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LEGAL PROTECTION FOR BPJS INPATIENTS DUE TO LIMITED HOSPITAL SPACE

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ABSTRACT

Access to healthcare is a constitutional right of citizens guaranteed by law. However, in practice, inpatients participating in the National Health Insurance (BPJS Kesehatan) are still frequently denied referrals by hospitals due to limited inpatient room capacity. This study aims to analyze the legal provisions related to the rights of BPJS Kesehatan patients, examine the legal responsibilities of hospitals and BPJS Kesehatan, and identify forms of legal protection for patients who experience referral denials. This study uses a normative legal method with a statutory and conceptual approach, through a qualitative analysis of secondary legal materials. The results show that denials of inpatient referrals due to limited capacity, without providing alternative referrals, contradict the hospital's obligation to provide healthcare services and its social function as stipulated in the Health Law and related regulations. Legal responsibility for such denials lies with the hospital due to negligence in providing services, and with BPJS Kesehatan due to its weak supervisory function over the referral system. Legal protection for patients includes preventive measures in the form of transparency of bed availability information and integration of hospital information systems, as well as repressive measures in the form of administrative sanctions and civil lawsuits. This study concludes that despite the existence of a regulatory framework, weak law enforcement has resulted in suboptimal protection of patient rights. Therefore, strengthened oversight, real-time integration of hospital management systems, and the implementation of strict sanctions are needed to ensure legal certainty for BPJS Kesehatan participants.

Keywords: Legal Protection, BPJS Health Patients, Refusal of Inpatient Referral, Hospital Responsibility.

INTRODUCTION

Health is a basic human right protected by the constitution and is a significant indicator of the well-being of any independent country. Article 28H, paragraph of the 1945 Constitution of the Republic of Indonesia clearly states that everyone has the right to good physical and mental health, a safe and clean place to live, a healthy environment, and health care. [1] The state has a constitutional duty to provide adequate medical facilities and public

[1] Lidya Shery Muis et al., "State Responsibility for Access and Availability of Patented Drugs for Public Health," *Yuridika* 38, no. 2 (2023): 219–242.

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services that are available to all members of society without discrimination. [2] The government is committed to creating a national health system that protects and preserves the health of all citizens. [3] This shows that they take this duty seriously. It is not only a moral duty to make this right a reality, but also a legal need that requires careful implementation through statutory legislation and strong enforcement measures to ensure fairness and humanity in the healthcare sector.

The creation of the Social Security Administering Body for Health as part of the National Social Security System represents a big change in Indonesia's healthcare laws. This universal health coverage program is based on Law Number 40 of 2004, which is about the National Social Security System, and Law Number 24 of 2011, which is about BPJS. [4] The main goal of this system is to make sure that all Indonesians may get the health care they need without going broke. [5] Participants have a legal right to benefits that include health care and services that meet basic medical needs. This system works on the ideas of working together and not making money. Its goal is to provide broad coverage that includes promotional, preventative, curative, and rehabilitative therapies across a wide range of health institutions across the archipelago.

The hierarchical referral system is a key part of the BPJS Health operational architecture. It is used to control the flow of patients and make sure that services are efficient[6]. Medical care starts at First Level Health Facilities and moves up to Advanced Level Referral Health Facilities based on the patient's medical needs and how serious their illness is.[7] Regulations require that referrals be done in a systematic way to maintain the quality of service and make better use of medical resources. The legislative mandate creates a structure that makes sure people get the right treatment for their medical needs. For this mechanism to work well, the infrastructure needs to be ready and the administrative bodies and healthcare

[2] Rizki Ramadani, Yuli Adha Hamzah, and Arianty Anggraeni Mangerengi, "Indonesia's Legal Policy During COVID-19 Pandemic: Between the Right to Education and Public Health," *Journal Of Indonesian Legal Studies* 6 (2021): 125.

[3] Rikko Hudyono and Suparnyo Suparnyo, "The Reformation Of Medical Organizations In Omnibus Law On Health: Single Or Multi-Bar," *Jurnal Pembaharuan Hukum* 10, no. 2 (2023).

[4] Ainul Yaqin, "Student Health Insurance; Islamic Law Study On The Management Model Of Health Insurance In Islamic Boarding Schools (Pondok Pesantren)," *Hukum Islam* 23, no. 1 (2023): 1–15.

[5] Naufal Rizky Perdana, Gayatri Adhasari, and Erlina Puspitaloka Mahadewi, "Challenges and Implementation of Universal Health Coverage Program in Indonesia," *International Journal of Health and Pharmaceutical (IJHP)* 2, no. 3 (2022): 589–596.

[6] Ida Ayu Agung Dewi Sawitri, Pande Putu Januraga, and Ni Made Sri Nopiyani, "The Impact of National Health Insurance Online Referral System on the Access and Quality of Health Services in Gianyar District, Bali, Indonesia," *Public Health and Preventive Medicine Archive* 8, no. 1 (2020).

[7] Putu Wuri Handayani et al., "The Regional and Referral Compliance of Online Healthcare Systems by Indonesia National Health Insurance Agency and Health-Seeking Behavior in Indonesia," *Heliyon* 7, no. 9 (2021).

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providers need to work well together. Any break in this connection puts the legal rights of the people who need this structured aid for their recovery at risk.

There are often differences between the legal rules and the real-life situations that happen in hospitals when it comes to the availability of inpatient facilities. Patients with BPJS status often have a hard time getting care at referral hospitals because they are told that the hospitals are full.[8] The common reasons for not letting patients in or delaying their admission are "limited inpatient rooms" or "full beds".[9] This event raises important legal questions about how open hospital data is and how easy it is to get to medical facilities.[10] Even when the patient's condition medically requires immediate inpatient care, these rejections nevertheless happen. The fact that this problem keeps coming up shows that it is a systematic failing, not just a one-time event. This creates a barrier that effectively undermines the promises made by the national health insurance law.

Patients' safety and right to life are at risk when they can't get medical care because there aren't enough resources.[11] The connection between the patient and the healthcare professional is more than just a business deal; it's also a therapeutic contract with legal obligations of care.[12] Denying a referral without a viable alternative or swift resolution violates patient safety standards and compromises the humanitarian responsibilities inherent in medical practice. Patients who have to find other places to get care or put off therapy on their own face greater health risks and mental anguish.[13] This situation creates a clear imbalance of power, with the patient, as the person receiving healthcare, suffering the consequences of problems in the system that should be the responsibility of the providers and insurance.

The Health Law and the Hospital Law set rules that hospitals must follow. These laws show how important hospitals are to society. These rules clearly say that hospitals can't turn away patients in emergencies who require essential care just because of administrative or

[8] Setyo Trisnadi, "The Responsibility of Social Security Organizing Agency (BPJS) When Participants Are Rejected by Hospital in the Perspective of Civil Agreement Law," *International Journal of Law Reconstruction* 7, no. 2 (2023): 198–210.

[9] Rina Arum Prastyanti et al., "Consumer Legal Protection for Patients and the Quality of Health Services in Hospitals," *Open Access Macedonian Journal of Medical Sciences* 11, no. E (2023): 198–202.

[10] Hasbuddin Khalid and Sri Lestari Poernomo, "Discriminatory Treatment of Fulfillment of Patient Rights in Services at Facilities by the Healthcare Social Security Agency in Indonesia," *Journal of Law and Sustainable Development* 11, no. 12 (2023): e2053–e2053.

[11] Adel Alabdaly et al., "Relationship between Patient Safety Culture and Patient Experience in Hospital Settings: A Scoping Review," *BMC Health Services Research* 24, no. 1 (2024): 906.

[12] Hargianti Dini Iswandari and Sanjana Hoque, "Reconceptualizing Legal Arrangement on the Doctor-Patient Relationship in Indonesia," *Law Reform* 18, no. 1 (2022): 58–78.

[13] Handojo Dhanudibroto and Gunawan Widjaja, "Rejection of Medical Treatment By Patients In The Perspective of Legal Responsibility.," *Devotion: Journal of Research & Community Service* 6, no. 3 (2025).

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budgetary problems.[14] The claim of inadequate capacity requires rigorous validation to prevent its use as a convenient justification for excluding BPJS patients, who are often perceived as less profitable than those with general or private insurance. Legal scrutiny must determine if hospitals have maximized their capacity or distributed their resources fairly. Not being able to handle capacity or make sure that referrals are made correctly could be a violation of the rules and professional ethics that govern hospital administration.[15]

A thorough analysis of legal protection is essential to address the injustices faced by BPJS participants in this context. Philipus M. Hadjon and other writers talk about the idea of legal protection, which separates preventative legal protection from oppressive legal protection.[16] Preventive protection is to afford individuals the option to express complaints or offer comments before to the finalization of a government decision, so preventing issues. Repressive protective systems resolve problems through judicial or administrative appeals. In healthcare, legal protection must include rules to stop arbitrary rejections and ways to fix rights abuses. The law must be a way to bring balance back between powerful medical institutions and weak patients, protecting the latter against carelessness and bad behavior by staff.

When a hospital refuses to refer a patient, the hospital administration and the BPJS regulatory body have to work together in a difficult way to make sure that the patient is not harmed. Hospitals are responsible for making sure that their facilities are accessible and that the capacity data they give is correct.[17] At the same time, BPJS Health is in charge of making sure that its partner facilities work well and that its members don't have any problems because of logistical issues. In this case, the legal idea of accountability includes not only simple administrative errors but also the possibility of civil liability for losses caused by delayed treatment or refusal of care.[18] To find out where the carelessness happened, you need to look at the service contracts and the laws that govern the relationship between the insurer and the provider.

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[14] Yeni Nuraeni, "Legal Protection Of Health Bpjs Accountability Regarding Hospital Refuse For BPJS Program Participants," *Jurnal Sosial Sains Dan Komunikasi* 1, no. 02 (2023): 85–92.

[15] Harsono Njoto, "Legal Protection Mechanisms and Consequences for Medical Negligence in Healthcare Services," *Rechtsidee* 11, no. 1 (2023): 10–21070.

[16] Rani Tiyas Budiyanti, Roro Isyawati Permata Ganggi, and Murni Murni, "Community Legal Protection in Obtaining Comprehensive and Quality Health Information and Education," *Populasi* 30, no. 1 (2022): 26–35.

[17] Eko Krisnarto et al., "Hospital Accountability for Medical Actions: A Justice-Oriented Approach Based on the Doctrine of Vicarious Liability," *Health Leadership and Quality of Life* 4 (2025): 11.

[18] Joko Sriwidodo, Soleh Hasan Wahid, and Anjar Kususiyanah, "Toward Equitable Healthcare: A Medical Dispute Resolution Framework to Address Medical Supply Delays in Health Law," *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 17, no. 3 (2025): 4525040.

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This article delineates the subject by analyzing three critical legal components associated with the occurrence of referral rejection. This study investigates the regulation of certain rights of BPJS Health inpatient participants within the referral service system, seeking to identify current statutory protections. The narrative then looks at how much legal responsibility both hospitals and BPJS Health have when a patient is turned away because there isn't enough room, and it questions who is responsible.[19] The fourth part of the problem formulation looks at the specific legal rights that these patients have. It looks at the remedies and recourse mechanisms that the law has set up to help those who have been denied their right to inpatient care.[20]

Research objectives are established to enable a methodical analysis of these pressing legal issues affecting public health governance. The main goal is to look at and assess the rules and regulations for patient rights in the referral system to see if the current laws are good enough or need to be changed. The study seeks to define the boundaries of liability for healthcare professionals and the social security agency to guarantee proper accountability in cases of service denial. A critical goal is identifying and formulating comprehensive legal protection frameworks that may be efficiently applied to safeguard BPJS participants. These objectives together seek to furnish a legal solution that harmonizes the statutory obligations of universal coverage with the pragmatic considerations of hospital accessibility.

This study contributes to the theoretical development of health law and the practical improvement of the national health insurance system. This work theoretically enriches the academic discourse regarding the intersection of consumer protection legislation, administrative law, and health law in Indonesia. It improves the conversation about how to hold the government accountable and protect people's constitutional rights. The results are a useful guide for lawmakers, hospital managers, and BPJS officials who want to improve and evaluate referral system protocols. The suggestions from this analysis aim to create a more fair and responsive healthcare system where everyone has the right to access inpatient treatment without having to deal with administrative denial.

METHOD

This study utilizes a normative juridical methodology, distinguished by a doctrinal approach that analyzes positive law and legal principles to tackle the issue of referral

[19] Vitasya Nusantari and Azis Budianto Suparno, "Legal Protection for the Rejection of BPJS Patients by the Hospital," in *MIC 2022: Proceedings of the 2nd Multidisciplinary International Conference, MIC 2022, 12 November 2022, Semarang, Central Java, Indonesia* (European Alliance for Innovation, 2023), 40.

[20] Gladys Haryanto, Erna Ambarwati, and Arman Lany, "Legal Protection for Medical Personnel in BPJS Affiliated Hospitals Based on Law Number 17 of 2023," *Research Horizon* 5, no. 4 (2025): 1513–1522.

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rejections for BPJS Health clients resulting from constrained inpatient capacity.[21] The study employs secondary data sources, systematically classified into primary legal materials, including the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2011 regarding BPJS, and Law Number 17 of 2023 concerning Health,[22] supplemented by secondary legal materials such as pertinent legal textbooks, academic journals, and theoretical doctrines. Data gathering is accomplished through extensive library research methodologies and document analyses, encompassing the identification, cataloging, and categorization of regulations and literature relevant to the research subject. The gathered data is then examined through a qualitative juridical analysis method, which interprets and assesses the legal materials to formulate prescriptive conclusions concerning the liability of healthcare providers and the legal protections accessible to patients within the national health insurance system.[23]

DISCUSSION

Legal Regulations Concerning the Rights of Inpatient BPJS Health Participants in the Referral System

The legal framework governing the rights of BPJS Health participants within the inpatient referral system is not a singular regulation but a complex stratification of laws ranging from the constitutional level to technical ministerial regulations. This framework is fundamentally grounded in the 1945 Constitution of the Republic of Indonesia (*UUD 1945*). Article 28H paragraph explicitly elevates health to a constitutional right, stating that every person has the right to live in physical and mental prosperity and to obtain health services.[24] Furthermore, Article 34 paragraph imposes a mandatory obligation on the State to provide adequate medical facilities and public services. Consequently, the relationship between a BPJS participant and the national health system is not merely contractual but constitutional; the state acts as the guarantor of health rights, executing this duty through the National Social Security System.

The operationalization of these rights is codified in Law Number 40 of 2004 concerning the SJSN and Law Number 24 of 2011 concerning the Social Security

[21] Fuji Restu Firma, Elim Jusri, and Asep Sapsudin, "Comparative Review of Informed Consent as a Legal Safeguard in Healthcare: Perspectives from Indonesia and Others Countries," *Research Horizon* 5, no. 4 (2025): 1265–1280.

[22] Mulyadi Alrianto Tajuddin et al., "Indonesian Medical Confidentiality of Telemedicine," in *SHS Web of Conferences*, vol. 149 (EDP Sciences, 2022), 1024.

[23] Ivan Dieb Miziara and Carmen Silvia Molleis Galego Miziara, "Medical Errors, Medical Negligence and Defensive Medicine: A Narrative Review," *Clinics* 77 (2022): 100053.

[24] Muhamad Azhar and Utik Handayani, "Perlindungan Hukum Terhadap Korban Malpraktik Layanan Kesehatan Berbasis Telemedicine," *Law, Development and Justice Review* 6, no. 1 (2023): 51–65.

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Administering Body.[25] Under these statutes, the primary legal right of a participant is the entitlement to "benefits" (*manfaat*). In the context of the National Health Insurance, these benefits are comprehensive, covering promotive, preventive, curative, and rehabilitative services.[26] A critical legal distinction must be made here: the law guarantees access to *medical necessity*, not merely access to a specific preferred location. This principle underpins the "Tiered Referral System" (*Sistem Rujukan Berjenjang*), which is regulated to ensure the efficiency and quality of care. According to Ministry of Health Regulation Number 01 of 2012 concerning the Individual Health Service Referral System, medical services must start from First Level Health Facilities. Access to Advanced Level Referral Health Facilities—where inpatient care typically occurs—is a derivative right that activates only upon medical indication that the primary facility cannot handle the case.[27]

A significant legal tension arises in the implementation of these referral rights when intersected with hospital capacity issues. The regulation stipulates that the referral process must be based on the competence of the health facility and the severity of the patient's disease.[28] When an FKRTL is designated as the destination for a referral, a legal relationship is formed between the provider and the participant. The core problem emerges when hospitals invoke "limited inpatient rooms" as a basis for rejection.[29] Legally, the status of being a BPJS participant grants a "Right to Service," which implies that administrative barriers or resource constraints should not nullify the medical obligation. The Health Law (Law Number 17 of 2023) reinforces the social function of hospitals, mandating that while hospitals are institutions that may seek profit, their primary legal duty is humanitarian.

The regulation addresses the "full bed" scenario through the concept of horizontal and vertical referrals. If a specific hospital cannot accommodate a patient due to full occupancy, the legal obligation does not vanish; rather, it shifts. The hospital, in coordination with BPJS Health, is legally obligated to facilitate a referral to another facility of equal competence (horizontal referral) or higher competence (vertical referral). The practice of simply sending

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[25] Angelica Joanna Charity Kamalo, Cokki Cokki, and Shirly Gunawan, "Pengaruh Kualitas Layanan Terhadap Kepuasan Pasien BPJS Di Unit Rawat Inap Dan Rawat Jalan Rumah Sakit Umum Daerah Jawa Tengah," *Jurnal Manajemen Bisnis dan Kewirausahaan* 8, no. 3 (2024): 558–571.

[26] Fatma Ayu Wahyuningtyas and Bambang Budi Rahardjo, "Rendahnya Keikutsertaan Masyarakat Dalam BPJS Mandiri," *Indonesian Journal of Public Health and Nutrition* 3, no. 2 (2023): 195–203.

[27] R S Ode Arli, Rachmat Faisal Syamsu, and Armanto Makmun, "Faktor Penyebab Tingginya Angka Rujukan Di Fasilitas Kesehatan Tingkat Pertama Pada Era Jkn: Literature Review," *Prepotif J. Kesehat. Masy* 7, no. 3 (2023): 16594–16611.

[28] Cecilia Widijati Imam, Wisodhanie Widi Anugrahanti, and Raswati Prapti Rahayu, "Pendampingan Masyarakat Tentang Alur Pelayanan Rawat Jalan Pada Rumah Sakit," *SELAPARANG: Jurnal Pengabdian Masyarakat Berkemajuan* 6, no. 1 (2022): 298–302.

[29] Diwas Kc and Tongil Kim, "Impact of Universal Healthcare on Patient Choice and Quality of Care," *Production and Operations Management* 31, no. 5 (2022): 2167–2184.

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a patient home or refusing admission without a continuity of care plan is a violation of the "duty of care" principle. The law envisages a seamless system where the participant is not abandoned. Therefore, a rejection based on capacity without an active solution is an unlawful act because it effectively denies the participant the benefits they have paid for through premiums, thereby breaching the statutory insurance contract managed by BPJS.

The legal protection of these rights is bolstered by Law Number 8 of 1999 concerning Consumer Protection. In the healthcare equation, the BPJS participant is legally defined as a "consumer," while the hospital acts as the "business agent".[30] Article 4 of the Consumer Protection Law guarantees the consumer's right to comfort, security, and safety, as well as the right to correct, clear, and honest information. This is particularly relevant to the transparency of bed availability data. Often, the "keterbatasan ruang rawat" (limited inpatient room) is an opaque administrative claim. If a hospital creates an artificial scarcity for example, by reserving empty beds for general or private insurance patients while turning away BPJS patients this constitutes discriminatory practice. Article 32 of Law Number 17 of 2023 and previous regulations explicitly forbid discrimination in obtaining health services.[31] Thus, the participant has a statutory right to transparent information regarding real-time bed occupancy.

The regulatory framework makes a critical exception to the tiered referral procedural requirements in cases of emergency. In an emergency (*gawat darurat*), the administrative rigidity of the referral system is legally suspended. Article 174 of Law Number 17 of 2023 strictly prohibits any health facility from refusing a patient in an emergency or requesting a down payment. In such scenarios, the "referral letter" or "full capacity" defense is legally invalid if it endangers the patient's life. The hospital is mandated to perform stabilization measures irrespective of room availability. If the inpatient ward is truly full, the hospital must provide temporary care in the emergency unit or transit room until a transfer is safe.[32] This establishes that the right to life and safety stands at the apex of the legal hierarchy, superseding all administrative protocols and capacity limitations within the BPJS referral system. The law protects the patient’s biological necessity over the hospital’s infrastructural limitations.

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[30] Yohnly Boelian Dachban, Redyanto Sidi, and Yasmirah Mandasari Saragih, “Tinjauan Yuridis Kesiapan Rumah Sakit Dan Tanggungjawab Rumah Sakit Pasca Peraturan Menteri Kesehatan Nomor: 24/2022 Tentang Rekam Medis Dan Kesiapan Rumah Sakit,” *Jurnal Ners* 7, no. 1 (2023): 232–239.

[31] Althaf Naufal Romero, Sri Ratna Suminar, and Asep Hakim Zakiran, “Pemenuhan Hak Pasien BPJS Dalam Mendapatkan Pelayanan Antidiskriminasi Dihubungkan Dengan UU Rumah Sakit,” *Jurnal Riset Ilmu Hukum* (2023): 31–36.

[32] Amrita Shenoy, Gopinath N Shenoy, and Gayatri G Shenoy, “The Impact of EMTALA on Medical Malpractice Framework Models: A Review,” *Patient Safety in Surgery* 16, no. 1 (2022): 21.

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Liability of Hospitals and BPJS Health Regarding Referral Rejection Due to Capacity Limitations

The legal construction of liability regarding the rejection of BPJS Health inpatient participants is complex, rooted in the tripartite legal relationship between the Participant, the Healthcare Provider, and the Social Security Administering Body. This relationship is governed not only by public administrative law but also by civil and consumer protection laws. When a patient is denied access to inpatient care due to "limited capacity" or "full occupancy," the determination of liability requires a meticulous analysis of where the breach of duty occurred. The responsibility is bifurcated between the hospital, which acts as the direct provider of medical services, and BPJS Health, which acts as the insurer and organizer of the national health system. Both entities bear distinct legal burdens to ensure that the constitutional right to health is not rendered illusory by logistical or administrative failures.

The hospital serves as the frontline executor of health services. Under Law Number 17 of 2023 concerning Health, hospitals operate under a "social function" mandate, even if they are private entities. The liability of a hospital when rejecting a patient based on capacity limitations is primarily anchored in the concept of the "Duty of Care".[33] Legally, once a patient presents themselves at the hospital whether through the Emergency Room or the Polyclinic, a therapeutic agreement (*transaksi terapeutik*) is initiated. Although the formal contract may not be signed immediately, the legal duty to assess and stabilize exists. If a hospital rejects a patient citing full capacity, the hospital bears the Burden of Proof. In the perspective of Consumer Protection Law and Health Law, the hospital must be able to demonstrate that the beds are physically fully occupied. If an investigation reveals that the hospital practiced discrimination for instance, by reserving empty beds for general (cash) patients or private insurance holders while telling BPJS patients the ward is full this constitutes an Unlawful Act (*Perbuatan Melawan Hukum* or Tort) under Article 1365 of the Indonesian Civil.[34] In this scenario, the hospital has violated the principle of non-discrimination mandated by the Health Law. The hospital can be held civilly liable for material and immaterial damages suffered by the patient due to the delay in treatment caused by this deceit.

The hospital's liability extends to the Duty to Refer. The refusal of a patient cannot be absolute. If the facility is genuinely full, the hospital has an affirmative legal obligation to

[33] Windy Virdinia Putri and Nanik Prasetyoningsih, "The Limitation of Hospital Liability in Indonesian Health Law," in *5th Borobudur International Symposium on Humanities and Social Science 2023* (Atlantis Press, 2024), 775–783.

[34] Khalid and Poernomo, *loc.cit.*

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facilitate the transfer of the patient to another hospital. Simply turning the patient away at the registration desk without offering a solution or assistance constitutes "patient abandonment." In administrative law, this is a violation of the hospital's operational standards. If the patient is in an emergency condition, the liability escalates significantly. Article 190 of Law Number 36 of 2009 (and retained principles in the 2023 Health Law) stipulates criminal sanctions for hospital management or personnel who deliberately do not assist a patient in a critical condition.[35] Therefore, the excuse of "no rooms" is legally invalid in emergency contexts; the hospital is liable to provide temporary stabilization in any available space (e.g., triage or transit beds) before a safe transfer can be executed.

Based on Law Number 40 of 2004 and Law Number 24 of 2011, BPJS Health collects premiums from participants with the counter-obligation of guaranteeing "benefits". These benefits are not merely financial reimbursements but the actual availability of health services. Therefore, BPJS Health holds Contractual Liability towards its participants. When a participant follows all procedures (tiered referral) but is still rejected by the system, BPJS is potentially in a state of default (*Wanprestasi*).[36]

The core of BPJS Health's liability lies in its Supervisory and Credentialing Function. BPJS is legally obligated to manage the network of providers. This involves the "Credentialing" and "Re-credentialing" processes, where BPJS evaluates whether a partner hospital has sufficient capacity and resources to serve participants. If BPJS continues to contract with a hospital that has a notorious record of arbitrarily rejecting patients or falsifying bed availability data, BPJS can be held liable for "Negligence in Supervision." The agency has a duty to ensure that the data presented in the *Mobile JKN* application regarding bed availability is accurate. If the app shows beds are available, but the hospital rejects the patient, BPJS bears a responsibility for the discrepancy in the information system provided to the consumer.[37]

BPJS Health is liable for ensuring the Effectiveness of the Referral System. The tiered referral system is a mechanism imposed by BPJS regulations. If this system creates a bottleneck where patients are stranded between facilities, the liability falls on the organizer of the system. BPJS is required to have a "Liaison Officer" or BPJS Center in hospitals to resolve such disputes immediately on the ground. The absence or ineffectiveness of this

[35] Dedet Steavanno, Zudan Arief Fakrulloh, and Herman Bakir, "Hospital Criminal Law Refusing Emergency Patient Medical Services," *European Alliance for Innovation*, no. 2023 (2023).
[36] Trisnadi, "The Responsibility of Social Security Organizing Agency (BPJS) When Participants Are Rejected by Hospital in the Perspective of Civil Agreement Law."
[37] Prastyanti et al., "Consumer Legal Protection for Patients and the Quality of Health Services in Hospitals."

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dispute resolution mechanism during a critical rejection implies a failure in service delivery standards.[38]

In many cases of referral rejection, the liability is not mutually exclusive but can be interpreted as Joint Liability. For instance, if a patient suffers deterioration because the Hospital refused admission and BPJS failed to provide an alternative destination promptly, both entities contribute to the injury. The hospital is liable for the direct refusal, and BPJS is liable for the failure of the guarantee system. From the perspective of Administrative Law, the government also holds ultimate liability for failing to provide adequate infrastructure relative to the population size, but in the context of specific disputes, the burden falls heavily on the operational entities.[39]

The liability for referral rejection due to capacity limitations is strict. For the hospital, it is a liability of conduct they must prove they acted without discrimination and fulfilled their duty to refer/stabilize. For BPJS Health, it is a liability of result they must guarantee that the participant eventually receives the medical care they are entitled to. The law does not accept "full capacity" as a justification for the cessation of medical responsibility; rather, it views it as a logistical challenge that both the provider and the insurer are legally bound to solve to protect the patient's rights.

Forms of Legal Protection for BPJS Health Inpatient Participants Facing Referral Reject ion

The theoretical framework of legal protection in the context of healthcare services is premised on the imbalance of power between the healthcare provider (the hospital) and the recipient of services (the patient). BPJS Health participants, often occupying a weaker bargaining position due to their reliance on the social security system and lack of medical knowledge (asymmetric information), require robust legal safeguards. Following the jurisprudential framework proposed by legal scholars such as Philipus M. Hadjon, legal protection for these participants is dichotomized into Preventive Legal Protection and Repressive Legal Protection.[40] These two forms operate simultaneously to ensure that the constitutional right to health is not merely a normative text but a practical reality,

[38] Dinna Prapto Raharja et al., "The Impact of Informal Patient Navigation Initiatives on Patient Empowerment and National Health Insurance Responsiveness in Indonesia," *BMJ Global Health* 7, no. Suppl 6 (2022): e009526.

[39] A Ardiansah, E Asnawi, and R Pardede, "Government Responsibilities in the Health Services of the Indonesian People Post the Implementation of the New Health Law," *Journal of Ecohumanism* 4, no. 1 (2025): 2017–2024.

[40] Finensia Aulia Kusumastuti and Mukti Fajar ND, "Upaya Perlindungan Hukum Bagi Pasien BPJS Terkait Sistem Rujukan Rumah Sakit Di Kota Yogyakarta," *Media of Law and Sharia* 1, no. 3 (2020): 162–175.

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particularly when participants face the systemic hurdle of referral rejection due to alleged capacity limitations.

Preventive legal protection aims to create conditions that preclude the violation of rights before they occur. In the context of referral rejections, this form of protection acts as a barrier against arbitrary administrative decisions by hospitals. The primary instrument of preventive protection is the Regulation of Transparency and Public Information. Legally, hospitals are bound by the principle of information disclosure. This is operationalized through the integration of hospital management information systems with the BPJS Health digital ecosystem, specifically the *Mobile JKN* application and the *SIRANAP* platform. By mandating the real-time publication of bed availability, the law empowers participants to verify the validity of a "full bed" claim. This transparency serves as a legal safeguard; it prevents hospitals from fabricating capacity issues to avoid BPJS patients. When a patient can demonstrate via a government-sanctioned app that beds are available, the hospital is legally estopped from refusing admission without a legitimate medical reason.

Secondly, preventive protection is enforced through the Credentialing and Re-credentialing Mechanism. Before a hospital can serve BPJS participants, it must undergo a rigorous legal and operational assessment by BPJS Health and the local Health Office.[41] This process evaluates the hospital's infrastructure, human resources, and capacity to handle specific volumes of patients. The Cooperation Agreement (*Perjanjian Kerja Sama*) signed between BPJS and the Hospital is a form of preventive law; it explicitly sets the standards of service. If a hospital fails to meet the requirement of non-discrimination during this assessment, they are denied the contract. This screening process protects participants by ensuring that only compliant and capable facilities enter the referral network.

Repressive legal protection functions as a remedy or sanction after a violation has occurred. When a BPJS participant is rejected due to "limited space" and suffers harm (physical deterioration, psychological distress, or financial loss from seeking private care), the law provides several avenues for recourse. Non-Litigation and Administrative Recourse: The most immediate form of repressive protection is the Internal Complaint Handling Mechanism. Regulations mandate that every provider hospital must have a BPJS Health handling unit, often referred to as "BPJS SATU" (*Siap Membantu*) or the BPJS Center. Participants can immediately report the rejection to the BPJS officer stationed at the hospital. This officer has the legal authority to verify the actual bed occupancy and facilitate a solution, such as a temporary transfer to a different class or a referral to another hospital. Furthermore,

[41] Septian Bayu Kristanto et al., "The Institutionalization of New Public Management (NPM) on Indonesia Healthcare and Social Security Agency," in *Ninth International Conference on Entrepreneurship and Business Management (ICEBM 2020)* (Atlantis Press, 2021), 508–512.

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the Hospital Supervisory Board (*Badan Pengawas Rumah Sakit* - BPRS) exists at the provincial level to receive complaints regarding hospital ethics and service standards.[42] This body can investigate the rejection and recommend administrative actions.

1. Consumer Dispute Settlement: Recognizing the participant as a consumer, Law Number 8 of 1999 concerning Consumer Protection offers a specific avenue through the Consumer Dispute Settlement Body.[43] This is a crucial form of legal protection because it is designed to be fast, low-cost, and accessible. Participants who are rejected can file a complaint with BPSK alleging that the hospital (business actor) failed to provide the service promised. BPSK has the authority to facilitate mediation, conciliation, or arbitration. Decisions made by BPSK can include orders for the hospital to pay compensation or to fulfill its service obligations.[44] This bypasses the often lengthy and expensive procedures of the conventional court system.
2. Civil Litigation: If non-litigation methods fail, participants have the right to seek justice through the courts. This can be framed as a Tort or *Perbuatan Melawan Hukum* (Article 1365 of the Civil Code).[45] To succeed, the participant must prove that the hospital's rejection was unlawful (e.g., lying about capacity), that there was fault (intentional or negligent), and that this caused damage. The "damage" here is not only the worsening of the illness but also the loss of the *chance* of recovery (*loss of chance* doctrine).[46] Alternatively, the participant can sue for Breach of Contract (*Wanprestasi*) against BPJS Health for failing to guarantee the provision of facilities as stipulated in the insurance policy.
3. Administrative Sanctions: The most potent form of repressive protection, often initiated by the government, is the imposition of Administrative Sanctions. Under the Health Law and Hospital Law, hospitals that are proven to discriminate against patients or reject those in emergencies can face a graduated scale of penalties. These range from written warnings and suspension of cooperation with BPJS, to the

[42] Supeno Supeno, "Badan Pengawas Rumah Sakit (BPRS) Sebagai Badan Penyelesaian Sengketa Medik Secara Mediasi," *Wajah Hukum* 6, no. 2 (2022): 379–385.

[43] Chatrin Intan Sari, "Consumer Protection on Illegal Drugs Cases in Indonesia," *Indonesia Media Law Review* 1, no. 1 (2022): 63–80.

[44] Dhaniswara K Harjono and Hulman Panjaitan, "Settlement of Consumer Disputes through the Consumer Dispute Resolution Agency and Their Problems," *Jurnal Hukum Dan Peradilan* 10, no. 3 (2021): 463–478.

[45] Adi Sulistiyono and Hari Purwadi, "Doctor's Legal Responsibility For Unlawful Actions Against Medical Action Errors," *Russian Law Journal* 11, no. 1 (2023): 88–94.

[46] Berber Laarman and Arno Akkermans, "Innovating Compensation for Medical Liability in the Netherlands," in *Compensation Schemes for Damages Caused by Healthcare and Alternatives to Court Proceedings: Comparative Law Perspectives* (Springer, 2021), 269–292.

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downgrade of hospital class accreditation, and ultimately, the revocation of the operational license (*Izin Operasional*).[47] While this does not directly compensate the individual patient, it serves as a powerful deterrent (general prevention) and protects the broader community from similar future violations.

4. Criminal Liability: In extreme cases where the rejection leads to the patient's death or permanent disability, and it is proven that the hospital deliberately abandoned the patient despite having the capacity to help (especially in emergencies), criminal law provides the ultimate protection. Articles regarding "abandonment of persons in need of help" in the Criminal Code and specific provisions in the Health Law can be invoked to prosecute responsible hospital personnel or management.[48] This underscores that the right to life is absolute and its violation carries the weight of state punishment.

Legal protection for BPJS participants is a layered system. It begins with digital transparency and contractual standards to prevent rejection, moves to immediate on-site dispute resolution, and culminates in civil compensation and administrative/criminal punishment. The effectiveness of this protection relies on the participant's awareness of these rights and the government's commitment to enforcing the sanctions against non-compliant medical institutions.

CONCLUSION

Constitutionally, citizens' health is a right as stipulated in Article 28 paragraph H of the 1945 Constitution. This constitutional mandate resulted in derivative regulations in the form of Law No. 17 of 2023 concerning health, which explicitly regulates health. However, the operationalization of BPJS Health participants' rights is regulated in Law No. 40 of 2004 concerning the National Social Security System (SJSN) and Law No. 24 of 2011 concerning the Social Security Administration Agency.

In principle, legal protection for BPJS Health participants whose referrals are denied depends on a combination of strict administrative oversight and firm enforcement of hospital social responsibility, where the right to healthcare legally takes precedence over logistical limitations. The interplay between these variables suggests that denying referrals due to capacity limitations is not simply an infrastructure issue; it is also a legal violation that holds both hospitals and BPJS Health accountable for failing to fulfill their emergency and stabilization duties and for failing to follow through on their oversight and contractual promises. To achieve true justice, we need to shift from making promises in law to a model

[47] Trisnadi, *loc.cit*.
[48] Steavanno, Fakrulloh, and Bakir, *loc.cit*.

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of legal protection that combines proactive digital transparency about bed availability with strong administrative sanctions. In this way, the constitutional requirement for universal health coverage will not be ignored by the discretion of healthcare providers.

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