



Model of National Health Insurance Arrangements Based on Justice and Social Welfare

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Abstract

National Health Insurance is very interesting to study, because it relates to the right of the community to obtain social security as mandated by the 1945 Constitution of the Republic of Indonesia. Health is one of the human rights in addition to the right to obtain a livelihood such as clothing, food and adequate housing for humans. Health is a basic human right that everyone has the right to obtain, health is an element of welfare that must be realized according to the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia. This research is a normative legal research with a statutory approach, a conceptual approach and a comparative approach. Legal materials: primary, secondary and tertiary legal materials. The method of collecting materials used a combined method of snowballing with a systematic method. All legal materials collected were analyzed through the steps of description, interpretation, systematic, argumentation and evaluation. The results of this study indicate that the philosophical basis underlying the provision of national health insurance is the state's obligation to provide social protection to the community as stated in the 1945 Constitution of the Republic of Indonesia and social protection guarantees, one of which is health protection. get protection, especially for neglected children and the poor. Regulation of the National Health Insurance in the perspective of the *Ius Constitutum*, where currently BPJS in the legal perspective is accepted or treated with legal construction as *rechtspersoon* / *rechtssubject* with the principle of *communis oppo doctorum*, which in the implementation of its functions is subject to legal principles. As a state agency, BPJS has an independent policy authority as long as it is used to the maximum extent for the benefit of the participants. Within the scope of State Administrative Law (HAN), BPJS is a very specific Public Legal Entity (BHP) because BPJS is the only BHP formed and (only) can be dissolved by law. In addition, BPJS directors are also directly responsible to the President. The model for setting up a National Health Insurance based on Justice and Social Welfare, it is hoped that the National Health Insurance Arrangement can provide justice and social welfare both to the community as recipients of health services, to hospitals as providers of health services, to health workers and to other stakeholders who involved in the provision of National Health Insurance.

Keywords: *National Health Insurance; Justice; Social Welfare; Regulatory Model*

Introduction

human rights in addition to the right to obtain a livelihood such as clothing, food and adequate housing for humans. Health is a basic human right that everyone has the right to obtain, health is an element of welfare that must be realized according to the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia.

One of the national goals of the Indonesian people, as stated in the Preamble to the 1945 Constitution, is to promote public welfare. This shows that since independence, the Unitary State of the Republic of Indonesia has firmly established the concept of a Welfare State . The Welfare State is the responsibility and obligation of the State in providing welfare to its people which includes the fulfillment of the basic needs of citizens (basic needs), social services and market economic intervention.. In other words, the welfare state is the responsibility of the state in terms of fulfilling basic needs which are the rights of citizens and if the government cannot implement them, citizens can sue in accordance with the rule of law.

The achievement of Indonesia's national goals as mandated in the 1945 Constitution requires the implementation of a comprehensive, integrated, directed, and sustainable national development. Achieving these national development goals requires strong, independent and quality human resources . In order to realize the success of these goals, the role of successful health development will also determine, because a healthy population will encourage the success of educational programs, encourage increased productivity and increase the economy.

Awareness of the importance of social protection guarantees continues to grow in accordance with the mandate of the amendment to the 1945 Constitution Article 34 paragraph (2), which states that the state develops a Social Security System for all Indonesian people. With the inclusion of the Social Security System in the amendment to the 1945 Constitution, the issuance of Law Number 40 of 2004 concerning the National Social Security System (SJSN) is a strong evidence that the government and stakeholders have a great commitment to realizing social welfare for all its people. Through SJSN as a form of social protection, it essentially aims to ensure that all people can fulfill their basic needs for a decent life.

The form of social protection for the Indonesian people is also contained in Law number 39 of 1999 concerning Human Rights, article 41, which states that "every citizen has the right to Social Security which is needed for a decent life and full personal development". This is also in line with Law No. 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights (International Convention on Economic, Social and Cultural Rights), which is better known as the Ecosob Law, which states that one of the rights of the community is is the right to social security, the right of mothers and children to special care and assistance.

Optimal public health development will support the achievement of national development. The implementation of development and national development must go hand in hand and in balance in order to achieve the desired goals for the welfare of all Indonesian people. The increase in development in the health sector is determined by the availability of health management guidelines, starting from the planning, methods, and methods of administering health insurance. Guarantee social protection of health for is expected to improve access to health care, but the implementation is not fully improve the health status of the community, this is due to basic health facilities are still insufficient, especially for the disadvantaged, remote, border.

As a form of the responsibility of the Indonesian government in providing welfare to the community, the Government puts it in the form of regulations that regulate various matters regarding guarantees of protection for the people of Indonesia. This is reflected in Article 28A of the 1945

Constitution which states that everyone has the right to live and has the right to defend his life and life. Article 28H of the 1945 Constitution paragraph (1) states that everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy environment, and to have the right to health services. The development of a social security system and health insurance for the community can be seen in Article 34 of the 1945 Constitution paragraph (1) stating that the poor and neglected children are cared for by the state, in paragraph (2) the State develops a social security system for all people and empowers the weak and disadvantaged. capable of conforming to human dignity. Article 34 paragraph (3) states that the State is responsible for providing adequate health care facilities and public service facilities. As the implementation of Article 34 UUD 1945 that came out of Law No. 40 Year 2004 on Social Security System of National and Act No. 24 of 2011 concerning the Establishment Board Organizers Social Security (BPJS) as well as the discharge of the Regulation of President Number 12 of 2013 concerning Guarantee Health National which was established on January 1 2014. The establishment of the Social Security Administering Body (BPJS) for Health as the provider of Health Insurance is expected to be able to answer and respond to various challenges of health development in the present and in the future. The implementation of Law number 40 of 2004 in its application has experienced many problems such as health services which cause confusion in the community as BPJS participants, a sense of injustice in the community, people find it difficult to get services, the occurrence of a tiered referral system, the role of local governments is not yet optimal, BPJS difficulties in paying a claim to the hospital makes the problem quite complicated to solve.

The government's responsibility to provide social security is also reflected in the 2020-2024 National Mid-Term Development Plan, regarding the development agenda, namely: economic resilience, reducing disparities between regions, quality of human resources, mental revolution, strengthening infrastructure and basic services, the environment, and finally strengthening political stability, law, defense, and security . This means that the Indonesian government is very serious about providing basic services which include social security, especially health insurance for the people of Indonesia.

Law No. 36 of 2009 concerning health mandates that the provision of a minimum budget for health development is 5 percent and 10 percent of the health budget comes from the regions. However, the seriousness of the Government of Indonesia in health development has not been supported by the provision of sufficient funds for health development. Until now, the budget provided by the central government for new development is 5% of the total development budget each year. This is certainly not sufficient for the development of the health sector for the entire territory of Indonesia which is so vast, compared to other countries in ASEAN which provide a budget for the development of the health sector of an average of 10%. Therefore, the participation of local governments, communities and the private sector is needed to participate in health development so that universal health coverage for the entire population of Indonesia (Universal Health Coverage) as targeted will be achieved soon.

Realizing the many problems that afflict the community in health services, the President of the Republic of Indonesia issued Presidential Regulation of the Republic of Indonesia number 82 of 2018 concerning National Health Insurance. The issuance of Presidential Regulation 82 of 2018 is an effort from the government to improve the service system to the community, although there are still many things that need to be improved to realize welfare for the community including legal improvements, such as improving the legal substance of Presidential Regulation 82 of 2018 in Article 12, Article 49 , Article 71 (1), Article 75 (2), besides that it is necessary to make efforts to improve the legal structure of the National Social Security System in generalizing the national health insurance program and improving the legal culture is very necessary in order to realize a sense of justice, benefit, and social welfare for the community. . In general, the aim of this research is the realization of justice and social welfare through the regulation of the National Health Insurance. Through a study of this issue, the debate over the regulation of the National Health Insurance based on justice and social welfare can be realized. While the specific objectives of this study are to examine and analyze the nature of the provision of National Health Insurance, to examine and analyze the regulation of the National Health Insurance system in the

Indonesian legal system and to examine, analyze, and find a model for setting up a National Health Insurance based on Justice and Social Welfare for the community. The benefits of this research are expected to provide benefits and contributions to legal science, especially the regulation of the National Health Insurance law and it is hoped that the research results can solve problems related to the regulation of the National Health Insurance so that it can provide solutions for lawmakers, namely the President and the House of Representatives (DPR). as input on the model of setting up the National Health Insurance based on justice and social welfare. The results of this study are also expected to provide a solution to the problem of the situation of setting up the National Health Insurance to the community by creating a regulatory model for the realization of justice and social welfare.

Research Method

This study uses a normative legal research method with the types of approaches, namely the statute approach, comparative approach, and conceptual approach. The legal materials used are primary, secondary and tertiary legal materials. The method of collecting legal materials uses a combined method of snowball (snowball method) with a systematic method (systematic method). The primary, secondary and tertiary legal materials that were collected were analyzed through the steps of description, interpretation, systematic, argumentation and evaluation.

Results and Discussion

The nature of the provision of national health insurance for the welfare of the community. Philosophically, social security is a right for everyone to get a sense of security, which of course in this case is safe from all kinds of things that can threaten their survival. Everyone who is sick wants healing. Everyone who works wants themselves to be safe from work accidents, even financially secure when they are no longer working. The right to obtain social security is a basic right which in this case the state as the highest organization must be able to administer it to be able to fulfill it for citizens. Sociologically, a society that is not prosperous will lead to an irregular situation. Welfare is the beginning of crime and other social disorder. Therefore, the state must be able to improve the welfare of its citizens and one way to do that is to provide social security so that the social security system can be felt by all levels of society. Juridically, it was found that there were overlapping regulations and authorities in the administration of health insurance which could result in the implementation of providing health insurance to the community.

The National Health Insurance in the *Ius Constitutum* Perspective contains BPJS as a public legal entity that is directly responsible to the President, which was established by order of the Act. BPJS functions to provide health services with the authority to make binding and independent decisions for the benefit of the participants. BPJS also has coercive power over citizens, because it has requirements with various obligations that must be fulfilled by participants and providers. BPJS in the legal perspective is accepted or treated with legal construction as *rechtspersoon* / *rechtssubject* with the principle of *communis oppo doctorum*, which in the implementation of its functions is subject to legal principles. As a state agency, BPJS has an independent policy authority as long as it is used to the maximum extent for the benefit of the participants. Within the scope of State Administrative Law (HAN), BPJS is a very specific Public Legal Entity (BHP) because BPJS is the only BHP formed and (only) can be dissolved by law. In addition, BPJS directors are also directly responsible to the President.

The model for providing national health insurance based on justice and social welfare based on the *Ius Constituendum* contains the legal system that regulates the provision of national health insurance. The current health legal system in Indonesia must always have a monitoring and evaluation system so that

the implementation of policies on health in the wider community can be optimized as well as possible. The regulatory model that will be discussed by the author will be described starting from institutions, payment systems, health service systems. Institutional health systems must refer to a government policy that must be accommodated by institutions under the supervision of the state itself. Regardless of the existence of a private health institution, it must still refer to the provisions of the applicable laws in a country.

The Social Security Administration for Health (BPJS) is an institution that accommodates the health system in Indonesia with a different payment scheme based on the wishes of the Indonesian people in choosing which health services are needed. Starting from class I to class III, it becomes an obligation for the people to pay premiums every month and this payment system is based on the principle of *gotong royong*. This means that even if a person is not sick, he is still obliged to pay the premium charged to him with the aim of providing mutual assistance to members of the community who turned out to be paying BPJS Health premiums but he experienced a disaster, namely suffering from illness. Based on this, it is necessary to obtain a solid foundation that the 1945 Constitution stipulates that the state is obliged to provide health services to its citizens. This means that the authors argue that there is no need for differences in the provision of health services with a limitation in the form of class I to III health services, but rather based on the principle of justice in providing health services and can provide welfare to the community.

Conclusion

- a. The philosophical basis underlying the provision of national health insurance is the state's obligation to provide social protection to the community as stated in the 1945 Constitution of the Republic of Indonesia and social protection guarantees, one of which is health protection and poor people.
- b. BPJS as a public legal entity that reports directly to the President, which was established by order of the Act. BPJS functions to provide health services with the authority to make binding and independent decisions for the benefit of the participants. BPJS also has coercive power over citizens, because it has requirements with various obligations that must be fulfilled by participants and providers. BPJS in the legal perspective is accepted or treated with legal construction as *rechtspersoon/rechtssubject* with the principle of *communis oppo doctorum*, which in the implementation of its functions is subject to legal principles. As a state agency, BPJS has an independent policy authority as long as it is used to the maximum extent for the benefit of the participants. Within the scope of State Administrative Law (HAN), BPJS is a very specific Public Legal Entity (BHP) because BPJS is the only BHP formed and (only) can be dissolved by law. In addition, BPJS directors are also directly responsible to the President.
- c. Model of setting up a national health insurance based on justice and social welfare, it is hoped that the regulation of national health insurance can provide justice and social welfare both to the community as recipients of health services, to hospitals as providers of health services, to health workers and to other stakeholders.

Suggestion

- a. To the Government, to make regulations or reconstruct regulations on National Health Insurance that can synergize national health insurance services to the community, so that it does not seem that there are overlapping rules and authorities that can result in not optimally providing health insurance to the community.

- b. It is better if the rules that will be made can provide a sense of justice and welfare to the community as recipients of national health insurance, to hospitals both government and private hospitals as providers of health insurance services, to health workers and to all stakeholders involved in providing health insurance.

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