BIS HUMANITIES AND SOCIAL SCIENCE

Volume 3 2025 | DOI: 10.31603/bishss.415
ASEAN Conference of Law Schools 2025

UNIMMA PRESS
Universitas Muhammadiyah Magelang

Protection of citizens' rights to health insurance in the realization of universal health coverage

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Abstract

Law No. 40 of 2004 concerning the National Social Security System (SJSN) addresses Universal Health Coverage (UHC) by requiring every resident to have access to comprehensive health services through a pre-effort system. The constitutional foundation is provided by Article 28H paragraph (1) of the 1945 Constitution, which affirms that "every person has the right to live prosperously physically and spiritually, to reside, and to obtain a good and healthy environment as well as the right to receive health services." However, the implementation of health services has not fully resolved the complexity of health service management and financing, which increasingly depends on advanced and costly health technologies. This study aims to examine the protection of citizens' rights to health insurance in realizing universal health coverage. The research employs a normative juridical method using a legislative (statute) approach, a historical approach, and a philosophical approach. Secondary data, comprising primary and secondary legal materials, were collected through library research. The findings reveal that the protection of citizens' rights to health insurance in the realization of universal health coverage constitutes the fulfillment of basic rights to health. The government, therefore, bears the responsibility to guarantee adequate, equitable, and optimal access to health services for every citizen as part of its obligation to respect, protect, and fulfill constitutional rights.

Keywords

Universal Health Coverage (UHC), National Social Security System (SJSN), Right to Health, Constitutional Rights, Health Insurance

Published:
October 1, 2025

Selection and Peer-review under the responsibility of the ASEAN Conference of Law Schools 2025 Committee

Introduction

Health is a fundamental human right and a vital component of welfare that must be realized in accordance with the ideals of the Indonesian nation as stated in Pancasila and the 1945 Constitution. Therefore, every activity and effort to improve the highest possible degree of public health is carried out based on the principles of non-discrimination, participation, protection, and sustainability, which are very important for the formation of Indonesian human resources, the enhancement of the nation's resilience and competitiveness, as well as national development.

Furthermore, Article 28H Paragraph (1) of the 1945 Constitution states that every person has the right to live prosperously in body and soul, to have a place to live, and to enjoy a good and healthy environment as well as the right to obtain health services. Article 34 Paragraph 3 further explains that the state is responsible for providing proper health service facilities and public service facilities. However, in reality, Indonesia still faces the problem of low public access to quality health services (BPJS, 2020). The implementation of health services is unable to address the complexity of the management and financing of health services, which increasingly depends on health technology that is becoming more expensive and complicated (Sulastomo, 2006).

The principle of legal protection against government actions is based on and sourced from the concept of recognition and protection of human rights. Historically, in the West, the emergence of concepts about recognizing and protecting human rights was directed towards limitations and placing obligations on both society and the government. The second principle underlying legal protection against government actions is the principle of the rule of law. Related to the recognition and protection of human rights, such recognition and protection take a primary place and can be linked to the goal of the rule of law.

As a fundamental right that must be respected and fulfilled by the state, the right to health essentially has the same position as other fundamental rights, as stated by Paul Hunt: "*Although the right to health is a fundamental human right that has the same international legal status as freedom of religion or the right to a fair trial, it is not as widely recognized as these and other civil and political rights*" (Paul Hunt). Thus, the right to health as a fundamental right holds the same status as freedom of religion and other basic rights, even though the right to health is not yet widely recognized as a human right.

If we look at international conventions related to the fulfillment of the right to health, the Universal Declaration of Human Rights (UDHR) is the starting point where the right to health was declared as part of human rights. Article 25 Paragraph (1) of the UDHR states that everyone has the right to an adequate standard of living for health and well-being of themselves and their family, including the right to food, clothing, housing, medical care, and necessary social services (UDHR).

The provisions regarding the right to health further developed under the second generation of human rights, which is marked by the adoption of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (ICESCR). In the Universal Declaration of Human Rights (1948), representatives from various countries agreed to support the rights contained therein "as a common standard of achievement for all peoples and all nations." Then in 1976, the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights were approved by the UN General Assembly and declared to be in effect (Satya Arinanto, 2015).

Thus, the state has the obligation to take steps, both individually and through international assistance and cooperation, to realize the fulfillment of the right to health. In this regard, it may be asserted that the conception of the right to health is a part of the diversity of national legal systems that refer to or follow international legal norms regarding human rights (Sunaryati Hartono, 2015). The state has established measures to realize the fulfillment of the right to health through the National Health Insurance, which is part of the National Social Security System. However, health insurance for every individual (citizen) should be an obligation of the state to fulfill without discriminating between one citizen and another.

In the implementation of the national health insurance, the concept used is that of social health insurance covering the entire population, where participation is mandatory for all Indonesians (citizens). With regard to this participation, contributions are set for all participants. The state divides the membership into two types: Contribution Assistance Recipients (PBI) of health insurance and Non-Contribution Assistance Recipients (Non-PBI) of health insurance. The contribution assistance recipients include the poor and underprivileged whose contributions are paid by the state, whereas non-contribution assistance recipients are participants who are not classified as poor or underprivileged and whose contributions are not paid by the state.

Based on the above background, the government plays a very important role in determining various policy alternatives in implementing the national health insurance system. To address these issues and to finance health care to guarantee universal health coverage for the public, the protection of citizens' rights to health insurance is required.

Method

This study uses a normative legal research method with a comparative law approach (Marzuki, 2019), which aims to analyze the differences and similarities in the legal frameworks and approaches to counter-terrorism between Indonesia and Malaysia. The data used consist of primary legal sources such as laws, government regulations, and official policies related to counter-terrorism in both countries, as well as secondary legal sources including scientific literature, research reports, and relevant case studies to enrich the analysis and provide empirical context to the comparison conducted.

Results and discussion

State's duty in fulfilling the right to health

According to the modern concept (in a Welfare State or Social Service State), a state has a duty to organize the public interest to provide the greatest prosperity and welfare based on justice within a Rule of Law state (Amrah Muslimin, 2005). In this regard, the state's purpose (*staatswill*) indicates the ideal goals the state aims to achieve, while the state's function is the implementation of these ideal goals in concrete reality.

The fundamental philosophy of guaranteeing the right to health as a human right is the *raison d'etre* of human dignity in which public health is the pillar of nation-building. The degree and dignity of a nation are measured by the extent of its social role. Poor health quality adversely affects the functioning of government. This awareness represents the commitment of all nation-states (Hendra Nutjahjo, 2005).

With regard to this, the state should carry out its functions in realizing the right to health through obligations of conduct and obligations of result, which are part of the implementation of economic, social, and cultural rights. One principle of international law applicable to all countries, stated in various international conventions and included in the WHO Constitution, is: "*The enjoyment of the highest attainable standard of health as a fundamental right of every human being*." This principle provides a foundation for every country in formulating policies that must realize the right to health for every individual, where the right to the optimal level of health is a fundamental right of every individual. In this context, the state is demanded to respect, fulfill, and protect the right to health. The aspect of respect means that the state is obliged not to take actions that result in individuals or groups failing to attain or fulfill their rights. Fulfillment means the state must take legislative, administrative, budgetary, judicial, or other measures to ensure the realization of these rights. Protection refers to how the state implements policies to prevent and address intentional violations or neglect (Suparman Marzuki, 2011).

One of the agendas strengthening the position of human rights possessed by every individual, where the state has the duty to realize them, is found in the Vienna Declaration, stating, "*All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms*" (Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights, 1995). Due to their universal nature and interconnection between one right and another, the fulfillment and protection of human rights is a state's duty that must be fulfilled for every individual. The right to health as a human right must be fulfilled by the state in accordance with universally applicable conventions.

In this regard, human rights set minimum standards, where they do not attempt to describe an ideal social and political world. The application of human rights places the most political decisions in the hands of national leaders and all citizens. However, broadly speaking, in its implementation, human rights demand standards that impose significant limitations on laws and policymaking aimed at fulfilling and respecting human rights (James W. Nickel, 2009).

The state is the central actor holding the primary responsibility in the implementation of policies based on international law or international agreements where the right to health is protected (John Tobin, 2002). In carrying out these efforts, the state must take strategic steps in fulfilling the right to health, involving all stakeholders in the health sector, both from government and private elements.

In this case, the right to health as a human right legally establishes a relationship between the individual and the state, where the state's obligations regarding human rights must refer to three principles: respect, protect, and fulfill the right to health, which are parts of human rights (World Health Organization, 2002).

The concept of the right to health within the national health insurance system

The policy on the fulfilment of the right to health, specifically the right to health services (right to care) in Indonesia, is part of the National Social Security System. The underlying principle for drafting the National Social Security System policy began with the People's Consultative Assembly (MPR) session discussing the report of the State High Institutions in 2001 and the current conditions in Indonesia as well as the world. At that time, the MPR declared that the national crisis, which began with the monetary crisis, economic crisis, political crisis, security crisis, and trust crisis that struck Indonesia since 1997, had reached a condition that could endanger the survival of the Indonesian nation and state. The situation worsened with the threat of a global economic recession. In order to overcome this severe condition, strong determination, commitment, and unity from all components of the nation, especially state administrators, were required.

At the 2001 Annual Meeting of the People's Consultative Assembly of the Republic of Indonesia, held alongside other High State Institutions, human rights issues were also discussed. The issue of human rights at the meeting ultimately resulted in assignments related to human rights under the Law and Human Rights sector. The People's Consultative Assembly Decree Number: X/MPR/2001 assigned the president to immediately complete the investigation and prosecution process of alleged human rights violations.

From the above explanation, it appears that the topics of health and social security do not fall under the law and human rights sector but rather in the social and cultural sector, where social security is categorized under "assignments in the field of labor and social security" and health is categorized under "assignments in the field of health services."

Initially, the policy to fulfil the right to health services (right to care) in Indonesia was separate from the National Social Security System. The policy designed to fulfill the right to health was a social health insurance concept covering the entire society that adopted the social insurance concept. The right to health designed in the social health insurance concept was arranged as a subsystem within the National Social Security System, where the social security concept would be established under different regulations. However,

the discussion in the House of Representatives (DPR) agreed that Social Health Insurance be merged into the National Social Security System.

Thus, the merging of the right to health with the right to social security, both of which are also contained in the 1945 Constitution, is evident from the report of the chairman of the Special Committee on the Draft Law on the National Social Security System in the plenary meeting of the Indonesian House of Representatives held on September 28, 2004. The report stated that the draft law on the National Social Security System is a mandate from the 1945 Constitution of the Republic of Indonesia Article 28H paragraphs (1), (2), and (3) regarding the right to social security and the right to health. More specifically, Article 34 paragraph (2) of the 1945 Constitution affirms that the state develops the National Social Security System. This system is intended to provide comprehensive social security because every person has the right to social security to fulfill the basic needs of a decent life and improve their dignity in order to realize a prosperous, just, and affluent Indonesian society.

Furthermore, the merging of Health Insurance with Social Security is also emphasized by the Government in the explanation as an introduction to the draft law, stating that the National Social Security System (SJSN) also includes health insurance organized through a social insurance mechanism. The regulation of the health insurance system as a subsystem of the National Social Security System is intended to regulate the national social health insurance system as proposed in the form of a draft law on National Social Health Insurance by the House of Representatives (DPR). Therefore, there is no need to draft a separate law on national social insurance.

Consequently, health insurance is merged into the social security program, in accordance with Law Number 40 of 2004 on the National Social Security System Article 18, stating that types of social security programs include health insurance, work accident insurance, old-age security, pension security, and death security. In this case, health insurance is organized with the aim of ensuring that participants receive the benefits of health maintenance and protection in meeting basic health needs.

The fulfillment of right to health through the national health insurance

Since 1947, the United Nations (UN) Declaration of Human Rights has placed health as one of the human rights and mentioned that "every population has the right to security when they are sick." Therefore, Indonesia, as a country that has ratified the convention, is gradually obligated to realize the implementation of health insurance for all, in accordance with the country's capabilities and development (Hartini Retnaningsih, 2013).

At the 58th meeting in 2005 in Geneva, the World Health Assembly (WHA) emphasized the need to develop a health financing system that guarantees community access to health services and provides protection against financial risks. In this regard, the Resolution of the 58th World Health Assembly in 2005 recommended that all member

countries build sustainable health financing systems to guarantee health services for the entire population (Asih Eka Putri, 2011).

In establishing a sustainable health financing system to guarantee health services for all citizens, the 58th WHA explicitly issued a resolution stating that sustainable health financing through Universal Health Coverage is carried out through a social health insurance mechanism. The WHA also recommended that WHO encourage member countries to evaluate the impact of changes in health financing systems on health services as they move towards Universal Health Coverage (Ministry of Health of the Republic of Indonesia).

In Indonesia, the right to health is enshrined in the 1945 Constitution, Articles 28H and 34, and also regulated in Law Number 23 of 1992 concerning Health, which was later replaced by Law Number 36 of 2009 concerning Health. Law Number 36 of 2009 asserts that every person has the same right to access health resources and receive safe, quality, and affordable health services. Conversely, every person also has an obligation to participate in social health insurance programs.

Conclusion

The right to health based on the ICESCR in Indonesia has not yet been fully implemented. This is reflected in the implementation of facilities and health personnel, as well as the national health insurance system. Regarding facilities and health personnel, the issues include availability, affordability, equity, and quality. This situation is not in line with the provisions of Article 12 paragraph (1) of the ICESCR and the components of the right to health as elaborated by CESCR. The health insurance system in Indonesia has also not reached the expected targets because many people are still not enrolled in the health insurance program. The participation system, which should only involve poor and near-poor populations, is instead followed by middle, upper-middle, and even upper-class people. The national health insurance program should be accessible to all citizens, and the discussion about eliminating classes based on premium payments contradicts the principle of equality in Human Rights. Future regulations should prioritize several aspects because health services are a basic need for society. Furthermore, the existence of the Health Insurance Implementing Agency, which serves as the platform for the community to receive health services, must be articulated within the framework of Human Rights.

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