# UNILATERAL CONTRACT IN THE COOPERATION BETWEEN BPJS HEALTH AND HOSPITALS: AN ANALYSIS OF PARTY IMBALANCE

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**Abstract**

*The cooperation between BPJS Kesehatan (Indonesia's National Health Insurance Agency) and hospitals represents a form of public–private partnership (PPP) with distinctive characteristics within the national health system. In practice, the contractual relationship between these two entities is often perceived as placing BPJS Kesehatan in a more dominant position. This occurs because BPJS simultaneously functions as regulator, purchaser of health services, and supervisor of contract implementation. This study aims to examine the legal characteristics of the cooperation contract, assess the extent to which unilateral elements emerge within its regulatory framework, and analyze the implications of such imbalance for hospital autonomy, legal certainty, and the economic sustainability of healthcare institutions.*

*Using a normative juridical method, this research reviews primary legal sources such as Law No. 24 of 2011 on BPJS, BPJS Regulation No. 1 of 2014 concerning Cooperation with Healthcare Facilities, and Article 1338 of the Indonesian Civil Code. These sources are supported by secondary literature on administrative law theory and public contract concepts.*

*The analysis shows that the cooperation contract between BPJS Kesehatan and hospitals tends to be substantively unbalanced, mainly due to the discretionary authority of BPJS to interpret, modify, and even terminate the contract unilaterally. This condition weakens the bargaining position of hospitals and may create structural inequality in the implementation of the national health insurance system.*

*These findings pose challenges to the principles of contractual justice and good governance, particularly with regard to fairness, transparency, and accountability. This research recommends restructuring the cooperation into a more equitable bilateral administrative contract and offers conceptual contributions to the development of public contract law and reform of the BPJS system in Indonesia.*

***Keywords:*** *BPJS Kesehatan, unilateral contract, public–private partnership, contractual justice, hospital cooperation, administrative law.*

# KONTRAK SEPIHAK DALAM KERJA SAMA BPJS KESEHATAN DAN RUMAH SAKIT: ANALISIS KETIMPANGAN PARA PIHAK

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**Absrak**

*Kerja sama antara BPJS Kesehatan (Badan Penyelenggara Jaminan Sosial Kesehatan) dan rumah sakit merupakan bentuk kemitraan publik–swasta (public-private partnership/PPP) yang memiliki karakteristik khusus dalam sistem kesehatan nasional. Dalam praktiknya, hubungan kontraktual antara kedua entitas ini sering dianggap menempatkan BPJS Kesehatan dalam posisi yang lebih dominan. Hal ini terjadi karena BPJS berperan sekaligus sebagai regulator, pembeli layanan kesehatan, dan pengawas pelaksanaan kontrak. Penelitian ini bertujuan untuk mengkaji karakteristik yuridis kontrak kerja sama tersebut, menilai sejauh mana unsur-unsur sepihak muncul dalam pengaturannya, serta menganalisis implikasi ketimpangan itu terhadap otonomi rumah sakit, kepastian hukum, dan keberlanjutan ekonomi institusi kesehatan.*

*Dengan menggunakan metode yuridis normatif, penelitian ini menelaah sumber hukum primer seperti Undang-Undang Nomor 24 Tahun 2011 tentang BPJS, Peraturan BPJS Kesehatan Nomor 1 Tahun 2014 tentang Kerja Sama dengan Fasilitas Kesehatan, serta ketentuan Pasal 1338 Kitab Undang-Undang Hukum Perdata. Sumber tersebut diperkuat dengan literatur sekunder mengenai teori hukum administrasi dan konsep-konsep kontrak publik. Hasil analisis menunjukkan bahwa kontrak kerja sama antara BPJS Kesehatan dan rumah sakit memiliki kecenderungan tidak seimbang secara substansial, terutama karena adanya kewenangan diskresioner BPJS untuk menafsirkan, mengubah, bahkan mengakhiri kontrak secara sepihak. Kondisi ini melemahkan posisi tawar rumah sakit dan berpotensi menciptakan ketidaksetaraan struktural dalam pelaksanaan sistem jaminan kesehatan nasional.*

*Temuan tersebut menimbulkan tantangan terhadap prinsip keadilan kontraktual (contractual justice) dan asas good governance, khususnya dalam hal fairness, transparansi, dan akuntabilitas. Penelitian ini merekomendasikan restrukturisasi menuju kontrak administratif bilateral yang lebih setara, serta menawarkan kontribusi konseptual bagi pengembangan hukum kontrak publik dan reformasi sistem BPJS di Indonesia.*

*Kata Kunci: BPJS Kesehatan, kontrak sepihak, kemitraan publik-swasta, keadilan kontraktual, kerja sama rumah sakit, hukum administrasi.*

## INTRODUCTION

The National Health Insurance (JKN) system administered by BPJS Health is designed to ensure equitable access to healthcare services through a mandatory social insurance scheme. In its operation, BPJS Health establishes cooperation contracts with hospitals as advanced-level referral healthcare facilities. However, this contractual relationship is often criticized as unbalanced because BPJS Health occupies a dominant position in

determining service standards, tariffs, payment mechanisms, and hospital performance assessment procedures. This imbalance raises important legal issues regarding the equality of parties in public contracts and its impact on the sustainability of hospital services, both public and private.[1]

The background of this issue has become increasingly relevant as several previous studies indicate a tendency toward unilateral contracts (adhesion contracts) in the relationship between BPJS and healthcare facilities. Hospitals are often placed in a position where they must accept contractual terms without adequate negotiation, given that their operational sustainability heavily relies on cooperation with BPJS Health. Hospitals frequently face risks of financial losses due to delayed claim payments, strict verification requirements, and regulatory changes made internally by BPJS without effective consultation. This situation prompts questions regarding legal certainty and protection for healthcare providers within the JKN scheme.[2]

Previous studies further reinforce the urgency of this research. First, the study by Sari (2019) shows that BPJS Health has broad authority in determining service standards and INA-CBG's tariffs without proportionally involving hospitals as strategic partners. However, the study provides limited discussion on contractual legal aspects, particularly regarding the equality of parties. Second, research by Pranata (2020) reveals that hospitals experience administrative pressure due to claim verification mechanisms perceived as unilateral. Nevertheless, the study focuses more on managerial aspects and does not explore the legal implications of such practices. Third, the research conducted by Widodo (2021) examines conflicts of interest in healthcare service contracts but does not relate them to public contract theory and the principles of good governance.[3]

The strength of previous studies lies in their ability to empirically portray the dynamics between BPJS Health and hospitals and highlight the problems occurring in healthcare service implementation. However, these studies have several limitations, especially in terms of legal analysis of the structural framework of the BPJS Health contract. No research has comprehensively examined the imbalance in the positions of the parties from the perspective of administrative law, public contract law, and the equality principle in legal relationships involving public bodies and the private sector. This analytical gap is what this research seeks to bridge. **This research holds significant urgency because** the cooperation contracts of BPJS Health serve as the legal foundation for all operational mechanisms within the National Health Insurance (JKN) system. Any imbalance in these contracts can directly affect the quality of healthcare services, the operational sustainability of hospitals, and public trust in the national health insurance system. In the context of public service delivery, a contract functions

[1] [1] Sari, L. (2019). *Analisis Kewenangan BPJS dalam Penetapan Tarif INA-CBG's*. Jurnal Kebijakan Kesehatan

[2] Pranata, D. (2020). *Manajemen Verifikasi Klaim BPJS Kesehatan pada Rumah Sakit Swasta*. Jurnal Administrasi Rumah Sakit.

[3] Widodo, A. (2021). *Konflik Kepentingan dalam Kontrak Pelayanan Publik*. Jurnal Hukum Administrasi Negara.

not only as a legal instrument but also as a policy tool that determines the effectiveness of state program implementation. Therefore, a thorough legal analysis of the nature of BPJS Health contracts becomes essential to ensure that the legal relationship between the state and service providers is governed by principles of fairness, proportionality, and accountability.

From a theoretical perspective, this research employs key concepts in administrative law, including public body discretion, the principle of equality in public services, and theories of administrative contracts. In the relationship between BPJS Health and hospitals, the contract does not fall strictly within the realm of private law but contains public elements because it involves the execution of state functions in ensuring public health. This situation creates a dualistic legal character that cannot be fully explained by classical private contract theory. Thus, the public contract theory becomes relevant for analyzing the structure and the nature of BPJS authority within these agreements.

This research also contributes by offering solutions to the shortcomings found in previous studies. Through a normative examination of the legal framework governing BPJS Health, this study seeks to formulate a more balanced contract model between BPJS Health and hospitals. Such a contract model is expected to reduce positional inequality through transparent oversight mechanisms, non-disadvantaging contractual provisions, and guarantees for the continuity of healthcare services. Furthermore, this study identifies contractual areas that may be vulnerable to misuse as the basis for administrative actions that weaken the position of hospitals.

Based on the above elaboration, the central **research question** of this study is: *What are the juridical characteristics of the cooperation contract between BPJS Health and hospitals, to what extent is the contract unilateral, and what are the implications for the legal standing and operational sustainability of hospitals in the implementation of JKN?* This question forms the basis for analyzing contractual inequality and for formulating recommendations for a more equitable and proportional cooperation model.

This study employs a **normative juridical method** with a statute approach, conceptual approach, and case approach involving disputes related to BPJS Health contracts that have been brought to court or identified by the Audit Board of Indonesia (BPK). This method is applied by examining Law No. 24 of 2011 on BPJS, BPJS Health Regulation No. 1 of 2014, and the general principles of good governance. Secondary data are obtained from academic journals, research reports, and relevant administrative law literature.

The objectives of this research are to: (1) identify and analyze the characteristics of the cooperation contracts between BPJS Health and hospitals; (2) assess the presence of inequality in the positions of the parties as well as unilateral elements within the contract structure; and (3) formulate the juridical implications of such inequality for legal certainty and the continuity of hospital services.

Through this analysis, the study is expected to provide normative contributions to improving the design of BPJS Health contracts so that they become fairer, more transparent, and aligned with the principles of good governance.

## FORMULATION OF THE PROBLEMS

1. What are the juridical characteristics of the cooperation contract between BPJS Health and hospitals in the implementation of the National Health Insurance (JKN)?
2. Are there indications of unilateral elements (unilateral/adhesion contract) within the structure of the contract?
3. What are the juridical implications of such contractual imbalance for legal certainty, service sustainability, and the bargaining position of hospitals within the JKN system?
4. How does the contractual imbalance impact hospitals?

## RESEARCH METHOD

This study employs a **normative juridical method**, which is a legal research method focused on examining norms, principles, and applicable legal rules. The normative juridical method is used because the issues analyzed relate to the cooperation contract between BPJS Health and hospitals as a legal instrument within the implementation of the National Health Insurance (JKN). This research does not examine social behavior directly but instead analyzes how the law should regulate equality between parties in public contracts.[4]

Several approaches are used in this study:

1. **Statute Approach**, which involves examining Law No. 24 of 2011 on BPJS, BPJS Health Regulation No. 1 of 2014 on Cooperation with Healthcare Facilities, and contractual provisions in the Indonesian Civil Code, particularly Articles 1320 and 1338 concerning the principle of freedom of contract.
2. **Conceptual Approach**, by reviewing concepts such as public contracts, administrative contracts, the principle of equality before the law, the principles of good governance, and theories of abuse of authority in administrative law.
3. **Case Approach**, which includes examining relevant court decisions and audit reports, including findings from the Audit Board of Indonesia (BPK) and disputes related to hospital claim verification by BPJS Health. This approach is used to understand how legal norms are applied in practice.

The legal materials consist of primary, secondary, and tertiary legal sources. **Primary legal materials** include laws, BPJS regulations, and court decisions. **Secondary legal materials** comprise books, academic journals, and research reports discussing BPJS Health governance and public contracts. **Tertiary legal materials** include legal dictionaries and encyclopedias used to clarify technical terminology.[5]

Legal materials are collected through **document study**, a library research method used to obtain and classify relevant legal norms. All legal materials are then analyzed using **qualitative analysis techniques** by interpreting legal norms, comparing literature, and drawing juridical arguments based on legal reasoning. Qualitative

[4] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: Rajawali Press, 2014), hlm. 13.

[5] Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2016), hlm. 93.

analysis is used to assess whether BPJS Health contracts contain unilateral elements, to evaluate their implications for hospitals, and to determine how such contracts should be structured according to public law theory.[6]

Through this normative juridical method, the research is expected to provide a comprehensive analysis of the legal positions of the parties in BPJS Health contracts and formulate normative recommendations for contractual reform to create a more equitable cooperation relationship.

## RESEARCH FINDINGS AND DISCUSSION

### A. Overview of the Cooperation Contract Between BPJS Health and Hospitals

Cooperation between BPJS Health and hospitals serves as a fundamental pillar in the implementation of the National Health Insurance (JKN) program. Normatively, this legal relationship is established through a written Cooperation Agreement (PKS), which is standardized and determined by BPJS pursuant to the authority granted under Law No. 24 of 2011 concerning BPJS and Presidential Regulation No. 82 of 2018 on Health Insurance. On paper, this PKS is an administrative contract that regulates the rights and obligations of both parties, participant service mechanisms, claim calculation and payment systems, as well as dispute resolution procedures.

The research findings indicate that, in practice, the contract does not function as a free and balanced agreement. Hospitals, as healthcare facilities, occupy the position of recipients of a standard-form ("adhesion") contract, where most clauses cannot be negotiated. BPJS acts as the dominant party due to its authority as the organizer of social security and technical regulator of healthcare services and financing.

This characteristic leads to contractual imbalance, which becomes the central focus of this analysis. Several indicators of imbalance include:

1. the unilateral nature of the contract,
2. BPJS' extensive authority over claim verification,
3. the limited appeal mechanisms available to hospitals,
4. the determination of INA-CBG's tariffs that do not reflect real hospital costs, and
5. the risk of unilateral termination of the contract.

These phenomena create inequality in the legal standing of the parties, even though the principles of proportionality, balance, legal certainty, and good faith are fundamental principles in contract law.

### B. Juridical Characteristics of the Cooperation Contract

#### 1. Administrative Contract and Standard Form Contract

The Cooperation Agreement (PKS) between BPJS Health and hospitals is essentially an administrative contract because one of the parties is a public legal entity performing state functions in the field of social security. From the perspective of administrative law, administrative contracts possess characteristics distinct from private contracts. Public contracts are

[6] Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, (Yogyakarta: Gadjah Mada University Press, 2015), hlm. 45–48.

not merely based on the principle of freedom of contract but also contain elements of state authority vested in one party.

Theoretically, administrative contracts have several essential features:

1. **A primary objective of serving public interest**, meaning the agreement is not oriented toward economic profit but toward the effective and sustainable provision of public services.
2. **Contract provisions that are unilaterally drafted by the public agency**, as they are tied to minimum service standards, administrative procedures, and supervisory mechanisms that must be followed by private entities.
3. **Special prerogative powers** granted to the public body, enabling unilateral modification, termination, or administrative sanctions to protect the public interest.

These characteristics are found in the PKS between BPJS Health and hospitals. All clauses are drafted by BPJS as national standards that apply uniformly to all healthcare facilities. Hospitals — which rely on BPJS cooperation to carry out JKN claim services — have no adequate negotiation space. Their choices are limited to accepting or declining the agreement entirely. This take-it-or-leave-it position is a major feature of standard-form contracts.

Lannyati and colleagues explain that standard contracts are marked by unilateral dominance of the drafting party, leaving the other party without equal opportunity to negotiate or develop balanced clauses. Standard contracts are not prohibited under Indonesian law, especially in public sectors that require administrative uniformity. However, such contracts can create inequality in bargaining power when one party holds substantially greater economic or regulatory authority.[7]

In the context of the BPJS–hospital PKS, this imbalance fosters potential injustice, such as clauses granting BPJS discretionary power to delay payments, assess service eligibility, or terminate cooperation unilaterally. Hospitals, being the weaker party, often accept all terms even when certain provisions threaten their operational sustainability. Hence, juridical analysis is necessary to ensure contractual justice in public-sector agreements.

## 2. The Principle of Proportionality in Contracts

Under contract law theory, the principle of proportionality is a fundamental principle requiring a balance between the rights and obligations of both parties. This principle emphasizes not only formal equality but also substantive equality—where benefits, risks, and burdens must be allocated fairly according to each party's role, capacity, and contribution. The principle serves to prevent unilateral dominance and ensure substantive justice.[8]

Normatively, the PKS between BPJS Health and hospitals acknowledges proportionality as a foundational principle of JKN implementation. However, the alignment between this formal recognition and actual implementation remains weak. Solikah notes that the acknowledgment of

[7] Niniek Lannyati, Sarwono Harjomulyadi, & Taufiq Taufiq, *Penerapan Prinsip Kesetaraan bagi Para Pihak dalam Kontrak Baku*, Konstruksia.

[8] Solikah, *Penerapan Asas Proporsionalitas dalam Kontrak Layanan Kesehatan antara Rumah Sakit dan BPJS*, JHEK, Universitas Hang Tuah

proportionality in PKS documents is merely "administrative formality" and does not materialize substantively in risk distribution and authority.

In practice, hospitals bear the greatest operational risk. They must provide facilities, personnel, medication, and maintain service quality according to national standards. Meanwhile, BPJS controls claim verification, payments, and the determination of medical service standards without sufficient negotiation channels.[9]

This imbalance demonstrates that hospitals—despite being the frontline of service delivery—do not have proportionate power over financing and service assessment processes. The weak implementation of proportionality results in **relational dependency**, where hospitals become highly dependent on BPJS without having equal bargaining power. This creates **structural injustice**—a form of unfairness embedded not through explicit violations of law but through the institutional structure of the contract itself.

Thus, while the proportionality principle is normatively acknowledged, its implementation in the BPJS–hospital contractual relationship remains limited and requires reevaluation to ensure substantive fairness.[10]

### 3. Determination of INA-CBG's Tariffs as a Unilateral Instrument

The determination of INA-CBG's (Indonesia Case-Based Groups) tariffs is a fundamental component in the claim payment mechanism within JKN. These tariffs are set nationally by the Ministry of Health through Minister of Health Regulation No. 52 of 2016, later amended by various subsequent regulations. Hospitals must comply with these tariffs and have no role in determining their values.

This mechanism clearly reflects unilateral characteristics in the contractual relationship. Ideally, healthcare service providers would be given a consultation role to ensure the tariff aligns with real service costs. However, under the JKN scheme, INA-CBG's tariffs are imposed mandatorily without negotiation.

The fixed INA-CBG's tariffs often fail to align with real healthcare costs due to several reasons:

1. **Lack of responsiveness to rising prices of medicines and medical equipment**.
2. **Failure to accommodate regional cost variations**, despite significant differences between remote regions and major cities.
3. **Greater burden on private hospitals**, which must cover all operational costs without government subsidies.
4. **Ignorance of accreditation differences**, where higher-accredited hospitals incur higher expenses yet receive the same tariff.
5. **Inability to fully account for complex comorbidities**, causing frequent underpayment for severe cases and overpayment for mild cases.[11]

[9] Ajik Sujoko, *Asas Kebebasan Berkontrak dalam Kontrak Pemerintah*, Masalah-Masalah Hukum, Undip.

[10] Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, Yogyakarta: Gadjah Mada University Press, 2015.

These discrepancies reveal what health contract theory refers to as **structural imbalance**—imbalance caused by regulatory structures that exclude service providers from participating in tariff-setting processes. Structural imbalance weakens the bargaining position of hospitals because they must accept the mandatory tariff without negotiation.

For private hospitals, the impact is even more pronounced due to higher operational costs and the absence of state financial support.

Since INA-CBG's tariffs are imposed by binding administrative regulations, hospitals cannot request tariff adjustments even when they diverge from actual service costs. As such, the tariff clause in the PKS does not reflect the freedom of contract principle under Article 1338 of the Civil Code. Instead, it is more accurately categorized as **mandatory administrative regulation (dwingend recht)** rather than a consensual contractual provision.

**Table 1. Comparison of Hospital Cost Burdens and INA-CBG's Tariff Components**

| Aspect | Actual Hospital Costs | INA-CBG's Tariff | Implications for Contract Balance |
|---|---|---|---|
| Prices of medicines and medical devices | Experience fluctuating increases depending on supply and market conditions | Do not change periodically; remain fixed according to Ministry of Health regulations | Underpayment for cases requiring high-cost medicines |
| Interregional variations | Logistics and human resource costs are higher in remote areas | Tariffs are standardized nationally | Hospitals in remote regions bear higher financial burdens |
| Differences in hospital status (public vs. private) | Public hospitals receive subsidies, private hospitals do not | Tariffs are the same for all hospitals | Private hospitals are more vulnerable to financial deficits |
| Accreditation standards | Higher facility quality and service standard result in greater costs | Accreditation level is not considered in tariff calculation | Fully accredited hospitals bear uncompensated costs |
| Patient comorbidities | Cases with multiple comorbidities generate significantly higher expenses | CBG categories do not accurately capture severe comorbidities | Claims often fail to cover actual treatment costs |

With its standardized character, the determination of INA-CBG's tariffs has proven to be one of the main sources of contractual imbalance between BPJS

Health and hospitals. The unilaterally determined tariff structure creates a payment mechanism that does not always correspond to the actual costs of healthcare services. This situation has the potential to reduce service quality, impose financial burdens on hospitals, and weaken their bargaining position in the implementation of JKN cooperation contracts.

**4. BPJS Authority in Claims Verification**

In the context of administering the National Health Insurance (JKN), the authority to verify claims is a crucial aspect that determines whether a health service provided by a hospital to JKN participants is eligible for payment. Normatively, claim verification is regulated under BPJS Health Regulation Number 3 of 2023 concerning Verification of Health Service Claims.[1] However, this regulation shows that BPJS does not merely function as the administrator of the national insurance system but also as the entity that formulates verification guidelines, conducts verification, and makes the final decision regarding claims.

The concentration of these functions grants BPJS a dual—even multiple—authority, which in administrative law theory has the potential to create conflicts of interest. This arises because the party responsible for controlling expenditures (BPJS) is the same party that determines the validity of claims, without any independent oversight mechanism. In the ideal model of public contract governance, an external review body should exist to examine the validity of claims and ensure objective assessment.[2]

In practice, many hospital claim rejections are not caused by medical errors or violations of service procedures but rather by administrative interpretations. For example, differences in perception regarding case severity levels, discrepancies in diagnostic coding (ICD-10), or differing assessments of the need for inpatient care are frequently used as grounds for rejecting claims. Yet, most clinical decisions fall within the domain of the attending physician, not BPJS administrative verifiers.[3]

When administrative interpretation dominates the verification process, hospitals are placed in a difficult position. The decisions of BPJS verifiers are binding and cannot be contested unless the hospital submits an objection through an internal procedure that is lengthy and offers no guarantee of revising the result. This situation reflects the existence of unilateral discretionary power—decision-making authority held by one party without sufficient corrective mechanisms.

Furthermore, the concentration of authority within BPJS also affects the claims payment process. Many hospitals report delays in payment because claims are pending verification results or are required to undergo strict clinical pathway assessments. When claims are rejected, hospitals lack a strong legal basis to compel BPJS to provide payment, since all verification mechanisms are regulated and controlled unilaterally by BPJS.[4] This undermines the principle of equality before the law within public contractual relations.

From the perspective of administrative contracts, the unilateral verification authority demonstrates that the relationship between BPJS and hospitals does not fully reflect the equality of parties as required in general contract principles. Instead, it resembles a vertical relationship between a public body and private institutions that occupy a subordinate position. Thus, the verification mechanism affects not only the technical aspects of financing but also the

structural balance in the implementation of JKN contractual cooperation.

**Table 2. Analysis of BPJS Authority and Hospital Rights in the Claims Verification Process**

| Aspect | BPJS Position/ Authority | Hospital Rights/Interests | Imbalance Analysis |
|---|---|---|---|
| Formulation of verification guidelines | BPJS formulates verification standards, criteria, and claim indicators | Hospitals only follow the predetermined guidelines | Hospitals have no role in guideline formulation; inconsistent with the principle of participation |
| Implementation of verification | Verification conducted by BPJS verifiers or BPJS-appointed partners | Hospitals must provide all required documents and access | BPJS dominance in the process creates potential conflicts of interest |
| Determination of claim outcomes | Verification results are final and determined by BPJS | Hospitals may file objections, but they are non-binding | BPJS holds the final decision → unilateral discretionary power |
| Appeal mechanism | Internal BPJS procedure, without involving an independent body | Hospitals have no access to external appeal channels | Absence of external control; prone to maladministration |
| Financial impact | BPJS controls claim expenditure | Hospitals bear the risk of rejected claims | Hospitals carry financial risks that should be proportionally shared |

It can be concluded that the centralized claim verification authority held by BPJS Health constitutes one of the most significant sources of contractual imbalance between BPJS and hospitals. By controlling all stages of verification—from the formulation of guidelines, implementation, to the final determination of claim outcomes—BPJS maintains a dominant position that is inconsistent with the principles of contractual fairness, proportionality, and checks and balances. This asymmetry of authority ultimately weakens the position of hospitals as contractual partners and has the potential to undermine the sustainability of health services within the National Health Insurance (JKN) scheme.

**Table 1. Juridical Characteristics of the BPJS–Hospital Contract**

| Aspect | Regulation | Field Findings | Potential Issues |
|---|---|---|---|
| Form of Contract | Standard form contract determined by BPJS | Hospitals cannot negotiate contract terms | Imbalance of bargaining position |

| Aspect | Regulation | Field Findings | Potential Issues |
|---|---|---|---|
| Nature of Contract | Administrative (public contract) | BPJS holds special prerogative powers | Dominance of the public authority |
| Tariff Setting | INA-CBG's determined by the government | Misalignment with actual hospital costs | Risk of hospital financial deficits |
| Claim Verification | Conducted by BPJS | Unilateral interpretation | Uncertainty of payment |
| Contract Termination | BPJS may terminate if hospital is deemed non-compliant | Hospitals face difficulties terminating the contract | Hospitals placed in a highly vulnerable position |

**Research Findings and Discussion**

The findings of this study indicate that the BPJS–hospital contract exhibits the characteristics of a unilateral agreement with strong dominance from BPJS. This imbalance has broad implications for the administrative, financial, and service-quality dimensions of hospital operations. To achieve a balanced legal relationship, a more participatory, transparent, and proportional contract design is required.

**2. Indications of Unilateral Elements (Unilateral/Adhesion Contract) in the Contract Structure**

The study identifies several provisions that reflect unilateral characteristics. First, BPJS has the authority to unilaterally interpret contractual provisions in cases of discrepancies related to service standards or claim submissions. Second, BPJS has the power to modify contractual content through internal regulations—for instance, adjustments to claim verification procedures or service tariff policies—without any renegotiation mechanism with hospitals. Third, BPJS may terminate the cooperation agreement if a hospital is deemed non-compliant with service standards, yet no dispute-resolution mechanism exists that provides hospitals with equal bargaining standing.

This contract model places hospitals in a subordinate position, thus substantially fulfilling the characteristics of an adhesion contract, in which one dominant party determines all contractual terms.

**3. Imbalance of the Parties' Positions in the Perspective of Administrative Law and Public Contract Law**

From the standpoint of administrative law, BPJS Kesehatan exercises public authority that directly influences the rights and obligations of hospitals. The imbalance appears in two main aspects:

1. **Discretionary Authority**
   BPJS holds broad discretion in establishing service standards, procedures, and performance evaluations. Discretion without adequate control mechanisms may lead to maladministration, especially in cases where claim rejections occur without proportional justification.

2. **Supervisory Authority**
   BPJS acts both as regulator and purchaser of services, creating conditions with inherent conflicts of interest. Hospitals lack the bargaining power to reject BPJS decisions, even when such decisions are potentially detrimental.

From the perspective of public contract law, this legal relationship does not satisfy the principles of formal equality (equality of arms) and fair bargaining, which are essential in contracts between the state and private actors.

## 4. Impacts of Contractual Imbalance on Hospitals

The study identifies three major impacts on hospitals:

a. **Operational Impact**
   Hospitals experience increased administrative burdens due to complex and frequently changing claim-verification requirements. Workloads for medical and administrative personnel rise, while opportunities for service innovation remain limited.

b. **Financial Impact**
   The nationally standardized INA-CBG's tariff system creates operational deficits for certain hospitals—particularly private hospitals and those located in remote areas. Delays in claim payments also disrupt hospital cash flow.

c. **Legal Impact**
   The absence of negotiation space prevents hospitals from demanding revisions to contractual provisions even when such provisions no longer align with evolving service needs. This situation undermines legal certainty for hospitals.

## 5. Relevance of Findings to Administrative Contract Theory and Good Governance Principles

The study shows that the BPJS cooperation agreement does not fully align with good governance principles, particularly:

- **Transparency**, as internal policy changes are not always communicated through a dialogic process with hospitals;
- **Accountability**, since claim-rejection decisions are often issued without clear justification;
- **Proportionality and fairness**, due to BPJS's overwhelmingly greater authority compared to hospitals.

In administrative contract theory, there should be a system of checks and balances to prevent abuse of authority by public bodies. However, such mechanisms are not evident in the current BPJS contract practice.

## 6. Normative Solutions and a More Balanced Contract Model

This study proposes several normative recommendations:

1. The contract should be redesigned as a bilateral administrative contract, not an adhesion contract.
2. Any internal policy changes by BPJS must be accompanied by mandatory consultation mechanisms with hospitals.
3. Claim disputes should be reviewed by an independent forum rather than solely by BPJS verifiers.
4. External oversight—such as by the Ombudsman or the Ministry of Health—must be strengthened.

5. INA-CBG's tariffs should be reviewed based on regional conditions so as not to disadvantage specific hospitals.

Such a model would be more consistent with administrative law principles and the ideals of equitable public service.

**7. Synthesis of Discussion**

Based on the normative analysis, this study concludes that the cooperation agreement between BPJS Kesehatan and hospitals displays unilateral characteristics that generate a structural imbalance between the parties. This imbalance has direct implications on the legal, operational, and financial aspects of hospital management. Because the contract functions as a public-sector instrument, structural reform is required to ensure fairness, transparency, and adequate protection for hospitals as frontline healthcare providers.

**Conclusion**

This study demonstrates that the cooperation agreement between BPJS Kesehatan and hospitals constitutes an administrative contract implemented within the framework of BPJS's public mandate as the administrator of the National Health Insurance (JKN) system. However, the contract structure does not reflect the equality of parties as required by fundamental principles of contractual fairness and public-contract doctrine. BPJS's dominance in setting service standards, INA-CBG's tariffs, claim-verification mechanisms, and the authority to interpret or amend contractual provisions without negotiation shows that the agreement operates essentially as an adhesion contract.

This imbalance creates significant consequences for hospitals. Operationally, hospitals face administrative burdens and restricted service flexibility. Financially, uniform tariffs and delayed claim payments jeopardize hospital cash-flow stability and threaten service continuity. Legally, the absence of meaningful negotiation mechanisms deprives hospitals of the ability to challenge or renegotiate unfavorable contractual terms, leading to legal uncertainty and potential abuse of authority by BPJS.

From the perspective of administrative law and public-contract theory, these conditions do not align with the principles of good governance—particularly proportionality, transparency, participation, and accountability. Thus, this study asserts that the BPJS cooperation contract must be redesigned as a bilateral administrative agreement that provides negotiation space, objective dispute-resolution mechanisms, and strengthened external oversight. Contract reform is essential to create a more just, sustainable, and legally certain health-insurance system for all healthcare facilities in Indonesia.

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