

Law Implementation Of The National Health Insurance Program (JKN) For Medical Acupuncture Specialist Services In Kayuagung Regional General Hospital

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ABSTRACT

*Termination of health service coverage for medical acupuncture by BPJS in January 2015 on the grounds that medical acupuncture includes traditional health services contained in Presidential Decree number 12 of 2013 article 25 (j). Previously, medical acupuncture services had been guaranteed by PT. Askes based on joint regulation of the Minister of Health and Minister of Home Affairs number 138 and 12 of 2009. This study uses an empirical legal approach and a review of laws and regulations related to health insurance. Results: There are 2 regulations for acupuncture services, namely traditional acupuncture performed by non-medical personnel, and medical acupuncture performed by medical personnel (acupuncture specialists or general practitioners plus). Medical acupuncture services in hospitals performed by acupuncture specialists are medical services which include: examination and diagnosis, treatment and non-surgical specialist medical treatment according to medical indications, as contained in the fourth revision of Presidential Regulation number 12 of 2013 namely Presidential Decree number 82 of 2018 on article 47 paragraph (1) points b3 and b4. Also in line with the previous regulation, namely Regulation of the Minister of Health number 28 of 2014 concerning guarantees for medical acupuncture services. Conclusion: Based on the principle of *Lex specialis derogate legi generalis*, the Perpres can be the basis for implementing JKN for medical acupuncture services in hospitals..*

Keywords: *Law enforcement, National Health Insurance (JKN), BPJS, Medical Acupuncture.*

INTRODUCTION

The government has a responsibility for public health, as contained in the constitution, Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia reads:

"Everyone has the right to live in physical and spiritual prosperity, to have a place to live, live, and have a good and healthy environment and have the right to access health services (Alim, 2016). While in Article 34 paragraph (3) "The state is responsible for the provision of proper health service facilities and public service facilities".

Health is one of the basic human needs, therefore health is a right for every citizen that is protected by law. Every country recognizes that health is the biggest capital to achieve prosperity. Therefore, improving health services is basically an investment in human resources to achieve a prosperous society (Khariza, 2015).

Law Number 36 of 2009 concerning Health, in Article 1 paragraph (1) states "Health is a healthy state, both physically, mentally, spiritually and socially which enables everyone to live productively socially and economically". Article 4 reads "Every person has the right to Health". Article 5 paragraph (2) "Everyone has the right to obtain safe, quality health services". Article 16 "The government is responsible for the availability of resources in the health sector that are just and equitable for all people to obtain the highest degree of health".

Law Number 24 of 2011 concerning the Social Security Administering Body (BPJS), stipulates the establishment of the Health BPJS for the implementation of the National Health Insurance (JKN) program and the Employment BPJS for the implementation of work accident security, old age security, pension security and death security programs. Article (3) of Law Number 24 of 2014 states "BPJS aims to realize the provision of guarantees for the fulfillment of the basic needs of a decent life for each Participant and/or their family members". Article 10 letter (f) reads "Paying benefits and/or financing health services in accordance with the provisions of the Social Security program". Article 13 letter (d) states "Providing Benefits to all Participants in accordance with the Law on the National Social Security System.

JKN is organized nationally based on social insurance principles and equity principles. The principles of social insurance include: (1) cooperation between the rich and the poor, the healthy and the sick, the old and the young, as well as those with high and low risk; (2) Participation is mandatory and not selective; (3) Contributions are based on a percentage of wages/income for workers who receive wages or a nominal amount for workers who do not receive wages; (4) Managed on a non-profit basis, meaning that the management of funds is used for the maximum benefit of the participants, any surplus will be kept as a reserve fund and to increase the benefits and quality of services. The principle of equity is equality in obtaining services according to medical needs, which are not related to the amount of contributions that have been paid. This principle is realized by paying contributions of a certain percentage of wages for those who have income, and the government pays contributions for those who cannot afford it. Health insurance is held with the aim of ensuring that participants obtain the benefits of health care and protection in meeting their basic health needs.

Presidential Regulation Number 12 of 2013 concerning Health Insurance, in Article 1 paragraph (1) reads "Health Insurance is a guarantee in the form of Health protection so that participants obtain health care benefits and protection in meeting basic health needs that are given to everyone who has paid contributions or the contribution is paid by the government". Article 20 paragraph (1) contains "Every participant has the right to obtain health insurance benefits that are individual health services, including promotive, preventive, curative and rehabilitative services including drug services and consumable medical materials in accordance with the necessary medical needs. Article 22 paragraph (1) Letter b states "Health services

guaranteed at advanced referral include outpatient care, reads: examination, specialist treatment and consultation by specialist doctors and subspecialists. Article 22 paragraph (1) Letter c reads "Special medical action according to medical indications".

While Article 25 letter (j) Presidential Regulation Number 12 of 2012 confirms "Health services that are not guaranteed include: complementary, alternative and traditional medicine, including acupuncture, shin she, chiropractic, which have not been declared effective based on a health technology assessment. /HTA).

Explanations regarding medical acupuncture services at Advanced Referral Health Facilities (FKRTL) are specifically in Regulation of the Minister of Health (PMK) Number 28 of 2014 concerning Guidelines for the Implementation of the National Health Insurance Program, namely "Guarantee benefits given to participants in the form of health services that are comprehensive (comprehensive) based on the necessary medical needs. In Chapter IV PMK Number 28 of 2014 states "Health services guaranteed at FKRTL include: in Letter b number (2) "Examination, treatment and specialist consultation by specialist doctors and subspecialists"; In Letter b number (3) "Special medical action, both surgical and non-surgical according to medical indications"; and in Letter b number (12) "Medical acupuncture".

Presidential Regulation Number 82 of 2018 concerning Health Insurance, is the fourth amendment to Presidential Regulation Number 12 of 2013. In Article 46 paragraph (1) it reads "Every participant has the right to receive health insurance benefits that are individual health services, including promotive, preventive, curative services and rehabilitative services, including drug services, medical devices, and consumable medical materials according to the necessary medical needs. Article 47 paragraph (1) Letter b number (3) states "Guaranteed advanced referral health services include: examination, treatment, and specialist consultation; and in letter b number (4) reads "Special medical action, both surgical and non-surgical according to medical indications".

The regulations related to medical acupuncture services that currently exist are quite complete, but efforts to encourage the integration of medical acupuncture services into Health Facilities still encounter obstacles, especially the guarantee that has been going on since 2009 by PT. Askes, suddenly in January 2015 BPJS stopped its guarantee, arguing that medical acupuncture is a traditional treatment.

Problems arise when the policy makers, in this case the BPJS, interpret that medical acupuncture into traditional acupuncture treatment does not use regulations that legally accommodate the regulation of medical services in general, which are carried out by medical specialist doctors. It seems that there is a conflict of norms, even though there are strong regulations to serve as a legal basis for the application of medical acupuncture services at FKRTL. Due to the protracted nature of this problem, the immediate impact felt by the community is the limited utilization of medical acupuncture health services in hospitals.

The Kayuagung Regional General Hospital (RSUD) is a government teaching hospital. the acupuncture polyclinic was established in 2015, since then until now it has been able to serve various complaints and diseases, the treatment is based on clinical evidence of medicine or evidence based medicine (EBM) which has clear benefits for the patient's recovery (Section, 2022).

Reports from the medical services section of Kayuagung Hospital, there are 10 types of diseases that most come for treatment at the Outpatient Polyclinic of Kayuagung Hospital in

2022, namely: Refractive Disorder, Diabetes mellitus, Stroke, Dyspepsia, Cataracts, Hypertensive Heart Disease (HHD), Kidney Failure Chronic (CKD), Hypertension, Atherosclerotic Heart Disease (ASHD), and epilepsy. Of the ten kinds of diseases mentioned above, all of them can be treated with acupuncture therapy either as the main treatment or as an adjunct. As for the author's research is How legal application of the national health insurance program (JKN) to medical acupuncture specialist services at the Kayuagung Regional General Hospital (RSUD)? What are the obstacles encountered in implementing the law on the JKN program for medical acupuncture specialist services at Kayuagung Hospital?

RESEARCH METHOD

Type the research used is empirical legal research. Empirical legal research is carried out by researching directly into the field to see directly the application of laws and regulations, as well as conducting interviews with several respondents who are considered to be able to provide information regarding the implementation of the application of the law. The main data in this study are primary data and are supported by secondary data.

DISCUSSION AND ANALYSIS

Law Application of the National Health Insurance Program (JKN) to Medical Acupuncture Specialist Services at the Kayuagung Regional General Hospital (RSUD).

Medical Acupuncture is a branch of Physical Medicine and is based on Neuroscience, treating patients based on medical principles and evidence based (Kiswojo et al., 2009). The service is carried out by a doctor.

Medical acupuncture therapy is performed by an acupuncture specialist (Sp.Ak) either as a single or additional therapy for various kinds of complaints and diseases, for example in cases of: Rheumatic pain, Stroke, Bell's Palsy, Hypertension, Diabetes Mellitus, and others. In treating patients, acupuncture therapy can synergize with other specialist doctors such as Neurologists and Medical Rehabilitation Specialists.

Acupuncture health services are one type of advanced health services covered by PT. Askes (Persero) contained in the Joint Regulations of the Minister of Health and the Minister of Home Affairs Number 138/Menkes/PB/II/2009 and Number 12 of 2009 concerning Guidelines for Health Service Tariffs for PT. Askes (Persero) and their Family Members at Community Health Centers, Community Health Centers and Regional Hospitals. PT. Askes (Persero) provides acupuncture health services as a package of medical procedures that can be performed at advanced level outpatient services, one day care (One Day Care), as well as advanced level inpatient services in ordinary care rooms for Askes participants, which include civil servants. Civilians, Retired Recipients, Veterans, and Pioneers of Independence along with their family members.

Since the operation of BPJS Health on January 1, 2014 as stated in the BPJS Law, PT. Askes (Persero), which previously held health insurance, was declared disbanded without liquidation, and all assets and liabilities as well as legal rights and obligations of PT Askes (Persero) became assets and liabilities as well as legal rights and obligations of BPJS Kesehatan.

On January 22, 2015 a letter was issued from the Regional Head of the Central Jakarta Health BPJS to the Central Jakarta Regional FKRTL which temporarily suspended medical acupuncture services on the grounds that there was legal disharmony between the Minister of

Health Regulation Number 28 of 2014 and Presidential Regulation Number 12 of 2013 concerning services that are not guaranteed in the JKN program. So since January 23, 2015 the guarantee for medical acupuncture services has been temporarily suspended until revisions to the Presidential Regulation are made.

The reason for the BPJS is to use the principle of "Lex superior derogate legi inferior" in applying the Health insurance law to medical acupuncture, and interpreting medical acupuncture as a traditional service as contained in Article 25 letter (j) of Presidential Decree Number 12 of 2013 which states "Health Services that are not guaranteed are: complementary, alternative and traditional medicine, including acupuncture, shin she, chiropractic, which have not been declared effective based on Health Technology Assessment. There is an impression that there is a conflict of legal norms, because the explanation in Chapter IV letter (b) number 12 of the Minister of Health Regulation Number 28 of 2014 reads "Health services guaranteed at FKRTL include: medical acupuncture".

There are 2 types of regulations regarding acupuncture services according to laws and regulations, namely: medical acupuncture performed by medical personnel (general practitioner plus or acupuncture specialist); and traditional acupuncture performed by non-medical personnel.

Law Number 36 of 2009 concerning Health, clearly separates health services and traditional health services, as contained in Article 1 paragraph (15) states "Traditional health services are treatment and/or care by methods and drugs that refer to experience and empirical hereditary skills that can be accounted for and applied in accordance with the norms prevailing in society. Article 48 paragraph (1) reads "The implementation of health efforts as referred to in Article 47 is carried out through the following activities: a) Health services; b) traditional health services; etc.

Medical practice according to Article 1 paragraph (1) of Law Number 29 of 2004 states "Medical practice is a series of activities carried out by doctors and dentists for patients in carrying out health efforts". Furthermore, Article 1 paragraph (9) reads "Health service facility is a place for implementing health service efforts that can be used for medical or dental practice".

Law Number 36 of 2014 concerning Health Workers, in article 11 paragraph (1) reads "Health Workers are grouped into: a). medical personnel; b). clinical psychology personnel; c). nursing staff; d). midwifery staff; e). pharmacy staff; f). public health workers; g). environmental health workers; h). nutritionist; i). physical therapist; j). medical technicians; k). biomedical engineering personnel; l). traditional health workers; and M). other health professionals." Article 11 paragraph (2) "Types of Health Workers who are included in the group of medical personnel as referred to in paragraph (1) letter a consist of doctors, dentists, specialist doctors and specialist dentists".

Soby regulation, there is already a separation between health services performed by doctors or specialist doctors, and traditional health services. There are always 2 different article clauses in a statutory regulation which explains in detail about health services and traditional health services.

Regulation of traditional health services is specifically regulated by Government Regulation of the Republic of Indonesia Number 103 of 2014, Article 7 paragraph (1) reads "Types of traditional health services include: a). Empirical Traditional Health Services; b).

Complementary Traditional Health Services; and c). Integration of Traditional Health Services". Article 1 paragraph (9) "Traditional Health Service Facility is a Health Service Facility that provides treatment/care for Complementary Traditional Health Services." Article 1 paragraph (10) "Healthy Homes are places used to carry out Empirical Traditional Health care".

Regulation of the Minister of Health Number 37 of 2017 concerning Integration Health Services, in Article 1 paragraph (1) reads "Traditional Integration Health Services is a form of health service that combines conventional health services with complementary traditional health services, either as a complement or as a substitute in circumstances certain". Article 1 paragraph (2) "Conventional health services are a system of health services carried out by doctors and/or other health workers in the form of treating symptoms and diseases using drugs, surgery, and/or radiation". Article 3 paragraph (1) "Integrated Traditional Health Services are carried out jointly by traditional health workers and other health workers for the treatment/care of patients".

Another explanation regarding traditional medicine is contained in the Regulation of the Minister of Health Number 15 of 2018 concerning the Implementation of Complementary Traditional Health Services, in Article 1 paragraph (7) "Griya Sehat is a Traditional Health Service Facility that organizes traditional and complementary care/treatment by Traditional Health Workers". Article 3 paragraph (1) "Complementary Traditional Health Services are carried out by Traditional Health Workers in traditional health service facilities".

Presidential Regulation Number 82 of 2018 concerning Health Insurance, is the fourth amendment to Presidential Regulation Number 12 of 2013, Article 1 paragraph (1) reads "Health Insurance is a guarantee in the form of health protection so that Participants obtain the benefits of health care and protection in meeting basic health needs given to everyone who has paid the Health Insurance Contribution or whose Health Insurance Contribution has been paid by the Central Government or Regional Government". Article 1 paragraph (4) "Benefits are social security benefits that are the rights of Participants and/or their family members". Article 46 paragraph (1) "Every participant has the right to obtain health insurance benefits that are individual health services, including promotive, preventive, curative and rehabilitative services, including drug services, medical devices,

Article 47 paragraph (1) letter b number (3) Presidential Regulation Number 82 of 2018 states "Guaranteed advanced referral health services include: examination, treatment, and specialist consultation". Article 47 paragraph (1) letter b number (4) Presidential Regulation Number 82 of 2018 reads "Special medical actions, both surgical and non-surgical according to medical indications".

The revision to Presidential Regulation Number 12 of 2013 has been carried out with the issuance of the fourth revision in the form of Presidential Regulation Number 82 of 2018 which no longer mentions "acupuncture" as an unsecured benefit. However, BPJS still has not guaranteed medical acupuncture services again on the grounds that it still requires HTA.

If the laws and regulations do not specifically mention guarantees for medical acupuncture services at FKRTL or hospitals, then the general principle "Lex specialis derogate legi generalis" applies. In this case, general regulations apply that medical acupuncture services performed by acupuncture specialists at FKRTL or hospitals are specialist medical services, as contained in Article 22 paragraph (1) letter b number (1) parts b and c of Presidential Decree

No. 12 of 2013; Chapter IV letter b numbers (2 and 3) Regulation of the Minister of Health Number 28 of 2014; and Article 47 paragraph (1) letter b lift (3 and 4) Presidential Regulation Number 82 of 2018; which states "Health services that are guaranteed at advanced referral levels include outpatient care: examination, specialist treatment and consultation by specialist doctors and subspecialists; Specialist medical action according to medical indications.

The BPJS interpretation of including medical acupuncture into traditional acupuncture is wrong. There are different types of staff, medical acupuncture is performed by medical personnel (general practitioner plus and/or acupuncture specialist), while traditional acupuncture is performed by non-medical personnel. The educational curriculum is also very much different, let alone the competencies possessed. Medical personnel practicing medicine have competence as doctors which include: conventional diagnosis and treatment according to medical indications, while non-medical personnel who practice acupuncture do not have this authority. So medical acupuncture services cannot be equated with traditional acupuncture.

The implementation of medical acupuncture services must pay attention to service quality and safety, in accordance with the mandate in the Health Act. BPJS participants, both independent and paid by the government, have the same rights to obtain quality and safe health services, including medical acupuncture services which are part of specialist medical services.

Gustav Radbruch said that there are three purposes of law, namely benefit, certainty, and justice. In carrying out these three legal objectives, priority principles must be used. Justice may be prioritized and sacrifice benefits and legal certainty for the wider community (Dayat, 2022).

Related to the relationship of the three basic legal values, there can be tension between them with each other. This tension is understandable because all three contain different demands which have the potential to conflict with one another. If taken as an example of legal certainty then as a value it immediately shifts the values of justice and utility aside. According to Radbruch, if there is tension between these basic values, we must use the basis or principle of priority where the first priority always falls on the value of justice, then the value of use or benefits and finally legal certainty. This shows that Radbruch places the value of justice above the value of benefits and the value of legal certainty and places the value of legal certainty below the value of legal benefits (Gilang, 2020).

A different opinion was expressed by Achmad Ali (in Gilang, 2020) who stated that "He himself agrees with the principle of priority but not by setting a priority order as stated by Radbruch. He considers that it is more realistic if we adhere to casuistic priority principles. What he means is that the three basic legal values are prioritized according to the case at hand. According to him, if the casuistry priority principle is adhered to, then our legal system will avoid various unresolved conflicts."

So in the case of medical acupuncture health services at FKRTL or hospitals, the principles that should be prioritized are the principles of benefit and justice, because health is a basic right of every citizen guaranteed by the constitution.

Health is one of the basic human needs, therefore health is a right for every citizen that is protected by law. Every country recognizes that health is the biggest capital to achieve prosperity. Therefore, improving health services is basically an investment in human resources to achieve a prosperous society (Khariza, 2015).

ApplicationThe Law on the National Health Insurance Program (JKN) for Medical Acupuncture Specialist Services at the Kayuagung Regional General Hospital (RSUD) cannot yet be implemented because BPJS continues to maintain that medical acupuncture is part of traditional medicine.

Obstacles Faced in Legal Implementation of the National Health Insurance Program (JKN) for Medical Acupuncture Specialist Services at the Kayuagung Regional General Hospital (RSUD)

Studylegal effectiveness is an activity that shows a strategy for creating general problems, namely a comparison between legal facts and legal values, especially looking at the level between law in action and law in theory, this activity will show the relationship between law scripture and law in action (Taneko, 2017).

Studiesregarding the effectiveness of the law differ from one another, but generally compare it with a legal ideal. Impact study, comparing legal reality with legal ideals that have a clear and specific operational meaning. The measuring instrument is a law that is still in effect having a clear purpose or a legal regulation stating a certain policy (Pujirahayu, 2020).

There isSeveral related factors determine the law enforcement process, as revealed by Friedman, namely legal substance, legal culture and legal structure. For law enforcement to be effective, these three components must operate simultaneously. A flaw in any of the components will frustrate or reduce the effective quality of law enforcement. In line with the opinions of Satjipto Rahardjo and Friedman, Soerjono Soekanto mentioned five factors that determine the effectiveness of law enforcement, namely: rule of law, law enforcement facilities, legal apparatus, public awareness and legal culture (Ni'mah, 2022).

The obstacles faced in the application of the Law on the National Health Insurance Program (JKN) forMedical Acupuncture Specialist Services at the Kayuagung Regional General Hospital (RSUD), namely:

First, the legal issue itself, there is no regulation that specifically mentions guarantees for medical acupuncture services at the level of laws or presidential regulations, although in fact almost all specialist medical services are also not specifically stated, but in fact the medical services of other specialists are borne by BPJS on a legal basis that is "Lex generalist". In this case BPJS considers medical acupuncture to be traditional acupuncture, so it cannot be guaranteed in JKN.

Second, human resources are still limited. Until now, acupuncture treatment and therapy has not been widely used as part of the main treatment to treat various diseases or certain medical conditions, but acupuncture acts as an additional therapy.

Medical acupuncture is carried out in the form of identifying acupuncture points that will be used to treat various diseases, then manipulation is carried out. Some patients will feel a slight sensation at the acupuncture needlepoint, but no actual pain. Stimulation of acupuncture points is generally done with a special needle called manual acupuncture, and it is also possible that the previously inserted needle will be given low voltage electricity from an electrostimulator called "Electro-acupuncture" or by using a TDP heating device, or other modalities.

Acupuncture will provide certain effects through stimulation of acupuncture points, influencing neuro-hormonal to achieve hemostasis, namely the balance of the metabolic system

in the body. Therefore, acupuncture treatment is different from traditional acupuncture that we often encounter in society. Medical acupuncture is part of conventional medicine and its practitioners are medical personnel (general practitioners plus acupuncture specialists), while traditional acupuncture is part of Traditional Chinese medicine and its practitioners are non-medical (not doctors).

Actually, acupuncture therapy services can save BPJS funds, considering that acupuncture treatment procedures are carried out without the use of drugs and most of those served are elderly patients and patients with chronic diseases with various problems.

Third, the lack of facilities and infrastructure in acupuncture treatment services at the Kayuagung Regional General Hospital (RSUD). The lack of other tools such as laserpuncture as one of the modalities of acupuncture therapy, so that if there are patients who need it, the action cannot be served, for example: using laserpuncture in children is more appropriate because it is not painful.

Fourth, the reason for society, many people think that with acupuncture treatment can cure all kinds of diseases, but this is not the case.

From field survey with interviews with several respondents, four obstacles were found in the application of the JKN program law to medical acupuncture specialist services at Kayuagung Hospital, as described above. This is in line with what legal experts say about the effectiveness of law enforcement.

CLOSURE

Conclusion

The application of the Law on the National Health Insurance Program (JKN) to Medical Acupuncture Specialist Services at the Kayuagung Regional General Hospital (RSUD) cannot yet be implemented, because BPJS considers medical acupuncture to be traditional acupuncture which cannot be guaranteed by BPJS. Obstacles Faced in the Implementation of the Law on the National Health Insurance Program (JKN) for the services of Medical Acupuncture Specialists at the Kayuagung Regional General Hospital (RSUD), namely The legal factor itself, there is no regulation specifically regarding medical acupuncture at the level of an Act or Presidential Regulation, Human Resources Factor, the availability of acupuncture specialist doctors is still small, The factor is the limited facilities and infrastructure in medical acupuncture services at Kayuagung Hospital, namely the lack of supporting tools such as Laserpuncture as a modality of medical acupuncture therapy. Community factors, most people do not understand the benefits of acupuncture therapy.

Suggestions

For the government, there should be a legal policy in the form of the latest Law or Presidential Regulation which clearly states that medical acupuncture services in hospitals performed by acupuncture specialists are guaranteed by BPJS. For BPJS, use a legal basis in the form of a "generalist" principle which states that medical acupuncture services performed by acupuncture specialists at FKRTL are "specialist consultations and non-surgical specialist medical procedures", as contained in Article 47 paragraph (1) letter b numbers (3 and 4) Presidential Regulation Number 82 of 2018. Acupuncture specialists/professional organizations (PDAI) should take legal action in the form of submitting or requesting a Supreme Court (MA)

Fatwa against Article 47 paragraph (1) letter b numbers (3 and 4) of Presidential Regulation Number 82 of 2018, that "Specialist services Medical acupuncture at the Hospital is included in specialist consultation and non-surgical specialist medical procedures, like other specialist medical services, which are not all specifically mentioned, but can be guaranteed by BPJS.

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