GAGASAN PERLINDUNGAN HUKUM BERKEMANUSIAAN DALAM PEMENUHAN HAK KESEHATAN PESERTA BPJS PADA LAYANAN KESEHATAN RUJUKAN TINGKAT LANJUT

Dr. dr. Gregorius Yoga Panji Asmara, S.H., M.H., C.L.A., C.C.D., C.M.C.
lawyer | lecturer | legal auditor | contract drafter | mediator-conciliator | health management consultant | competency assessor

Disampaikan pada FGD Penelitian Disertasi Doktor Ilmu Hukum
Tanggung Jawab Negara terhadap Peserta BPJS dalam Memperoleh Layanan Kesehatan Rujukan Tingkat Lanjut
14 September 2024

Get Started

Isu Hukum

- Pasal 28 (H) UUD 1945 – hak memperoleh pelayanan kesehatan
- Kenyataan waktu tunggu berbulan-bulan, penumpukan pasien pada FKRTL

- Pasal 39 ayat (2) UU 17/2023 - Sistem rujukan Pelayanan Kesehatan perseorangan sebagaimana dimaksud pada ayat (1) dilakukan berdasarkan kebutuhan medis Pasien dan kemampuan pelayanan pada setiap Fasilitas Pelayanan Kesehatan.
- Pasal 189 ayat (1) huruf c UU 17/2023 - Setiap Rumah Sakit mempunyai kewajiban memberikan pelayanan Gawat Darurat kepada Pasien sesuai dengan kemampuan pelayanannya

1. Hakikat tanggung jawab negara terhadap peserta BPJS dalam memperoleh layanan Fasilitas Kesehatan Rujukan Tingkat Lanjut (FKRTL)
2. Konsep rekonstruksi tanggungjawab negara terhadap peserta BPJS dalam memperoleh layanan Kesehatan Rujukan Tingkat Lanjut (FKRTL).

Gregorius YP Asmara

Identifikasi Subjek Hukum yang Terlibat

1. Pasien
2. Fasilitas Pelayanan Kesehatan
3. Tenaga Medis/ Tenaga Kesehatan
4. Penjamin Pembiayaan

Gregorius YP Asmara

Next Page →

Tolok Ukur Prestasi Pelayanan Kesehatan

Pasal 280

(1) Dalam menjalankan praktik, Tenaga Medis dan Tenaga Kesehatan yang memberikan Pelayanan Kesehatan kepada Pasien harus melaksanakan upaya terbaik.

(2) Upaya terbaik sebagaimana dimaksud pada ayat (1) dilakukan sesuai dengan norma, standar pelayanan, dan standar profesi serta kebutuhan Kesehatan Pasien.

(3) Upaya terbaik sebagaimana dimaksud pada ayat (1) tidak menjamin keberhasilan Pelayanan Kesehatan yang diberikan.

(4) Praktik Tenaga Medis dan Tenaga Kesehatan diselenggarakan berdasarkan kesepakatan antara Tenaga Medis atau Tenaga Kesehatan dan Pasien berdasarkan prinsip kesetaraan dan transparansi.

Gregorius YP Asmara

Pasal 280 UU 17/2023 Kesehatan

Next Page →

Standar Profesi, Standar Pelayanan, dan Standar Prosedur Operasional

Pasal 291

(1) Setiap Tenaga Medis dan Tenaga Kesehatan dalam menyelenggarakan Pelayanan Kesehatan berkewajiban untuk mematuhi standar profesi, standar pelayanan, dan standar prosedur operasional.

(2) Standar profesi sebagaimana dimaksud pada ayat (1) untuk setiap jenis Tenaga Medis dan Tenaga Kesehatan disusun oleh Konsil serta Kolegium dan ditetapkan oleh Menteri.

(3) Standar pelayanan sebagaimana dimaksud pada ayat (1) diatur dengan Peraturan Menteri.

(4) Standar prosedur operasional sebagaimana dimaksud pada ayat (1) ditetapkan oleh pimpinan Fasilitas Pelayanan Kesehatan.

Gregorius YP Asmara

Next Page →

standar Pelayanan Kesehatan

- Setiap Orang berhak mendapatkan perawatan Kesehatan sesuai dengan standar Pelayanan Kesehatan
  - standar Pelayanan Kesehatan: pedoman bagi Tenaga Medis dan Tenaga Kesehatan dalam menyelenggarakan Pelayanan Kesehatan
- Fasilitas Pelayanan Kesehatan wajib membuat standar prosedur operasional dengan mengacu pada standar Pelayanan Kesehatan
- Setiap Rumah Sakit mempunyai kewajiban memberikan Pelayanan Kesehatan yang aman, bermutu, antidiskriminatif, dan efektif dengan mengutamakan kepentingan Pasien sesuai dengan standar pelayanan Rumah Sakit
- Tenaga Medis dan Tenaga Kesehatan dalam menjalankan praktik berhak mendapatkan pelindungan hukum sepanjang melaksanakan tugas sesuai dengan standar profesi, standar pelayanan profesi, standar prosedur operasional, dan etika profesi, serta kebutuhan Kesehatan Pasien
- Tenaga Medis dan Tenaga Kesehatan dalam menjalankan praktik wajib memberikan Pelayanan Kesehatan sesuai dengan standar profesi, standar pelayanan profesi, standar prosedur operasional, dan etika profesi, serta kebutuhan Kesehatan Pasien

Pasal 4 ayat (1) huruf d UU 17/2023 Kesehatan
Bagian penjelasan Pasal 4 ayat (1) huruf d UU 17/2023 Kesehatan
Pasal 173 ayat (1) huruf g UU 17/2023 Kesehatan
Pasal 189 ayat (1) huruf b UU 17/2023 Kesehatan
Pasal 273 ayat (1) huruf a UU 17/2023 Kesehatan
Pasal 274 huruf a UU 17/2023 Kesehatan

Gregorius YP Asmara

Next Page →

Isu

- Kemampuan layanan Fasilitas Pelayanan Kesehatan – acuannya adalah standar prosedur operasional (yang ditetapkan oleh Fasyankes)
- Standar prosedur operasional dibuat oleh Fasyankes mengacu pada standar Pelayanan Kesehatan
- Isu: kendali mutu – kendali biaya

Pasal 303

(1) Setiap Tenaga Medis dan Tenaga Kesehatan dalam melaksanakan Pelayanan Kesehatan wajib menyelenggarakan kendali mutu dan kendali biaya serta memperhatikan keselamatan Pasien.

(2) Dalam rangka pelaksanaan kegiatan sebagaimana dimaksud pada ayat (1) dapat diselenggarakan audit Pelayanan Kesehatan.

(3) Kendali mutu dan kendali biaya dalam Fasilitas Pelayanan Kesehatan merupakan tanggung jawab Fasilitas Pelayanan Kesehatan.

(4) Pembinaan dan pengawasan terhadap kendali mutu dan kendali biaya sebagaimana dimaksud pada ayat (1) sampai dengan ayat (3) dilaksanakan oleh Pemerintah Pusat dan Pemerintah Daerah.

Kendali Mutu dan Kendali Biaya JKN

Pasal 2

(1) Kendali mutu dan kendali biaya pelayanan kesehatan dilakukan untuk menjamin agar pelayanan kesehatan kepada Peserta sesuai dengan mutu yang ditetapkan dan diselenggarakan secara efisien.

(2) Sistem kendali mutu dan kendali biaya pelayanan kesehatan pada Fasilitas Kesehatan dilakukan oleh Fasilitas Kesehatan dan BPJS Kesehatan, berkoordinasi dengan organisasi profesi, asosiasi fasilitas kesehatan, Dinas Kesehatan Kabupaten/Kota, Dinas Kesehatan Provinsi, dan Kementerian Kesehatan.

(3) Penyelenggaraan kendali mutu dan kendali biaya pelayanan kesehatan sebagaimana dimaksud pada ayat (1) oleh BPJS Kesehatan dilakukan melalui pemenuhan standar mutu yang meliputi:

a. standar input pada Fasilitas Kesehatan;
b. standar proses pelayanan kesehatan; dan
c. standar luaran kualitas kesehatan Peserta.

Gregorius YP Asmara

Peraturan BPJS 8/2016 Penerapan Kendali Mutu dan Kendali Biaya pada Penyelenggaraan Program Jaminan Kesehatan Nasional

Next Page →

Perlindungan Hukum Berkemanusiaan dalam Praktik Kedokteran (Pelayanan Kesehatan)

Pemenuhan 4 prinsip:

1. Hukum yang harmonis
2. Hukum yang bersifat imperatif
3. Hukum yang melindungi harkat dan martabat manusia
4. Hukum yang memenuhi prinsip fundamental etika biomedis

Gregorius YP Asmara

Gregorius Yoga Panji Asmara. “Model Pengaturan Audit Medis yang Memberikan Perlindungan Hukum Berkemanusiaan dalam Praktik Kedokteran.” Disertasi, Universitas Sebelas Maret, 2023.

Next Page →

Prinsip Fundamental Etika Biomedis

1. Menghormati otonomi (Autonomy)
2. Tidak merugikan (Non-maleficience)
3. Berbuat baik (Beneficence)
4. Keadilan (Justice)

Gregorius YP Asmara

Beauchamp, Tom L, dan James F Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2019.

Next Page →

Prinsip Keadilan dalam Prinsip Fundamental Etika Biomedis

- The terms fairness, desert (what is deserved), and entitlement have been used by philosophers as a basis on which to explicate the term justice
- These accounts interpret justice as fair, equitable, and appropriate treatment in light of what is due or owed to affected individuals and groups.
- Formal principle of justice - Common to all theories of justice is a minimal requirement traditionally attributed to Aristotle: Equals must be treated equally, and unequals must be treated unequally.
- That equals ought to be treated equally provokes no debate, but significant problems surround judgments about what constitutes an equal and which differences are relevant in comparing individuals or groups.
- Material principles of justice – required!

Gregorius YP Asmara

Beauchamp, Tom L, dan James F Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2019.

Next Page →

Prinsip Keadilan dalam Prinsip Fundamental Etika Biomedis

- Material principles are essential components of general theories of justice
- Four traditional theories and two theories that attend closely to the value of health and health care in a theory of justice

1. Utilitarian theories - emphasize a mixture of criteria for the purpose of increasing or maximizing human welfare and public utility
2. Libertarian theories - emphasize individual rights to social and economic liberty, while invoking fair procedures as the basis of justice rather than substantive outcomes such as increases of welfare
3. Communitarian theories - underscore principles of justice derived from conceptions of the good developed in moral communities
4. Egalitarian theories - emphasize equal access to the goods in life that every rational person values, often invoking material criteria of need and equality

a. Capability theories
b. Well-being theories

Gregorius YP Asmara

Beauchamp, Tom L, dan James F Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2019.

Next Page →

Prinsip Keadilan dalam Prinsip Fundamental Etika Biomedis

1. Capability theories
   Identify capabilities such as the capability to be healthy that are essential for a flourishing life and identify ways social institutions can and should protect and promote capabilities

2. Well-being theories
   Emphasize core dimensions of human welfare and what is required nationally and globally to realize them.

Gregorius YP Asmara

Beauchamp, Tom L, dan James F Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2019.

Next Page →

Prinsip Keadilan dalam Prinsip Fundamental Etika Biomedis

Each of these six theories articulates a general, notably abstract, material principle of distributive justice:

1. To each person according to rules and actions that maximize social utility (utilitarianism)
2. To each person a maximum of liberty and property resulting from the exercise of liberty rights and participation in fair free-market exchanges (libertarianism)
3. To each person according to principles of fair distribution derived from conceptions of the good developed in moral communities (communitarianism)
4. To each person an equal measure of liberty and equal access to the goods in life that every rational person values (egalitarianism)
5. To each person the means necessary for the exercise of capabilities essential for a flourishing life (capability theories)
6. To each person the means necessary for the realization of core elements of well-being (well-being theories)

Gregorius YP Asmara

Beauchamp, Tom L, dan James F Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2019.

Next Page →

Two Theories Closely Connected to the Value of Health

- Since roughly the end of the twentieth century, two innovative theories have reoriented discussions about justice in health policy and biomedical ethics.
- Both theories are inspired by Rawls and can be described as egalitarian, but they cannot be accurately described as fundamentally Rawlsian.
- They have also been deeply influenced by Aristotle’s moral theory, especially his views about the role and importance of states of human flourishing.

Gregorius YP Asmara

Beauchamp, Tom L, dan James F Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2019.

Next Page →

Capability Theories

- An account of justice that starts from the premise that the opportunity for individuals to reach states of proper functioning and well-being is of basic moral significance and that the freedom to achieve these states should be analyzed in terms of the capabilities of individuals—that is, persons' powers or abilities to act and become what they value

Gregorius YP Asmara

Beauchamp, Tom L, dan James F Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2019.

Next Page →

Capability Theories

Ten core ‘capabilities,’” which she calls “the central human capabilities” (Martha Nussbaum):

1. Life. Being able to live a normal life without dying prematurely or existing in a reduced state making life not worth living
2. Bodily health. Being able to have good health, nutrition, and shelter
3. Bodily integrity. Being able to move freely, to be secure against violence, and to have opportunities for sexual satisfaction and reproductive choice
4. Senses, imagination, and thought. Being able to use these capacities in an informed and human way aided by an adequate and diverse education and in a context of freedom of expression
5. Emotions. Being able to have emotional attachments to persons and things so that one can love, grieve, and feel gratitude without having one’s emotional development blunted by fear, anxiety, and the like
6. Practical reason. Being able to form a conception of the good and to critically reflect in planning one’s life
7. Affiliation. Being able to live meaningfully in the company of others, with self-respect and without undue humiliation
8. Other species. Being able to live with concern for animals, plants, and nature generally
9. Play. Being able to play and enjoy recreational activities
10. Control over one’s environment. Being able to participate as an active citizen in political choices pertaining to one’s life and property

Gregorius YP Asmara

Beauchamp, Tom L, dan James F Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2019.

Next Page →

Well-Being Theories

- Capability theories are centered on the abilities, opportunities, and forms of freedom requisite for well-being, but a recent general theory that is closely aligned with biomedical ethics focuses on well-being itself, rather than on capabilities for well-being.

- The focus is on ensuring that everyone experiences well-being in ways commensurate with a decent life.

- A theory of social justice should be concerned centrally with six core elements of well-being:
  1. Health
  2. Personal Security
  3. Knowledge and Understanding
  4. Equal Respect
  5. Personal Attachments
  6. Self-determination
- In the case of the core element of health, the major goal is instantiation of both the right to health and the right to health care.

Gregorius YP Asmara

Beauchamp, Tom L, dan James F Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2019.

Next Page →

Well-Being Theories

- Two influential arguments support a moral right to government-funded health care (but other good arguments may also be available): (1) an argument from collective social protection and (2) an argument from fair opportunity.

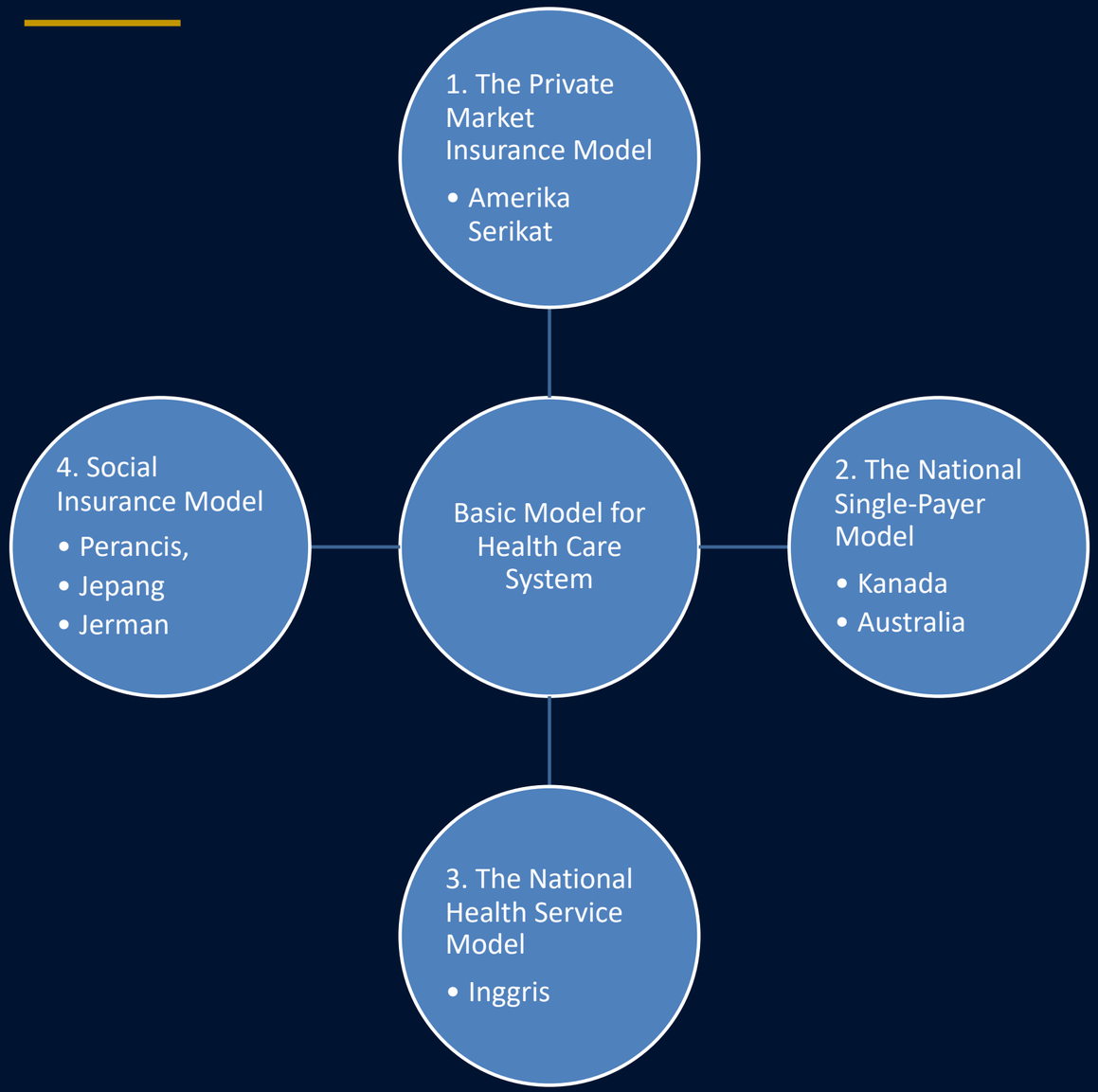
- How much in the way of health care and public health should be funded by the government?
- Question about sufficiency of government support may be the most important practical question in all of biomedical ethics.
- Society should give a proportional return on benefits received from individuals, with all alike sharing the burdens of taxation necessary to produce these benefits

Gregorius YP Asmara

Beauchamp, Tom L, dan James F Childress. *Principles of Biomedical Ethics*. Oxford: Oxford University Press, 2019.

Next Page →

Four Basic Model for Health Care System



Gregorius YP Asmara

David Cummiskey. “Health Care Justice: The Social Insurance Approach.” Dalam International Public Health Policy and Ethics. Dordrecht: Springer, 2008.

Next Page →

Four Basic Model for Health Care System

- Private Market Insurance systems are for-profit, contractual insurance agreements between individuals and private insurance companies, which are often mediated, negotiated, and financed by employers for employees.
- A National Single-Payer model is a national, government-funded, health payment system.
- A National Health Service system is single-payer and also government-run, with public hospitals and clinics, and medical providers as employees of the NHS system.
- The social insurance model is funded primarily by employer and employee contributions like private markets. Moreover, the social insurance funds are not run by the government, and yet as in nationalized health care, there is still a public guarantee of basic health care for all.

Gregorius YP Asmara

David Cummiskey. “Health Care Justice: The Social Insurance Approach.” Dalam International Public Health Policy and Ethics. Dordrecht: Springer, 2008.

Next Page

Rekomendasi

- Pemenuhan prinsip *justice* sebagai salah satu pemenuhan prinsip fundamental etika biomedis – proporsional terhadap masing-masing subjek hukum terkait
- Penegasan norma standar profesi, standar pelayanan (profesi), standar prosedur operasional yang dimaksud dalam peraturan perundang-undangan dan keberlakuannya
- Tolok ukur kualitas pelayanan dalam skema pembiayaan JKN perlu dipertegas – penegasan pada standar prosedur operasional
- Tanggung jawab negara dalam pencapaian hak perolehan kesehatan diuji dengan postulat perlindungan hukum berkemanusiaan dalam praktik kedokteran (pelayanan kesehatan)

Gregorius YP Asmara

Next Page →

Terima Kasih!

Dr. dr. Gregorius Yoga Panji Asmara, S.H., M.H., C.L.A., C.C.D., C.M.C.
lawyer | lecturer | legal auditor | contract drafter | mediator-conciliator | health management consultant | competency assessor

Disampaikan pada FGD Penelitian Disertasi Doktor Ilmu Hukum
Tanggung Jawab Negara terhadap Peserta BPJS dalam Memperoleh Layanan Kesehatan Rujukan Tingkat Lanjut
14 September 2024

linktr.ee/gegoasmara