

Urgency of Regulatory Updates in Law Enforcement Against Fraudulent Acts by Health Facilities in the National Health Insurance Program

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ABSTRACT

The National Health Insurance (JKN) Program in Indonesia faces significant challenges in law enforcement against fraudulent activities by health facilities. Despite the implementation of Minister of Health Regulation No. 16 of 2019, which addresses fraud through administrative sanctions, the regulation has shown limitations, particularly the absence of criminal sanctions. This study utilizes a normative juridical method with a statutory approach and descriptive-analytical specifications to evaluate the current regulatory framework and the need for stronger legal measures. The analysis reveals that the current sanctions, limited to warnings and fines, lack a deterrent effect, enabling repeated fraudulent practices that undermine the JKN system. This paper suggests the introduction of criminal sanctions, which would align the regulation with the broader legal framework, including the Criminal Code and anti-corruption laws. The implications of this regulatory gap are significant, as it hampers the effectiveness of law enforcement, impacts public trust in the system, and threatens the sustainability of health services. Strengthening the regulation will improve accountability, ensure transparency, and protect citizens' rights to health services, ultimately fostering a more robust and reliable national health insurance system.

INTRODUCTION

The National Health Insurance Program (JKN) represents a significant step by the Indonesian government to provide equitable healthcare for all citizens, regardless of social or economic background (Berdame, 2024). With over 250 million participants by 2024, JKN is one of the largest health insurance programs globally, highlighting its importance in ensuring health services are accessible to all Indonesians (Purwaningsih, 2023).

Legally, JKN is not just an ordinary policy, but a real manifestation of the constitutional mandate, namely the 1945 Constitution of the Republic of Indonesia (hereinafter *UUD NRI 1945*). Article 28H, paragraph (1) emphasizes the right of every person to live in prosperity, including obtaining health services (Karwur, 2024). Meanwhile, Article 34, paragraph (3) assigns the state to build a social security system for all people (Hennigusnia, 2021). Thus, JKN is an important part of the state's responsibility in fulfilling the basic rights of its citizens in the health sector.

Since its launch in 2014 and managed by BPJS Kesehatan, the coverage of JKN participants has continued to grow rapidly. By 2024, more than 250 million Indonesians have become participants, making JKN one of the largest health insurance programs in the world. The funds managed have reached hundreds of trillions of rupiah each year. This large scale and complexity of management are what make strong and effective regulations very necessary to maintain transparency, integrity, and sustainability of the program for future generations.

The widespread fraudulent practices in health facilities in the implementation of the JKN Program are a serious problem that threatens the sustainability of this program. Forms of fraud often found include fictitious claims, namely submitting payments for services that are not provided, and manipulation of medical data so that claims can be larger. There is also the practice of over-utilization of services without clear medical reasons to increase the number of claims, as well as double claiming and upcoding, namely increasing the diagnosis code or medical action so that the payment received is higher than it should be.

One of the fundamental weaknesses in the current regulations, especially the Regulation of the Minister of Health Number 16 of 2019 concerning the Prevention and Handling of Fraud and the Imposition of Administrative Sanctions in the Implementation of the Health Insurance Program (hereinafter referred to as *Permenkes No. 16 of 2019*), lies in the approach to sanctions, which is still limited to the administrative realm. In Article 6, paragraph (2), the sanctions regulated are only in the form of verbal warnings, written warnings, and/or orders to return losses due to fraud to the injured party (Fajarwati, 2024). Although paragraphs (3) to (5) open up the possibility of additional sanctions such as fines or revocation of permits, law enforcement against perpetrators of fraud has not touched on the criminal aspect, even though the impact of the fraud that occurs can be large and systemic.

The absence of explicit criminal sanctions regulations in *Permenkes No. 16 of 2019* creates a significant legal loophole. Article 6, paragraph (7) does state that administrative sanctions do not eliminate the possibility of imposing criminal sanctions by statutory provisions, but this regulation does not explain in detail the mechanism or coordination of criminal law enforcement. As a result, fraud perpetrators in the JKN system often only receive relatively light administrative sanctions and do not provide a deterrent effect, so the potential for repeated violations remains wide open.

This weakness is further exacerbated by the lack of integration between health regulations and applicable criminal law instruments, such as the Criminal Code (*KUHP*), Law No. 31 of 1999 concerning the Eradication of Corruption (*UU Tipikor*), and the *SJSN* Law. In fact, when fraud is carried out by health facility personnel through claim manipulation or misuse of public funds, this action should be categorized as a criminal act of corruption or fraud in accordance with the *Tipikor Law* and the Criminal Code (Anggun, 2022).

Fraudulent acts carried out by health facilities in JKN have a serious impact on the fulfillment of the right to health guaranteed by the constitution. Practices such as fictitious claims, excessive use of services without medical reasons (*over-utilization*), and upcoding of diagnoses or medical procedures not only drain JKN funds that should be used for services that are truly needed but also disrupt the distribution of fair and targeted services. As a result, funds wasted due to this fraud reduce the quality and continuity of health services, especially for the most vulnerable groups such as the poor, the elderly, and patients with chronic diseases.

When health services become limited or decline in quality due to fraud, the state fails to carry out its obligations as stipulated in Article 28H, paragraph (1) and Article 34, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which emphasizes that every citizen has the right to receive decent health services (Astuti, 2024). Thus, fraud in the JKN system is not just an administrative or ethical violation, but also a violation of the constitutional rights of the people that must be guaranteed by the state (Biaggy, 2020).

Regulatory updates in dealing with fraud in health facilities participating in the JKN Program are influential so that existing regulations not only rely on administrative sanctions but also provide space for fair and firm criminal law enforcement (Ardinata, 2020). Because the impact of this fraud is very broad, ranging from threatening the sustainability of JKN funds, reducing the quality of services, to damaging public trust, we need regulations that can provide a deterrent effect, take serious action against perpetrators, and recover state losses. With stronger regulations, law enforcement can be more effective, the accountability of all parties involved in health services is better maintained, and the public can again believe that JKN is a system that can be relied on to fulfill their right to health (Fadri, 2024). In essence, this update is an important step to ensure that JKN continues to run well and provides real benefits for all Indonesian people.

Legal frameworks such as Minister of Health Regulation No. 16 of 2019 have aimed to address fraud, but they remain inadequate. Current regulations impose only administrative sanctions, which have proven ineffective against the large-scale and systematic fraud observed in health facilities. As a result, perpetrators often face minimal consequences, allowing fraudulent activities to persist unchecked (Fajarwati, 2024). This regulatory gap poses a significant risk to the constitutional right of Indonesians to access affordable, quality healthcare, as guaranteed by Articles 28H(1) and 34(3) of the 1945 Constitution (Karwur, 2024).

Recent developments in the healthcare sector, including the ongoing COVID-19 pandemic, have exacerbated these challenges. The surge in digital health services and telemedicine has introduced new opportunities for fraud, further complicating enforcement efforts. Therefore, there is an urgent need for regulatory reform that not only strengthens the enforcement of existing laws but also introduces criminal sanctions for fraud perpetrators. This research aims to explore the necessary updates to JKN-related regulations to address these vulnerabilities, ensuring the sustainability and fairness of the program in the long term.

METHOD

This study applies a normative juridical approach, which focuses on reviewing various legal sources to assess the legal issues related to fraud within the National Health Insurance Program (*JKN*). The normative analysis involves evaluating the existing laws and regulations to identify gaps, specifically within the framework of the *JKN* system, and examining how these gaps impact the effectiveness of law enforcement against fraudulent practices by health facilities.

The data for this study were collected through a combination of primary, secondary, and tertiary legal materials. Primary legal materials include statutes and regulations directly related to the *JKN* program, such as Law No. 40 of 2004 concerning the National Social Security System and Minister of Health Regulation No. 16 of 2019, which addresses fraud

prevention and sanctions in the health sector. Secondary legal materials consist of academic articles, journal papers, and previous research that examine fraud within the *JKN* framework and explore the challenges in enforcing health laws in Indonesia. Lastly, tertiary legal materials include legal dictionaries and encyclopedias, which were consulted to clarify key legal terms and concepts, ensuring a precise understanding of the legal context surrounding fraud in the health sector.

The approach integrates a statutory approach, focusing on the analysis of relevant legal texts and documents to understand the scope of legal frameworks and their application. Furthermore, a descriptive-analytical method is used to systematically describe the legal issues and assess the strengths and weaknesses of existing regulations. This method enables the study to provide recommendations for legal reforms to enhance law enforcement and reduce fraudulent practices in *JKN*.

RESULT AND DISCUSSION

A. Regulatory Position in Handling Fraud by Health Facilities in the National Health Insurance Program

The *JKN* program is a concrete manifestation of citizens' rights to social protection in the health sector guaranteed by the constitution and laws and regulations in Indonesia (Ardiansah, 2020). *JKN* is part of the National Social Security System regulated in Law Number 40 of 2004 concerning the National Social Security System (hereinafter referred to as the *SJSN* Law). The program is specifically organized so that every citizen can get access to decent and fair health services (Syaid, 2023).

Article 2 of the *SJSN* Law emphasizes that the implementation of social security must be based on the principles of humanity, benefits, and social justice for all Indonesian people (Amanda, 2021). It emphasizes that *JKN* is not just a technical program, but also a form of state responsibility in fulfilling human rights, especially the right to health (Rahmah, 2024). Article 3 states that the purpose of the *SJSN* is to ensure that the basic needs of a decent life are met for each participant and their family, including the basic needs of health services in the context of *JKN*.

JKN is also implemented based on important principles stated in Article 4 such as cooperation, non-profit, openness, and accountability. These principles ensure that the program is designed to be sustainable, and transparent, and always prioritize the interests of participants (Andri, 2024). The principle of mandatory participation emphasizes that all citizens, without discrimination, have the same rights and obligations in this system (Dharmayanti, 2023). Thus, *JKN* is not just an ordinary public service, but also a direct manifestation of citizens' constitutional rights to social security and health services, as guaranteed in Article 28H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Minister of Health Regulation No. 16 of 2016 in the health insurance program was issued as an official guide to deal with various fraudulent practices that could threaten the sustainability of *JKN*. This regulation shows the government's commitment to maintaining the honesty and integrity of the *JKN* system by establishing a mechanism for monitoring, preventing, and acting against various forms of fraud that can be carried out by participants, *BPJS* Kesehatan, health facilities, drug and medical device providers, and other related

parties. The main focus of this regulation is a preventive and promotive approach. In Article 3, BPJS Kesehatan, health services, and advanced health facilities are required to build a fraud prevention system (Indrawan, 2024). These preventive measures include the preparation of internal policies and guidelines, the development of an anti-fraud culture, and the formation of a special team to prevent fraud. Thus, this regulation does not just wait for problems to arise but seeks to prevent them from the start so that health service governance runs transparently and responsibly.

However, this regulation also regulates administrative action for perpetrators of fraud. Articles 6 to 8 explain the types of sanctions that can be imposed, ranging from verbal warnings, written warnings, orders to return losses to the injured party, administrative fines, and permit revocation for serious violations. The amount of the fine is regulated proportionally based on the level of violation, namely 25% of the loss value for moderate violations, and 50% for serious violations, with a maximum fine of IDR 250,000,000.

Even so, the main weakness of Permenkes No. 16 of 2019 is the absence of criminal sanctions for fraud perpetrators. In fact, several forms of fraud that occur are crimes according to general criminal law. As a result, perpetrators of fraud who cause major losses to the state are only subject to relatively light administrative sanctions and have little deterrent effect (Sari, 2022). Therefore, it is very important to update this regulation so that it can integrate criminal law enforcement proportionally so that it can provide a stronger prevention and enforcement effect in preventing fraud practices that damage the JKN system.

Permenkes No. 16 of 2019 does have quite fundamental weaknesses in terms of criminal law enforcement against fraud cases in the JKN Program. This regulation does not regulate the mechanism for enforcing criminal law, whereas fraudulent practices that occur, such as data manipulation, fictitious claims, or falsification of documents by health facilities or individuals, can fulfill the elements of criminal acts such as fraud, forgery, and even corruption according to applicable law. However, this Ministerial Regulation still does not provide sufficient space for stricter legal action, especially in terms of criminal sanctions, so the potential for comprehensive and impactful law enforcement is limited.

Ministerial Regulation No. 16 of 2019 still relies heavily on administrative sanctions, such as warnings, fines, or orders to return losses, as regulated in Articles 6 to 8. These administrative sanctions may be sufficient for minor to moderate violations but are not strong enough to prosecute serious violations that cause large state losses or are carried out systematically and repeatedly. As a result, health facilities that commit fraud in an organized manner can still exploit legal loopholes without serious threats to the continuity of their operations.

Although Article 6 paragraph (7) of the Minister of Health Regulation No. 16 of 2019 states that administrative sanctions do not eliminate the possibility of enforcing criminal sanctions, this regulation does not provide further explanation regarding how the coordination and mechanism for enforcing criminal law should be carried out (Siregar, 2023). The absence of an explanation of the procedures for implementing criminal sanctions, or how coordination between BPJS Kesehatan, the Ministry of Health, the police, and the prosecutor's office, allows fraud perpetrators to escape more severe legal penalties.

Without clear and structured procedures, the enforcement of criminal sanctions against fraud perpetrators in JKN is limited in its effectiveness.

BPJS Kesehatan plays an important role in supervising and verifying claims in the JKN Program. As the manager of the health insurance system, BPJS Kesehatan is responsible for ensuring that claims submitted by health facilities and other service providers are truly valid and follow applicable regulations (Adi, 2025). For this reason, BPJS has a supervisory team that works with health facilities to ensure that the services provided are following actual medical needs, and not used for personal or group interests (Betan, 2023). This supervision is carried out through routine audits and monitoring of claim data, as well as using an integrated information system to detect suspicious claim patterns, such as fictitious or excessive claims.

The Ministry of Health through the Health Office has the authority to impose administrative sanctions on health facilities that are proven to have committed fraud (Purwandari, 2024). However, this authority is limited to administrative actions such as warnings or revocation of permits, which are often less effective in dealing with complex fraud or involving large losses. Therefore, these administrative sanctions have less of a deterrent effect, especially on fraud practices that are carried out repeatedly or in an organized manner. The Ministry of Health does have supervisory authority, but it is not yet equipped with sufficiently firm enforcement instruments to address fraud that is detrimental to the health system in the long term.

Cooperation between institutions is essential in handling fraud, especially those involving large losses or in an organized manner. Unfortunately, the synergy between BPJS Kesehatan, the Ministry of Health, and law enforcement officers such as the Police, the Prosecutor's Office, and the BPK/KPK has not been optimal. Although Permenkes No. 16 of 2019 states that administrative sanctions do not eliminate the possibility of criminal sanctions, this regulation does not clearly outline the mechanism for collaboration between institutions in enforcing criminal law. Without clear procedures and mutual agreement, handling fraud that requires criminal law enforcement is often hampered, making it difficult to take firm action against fraud perpetrators, both individuals and institutions.

B. Urgency of Regulatory Reform to Strengthen Law Enforcement Against Fraud

The main weakness in regulations that only rely on administrative sanctions such as warnings and orders to return losses is the lack of a deterrent effect for fraud perpetrators, especially those who are organized or repeatedly commit violations. Fraud practices in the JKN Program, whether carried out by health facilities or participants, are often systematic and cause major losses. Current regulations have not been able to address this problem effectively. Therefore, it is significant to update existing regulations by tightening supervision and providing stricter sanctions, including the possibility of expanding the application of criminal sanctions to deal with repeated fraud that has a major impact.

Strengthening legal norms in handling fraud in JKN is very necessary so that perpetrators who commit serious fraud and systematically harm the state can feel a real deterrent effect. With the criminal sanctions, fraud perpetrators will be more aware of the serious legal consequences, so that the possibility of repeated violations can be minimized. These criminal sanctions will have a stronger impact than relying solely on administrative sanctions.

Permenkes No. 16 of 2019 must be harmonized with other relevant regulations, such as the Corruption Crime Law (Tipikor), the Criminal Code (KUHP), and the National Social Security System Law. This harmonization is important so that fraud handling in JKN can be carried out in an integrated and comprehensive manner, avoiding overlapping regulations or legal gaps that could hinder law enforcement.

Law enforcement against fraud in the health sector must also involve close cooperation between law enforcement agencies such as the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK). This collaboration is important so that fraud handling can be carried out effectively and on target. In addition, cross-sector regulations need to be created involving various agencies such as BPJS Kesehatan and the Ministry of Health, so that fraud handling can be carried out in a coordinated and comprehensive manner. This cross-sector regulation will also strengthen supervision and law enforcement against fraud involving many parties.

Regulations that only rely on administrative sanctions such as warnings and return of losses are less effective in providing a deterrent effect, especially for perpetrators of repeated or organized fraud. Although there are sanctions for health facilities or JKN participants who violate, these sanctions have not been able to prevent systematic violations and large losses to the state. Therefore, it is essential to update existing regulations by strengthening supervision and providing stricter sanctions, including the possibility of adding criminal sanctions for serious fraud cases so that handling is more effective.

Strengthening legal regulations related to fraud in the JKN system is urgently needed so that perpetrators who commit serious fraud can feel the real and deterrent impact of the law. With criminal sanctions, fraud perpetrators will be more aware of the serious consequences they could face, so that the possibility of repeating violations can be reduced. These criminal sanctions are expected to provide a stronger deterrent effect than relying solely on administrative sanctions.

Permenkes No. 16 of 2019 must also be adjusted and harmonized with other relevant regulations, such as the Corruption Crime Law (Tipikor), the Criminal Code (KUHP), and the SJSN Law. This harmonization is important so that fraud handling at JKN can be carried out in an integrated manner and not overlapping so that the fraud prosecution process becomes more focused and effective.

Handling fraud involving health facilities and JKN participants must also involve close cooperation between law enforcement agencies, such as the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK). Good coordination between these agencies is significant so that fraud handling can be carried out quickly and on target. In addition, cross-sector regulations need to be created that connect various related agencies, including BPJS Kesehatan and the Ministry of Health, so that handling fraud involving many parties can be conducted in a coordinated and comprehensive manner. In this practice, supervision and law enforcement against fraud in the JKN system will be more powerful and more effective.

CONCLUSION

Minister of Health Regulation No. 16 of 2019, although it has established a mechanism for monitoring, preventing, and taking action against fraud in the *JKN* Program, still has

significant weaknesses in terms of enforcing criminal sanctions, which should be a firm step to deal with fraud perpetrators who cause major losses. The administrative sanctions stipulated in this regulation have proven to be less effective in dealing with fraud that is carried out in an organized and repeated manner, so they do not provide an adequate deterrent effect. This regulation also does not regulate in detail the mechanism for coordination and implementation of criminal sanctions between *BPJS Kesehatan*, the Ministry of Health, and law enforcement officers, which makes criminal law enforcement limited. To deal with systematic and repeated fraud in the *JKN* Program, regulatory updates are urgently needed, including strengthening supervision and enforcement of stricter sanctions, such as expanding the application of criminal sanctions for perpetrators of serious fraud. Regulations that only rely on administrative sanctions have proven to be ineffective, so strengthening legal norms and harmonization with other related regulations such as the Corruption Law, the Criminal Code (*KUHAP*), and the *SJSN* Law are very important. In addition, coordination between law enforcement agencies and the formation of cross-sectoral regulations involving various related agencies also need to be strengthened to create a more integrated and comprehensive system in dealing with fraud in the health sector. With these steps, law enforcement against fraud in *JKN* can be more effective and provide a greater deterrent effect for perpetrators of fraud.

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