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National Health Insurance Policy from the Perspective of Health Law and Human Rights Protection

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Abstract

Indonesia's national health insurance promises universal coverage, but its package-based tariffs and restricted drug list create tension with patient autonomy when individuals seek clinically superior treatments outside the formulary, generating a legal dilemma between patient rights and administrative limitations. This study aims to analyse the hierarchical position of these conflicting norms and determine the conditions under which voluntary cost-sharing is legally permissible. Using a normative juridical approach with statute and conceptual methods, the research examines the relationship between the Health Law and various implementing regulations on health insurance. The findings reveal that patient rights to complete information and autonomous decision-making hold superior legal status over financing limitations. Voluntary cost-sharing is lawful when based on transparent informed consent and separate written agreements that clearly distinguish guaranteed services from additional components chosen by patients. The study concludes that current restrictions represent limits on state subsidies rather than limits on clinical quality or patient freedom. Immediate revision of implementing regulations is recommended to explicitly recognise voluntary top-up mechanisms, accompanied by standardised transparency procedures in all health facilities to ensure legal certainty and protection for both patients and healthcare providers.

Keywords

Cost-Sharing, Health Law, National Health Insurance, Patient Autonomy, Patient Rights.

1. Introduction

The health system plays a central role in creating a healthy and prosperous society. The Indonesian government has shown a strong commitment to guaranteeing every citizen's right to the highest attainable standard of health through the enactment of Law Number 17 of 2023 concerning Health (Rahman et al., 2025). This law clearly states that every person has the right to live a good, healthy, and prosperous life, including the right to obtain balanced and accountable health information, access affordable and quality services, and most importantly, the right to independently and responsibly determine the health services required (Haryanto et al., 2025; Prastyo et al., 2025). The guarantee of patient autonomy in Article 4 of this law becomes the main legal foundation that strengthens the principle of human dignity in medical practice (Umam, 2022; Nadira & Khairunnisa, 2023).

The constitutional basis of the right to health has long been recognised as a state obligation that must be fulfilled progressively (Asshiddiqie, 2015). Human rights in health services require the state not only to provide access but also to protect individual autonomy in decision-making (Kusumaningrum, 2018). In practice, the relationship between patients and healthcare providers is governed by a therapeutic transaction agreement, where medical practice is essentially a contract aimed at maintaining health, preventing disease, treating illness, and improving quality of life (Fuady, 2005). Patient autonomy, supported by complete and accurate information, is the core of valid informed consent (Hadjon, 1987; Dewi & Adiatmika, 2025).

The National Health Insurance (*Jaminan Kesehatan Nasional/JKN*) programme, managed by the Social Health Security Administration (*Badan Penyelenggara Jaminan Sosial Kesehatan/BPJS Kesehatan*), is the main instrument for the state to fulfil the right to health. JKN operates under Presidential Regulation Number 82 of 2018 as amended by Presidential Regulation Number 59 of 2024 and uses the Indonesian Case-Based Groups (INA-CBGs) prospective payment system together with the National Formulary (*Formularium Nasional/Fornas*) as cost-control mechanisms (Ministry of Health, 2023; Sari et al., 2023; Nurvidyaning et al., 2025). However, the implementation of this financing system often creates tension between administrative restrictions and clinical needs. Many studies show that INA-CBG's tariffs are frequently lower than actual hospital costs, especially in complex and catastrophic cases, leading to financial losses and reduced service quality (Annisya, 2017; Prasetyo, 2019; Arimbi et al., 2022).

Although the government has raised tariffs through Minister of Health Regulation Number 3 of 2023, the gap between real costs and BPJS Kesehatan claims remains significant (Rahayuningrum et al., 2017; Manopo & Susanti, 2025). When doctors find clinically superior treatment options that are not covered by INA-CBG's packages or national formulary, patients' right to choose the best therapy directly conflicts with JKN financing rules. Several researchers have highlighted the ethical dilemma faced by medical personnel who must choose between following JKN administrative procedures or prioritising the patient's best interest (Alayda et al., 2024; Minarni et al., 2025).

According to Desdiani et al. (2024), hospitals participating in JKN often experience serious financial difficulties because of the tariff disparity, which indirectly affects service availability and quality. Similar concerns were also expressed by Arimbi et al. (2022), who found that restrictive policies reduce hospitals' ability to provide optimal care. However, most existing studies focus on the financial and operational impacts of INA-CBGs and have not deeply analysed the legal consequences when patients, based on their autonomy rights, request medical actions outside JKN coverage and are willing to pay the cost difference. This situation creates uncertainty for both patients and healthcare providers regarding the legality and protection of voluntary cost-sharing practices.

Therefore, a clear research gap exists in the normative analysis of conflicts between patient autonomy rights under Law Number 17 of 2023 and JKN financing restrictions, as well as the legal conditions under which cost-sharing for non-covered but clinically superior medical components can be carried out safely. This study aims to examine the hierarchical position of norms between patient autonomy and JKN administrative limitations, clarify the legality and requirements of voluntary cost-sharing based on informed consent and separate agreements, and provide legal protection for medical personnel and health facilities when offering non-JKN options that are in the patient's best interest. By doing so, this research seeks to offer practical solutions to align JKN implementation with human rights principles and the new Health Law.

2. Methods

This study employs a normative juridical approach, also known as doctrinal legal research, which focuses on analysing legal norms, principles, and legislation to resolve conflicts within the legal system. The research examines the hierarchical relationship and consistency between higher-order regulations, particularly Law Number 17 of 2023 concerning Health as the primary legal basis guaranteeing patient autonomy, and lower-order implementing regulations such as Presidential Regulation Number 82 of 2018 (as amended by Presidential Regulation Number 59 of 2024), Minister of Health Regulation Number 3 of 2023 on tariff standards, and Minister of Health Decree Number HK.01.07/MENKES/1366/2024 on coordination of benefits. By using the statute approach, this study identifies normative gaps and conflicts between the absolute protection of patient rights under Article 4 of the Health Law and the administrative-financial restrictions imposed through the INA-CBG's system and the National Formulary.

A conceptual approach is also applied to deepen the understanding of key legal concepts central to the issue, including patient autonomy, informed consent, therapeutic transaction agreements, and legal protection for healthcare providers (Hadjon, 1987). These concepts are analysed in the context of human rights principles and medical ethics to determine the proper legal position when patients voluntarily choose medical actions or medications outside JKN coverage. The data used consist of primary legal materials in the form of legislation and secondary materials comprising scholarly works, journal articles, and related legal literature (Asshiddiqie, 2015).

Through systematic interpretation and evaluation of these materials, the study seeks to provide clear legal construction regarding the supremacy of patient autonomy rights over JKN financing limitations, the conditions under which voluntary cost-sharing is legally permissible, and the mechanisms needed to protect medical personnel and health facilities from administrative or criminal risks when facilitating clinically superior but non-covered treatment options. The ultimate aim is to produce prescriptive solutions that can serve as a basis for regulatory reform and standardised operational procedures in healthcare facilities.

3. Results

3.1. JKN Paradigm: INA-CBG's Package Rates and Formulary Restrictions

JKN programme is administered based on the principles of social insurance, mutual cooperation, and equity as regulated in Presidential Regulation Number 82 of 2018, as amended by Presidential Regulation Number 59 of 2024. Health service financing under JKN adopts a prospective payment system known as Indonesia Case Base Groups (INA-CBGs), in which health facilities receive fixed payments according to diagnosis groups and procedures regardless of the actual costs incurred (Ministry of Health, 2023). National Formulary further restricts the choice of drugs

and medical materials that can be claimed by the BPJS Kesehatan, with the main objective being cost containment and long-term sustainability of the programme (Arimbi et al., 2022). This mechanism is intended to encourage efficiency and prevent excessive use of health resources.

Despite its noble aim, numerous studies consistently reveal that INA-CBG's rates are often lower than the real operational costs of hospitals, particularly in complex, catastrophic, or high-comorbidity cases (Annisya, 2017; Rahayuningrum et al., 2017; Prasetyo, 2019). The tariff disparity forces hospitals to implement various cost-cutting measures such as limiting the use of advanced medical devices, prolonging the use of cheaper generic drugs, or even reducing supporting facilities (Manopo & Susanti, 2025). Such practices, although understandable from a financial perspective, risk reducing the overall quality of care delivered to JKN participants (Desdiani et al., 2024). Hospitals dominated by JKN patients are especially vulnerable to liquidity problems and, in extreme cases, face the real threat of bankruptcy (Annisya, 2017).

Although the government increased the average INA-CBG's tariff by approximately 9–12 percent through Minister of Health Regulation Number 3 of 2023, the adjustment is still considered insufficient to close the gap between actual costs and BPJS claims in many types of cases (Ministry of Health, 2023; Manopo & Susanti, 2025). The rigid structure of the National Formulary also creates clinical limitations because certain drugs or therapies proven to be more effective for particular patients are not included in the list of reimbursable items (Minarni et al., 2025). Doctors are therefore placed in a difficult position: following JKN administrative rules may conflict with their professional and ethical duty to offer the best possible treatment option (Indonesian Medical Association, 2012). This financing paradigm, while successful in controlling national health expenditure, inadvertently generates normative tension with higher legal guarantees of patient rights and clinical autonomy enshrined in Law Number 17 of 2023 concerning Health.

3.2. Conflict between Norms and the Legality of Cost-Sharing

Law Number 17 of 2023 concerning Health places patient autonomy in a superior position by explicitly stating in Article 4 that every person has the right to independently and responsibly determine the health services needed after receiving complete information (Alowais et al., 2023; Raspati et al., 2024). This guarantee cannot be diminished by lower regulations that merely arrange financing mechanisms. Presidential Regulation Number 82 of 2018, as amended and Minister of Health Regulation Number 3 of 2023 establish the principle that health facilities are prohibited from charging additional costs to JKN participants for services already covered under the INA-CBG's package (Ministry of Health, 2023; Hadning & Kubra, 2025; Hadning et al., 2025). The main purpose is to protect participants from unexpected financial burdens and to maintain the social insurance character of the programme.

However, the same lower regulations do not absolutely prohibit patients from choosing and paying for medical actions that exceed JKN coverage when such choices are made voluntarily. The prohibition on additional charges applies only to guaranteed services, not to components that fall outside the INA-CBG's package or National Formulary. When patients, based on their autonomy rights, decide to use drugs, medical devices, or procedures that are clinically more appropriate but not reimbursable by the BPJS Kesehatan, a normative conflict arises between higher individual rights and lower administrative restrictions (Umam, 2022). Legal doctrine recognises that the state may limit the extent of its subsidy without limiting citizens' freedom to obtain better services at their own expense (Hadjon, 1987; Kusumaningrum, 2018).

The therapeutic relationship between patient and healthcare provider remains a contractual agreement that can produce new obligations separate from JKN

coverage (Fuady, 2005). Once patients receive full disclosure and express their wish to bear the cost difference, the transaction for non-covered components becomes a private agreement that does not violate the non-cost-sharing principle applicable to guaranteed benefits. This separation is essential to maintain legal certainty for all parties.

Table 1. Cost-Sharing and Legal Status

No.	Cost-Sharing Conditions	Legal Status	Description
1	Upgrade to inpatient care	Legal	Regulated by Presidential Regulation, subject to the difference in rates between JKN class rights and the selected class.
2	Choosing medical/drug options outside of coverage	Legal with conditions	Legal if based on patient autonomy (Law Number 17 of 2023) and not hospital coercion, with a written agreement for costs outside BPJS coverage (non-INA-CBGs).
3	Charging fees for services that are already covered	Illegal (violation)	Violates JKN principles and may be categorized as fraud or an administrative violation.

Different forms of cost-sharing already have varying legal status under current regulations as summarised in Table 1. Upgrading inpatient class has long been permitted with clear calculation of the difference between entitlement class rates and chosen class rates. Choosing medical components outside INA-CBG's coverage or National Formulary follows the same logic of patient autonomy, provided the initiative comes entirely from the patient after receiving balanced information (Nadira & Khairunnisa, 2023). Imposing charges on services that should already be covered by the package, however, remains illegal and risks administrative sanctions or fraud allegations.

Recent policy developments further support the legality of structured cost differences. Minister of Health Decree Number HK.01.07/MENKES/1366/2024 explicitly regulates coordination of benefits between JKN and supplementary insurance, creating a formal pathway for patients to cover gaps without burdening health facilities (Ministry of Health, 2024). This decree indirectly confirms that voluntary cost-sharing under transparent mechanisms is compatible with the overall JKN framework when patient rights are properly respected.

The hierarchical supremacy of Law Number 17 of 2023 over implementing regulations, therefore, provides the strongest legal basis for recognising voluntary cost-sharing as a legitimate practice (Asshiddiqie, 2015). Health facilities and medical personnel who facilitate such choices through separate written agreements are not violating JKN principles but are instead fulfilling higher obligations toward patient autonomy and human rights protection (Dewi & Adiatmika, 2025). Proper documentation and informed consent become the key elements that transform potential administrative violations into lawful manifestations of individual rights.

3.3. Protection of Patient Rights and Autonomy in Choosing Medical Options

The principle of health services requires doctors to provide complete, balanced, and understandable information so that patients can make valid decisions through informed consent (Berg et al., 2001; Hall et al., 2012; Nadira & Khairunnisa, 2023). Withholding information about clinically superior options merely because they are not covered by JKN constitutes a serious violation of the patient's right to information and undermines the validity of consent (Dewi & Adiatmika, 2025). The obligation of full disclosure is absolute and stands above administrative considerations of the insurance programme (Indonesian Medical Association, 2012). Patients who are not informed of all relevant treatment alternatives, including non-

covered but more effective ones, may later claim that their autonomy has been restricted (Fuady, 2005).

Patient autonomy guaranteed under Article 4 of Law Number 17 of 2023 is a direct embodiment of the right to self-determination and human dignity (Umam, 2022). This right cannot be limited by the scope of state funding alone because JKN and National Formulary are merely instruments that determine the extent of subsidy, not the ceiling of clinical quality or patient choice (Kusumaningrum, 2018). When patients voluntarily decide to bear additional costs for medical actions outside the package, such a decision must be viewed as the legitimate exercise of autonomy rather than a breach of JKN rules (Hadjon, 1987).

Table 2. Prescription for Resolving Legal Norm Conflicts

No	Legal Norm	Conflict Analysis	Prescription Solution
1	Article 4 of Law Number 17 of 2023 (right to balanced and responsible information)	This right obliges doctors to inform patients of all relevant clinical options, including therapies or medications not covered by JKN, if these options are medically superior or necessary.	Ethical principle above administration: withholding non-JKN options to avoid BPJS administrative issues constitutes an ethical violation and undermines informed consent.
2	National Formulary (ForNas) and INA-CBG's Standards	JKN standards serve as limits on subsidies/state funding, not limits on medical service quality.	Administrative clarification: hospitals must clearly separate (a) best clinical options and (b) JKN coverage limits when giving information.

The normative conflict between higher guarantees of individual rights and lower financing regulations can be resolved systematically as presented in Table 2. Patient autonomy and the right to complete information occupy a superior hierarchical position; therefore, doctors remain obliged to explain all clinically relevant options regardless of coverage status. JKN standards through INA-CBGs and National Formulary represent limitations on state subsidy, not restrictions on medical quality or patient freedom. Hospitals and doctors must clearly separate information about the best clinical options from information about what is covered by the BPJS Kesehatan (Minarni et al., 2025).

Failure to offer non-JKN options that are medically indicated out of fear of administrative sanctions actually exposes medical personnel to ethical and legal risks of malpractice (Indonesian Medical Association, 2012). Patients who later discover that better treatment was available but not offered may file civil claims or complaints to the Medical Ethics Honorary Council. Conversely, when doctors provide full disclosure and patients freely choose to pay the difference through a transparent agreement, the protection of autonomy is fulfilled and legal certainty is achieved for all parties (Alayda et al., 2024).

The state's responsibility to protect the right to health includes ensuring that financing mechanisms do not indirectly curtail individual autonomy. Law Number 17 of 2023 strengthens the legal standing of patients who wish to add benefits beyond JKN coverage, making voluntary cost-sharing a protected manifestation of personal freedom when performed with proper informed consent and documentation (Asshiddiqie, 2015). Healthcare providers who respect this hierarchy of norms are not only complying with the law but are also preventing potential human rights violations in daily practice.

3.4. Legal Strength and Protection for Medical Personnel and Hospitals

Medical personnel and health facilities obtain strong legal protection when they recommend non-JKN options, provided such recommendations are based on solid

medical indications and serve the best interest of the patient (Indonesian Medical Association, 2012). The ethical obligation to prioritise patient safety and welfare stands above administrative constraints of the JKN programme (Minarni et al., 2025). Doctors who withhold clinically superior treatment simply to avoid conflict with BPJS regulations risk being accused of ethical malpractice for violating the principle of full disclosure (Dewi & Adiatmika, 2025). Proper documentation of medical rationale and patient consent becomes the main shield against any future claims.

Hospitals face significant administrative risks if the BPJS Kesehatan interprets cost-sharing as a violation of the cooperation agreement, including sanctions or termination of the partnership. Nevertheless, such risks can be effectively mitigated through transparent procedures and robust evidence that the initiative came entirely from the patient (Fuady, 2005). A separate written agreement clearly stating that the patient understands the availability of standard JKN options and voluntarily chooses to bear the cost difference provides crucial legal protection for the facility (Umam, 2022).

Table 3. Medical Information and Legal Consequences

No	Medical Treatment Options	Legal Risks	Consequences
1	Not providing non-JKN options due to fear of costs	Violation of patient autonomy and information rights (Law 17 of 2023).	May lead to ethical malpractice claims or civil disputes if patients feel harmed for not receiving the best clinical options.
2	Providing non-JKN options with full disclosure and agreement	Administrative risks from BPJS if cost-sharing is seen as a breach of the Cooperation Agreement.	Mitigation: Proper documentation and agreements can justify that providers are upholding patient autonomy.

The different legal consequences arising from the handling of treatment options are presented in Table 3. Failing to inform patients about better non-JKN alternatives exposes doctors and hospitals to civil lawsuits or ethical disciplinary action because it directly violates patient autonomy and the right to complete information guaranteed by Law Number 17 of 2023. Offering non-JKN options with full disclosure and signed agreement, on the other hand, carries manageable administrative risk that can be defended successfully when documentation is complete (Desdiani et al., 2024). The table clearly shows that the greater danger lies in not offering the best clinical choice rather than in facilitating it transparently.

Legal protection ultimately depends on the quality of informed consent and the separation between guaranteed JKN services and additional components chosen by the patient. Health facilities that implement standard operating procedures requiring detailed explanation of both clinical benefits and financial implications are in the strongest position when audited by BPJS Kesehatan (Arimbi et al., 2022). Written acknowledgement from patients or families that they receive basic JKN coverage while voluntarily adding uncovered benefits eliminates the element of fraud and reinforces the lawful nature of the practice.

Strengthening coordination of benefits with private insurance, as regulated in Minister of Health Decree Number HK.01.07/MENKES/1366/2024, offers the safest alternative for patients who wish to upgrade services without creating direct financial pressure on hospitals (Ministry of Health, 2024). Until this mechanism is widely adopted, however, hospitals must rely on meticulous documentation and separate agreements to safeguard themselves while continuing to respect patient

autonomy. When performed correctly, facilitating voluntary cost-sharing does not weaken but actually strengthens the legal and ethical standing of medical personnel and health facilities in the JKN era.

4. Conclusion

The normative conflict between the guarantee of patient autonomy in Law Number 17 of 2023 and the financing restrictions of JKN through INA-CBG and the National Formulary clearly shows that patient rights occupy a higher legal position than administrative limitations. The right to complete information and the right to independently choose health services cannot be sacrificed merely for reasons of cost efficiency. Voluntary cost-sharing for medical components outside JKN coverage is legally permissible and protected when it is truly based on the patient's free and informed decision, supported by transparent documentation and a separate written agreement. Medical personnel and hospitals gain strong legal protection as long as they consistently prioritise full disclosure and the patient's best interest.

This study still has limitations because it only analyzes the issue from a normative perspective and has not yet examined real implementation in various types of health facilities across regions. The practical implications of this research emphasise the urgent need for regulatory revision to explicitly accommodate voluntary top-up mechanisms and strengthen coordination of benefits schemes. For future research, empirical studies are recommended to measure the actual impact of transparent cost-sharing practices on service quality, patient satisfaction, and the financial health of hospitals participating in JKN.

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The authors declare that there is no conflict of interest.

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Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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