

## LEGAL RESPONSIBILITY OF THE HEALTH SOCIAL SECURITY ADMINISTRATING AGENCY (BPJS) FOR FAILURES OF PARTICIPANTS' PERSONAL DATA

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### ABSTRACT

Law Number 24 of 2011 concerning the Social Security Administering Agency is the government's commitment to providing optimal services in the health sector. The implementation of Social Security is mandatory. BPJS Health as a data controller manages membership data which is personal data and is vulnerable to data leaks, as the results of a survey conducted in 2021 showed that 28.7% of Indonesian people had experience of misuse of personal data. This research discusses the legal responsibility of BPJS Health according to the PDP Law as well as from a civil law perspective in the event of a personal data failure. This research aims to analyze the legal accountability of BPJS Health both according to the PDP Law and from a civil law perspective. This research was carried out using normative research methods by dissecting, exploring legal sources and exploring literature that is appropriate to the research object. The conclusion of this research is that BPJS Health as a data controller must comply with the provisions of the PDP Law and fulfill its responsibilities based on the obligations that must be fulfilled including providing compensation related to the participant's right to file a lawsuit if the data controller is proven to have violated data protection principles. as well as provisions providing administrative sanctions for data controllers. From a civil law perspective, BPJS Health as a matter of public law and as a data controller can be held responsible for losses arising from failure of personal data of BPJS Health participants.

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### INTRODUCTION

Health is a human right and an element of welfare that must be realized as intended in Pancasila and the 1945 Constitution of the Republic of Indonesia. As a form of the government's commitment to providing optimal services in the health sector, Law Number 24 of 2011 concerning Organizing Bodies has been issued. Social Security, which is a government program in the form of a national social security system to provide social welfare and guaranteed protection for all people.

BPJS Health is a legal entity formed to implement the National Health Insurance (JKN) program with the principles of social health insurance (Selvia Rustyani-2023). Law Number 24 of 2011 concerning BPJS in Article 4 letter g states that BPJS participation is mandatory, therefore according to Article 10 letter e in the same law it is said that one of the tasks of BPJS is to collect and manage participant data and as is known along with data managed by BPJS is membership data which is personal data.

Personal data is data about an individual who is identified or can be identified individually or combined with other information, either directly or indirectly, through electronic or non-electronic systems. Currently BPJS health membership data has been integrated with the Population Identification Number (NIK), on the one hand it is convenient so that by just carrying a Population Identification Card (KTP) people can access the necessary health services but on the other hand this is very dangerous because of the personal data that is involved. It should not be for public consumption and there have been many cases reported about data leaks of BPJS Health

participants, where data hacking can be experienced by anyone, both the general public and government or private agencies.

The increase in data leak cases in recent years is quite worrying, where identity which is personal data is used to commit fraud or other serious crimes (Edy.S.-2018), as the results of a survey carried out in 2021 showed that 28.7% Indonesian people have experience of misuse of personal data with the most losses being the feeling of being terrorized and contacted by unwanted parties and even fraud (2021 National Survey). Apart from that, in 2021 there was also a data leak which allegedly came from BPJS Health participant data, namely there were 279 million population data in Indonesia, which was sold on the *online forum Raid Forums*. The data sold contained information about card numbers, Population Identification Numbers, cell phone numbers, *e-mail addresses*, residential addresses and even salary amounts, and in the end Kominfo blocked the "Kotz" account and the *Raid Forums online forum site* because it was deemed to contain content. which violates the provisions of laws and regulations in Indonesia, but of course blocking these sites cannot immediately overcome the problem of data that has already spread in cyberspace so that personal data security is a challenge for data controllers and the government to build adequate electronic systems and create a climate and culture who care about personal data protection (Edy. S-2023).

Responding to the leak of personal data of BPJS Health participants, BPJS Health as the data controller needs to make various efforts so that comfort can be created for BPJS Health participants and this must be in line with legal products that are born from the legal development process which of course must be able to answer all legal problems that occur. and must be responsive/populistic, including by producing legal products that contain and depict a sense of justice and are able to answer people's expectations (Mahfud MD-2017). This research aims to analyze the legal responsibility of BPJS Health according to the PDP Law when there is a leak of participants' personal data and to analyze the responsibility of BPJS Health from a Civil Law perspective.

## RESEARCH METHODS

This research is normative research which is described descriptively analytically with characteristics that describe and examine existing phenomena in an orderly, careful and objective manner. Normative legal research emphasizes the use of primary legal materials which are secondary data, secondary legal materials and tertiary legal materials (Desmon Trisandi-2024).

## RESULTS AND DISCUSSION

BPJS Health membership is a government program so in this case regulations are needed that can answer problems well, including responding to challenges from the digital world which are currently felt to be getting bigger and impossible to avoid. Law Number 27 of 2022 concerning Protection of Personal Data which aims to guarantee citizens' rights to personal protection where the protection of personal data is one of the human rights, apart from this this law also aims to raise and optimize awareness in the community and guarantee recognition of the importance of protecting personal data.

The lack of regulation regarding aspects of legal protection of personal data and the low awareness of reporting personal data violations means that the level of personal data protection violations in Indonesia tends to be high (Dashilfa. A-2023). Legal protection in principle consists of preventive legal protection and repressive legal protection with the aim of resolving disputes or problems that arise, where this repressive legal protection is carried out by involving the courts (I Nyoman D-2019). Likewise, problems that arise in BPJS Health membership include when there is a leak of personal data of BPJS Health participants where BPJS Health participants as subjects of personal data must of course receive legal protection.

According to Mochtar Kusumaatmadja, legal subjects are holders or bearers of rights and obligations, which nowadays has developed where legal subjects are not only humans/people but also include legal entities, and there is also an opinion which states that public legal entities are "fictional legal subjects" namely a group person/human being and act as one unit in maintaining the

obligations and rights of a legal entity (Jimmy. B-2021), thus BPJS Health is a public legal entity and is a legal subject and has inherent rights and obligations that must be fulfilled.

Until now, the case of leaking personal data of BPJS Health participants has never been clearly stated as to what caused it, however, if this can be proven to be due to an error, negligence or other unlawful act committed by BPJS Health, then this has violated several provisions in the Personal Data Protection Law so that BPJS Health has legal responsibility regarding leaks of personal data (One M-2024) and leaks of personal data will have a wide impact, including affecting public trust in the government (Adilla. S-2022).

BPJS Health and BPJS Health participants basically have an attachment in the form of an agreement or contractual legal relationship, namely with the rights and obligations contained in the provisions of Law Number 24 of 2011 (Asen B-2016), including Article 12 paragraph (3) which in essence, it states that BPJS Health has legal rights and obligations.

In connection with the registration process for BPJS Health participants, the author tries to trace the data change/repair process (change in BPJS Health membership from dependent participants to independent participants), so from the author's observations there is no information on *terms and conditions* relating to the protection of personal data, even though if referring to the provisions of Article 5 of the PDP Law, personal data subjects have the right to obtain information, including about the accountability of the party requesting personal data (Danrivanto. B-2023), then in Article 21 paragraph (1) of the PDP Law it is said that the controller of personal data in terms of processing Personal data is required to convey information, including about the rights of personal data subjects, in this case prospective BPJS Health participants. These provisions must of course be adhered to by BPJS Health so that the legal rules are clear and this is in line with the theory of *utilitarianism*, namely that the use of law in society is to provide great benefits (Endah. D-2022).

### **BPJS Health's legal liability according to the PDP Law in the event of a leak of participants' personal data**

BPJS Health as a personal data controller must comply with the provisions in the PDP Law which constitutes the overall effort to protect personal data in the process of personal data processing to ensure and guarantee the constitutional rights of personal data subjects. BPJS is a public legal entity which is the controller of personal data, acting either individually or jointly in determining the purposes and exercising control in the processing of personal data.

BPJS Health has legal responsibility for leaks or failures of its participants' personal data. This responsibility is based on the obligations that BPJS must fulfill by complying with the principles of personal data protection as regulated in the PDP Law, including:

1. Based on the provisions of Article 12 paragraph (1) of the PDP Law, BPJS Health participants as personal data subjects have the right to file a lawsuit and obtain compensation for violations that occur in the processing of personal data. This civil suit can be filed if the data controller is proven to have violated data protection principles (Shinta D-2023).

Compensation as stipulated in Article 12 of the PDP Law can be seen as a legal protection effort provided by the government. According to Satijipto Raharjo, legal protection is an effort to provide protection for human rights that are harmed by other people, where this is given to the community so that they can feel the right to protection provided by law, this is in line with the theory of legal protection which examines and analyzes the forms and forms of legal protection. or the purpose of protection of the protected legal subject as well as the object of protection provided by law to the subject (Salim. HS-2022).

Based on the theory above, if there is a failure in processing the personal data of BPJS Health participants which can be proven due to an error, negligence or unlawful act committed by BPJS Health then in this case BPJS Health has failed to protect the participant's personal data which is its obligation and responsibility as a personal data controller, so that personal data subjects can submit claims for compensation.

Compensation in this legal context includes several forms, namely:

- (1) In nominal form, namely in the form of an amount of money given to the victim when an unlawful act occurs intentionally without causing real harm to the victim.
- (2) In the form of compensation, it is a payment commensurate with the losses suffered by the victim.

- (3) In the form of punishment, compensation is greater than the actual loss.
2. The processing of personal data by data controllers is stated in Article 16 paragraph (1) of the PDP Law, this article is closely related to Article 47 which in essence states that personal data controllers have obligations and must be responsible for processing personal data by fulfilling obligations to implement the principles of personal data protection.
- According to Shinta Dewi Rosadi, data controllers need to take steps to implement the principles of personal data protection, including:
- (1) Drafting and implementing a privacy policy;
  - (2) Carrying out an impact assessment approach to personal data protection;
  - (3) Make agreements with parties involved in processing personal data;
  - (4) Document all processing of personal data;
  - (5) Implement high security standards to prevent failure to protect personal data; And
  - (6) Appoint a personal data protection official.
3. When there is a failure to protect personal data, the personal data controller is obliged to inform the personal data subject in writing no later than 3 x 24 (three times twenty four) hours, this statement is stated in Article 46 paragraph (1) of the PDP Law but in Article 53 paragraph (1) letter c of the provisions of Article 46 paragraph (1) is excluded because it is included in the category of public interest in the context of state administration, including social security.
- In the author's opinion, BPJS Health participants as personal data subjects should still be provided with information related to failures in protecting personal data because apart from protecting personal data being included in the protection of human rights, it is hoped that by being informed about failures in personal data protection, BPJS Health participants will be able to take steps to take steps. necessary anticipatory measures and will educate and increase public awareness to be more careful and of course on the other hand will increase the capacity and responsibility of BPJS Health as data controllers who must make various efforts so that there is no failure to protect personal data.
4. The provisions of Article 57 paragraph (1) indicate that there are 30 (thirty) articles in the PDP Law which are obligations that must be fulfilled by data controllers and if they are violated, the personal data subject can submit a claim to the personal data protection supervisory agency and the agency will impose administrative sanctions. to the personal data controller (Shinta. D-2023) as stated in Article 57 paragraph (2), the administrative witness provided may be in the form of a written warning, temporary suspension of personal data processing activities, deletion or destruction of personal data and/or administrative fines.
- In accordance with the provisions of Article 57 paragraph (5), the mechanism for imposing administrative sanctions in the form of administrative fines is regulated in more detailed statutory regulations, namely PP, but up to now no PP as a derivative of the PDP Law has been issued so this PDP Law has not yet been implemented. implemented optimally, whereas as we all know , the formation of the PDP Law is a form of the government's role in protecting its people from the impacts of developments over time (Timothy. D-2023), therefore Government Regulations derived from the PDP Law are an urgent matter that must be realized immediately.

### **BPJS Health's legal liability in the event of leakage of participants' personal data from a civil law perspective.**

From a civil law perspective, BPJS Health can be held responsible for losses arising from leaks of participants' personal data, namely as follows:

1. Article 1365 of the Civil Code, this article contains forms of compensation that are imposed on the wrong party, causing losses both material and immaterial, this compensation occurs because of a mistake, not because of an agreement (Indah.S.-2020). Thus, if the leak of personal data of BPJS Health participants can be proven to have occurred due to an element of error in an unlawful act, then based on the provisions of Article 1365 of the Civil Code, BPJS Health must compensate for the losses suffered by the participant.
2. Article 1366 of the Civil Code, states that every person is responsible not only for losses caused by their actions but also for losses caused by their negligence or carelessness, then if someone is negligent which causes harm to others even without their deliberate intention still have to be responsible for the losses they cause.

In this regard, BPJS Health must ensure that it has made sufficient efforts to prevent these losses from occurring.

3. Article 1367 of the Civil Code states that in principle a person must be responsible for losses caused by his own actions and also for losses caused by the actions of people under his responsibility or caused by goods under his control.

According to Article 1 number 1 of Law Number 24 of 2011 concerning BPJS, BPJS is a legal entity so that BPJS has rights and obligations according to law (Yati. employees) who are their responsibility or may also have to be responsible for losses incurred due to errors in "goods" which in this case can be electronic systems or the like used by BPJS as data controller.

Based on the provisions of the articles mentioned above, it is reflected that there are elements of unlawful acts which can be categorized as intentional unlawful acts (Article 1365 of the Civil Code, unlawful acts without fault or elements of intention or negligence (Article 1366) and unlawful acts resulting from negligence (Article 1367).

Civil law includes material law and formal law where material law is realized in the form of laws which require formal law to be implemented (Efa.L-2019). The PDP Law is material law and in cases where there is a failure in the personal data of BPJS Health participants in the form of leakage of personal data, as explained above, a civil lawsuit can be filed if the data controller is proven to have violated the principles of data protection and BPJS Health participants as personal data subjects have the right to receive compensation in the event of a personal data breach and BPJS Health as the data controller, apart from being obliged to provide compensation, is also subject to administrative sanctions and this is in line with the provisions in the Civil Code, namely Article 1365, Article 1366 and Article 1367.

## CONCLUSION

BPJS Health as a data controller must comply with the provisions of the PDP Law and fulfill its responsibilities based on the obligations that must be fulfilled by BPJS Health, including providing compensation related to the rights of BPJS Health participants as personal data subjects who can file a lawsuit if the data controller is proven to have committed a violation. principles of personal data protection, apart from that BPJS Health can be subject to administrative sanctions if it is proven that a personal data breach has occurred.

BPJS Health is responsible for violations of personal data resulting from electronic system failures or due to negligence or carelessness on the part of BPJS employees.

## BIBLIOGRAPHY

- Adilla Septiani, et al, *The Role of E-government in Public Services* , Journal of Social Sciences and Education p-ISSN:2721-2491 e-ISSN: 2721-2246, Vol 3, No 5, November 2022.
- Asen B, *Agreement between Participants and BPJS in the Health Sector According to Law No.24 of 2011* , Lex Crimen Vol.V/No.3/Mar/2016.
- Danrivanto Budhijanto, *Personal Data Protection Law in Indonesia Cyberlaw and Cybersecurity* , Refika Aditama, Bandung-2023.
- Dashilfa Afifah et al, Analysis of the Government's Responsive Steps in Improving Information Security in Data Leaks at BPJS Health, November 2023, <https://www.researchgate.net/publication/375799891>.
- Desmon. T. (2024). *Criminal Acts of Misuse of Personal Data in Indonesian Cyber Law* . Indonesian Scientific Journal p-ISSN: 2541-0849 e-ISSN: 2548-1398 Vol. 9, no. 2, February 2024.
- Edy Santoso, Andriana, *Insecurity in Consumer Data Protection in the eHealth Sector, De Jure Legal Research Journal* , Volume 23 Number 1, P-ISSN: 1440-5632, E-ISSN: 2579-8561, March 2023.
- Edy Santoso, *The Influence of the Era of Globalization on Business Law in Indonesia* , Kencana, Jakarta-2018.
- Efa Laela, *Kapita Selecta Indonesian Civil Procedure Law* , Mandar Maju, Bandung-2019.

- Endah Dewi Nawangsasi Sukarton, *Privacy Protection in the New Normal Digital Lifestyle Era Regarding Cyber Power* , Refika Aditama, Bandung, 2022).
- Indah Sari, *Unlawful Acts (PMH) in Criminal Law and Civil Law* , Scientific Journal of Aerospace Law-Faculty of Law, Marshal Suryadarma Dirgantara University, Volume 11 No.1, September 2020.
- I Nyoman Dharma Wiasa, *Implementation of Consumer Protection for BPJS Participants in Health Services at Sanglah General Hospital Denpasar* , Journal of Legal Analysis, Volume 2, Number 2, ISSN: 2690-4959, September 2019,
- Jimmy Bastian et al, *Public Legal Entities as Justitiabelen in State Administrative Courts* , Journal of Legal Studies, Volume 17, Number 2, August 2021.
- Code of Civil law.
- Moh. Mahfud MD, *Legal Politics in Indonesia* , Raja Grafindo Persada, Jakarta, 2017.
- Mochtar Kusumaatmadja, Arief Sidharta, *Introduction to Legal Science, a First Introduction to the Scope of Application of Legal Science* , Alumni, Bandung-2016.
- One Maulida, *Responsibility of the Health Social Security Administering Body (BPJS) for Leaks of User Personal Data in a Criminal Law Perspective, Indonesian Journal of Law Justice* , Volume 1, Number 2, 2024.
- Salim HS, Arlies Septiana Nurbani, *Application of Legal Theory in Thesis and Dissertation Research* , Rajawali Grafindo Persada, Depok-2022).
- Selvia Rustyani, *Efficiency and Productivity of BPJS Health 2014-2021* , National Health Insurance Journal Volume 3 Number 2 ASSN: 2798-6705, December, 2023.
- Sinta Dewi Rosandi, *Discussion of the Personal Data Protection Law (RI Law No.27 of 2022)*, Ginar Graphics, Bandung, 2023.
- 2021 National Survey, *Public Perceptions of Personal Data Protection* , Ministry of Communication and Informatics, 2021.
- Timotius Djaja Saputra, Rasji, *Protection of Personal Data as Fulfillment of the Right to Privacy in the Digital Era* , e-ISSN: 2550-0813 | p-ISSN: 2541-657X | Vol 10 No 1 of 2023 Pg. : 349-357 NUSANTARA: Journal of Social Sciences available online <http://jurnal.um-tapsel.ac.id/index.php/nusantara/index>
- 1945 Constitution.
- Law Number 24 of 2011 concerning the Social Security Administering Agency
- Law Number 27 of 2022 concerning Protection of Personal Data.
- Yati Nurhayati, *Textbook for Introduction to Legal Studies*, Nusa Media, Bandung-2020.
- Internet :
- <https://www.bbc.com/indonesia/indonesia-57196905> , accessed 21 May 2021
- <https://tekno.kompas.com/read/2021/05/25/13304797/bpjs-kesehatan-akui-adabesar-peretasan-data-279-juta-warga-ri> , accessed 25 May 2021.
- <https://www.Hukumonline.com/klinik/a/respons-bayar-bpjs-atas-kebocoran-data-personal-pesertanya-lt6389d13f91363/> accessed December 2, 2022.
- <https://fahum.umsu.ac.id/perbuatan-melawan-Hukum/> accessed February 11, 2024.