



## Termination of Contracting Cooperation Between the Private Hospital with the BPJS Kesehatan Related to Fraud in the Form of Writing Excessive Diagnosis Code/Upcoding

Kristanti Saraswati Ritonga; Suherman; Imam Haryanto

Program Studi Ilmu Hukum, Fakultas Hukum, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i2.1633>

### **Abstract**

Termination of the contract of cooperation between the private hospital and BPJS Kesehatan related to fraud in the form of writing an excessive diagnostic code / upcoding, is clearly in accordance with contract law in Indonesia. This research is normative, namely research on legal principles, using a descriptive type of research, namely by describing the results of research in a complete and systematic manner on matters that are the subject of writing. The results and conclusions of the study that the termination of cooperation contracts between private hospitals and BPJS Kesehatan related to fraud in the form of writing excessive diagnostic codes /upcoding is in accordance with contract law in Indonesia. The basis for terminating this cooperation contract is in accordance with Article 1267 of the Civil Code. And the legal consequences for the parties to terminate the cooperation contract related to fraud in the form of writing excessive diagnostic codes / upcoding, regulated in Article 1243, Article 1267 and Article 1365 of the Civil Code. BPJS Kesehatan is expected to provide complete socialization to private hospitals regarding the substance of the cooperation contract with private hospitals. And the private hospital knows in detail the obligations that must be fulfilled in this cooperation agreement, especially related to fraud associated with writing an excessive diagnostic code / upcoding, which is carried out by the private hospital. The parties share this agreement in good faith.

**Keywords:** *Termination of contract; Fraud; Upcoding*

### **A. Preliminary**

#### *I. Background*

The right to an adequate standard of living for the health and well-being of himself and his family is a human right and is recognized by all the nations of the world, including Indonesia. This was stated in the 1948 United Nations Declaration on Human Rights. Article 25 paragraph (1) of the Declaration says that:

*"Everyone has the right to an adequate degree of life for the health and well-being of himself and his family, including the right to food, clothing, housing and health care as well as the necessary social services, and is entitled to guarantees when unemployed, suffering from illness, disability,*

*being widowed / widower, reaching old age or other conditions that result in lack of income that is beyond his control".<sup>1</sup>*

In Indonesia, the philosophy and foundation of the Pancasila state, especially the 5th precept, also recognizes citizens' human rights to health. This right is also included in the 1945 Constitution Article 28H and Article 34, and regulated in Law No. 23 of 1992 concerning Health, which was then replaced by Law No. 36 of 2009. In Law 36/2009 it is stated that everyone who has the same right to obtain access to resources in the health sector and obtain safe, quality and affordable health services.<sup>2</sup>

To realize the global commitment and the above constitution, the government is responsible for implementing public health insurance through the National Health Insurance (JKN) for individual health. In fulfilling this, the government has organized several forms of social security in the health sector, including PT Askes (Persero) and PT Jamsostek (Persero) which serve among others civil servants, pension recipients, veterans, and private employees. For the poor and unable, the government provides guarantees through the Public Health Insurance (Jamkesmas) and Regional Health Insurance (Jamkesda) schemes.

In 2004, Law No. 40 of 2004 concerning the National Social Security System (SJSN). Law 40/2004 mandates that compulsory social security for all residents including the National Health Insurance (JKN) through a Social Security Organizing Agency (BPJS). In this Law, the National Social Security System is regulated, which covers health insurance, work accident insurance, old age insurance, pension benefits and life insurance for all occupants through compulsory employee contributions.<sup>3</sup>

Law No. 24 of 2011 concerning the Social Security Organizing Agency also stipulates, the National Social Security is organized by the Social Security Organizing Agency (BPJS) consisting of BPJS Kesehatan and BPJS Employment. Specifically for the National Health Insurance (JKN) organized by BPJS Kesehatan, the implementation began on January 1, 2014.<sup>4</sup>

In the implementation of the health insurance program in the national social security system, various problems were discovered, including the potential for fraud that could cause harm to the national social security fund. According to Minister of Health Regulation No. 36 of 2015 concerning Prevention of Fraud (Fraud) in the Implementation of the Health Insurance Program in the National Social Security System and BPJS Regulation No. 7 of 2016 concerning the Fraud Prevention System (Fraud) in the implementation of the Health Insurance Program, JKN Fraud is an action taken intentionally by participants, BPJS Kesehatan officials, health service providers, and providers of drugs and medical devices to obtain financial benefits from the health insurance program in the National Social Security System through fraudulent acts that are not in accordance with the provisions.<sup>5,6</sup>

From observations made by the Health Management Study Center of Gadjah Mada University, Yogyakarta in 7 major hospitals (Cipto Mangunkusumo Hospital, Kariadi Hospital, Sardjito Hospital, Wahidin Sudirohusodo Hospital, Sanglah Hospital, Soeradji Tirtonegoro Hospital, and Moewardi Hospital) by means of in-depth discussions reported the percentage of potential fraud has occurred in the

---

<sup>1</sup> Deklarasi Universal *Hak-Hak Asasi Manusia* Article 25 Paragraph (1).

<sup>2</sup> Undang-Undang Republik Indonesia Number 36 of 2009 concerning *Kesehatan* Article 5 Paragraph (1) and (2).

<sup>3</sup> Undang-Undang Republik Indonesia Number 40 of 2004 concerning *Sistem Jaminan Sosial Nasional (SJSN)*.

<sup>4</sup> Undang-Undang Republik Indonesia Number 24 of 2011 concerning *Badan Penyelenggara Jaminan Sosial (BPJS)*.

<sup>5</sup> Peraturan Menteri Kesehatan Republik Indonesia Number 36 of 2015 concerning *Pencegahan Kecurangan (fraud) dalam Pelaksanaan Program Jaminan Kesehatan Pada Sistem Jaminan Sosial Nasional*. Article 2.

<sup>6</sup> Peraturan Badan Penyelenggara Jaminan Sosial Kesehatan Number 7 of 2016 concerning *Sistem Pencegahan Kecurangan (Fraud) dalam Pelaksanaan Program Jaminan Kesehatan*. Article 4.

category of fraud according to the NCAA, as follows:<sup>7</sup> upcoding, by entering billing claims based on inaccurate codes, namely diagnoses or procedures that are more complex or use more resources, resulting in higher claim values than they should (100%).

According to the Republic of Indonesia Minister of Health Regulation No 36/2015, health facilities that commit JKN fraud are given administrative sanctions in the form of verbal reprimands, written warnings, and / or orders to recover losses due to JKN fraud to the injured party. Whereas in the BPJS Regulation No. 7/2016 it states that in the event of evidence of fraud based on an investigation report, the Health BPJS may terminate the cooperation agreement with the private FKRTL.

The implementation of the cooperation agreement between BPJS Kesehatan and health facilities in the JKN program is regulated in Presidential Regulation No. 12 of 2013 concerning Health Insurance, Article 36 which reads:<sup>8</sup>

- 1) *"Health service providers include all health facilities that are collaborating with the BPJS Kesehatan.*
- 2) *Health facilities owned by the Government and Regional Governments that meet the requirements must cooperate with the BPJS Kesehatan.*
- 3) *Private-owned health facilities that meet the requirements can establish cooperation with the BPJS Kesehatan.*
- 4) *Cooperation referred to in paragraph (2) and paragraph (3) shall be carried out by entering into an agreement in written form. "*

And Minister of Health Regulation No. 71 of 2013 concerning Health Services in the National Health Insurance, Article 4 which reads:

- 1) *"Health facilities as referred to in Article 2 say cooperation with the BPJS Kesehatan.*
- 2) *Cooperation of Health Facilities with BPJS Kesehatan as referred to in paragraph (1) shall be carried out through a cooperation agreement.*
- 3) *The Health Facility cooperation agreement with the BPJS Kesehatan is made between the leader or the authorized Health Facility owner and the Health BPJS.*
- 4) *The cooperation agreement as referred to in paragraph (3) is valid for at least 1 (one) year and can be extended again by mutual agreement. "*

In BPJS Regulation No. 7/2016, regulates sanctions for JKN fraud, namely:<sup>9</sup>

*"In the event that a fraud is proven according to the investigation report referred to in Article 21 letter e, the BPJS Kesehatan may terminate the cooperation agreement with FKTP and FKRTL privately owned".*

Based on the descriptions above, the author is interested in compiling a thesis entitled: "DISCONNECTION OF CONTRACTS OF COOPERATION BETWEEN PRIVATE HOSPITALS WITH BPJS KESEHATAN RELATED TO FRESH (FRAUD) IN THE FORM OF WRITING DIAGNOSA CODE WITH PRIVATE/UPCODING."

<sup>7</sup> Info BPJS Kesehatan Media Internal Resmi BPJS Kesehatan, XXIX Edition November 2015, "*Tindak Kecurangan (Fraud) Merugikan Program JKN (Negara)*".

<sup>8</sup> Peraturan Presiden Republik Indonesia Number 12 of 2013 concerning *Jaminan Kesehatan*.

<sup>9</sup> Peraturan Menteri Kesehatan Republik Indonesia Number 71 of 2013 concerning *Pelayanan Kesehatan Pada Jaminan Kesehatan Nasional*.

## II. Formulation of the Problem

This type of research used in this study is normative, namely by conducting research on legal principles. This type of research is descriptive, namely by describing clearly, in detail and systematically about termination of cooperation contracts conducted by BPJS Kesehatan is legal according to contract law in Indonesia and its legal consequences for parties from termination of contracts by BPJS Kesehatan related to fraud (fraud) in the form of writing excessive diagnostic code / upcoding. This research conducts legal and conceptual approaches. Legislative approach by examining the laws and regulations relating to termination of the cooperation contract conducted by BPJS Kesehatan related to fraud in the form of upcoding by private hospitals and the legal consequences. While the conceptual approach is an approach that moves from the views or doctrines related to the termination of the cooperation contract conducted by BPJS Kesehatan related to fraud in the form of upcoding by private hospitals.

This type of research data is secondary data, namely data obtained by researchers from official documents, books relating to the object of research, research results in the form of reports. Secondary data sourced from three legal materials, namely: a) primary legal materials; b) secondary legal materials; and c) tertiary legal materials.

Data collection methods in this research are literature study and interviews. Literature study is obtained by reading, studying and quoting legislation, books and literature. Interviews were conducted with speakers from private hospitals.

The method of processing legal materials is processed by: a) inventory of data; b) data selection; c) data classification; and d) compilation of data.

Method of Analysis of legal materials is carried out in a descriptive juridical manner, that is Analysis is carried out by describing the facts or circumstances of an object in the form of sentence descriptions based on the statements of the parties related to this research. And the results of this study are then described so as to provide a clear picture of the problem.

## III. Research Methods

This type of research used in this study is normative, namely by conducting research on legal principles. This type of research is descriptive, namely by describing clearly, in detail and systematically about termination of cooperation contracts conducted by BPJS Kesehatan is legal according to contract law in Indonesia and its legal consequences for parties from termination of contracts by BPJS Kesehatan related to fraud in the form of writing excessive diagnostic code/upcoding. This research conducts legal and conceptual approaches.<sup>10</sup> Legislative approach by examining the laws and regulations relating to termination of the cooperation contract conducted by BPJS Kesehatan related to fraud in the form of upcoding by private hospitals and the legal consequences. While the conceptual approach is an approach that moves from the views or doctrines related to the termination of the cooperation contract conducted by BPJS Kesehatan related to fraud in the form of upcoding by private hospitals.<sup>11</sup>

This type of research data is secondary data, namely data obtained by researchers from official documents, books relating to the object of research, research results in the form of reports. Secondary data sourced from three legal materials, namely: a) primary legal materials; b) secondary legal materials; and c) tertiary legal materials.

<sup>10</sup> Soerjono Soekanto & Sri Mamuji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta: Rajawali Pers, 2001), pg. 14.

<sup>11</sup>A. Anugrahni. 2018. *Pendekatan Dalam Penelitian Hukum*. Accessed from <https://ngobrolinhukum.wordpress.com/2013/12/16/pendekatan-dalam-penelitian-hukum/> May 1 2015 at 13.18 WIB.

Data collection methods in this research are literature study and interviews. Literature study is obtained by reading, studying and quoting legislation, books and literature. Interviews were conducted with speakers from private hospitals.<sup>12</sup>

The method of processing legal materials is processed by: a) inventory of data; b) data selection; c) data classification; and d) compilation of data.

The method of Analysis of legal materials is carried out in a descriptive juridical manner, that is Analysis is carried out by describing the facts or circumstances of an object in the form of sentence descriptions based on the statements of the parties related to this research. And the results of this study are then described so as to provide a clear picture of the problem.

## **B. Results and Discussion**

### **1. Termination of Contract undertaken by the BPJS Kesehatan Legitimate Under Indonesian Contract Law**

Cooperation contract between Private Hospital and BPJS Kesehatan is an agreement made by the parties in written form. This agreement includes an underhand agreement in which the parties sign the contract on stamp duty (without the involvement of public officials). This is in line with the provisions in Article 1874 of the Civil Code which reads: "what is considered as writing under the hand is a deed signed under the hand, a letter, a register, a household affair and other writings made without the intermediary of a general official".

According to the terms and process of occurrence / formation of this agreement including consensual contracts where the contract is considered valid because there is an agreement between the parties who made the contract. This is in line with the provisions in Article 1313 of the Civil Code which reads: "an agreement is an act in which one or more people are bound to one or more people".<sup>13</sup> This means that the word agreement stated in Article 1313 of the Civil Code is a two-sided or more legal act, where agreement is required from the parties making the agreement. In this agreement the parties have rights and obligations, so this agreement is called a reciprocal contract. According to the naming and nature of its legal arrangements, this agreement includes a named contract.

Anatomy of a contract made in the form of a deed under the hand must refer to the "general provisions" contained in Article 28 of Law Number 30 of 2004 concerning the Position of Notary, the deed parts consist of:<sup>14</sup> 1). The beginning of the deed or the head of the deed; 2). Deed body; 3). End or closing of the deed. The start of the deed or the head of the deed consists of: a). title of the deed; b). deed number; c). hours, days, months and years; and D). full name and place of domicile of the notary. The deed body consists of: a). full name, place and date of birth, nationality, occupation, record, position, residence of the parties facing and / or the people they represent; b). information regarding the position of acting; c). the contents of the deed which is the will and desire of the parties concerned; and d). full name, place and date of birth, and occupation. The position, position and residence of each identifying witness. Deed or closing act consists of: a). a description of the reading of the deed already regulated in Article 16 paragraph (1) letter l or Article 16 paragraph (7); b). a description of the signing and place of signing or translation of the deed if any; c). full name, place and date of birth, occupation, position, position and residence of each witness of the deed; and d). a description of the absence of changes in the making of the deed or a description of the changes that can be in the form of additions, deletions, or replacements.

<sup>12</sup> *Op.Cit.* Pg 66.

<sup>13</sup> Buku Ketiga Kitab Undang-Undang Hukum Perdata concerning *Perikatan*.

<sup>14</sup> Undang-Undang Republik Indonesia Number 30 of 2004 concerning *Jabatan Notaris*.

But in its development, anatomy of the contract consists of:<sup>15</sup> 1). Head of deed; 2). Comparative; 3). Praemisse; 4). Definition; 5). Fill out the deed; 6). Closing of the deed; and 7). Amendments or addendums to the deed.

This agreement is entitled:<sup>16</sup> **"Cooperation Agreement Between BPJS Kesehatan and Private Hospitals About Advanced Referral Health Services for Health Insurance Program Participants"**.

The title of this agreement is to avoid mistakes in the identification of documents. The title of this agreement is clear and in accordance with the substance of the contract. And the title of this agreement describes the entire substance of the contract made by the parties.

This agreement is regulated in PMK 71/2013 on Health Services in the National Health Insurance which requires a cooperation contract between BPJS Kesehatan and health facilities (including private hospitals).

This agreement has a contract number, day, date, month and year of the contract. Writing the contract number is intended to be orderly administration, and writing the day, date, month and year of the contract carried out, because it relates to the legal capacity (position, authority, and legal skills) of the parties who signed the contract. Also important in relation to determining certainty at the time of the contract.

This agreement was signed in Jakarta. The writing of the place where the contract is made is related to the existence of the parties who signed the contract in the region or region where the contract deed was made.

This agreement is written the identity of the parties who signed the agreement. Writing identity consists of the names of the parties that are complete and correct; occupation or position in the community, which is also written completely and correctly; office address; certificate of position or position. Writing the identity of the parties has an identification function and aims to explain the legal capacity of the parties who signed the contract. In this agreement, BPJS Kesehatan is the first party while Private Hospital is the second party.

PMK 71/2013 regulates this agreement between the director or owner of an authorized private hospital and the BPJS Kesehatan. Each party must be represented by people who are capable of doing legal actions. This has fulfilled the legal requirements of an agreement as stipulated in Article 1320 (2) of the Civil Code which states that "the ability of the parties to make an agreement".

The parties that represent, viewed from the aspect of authority, that is, those who are authorized to act in their positions in accordance with their respective appointment letters. The agreement made by the parties in this agreement is free from mistakes, coercion or fraud. The parties have freedom of will, and are also free from pressure which results in a "flaw" for the realization of that will. This reads in Article 1321 which states that "there is no valid agreement, if this agreement is given because of an error, or is obtained by force or fraud".

This agreement does not include praemisse. Despite the absence of praemisse, this agreement is still valid.

Article 1 of this agreement explains the definition, which contains key terms of the substance of the contract. The purpose of writing the key terms is to set technical matters that apply to the parties

---

<sup>15</sup> Muhammad Syaifuddin. *Op.cit.* Pg. 178-179.

<sup>16</sup> Draft Agreement on *Perjanjian Kerjasama antara BPJS Kesehatan dengan Rumah Sakit Swasta*.

stipulated in this agreement. The key terms defined in the article definition in this agreement are binding on the parties to the contract.

Article 2 of this agreement explains the intent and purpose of the establishment of this agreement, namely: 1). The purpose of this agreement is to conduct equal cooperation in the operation of advanced level referral health services for participants of the health insurance program; 2) the purpose of this agreement is the implementation of health insurance for participants with the terms and conditions set forth in the agreement.

The purpose and objectives of this agreement are in accordance with Article 2 of PMK 71/2013 which states that the implementation of health services is advanced level referral health facilities with BPJS Kesehatan that has collaborated. The referred level of advanced health facilities in question is a private hospital.

Article 3 of this agreement governs the scope and procedure of: 1) the scope of this agreement includes the provision of advanced referral health services in the form of individual health services that are specialized or subspecialistic consisting of advanced level outpatient, advanced level inpatient, and hospitalization in a special treatment room; 2) in the event that there is an additional scope of services by the second party within the term of the agreement, the first party will conduct a crediting for the fulfillment of the mandatory requirements and technical requirements in accordance with the applicable laws and regulations, to then be stated in the Agreement Addendum; 3) the addition of services referred to in paragraph 2) of this article, is not included in the case of additional clinical human resources for the types of services that are available at the time of signing the agreement; 4) description of the scope of health services and health service procedures for participants as listed in attachment I to this agreement.

The scope and procedures in this agreement have also been regulated in PMK 71/2013. Article 4 of this agreement regulates the rights and obligations, namely the rights and obligations of the first party and the second party. The rights and obligations stipulated in this agreement, both the health facility (private hospital) and the BPJS Kesehatan, are regulated in PMK 71/2013.

Based on the provisions of PMK 71/2013, the rights of the Private Hospital shall consist of at least: a). get information about membership, service procedures, payments and the process of cooperation with the BPJS Kesehatan; and b). receive payment of claims for services provided to participants no later than 15 (fifteen) working days after the claim documents are received in full.

Based on PMK 71/13, the obligations of private hospitals referred to in PMK 71/2013 at least consist of: a). provide health services to participants in accordance with applicable regulations; and b). provide service reports according to the agreed time and type.

Based on PMK 71/13, BPJS Kesehatan rights consist of at least: a). making or terminating work contracts with health facilities; and b). Receive service reports according to the agreed time and type.

Based on PMK 71/13, the obligation for the BPJS Kesehatan at least contains: a). provide information to private hospitals relating to membership, service procedures, payments and the process of cooperation with BPJS Kesehatan; and b). process the claim payment to the health facility for services provided to participants no later than 15 (fifteen) working days after the complete claim document is received. Whereas further provisions on rights and obligations in this agreement are regulated by the BPJS Kesehatan.

Article 5 of this agreement regulates the confidentiality of information that the parties are required to keep any knowledge and confidential information relating to other parties and is prohibited,

without the written consent of other parties to notify, open or provide information, information or similar matters relating to the content or related to this agreement.

A confidentiality agreement is an agreement that binds one or more parties not to disclose one party's confidential information to another party where, if confidential information is disclosed, it could result in losses for the owner of the confidential information.

In Article 5 paragraph (2) included in the knowledge and confidential information in paragraph (2) of this agreement, one of them is information about patients. Understanding information about the patient is the patient's medical record which is a record that contains the identity, diagnosis, history of the disease, physical examination and supporting examinations (such as laboratory and radiology), and administration of drugs.

The medical record request is used to carry out the claim administration audit process. This is regulated in Article 38 of BPJS Regulation 7/2018 concerning Management of Health Facilities Claim Administration in Health Insurance Administration.

In Article 10 Minister of Health Regulation No. 269 of 2008 concerning Medical Records, opening or releasing information about identity, diagnosis, disease history, examination history and treatment history opened in terms of:<sup>17</sup>

- a. For the benefit of the patient's health;
- b. Fulfill the request of law enforcement officials in the context of law enforcement according to court orders;
- c. The request and / or the patient's own consent;
- d. Request for institutions / institutions based on statutory provisions; and
- e. For the purposes of research, education, and medical audits, as long as there is no mention of the patient's identity.

Article 6 of this agreement regulates the class of care. The contents of this agreement describe the provision of inpatient services in private hospitals, in accordance with the provisions of the BPJS Kesehatan as stipulated in Article 23 of Presidential Regulation 12/2013 on Health Insurance and Article 23 of Presidential Regulation No. 19 of 2016 concerning Second Amendment to Presidential Regulation Number 12 of 2013 concerning Health Insurance.

Article 6 of this agreement also regulates the services of inpatients who increase care higher than their rights by paying the difference between the costs guaranteed by the BPJS Kesehatan and the costs to be paid. This is regulated in PMK 52/2016 concerning Health Service Tariff Standards in organizing health insurance programs and PMK 4/2017 regarding the second Amendment to PMK 52/2016 regulations.

Article 7 of this agreement is about health service tariffs. This article is in accordance with the provisions of PMK 52/2016.

Article 8 of this agreement regulates the procedure for the submission and payment of health services. Health service payment system already in accordance with the provisions of Article 32 of PMK 71/2013 concerning Health Services on National Health Insurance.

---

<sup>17</sup> Peraturan Menteri Kesehatan Republik Indonesia Number 269 of 2008 concerning *Rekam Medis*.



Article 9 of this agreement regulates the duration of the agreement. This article is in accordance with the provisions in Article 4 paragraph (4) of PMK 71/2013 concerning Health Services in the National Health Insurance Collaboration Agreement with Health Facilities for BPJS for at least 1 (one) year.

Article 10 of this agreement regulates monitoring and evaluation. This article is in accordance with the provisions of Article 33 of PMK 71/2013 on Health Services in national health insurance regulating the monitoring and evaluation of the implementation of health insurance services. Whereas the audit carried out by the BPJS Kesehatan internal audit team is regulated in Article 16 of the BPJS 7/2016 Regulation on the Fraud Prevention System in the Implementation of the Health Insurance Program. (Articles 96, 97 and 98 PP 82/2018 concerning Health Insurance, which is about monitoring and evaluation).

Article 11 of this agreement governs Claim Expiration. Expired claims are in accordance with the provisions in Article 40 of the Health Regulation BPJS 7/2018 concerning Management of Health Facilities Claim Administration in the Implementation of Health Insurance.

Dispute resolution is in accordance with Article 91 PP 82/2018 regarding health insurance.

Article 12 of this agreement regulates sanctions. The parties agree that sanctions will be given if:

- a) The parties were found to be incompatible with the implementation of the contents of the agreement;
- b) the second party fails or does not meet the standards at the evaluation stage
- c) the parties commit violations in accordance with applicable laws;
- d) one of the parties misused the authority by committing moral hazard or indicated fraud.

These sanctions are made if one party or the parties do not perform according to this agreement.

In contract law, the legal consequences for parties who have the obligation to carry out achievements in the contract but commit fraud (fraud) in the form of writing an excessive diagnostic code/upcoding, namely:

- a) must pay compensation for the losses suffered by the BPJS Kesehatan (vide Article 1243 of the Civil Code which states that if the party giving the obligation is negligent to perform his achievements, those who neglect to do the achievement must compensate the cost of loss and interest);
- b) must accept the termination of the contract accompanied by payment of compensation (vide Article 1267 of the Civil Code which states that the party receiving the obligation can force the party giving the obligation, the party who fails to perform, or demanding the cancellation of the agreement accompanied by compensation, loss and interest.

Article 13 of this agreement regulates the termination of the agreement. Either party may cancel and or terminate this agreement. The parties agree, in writing, to terminate this agreement which is effective on the date that the agreement is reached. The reasons for the cancellation and / or termination of this agreement if: a). one of the parties violates the substance written in this agreement; b). one of the business or operational permit is revoked by the government; c). one party merges; d). one party was declared bankrupt by the court; and one of the parties is in a state of liquidation. Violations of the provisions one of which includes fraud (fraud) in the form of writing an excessive diagnostic code / upcoding, which is regulated in PMK 36/2015 and BPJS 7/2016 Regulation. Article 24 paragraph (4) of the BPJS 7/2015 Regulation states that the termination of the cooperation agreement in the event of evidence of fraud is based on an investigation report, reported to the District / City / Province Health Office.

In the termination article of this agreement the parties have agreed to waive the entry into force of the provisions in Article 1266 of the Civil Code which reads: "the cancellation conditions are deemed to be always stated in a mutual agreement, if one party does not fulfill its obligations. In such case the agreement is not null and void, but the cancellation must be requested from the court ".The exclusion of article 1266 of the Civil Code is so that there is no fulfillment of the contents of the agreement by one of the parties so that the cancellation of this agreement does not go through the process of requesting an invalidation to the court but can only be based on the agreement of the parties themselves. However, this agreement is legitimate by disregarding the legal provisions of the agreement because this agreement was made based on the agreement of the parties, and serves as a law for those who bind themselves to each other.

Article 14 of this agreement regulates Force Majeure. It is stated in the contents of this article that Force Majeure are a number of causes that occur beyond the ability, error or power of the parties and may cause the party experiencing unable to carry out or forced to postpone the implementation of their obligations in the agreement. The forced conditions in question are epidemics, natural disasters, fires, floods, wars (both stated and not stated), rebellions, riots, general strikes, fires and government policies that directly affect the implementation process of this agreement.

In the articles of the Civil Code governing the state of force include the following:

a) Article 1244 of the Civil Code, states that the debtor must be punished for reimbursing costs, losses and interest, if he cannot prove that the agreement was not carried out or the inaccurate time in carrying out the agreement was caused by something unexpected, which could not be insured to him, even though there was no bad intention in him.

b) Article 1245 of the Civil Code, states that there is no reimbursement of loss and interest costs if due to coercive circumstances or due to things that happen by accident, the debtor is prevented from giving or doing something that is required, or doing an act that is prohibited for him.

Article 15 of this agreement regulates dispute resolution. This is regulated in Article 46 of Presidential Regulation 12/2013 concerning Health Insurance. In this article a dispute is arranged between BPJS Health and Health Facilities (Dispute resolution in Article 91 of Presidential Regulation 82/2018 concerning health insurance). Dispute claims are also regulated in Article 37 of the BPJS Kesehatan Regulation 7/2018 concerning the management of the administration of health facility claims in the administration of health insurance.

Article 16 of this agreement regulates the mechanism for providing information and handling complaints. This is also regulated in Article 11 and Article 12 of Presidential Regulation Number 76 of 2013 concerning Management of Public Service Complaints that regulates the resolution of complaints in a fast, precise, orderly, thorough, and accountable manner. The injured party can make a complaint. Complaints are made no later than 30 (thirty) must be since the complainant receives the service.<sup>18</sup>

Article 17 of this agreement entitled "Notification" regulates the communication process of the parties regarding mandatory matters, which is done in writing and delivered via email, expedition, post or facsimile. In this article the addresses of the parties are listed.

Article 18 of this agreement entitled "Others" contains 1). Transfer of rights and obligations; 2). Severability; 3). Change; 4). Limitation of liability; 5). Applicable law; 6). Supply chain financing; and 7). Unity. This article is in accordance with the provisions in Article 1339 of the Civil Code which reads "an agreement is not only binding for matters that are expressly stated therein, but also for anything that

---

<sup>18</sup> Peraturan Presiden Number 76 of 2013 concerning *Pengelolaan Pengaduan Pelayanan Publik*.

according to the nature of the agreement, is required by propriety, custom, or law". The contents of the agreement in addition to regulating the things explicitly therein, but also regulating propriety, habits and laws.

This agreement is affixed with a Rp. 6000 seal. The sealing of this agreement has no relationship with the validity of the contract, because the validity of the contract is made on stamped paper or written on ordinary paper which is then affixed with a stamp seal, making the contract has fulfilled the legal requirements of a contract (vide Article 1320 Civil Code). The imposition of stamp duty on contract paper is not regulated in the Civil Code. The stamp duty function is to pay taxes and ratify an agreement as evidence in the future.

Imposition of stamp duty on contract legal documents, because the contract legal documents contain nominal value and are used as proof. So this agreement in accordance with the contract legal documents that have been imposed stamp duty in accordance with Law No. 13 of 1985 concerning Stamp Duty, is a valid means of proof in court.<sup>19</sup>

The large regulation on stamp duty that must be paid is in Article 2 paragraph (1) of Law 13/1985, namely: a). the stamp duty value of Rp3,000 is imposed on contract legal documents whose nominal value is more than Rp.250,000; b). the stamp duty value of Rp 6000 is imposed on contract documents with a nominal value of more than Rp 1,000.00; c). for contract legal documents whose nominal value is less than Rp. 250,000, - there is no stamp duty.

This agreement was signed by the first party which is the party from BPJS Kesehatan and the second party is the private hospital. A signature is essentially a sign of agreement from the parties to the terms and conditions of the agreement. This is in accordance with the provisions in Article 1875 of the Civil Code which states that "a writing under the hand of which the truth is recognized by the person confronted with it or is legally deemed justified by it, gives rise to complete evidence such as an authentic deed for those who sign it, expert their heirs and those who get their rights ".

This agreement is strengthened by affirming the initials of the parties on each page of the agreement. This is intended for agreement on the content of each page by the parties.

This agreement was made with the intention to conduct equal cooperation in the organization of advanced referral health services for participants of the health insurance program. And the purpose of this agreement is for the implementation of health insurance for participants, which is every Indonesian citizen who is obliged to participate and must pay contributions in the health insurance program.

In this agreement in Article 12 concerning sanctions, it is stated that "in the event that one party is found to be abusing authority by carrying out moral hazard activities or indicated fraud such as making fictitious claim (one of which is fraud) in the form of writing an excessive diagnostic code / upcoding), then the party who misused the authority is obliged to recover the losses incurred and the injured party can cancel this agreement unilaterally.

In accordance with Article 1267 of the Civil Code which states "the party to whom the agreement is not fulfilled, can choose whether he, if it can still be done, will force the other party to fulfill the agreement, or, will demand the cancellation of the agreement, accompanied by reimbursement of costs, losses, and flower". If the private hospital commits fraud (fraud) in the form of writing an excessive diagnostic code / upcoding, BPJS Kesehatan can sue for termination of the contract in accordance with the contents of this agreement.

---

<sup>19</sup> Undang-Undang Republik Indonesia Number 13 of 1985 concerning *Bea Materai*. Article 2.

In this case, the cancellation or termination of this agreement is unilaterally in accordance with the Contract Law in Indonesia.

## 2. Legal Consequences for Parties from Contract Termination Related to Fraud in the Form of Writing Excessive Diagnostic Codes/Upcoding

In contract law, the legal consequences for parties who have the obligation to carry out the achievements in the contract but do default, namely:

a) Article 1243 of the Civil Code states that "reimbursement of costs, losses and interest due to not being affected by an engagement, only then begins to be required, if, the debtor, after being declared negligent to fulfill the agreement, continues to neglect it, or if something must be given or made, can only be given or made within the grace period that has exceeded".

In the event that a party commits fraud is a party that breaks a promise or does not make an achievement or mistakes an achievement or late performs an achievement. A broken promise results in the emergence of the right of the injured party to claim compensation. In this case, what is meant by compensation is a real loss that can be suspected or estimated at the time the agreement was made, arising from a broken promise.

b) Article 1267 of the Civil Code states that "the party to whom the agreement is not fulfilled, can choose whether he, if that can still be done, will force the other party to fulfill the agreement, or whether he will delay the cancellation of the agreement, accompanied by costs, losses, and flower". In this case, for the injured party, it is free to determine its demands on those who commit fraud. The choices that are disadvantaged are: a) compensation; b) fulfillment of the engagement; c) fulfillment of the agreement with compensation; d) termination of the engagement; and e) termination of the agreement with compensation.

c) Article 1365 of the Civil Code states that: "every act that violates the law, which brings harm to others, obliges the person who because of his mistake to issue the loss, replaces the loss". Matters of illegal actions include: 1) there must be actions, both positive and negative; 2) the act must be against the law; 3) there are losses; 4) there is a causal relationship between the act against the law and the loss; and 5) there was an error.

In this agreement in Article 12 concerning sanctions, it is stated that "in the event that one party is known to abuse his authority by carrying out moral hazard activities or indicated fraud such as making fictitious claims (one of which is fraud) in the form of writing an excessive diagnostic code / upcoding), then the party who misused the authority is obliged to recover the losses incurred and the injured party can cancel this agreement unilaterally. In the case of compensation for parties who abuse their authority, they must pay compensation in accordance with contract law in Indonesia.

## **Conclusion**

Termination of the contract of cooperation between the private hospital and the BPJS Kesehatan related to fraud in the form of writing an excessive diagnostic code/ upcoding in accordance with contract law in Indonesia. This agreement is in accordance with the articles contained in the Civil Code. The agreement between a private hospital and BPJS Health has fulfilled the four legal requirements for a contract / agreement. This is regulated in Article 1320 of the Civil Code. It is considered legitimate because the first party has agreed to bind itself to the second party. The parties who signed this agreement are legally capable of carrying out legal actions. This is in accordance with Article 1329 of the Civil

Code. This agreement requires the parties to carry out achievements which according to Article 1234 of the Civil Code can be in the form of giving something, doing something or not doing something. This agreement is not an agreement without cause, because it is fake or prohibited. This is in accordance with Article 1335 of the Civil Code.

Termination of the contract of cooperation between the private hospital and BPJS Kesehatan related to fraud in the form of writing an excessive diagnostic code/ upcoding, referred to in article 12 on "Sanctions" to be given by private hospitals related to fraud (fraud) in the form of writing excessive diagnostic code / upcoding. This is in accordance with Article 1267 of the Civil Code.

The legal consequences for parties to terminate the contract related to fraud (fraud) in the form of writing an excessive diagnostic code / upcoding regulated in several Articles contained in the Civil Code. Article 1243 of the Civil Code, for private hospitals that commit fraud (fraud) associated with writing an excessive diagnosis code / upcoding must provide reimbursement of costs, losses and interest to the BPJS Kesehatan, the injured party. Article 1267 of the Civil Code means that the BPJS Kesehatan can determine fraud in the form of excessive diagnosis code writing, in the form of compensation, fulfillment of the agreement, fulfillment of the agreement with compensation, termination of the agreement, or termination of the agreement with compensation. Whereas Article 1365 of the Civil Code implies the private hospital that commits an offense related to fraud in the form of writing a diagnosis code that is excessive, thus causing harm to the BPJS Kesehatan, compensating for the harm caused. This can be done if it meets four elements, namely a) there is an act that violates the law; b) there are losses; c) there is a causal relationship between losses and unlawful acts; and d) there was an error.

### ***Bibliography***

#### **Book:**

Soerjono Soekanto & Sri Mamuji. 2001, *Penelitian Hukum Normatif* (Suatu Tinjauan Singkat). Jakarta: Rajawali Pers.

Syaifuddin, Muhammad. 2012. *Hukum Kontrak Memahami Kontrak dalam Perspektif Filsafat, Teori, Hukum (Seri Pengayaan Hukum Perikatan)*. Bandung: CV Mandar Maju

#### **Constitution:**

Indonesia, Undang-Undang Number 13 of 1985 concerning Bea Materai.

Indonesia, Undang-Undang Number 30 of 2004 concerning *Jabatan Notaris*.

Indonesia, Undang-Undang Number 40 of 2004 concerning *Sistem Jaminan Sosial Nasional (SJSN)*.

Indonesia, Undang-Undang Number 36 of 2009 concerning *Kesehatan*.

Indonesia, Undang-Undang Number 24 of 2011 concerning *Badan Penyelenggara Jaminan Sosial (BPJS)*.

Peraturan Presiden Number 76 of 2013 concerning *Pengelolaan Pengaduan Pelayanan Publik*.

Peraturan Presiden Number 12 of 2013 concerning *Jaminan Kesehatan*. Sekretariat Kabinet Republik Indonesia.

Peraturan Menteri Kesehatan Republik Indonesia Republik Indonesia Number 269 of 2008 concerning *Rekam Medis*.

Peraturan Menteri Kesehatan Republik Indonesia Number 71 of 2013 concerning *Pelayanan Kesehatan Pada Jaminan Kesehatan Nasional*, Menteri Kesehatan Republik Indonesia.

Peraturan Badan Penyelenggara Jaminan Sosial Kesehatan Number 7 of 2016 concerning *Sistem Pencegahan Kecurangan (Fraud) Dalam Pelaksanaan Program Jaminan Kesehatan*, Direktur Utama Badan Penyelenggara Jaminan Sosial Kesehatan.

Buku Ketiga Kitab Undang-Undang Hukum Perdata concerning *Perikatan*.

Universal Declaration of Human Rights adopted on December 10<sup>th</sup>, 1948.

**Article from Website:**

A.Anugrahni.2018.Pendekatan Dalam Penelitian Hukum. Accessed from <https://ngobrolinhukum.wordpress.com/2013/12/16/pendekatan-dalam-penelitian-hukum> May 1<sup>st</sup> 2015 at 13.18 WIB.

**Magazine:**

BPJS Kesehatan. (2015). *Tindak Kecurangan (Fraud) Merugikan Program JKN (Negara)*. Jakarta: Info BPJS Kesehatan. Media Internal Resmi BPJS Kesehatan. Edisi XXIX. XXIX Edition. November. Pg. 3-4.

**Draft:**

Agreement on Cooperation Agreement between BPJS Health and Private Hospitals.

**Copyrights**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).