THE JURIDICAL ANALYSIS OF LEGAL NORMS RELATED TO BPJS REFERRALS IN PUSKESMAS TO GOVERNMENT HOSPITALS

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Abstract

The Regent's instructions to the Head of the Health Service in city M with letter number 445/ /402.102/2021 regarding BPJS Health Center patients if referred are directed to the Regional Government Hospital. This instruction creates a conflict between legal norms and applicable government regulations and Health BPJS regulations. Because it can have an impact on tiered referral services in hospitals. In the Regulation of the Minister of Health of the Republic of Indonesia Number 01 of 2012 it is explained that referrals are made in stages, according to medical needs starting from the first level of health services. Social health insurance is a right for residents regulated in RI Law No. 40 of 2004 and Regulation of the Minister of Health of the Republic of Indonesia Number 71 of 2013 concerning Health Services. State that follow-up referrals are individual health services that are specialist and sub-specialist. The purpose of this study is to analyze the impact that will occur if the implementation of the Regent's instructions regarding tiered referrals in City M is carried out. The research method used Normative Descriptive Analysis with a statutory regulation approach and analysis using secondary data in the form of Legal Materials with Literature Studies, so that it becomes clear how the correct position is between Government instructions and regulations and the applicable Health BPJS.

Keywords: *BPJS Health; Instructions; Tiered Referrals.*

A. Research Background

Article 5 paragraph (2) of the Law of the Republic of Indonesia No. 36 of 2009

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concerning Health, that everyone has the right to obtain safe, quality, and affordable health services. Article 30 paragraph (1) states that a "Health Service facilities according to the type of service consist of: a) Individual Health Services; and b). Community Health Services", while in paragraph (2) is "Health Service Facilities as referred to in paragraph (1) include first level Health Services, second level Health Services, and third level Health Services".

Health efforts are carried out through efforts to improve, prevent, treat, and recover which are aimed at individuals, are carried out in a comprehensive, continuous and integrated manner, and are supported by a referral system that functions in a fully functioning manner.[1] To achieve a healthy, happy, and prosperous society, the Government makes this happen by developing health services, with the aim of increasing people's awareness, willingness, and ability to live healthily, so that the degree of public health is realized optimally.[2] The embodiment of the Health Service Program is regulated in Law Number 40 of 2004 concerning the National Social Security System (SJSN) or better known as the National Health Insurance which is equitable and non-discriminatory for all people. The National Social Security System Program began in 2014 through the legal basis of Law Number 24 of 2011 concerning the Social Security Administering Body or BPJS. This SJSN program is mandatory for all levels of Indonesian society.

A referral letter is a medical cover letter that is used as a guide for quality, cheap, effective, efficient follow-up treatment and is carried out by competent medical personnel.[3] The referral letter is a continuation of the treatment given if the patient

[1] Indonesian Ministry of Health, 2013, *Directorate General of Health Efforts, National Referral System Guidelines*, Indonesian Ministry of Health, Jakarta, p. 1.
[2] Satriadi and Dwi Septi Haryani, "Penerapan E-Puskesmas Pada Puskesmas Tanjung Pinang", *Jurnal Penelitian Ekonomi dan Bisnis*, Vol. 4, No. 2, 2019, p. 153-165.
[3] Ridho Rinaldo, "Implikasi Pengaturan Sistem Rujukan Berjenjang terhadap Pelayanan Kesehatan Perorangan", *Jurnal Semarang Law Review*, Vol. 1, No. 1, 2020, p. 7.

requires further action and treatment.[4] This referral system is also formulated in the Regulation of Minister of Health of the Republic of Indonesia Number 01 of 2012 concerning the Individual Health Service Referral System, which is a health administration that regulates the reciprocal delegation of duties and responsibilities, both vertical referrals and horizontal referrals, both structurally and functionally of patient health problems. Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, where referrals are arranged in a tiered form.

Related analysis regarding instructions that appear and result in causing this legal conflict, we will discuss it under the title "Juridical Analysis of Legal Norms Related to Health BPJS Referrals at Health Centers Directed to Government Hospitals". This description will explore the potential that will occur so that it cancausing regulatory conflicts between the Regent's instructions and regulations from the Regional Government with regulations in force in the Government and Health BPJS as the sole actor of health services. The formulation of the problems of this research are; 1) The legal ratio of the regent's instructions to the Head of Health Office regarding Health BPJS Referrals directed to Regional Government Hospitals; and 2) Legal protection for Health BPJS patients who are disadvantaged as a result of being referred only to Regional Government Hospitals.

The state of art lies in the existence of regulations related to the difference between the regent's instructions and statutory regulations, creating a conflict of legal norms, where the law is permanent while the instructions are commands without the force of legal legislation. This conflict of norms gives rise to disharmony between instructions and statutory regulations. Likewise, this regulation is also stated in Article 1 paragraph (2) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 2 of 2019 concerning Settlement of Disharmony in

[4] Solechan, "Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan Sebagai Pelayanan Publik", *Adminitrative Law & Governance Journal*, Vol. 2, No. 4, 2019, p. 686.

Legislative Regulations Through Mediation, that Disharmony in Legislative Regulations, hereinafter referred to as Disharmony, is a conflict/contradictions between legal norms or conflicts of authority arising from the enactment of Legislative Regulations. And Article 5 states that, the Legislative Regulations as intended in Article 2 are contradictory both vertically and horizontally, which causes disharmony in legal norms, conflicts of authority between ministries/institutions, creates injustice for society and business actors, and hinders the investment climate, business, and national and regional economic activities. However, a request can be submitted to resolve the disharmony between these laws and regulations through mediation.

Zuhri found that the implementation of the tiered referral system in BPJS Health Indonesia health facilities was an effort to find out the problems, obstacles and solutions that occurred to be more focused, and to be able to do this by identifying the implementation of the BPJS Health tiered referral system in health facilities. Rinaldo explained that the tiered referral arrangements at BPJS Health could ultimately have an impact on individual health services so that the BPJS Health tiered referral system in Indonesia could comply with procedures.

The aims of study were; 1) to The analyze legislative consideration of the regent's instructions to the head of health office regarding the referral of health BPJS centers to the regional government hospital; and 2) The analyze legal protection for health BPJS patients who suffer losses due to being referred only to regional government hospitals.

B. Research Method

The type of research used in this research is normative juridical analysis namely regarding the existence of instructions from the head of the region (regent) conveyed through the head of health service in city M, in the form of setting up a tiered referral

system for health BPJS where referrals from the Public health center must be directed to regional government hospital.

The methods used include[5]: 1) the statutory approach is usually used to examine statutory regulations which in their norms still lack or even foster deviant practices both at the technical level or in practice in the field; and 2) The conceptual approach is a type of approach in legal research that provides a point of view of problem solving analysis in legal research seen from the aspects of the legal concepts that lie behind it, or even can be seen from the values contained in the normalization of a regulation in relation to the concepts contained in it used or even it can be seen from the values contained in the normalization of a regulation in relation to the concepts used or even it can be seen from the values contained in the normalization of a regulation in relation to the concepts used.[6]

1. **Sources of Legal Materials**

Primary legal materials include legal materials that have binding power, namely:

a. The Constitution of the Republic of Indonesia 1945;
b. The Law of Republic of Indonesia Number 40 of 2004 concerning SJSN;
c. The Law of Republic of Indonesia Number 36 of 2009 concerning Health;
d. The Law of Republic of Indonesia Number 44 of 2009 concerning Hospitals;
e. The Law of Republic of Indonesia Number 24 of 2011 concerning BPJS;
f. The Minister of Health Number 01 of 2012 concerning Referral System for Individual Health Services;
g. The Minister of Health Number 71 of 2013 concerning Health Services at JKN;
h. The Minister of Health Number 28 of 2014 concerning Guidelines for Implementing the JKN Program;

[5] Peter Mahmud Marzuki, 2014, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, p. 35.
[6] Jhony Ibrahim, 2015, *Teori dan Metodelogi Penelitian Hukum Normatif*, Edisi Revisi, Bayumedia Publishing, Malang, p. 259.

i. The Minister of Health Number 75 of 2014 concerning Community Health Centers;
j. The Minister of Health Number 04 of 2018 concerning Hospital Obligations and Patient Obligations;
k. The Minister of Health Number 26 of 2021 concerning Guidelines for Indonesian Case Base Groups (INA-CBG) in Implementing Health Insurance.

Legal Materials consisting of textbooks written by influential legal experts, legal journals, legal cases, jurisprudence, minutes of legal seminars, and results of legal research related to this research.

2. **Collection and Processing of Legal Materials**

Based on the legal materials obtained, both primary and secondary, collected based on the problem, classified according to the hierarchy to be tested comprehensively.[7] The procedure for collecting legal materials is by means of library research, namely legal materials are collected, then studied and processed to select related materials. Then it is described and discussed systematically with separation according to the discussion material of each chapter, so that existing problems can be more easily resolved to produce conclusions that can be used in solving problems in this research proposal

3. **Analysis of Legal Materials**

This study used a descriptive normative analysis method, namely the analysis of legal materials is carried out with guidelines, based on legal norms and rules. The legal concept or legal doctrine contained in the theoretical framework or literature review is used to answer the problems in this study. Legal materials obtained from research on literature studies, laws and regulations and legal articles, are then

[7] Peter Mahmud Marzuki, *Op.Cit.*, p. 76.

described, linked, and presented in systematic writing to answer the problems that have been formulated.

C. Research Result and Analysis

1. The Legislative Consideration of Regent's Instructions to the Head of Health Office Regarding Referrals of Health BPJS Participants to Community Health Centers directed to Regional Government Hospitals

Health is a basic human need to be able to live a decent and productive life, for this reason it is necessary to provide health services that can be controlled at a cost and of prime quality to be able to help public health. In implementing a healthy Indonesia, three main pillars are upheld namely: (1) application of a healthy paradigm; (2) strengthening of health services: and (3) implementation of the National Health Insurance (JKN). The application of the healthy paradigm is carried out using a main health strategy for development, strengthening promotive and preventive efforts, as well as empowering the community.[8]

The implementation of social security, including JKN, is a safeguard mechanism in correcting the failure of the mechanism in achieving the goal of social justice for all people.[9] Many people criticize the administration of social security because it does not use the proper procedural mechanisms. Not many understand that disease cannot simply be returned to society. Therefore, the instrument formed in response to health is universal health insurance and is used to administer social security. The Health Organizing Body that is suitable for Indonesian citizens is the Social Security Administrative Body (BPJS), which is a special Legal Entity, specially

[8] Sirajuddin, *et.al*, 2021, *Hukum Pelayanan Publik Berbasis Partisipasi dan Keterbukaan Informasi*, Setara Press, Malang, p. 3.
[9] Bobi Handoko, *et.al*., "Sistem Rujukan Berjenjang BPJS Kesehatan", *Awal Bros Journal of Community Development*, Vol. 2, No. 2, 2021, p. 9-15.

formed by means of a Law that adds the form of legal entity and the working mechanism of Health BPJS.

The Health Social Security Administrative Body at the National level guarantees an equal basic program for all people, which is a decent minimum basic need. In the health sector, it has been agreed that this guarantee is a guarantee for comprehensive individual health services. Local governments and the private sector can form Health BPJS which provides guarantees that are complementary (which are not guaranteed by the national program) or that are supplementary (add to benefits or quality of benefits) guaranteed by the national program. In Law Number 40 of 2004 concerning the National Social Security System, there are at least 12 BPJS Health benefits that each participant can claim. The following is the explanation: 1) Resists almost all types of diseases; 2) Premium or affordable; 3) Easy contribution payment system; 4) Without medical check-up; 6) Without provisions for pre-existing conditions BPJS Health participants are entitled to receive First Level Health Services (PKTP), namely non-specialized individual health services including: general practitioners, dentists, primary clinics or health centers, as well as primary class D hospitals or equivalent. In this way, there is a win-win in the struggle for interests, but the people receive the most optimal guarantee. In Law Number 36 of 2009 concerning Health Article 1 which reads, health is a healthy state, both physically, mentally, spiritual, and social that enables everyone to live a socially and economically productive life. Also based on what is stated in article 1 of Law Number 36 of 2009 above, it indicates that health is the main aspect for achieving a perfect life.[10]

The relationship between Health BPJS and first level health facilities (Public health center) is a contractual relationship which is assumed to be a principal and agent relationship in agency theory. Health BPJS, which is the buyer of health

[10] Arlisah Amary dan Suprayitno, "Analisis Hubungan Fasilitas Terhadap Kepuasan Pasien Pengguna BPJS di UPT Puskesmas Segiri Kota Samarinda", *Jurnal Borneo Student Research*, Vol. 2, No. 2, 2022, p. 1068.

services, acts as the principal, while the health facility that provides health services is known as the agent. In this partnership relationship, each party has self-interest, so there is always a risk of moral hazard which can lead to conflict and affect the performance of health services provided to participants.

The legal requirements that must be met by Health BPJS with primary care health facilities are regulated in Article 1320 of the Civil Code, namely; agreement of those who bind themselves, the ability to make an agreement, a certain thing, a lawful cause. The cooperation agreement between Health BPJS and primary care health facilities (Public health center) is a standard agreement whose contents and requirements are made by Health BPJS. It is Health BPJS that makes a written agreement or what is called a deed of agreement, whereas if the primary service health facility (Public health center) fulfills the requirements, then Health BPJS agrees as one of the first health facilities that meets the requirements for collaboration with Health BPJS. Then, primary service health facilities must comply with the provisions in the agreement that has been standardized by Health BPJS. If the application is approved by Health BPJS, both parties make an agreement and are bound by an agreement in the form of a deed of agreement that has been agreed upon and signed by both parties. After an agreement was made between Health BPJS and primary service health facilities (Public health center), a legal agreement was created which then created a legal relationship, in which the legal relationship gave birth to rights and obligations for Health BPJS and primary service health facilities. The health insurance program is run nationally on the principle of social insurance.

Public health center is the first level health service facility that is closest to the community. To improve public health, the public health center has the main task of implementing basic health service efforts, namely individual health efforts and community health efforts. In public health efforts there are health promotion

activities. Health promotion is an effort to prevent disease and improve public health regarding the handling of a disease. Public health center itself has a function to develop public health in its working area. The role of Community Health Centers in efforts to provide basic health services, especially the implementation of health promotion based on The Regulation of Minister of Health Number 75 of 2014 concerning Community Health Centers.

The basic legal objective of the Community Health Center is to improve the highest degree of public health[11]. To achieve this goal, the participation of the government is also needed in planning, organizing, fostering, and supervising the implementation of health efforts that are equitable and affordable to the community. In order for health services to be carried out properly, it is necessary for the management of the public health center to plan, drive the implementation of health efforts, foster, supervise to achieve goals effectively and efficiently. The Public health center is also part of the implementer of the National Health Insurance (JKN) program which must be guaranteed by the Health Social Security Administration Agency (BPJS). The better the quality of service provided by the Public health center, the more satisfied Health BPJS patients will be in utilizing the service.

Based on the legal basis of each, between Health BPJS and public health center as primary service health facilities, they have the same law in providing health services, where Health BPJS is the health provider while the public health center is the health actor, so this makes a form of mutually beneficial health service collaboration. related. The legal relationship between Health BPJS and public health center is similar to the legal relationship between service providers and patients, which is a civil law relationship based on the agreement of both parties. The legal

[11] Dewandaru dan Hilarius Kunto, 2018, *Peran Puskesmas dalam Upaya Pelayanan Kesehatan Dasar Khususnya Pelaksanaan Promosi Kesehatan Berdasarkan Peraturan Menteri Kesehatan Nomor 75 Tahun 2014 tentang Puskesmas,* Bachelor Thesis, Fakultas Hukum Universitas Katolik Soegijapranata, Semarang, p. 6.

requirements that must be fulfilled by the BPJS for health and the public health center are regulated in Article 1320 of the Civil Code, namely: the agreement of those who bind themselves, the ability to make an agreement, a certain matter, a lawful cause.

The service provider must provide detailed information regarding the method of treatment and the patient is given the right to agree or disagree with the actions taken by the service provider. In addition, the legal relationship between service providers and patients can be categorized as a legal relationship between consumers and service providers, as stipulated in Article 1 point 2 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, which explains that a consumer is anyone who uses goods or services available in society both for oneself and others.

2. The Case analysis of Reducing Regent's Instructions on Choice of Hospital Referrals Only to Government Hospitals

A Regent or Regional Head has the authority and duties carried out for the progress and prosperity of the citizens of the region. Likewise with the authority and duties of the Regent in M City, which has been stated in Article 1 number 6, M City Regent Regulation number 30 of 2013 concerning the Distribution of Duties and Authorities of the Regent and Deputy Regent of M City, that government affairs are government functions that become the rights and responsibilities of each level of government to regulate and manage these functions in accordance with their authority in order to protect and prosper the community. The duties of a regional head, in this case the Regent, are indeed to give full authority to develop the region within the corridors determined by the Central Government.

In the Government Regulation that regulates Regional Government Matters, namely Article 17 paragraph (1) and paragraph (2) of the Law of the Republic of Indonesia number 23 of 2014 concerning Regional Government, it states in paragraph (1) that the Region has the right to establish regional policies to carry out government affairs that become the authority of the Region. Whereas in paragraph (2) the regions in establishing regional policies as referred to in paragraph (1) must be guided by the norms, standards, procedures, and criteria that have been determined by the Central Government. The regulation states that the Regional Government has the discretion to regulate and develop its area according to the conditions and resources of the area. This is ensured by the existence of all the intervention of the regional head.

In practice, a regional head and his deputies have duties, powers, obligations, and rights as regional heads and deputy regional heads, also have limitations in carrying out their duties and authorities while running the wheels of government. As stated in Article 65 paragraph (1) of the Law of the Republic of Indonesia number 23 of 2014 concerning Regional Government, where there is a Prohibition task for Regional Heads and Deputy Regional Heads. Prohibitions regarding regional heads and deputy regional heads are explained in Article 76, namely: paragraph (1) make decisions that specifically benefit personal, family, cronies, certain groups, or political groups that are contrary to provisions of laws and regulations; and/or other groups of people who are contrary to the provisions of laws and regulations. Based on this regulation, it means that regional heads have boundaries that cannot be violated while running the wheels of their government. A regional head equivalent to a regent has an obligation to improve and prosper his citizens, in implementing his development to increase the income of his citizens. This is in accordance with the rules in Article 258 paragraph (1) Regions carry out development to increase and

equalize people's income, employment opportunities, business fields, increase access and quality of public services and regional competitiveness. This regulation requires that a Regent is obliged to every citizen to be able to improve the standard of living of citizens and to be able to prosper their citizens:

a. Lead the implementation of government affairs which are the authority of the Region based on statutory provisions and policies stipulated together with the DPRD;
b. Maintaining peace and public order;
c. Drafting and submitting a draft regional regulation on the RPJPD and a draft regional regulation on the RPJMD to the DPRD for discussion with the DPRD, as well as formulating and stipulating the RKPD;
d. Drafting and submitting a draft regional regulation on APBD, a draft regional regulation on changes to the APBD, and a draft regional regulation on accountability for the implementation of the APBD to the DPRD for joint discussion;
e. Represent the Region inside and outside the court, and can appoint a legal representative to represent it in accordance with the provisions of laws and regulations;
f. Deleted;
g. Carry out other tasks in accordance with the provisions of the legislation.

Regarding the Providing of Incentives and Facilitation of Investment in Article 278 of the Law of the Republic of Indonesia number 23 of 2014 concerning Regional Government, that paragraph (1) Regional Government Administrators involve the participation of the community and the private sector in regional development and paragraph (2) to encourage the participation of the public and the private sector as referred to in paragraph (1), Regional Government Administrators can provide

incentives and/or facilities to the community and/or investors as regulated in regional regulations based on the provisions of laws and regulations.

Article 278 explains that the regional government also encourages and provides facilities for the private sector to play a role in regional development. Because of that, various incentives and conveniences were provided to be able to invest in Kota M, including investment in health services, with the construction of several primary clinics and several private hospitals in collaboration with Health BPJS in serving health in this JKN era. The hope of the private sector is that they will also get benefits and benefits to be able to enjoy businesses that are facilitated by the Regent or Regional Head, especially in the health service sector.

However, this became counter and contradictory after an instruction appeared from the Regent which was conveyed to the Head of the Kota M Health Office after conducting and holding a coordination meeting. The instruction letter numbered: 445/402.102/2021, on December 22, 2021, stated that the public health center in city M as first-level health services, if they were to refer Health BPJS patients, could be directed to the Regional Government Hospital in City M. This instruction was issued by the Head of the Kota M Health Office after coordinating with the Regent. With these Instructions, then it creates a non-compliance with various previously applicable rules including the freedom of Health BPJS participants in choosing or getting a hospital that is in accordance with the distance of residence and disease conditions of the Health BPJS patient itself. Even though Health BPJS participants have the freedom to choose the place where and where the patient will be referred. This is in accordance with Article 12 paragraph (1) Permenkes Number 01 of 2012, that to refer must be with the consent of the participant or his family.

Therefore, with the emergence of these instructions, the freedom of health BPJS participants becomes limited. Which resulted in the emergence of various problems,

especially problems in the hospital itself in accordance with what had been instructed by the Regent, for example health services with long queues which resulted in patients piling up in the hospital, then with the difficulty of participants in accessing the distance to the hospital if the location place of residence far from the hospital, and so forth.

In terms of the Regent's Instruction, it is an official order (official note) provided that it is an internal order and is not binding in the community. So it can be interpreted legally that Instructions are not as forceful or have legal force as is the case with Regulations, both Regent Regulations and or Regional Regulations, so they may not be binding at all on the community. So if there is an instruction from the Regent, the Government should and as soon as possible issue it in the form of a Regent Regulation and or a Regional Regulation, so that the legal basis becomes clear, because the instruction is not strong enough to become a legal basis for establishing or making it a regional regulation. These instructions are usually technical in nature to carry out a Regent's Regulation and or a Regional Regulation within a certain period of time.

The Regent's Instruction cannot also be used as a legal umbrella to bind the community, let alone to the extent of imposing sanctions if the community does not comply and carry it out. Although actually the instructions of a Regional Head can be interpreted as an order from superiors to subordinates that are individual, concrete, and one-time (final, *einmahlig*) so that it cannot be classified under laws and regulations (*wetgeving*) or policy regulations (*beleidsregel, pseudo-wetgeving*). Regional Head Instructions can only bind internal agencies, regional government officials who are located under the regional head in carrying out government administration. In principle, instructions must still refer to the statutory regulations above them, because by nature instructions are only binding on government

institutions. Meanwhile, the Regent's Instruction Letter to the Head of the Kota M Health Service is an order that is from a leader to his subordinates without any legal provisions, as in Article 218 paragraph (2) and paragraph (3) of the Law of the Republic of Indonesia number 23 of 2014 concerning Regional Government, that Paragraph (2) Service heads have the task of assisting regional heads in carrying out Government Affairs which are the authority of the Regions. Paragraph (3) In carrying out their duties, the service head is responsible to the regional head through the regional secretary. The law explains how the role of a Head of Service in an area is explained. As in Article 218 paragraph (2) and paragraph (3) of the Law of the Republic of Indonesia number 23 of 2014 concerning Regional Government, that Paragraph (2) Service heads have the task of assisting regional heads in carrying out Government Affairs which are the authority of the Regions. Paragraph (3) In carrying out their duties, the service head is responsible to the regional head through the regional secretary. The law explains how the role of a Head of Service in an area is explained as in Article 218 paragraph (2) and paragraph (3) of the Law of the Republic of Indonesia number 23 of 2014 concerning Regional Government, that Paragraph (2) Service heads have the task of assisting regional heads in carrying out Government Affairs which are the authority of the Regions. Paragraph (3) In carrying out their duties, the service head is responsible to the regional head through the regional secretary. The law explains how the role of a Head of Service in an area is explained.

Basically it is the difference between the Regent's instructions and the statutory regulations that create a conflict of legal norms, where the law is permanent while instructions are orders without the force of legal legislation. This conflict of norms creates a disharmony between instructions and laws and regulations as Table 1.

Basically, the difference between the Regent's instructions and the regulations is as shown in Table 1 below.

Table 1.
Conflict of Legal Norms between Regent's instructions and Regulations

No	Aspect	Regent's Instructions	Ministerial Regulation
1	Referral	Puskesmas in City M as the first level health service, if you want to refer BPJS Health patients, you can be directed to the Regional Government Hospital in City M	BPJS Health Participants in choosing or getting a hospital that suits the distance from where you live and the disease condition of the patient BPJS Health. Article 12 paragraph (1) Minister of Health Regulation Number 01 of 2012 states that BPJS Health participants have the freedom to choose where and where patients will be referred
2	Legal provisions	Instructions in the form of orders from a leader to his subordinates without any legal provisions.	Legislative regulations (*wetgeving*) or policy regulations (*beleidsregel, pseudo-wetgeving*).

Source: Analysed by the Author

Table 1 explained that it is also the case that the Regulation is also contained in Article 1 paragraph (2) Regulation of Minister of Law and Human Rights of the Republic of Indonesia Number 2 of 2019 concerning Settlement of Disharmony of Legislation through Mediation, that Disharmony of Legislation, hereinafter referred to as Disharmony, is a conflict/conflicts between legal norms or conflicts of authority that arise due to the enactment of Legislation. And Article 5 that, Legislation as referred to in Article 2 that contradicts both vertically and horizontally which causes

disharmony of legal norms, conflicts of authority between ministries/agencies, creates injustice for the public and business actors, and hinders the investment climate, business and national economic activities and area. However, this can be submitted an application to be able to resolve disharmony between these laws and regulations through Mediation.

Mediation referred to in Article 1 paragraph (3) of the Regulation of Minister of Law and Human Rights of the Republic of Indonesia Number 2 of 2019, is that Mediation is an out-of-court settlement of disharmony of laws and regulations implemented by the Directorate General of Legislation, Ministry of Law and Human Rights. This request for Mediation can be carried out by the public, be it an individual, institution or public legal entity as in Article 3 of the Regulation of Minister of Law and Human Rights of the Republic of Indonesia Number 2 of 2019, that the Petitioner for the settlement of disharmony of laws and regulations through Mediation is: a) individual or group of people; b) agency/institution/ministerial/non-ministerial government institution/regional government; and/or c) public/private legal entity.

The dimensions and scope of the conflicts that occurred were quite diverse and broad.[12] Conflicts and disputes can occur in both the public and private spheres. In the private law dimension, the parties to the dispute can settle their dispute through legal channels in court or outside the court. One form of dispute resolution in the realm of private law is mediation[13]. In Indonesia, the problem of conflicting norms or disharmony of laws and regulations is a legal problem that often occurs. This disharmony is usually motivated by the fact that several laws and regulations overlap with one another. Disharmony of laws and regulations is essentially inseparable from

[12] Busyra Azheri, 2016, *Corporate Social Responsibility dari Voluntary Menjadi Mandotary*, Raja Grafindo Persada, Jakarta, p. 54.
[13] Oktafian Prastowo, 2020, *Implementasi Perma No. 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan Negeri Surakarta*, Thesis, Fakultas Hukum Universitas Muhammadiyah Surakarta, Jawa Tengah, p. 2.

the institutions that have the authority to form laws and regulations. Because imperfections in the formation of laws and regulations result in disputes in laws and regulations. The mediation referred to is an effort to settle out of court against disharmony of laws and regulations which are usually carried out by the Directorate General of Legislation[14].

The form of settlement by mediation according to Ph. Kleintjes, by using two testing rights in differentiating against statutory regulations. The two test rights include:

a. The right to examine formally (*formele toetsinggrecht*), namely the authority to assess whether a legislative product such as a law has been formed with the procedure as stipulated in the applicable laws and regulations. This definition of the right to formally examine shows that what is assessed or tested is the procedure followed in the formation of a law;
b. The right to examine material (*materiele toetsingrecht*), namely the authority to assess whether the substance of a statutory regulation is in accordance with or contrary to statutory regulations of a higher degree and or the public interest. So the right to examine material is related to the content of a statutory regulation in relation to a higher level statutory regulation and or public interest.

In solving the disharmony of legal norms contained in laws and regulations, it can be pursued by constitutional paths. Settlement of disharmony of laws and regulations in Indonesia is carried out by several institutions, namely:

a. Judicial reviews (*right of judicial review*)

Is the process of examining lower laws and regulations against higher laws and regulations carried out by the judiciary.

[14] Evi Hastuti, dkk., "Penyelesaian Disharmoni Peraturan Perundang-undangan Melalui Mediasi", *Gorontalo Law Review*, Vol. 3, No. 2, 2020, p. 139-140.

b. Executive reviews (executive agency);

Examination of statutory regulations carried out by the executive branch against statutory regulations made by the executive branch itself without being asked for a judicial review by the judicial institution.

c. Legislative review (legislative body);

Is an alternative to the review of statutory regulations carried out by the Supreme Court and the Government where the DPR and DPRD supervise legal products before the legal products are enacted.

Disharmony of laws and regulations is a legal problem that occurs across legal norms. Where there is a clash between one legal norm and another legal norm which causes the inconsistency of a legal regulation in regulating a problem.

Based on the theory of authority which explains government authority in the form of regent's instructions, in principle it is the ability or power to carry out certain legal actions. Authority has an important position in the study of constitutional law and administrative law. Authority is an understanding that comes from the law of government organizations, which is explained as the totality of rules relating to the acquisition and use by subjects of public law in public legal relations. Government authority in this connection is connoted as the ability to implement positive law, and in this way a legal relationship can be created between the government and citizens. The authority possessed by the government in carrying out concrete actions, making regulations or decisions is always based on the authority obtained from the constitution through attribution, delegation and mandate.

From the Regulation of Minister of Law and Human Rights, with the disharmony between the Regent's instructions and the applicable laws and regulations, a conflict of legal norms arises. This legal norm conflict is resolved by means of mediation. Automatically this Regent's instruction can be deemed null and

void by the existing regulations. So the Regent's Instruction through the head of Minister Health Office number: 445/402.102/2021, has no legal force, and makes this Regent's instruction not strong enough to carry out. So the instruction to direct Health BPJS patients when they are referred to the Regional Government Hospital, with the disharmony in the above laws and regulations, can be considered invalid.

3. The Legal Protection for BPJS Patients Who Are Harmed By Being Referred only to Local Government Hospitals

There are two kinds of legal protection for BPJS patients, namely preventive legal protection and repressive legal protection for BPJS patients:

a. Preventive legal protection for BPJS patients

The state is obliged to guarantee the health of its citizens as stipulated in Article 34 paragraph (3) of the 1945 Constitution which reads, The state is responsible for providing adequate health facilities and public services. Realized by Article 3 Law Number 24 of 2011 concerning the Social Security Organizing Agency aims to provide social security to meet the basic needs of each participant and a decent living for each participant and their family.

The government's efforts to increase development in the health sector are by building additional infrastructure such as hospitals in various regions.[15] The hospital is a health service institution for the community with its own characteristics which are influenced by developments in health science, technological advances, and social life of the community which must continue to be able to improve services that are of a higher quality and are affordable to the community in order to realize the highest degree of health.[16] In the development of

[15] Stout HD, 2014, *de Betekenissen van de wet, dalam Irfan Fachruddin, Pengawasan Peradilan Administrasi terhadap Tindakan Pemerintah*, PT. Alumni, Bandung, p. 4.
[16] Titik Triwulan dan Shinta Febrian, 2015, *Perlindungan Hukum bagi Pasien*, Prestasi Pustaka, Jakarta, p. 49.

the medical world, hospitals have an important role in supporting public health. In the process of providing health services between the hospital and the patient, there is a relationship between the business actor (hospital) and the consumer (patient) in which mutually beneficial things must occur[17].

Prevention is an action that is social with the aim of preventing or reducing the occurrence of things that are not desirable in the present or the future. This action can be carried out by an individual or a group with the same goal.[18] When viewed from its goal of preventing and reducing, it can be said that prevention is an action that does not need to be expensive. Usually preventive is used in various fields, Preventive Law Legal subjects are given space to submit objections or opinions before a government decision is made to get a definitive form. This is done in order to prevent disputes.

Preventive means an action or preventive effort. The Indonesian Ocean Dictionary states that what is meant by deterrence is preventing, obstructing, or limiting (so that nothing happens). In principle, prevention aims to minimize the existence of a problem. The costs that may have to be incurred make a preventive action cheaper than the cost of reducing the adverse effects of an event that occurs.

Preventive legal protection is carried out by ensuring that statutory provisions and decisions made by the government do not conflict with the above regulations. In addition, the provisions and implementation of these provisions do not violate the basic rights of the people. Legal protection is a protection given to legal subjects in the form of both preventive and repressive instruments, both verbal and written. In other words, it can be said that legal protection is a separate picture of the

[17] Gede Yudiana, *et.al*., ”Perlindungan Hukum bagi Pasien Pengguna Badan Penyelenggara Jaminan Social (BPJS) di Rumah Sakit Kota Mataram”, *Jurnal Media Bina Ilmiah*, Vol. 14, No. 12, 2020, p. 3591.
[18] Hans Kelsen, 2017, *Teori Umum Hukum dan Negara, Dasar-Dasar Ilmu Hukum Normatif sebagai Ilmu Hukum Deskriptif Empirik*, Terjemahan Somardi, BEE Media Indonesia, Jakarta, p. 81.

function of the law itself, which has the concept that law provides justice, order, certainty, benefit, and peace.[19].

Preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision gets a definitive form, the goal is to prevent disputes from occurring. Meanwhile, preventive legal protection means for government actions based on freedom of action, because with preventive legal protection, the government is encouraged to be careful in making decisions based on discretion. Provision of preventive protection to the community, regulated in law and institutions that can provide protection to citizens to submit objections or lawsuits to the government.

Laws and regulations governing preventive legal protection are contained in Law Number 8 of 1999 concerning Consumer Protection, by realizing a balance of protection for the interests of consumers and business actors. In implementing this balance of protection, the Consumer Protection Law has provided rules regarding rights and obligations, both for consumers and for business actors[20]. In the implementation of health services, BPJS participants are protected by Health BPJS Regulation Number 1 of 2014 concerning the Implementation of Health Insurance and Article 13 paragraph (2) of Minister of Health Regulation Number 71 of 2013, which states that "Comprehensive health services as referred to in paragraph (1) are in the form of promotive health services, preventive, curative, rehabilitative, midwifery services, and Medical Emergency Health Services, including supporting services which include simple laboratory tests and pharmaceutical services in accordance with statutory provisions. Also in Article 20 of the Regulation of

[19] Wahyu Simon Tampubolon, "Upaya Perlindungan Hukum bagi Konsumen Ditinjau dari Undang-Undang Perlindungan K", *Jurnal Ilmiah "Advokasi"*, Vol. 4, No. 1, 2016, p. 54.
[20] Deni Syaputra, *et.al*., "Upaya Perlindungan Hukum Preventif terhadap Konsumen", *Journal of Social and Economics Research,* Vol. 3, No. 1, 2021, p. 44.

Minister of Health Number 71 of 2013 it states, regarding the rights that participants obtain related to advanced level referral health services.

The standard of legal protection that patients get in the form of preventive legal protection is also in Article 56 in paragraph (1) and paragraph (2) of Law Number 36 of 2009 concerning Health, that: paragraph (1) Everyone has the right to accept or reject part or all of the measures of assistance that will be given to him after receiving and understanding the complete information regarding said actions, paragraph (2) The right to accept or reject as referred to in paragraph (1) does not apply to: a) sufferers of diseases whose disease can quickly spread to the wider community; b) the state of a person who is unconscious; or c) severe mental disorder. Legal protection for these patients can be categorized as preventive legal protection or in the form of prevention before there is a violation of the law[21].

b. Repressive legal protection for BPJS patients

Repressive legal protection is legal protection that aims to resolve disputes. Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given when a dispute has occurred or a violation has been committed. This law is the final protection in the form of sanctions such as fines, imprisonment, and additional laws that can be given when a dispute has occurred or a violation has occurred.

Law as a government effort in upholding human rights, aims to resolve dispute cases. Cases heard by the General Courts in Indonesia will be in this realm. In principle, whatever the government does is based on and originates from the concept of recognizing and protecting human rights. This is the concept of the recognition and protection of human rights directed at limiting and placing the

[21] Karenina Maria Tavarez dan Rahayu Subekti, "Perlindungan Hukum terhadap Pasien Selama Pandemic Covid-19", *Jurnal Pendidikan Kewarganegaraan Undiksha,* Vol. 9, No. 2, 2021, p. 511.

obligations of society and the government. Another principle is the state's status as a rule of law state, so that as a rule of law it must always look at human rights.

In repressive law, legal subjects are given wide space to express their opinions and even raise objections before a government regulation is issued and definitively enacted. By giving space to these legal subjects, it is hoped that they can suppress or prevent the occurrence of disputes and general disputes as a result of the enactment of statutory regulations. The Invitation Law as the government's effort to uphold equality to solve all the problems that occur.

The characteristics of Repressive Law explained by Herlambang, repressive law is in a repressive regime, namely a regime that places all its actions with the aim of caring for the interests of power. Social and legal order in society is controlled by means of violence, coercion, and intimidation. Repressive laws are intended only to perpetuate class justice, especially the ruling class. Repressive law relies on the power of people (rule by law). Repressive law is law as a tool of repressive power from the rulers of the state or the regime in power in government.

Repressive laws were developed as part of a system of absolute power which aims to maintain the power of the status quo. Generally, the way repressive law works is that it is harsh and detailed towards the people, and conversely soft towards regulators and state authorities because the law is subject to power politics. The aim of repressive law is to force the people's complete obedience and submission to the authorities. Academically, generally there are several characteristics of repressive law that are:

1) Order is the main/main goal of law;
2) The legitimacy or basis of the binding force of the law is state power;
3) Legislation that is formulated in detail is strict (repressive) binding on the people, but soft on the authorities;

4) The reason for making the law is ad-hoc in accordance with the arbitrary wishes (arbitrators) of the authorities;
5) Opportunity to act is pervasive according to opportunity;
6) All-encompassing coercion without clear boundaries;
7) The morality demanded of society is self-control;
8) Power occupies a position above the law;
9) Society's obedience must be unconditional, and disobedience is punished as a crime;
10) Community participation is permitted through submission, while criticism is understood as defiance.

The standard of legal protection that patients get is in the form of repressive legal protectionpursuant to Article 58 paragraph (1) and paragraph (2) of Law Number 36 of 2009 concerning Health it is written that: paragraph (1) Everyone has the right to claim compensation against a person, health worker, and/or health provider who causes harm due to wrongdoing or negligence in the health services they receive, paragraph (2) The claim for compensation as referred to in paragraph (1) does not apply to health workers who take action to save a person's life or prevent disability in an emergency. This repressive legal protection can help Article 58 of Law Number 36 of 2009 concerning Health above be included in a repressive form of legal protection, namely legal protection that applies after a violation of the law has occurred.[22]

D. Conclusion

Based on the results of the analysis it is concluded that 1) The legislative consideration of the Regent's instruction to the Head of Health office regarding the

[22] Inten Kesuma Wati dan Siti Fatimah, "Politik Hukum Otonomi Daerah di Era Pandemi Covid-19 di Bidang Kesehatan", *Jurnal Pendidikan Kewarganegaraan Undiksha*, Vol. 10, No. 3, 2022, p. 29-30.

referral of Health BPJS Centers to the Regional Government Hospital, from a juridical point of view, is an instruction that is contrary to the laws and regulations that apply above it, because it creates regulatory disharmony, between the instructions and the laws and regulations. This creates a conflict of legal norms between the instructions of the Regent as the head of the region and the regulation of Health BPJS as the sole actor of health services; 2) A legal protection for Health BPJS participants due to the consequences of being referred only to Regional Government Hospitals, can be in the form of preventive legal protection, namely by submitting efforts to test the Regent's instructions to the Head of Health service regarding referrals for Health BPJS Public health center which are directed to Regional Government Hospitals, in addition it is also legal protection that is repressive, namely by filing lawsuits against the Regent who issues the Regent's instruction to the Head of Health service regarding the referral of Health BPJS public health center which is directed to the Regional Government Hospital.

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