Journal of International Islamic Law, Human Rights and Public Policy (JISHUP Journal) | ISSN(e): 3031-2280
Volumes 3 No. 2 (2025)

DICHOTOMY OF BPJS REGULATIONS WITH LAW NO. 17 OF 2023 WHICH CAUSES THE LOSS OF THE FUNCTION OF GENERAL DENTISTS IN BPJS SERVICES IN HOSPITALS

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Received : 22 February 2025
Revised : 07 March 2025
Accepted : 28 March 2025
Published : 29 April 2025
DOI : https://doi.org/10.59733/jishup.v3i2.134
Publish Link : https://jishup.org/index.php/ojs

Abstract

This study examines the existence of a dichotomy or disharmony of regulations between the Social Security Administering Body (BPJS) and several other regulations including Law No. 17 of 2023 concerning Health, especially in the context of the role and function of general dentists in health services based on the National Health Insurance (JKN). After the enactment of Presidential Regulation (Perpres) No. 59 of 2024 concerning the Third Amendment to Presidential Regulation Number 82 of 2018 concerning Health Insurance (Perpres 59/2024), new provisions have emerged that implicitly or explicitly limit the scope of general dentist practice in BPJS services, including in promotive, preventive, curative, and rehabilitative aspects. The disharmony between BPJS technical regulations and the mandate of the latest Health Law has caused unrest in the field, both at the health facility level and dentists, and also the community as patients. This study uses a juridical-normative approach with an analysis of relevant laws and regulations, as well as interviews with practitioners in the field. The results of the study indicate that there is regulatory disharmony that has an impact on the loss of the strategic function of general dentists in the national health service system. Therefore, policy harmonization is needed between BPJS regulations and the Health Law to ensure the sustainability of services and protection for the general dentist profession in Indonesia.

Keywords: ***BPJS Health, Law No. 17 of 2023, general dentists, health services, regulatory dichotomy***

A. Introduction

One of the important factors in realizing national welfare is health. This is the legal ideal (rechtsidee) of the State of Indonesia (Sunartejo, 2024). Inclusive and equitable health services are important pillars in the social security system in Indonesia. As the holder of the mandate for this ideal, the Government has created many health programs in order to realize this, including establishing BPJS Kesehatan as a health program based on Social Justice for all Indonesian people so that all levels of society can use it for survival. BPJS Kesehatan, as the organizer of the National Health Insurance (JKN) program, plays a crucial role in realizing access to health services for all levels of society (BPJS Kesehatan, 2022).

Dentists as one of the medical personnel, are regulated in Law No. 17 of 2023 concerning Health. Dentists have an important role in achieving Indonesia's national health goals, especially in improving the dental and oral health of the community, as well as in overall health aspects. In other words, the role of dentists is not only to improve individual dental and oral health problems, but also to contribute to improving the quality of life of the community.

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In practice, dentists can practice independently or as part of a multidisciplinary hospital team. In the context of a hospital, general dentists should be able to play an active role in providing integrated services with general practitioners and other specialists, especially in the context of tiered services and horizontal referrals. Before the enactment of Presidential Regulation No. 59 of 2024 concerning JKN, dental practices in hospitals followed the previous regulations, namely Presidential Regulation Number 82 of 2018 concerning Health Insurance, in which general dentists can provide services according to patient needs, both general patients and BPJS patients, in collaboration with specialist doctors in terms of horizontal referrals within the hospital.

However, since the enactment of the Presidential Regulation, the role of general dentists in serving BPJS patients at advanced referral health facilities (FKRTL) has not been recognized in the BPJS claim system. This policy has caused polemics among medical personnel, especially general dentists because it is considered contrary to the spirit of Health Law No. 17 The Year contained in point b, Considering Matters, is written: That the development of public health requires health efforts, health resources, and health management to improve the highest level of public health based on the principles of welfare, equality, non-discrimination, participation, and sustainability in the context of developing quality and productive human resources, reducing disparities, strengthening quality health services, increasing health resilience, ensuring a healthy life, and advancing the welfare of all citizens and the nation's competitiveness for achieving national development goals. This creates a dichotomous condition that has the potential to harm services to the community and dwarf the professional function of general dentists.

In addition to FKTP, general dentists also have the competence and great potential to contribute to dental health services at the advanced level (FKRTL), especially in areas with limited specialist personnel.[3]However, in practice, the role of general dentists in FKRTL is often not accommodated by BPJS technical policies. For example, clinical actions such as root canal treatment and complex fillings that can actually be performed by general dentists are actually limited to specialist dentists.[4]This not only hinders the distribution of services evenly, but also violates the principles of efficiency and accessibility of services as promoted by Law No. 17 of 2023. In fact, the law provides a more inclusive space for all health workers, including general dentists, in providing promotive, preventive, curative, and rehabilitative services in a hierarchical manner.[5]This disparity between legal norms and operational policies is part of the main problem that will be studied in more depth in this paper. This paper aims to analyze the regulatory conflict between BPJS regulations and Health Law No. 17 of 2023, identify its impact on general dental practice in BPJS services, and provide constructive and solution-oriented policy recommendations.

B. The problem

Based on the description above, the main issues that are the main focus of this article are as follows:

1. How does the regulatory disharmony between Presidential Decree 59 of 2024 and Law No. 17 of 2023 cause the loss of the role of general dentists in BPJS services at FKTRL?
2. What impact will the elimination of the role of general dentists have on the health care system, patient rights, and the professionalism of health workers?
3. How can legal and policy solutions be formulated to reconstruct the role of general dentists proportionally in JKN services?

C. Research methods

This study uses a qualitative approach with a descriptive-analytical method. Data collection through literature studies and non-participatory observations in several FKRTL and FKTP. The focus of observation includes the structure of dental and oral health services, the volume of patient visits, the availability of medical equipment and materials, and the implementation of promotive, preventive, curative and rehabilitative functions.[6]
Data sources consist of:

[3]Indonesia. Ministry of Health, Indonesian Health Profile 2022 (Jakarta: Ministry of Health RI, 2023),https://www.kemkes.go.id
[4]BPJS Health, Technical Instructions for Implementing the 2024 JKN Program (Jakarta: BPJS Health, 2024)
[5]Indonesia. Ministry of Health, Technical Guidelines for Dental and Oral Health Services at FKTP and FKTRL (Jakarta: Directorate General of Health Services, Ministry of Health, Republic of Indonesia, 2021)
[6]Gatot Supriyanto, "Problems of Dental Health Services in the JKN Scheme" Journal of Health Administration 9, no. 2 (2023): 110-119

- Legal and policy documents such as Laws, Presidential Regulations, and Ministerial Regulations;
- Official report from BPJS Kesehatan and the Ministry of Health,
- Relevant scientific literature.

The analysis technique used is content analysis to identify the main themes and normative relations between regulations and policy implementation in the field.

D. Discussion

1. Legal Basis for BPJS Health

BPJS Kesehatan as the implementer of the National Health Insurance (JKN) has a legal mandate based on Law No. 40 of 2004 concerning the National Social Security System (SJSN) and Law No. 24 of 2011 concerning BPJS. Within this framework, the function of BPJS includes guaranteeing fair and tiered health service financing, starting from first-level facilities to advanced levels. Its main objective is to ensure equal, efficient, and sustainable access to health services for all citizens.

The benefits of BPJS's existence are very significant in expanding the scope of health services. However, in its implementation, a systemic gap has emerged that has an impact on the elimination of the function of general dentists in Advanced Referral Health Facilities (FKRTL). This problem stems from the absence of explicit norms in Law No. 17 of 2023 concerning Health, which in its codification does not provide legal certainty regarding the role of general dentists in hospitals in the context of BPJS services. As a result, there is a unilateral interpretation in operational policies that only accommodate specialist dentists at the FKRTL level, especially for financing needs through the INA-CBG system.

In the context of administrative law, BPJS functions as a state implementing institution that has the authority to organize a national health insurance program, with the principles of social insurance and equity principles. Article 6 of the BPJS Law emphasizes that BPJS is tasked with providing protection to participants so that they obtain health care benefits and protection in meeting basic health needs. These benefits are comprehensive, covering efficient and sustainable promotive, preventive, curative, and rehabilitative services.

In addition to being a technical implementer, BPJS has limited regulatory functions, including in the form of determining tariff policies (INA-CBGs), regulating referral mechanisms, and limiting certain services for reasons of budget efficiency. However, as a non-structural institution, BPJS remains subject to the applicable legal hierarchy, especially in terms of information disclosure, the principle of legality, and public accountability. This is important to ensure that every internal BPJS policy does not deviate from the principles of constitutional law and the constitutional rights of citizens.

In implementing its program, BPJS Kesehatan collaborates with various health service facilities, both primary (FKTP) and advanced (FKRTL), with a package and claim-based financing model. However, in practice, there is often inequality in access due to internal administrative policies that are not in sync with health profession regulations and higher laws. For example, the elimination of general dentist services in referral hospitals has caused unrest because it is contrary to the spirit of equitable and competency-based health services. From the perspective of Hans Kelsen's legal theory, legal norms must be hierarchical and coherent, where operational policies such as BPJS service guidelines must not conflict with higher laws. In addition, the theory of social justice by John Rawls also emphasizes that the distribution of public resources, including health services, must provide the greatest benefits to the most disadvantaged groups. Therefore, the existence of BPJS as the implementer of the social security system must not only be administratively efficient, but also substantively fair in guaranteeing the right to universal public health.

Thus, the legal basis of BPJS provides strong legitimacy for the implementation of national health insurance. However, the interpretation and implementation of policies by BPJS must remain within a legal framework that is consistent with the principles of justice, non-discrimination, and equal access to health services. Efforts to harmonize regulations and supervision of BPJS technical policies are important to maintain the integrity of the national health system. Furthermore, Presidential Regulation No. 59 of 2023 concerning the Implementation of Health Service Transformation, which is part of the national strategy in health system reform, actually emphasizes the focus on improving the quality of competency-based services and digitalizing the referral system. Although it has positive intentions, this Presidential Regulation does not specifically regulate the strengthening of the role of general dentists in the BPJS referral scheme, thus further strengthening the dichotomy that advanced services are only handled by

specialists. The BPJS referral system that relies on the current INA-CBG classification does not provide space for general dentists in FKRTL, because the services they perform are not categorized as claimable actions. In fact, many medical actions in the field of dentistry, such as extractions, advanced caries treatment, and emergency care, are still within the scope of competence of general dentists. This lack of synchronization causes general dentists in hospitals not to function optimally, which ultimately has an impact on the efficiency of financing and the fulfillment of patient rights to health services.

This shows that there is a regulatory gap between the law, presidential regulations, and BPJS technical policies, which systematically results in the exclusion of general dentists in hospitals. This situation has the potential to harm the principle of Universal Health Coverage (UHC) and the principle of non-discrimination of health workers in the national social security system.

2. Regulatory Dichotomy and Implications of the Loss of the Role of General Dentists in FKRTL

The regulatory issues that cause the loss of the role of general dentists in services at Advanced Referral Health Facilities (FKRTL) can be traced from the dichotomy between Presidential Regulation Number 82 of 2018 concerning Health Insurance and Law Number 17 of 2023 concerning Health. Presidential Regulation 82 of 2018 in its attachment states that FKRTL services are intended for specialist and subspecialist health services, which implicitly eliminates the role of general dentists as service providers at this level. This is reinforced by the BPJS claim system which only recognizes certain dental services at FKRTL if they are performed by specialist dentists.

On the other hand, Health Law No. 17 of 2023 as a higher legal regulation states in Article 184 paragraph (2) that "In addition to specialist services and/or subspecialist services, hospitals can provide basic services". This provision emphasizes that hospitals have the flexibility to provide services that are not only limited to specialists and subspecialists, but also basic services that should be able to include services provided by general dentists.

If the Presidential Decree only adopts part of the provisions of the Law, in this case only referring to Article 184 paragraph (1) which mentions specialist and subspecialist services without recognizing the existence of paragraph (2) regarding basic services, then this is a violation of the principle of Legal Harmonization (Normative Coherence). This theory emphasizes that every norm in a regulation must be read systematically and not side-by-side. Jimly Asshiddiqie emphasized that "Interpretation of a law must be done systematically, not piecemeal, so that there is no violation of the true meaning of the law.

In addition, the principle of lex simplicer non facit ut aliquid operetur frusta ("the law must not make anything in vain") is also an important principle. If the law orders hospitals to provide basic services, then this provision must not be ignored in the implementing regulations, because it will make the mandate of the law in vain or ineffective. This is a form of denial of the intention of the legislator and is contrary to the principle of legal effectiveness.

From a legal theory perspective, this conflict reflects the principle of lex superior derogat legi inferiori, namely that higher regulations override lower regulations.[7]Therefore, if there is a discrepancy between the provisions in the Presidential Decree and the Law, then the norms in the Law should be used as the main reference. In addition, according to Hans Kelsen in Stufenbau der Rechtsordnung (hierarchy of legal norms), the legal system is built in stages, where each norm obtains validity from a higher norm.[8]Peter Mahmud Marzuki in his book Introduction to Legal Science states, "Good regulations must fulfill the principle of legality and not conflict with higher norms. Thus, the position of the Presidential Decree as an implementing regulation must not conflict with the norms regulated in the Law.

Furthermore, from a legal policy perspective, the limitation of the role of general dentists in FKRTL through BPJS technical policies has the potential to create service exclusion that is not in line with the principles of justice and service efficiency. This can be criticized with the law as a tool of social engineering approach from Roscoe Pound, who views law as a tool to engineer society towards a better direction.[9]If the law is used as a public policy tool, then it

[7]Kelsen, Hans. General Theory of Law and State. Translated by Anders Wedberg, Harvard University Press, 1960 (Principles of Lex Superior)

[8]Kelsen, Hans. General Theory of Law and State (Concept Stufenbau der Rechsordnung)

[9]Pound, Roscoe. Social Control Through Law. Yale University Press, 1942

should be inclusive and adaptive to the needs of health services, including optimizing the role of general dentists whose competencies have been regulated in dental education standards.

3. Competence of General Dentists and Specialist Dentists

According to the Indonesian Dentist Competency Standards compiled by the Indonesian Dental Council, general dentists have the authority to perform promotive, preventive, curative, and rehabilitative actions at basic to advanced levels. Actions such as tooth extraction, filling, simple root canal treatment, and handling of oral infections are within the competence of general dentists.

On the other hand, specialist dentists have more authority in handling complex cases that require in-depth expertise according to their field of specialization such as periodontics, orthodontics, and oral surgery. However, in the practice of BPJS services at FKRTL, all actions can only be claimed if performed by a specialist dentist, even though the action can be clinically performed by a general dentist.

This creates disparities in services and inefficiencies in the health system by forcing hospitals and patients to access specialist services even when they are not medically necessary. From the perspective of the theory of distributive justice as proposed by John Rawls, this policy does not meet the principle of justice because it does not provide equal opportunities for health workers and does not optimize resources.[10]

4. Case Study: Cardiologist Referral to General Dentist Before Surgery

One concrete example of this system error can be seen in open heart surgery procedures, where patients are required to undergo dental examination and treatment before surgery. This is to prevent the risk of systemic infection from the oral cavity, which can lead to infective endocarditis.[11]In this condition, heart specialists often refer patients to dentists at hospitals.

However, because the BPJS claim system does not accommodate the role of general dentists in FKRTL, patients must see a specialist dentist or be referred out of the hospital (FTKP). This situation risks delaying surgery, increasing the patient's personal costs, and shows that the BPJS system is not based on clinical needs, but merely follows a discriminatory bureaucratic claim structure.

5. Impact on General Dentists and the Health Care System

The policy of eliminating the role of general dentists in FKRTL has serious impacts on dentists with ASN and non-ASN status. One significant impact is the difficulty in fulfilling Employee Performance Targets (SKP) based on services and performance indicators. General dentists who do not have patients due to the absence of claimed services will be considered unproductive in performance assessments, even though the absence of services does not arise from their inability or negligence.

For non-ASN doctors or contract employees, this can result in work discomfort, incentive cuts, and even termination of employment contracts. In the long term, this policy creates career inequality and hinders the distribution of health workers nationally.

From the community's perspective, this policy has an impact on service delays, burdening patient costs, and reducing accessibility. People who should be treated by general dentists are forced to queue for specialist services, which are not only more expensive but also limited in number.

6. Potential for Overcompetence and Cross-Competence

Another consequence of a system that only recognizes specialist services is the emergence of the phenomenon of overcompetence, where specialist doctors have to handle cases that could actually be the competence of general dentists. This causes waste of resources, specialist work fatigue, and structural inefficiency.[8]

In addition, cross-competence can also occur, where specialist doctors perform basic actions that can be ethically and professionally performed by general dentists. This can certainly violate the principles of professionalism

[10]Rawls, John. A Theory of Justice. Harvard University Press, 1971.

[11]Lockhart, PB, & Loven, B. (2003). Dental Care and the risk for infective endocarditis. Cardiology Clinics, 21(4), 563-571.

and interprofessional collaboration in health services. A healthy system should encourage collaboration based on competence, not the dominance of one profession.

7. Hospital by Law as a Strategic Solution

*Hospital by Law*is an internal legal document of the hospital that regulates clinical governance, organizational structure, and the authority of medical personnel. This document is binding and can be a reference to ensure that the role of general dentists continues to exist in FKRTL, in accordance with the competence and service needs. From the perspective of institutional law (legal institutional design), hospital law can be viewed as a form of quasi-regulation, namely internal regulations that, although they do not have the legal force of a law, are still normative and binding in the hospital environment.[12]

The legal basis for Hospital by Law includes:

- Law No. 44 of 2009 concerning Hospitals,
- Minister of Health Regulation No. 755/Menkes/Per/IV/2011 concerning the Medical Committee,
- Minister of Health Regulation No. 12 of 2020 concerning Hospital Accreditation.

Through Hospital by Law, hospitals can establish a clear division of labor between general dentists and specialists, create clinical pathways, and formalize clinical privileges for general dentists. This is also an advocacy tool so that BPJS policies are more flexible towards services that are relevant and legally professional.

In the perspective of Satjipto Rahardjo's progressive legal theory, law must be understood as a means to fight for substantive justice, not just a formal procedure. Therefore, Hosptal by Law can be positioned as an instrument that allows hospitals to build a fairer and more responsive system to the needs of public health services, including maintaining the role of general dentists in FKTRL, even though it has not been accommodated by the BPJS claim system.[13]

The existence of Hospital by Law is also in line with the theory of governance by contract, namely a form of institutional arrangement based on administrative agreements between hospital management and medical personnel, which aims to ensure accountability, distribution of authority, and service efficiency.[14]This is important to prevent administrative dominance in clinical decision-making that can harm certain professions. Hospital by Law functions as a form of legal self-governance of hospitals to ensure proportional, competency-based, and professionally standardized medical practices.[15]

According to Maria Farida Indrati, laws and regulations must fulfill the principles of clarity of purpose and suitability between types, hierarchies, and content.[16]In this context, Hospital by Law can be a normative bridge when there is disharmony between BPJS regulations and the Health Law, because this document provides a basis that is in accordance with the role of general dentists.

In addition, the responsive legal approach as put forward by Puspita and Syafitri states that good regulations should arise from the needs of society and the profession, and be able to adapt to social dynamics and developments in medical technology.[17]So Hospital by Law is not only an internal tool, but also a legal strategy to encourage state policies to be more inclusive of competency-based services, not just specialization levels.

8. Legal Analysis and Recommendations

The provision that eliminates the role of general dentists in FKRTL is a form of administrative discretion that exceeds authority because it is not based on statutory norms. In Hans Kelsen's legal theory, legal norms must be hierarchical and coherent.[9] The disharmony between the Law, Presidential Regulation, and Ministerial Regulation shows a violation of the principles of a structured legal system.

[12]Julia Black, "Decenting Regulation: Understanding the Role of Regulation and Self-Regulation in a'Post-Regulation World," Current Legal Problems 54, no. 1 (2001): 103-246.

[13]Rahardjo, Satjipto. Progressive Law: Law that Liberates the People (Jakarta: Kompas, 2009)

[14]Kenneth W. Abbott et al.," The Concept of Legalization," International Organization 54, no. 3(2000): 401-419.

[15]Charles F. Sabel and William H. Simon, "Minimalism and Experimentalism in the Administrative State," Georgetown Law Journal 100, no. 1(2001): 103-146.

[16]Farida, Maria Indrati. Legal Science: Types, Functions and Content Material. Yogyakarta: Kanisius, 2007.

[17]Rahardjo, Satjipto. Progressive Law: Law that Liberates the People. Jakarta: Kompas, 2009

From the perspective of the principle of legality and the principles of state administrative law, policies that do not have a clear legal basis and have a detrimental impact on individual rights can be sued through the state administrative court mechanism.

Recommendation:

1. The government and other stakeholders need to revise BPJS regulations into competency-based service policies, not just facility levels.
2. Harmonization between Law 17/2023, Presidential Decree 82/2018, and Minister of Health Regulation 3/2020 needs to be carried out.
3. Formal recognition of general dentists at FKRTL through regulations and hospital by law.
4. Development of fair and realistic SKP and remuneration systems.
5. Development of a national clinical pathway that includes general dentists in the hospital service algorithm.

E. Closing

1. Conclusion

The disharmony between the regulations governing the national health insurance system, especially between Law Number 17 of 2023 concerning Health, Presidential Regulation Number 59 of 2023 concerning Health Provision, and technical regulations from BPJS Kesehatan such as Regulation of the Minister of Health Number 3 of 2020, has had a serious impact on the loss of the role of general dentists in advanced referral health facilities (FKRTL). This phenomenon not only causes unrest and losses for general dentists—especially in the context of fulfilling Employee Performance Targets (SKP), service performance achievements, and stability of professional roles—but also has a negative impact on the wider community through disruption of access to basic dental services, potential cross-competence, and overcompetence in specialist dentists.

From a legal perspective, BPJS's move to limit the role of general dentists in FKRTL has the potential to violate the principles of legality and hierarchy of norms as per Hans Kelsen's stufenbau theory, where administrative policies must not conflict with higher laws. In this case, the principle of lex superior derogat legi inferiori should be applied in assessing conflicts between BPJS operational policies and higher provisions such as Law No. 17 of 2023.

This regulatory imbalance also creates legal uncertainty and gives rise to cross-competence between general dentists and specialist dentists, which is contrary to the principle of distributive justice in health services. In addition, a referral system that does not consider the functional role of general dentists in handling pre-surgical cases, such as patients with heart disease, risks hampering the efficiency of the service system as a whole.

2. Suggestion

- Revision of BPJS Health Technical Policy
  BPJS needs to harmonize its internal policies to be in line with the provisions of Law Number 17 of 2023 and Presidential Regulation Number 59 of 2023, by placing general dentists as an integral part of services at FKRTL according to their competencies.
- Strict Implementation of Hospital By Law
  Hospitals as service institutions need to implement clear, transparent, and fair hospital by law, which regulates the role of each medical personnel based on competence. Hospital by law can be a concrete solution in reorganizing the distribution of tasks and authorities of medical personnel, including general dentists.
- Increased Regulatory Oversight and Professional Advocacy
  The government, professional organizations, and civil society need to strengthen their supervisory function over BPJS policies and fight for legal protection and professional ethics for general dentists, in order to maintain fairness and efficiency of health services.
- Evaluation of Referral Systems and Interdisciplinary Services
  A comprehensive evaluation of the tiered referral system is needed, especially in interdisciplinary cases such as heart patients who require clearance from a dentist before surgery, to avoid neglecting crucial dental services.
- Socialization and Education of Cross-Sector Regulations

Massive and ongoing socialization to health service providers regarding the latest regulations and their legal status can prevent multiple interpretations, strengthen team-based services, and create synergy between health workers.

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