

The Construction of Legal Liability of BPJS Kesehatan and Hospitals for Pending Claims

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Abstract

Pending BPJS Kesehatan claims are often reduced to a purely administrative issue, even though this condition triggers complications of civil liability that have a systemic impact on the quality of healthcare services. This normative legal study aims to reconstruct the limits of the legal liability of the parties within the National Health Insurance (JKN) ecosystem by examining the intersection between the regimes of breach of contract and tortious acts (Perbuatan Melawan Hukum/PMH). The findings reveal a hierarchically distinct structure of civil liability within the triadic relationship of BPJS, hospitals, and patients. First, in the contractual sphere, the status of breach of contract is determined by the party that commits the first breach: BPJS is deemed to be in breach when it unilaterally delays payment of valid claims, whereas a hospital is deemed to be in breach when the delay originates from its administrative negligence. Second, in the sphere of service delivery, hospitals bear an absolute duty toward patients. A decline in the standard of care resulting from cash flow constraints caused by pending claims legally constitutes a tortious act by the hospital, and the burden of liability cannot be shifted to BPJS. This study contributes the conceptual proposition that patient protection must be isolated from the dynamics of contractual financing disputes. Therefore, a reformulation of the cooperation agreement is required to specifically regulate the separation of liability regimes and proportional dispute resolution mechanisms in order to eliminate inequality of position and overlap in civil obligations within the JKN system.

1. Introduction

The fulfillment of the right to health is a constitutional mandate, as affirmed in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia.¹ To

¹ Dolot Alhasni Bakung et al., "Health Service Law in Remote Doctor Consultation (Telemedicine)," *Health* 4, no. 4 (2021).

realize this mandate, the state established BPJS Kesehatan as a public legal entity that administers the National Health Insurance (JKN) program.²

In practice, the operational relationship between BPJS Kesehatan and hospitals is structured through a cooperation agreement that functions not only as an administrative instrument, but also embodies public service values because it is directly related to the fulfillment of the public's right to health.³ Although the normative framework has been established through the BPJS Law, Presidential Regulation No. 82 of 2018 as amended by Presidential Regulation No. 59 of 2024, and Minister of Health Regulation No. 7 of 2021, practice shows that hospitals still frequently encounter pending claim problems due to incomplete documentation and obstacles in the BPJS verification process.⁴ This condition affects the stability of hospital cash flow, disrupts service operations, and ultimately has the potential to reduce the quality of care received by patients.

From a civil law perspective, the pending claim situation may give rise to potential breach of contract within the contractual relationship between BPJS and hospitals and create the possibility of tortious acts when a decline in service quality harms patients. While previous studies have tended to situate BPJS claim issues within managerial or administrative domains, normative studies that examine contractual implications, civil law principles, and patient protection in depth remain relatively limited.⁵ Therefore, this study is important to comprehensively analyze the construction of the parties' civil liability, the normative weaknesses in the cooperation agreement, and their legal consequences for the fulfillment of the right to health within the JKN system.

This limitation in normative studies indicates a gap between the applicable legal framework and the actual implementation of the JKN system in practice. In fact, as an agreement giving rise to an obligatory legal relationship, the cooperation between BPJS and hospitals must be analyzed on the basis of the principles of balance, legal certainty, and protection of the most vulnerable party, namely the patient.⁶

The unclear limits of obligations, the absence of an objection mechanism for pending claims, and the lack of regulations on compensation for declining service quality demonstrate the fragility of the normative framework in accommodating the complexity of the triadic relationship between BPJS, hospitals, and patients. This legal vacuum triggers overlapping liability, inequality in contractual positions, and recurring civil disputes that directly undermine the fulfillment of the public's right to health.

² Yulius Don Pratama et al., "Perlindungan Hukum Terhadap Pasien BPJS Kesehatan Dalam Mendapatkan Pelayanan Kesehatan Di RSUD Dr. Doris Sylvanus Palangka Raya," *Journal of Environment and Management* 2, no. 2 (2021): 191-99.

³ Winda Riyasari and Fefri Indra Arza, "Pengaruh Audit Operasional, Pengendalian Internal, Dan Good Clinical Governance Terhadap Efektivitas Pelayanan Kesehatan Pasien Bpjs Di Rumah Sakit," *Jurnal Eksplorasi Akuntansi* 2, no. 4 (2020): 3533-52.

⁴ Patriani, "Analysis of the Stunting Program in Kubu Raya Regency through the Use of Evidence Theory," *International Journal of Social Science and Human Research* 07, no. 02 (2024), <https://doi.org/10.47191/ijsshr/v7-i02-08>.

⁵ Santi Dewi and Ade Anjalita, "The Influence of BPJS Health Services Quality on Patient Satisfaction at Ciseeng Public Medical Centre.," *Journal of Social Science (2720-9938)* 4, no. 2 (2023).

⁶ Nim Zulkahfi, *Jaminan Kesehatan Nasional (Jkn) Dalam Perspektif Hukum Islam*, 2014.

Therefore, this study is urgently needed to shift the discourse on pending claims from a merely technical-administrative issue to a fundamental problem of the law of obligations. The civil law analysis is focused on examining whether the cooperation agreement has satisfied the principles of good faith, proportionality, and certainty of performance, while also evaluating the protective capacity of existing legal instruments for patients when service failures occur. Ultimately, this study offers a normative reconstruction to redefine the distribution of liability in a clear manner, thereby fostering a JKN ecosystem that is accountable, balanced, and sustainable.

2. Method

This study is a normative legal study aimed at analyzing the contractual relationship between BPJS Kesehatan and hospitals, as well as the legal implications of pending claims for the fulfillment of patients' rights within the National Health Insurance system. The focus of the study is directed toward the construction of the parties' civil liability, particularly in distinguishing the domain of breach of contract in the relationship between BPJS and hospitals from the domain of tortious acts in the relationship between hospitals and patients.

This study employs two approaches. First, the statutory approach is used to examine and assess the interrelation of norms within the Indonesian Civil Code, regulations concerning BPJS Kesehatan, National Health Insurance regulations, and legal provisions in the fields of health and hospitals. Second, the conceptual approach is used to elaborate relevant legal concepts, such as freedom of contract, good faith, proportionality, breach of contract, tortious acts, and the protection of patients' rights.

The legal materials used consist of primary and secondary legal materials. The primary legal materials include laws and regulations related to the law of obligations, the administration of BPJS Kesehatan, the JKN claim mechanism, and the provision of hospital services. The secondary legal materials include books, scientific journal articles, and expert opinions relevant to the issue of pending claims and civil liability in healthcare services. All of these legal materials are analyzed through qualitative juridical analysis using deductive reasoning. The analysis is conducted by interpreting the relevant norms, relating them to the structure of the legal relationship among BPJS, hospitals, and patients, and then formulating prescriptive arguments regarding the limits of obligations and the forms of civil liability arising from pending claims.

3. Analysis or Discussion

3.1. The Position of the BPJS-Hospital Cooperation Agreement in Civil Law

The cooperation agreement between BPJS Kesehatan and hospitals constitutes a reciprocal agreement governed by the general provisions of civil law, particularly Articles 1313, 1320, and 1338 of the Indonesian Civil Code.⁷ Within the construction

⁷ Deborah Intan Paulina and Siwi Talinta Fitra Medica, "Problematika Pencairan Hak Jasa Layanan Rumah Sakit Oleh BPJS Kesehatan," *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 20, no. 2 (2022): 267–87.

of such an agreement, the element of “mutually binding oneself” becomes particularly important because it indicates that each party bears obligations that must be fulfilled in a balanced manner.⁸

BPJS is obliged to pay hospital claims within the prescribed period, namely no later than 15 working days after the claim documents have been declared complete. Conversely, hospitals are obliged to submit claim documents in a complete, accurate, and proper manner in accordance with the INA-CBG’s standards as the basis for verification by BPJS.⁹ Accordingly, the legal relationship established between the two parties is an obligatory legal relationship that gives rise to performance obligations for each party. If one party fails to perform or delays the performance of such obligations, the act must be analyzed under the regime of breach of contract as regulated in the law of obligations. Consequently, any breach of performance gives rise to the possibility of civil liability in the form of specific performance, compensation, or sanctions in accordance with the agreement and the applicable laws and regulations.

In the context of such a reciprocal relationship, breach of contract may arise on the part of either party, depending on which party fails to fulfill its performance obligations.¹⁰ If a hospital fails to submit complete claim documents or makes errors in completing INA-CBG’s data, then the resulting pending claim constitutes a consequence of the hospital’s negligence rather than a breach by BPJS.¹¹ Conversely, if the documents are complete and comply with the applicable requirements, yet BPJS still delays payment beyond the 15 working day limit, BPJS may be deemed to have committed a breach of contract for failing to perform its obligation to pay the claim on time.

This condition gives rise to tangible losses for hospitals, such as disrupted cash flow, increased operational burdens, and the potential decline in service quality. Therefore, the breach of contract regime becomes an important instrument for determining the party that bears civil liability in pending claim situations. Such a breach of contract may give rise to legal consequences in the form of claims for performance, payment of interest, late payment penalties, or compensation in accordance with Article 1243 of the Indonesian Civil Code and the applicable provisions of the cooperation agreement.¹² Accordingly, the analysis of civil liability must be assessed proportionally on the basis of which party first breached its performance obligation.

⁸ Rina Arum Prastyanti et al., “Consumer Legal Protection for Patients and the Quality of Health Services in Hospitals,” *Open Access Macedonian Journal of Medical Sciences* 11, no. E (2023): 198–202.

⁹ Kemal Juniardi and Dwi Ratna Indri Hapsari, “Penerapan Asas Kebebasan Berkontrak Dan Proporsionalitas Dalam Perjanjian Kerja Antara Pengusaha Dan Pekerja Di Banjarmasin,” *Indonesia Law Reform Journal* 1, no. 2 (2021): 257–72.

¹⁰ Yofiza Media and Prima Resi Putri, *The Role of Hospital By Laws in Providing Legal Protection Against Alleged Medical Malpractice at the Padang Panjang City Regional General Hospital*, 2024.

¹¹ Rachmad Rachmad, “Perbedaan Tarif INA–CBG’s Dengan Tarif Riil Rumah Sakit Pada Pasien BPJS Kasus Stroke Iskemik Rawat Inap Kelas I Di RS PON Tahun 2018,” *Jurnal Manajemen Dan Administrasi Rumah Sakit Indonesia (MARS)* 3, no. 2 (2019): 155–64.

¹² Alberich Martin Setiawan and Nany Suryawati, “Penyimpangan Kesepakatan Dalam Perjanjian Kerja Antara Pemberi Kerja Dan Pekerja: Deviation of Agreement in The Employment Agreement Between Employer and Worker,” *Reformasi Hukum* 27, no. 3 (2023): 214–25.

In addition, it should be emphasized that determining the party that first committed a breach of obligation is crucial in establishing the form of civil liability that arises. This is consistent with the principle of *exceptio non adimpleti contractus*, which grants one party the right to suspend the performance of its obligation when the other party has first failed to perform its own obligation.¹³

Within the framework of the law of obligations, BPJS's right to withhold payment for claim documents containing administrative defects constitutes a manifestation of the principle of *exceptio non adimpleti contractus*, namely the right to suspend performance because the counterparty has not yet fully performed its obligation.¹⁴

However, this right of suspension immediately lapses and turns into a breach of contract when BPJS unilaterally withholds payment without valid legal justification for claims that have already been verified as clean and clear. This construction affirms that the contractual equilibrium between BPJS and hospitals is strictly governed by the principles of proportionality and good faith. Therefore, pending claim disputes cannot be unilaterally justified solely on administrative grounds, but must instead be examined through a reciprocal assessment of the sequence of performance in order to determine with precision which party committed the first breach of contract.¹⁵

To construct the first breach argument, the law of civil evidence requires a rigid documentary record, including the chronology of claim submission, the validity of document completeness, and the transparency of the verification period by BPJS.¹⁶ This administrative record constitutes a *conditio sine qua non*, or an absolute prerequisite, for proving the element of negligence (*culpa*). If the legal facts establish that the negligence originates from BPJS, which delays payment after the documents have been declared complete, then BPJS's civil liability is not confined merely to the settlement of the principal claim.

BPJS is also obliged to pay late payment penalties and compensation (*schadevergoeding*) in accordance with the regulatory and contractual mandates. Conversely, if the causality of the pending claim is proven to stem from the hospital's administrative incompetence, then the hospital's right to claim compensation becomes premature and is extinguished, in which case the hospital fully bears the burden of correcting the documents as a form of rectification of its performance.¹⁷

¹³ Maria Xiouri, "The Exceptio Non Adimpleti Contractus in Public International Law," *International Community Law Review* 21, no. 1 (2019): 56–92.

¹⁴ Elzidan Herendra Palasara and Made Aditya Pramana Putra, "Ratio Decidendi Dalam Perkara Wanprestasi Pada Perjanjian Waralaba: Studi Kasus Putusan Mahkamah Agung Nomor 1064 K/Pdt/2020," *Ethics and Law Journal: Business and Notary* 2, no. 3 (2024): 93–111.

¹⁵ Bonny Pranayuda et al., "Analisis Penyebab Pending Klaim Pasien BPJS Kesehatan Dalam Pengajuan Klaim Di Rumah Sakit Umum Persahabatan," *Blantika: Multidisciplinary Journal* 1, no. 4 (2023): 305–13.

¹⁶ Maryani Setyowati et al., *Manajemen Pelayanan Kesehatan*, n.d.

¹⁷ Denik Wuryani et al., "Tanggung Jawab Hukum Rumah Sakit Terhadap Terjadinya Infeksi Daerah Operasi Pada Pasien Bedah," *Jurnal Interpretasi Hukum* 4, no. 3 (2023): 461–77.

3.2. Analysis of Breach of Contract in Pending Claims from the Perspective of BPJS Kesehatan's Obligations

Pending claims may be qualified as a form of breach of contract if several essential elements are fulfilled within the contractual relationship between BPJS Kesehatan and hospitals. First, there must be a valid agreement between the parties as the basis for the creation of an obligatory legal relationship. Second, the agreement must contain a clear obligation on the part of BPJS, namely to pay claims no later than 15 working days after the claim documents have been declared complete. Third, the claim documents submitted by the hospital must have been received in a complete, accurate, and proper condition in accordance with the INA-CBG's provisions, so that no administrative obstacle exists that may serve as a valid reason to delay payment. Fourth, BPJS nevertheless fails to make payment within the agreed period without the existence of a legally acceptable force majeure circumstance.¹⁸

If all four elements are fulfilled, BPJS may legally be deemed to have committed a breach of contract as provided in Article 1243 of the Indonesian Civil Code for failing to perform its obligation in a timely manner. Furthermore, Presidential Regulation No. 59 of 2024 affirms the existence of an administrative sanction in the form of a 1 percent monthly penalty for delayed payment, thereby rendering BPJS's violation not merely a contractual issue, but also a violation of statutory provisions. Consequently, the hospital as the injured party is entitled to claim payment of the outstanding claim, late payment penalties, as well as compensation for losses arising from BPJS's failure to perform its obligation.¹⁹

Within the framework of civil law, BPJS's liability as a debtor who fails to perform its obligation is not limited to the fulfillment of its principal obligation in the form of claim payment, but also includes an additional obligation to compensate for losses arising from such delay. The losses suffered by hospitals may take the form of disrupted cash flow, obstacles in the provision of healthcare services, and increased operational costs resulting from delayed payment by BPJS. All of these forms of loss fall within the categories of costs, losses, and interest as referred to in Article 1246 of the Indonesian Civil Code, and may therefore be claimed as part of compensation.²⁰

In addition, persistent delays in payment also have the potential to undermine the contractual relationship and disrupt the stability of healthcare services, which constitutes the primary objective of the cooperation. Accordingly, BPJS's breach of contract affects not only the civil relationship between the parties, but also carries broader implications for the continuity of healthcare services that hospitals are required to maintain. This situation underscores the importance of timely claim payment as part of BPJS's legal obligation and demonstrates that a violation of such

¹⁸ Diah Arimbi, "Legal Status of the Social Security Administrator (BPJS) as a Public Legal Entity," *Jurnal Dinamika Hukum* 19, no. 3 (2020): 829–55.

¹⁹ Eriati Eriati et al., "Sengketa Klaim Rumah Sakit dengan Badan Penyelenggara Jaminan Sosial Kesehatan," *Indonesian Research Journal on Education* 4, no. 3 (2024): 1500–1506, <https://doi.org/10.31004/irje.v4i3.990>.

²⁰ Yulius Effendy and Anggawira Anggawira, *Forms of Legal Liability of Parties in Default in Agreements Based on the Civil Code*, 2025.

obligation gives rise to tangible juridical consequences for which BPJS may be held legally accountable.

The principle of civil liability requires that every form of negligence causing loss must be remedied through a proportional compensation mechanism. In the contractual relationship between BPJS and hospitals, this principle ensures that the injured party obtains recovery equivalent to the loss it has suffered.²¹ Accordingly, if BPJS delays claim payments to the extent that a hospital is unable to meet its operational obligations, such loss may be regarded as a direct loss arising from BPJS's breach of contract.

In this context, the hospital is entitled to claim not only payment of the principal amount of the claim, but also compensation for all additional burdens resulting from the delay. On the other hand, BPJS's failure to fulfill its obligation in a timely manner may also create uncertainty in the implementation of the cooperation and reduce the overall effectiveness of the National Health Insurance system.²²

Therefore, BPJS's compliance with claim payment deadlines constitutes a key element in maintaining legal certainty in its contractual relationship with hospitals. Such legal certainty is important not only for the implementation of the agreement, but also as a form of protection for the interests of the parties, as mandated by the principle of *pacta sunt servanda*, which requires every agreement to be performed in good faith and in accordance with its terms. Untimely payment, although seemingly an administrative issue, in essence reflects a breach of an agreed juridical obligation and has a direct impact on the continuity of the public service function carried out by hospitals.

If such non-compliance occurs repeatedly, the contractual relationship may enter a state of material breach, namely a substantial violation that entitles hospitals to pursue further legal measures, including renegotiation of the agreement, termination of the cooperation, or a civil action on the basis of breach of contract. Accordingly, the continuity and effectiveness of the JKN system are largely determined by the extent to which BPJS performs its obligations consistently, in a timely manner, and in accordance with the applicable provisions, so as not to create additional burdens or uncertainty that may disrupt the stability of healthcare services.

3.3. Analysis of Breach of Contract in Pending Claims from the Hospital's Perspective

Within the contractual relationship between BPJS Kesehatan and hospitals, not only BPJS may potentially commit a breach of contract, but hospitals may also be considered negligent if they fail to fulfill the administrative obligations stipulated in the cooperation agreement.²³ Hospitals may be categorized as having committed a breach of contract when the submitted claim documents are incomplete, the INA-CBG's data entered are inaccurate, there is delay in claim submission, or there is

²¹ Althaf Naufal Romero et al., "Pemenuhan Hak Pasien BPJS Dalam Mendapatkan Pelayanan Antidiskriminasi Dihubungkan Dengan UJU Rumah Sakit," *Jurnal Riset Ilmu Hukum*, 2023, 31–36.

²² Arif Fadhillah et al., "Tanggung Jawab Negara terhadap Jaminan Kesehatan dalam Perspektif Hak Asasi Manusia," *AHKAM* 4, no. 1 (2025): 32–40, <https://doi.org/10.58578/ahkam.v4i1.4611>.

²³ Christine Elisia Widjaya et al., "Karakteristik Perjanjian Asuransi Tanggung Gugat Profesi Dokter Terhadap Klaim Malapraktik Medis," *Media Juris* 6, no. 1 (2023): 43–60.

non-compliance with the administrative standards required for the verification process. In such circumstances, the pending claim is not the result of a breach by BPJS, but rather the direct consequence of the hospital's negligence in fulfilling its obligation.

Therefore, BPJS may lawfully suspend payment until the hospital corrects or completes the required documents. This analysis is important to distinguish between justified pending claims and pending claims resulting from BPJS's negligence.²⁴ Only pending claims that lack an administrative basis and occur after all requirements have been properly fulfilled may be qualified as a breach of contract by BPJS.

Such a proportional assessment is crucial because it determines the legitimacy of claims for compensation and the form of civil liability that may be asserted by the parties. If a pending claim is proven to originate from the hospital's administrative error, the hospital cannot claim against BPJS for delayed payment, since such delay is the logical consequence of the hospital's incomplete performance. In this context, the hospital is positioned as the party committing the first breach, and contractual liability therefore cannot be imposed on BPJS. Conversely, if the hospital has fulfilled all administrative requirements but BPJS nevertheless delays payment without lawful grounds, such delay becomes the responsibility of BPJS as the party in breach of contract.

Where BPJS is proven to have delayed payment without valid justification, the hospital has a strong legal position to demand performance as well as compensation for losses arising from that delay. Such losses may include additional operational costs, disruption of medical services, and the risk of declining service quality affecting the hospital's professional obligations toward patients. Such claims are based on Article 1243 of the Indonesian Civil Code concerning compensation for costs, losses, and interest arising from the debtor's negligence.

In addition, the existence of administrative sanctions in the form of penalties for delayed payment, as provided under Presidential Regulation No. 59 of 2024, further strengthens the hospital's position as the injured party. The status of BPJS's breach of contract in the context of pending claims not only gives rise to financial consequences, but also affirms BPJS's failure to discharge a legal obligation that is essential to the continuity of the healthcare service system.²⁵ This shows that disciplined performance of contractual obligations by both parties constitutes a primary prerequisite for the establishment of a balanced and equitable contractual relationship in the administration of the National Health Insurance system.

²⁴ Surya Darma and Arikha Saputra, "Kedudukan Dan Kekuatan Hukum Perjanjian Kerjasama Memorandum Of Understanding Antara Rsud Tugurejo Dengan Bpjs Kesehatan Dalam Bidang Pelayanan Kesehatan Ditinjau Dari Segi Hukum Kontrak," *Hukum Responsif* 15, no. 1 (2024): 140–49.

²⁵ Novi Eka Kusuma Putri et al., "Urgensi Kebijakan Pendanaan Jaminan Kesehatan Masa Pandemi Covid-19 Di Indonesia Menurut Undang-Undang Nomor 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional (SJSN)," *Perspektif Hukum*, 2022, 29–52.

Accordingly, the resolution of pending claim problems cannot be pursued solely through an administrative approach, but must be understood as a matter of civil law that requires certainty and firmness in the performance of obligations. The certainty of payment timelines, the completeness of documents, and the accuracy of the verification process are the elements that determine whether a pending claim originates from the negligence of the hospital or that of BPJS. For this reason, control and evaluation mechanisms must be structured in a transparent and accountable manner, so that no party causes or suffers disproportionate harm.

Within this framework, the cooperation agreement must provide clear provisions regarding time limits, procedures for correcting documents, and the legal consequences if either party fails to perform its obligations. Clear regulation not only prevents the recurrence of breach of contract, but also ensures that healthcare services continue to operate optimally without disruption caused by imbalances in cash flow. Therefore, strengthening the contractual dimension through compliance with the principles of civil law constitutes an important foundation for maintaining stability, sustainability, and fairness in the relationship between BPJS and hospitals as an integral part of the implementation of the National Health Insurance system.

3.4. Hospitals' Civil Liability toward Patients in Relation to Pending Claims (Tort)

Although pending claims arise within the contractual relationship between BPJS Kesehatan and hospitals, their legal consequences may extend directly to patients as recipients of healthcare services. Therefore, when a pending claim results in a decline in the quality of care, the issue no longer remains confined to the sphere of breach of contract between BPJS and hospitals, but may shift into the sphere of tortious acts. In this context, hospital liability need not be understood as absolute in the sense of being unlimited, but rather as a continuing legal obligation to maintain service standards for patients.²⁶

The basis of hospital liability lies in the direct legal relationship between the hospital and the patient, which gives rise to an obligation to provide proper, safe, and quality healthcare services. From this direct relationship arises a duty of care that requires hospitals not only to deliver medical services, but also to adequately organize the facilities, personnel, and governance of healthcare delivery.

From the perspective of civil law, hospitals remain the party that has a direct legal relationship with patients. This position is not diminished merely because the hospital is also bound by a contractual relationship with BPJS. Therefore, a hospital's failure to maintain service standards cannot be justified solely by referring to delayed claim payments. As long as the patient receives services directly from the hospital, the hospital remains the first party that must be held accountable for the

²⁶ Pranayuda et al., "Analisis Penyebab Pending Klaim Pasien BPJS Kesehatan Dalam Pengajuan Klaim Di Rumah Sakit Umum Persahabatan."

quality of care provided.²⁷ Hospitals remain obliged to seek operational solutions so that patients are not harmed by the contractual failure of another party. If patient loss is proven to arise from the hospital's inability to maintain service standards, the hospital may be sued on the basis of a tortious act, and such liability cannot be shifted to BPJS under a different legal relationship.

At the same time, this separation of liability does not preclude the hospital from seeking recovery against BPJS under a different legal relationship if it can be proven that BPJS's delay in claim payment was the initial cause of the hospital's financial burden. This means that, toward patients, the hospital continues to bear direct liability for the quality of care, while toward BPJS, the hospital may still pursue contractual remedies on the basis of breach of contract. This separation is important so that patient protection is not conflated with financing disputes, while also ensuring that the ultimate burden of loss may be directed to the party that first failed to perform its obligation.

From the perspective of civil law, the hospital's position in relation to the patient cannot be weakened by the existence of its contractual relationship with BPJS. The hospital remains a healthcare provider that, as a matter of law, has direct obligations toward the patient, so that any decline in service quality, whether caused by internal or external obstacles, remains its responsibility. This is consistent with the principle that the party having a direct legal relationship with the injured party is the first party to be held liable.²⁸

In the context of pending claims, even if the initial cause originates from BPJS's negligence in performing its payment obligation, hospitals cannot invoke such circumstances as a justification for reducing the quality of care. Failure to maintain service standards may be regarded as a form of negligence that satisfies the element of culpa in tortious liability. Accordingly, hospitals remain in a position that requires them to ensure that patients' rights to proper healthcare services are fulfilled, and any loss arising from a hospital's inability to maintain such standards gives patients the possibility to claim compensation under Article 1365 of the Indonesian Civil Code. This confirms that the protection of patients' rights constitutes the primary concern that must not be diminished by the administrative or contractual dynamics between BPJS and hospitals.

The existence of pending claims cannot serve as a basis for shifting or reducing hospital liability toward patients, because the legal relationship between hospitals and patients stands independently from the hospital's contractual relationship with BPJS. Hospitals remain obliged to guarantee the fulfillment of medical service standards as regulated under the Hospital Law and the Health Law, both of which

²⁷ Sonny Harmadi and Irwandy Irwandy, "Technical Efficiency of Public Service Hospitals in Indonesia: A Data Envelopment Analysis (DEA)," *Asian Social Science* 14, no. 6 (2018).

²⁸ Solikah Sriningsih, "Penerapan Asas Proporsionalitas Dalam Kontrak Layanan Kesehatan Antara Rumah Sakit Dan Badan Penyelenggara Jaminan Sosial (BPJS)," *Jurnal Hukum Dan Etika Kesehatan* 1, no. 1 (2021): 1-10.

place patient safety and service quality as imperative norms that are not open to negotiation.

Even when facing financial constraints caused by pending claims, hospitals must still ensure that the provision of medicines, medical devices, treatment facilities, and medical personnel continues to operate optimally. This obligation is inherent and cannot be transferred to BPJS, so that any patient loss arising from a hospital's negligence in maintaining service standards remains the hospital's civil liability.

Therefore, hospitals are required to establish managerial and operational mechanisms capable of mitigating the risk of declining service quality, so that patients do not become victims of obligations that have not been performed by another party. In this context, the principle of duty of care and the obligation to anticipate the negative consequences of pending claims form an integral part of the hospital's legal responsibility toward patients.

Hospitals must act proactively to prevent the occurrence of patient loss, including in situations where the source of the problem originates from their contractual relationship with BPJS. The obligation to take such preventive measures constitutes a manifestation of the duty of care and professional standards that must be observed by all healthcare personnel and medical service facilities. If a hospital fails to take adequate measures to maintain the continuity of care, such negligence may be regarded as a breach of the duty of care that legally places the hospital in the position of the liable party.

In such circumstances, patients are entitled to seek civil liability on the basis of tort because the elements of loss and causation have been satisfied. This situation confirms that hospitals are obliged not only to provide proper healthcare services, but also to ensure the existence of a risk mitigation system capable of minimizing the adverse effects of pending claims. Therefore, a hospital's inability to anticipate and manage the consequences of pending claims ultimately becomes a strong basis for the emergence of civil liability toward patients, regardless of which party first caused the delay in claim payment.

3.5. Separation of Civil Liability Between BPJS and Hospitals

Such a clear separation of liability also serves to preserve legal certainty, because each party is aware of the limits and scope of its respective obligations within the structure of legal relationships under the National Health Insurance system. BPJS cannot be held liable for patient losses because its position is not that of a healthcare provider, but rather that of a party financing healthcare services through the claim mechanism. Conversely, hospitals cannot disclaim their liability toward patients on the ground of delayed payment by BPJS, since the obligation to

provide proper care constitutes a direct legal obligation and is not contingent upon the performance of another party's obligation.²⁹

Consequently, in the event of a dispute, the court must carefully assess which legal relationship constitutes the source of the loss, namely whether the loss arises from BPJS's breach of contract toward the hospital or from a tortious act committed by the hospital against the patient. By establishing this correlation, the enforcement of civil law may proceed in a proportional, objective, and just manner, thereby preventing unlawful transfers of liability or the imposition of liability on an inappropriate party. This understanding constitutes an important foundation for formulating future policies and cooperation agreements so that the potential for disputes may be minimized and the provision of healthcare services to the public may continue to be maintained optimally.

Clarity regarding this separation of liability is important not only in the context of dispute resolution, but also as a normative guideline for the parties in drafting and implementing the cooperation agreement. The contract between BPJS and hospitals must be formulated in detail by stipulating time limits, verification mechanisms, objection procedures, and the legal consequences of delayed performance by each party.³⁰

A clear construction of the agreement will strengthen the legal position of the parties and prevent overlapping liability that may harm patients as the most vulnerable party. In addition, the existence of explicit norms will provide certainty for hospitals in anticipating potential operational impacts arising from delayed claim payments, while also providing guidance for BPJS in performing its obligations in a transparent, timely, and legally compliant manner. Accordingly, the separation of liability analyzed above is not merely a technical aspect of civil law, but also an important instrument for realizing accountable, equitable, and patient rights oriented governance of healthcare services within the National Health Insurance system.

This separation of civil liability between BPJS and hospitals has strategic implications for creating a balanced legal relationship among the parties and ensuring that each obligation is performed proportionally. With a clear delineation of who bears responsibility under particular circumstances, the potential for disputes may be reduced because the parties understand the legal consequences of each act of negligence.³¹

²⁹ Arrozi Adhikara et al., "Organizational Performance in Environmental Uncertainty on the Indonesian Healthcare Industry: A Path Analysis," *Academic Journal of Interdisciplinary Studies* 11, no. 2 (2022): 365–77.

³⁰ Romero et al., "Pemenuhan Hak Pasien BPJS Dalam Mendapatkan Pelayanan Antidiskriminasi Dihubungkan Dengan UU Rumah Sakit."

³¹ Alya Puspita Juliasari and Idris Wasahua, "Analisis Yuridis Upaya Pencegahan Dan Risiko Hukum Terhadap Kebocoran Data Rekam Medis Elektronik Pasien Di RSUD Serpong Utara," *SENTRI: Jurnal Riset Ilmiah* 5, no. 2 (2026): 1379–98.

The application of the precautionary principle in contract drafting and in the performance of obligations will also encourage the creation of a mutually beneficial cooperative relationship and prevent the practice of shifting blame when obstacles arise in the claim process. In addition, a proper understanding of this allocation of liability may serve as a reference for policymakers in improving the regulation of the National Health Insurance system, particularly in the aspects of supervision, procedural standardization, and the enforcement of sanctions.

A comprehensive understanding of this structure of civil liability may also provide a foundation for improving the quality of the legal relationship between BPJS and hospitals through the restructuring of contractual clauses in a more adaptive and solution oriented manner. A clear specification of the limits of obligations, dispute resolution mechanisms, and operational standards to be fulfilled by each party will strengthen the effectiveness of the implementation of the cooperation agreement and reduce the potential for moral hazard, both on the part of hospitals and BPJS.

In addition, strengthening the contract may support the realization of a more efficient and accurate claim management system, so that the risk of pending claims can be minimized. Accordingly, the legal relationship that is established is not merely transactional in nature, but also promotes the development of a collaborative system based on legal compliance and institutional integrity. Ultimately, the harmonization of civil obligations among the parties will make a significant contribution to the sustainability of the National Health Insurance system, strengthen public trust, and ensure that the healthcare services provided continue to meet the standards of justice, utility, and legal certainty.

3.6. Normative Analysis: Contractual Weaknesses Triggering Civil Disputes

The normative analysis of the cooperation agreement framework between BPJS Kesehatan and hospitals reveals several contractual weaknesses that may repeatedly trigger civil disputes. First, the agreement does not establish a clear time limit for hospitals to complete claim documents, thereby creating uncertainty as to when a claim may be considered complete and when the payment period for BPJS begins to run. This lack of clarity often becomes a source of differing perceptions regarding the status of a claim, namely whether it is indeed incomplete or has already satisfied the administrative requirements. Second, there is no effective objection or dispute resolution mechanism when a hospital considers that a pending claim has been imposed by BPJS in an arbitrary or non-objective manner.³²

The absence of such a mechanism places BPJS in a dominant position in determining the completeness of claims without adequate room for correction on

³² Serlin Peda Ngura, "Penyelesaian Sengketa Pelayanan Kesehatan Penerima Layanan Kesehatan Perspektif Hukum Acara Perdata," *ADHAPER: Jurnal Hukum Acara Perdata* 10, no. 02 (2024): 110-27.

the part of hospitals, thereby creating the potential for abuse of authority and inequality in contractual position. Third, there is no provision concerning direct compensation to patients when hospitals are compelled to reduce the quality of care as a result of pending claims, thereby creating a gap in liability toward the party most adversely affected. These three normative weaknesses indicate that the existing contractual structure has not been fully capable of anticipating the risks and consequences arising within the triadic relationship of BPJS, hospitals, and patients, thus creating room for recurring civil disputes that cannot be resolved effectively.

These contractual weaknesses show that the cooperation agreement remains oriented merely toward an administrative relationship and has not yet fully internalized the fundamental principles of civil law concerning the balance of the parties and the proportional allocation of risk. The absence of comprehensive regulation concerning rights and protection mechanisms for both hospitals and patients creates structural tension within this legal relationship, in which BPJS holds a factually stronger position in determining claim validity and the flow of financing.

This condition creates a power imbalance that may increase the potential for breach of contract by one of the parties without the existence of adequate corrective instruments. In fact, from the perspective of modern contract law, an agreement involving public services and the interests of the wider community is required to have a more complete normative framework, including fair dispute resolution mechanisms, transparent oversight procedures, and guarantees of protection for the most vulnerable party, namely the patient.³³

A reformulation of the clauses of the cooperation agreement is urgently required to close the normative gap, prevent recurring disputes, and ensure that the overall National Health Insurance system operates in a fair, effective, and civil law compliant manner. Such reformulation should ideally not be limited to revising the contractual wording, but should also include the development of a regulatory framework capable of providing legal certainty and regulating in greater detail the rights and obligations of the parties at each stage of the claim process.

The strengthening of contractual instruments must be accompanied by the establishment of an independent oversight mechanism capable of assessing the objectivity of pending claims, so that there is no unilateral domination by BPJS or administrative deviation by hospitals. In addition, the regulatory framework must explicitly provide for the protection of patients as the most affected party, including a compensation mechanism in the event of a decline in service quality caused by the failure to perform obligations within the BPJS hospital relationship.

The reformulation of the contractual and regulatory framework in the National Health Insurance sector should not be oriented solely toward administrative efficiency, but also toward the reconstruction of a more just and balanced legal

³³ Ana Fauzia and Fathul Hamdani, "Sanksi Penundaan Atau Penghentian Jaminan Sosial Pada Masa Pandemi COVID-19," *Jurnal Kajian Pembaruan Hukum* 1, no. 2 (2021): 133–74.

relationship. The implementation of more precise regulations will reduce the legal uncertainty that has so far become a source of disputes, while also providing room for the parties to perform their obligations in a more transparent and measurable manner.

In the context of the triadic relationship among BPJS, hospitals, and patients, clarity of rules and dispute resolution mechanisms is essential so that every action, omission, and administrative decision can be evaluated objectively, thereby preventing the parties from bearing disproportionate liability. Ultimately, the fulfillment of civil law principles such as legal certainty, justice, and equality of the parties will strengthen public trust in the JKN system and ensure that the primary objective of healthcare services, namely to protect and improve public health, remains achieved without being disrupted by contractual problems or the normative weaknesses that have persisted thus far.

4. Conclusion

This study concludes that pending claims constitute a critical legal issue capable of generating civil liability within the contractual relationship between BPJS Kesehatan and hospitals. BPJS may be held liable for breach of contract when the hospital has fulfilled all administrative requirements but BPJS delays payment without lawful justification. Conversely, hospitals may be deemed in breach of contract when pending claims arise from incomplete documentation, inaccurate INA-CBG's data entry, or delayed claim submission. Beyond the contractual sphere, when pending claims result in a decline in service quality, hospitals may also incur tort liability, given that their obligation to provide proper medical services to patients is direct and cannot be diminished by administrative reasons. Accordingly, the structure of civil liability within this triadic relationship is hierarchical. BPJS is liable to hospitals under the regime of breach of contract, whereas hospitals are liable to patients under the regime of tort. These findings underscore the need to reformulate contractual clauses within the National Health Insurance system in order to clarify the limits of obligations, reduce recurring civil disputes, and strengthen legal protection for patients as the most vulnerable party.

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