

CHAPTER I

INTRODUCTION

A. Context of Study

Health is a basic and most important need for everyone. Law of the Republic of Indonesia Number 17 of 2023 states that Health is a state of well-being in terms of physical, mental, and social aspects, and not merely the absence of disease, enabling a person to live a productive life.¹ Therefore, health is not only the responsibility of individuals but also requires regulation by the government as a part of the state's responsibility to care for the health of its own people.

The right to health is one of the human rights guaranteed by the Indonesian Constitution. Based on the 1945 Constitution of the Republic of Indonesia in the 4th paragraph, it explains that the purpose of the Indonesian State is to prosper its people “advancing the general welfare” in this sentence it is clear that the welfare of the community will be the responsibility of the government to realize it. A prosperous and healthy life for every community and providing health services to the community is also the task of the government to realize it. As stipulated in Article 28 H paragraph (1) of the Second Amendment of the 1945 Constitution, “Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment, and to receive health services.”² In addition, Article 34 paragraph (3) of the 1945 Constitution confirms that the state is responsible for providing

¹ Article 1 Number 1 of Law Number 17 of 2025 concerning Health

² Article 28 H Point (1) of the 1945 Indonesian Constitutional Law

adequate health care facilities through the implementation of a national social security system.³ This constitutional mandate is the main basis for the establishment of the Health Social Security Organizing Agency (BPJS) which aims to provide equitable and affordable access to health services for all Indonesian people.

BPJS Health is a special legal entity to organize the National Health Insurance (JKN) program. Health services both in terms of physical and non-physical must meet high quality standards in order to ensure the quality of services provided to the community. The JKN program organized by the government aims to facilitate public access to health services, regardless of economic status. Both low- and high-income people have the same rights to obtain proper and quality health services. This program covers health services at the primary, secondary, and tertiary levels through cooperation with various health facilities, including referral hospitals. Services guaranteed by BPJS Health include promotive, preventive, curative, and rehabilitative services including the provision of medicines and medical materials according to the medical needs of participants.

BPJS Health establishes contractual relationships with referral hospitals to ensure optimal health services for JKN participants. This cooperation is regulated through an agreement that is private and legally binding. Violations of the agreement can occur, for example in the form of fictitious actions that have the potential to harm participants and the BPJS Health itself. BPJS Health

³ Ibid., Article 34 Point (3) of the 1945 Indonesian Constitutional Law

was formed based on Law No. 40 of 2004 which establishes a national social security system as a basic right of citizens, and Law No. 24 of 2011, which specifically establishes BPJS as a public legal entity to organize social security programs, including health and employment. Law No. 40 of 2004 on the National Social Security System (SJSN) is a broader philosophical and juridical foundation, stipulating that social security, including health insurance, is a basic right of every citizen and must be provided by the state.⁴ Article 5 paragraph (1) and Article 52 of this Law emphasize the scope and mechanism of social security implementation which is then implemented through BPJS. Law No. 24 of 2011 on Social Security Agency specifically regulates the establishment of BPJS Health and BPJS Employment as public legal entities.⁵ This law establishes the task of BPJS Health to organize the National Health Insurance (JKN) program. This law also regulates the principles of humanity, benefits, and social justice, as well as the implementation mechanism, including the relationship between the government, participants, and organizers.⁶

In implementing the National Health Insurance (JKN) program, BPJS Health collaborates with various health facilities, including hospitals through legally binding cooperation agreements. This agreement regulates the rights and obligations of each party including the scope of services, claim payment mechanisms, and verification and audit products for the services provided. Through this agreement, hospitals as BPJS Health partners are obliged to

⁴ Law Number 40 of 2004 concerning the National Social Security System (SJSN)

⁵ Law Number 24 of 2011 concerning Social Security Administration Agency

⁶ <https://lngrisk.co.id/glosari/landasan-hukum-bpjs-kesehatan/> accessed on 24/05/25

provide health services to JKN participants in accordance with the provisions and BPJS is obliged to pay claims for services provided. However, in practice, there are many irregularities in the form of filing fictitious claims, namely claims for services that have never been provided to participants. This action not only violates the principle of integrity in health services, but is also a constitutes a default or breach of contract by the hospital against the provisions in the cooperation agreement. For example, in 2024 two hospitals in Tegal, Central Java allegedly submitted fictitious claims to BPJS Health, resulting in potential state losses of up to billions of rupiah.⁷ The two hospitals were proven to have submitted claims for ventilator installation procedures that were never performed, with a total loss of Rp4.8 billion.⁸ This situation not only causes material losses for BPJS Health but also raises serious legal question regarding the compliance of health facilities with the terms of the cooperation agreement. From a civil law perspective, such actions could potentially qualify as a default if it is proven that the hospital did not fulfill its contractual obligations, thereby granting BPJS Health, as the injured party, the right to demand the restoration of rights, including the possibility of compensation.

The selection of Hospital in Tegal as the focus of this study is based on several considerations. First, this hospital was directly linked to the alleged fictitious claims case, making it a relevant and concrete example for examining contractual breaches in the cooperation agreement between hospitals and BPJS

⁷ <https://regional.kompas.com/read/2024/10/10/230109178/diduga-ajukan-klaim-fiktif-ke-bpjs-kesehatan-ini-penjelasan-rs-mitra> accessed on 24/05/25

⁸ <https://www.panduga.id/2024/10/07/kelakuan-rs-mitra-keluarga-tegal-dan-slawi-lakukan-tagihan-fiktif-bpjs-kesehatan-hingga-rp-48-miliar/> accessed on 24/05/25

Health, Second, the case at Hospital in Tegal is significant because it not only involves administrative irregularities but also reflects a substantial financial impact, amounting to billions of rupiah, which highlights the seriousness of the breach of trust in the cooperation system. Third, by focusing on this specific hospital, the research can provide a more in depth and detailed analysis of how contractual obligations under civil law are applied in practice, particularly with reference to Articles 1233 and 1243 the Indonesian Civil Code concerning the basis obligations and the consequences of default.

Furthermore, the Hospital in Tegal case is distinctive compared to other hospitals in Indonesian because the allegations of fictitious claims are well documented and have attracted public and legal scrutiny, making it an appropriate and accessible object of study. Other hospitals may also face contractual or administrative issues in their cooperation with BPJS Health, but the scale and clarity of the case at Hospital in Tegal provide a strong basis for academic analysis. This allows the research to explore the extent of the hospital's legal liability under civil law submitting fictitious claims, as well as the potential remedies available to BPJS Health to BPJS Health as the aggrieved party.

The private law aspects of contractual relationships are based on Article 1338 of the Civil Code, which regulates the principle of freedom of contract. This article states that a valid agreement is binding as law upon the parties who made it, so that the parties have the freedom to determine the content, form and with whom they will enter into this agreement as long as it does not conflict

with the law. Article 1320 of the Civil Code serves as an important reference for regulating the validity of an agreement. According to Article 1320 of the Civil Code, In order to be valid, an agreement must satisfy the following four conditions:

1. there must be consent of the individuals who are bound thereby;
2. there must be capacity to enter into an obligation;
3. there must be a specific subject matter;
4. there must be a permitted cause.

The first and second conditions are subjective conditions because they concern the parties entering into the agreement, while the third and fourth conditions are objective conditions because they concern the object of the agreement.⁹ If any of these conditions are not met, it may be null and void or may be cancelled.

Cooperation between BPJS Health and hospitals as a provider of health services is a very important role in the national health insurance system in Indonesia. The National Health Insurance Program (JKN) managed by BPJS Health aims to ensure that all people have access to adequate health services. However, in its implementation, this will be the biggest challenge, especially related to potential irregularities in the implementation of the agreement that can interfere with the effectiveness and smooth running of the program. Legally, this agreement complies with and is subject to Article 1338 paragraph

⁹ <https://www.hukumonline.com/klinik/a/pasal-1320-kuh-perdata-tentang-syarat-sah-perjanjian-lt656f1d2ff0d7/> accessed on 30/04/25

(1) of the Civil Code so that the rights and obligations contained in the contract must be fulfilled in good faith.

Default is one of the most important concepts in civil law where default in Indonesian civil law refers to a violation committed by one of the parties to the agreement, where the party does not fulfill its achievements or obligations as agreed in the agreement contract. Basically, this has been regulated in Article 1238 of the Civil Code which states “the condition in which a debtor has been declared negligent in relation to an order or deed or automatically after the passage of time specified in the agreement without the need for prior warning”¹⁰ Thus, default not only includes the inability to fulfill obligations, but also includes actions that do not comply with the time, manner, or quality specified in the agreement.¹¹ Furthermore, Article 1243 of the Civil Code gives the injured party the right to claim compensation including costs, losses and interest if there is a default and the debtor does not fulfill his obligations after being declared negligent.

Some aspects that can be categorized as default are non-fulfillment of obligations by one party or all parties, delays in fulfilling obligations where one party is negligent in not being on time in carrying out its obligations, the implementation of obligations is not in accordance with the agreement both in terms of quality and quantity that has been agreed upon. In the context of a Cooperation agreement, the assessment of a fictitious claim action can be

¹⁰ <https://smartlawyer.id/pasal-1238-kuh-perdata/> accessed on 01/05/25

¹¹ Sudikno Mertokusumo. (2006). *Hukum Perjanjian*. Jakarta: PT. RajaGrafindo Persada. Hal. 78.

categorized as a default if the action meets several criteria such as the existence of a valid agreement, non-fulfillment of obligations according to the agreement, neglect of the summons, and causing losses to other parties. In this fictitious claim case, the perpetrator can also be charged with Article 1337 of the Civil Code because the act contains elements of fraud that can legally cancel the agreement. Several aspects that can be categorized as breach of contract include the failure of one or all parties to fulfil their obligations, delays in fulfilling obligations where one party fails to perform its obligations on time, and the performance of obligations that does not comply with the agreement in terms of quality or quantity as agreed. In the context of a cooperation agreement, the assessment of a fictitious claim can be categorized as breach of contract if the action meets certain criteria, such as the existence of a valid agreement, failure to fulfil obligations in accordance with the agreement, failure to respond to a demand letter, and causing loss to the other party. In this case of a fictitious claim, the perpetrator may also be liable under Article 1337 of the Civil Code because the act contains elements of fraud that can invalidate the agreement under the law.

Fictitious claims are part of the practice of manipulating the submission of Health service bills that are not in accordance with medical facts, such as phantom billing (claims without real patients) or upcoding (inflating diagnosis codes). This action fundamentally damages the contractual relationship between BPJS Health and the Hospital because it violates the principle of good faith in the contract agreement as stated in Article 1338 paragraph (1) of the

Civil Code. This deviation not only disturbs the principle of *pacta sunt servanda* but also creates a statement that is detrimental to BPJS Health as the person in charge of the National Health Insurance program.

Cooperation agreements between BPJS Health and hospitals generally include clauses regarding sanctions for violations, including unilateral termination of cooperation by BPJS Health if the hospital is proven to have committed serious violations, such as submitting fictitious claims. This aims to protect the integrity of the JKN program and ensure that the funds managed are used appropriately and responsibly. The Tegal case shows the importance of supervision and law enforcement in the cooperation between BPJS Health and the Hospital. An effective mechanism is needed to detect violations, as well as ensure that parties involved in the JKN program carry out their obligations in accordance with the agreed agreement.

The resolution of fictitious claims can be carried out through litigation (civil lawsuit) or alternative dispute resolution mechanisms such as mediation and arbitration, as stipulated in Article 1270 of the Civil Code. However, the effectiveness of these two mechanisms heavily depends on transparency in claim verification and the enforcement of administrative sanctions, such as the revocation of operational licenses for hospitals as stipulated in Ministry of Health Regulation No. 16 of 2019. The legal liability of hospitals regarding fictitious claims includes compensation mechanisms under civil law and effective dispute resolution. Based on this, the author is interested in raising the research topic titled **“A BREACH OF CONTRACT AND LEGAL**

LIABILITY IN FICTITIOUS CLAIMS WITHIN THE COOPERATION BETWEEN BPJS HEALTH AND REFERRAL HOSPITALS CASE STUDY OF HOSPITAL IN TEGAL HOSPITAL IN TEGAL” to analyze the application of civil law in resolving fictitious claim disputes that occur in the field.

B. Problem Formulation

From the background above, there are two research question formulation :

1. Can the act of submitting fictitious claims be categorized as an act breach of contract against the cooperation agreement with the health BPJS according to civil law?
2. What is the form of the hospital's civil legal responsibility to the health BPJS for losses arising the fictitious claim?

C. Research Objective

The objectives of this research are as follows :

1. To analyze and examine whether the act of submitting fictitious claims by the hospital can be qualified as a form of breach of contract against the cooperation agreement with BPJS Health based on civil law provisions.
2. Explaining the form and scope of the hospital's civil legal responsibility to BPJS Health for losses incurred due to the submission of fictitious claims.

D. Research Originality

Research originality provides an overview of the difference in the thesis themes undertaken by the author. The purpose of research originality is to prevent plagiarism and repetition of studies conducted by previous researchers. Therefore, the author has identified prior research involving the same Alternative Dispute Resolution Institutions and their respective methods of resolution.

No.	Journal Articles	Author	Point of View
1.	Cooperation Agreement Between The Social Health Insurance Administrator and Dr. Mohammad Hoesin General Hospital in The Provision of Health Service	Febri Murtiningtias, H. Zulkarnain Ibrahim, M. Ridwan	This journal discusses the Cooperation Agreement between BPJS Health and Dr. Mohammad Hoesin General Hospital, which encountered several performance issues, and the efforts of the social security service in overcoming financing problems by paying claims on a first-in, first-out basis.
2.	Analysis of The Legal Aspect of Civil and Criminal Liability in Contract	Madaoui N	This journal highlights contract law's role in enforcing obligations and providing remedies for breaches, typically through civil liability, monetary damages, or specific performance. It recognizes defences to avoid liability, especially when the contract formation is flawed or external factors hinder performance. While breaches aren't criminal, misrepresentation and fraud can lead to both civil and criminal penalties. The journal discusses protections

			like Statutes of Frauds and unconscionability doctrines, which safeguard against unfairness in contract formation. Ultimately, contract law balances holding parties accountable while ensuring remedies for good faith disputes, with harsher penalties for fraud and unlawful activities, ensuring justice in contracts.
3.	The Application of The Principle of Proportionality in Health Service Contracts Between Hospitals and Social Security	Solikah Sriningsih	This journal discusses the cooperation contract between hospitals and BPJS involving two parties with interrelated responsibilities, where BPJS manages participant contributions and pays hospitals for health services. The principle of proportionality is reflected at every stage of the contract, from pre-contract, implementation, to post-contract. This principle ensures a fair distribution of rights and obligations between the two parties, based on their respective burdens and responsibilities. As a result, this contract creates a balanced and structured relationship that supports the provision of optimal healthcare services for BPJS participants, in accordance with the principles of justice and equality.
4.	Effectiveness and Legal Protection in Health Services in Public Hospitals for BPJS Health Participant Sembiring Deli Tua Public Hospital Study	Alprindo Sembiring, Beni Satria, Redyanto Sidi	This journal it highlights that, in accordance with Indonesian Laws such as Law No. 36 of 2009 on Health and Law No. 44 of 2009 on Hospitals, patient

			including BPJS participants are entitled to equal access to quality and safe health services. The study finds that Sembiring Deli Tua Public Hospital has effectively adhered to these regulations, as evidenced by its service to 8,318 BPJS patients in July, demonstrating compliance with established referral systems and service standards. Despite this, the research identifies ongoing challenges, including technical issues in claim submissions and data discrepancies, which can lead to breaches of contract (wanprestasi). The authors conclude that while legal frameworks are in place to ensure effective health service delivery and legal protection for BPJS participants, continuous monitoring and policy adjustments are necessary to address practical obstacles and enhance the overall effectiveness of the healthcare system
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E. Literature Review

1. Theory Breach of Contract

Breach of contract in the context of civil law refers to the failure of one party to fulfil its obligations as stipulated in an agreement. Such failure may take the form of not performing the obligation at all, performing the obligation but not in accordance with the agreement, or performing it late.

According to Subekti in his book *Contract Law*, breach of contract can occur in the form of failure to fulfil obligations, violating the terms of the agreement, or performing actions prohibited in the contract.¹²

In the context of cooperation between BPJS Health and referral hospitals, breach of contract can occur, for example, when hospitals fail to provide health services in accordance with the standards set out in the cooperation agreement. One form of alleged breach of contract is the submission of fictitious claims that are detrimental to BPJS Health.

As explained in the *Journal of Legal Construction*, breach of contract in business contracts, including in healthcare service partnerships, includes violations of the obligation to provide services in accordance with applicable regulations and standards.¹³ Therefore, the theory of breach of contract becomes an important basis for assessing whether or not the contractual obligations of the parties to the cooperation agreement have been fulfilled.

2. Default Liability in The Context of Civil Law

Liability for breach of contract in civil law is regulated in the Civil Code, specifically in Articles 1233 and 1243. These articles state that the party in breach of contract is obliged to compensate the aggrieved party for costs, losses, and interest. According to Sudikno Mertokusumo in his book *Understanding Law: An Introduction*, the primary purpose of such liability

¹² Subekti. (1996). *Hukum Perjanjian*. Jakarta: Intermasa.

¹³ Frisyudha, et al (2021). Renegosiasi sebagai Upaya Penyelesaian Wanprestasi dalam Kontrak Bisnis Selama Masa Pandemi Covid-19. *Jurnal Kontruksi Hukum*, 2(2), 344-349.

is to restore the aggrieved party to their original position as if the breach of contract had never occurred.¹⁴

In the context of cooperation between BPJS Health and partner hospitals, liability for breach of contract can take the form of compensation for financial losses incurred as a result of fictitious claims. A study published in the Journal of Legal Construction emphasizes that the contractual relationship between doctors, hospitals, patients, and BPJS Health as the social security provider is a contractual relationship of the “best efforts” nature, meaning the obligation to provide the best possible service, not to guarantee the final outcome of such services. Therefore, if a hospital is found to have breached its contractual obligations in the form of submitting fraudulent claims, it may be subject to civil penalties such as compensation, contract termination, or other legal consequences as stipulated in the applicable cooperation agreement.

3. Contractual Relationship between BPJS Health and Referral Hospitals

The contractual relationship between BPJS Health and referral hospitals is based on a cooperation agreement that falls under the category of contracts as regulated in civil law, specifically Article 1234 of the Civil Code, which regulates the obligation to give something, do something, or refrain from doing something. According to Hedrik in his book Ethics and Health Law, this cooperation agreement includes the obligation of the

¹⁴ Sudikno Mertokusumo. (2010). Mengenal Hukum: Suatu Pengantar. Yogyakarta: Liberty.

hospital to provide health services in accordance with the standards and procedures established by BPJS Health, while on the other hand, BPJS Health is obligated to pay claims for services rendered in accordance with applicable regulations.¹⁵

Research by Alprindo et al. highlights that the implementation of cooperation agreements between BPJS Health and referral hospitals frequently encounters technical obstacles. These include discrepancies between service data and claim reports, as well as administrative errors in the claim submission process. Such issues may lead to potential breaches of contract, particularly when a party most notably the hospital fails to fulfill its contractual obligations as stipulated in the agreement.¹⁶

In the specific case of alleged fictitious claims at Hospital in Tegal, the submission of inaccurate or false service data constitutes a violation of the hospital's duty to provide accurate and truthful information. This act can be classified as a form of contractual breach.

Accordingly, the contractual relationship between BPJS Health and referral hospitals provides a critical framework for assessing the hospital's civil liability in cases of breach. When the terms of the cooperation agreement are not fulfilled such as in the submission of fictitious claims the analysis of liability under civil law becomes essential, as will be discussed in this study.

¹⁵ Hedrik. (2013). *Etika dan Hukum Kesehatan*. Jakarta: EGC.

¹⁶ Alprindo Sembiring et al., "Effectiveness and Legal Protection in Health Services in Public Hospitals For BPJS Health Participants: Sembiring Deli Tua Public Hospital Study," *Journal of General Education Science*, vol.2, no.1 (2023): 33–38, ISSN 2963-0096, Berpusi Publishing.

4. Concept of Fictitious Claims in Health Services

The concept of fictitious claims in health services refers to deliberate acts of fraud committed to obtain financial gain from the National Health Insurance (JKN) program, which is not in accordance with legal and regulatory benefits.¹⁷ This fraud is driven by abuse of power and dishonesty, resulting in financial losses and even fatalities.¹⁸

In the context of Indonesian civil law, fictitious claims in health services submitted by health facilities to BPJS Health are essentially a breach of contract. When health facilities enter into cooperation with BPJS Health, a binding agreement is formed, whereby health facilities are obliged to provide services in accordance with standards and charge fees based on the services actually provided.

Types of fraud that often occur in healthcare financing include identity fraud, collusion to make false claims, unnecessary healthcare services, excessive invoicing, and miscoding or upcoding of diagnosis codes.¹⁹ Upcoding is a practice where hospital coders assign higher diagnosis codes than necessary, resulting in increased claim costs and financial burdens for BPJS Health, as well as statistical data that does not match actual cases in

¹⁷ Purwanti Agustini et al., “Analysis of Possibility of Fraud in the National Health Insurance Program in Indonesia,” *International Journal of Health Policy* 5, no. 1 (2025), DOI: <https://doi.org/10.51601/ijhp.v5i.394>

¹⁸ José Villegas-Ortega et al., “Fourteen Years of Manifestations and Factors of Health Insurance Fraud, 2006–2020: A Scoping Review,” *Health & Justice* 9, no. 1 (September 30, 2021): 26, <https://doi.org/10.1186/s40352-021-00149-3>

¹⁹ Agustini et al., “Analysis of Possibility of Fraud in the National Health Insurance Program in Indonesia,”

the field.²⁰ Factors driving upcoding include a lack of human resource competence, misperceptions of diagnoses by coders, a backlog of claim files, and a tendency to increase claim costs. Other forms of fraud include document forgery, phantom billing, and excessive use of services.²¹

The Indonesian government has sought to address fraudulent claims through various regulations. Efforts to prevent and handle fraud in the implementation of the Health Insurance Program aim to provide guidelines for participants, BPJS Health, health facilities, drug providers, and other stakeholders to implement comprehensive prevention measures. Previous regulations focused on imposing administrative sanctions for fraud. Examples include Minister of Health Regulation No. 36 of 2015 and Minister of Health Regulation No. 16 of 2019 concerning Fraud Prevention in the National Health Insurance program

5. Legal Protection for Patient in the Context of BPJS Health Cooperation

In addition to the contractual aspects between BPJS Health and hospitals, legal protection for patients is also an essential part of assessing breaches in healthcare cooperation relationships. Law No. 36 of 2009 on Health and Law No. 44 of 2009 on Hospitals stipulate that every patient has the right to safe, quality, and affordable healthcare services. These rights are fundamental and must be fulfilled by healthcare facilities, including BPJS

²⁰ Sariunita, Nadira, and Rizma Adlia Syakurah. 2023. "Analisi Kejadian Upcoding Biaya Pelayanan Kesehatan di Wilayah Kerja BPJS Kesehatan Cabang Depok". *Bina Generasi : Jurnal Kesehatan* 14 (2). Sulawesi Barat, Indonesia:1-6. <https://doi.org/10.35907/bgjk.v14i2.220>

²¹ *ibid*

Health partner hospitals. However, in practice, patients often experience violations of these rights, such as limited inpatient beds, substandard care, or insufficient information about healthcare procedures.

Such conditions not only reflect potential administrative negligence, but can also lead to default by hospitals, especially if the discrepancies directly impact the quality of services received by patients. In the context of alleged fraudulent claims, the losses are not only borne by BPJS Health as the insurer but also by patients, as the services they should have received may never have been provided or reported inaccurately. Therefore, patient protection is a crucial dimension in analyzing the legal liability of hospitals within the national health insurance system based on contracts and public services.

F. Research Method

1. Types of Research

The type of research used by the author is normative legal research. Normative legal research is conducted by reviewing secondary sources or data, such as laws, government regulations, and other legal literature, without conducting field research or empirical collection of primary data. In his book on legal research methodology, B. Arief Shidarta explains that normative legal research methods serve to provide legal arguments when there are gaps, ambiguities, and conflicts in norms. Normative research plays a role in maintaining the critical aspects of legal science as a *sui*

generis normative science.²² The focus of this study is on the analysis of applicable legal rules, particularly legislation, legal principles, and legal doctrines, especially those related to cooperation agreements between hospitals and BPJS Health and the legal liability arising from fictitious claims. This study aims to describe and analyze the legal implications of filing fictitious claims, as well as to explain the form of legal liability imposed on hospitals if such claims are proven to be detrimental to BPJS Health. This study is also descriptive in nature as it provides a comprehensive explanation of the legal phenomenon that occurs, with a focus on the analysis of applicable regulations and their application in practice.

2. Method of Approach

This study employs a statute approach, case approach and conceptual approach to examine the legal issues arising between BPJS Health and referral hospitals. The statutory approach emphasizes the use of written legal norms as the primary sources. It is considered absolute because legal issues under discussion are directly regulated in legislation, thereby prioritizing doctrinal legal analysis based on established legal knowledge rather than empirical studies on law.²³ In the context of this research, the statutory approach is carried out by examining laws and regulations governing the

²² Diantha, I Made Pasek, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Kencana) halaman. 12.

²³ Negara, T. A. S. "Normative Legal Research in Indonesia: Its Origins and Approaches". *Audito Comparative Law Journal (ACLJ)*, vol. 4, no. 1, Feb. 2023, pp. 1-9, doi: <https://doi.org/10.22219/aclj.v4i1.24855>

rights and obligations of both parties in the cooperation agreement, particularly the provisions of Articles 1233 and 1243 of the Indonesian Civil Code, which regulated the basis of obligations and the consequences of default. This approach is relevant to the case of alleged fictitious claims at Hospital in Tegal, as it allows for an analysis of whether the submission of fictitious claims constitutes a breach of contractual obligations and how civil liability should be imposed under applicable law. A case approach was applied to analyze the alleged fictitious claim case at Hospital in Tegal by examining relevant documents and facts of the case to evaluate the application of legal norms in practice. Additionally, the conceptual approach is used to examine the legal principles and doctrines relevant to contracts, breach of contract, and legal liability, as well as the interpretations of legal experts that provide a deeper understanding of the contractual relationship between BPJS and hospitals. This analysis is conducted by referring to applicable written legal norms and theories that explain legal issues in the practice of exercising the rights and obligations of both parties, particularly in the commitment to fulfil performance in the agreement contract to avoid breach of contract. Additionally, the study examines the standard clauses within the cooperation agreements and assesses their adequacy in preventing and addressing contractual breaches.

3. Object of Research

The object of this research is the legal norms that regulate the rights and obligations of both parties, particularly BPJS Health, in the context of cooperation agreements with hospitals. This study will focus on the regulations that apply if a hospital violates the contract agreement, resulting in losses for BPJS Health. Thus, this study will examine how legal norms govern breach of contract and the legal responsibilities that arise in the implementation of the cooperation agreement with BPJS Health.

In this context, the cooperation agreement between BPJS Health and referral hospitals serves as a legally binding that outlines the mutual rights and obligation of both parties. According to Article 1313 of the Indonesian Civil Code, an agreement is an act pursuant to which one or more individuals bind themselves to one another, thereby establishing enforceable legal obligations.²⁴ Furthermore, Article 1320 of the Civil Code stipulates four essential conditions for the validity of an agreement: mutual consent, legal capacity, a specific subject matter, and a lawful cause.²⁵

The cooperation agreement delineates the responsibilities of hospitals to provide healthcare services in accordance with the standards set by BPJS Health, while BPJS Health is obliged to reimburse claims submitted by hospitals for services rendered to BPJS Participant. However, instances of contractual breaches, such as the submission of fictitious claims by hospitals, have raised concerns regarding the enforcement of these

²⁴ Indonesian Civil Code 1313.

²⁵ Indonesian Civil Code 1320.

agreements. Such breaches not only contravene the terms of the contract but also result in financial losses for BPJS Health and undermine the integrity of the national health insurance system.²⁶

4. Sources of Research Data

a. Primary Legal Materials are legal materials consisting of legislation, case law, and court decisions, if any. These primary legal materials are authoritative and have legal force. Primary legal materials consist of:

- 1.) The 1945 Constitution of the Republic of Indonesia
- 2.) The Indonesian Civil Code (*Burgerlijk Wetboek*)
- 3.) Law of the Republic of Indonesia Number 17 Year 2023 concerning Health
- 4.) Law of the Republic of Indonesia Number 44 Year 2009 concerning Hospitals
- 5.) Law of the Republic of Indonesia Number 24 Year 2011 concerning the Social Security Administering Body (BPJS)
- 6.) Law of the Republic of Indonesia Number 24 Year 2004 concerning the National Social Security System (SJSN)
- 7.) Regulation of the Minister of the Republic of Indonesia Number 16 of 2019 concerning Patient Safety

²⁶ <https://ejournal.seaninstitute.or.id/index.php/Ekonomi/article/view/4405/3564>
accessed on 03/06/25

8.) Alleged Fictitious Claims Case at Hospital in Tegal, BPJS
Health Terminates Cooperation

b. Secondary Legal Materials are legal materials that use regulations as supporting materials to provide guidance in understanding primary legal materials, both in the form of theory and interpretation. Secondary legal materials consist of:

- 1.) Legal literature such as books, journals, scientific articles, research results and opinions of legal experts discussing the rights and obligations of fulfilling agreements, civil law, and protection of parties experiencing default in a civil context
- 2.) Official documents such as agreements between BPJS Health and hospitals, government policy documents, and related publications

c. Tertiary Legal Materials are legal materials that provide an understanding of secondary legal materials such as legal dictionaries, legal encyclopaedias and legal indexes, which help to explain legal terms or concepts used in this study

G. Method of Data Collection

The data collection technique used in this normative legal research is secondary data, namely literature study through the collection, reading, examination, and analysis of written legal materials such as legislation,

agreements made by BPJS Health and hospitals, doctrines, journals, and opinions of legal experts relevant to the research object. In addition, this study is supported by interviews with relevant stakeholders, namely representatives of BPJS Health and Hospital in Tegal, to obtain contextual and practical information regarding the implementation of cooperation agreements, claim submission procedures, and the handling of alleged fictitious claims.

H. Data Analysis

The data analysis method used by the author in this study is qualitative descriptive analysis, namely data obtained from written materials such as laws and regulations and books that are described in qualitative terms before being analyzed.