



Article History:

Received: 2023-06-07  
Published: 2023-09-01

Accepted: 2023-08-04

## THE GOVERNMENT'S ROLE IN HEALTH INSURANCE IN THE PERSPECTIVE OF HUMAN RIGHTS LAW IN INDONESIA

**Sri Zanariyah***Faculty of Law Sang Bumi Ruwa Jurai University Lampung, indonesia.*[sri.zanariyah@gmail.com](mailto:sri.zanariyah@gmail.com)**Rayna Kumala Sari***Faculty of Law Sang Bumi Ruwa Jurai University Lampung, indonesia.*[ratnakumala92@gmail.com](mailto:ratnakumala92@gmail.com)

**Abstract:** Human rights are defined as rights attached to human dignity as creatures created by God, and these rights are brought by humans from birth to the face of the earth so that these rights are innate (natural), not a gift from humans or the state. The Indonesian government has provided services in the health sector to the public, by establishing the National Social Security (JSN). The purpose of this research is to find out why health insurance in Indonesia is an activity that can be linked to human rights (HAM) and what is the government's role in implementing health insurance in terms of human rights aspects. The method used in this study is doctrinal (normative) research, so the type of data used is a type of secondary data obtained from literature study. The results of the research can be concluded that the implementation of health insurance follows the social insurance system by providing protection for all people and the government has a role to the implementation of health services based on the principles of humanity, the principle of benefit and the principle of social justice for all people in Indonesia.

**Keywords:** Government Role, Human rights, Health insurance.

## INTRODUCTION

The discussion on Human Rights (hereinafter written short on HAM), is not new, especially in Indonesia, it has been discussed a lot lately by the national community and the international community, if a country has problems related to human rights, it will easily spread throughout the world. Other countries, bearing in mind that information in this era of globalization can be easily and quickly known by the world community, through the internet everyone can access all information, both positive and negative, as long as one can operate modern equipment in the field of telecommunication information. The issue of human rights is important, because it can be associated with all actions or actions of a person against other people, even towards the people of the authorities, which can be studied from various policies that have been passed and declared valid. If problems related to human rights are found, the information will be easily spread to a country not only through internal interaction, but without being prevented it will be easily known by external parties, namely other nations. Therefore, all matters related to human rights require serious attention from a nation, because it will affect other nations, thus demanding various countries to study human rights issues intensively.

Human rights or Natural Rights became an important study after World War II and at the time of the formation of the United Nations in 1945, that human rights are a necessity in a social reality that is universal. In the end the desire arose to formulate human rights in an international text, so that on December 10, 1948 it was successfully drafted, with the

acceptance of the Universal Declaration of Human Rights (World Statement on Human Rights), this declaration was signed by several leaders from several countries that joined at the United Nations (UN) in Paris. As a statement formulated in the Universal Declaration of Human Rights, it is a moral commitment even though it is not legally binding. However, this document has enormous influence, both morally, politically and educationally (Budiardjo, 1998).

Indonesia as a developing country and as a member of the United Nations (UN) must accept the provisions regarding human rights as written in the Universal Declaration of Human Right Charter, as provisions that must be ratified in accordance with the state principles of Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia) and the culture of the Indonesian nation, in which provisions regarding human rights are written in a special chapter, namely Chapter XA on Human Rights, in Articles 28 A to Article 28 J. These provisions regarding human rights shows that Indonesia participates in giving recognition of human rights and providing protection for all people, both in terms of personal rights, rights as citizens, the right to get a job, legal protection and the right to obtain social welfare, health and social protection.

Several international conventions related to human rights have been ratified in the form of laws or presidential decrees, including:

- Law Number 19 of 1999 concerning the Abolition of Forced Labor

(Ratifying ILO Convention Number 105 of 1957)

- Presidential Decree Number 83 of 1998 concerning Freedom of Association and Protection of the Right to Organize (Ratification of ILO Convention Number 87 of 1948 The birth of Law Number 39 of 1999 concerning Human Rights, contained in Article 8 stipulates that the protection, promotion, enforcement and fulfillment of Human Rights is the responsibility of the government as well as the community).

The government is responsible for the protection of human rights for its citizens, by making policies in the form of regulations and implementing these regulations fairly for every individual in the unitary state of Indonesia. The community must also actively oversee the implementation of human rights in their surroundings, if there is a violation against anyone, immediately report the incident to the authorized state apparatus.

Human rights are defined as rights attached to human dignity as God's creatures, and these rights are brought by humans from birth to the face of the earth so that these rights are innate (natural), not a gift from humans or the state (MD, 2001). The nature of the existence and basis of human rights is solely for the benefit of humans themselves, to protect citizens from possible oppression, shackles and or restrictions on citizens' space for movement by the state. So that the most essential rights of citizens are protected from the arbitrariness of power (Muladi, 2009). A very basic and fundamental aspect of humanity is the right to life and the right to carry on

life, because these rights are given directly by God to every human being.

Indonesia as a country that upholds human rights, is implemented in the activities of daily life. The government has provided services in the health sector to the public, by establishing the National Social Security (JSN). As a form of protection for public health, there have been steps taken by the government, the availability of community health centers (PUSKESMAS), which currently exist in every sub-district, whose services are not only for outpatient care, but also have provided inpatient facilities for people who require intensive care. Health is everyone's need, we often hear the saying "health is expensive" this shows how important health is for everyone, when there is a sick family they will at least spend some money to buy medicine and even certain treatments, if you suffer from illness you need treatment by health workers. medical. Therefore, a healthy life is everyone's dream, therefore the government must be responsive to public health.

If there is a sick family member who needs special care, it will become a certain burden for the family, which is a risk that must be faced. Risk is an uncertainty, it may or may not happen, so everyone must be prepared to face it, everyone can get sick, no one wants the severity of an illness, when you suffer from illness it will cause inconvenience to a person or family, because it can cause loss or loss of something of economic value. In short, one would not be able to fully enjoy human life (Tampubolon, 2022).

The risks faced can be borne alone, can also be transferred to other parties, transferred in part or in whole. It is this risk that contains uncertainty

as the basis for the emergence of a business known as insurance, including insurance in the health sector. Health insurance can also be carried out by the government as a form of protection for the community, this insurance run by the government is called compulsory insurance or social insurance. Health insurance can be carried out by private companies, where insurance managed by private parties is a type of commercial insurance, whether or not it depends on the willingness of the parties to make an agreement, namely the party that transfers the risk (the insured) to the party receiving the risk (the insurer, namely the insurance company).

One of the human efforts to transfer their own risk is by entering into a risk sharing agreement with another party. Such an agreement is referred to as an insurance or coverage agreement (Hartono, 1997). Although there is also insurance that is not based on an agreement between the parties, but is required according to laws and regulations, it is known as social insurance. The role of the state in fulfilling the basic needs of the people is needed, especially in the form of comprehensive health services (Ardinata, 2020).

Insurance activities are activities to deal with risks faced by everyone who has an interest in someone's interests, related to one's property or life. However, whether insurance exists or not depends on the will of the parties, especially the will that has an interest in one's property or life, is the freedom of a person or group to carry out insurance. However, the government has a responsibility for the social protection of its citizens, to provide comfort, security and convenience in providing solutions to risks that may

occur to the community. The existence of insurance in society is interesting to discuss further, in this paper it will be examined from the perspective of human rights.

### **MAIN PROBLEM**

Based on the background, the problems to be discussed in this research are:

1. Why is health insurance in Indonesia an activity that can be linked to human rights (HAM)?
2. What is the role of the government in implementing health insurance in terms of human rights?

### **METHOD OF RESEARCH**

The research method used is doctrinal (normative) research, so the type of data used is secondary data obtained from literature. The approach to the problem is carried out in a normative manner towards laws and regulations governing human rights in Indonesia, provisions concerning national health insurance whose implementation follows the social insurance system, so that it is mandatory, to be followed by all residents in Indonesia. In addition, an approach was also made to the legal principles that apply in the implementation of social insurance in the national health insurance, as stipulated in the Law on the National Social Security System (SJSN).

In addition to the approach to primary legal materials, this research also uses secondary legal materials, namely literature books containing expert opinions on social insurance, in this case regarding health insurance related to human rights. These legal materials are processed

systematically so that they can be declared valid, so that they are easy to analyze qualitatively so that they can be concluded inductively

## **RESEARCH RESULT AND DISCUSSION**

### **1. Health Insurance in Indonesia in the Perspective of Human Rights (HAM).**

The definition of human rights in Law Number 39 of 1999 concerning Human Rights is contained in Chapter I General Provisions, Article 1 paragraph (1): Human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty. One and is His gift that must be respected, upheld and protected by the state, law, government and everyone for the honor and protection of human dignity. The set of rights referred to in Human Rights are rights that are intrinsically inherent in humans as God's creatures, which must be given a separate space in the sense that it is protected by law to be exercised by everyone on earth including in Indonesia, which must be upheld and respected by all people, the government and society in general. However, every person in exercising their human rights must also respect the rights of others, because other parties also have human rights that must be protected and respected. For the Indonesian nation, human rights as a thought and as a paradigm were not born together with the Universal Declaration of Human Rights (1948), although it cannot be denied that Indonesia as a member of a world organization that is part of the United Nations (UN), historically what happened on December 10, 1948 was the culmination of human struggle

after witnessing the atrocities of past wars. For Indonesia, the issue of human rights is not a problem that only concerns foreign parties, because since the formulation of the 1945 Constitution of the Republic of Indonesia, the founders of the Republic have been debating human rights issues. Because of the close relationship between issues of health, justice and human rights, the function of law itself becomes very pivotal (Mardiansyah, 2018).

The formulation of human rights in the 1945 Constitution of the Republic of Indonesia is the result of a compromise or consensus between ideas that view it as inappropriate to formulate human rights in a complete constitution with concerns that are individualistic and ideas that argue that it is proper for a constitution to contain human rights provisions in full. As a rule of law, the provisions regarding human rights are not only to meet the demands of the national and international community, but more than that, all provisions contained in the 1945 Constitution of the Republic of Indonesia must be realized in the life of the nation and state. The government as a responsible party, must have will politics, to implement the provisions of the 1945 Constitution of the Republic of Indonesia. Therefore human rights are not only regulated in the 1945 Constitution of the Republic of Indonesia, but must be formulated in statutory regulations followed by other implementing regulations. Human rights provisions in the 1945 Constitution, before being amended, had already been formulated regarding human rights, as written in Article 27 of the 1945 Constitution of the Republic of Indonesia, regarding equality in law

and government, the right to work and a decent living, entitled and obligatory in defending the country, followed by Article 28 regulating concerning freedom of association and assembly, expressing thoughts both orally and in writing, after being amended, human rights are regulated even more, which is written in Chapter XA on Human Rights, starting from Article 28A to Article 28 J. Article 28A of the Amended 1945 Constitution of the Republic of Indonesia, regulates that: "Every person has the right to live and has the right to defend his life and existence".

The contents of this article show that trying to live is a human right that must be protected. Surviving to live due to illness, surviving also means that someone is prohibited from being killed, so some argue that the death penalty is a violation of human rights. Therefore, people who are sick or who are threatened with death need the availability of means so that they can live, even though the limit of human life is in the hands of God Almighty, it is everyone's right to defend their lives. The necessary facilities are health facilities, the availability of sufficient medicines and medical equipment, of course it is the government's obligation to provide them.

Article 28A has something to do with Article 28H of the 1945 Constitution of the Republic of Indonesia, that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to get a good and healthy environment and has the right to obtain health services, including in this case the right to obtain social security.

In order to comply with human rights provisions regulated in the 1945 Constitution of the Republic of

Indonesia, on October 19, 2004 the government issued Law Number 40 of 2004 concerning the National Social Security System (UU-SJSN). Furthermore, as a follow-up to the issuance of the National Social Security System Law, in 2011 Law Number 24 of 2011 concerning the Social Security Administering Body (BPJS) was issued. The issuance of these two laws had an impact on the management of national health insurance, which is a type of social insurance (Sembiring, 2014), where the social insurance provider is the government.

The implementation of social security in the health sector in the framework of providing protection to people who need facilities and infrastructure in the health sector, the implementation is carried out by an agency namely the Health Social Security Administering Body (BPJS Health), the implementation of social security for the community besides health there is also BPJS Employment. This social administration was previously included in health insurance (ASKES) which specifically provides protection to the public in the health sector, and the implementation by Employment Social Security (JAMSOSTEK), in the field of insurance both of which are included in compulsory social insurance. The success of health insurance is largely determined by the availability of health facilities that meet the required standards (Koni et al., 2020).

The government as a party implementing social security, of course, must carry out an evaluation, whether the steps taken as an organizing body for community protection are appropriate with what is

being done in practice. As the organizer of the National Social Security (JSN) carried out by the Health and Employment BPJS, it is obligatory for everyone to take part in this program independently or collectively through institutions where a person carries out his work activities, for which there are periodic payment charges. Furthermore, it is the government's obligation to provide health services if BPJS members need these services. This means that the implementation of human rights for social security in the health sector is a burden that must be borne by both parties, everyone who needs health insurance must pay an amount of money for the infrastructure in the health sector provided by the government, payment of an amount of money is a premium in insurance, while the provision of facilities and infrastructure in the health sector is the obligation of the government including the obligation of the guarantor in insurance, namely social insurance in the health sector.

Insurance in the health sector is not only held by the government, some are held by private business entities, in this case including commercial insurance. Social insurance is compulsory insurance (compulsory), organized by the government, based on laws that provide basic protection to the public, while commercial insurance is insurance that is voluntary, basically an agreement between the two parties between the insured who has an interest in the risks involved. attached to one's soul/health, aims to seek profit (economic motive) (Muhammad, 2006).

There is a fundamental difference between social insurance held by the government and commercial insurance held by private parties. The difference lies in the occurrence of insurance, as an agreement for insurance, and as a form of obligation to provide protection to the community. This means that the implementation of commercial insurance is essentially an agreement (Ganie, 2011).

Even though insurance is a positive thing, its implementation depends on the good faith or honesty of the parties. Freedom in choosing insurance, freedom in agreeing to determine the contents of the agreement, must be carried out by both parties in a balanced way, so that prosperity will not only be achieved by the community who owns the interests, but also for companies that do the insurance business, so that between the two there is a relationship of mutual respect for one another, this is in accordance with the provisions in Article 28J of the 1945 Constitution of the Republic of Indonesia which includes provisions regarding human rights, that:

- Everyone is obliged to respect the human rights of other people in the orderly life of society, nation and state.

In exercising his rights and freedoms, everyone has the obligation to comply with the restrictions determined by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with considerations of

morality, religious values, security and public order in a democratic society.

Insurance as an agreement can certainly be studied from a human rights perspective. Whereas as an agreement, the agreement occurs because there is an agreement made by both parties, in which both parties are both willing not because they are forced by the other party, or by certain parties, are willing about what is insured, willing about the amount of premium, implementation time, risk limits and sum insured and the end of the insurance agreement, so that this willingness is in accordance with human rights. There is freedom to determine which insurance company where a person/group transfers risk by paying premiums, this is also regulated in the Indonesian Insurance Law, namely Law Number 40 of 2014, specifically in Article 24 concerning Insurance coverage for Insurance Objects must be based on the principle of freedom to choose an Insurance Company or a Sharia Insurance Company.

## **2. The Government's Role in the Implementation of Health Insurance in Indonesia from a Human Rights Perspective**

Implementation of human rights is also a form of realizing a democratic state based on Pancasila. In implementing Pancasila democracy in relation to human rights, there are at least two aspects that must be considered, namely the rule of law and human rights aspects, because the principles of Pancasila contain the following principles:

- Recognition and protection of human rights that contain equality in

the political, legal, social, economic, cultural and educational fields.

- An independent and impartial judiciary, not affected by any other powers.

- Guarantee of legal certainty in all matters, namely guarantees that all legal provisions can be understood, implemented and safe in carrying them out (Effendi, 1993).

Human Rights in general can be grouped into four groups, namely as follows:

- Civil Rights (civil rights)
- Political Rights (political rights)
- Socio Economic Rights (social economic rights)

Cultural Rights (rights in the field of culture: education, scientific and technological advances)(Qamar, 2013).

Reviewing human rights regulations, there are twenty-seven points in the 1945 Constitution. If the provisions that have been adopted into the Constitution are expanded to include new elements that complement existing formulations, then regrouped to include new provisions that have not yet been included, then the formulation of human rights can include four groups of material, as follows:

- Civil rights groups.
- Political rights groups.
- Groups of special rights and the right to development.
- State responsibility groups and human rights obligations (Asshiddiqie, 2011).

It is undeniable that the trend of reform in Indonesia has undergone many changes, including developments in terms of human



rights. Many incidents related to human rights have become the main thing that must be studied for the improvement of

the Indonesian nation, especially in improving law and law enforcement. By Indonesia's founding fathers, in fact human rights issues were alluded to, even though they were not mentioned explicitly, it can be seen in paragraph 1 of the Preamble of the 1945 Constitution: "In fact, independence is the right of all nations and because of that because it is not in accordance with humanity and justice", so that Indonesia can be called a country based on law. as a constitutional state must fulfill the following elements:

- The principle of recognition and protection of human rights
- The principle of legality
- The principle of division of powers
- The principle of an independent and impartial judiciary

The principle of popular sovereignty (Rajidi, 1989)

In connection with the implementation of human rights in Indonesia as stipulated in the 1945 Constitution and in other laws and regulations, including the ratification of the International Convention on Human Rights, as well as with the issuance of laws that regulate human rights, namely Law Number 39 of 1999 concerning Human Rights, and other related laws, show that there is concern for human rights that must be implemented in the life of society and the state. Actions taken by individuals, groups or the government must always refer to human rights provisions, of course that there is no unlimited freedom, but there are obligations that must be carried out in a fair and

balanced manner, the rights of a person or group must be balanced with the obligations of individuals or other groups, Neither party is free to act against the other party, all have norms that must be obeyed together.

The existence of the implementation of social security, especially in the health sector (health insurance) with the issuance of the BPJS Health card, for every member of the community, which is carried out by the government in the practice of using it, there is an impression that the card users are secondary in health services from patients who do not use the BPJS Health card. So if you want to get excellent service, you don't need to use the BPJS Kesehatan card. Another problem in the practice of providing health protection is that there is still the use of Health Insurance cards (Askes) which are regulated in Government Regulation Number 69 of 1991 concerning Health Care for Civil Servants, Retired Recipients, Veterans, Independence Pioneers and Their Families, the validity of the Askes card can be shown when someone needs services by showing the BPJS Kesehatan and Askes Cards together, the Hospital will ask which card to use, by explaining the difference in service between the use of the two cards.

## CONCLUSION

Health insurance is one of the social guarantees that apply in Indonesia based on Law Number 40 of 2004 concerning the National Social Security System, its implementation follows the social insurance system by providing protection to all people in Indonesia to be able to meet the basic needs of a decent life and increase their dignity and a prosperous society.

The government administers the National Health Insurance (JKN) by establishing the Health Social Security Administering Body (BPJS), whose role is to provide health services based on humanitarian principles.

## REFERENCES

- Ardinata, M. (2020). Tanggung Jawab Negara terhadap Jaminan Kesehatan dalam Perspektif Hak Asasi Manusia (HAM). *Jurnal HAM*, 11(2), 319–333.
- Asshiddiqie, J. (2011). *Hukum Tata Negara dan Pilar-Pilar Demokrasi*. Sinar Grafika.
- Budiardjo, M. (1998). *Dasar-Dasar Ilmu Politik*. Gramedia.
- Effendi, A. M. (1993). *Hak Asasi Manusia Dalam Hukum Nasional dan Internasional*. Ghalia Indonesia.
- Ganie, A. J. (2011). *Hukum Asuransi Indonesia*. Sinar Grafika.
- Hartono, S. R. (1997). *Hukum Asuransi dan Perusahaan Asuransi*. Sinar Grafika.
- Koni, J., Ngadino, N., & Lumbanraja, A. D. (2020). Sistem Jaminan Sosial Nasional Bidang Kesehatan Di Era Otonomi Daerah. *Notarius*, 13(2), 961–971.  
<https://doi.org/10.14710/nts.v13i2.33077>
- Mardiansyah, R. (2018). Dinamika Politik Hukum Dalam Pemenuhan Hak Atas Kesehatan Di Indonesia. *Veritas et Justitia*, 4(1), 227–251.  
<https://doi.org/10.25123/vej.2918>
- MD, M. (2001). *Dasar dan Struktur Ketatanegaraan*. Rineka Cipta.
- Muhammad, A. (2006). *Hukum Asuransi Indonesia*. PT. Citra Aditya Bakti.
- Muladi. (2009). *Hak Asasi Manusia Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat*. PT. Refika Aditama.
- Qamar, N. (2013). *Hak Asasi Manusia dalam Negara Hukum Demokrasi (Human Rights in Democratic Reschsstaat)*. Sinar Grafika.
- Rajidi, L. B. A. S. (1989). *Filsafat Hukum, Mazhab, dan Refleksinya*. Remadja Karya.
- Sembiring, S. (2014). *Hukum Asuransi*. Nuansa Aulia.
- Tampubolon, N. H. S. K. S. (2022). Tanggung Jawab Negara terhadap Jaminan Kesehatan dalam Perspektif Hak Asasi Manusia (HAM). *Jurnal HAM*, 1(1), 25–34.  
<https://doi.org/10.30641/ham.2020.11.319-332>