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INDONESIAN HEALTHCARE INSURANCE AND SOCIAL SECURITY (BPJS): AN ANALYSIS OF LAW NO. 40 OF 2004 ON MAQASHID SHARIA

SYUFA'AT

Universitas Islam Negeri Profesor Kiai Haji Saifuddin Zuhri Purwokerto, Indonesia.
Email: syufaat75@gmail.com, ORCID: <https://orcid.org/0000-0001-5325-6956>

MUHAMMAD FUAD ZAIN

Universitas Islam Negeri Profesor Kiai Haji Saifuddin Zuhri Purwokerto, Indonesia.
Email: fuad.zain@uinsaizu.ac.id, ORCID: <https://orcid.org/0000-0001-5644-1831>

Abstract

This article analyzes the policy of the Government of Indonesia on the implementation of Indonesian Healthcare Insurance and Social Security (BPJS) in Law No. 40 of 2004 reviewed from Maqasid Sharia. The main problem of BPJS membership is the unfulfillment of health services properly despite the increase in premium rates and BPJS claims over budget deficits. According to the Maqasid Sharia theory, what the Government does is in accordance to maintain the life of the people. The debate about the halal status of BPJS is divided into two; MUI stated that it is not appropriate with sharia, on the other hand, the largest NU mass organization through the Bahsul Masail Nahdhatul Ulama Institution (LBMNU) states that BPJS conforms to sharia principles and categorizes on contract of ta'awun (helping others). The promulgation of BPJS membership influence the people to support the program by paying premiums, and the government is obliged to provide good services to the premium and non-premium participants to maintain the people live as state social security.

Keywords: BPJS, Contract, Government of Indonesia, Helping Others, Maqasid Sharia

INTRODUCTION

The National Health Insurance (JKN) shows that the state has carried out the 1945 Constitution mandate by building a system and management of integrated health service delivery with the implementation of social security programs (Pasaribu, 2019). This social security program covers medical expenses for illness, childbirth, work accidents, medical care, as well as subsidies for families (Sulastomo, 2011).

Not only in Indonesia, but several countries in the world also have the same efforts to prosper their citizens in the implementation of social security. A country's endeavor to provide a decent or prosperous life is not easy. There are many factors including distrust of their citizens (Coughlin, 1982), the high intensity of regulatory changes, for example in France from the collective contribution scheme to an individual (Hairault & Langot, 2008), the classification of the contribution obligations amount based on age (Chauveau & Loufir, 1996), to the decision of the partial burden of the country to its citizens (Hairault & Langot, 2008), which was having a positive impact on productivity and labor burden in the United States (Hairault & Langot, 2008). Then there is the consensus in Turkey that the implementation of social security by the

state to its citizens has an impact on a significant reduction in welfare inequality (Kumru & Thanopoulos, 2008).

In Indonesia, the development of social security implementation has become an inevitability from the citizens' right and preference to participate in the program to the mandatory for every citizen to take part in the program (Law No. 40 of 2004, 2004). The public must engage in participation by paying regular contributions or premiums regularly to the social security program organizers, in this case, Healthcare BPJS (Astuti, 2018). Thus, denial of such obligations for those who are categorized can be considered for violating the law (Astuti, 2018).

The Healthcare BPJS in its organizers has been criticized by its members for its untidy administrative management (Sukardi, 2016), poor service quality, and the implementation of social security by Healthcare BPJS is still far from justice (Kadarisman, 2015). From a religious point of view, BPJS Kesehatan cannot be separated from the controversy about the halal status (Jafar, 2017). Nonetheless, Mugni Labib said that other institutions have the authority to issue fatwas regarding the non-halal Law (Labib, 2018). The Bahsul Masail Nahdhatul Ulama Institute (LBMNU) states that BPJS is following Islamic sharia principles and categorizes it into aqad ta'awun (Husna, Sarmidi., 2016).

The polemics caused by the differences in fatwas are interesting to be discussed in scientific research. Many researchers have written about strengthening the MU fatwa that there are riba transactions (Fidmatan, 2016), gharar, and maysir (Sukardi, 2016) in the implementation of social security by Healthcare BPJS (Jafar, 2017). Meanwhile, LBMNU states that healthcare BPJS is syar'i and applies the principle of ta'awun.

Based on the problematic reasons stated before, this article tries to find the solution to the problems by considering; first, there is a need for efforts to comprehensively describe the legal basis for the National Social Security System (SJSN), namely Law Number 40 of 2004. Second; there is a need to understand the main purpose of implementing social security through Healthcare BPJS to achieve community welfare from an Islamic perspective, which is then called maqashid Sharia.

The Principles of Sharia Insurance

Law No. 40 of 2004 has the meaning of insurance in which in English comes from the word guarantee or warranty (Soekamto, 2006). Abbas Salim argues that social insurance (compulsory insurance) is social security that is done by forcing (force saving) every citizen to participate and pay the contribution with a salary deduction mechanism (Salim, 2000).

In Indonesia, the word insurance and guarantee are often used similarly. Hence, the concept of a guarantee is the translation of the word insurance or security in social security terms which refers to the concept of risk transfer and fundraising for the common good. This is what causes confusion between social insurance and social security as in Article 28 H paragraph 3 that states: "everyone is entitled to decent social security".

Social security which is interpreted as similar to social insurance is mentioned in Law No. 40 of 2004 Article 19 paragraph 1, stating that: "Health insurance is provided nationally based on the principle of social insurance and the principle of equity". The principle of social insurance as in Article 1 paragraph 3 mentions that "The mechanism of fundraising is mandatorily derived from dues/contribution to protecting the socio-economic risks that befall the participants and/or their family members".

Substantially, social health insurance as referred to in Law no. 40 of 2004 as a social security mechanism implemented in Indonesia, has similarities with conventional insurance in general. Insurance or coverage according to Law no. 2 of 1992 article 1, is:

"An agreement between two or more parties by which the insurer binds himself to the insured by receiving insurance premiums to provide compensation to the insured due to loss, damage or loss of expected profits or legal liability to third parties that may be suffered by the insured from an uncertain event, or to provide a payment based on the death or life of an insured person (Sastrawidjaja, 2003)"

Based on the fact about social health insurance, Taqiyudin an-Nabhani elucidates its incompatibility with sharia in two aspects; first, the non-fulfillment of the social insurance contract as a valid contract according to syara' in terms of the ma'qud 'alaihi (object of the contract). Second, the non-fulfillment of the social insurance contract for the validity of the guarantee contract (dhaman) (al-Nabhani, 2003).

The non-fulfillment of social insurance agreement as a valid agreement according to syara' can be explained that insurance is an agreement/transaction in which there is an agreement between two parties and ijab qabul. Ijab from the insured and qabul from the insurance company (BPJS) (insurer). The transaction can be valid according to sharia if the transaction met the sharia requirements. The conditions for a valid transaction or contract according to sharia should include goods or services. Article 24 of the Compilation of Sharia Economic Law (KHES) states that the object of the contract is an amwal or legalized service required by each party (Supreme Court of the Republic of Indonesia, 2008). The object of the contract (mahallul 'aqd) is something that is used as the object of the contract and there are legal consequences imposed on it from tangible and intangible objects (benefits) (Gemala Dewi, 2018). Benefit in this sense is a replacement factor for losses related to an object or service (Musawar, 2000).

Akad/transactions in social insurance, do not occur in goods or services, but on the agreement, that is the insurance coverage. The agreement or guarantee of insurance cannot be considered as goods, because the substance cannot be used. It also cannot be considered as a service because someone cannot take advantage of the promise directly or indirectly, either by renting or lending. As for the amount of money from insurance coverage based on the contract or guarantee cannot turn the agreement into a service. However, it is only the result of a muamalah or agreement that has been made previously.

Akad or transaction that occurs in social insurance/ Healthcare BPJS can be said to be vanity because it does not meet the conditions or requirements in a transaction. Thus, the object of the akad (ma'qud 'alaihi) in the social healthcare insurance contract cannot be categorized as a valid

contract object, nor as goods or services. The object of healthcare social insurance is an agreement, where the insurance company in this case Healthcare BPJS agrees to pay the insured fund in the risk (event) causing the decrease in the insured fund including the healthcare expenses.

Sharia Equity Principles

The principle of equity is the second mechanism of the implementation of healthcare social security. The principle of equity means equality in obtaining services under medical needs that are not tied to the amount of contributions that have been paid (Soekamto, 2006). Equity in the provision of health services is an equal opportunity for justice and equality to two or more groups in terms of health services. Therefore, if there is different treatment for JKN PBI and non-PBI participants in the same health service, for example, then it indicates an injustice (Lauranti et al., 2017).

The equity principle in healthcare insurance currently applies to class services based on contributions. It means that services to the people will only be provided based on the ability of the population to provide contributions or premiums (article 19 paragraph 1 of Law No. 40 of 2004). Operationally, it impacts differences in the quality of services and facilities received by patients. Article 23 of Presidential Decree No. 12 of 2013 explains the classification of treatment room facilities for inpatients according to class. Consequently, for patients who wish to get a higher class, there will be an additional fee for upgrading the treatment class as regulated in the Regulation of the Minister of Health No. 28 of 2014 about Guidelines for the Implementation of the National Health Insurance Program.

Conceptually, the definition of equity implies equal rights (equality) in services available to all, equitable distribution based on health care needs and ease of access in each geographic area, as well as the removal of other barriers to accessing services. Thus, it can be said that equity in health services has never been able to occur in a class service system. On the other hand, there is discrimination in service. Whereas equity is the right to be healthy, a principle that must be adhered to by the state in fulfilling the right to health (Lost & Violence, 2015).

This reality is certainly contrary to the principle of universal coverage in the management of health insurance. Universal health coverage is defined as a state in which everyone can receive quality health care as needed without causing financial difficulties due to the obligation to pay for these health services (Lauranti et al., 2017).

As stated in the roadmap document of JKN 2012-2019, Indonesia wants health insurance for all residents, guarantees all diseases, and the portion of costs that are borne by the population as small as possible. The fact that happened shows the opposite, the premiums that must be paid by participants are increasing from year to year and limit health services with the excuse of closing the BPJS budget deficit. Based on Presidential Regulation Number 64 of 2020 concerning Health Insurance, the premiums increase based on different classes; class 1 increases from Rp. 80,000.00 to Rp. 150,000.00 and class 2 increases from Rp. 75,000.00 to Rp. 100,000.00, while the third class increases from Rp. 25,500, 00 to Rp. 35,000. According to the Decree of the Director of Service Guarantee (Perdirjamyan) Healthcare BPJS Number 5

of 2020, the health social security program does not guarantee or cover three health services; cataracts, delivery of healthy babies, and medical rehabilitation. In addition to its conflict with the universal coverage principle, the fact of equity in health insurance is also contrary to the meaning of equity itself which means the same right to obtain services per medical needs that are not tied to the amount of contributions that have been paid.

Al-Zuhaily argued about the principle of social equality in Islam, where Islam eliminates discrimination between humans based on race or skin color, lineage, and descent, rich and poor. Every human being has the same social position before Allah to prevent the occurrence of various crimes triggered by material and moral discrimination. (Al-Zuhaily, 2008). The principle of equality in the Islamic system, also stated by Khalaf that Islam does not privilege someone in exercising their rights. Islam does not give a special position to certain groups (Khalaf, 2005).

In health insurance, according to al-Badri, Islam has determined it as part of the basic needs of society. Health is included in public services (ar-ri'ayah asysyu'un) whose fulfillment must be realized by the state for all people either Muslims and non-Muslims, rich or poor, with financing borne by bait al-mal (al-Badri, 1991).

RESEARCH METHODS

This research uses qualitative research, where the researchers are the key instruments in research objects (Sugiyono, 2005), using critical theory paradigms for scientific and critical reality. Research data is sourced from documentation of legislation, jurisprudence, and MUI statements in the mass media (Arikunto, 2013). The nature of this research is descriptive-analytical and problem-solving procedures related to BPJS polemics seen Maqasid Sharia perspective in which the results can be used as a reference in the development of Islamic law related to contemporary issues (Nawawi, 1993).

RESULT AND DISCUSSION

One of the most important social policies of the twentieth century was the development of social security programs and systems in many countries. Social security is a material, social fund foundation and has an irreplaceable function in ensuring social justice, social stability, and economic growth defines the social security system as an economic stabilizer, an economic absorber, and a social justice adjuster (Peek et al., 2005). In addition, the ILO (2000) defines social security as referring to the protection that society provides to its members through a series of public measures to protect members from contingencies such as illness, maternity, occupational injury, disability, old age and death of the breadwinner (Ruparanganda et al., 2018). McKinnon explains that in realizing social goals, the social security system contributes to reducing poverty and inequality, supports improved health and promotes higher levels of social inclusion throughout life (McKinnon, 2016). Correspondingly, data show that social security guarantees people's income in the event of a defined emergency and provides personal savings (Aaron, 2011). The program was remarkably successful of families aged 65 or over, 64 percent receiving half or more of their income and 22 percent receiving all of it from social

security in 2007. The development of social security in several developing countries has shown a significant influence in narrowing income inequality and poverty.

Then, Zhu & Zheng also said that the National Social Security Fund is involved in many major programs such as old-age pensions, medical insurance, unemployment benefits, occupational accident insurance, and maternity insurance, all of which are important for protecting the national economy, livelihoods and stability. Social (Zhu & Zheng, 2020). Meanwhile, according to Meyer & Wu, social insurance programs are available for all individuals who have experienced disasters or are old (Meyer & Wu, 2018). These programs include pension and disability insurance, social security, unemployment insurance and medical treatment. On the other hand, social security provides cash or in-kind assistance only to low-income earners.

In the research of Lams and Purcell said that social security is the primary source of income for retirees in the United States and directly affects the economic welfare and poverty status of social security recipients (Lams & Purcell, 2013). This is then confirmed by data from McKinnon (2016), which says that social security provides benefits to 5,956,765 children living in the United States with grandparents as household leaders. In Thailand, social security includes three components: health insurance, social services, social assistance, and social investment nets. In addition, many social protection and security schemes have been implemented for Thais and foreigners who are legally allowed to work and live in Thailand (Chalamwong & Meepien, 2012).

Conventionally social security refers to an insurance system for humans, without discrimination, to protect members of the community from all possibilities during their lives (health, housing, retirement, pregnancy, work accidents, impatience, a family expenses). , training, vocational training, recreation, and mortality. Meanwhile, the social security system in the Islamic view refers to the interdependence between community members for the preservation of public and private interests and the prevention of material and moral damage. In Islam, social security is referred to as nizam al-takaful al ijtima'I, as one of the vital components of the Islamic economic system in protecting the welfare and survival of the people (Jalil et al., 2015). According to Assal, in the book An-Nizam al-Iqtishadity al-Islami, states, the essential pillars of Islamic economics are three, namely ownership (al-milkiyyah), freedom (al-hurriyyah), and social security (at-takaful). The social security system in Islam is made up of various beneficiaries and party responsibilities at various levels. Islam has various social security instruments such as zakat, waqf, alms, grants, kaffarah, diyafah, mirath and ghanimah (Jalil et al., 2015).

Social security in Islamic economics is based on the principles of brotherhood (ukhuwwah), solidarity (wahdah), mutual cooperation to promote welfare and prohibit crime (alta'awun 'ala al-birr wa al-taqwa wa' adam al-ta'awun 'ala al -ithmwa al-'udwan). Kfir mentions that social security is essential from Islamic point of view because: (1) the realization of justice and equality; (2) fulfillment of basic needs; (3) protection of the five main human elements (faith, soul, intellectual, lineage and wealth); (4) encourage cooperation between people (Kfir, 2015). One form of social security from the Islamic perspective is zakat. The role of zakat is not only

to fulfill the needs of the poor but also to provide job opportunities to those who can work (Dad et al., 2020).

In other words, zakat provides poor people with the capital to start their businesses. However, the concept is different because, in this case, zakat is an obligation in Islam and is a social system that helped people before the social security system existed (Hasan, 2006). According to Suhaib, zakat is social security for all, those who have enough money today pay for what they have. If they need money tomorrow, they will get what they need to survive. Thus, zakat is a Muslim institution that is useful for the survival of Muslims' lives (Abdullah & Suhaib, 2011).

Several literature studies have shown a relationship between religion, charity, social welfare, and community prosperity. IRIN data shows that in terms of charity volume, Islam globally has estimated at least 15 times the total humanitarian aid worldwide. This is because charity is part of all religious traditions. This is confirmed by the research of Kuznetsova & Round (2014) that of the 416 mosques surveyed, 90 percent provided financial support, and 68 percent provided food and clothing (Kuznetsova & Round, 2014). Thus, religious practice has implications for the welfare status of the people. Prosperity in the Islamic perspective has a broad point of view, prosperity does not only talk about material gain but also the attainment of spiritual benefits. The concept of Islamic prosperity. According to Imam Al-Qurtubi is a balance of material and spiritual prosperity (Hoesterey's, 2017). This is in line with the principles in Maqashid Sharia (The Purpose of Islamic Law), which teaches every Muslim to protect faith, the soul, the mind, posterity, and wealth. Therefore, the indicator of prosperity is halal and obtaining halal income, qana'ah, and happiness.

Prosperity in Islam can be achieved through the principles of charity and compassion that have been enshrined in the Qur'an and Hadith. The forms of the principles of charity and compassion are (1) Zakat/obligatory alms, (2) alms (voluntary charity) and (3) Waqf. The Islamic practice is a daily ritual that involves individuals in social and religious practices to help encourage the economy and prosperity of fellow religions. One form of Islamic economic practice is zakat. Dhar (2013) states that zakat is an instrument of social justice and a solution to poverty alleviation in Indonesia. Zakat is a welfare program to build peace, prosperity and socio-economic development. In addition, zakat plays a role in reducing community poverty and helping the poor by providing material or non-material compensation (Hossain, 2012). Zen & Setiadi, (2017) say that by optimizing zakat receipts, infaq and wakat income will be high and can be distributed to populations with low incomes, thereby increasing the prosperity of the people. Thus, Islamic economics has a significant role and potential in developing the economy and realizing prosperity.

Healthcare BPJS Membership and Maqashid Sharia

Article 4 of Law no. 40, 2004 states that the National Social Security System is implemented based on the compulsory participation principle. The participants of social security itself are everyone who has paid dues or whose contributions are paid by the government (Law No. 40

of 2004, 2004). Including foreigners who have worked for a minimum of 6 (six) months in Indonesia who have paid dues (Law No. 40 of 2004, 2004).

The word obligatory or mandatory is contrary to another article in the 1945 Constitution as the source of all laws in Indonesia, including the law on the administration of social security. In this context, the state has forced its citizens to participate in social insurance to protect themselves against certain risks. This kind of health insurance concept will cause harm, for instance, people's lives increasingly having a heavier burden from monthly contributions taken by Healthcare BPJS

According to Jaribah Ahmad al-Haritsi, Islamic social security covers all people in need from the people in an Islamic state, just as the caliph Umar bin al-Khaththab once guaranteed all citizens including friends, emigrants, ansar, city dwellers, villagers, until the disbeliever dhimmi (bin Ahmad, 2003). Abduh Said Ahmad al-Yamani argues about the target of social security which includes not only Muslims but also non-Muslims. Likewise, according to Abdul Aziz al-Badri, participants in Islamic social security are all Muslim and non-Muslim people regardless of economic status, rich or poor (al-Yamani, 2000).

The enactment of Law No. 40 of 2004 and Law No.11 of 2009 on Social Welfare indicates the division of authority; insurance-based social security is the authority of BPJS, social security-based social assistance is the authority of the Ministry of Social Affairs (Minanda, 2010). This division of authority should improve professionalism and optimize performance. Therefore, the improvement of services in administration, SHIB (Social Health Insurance Benefit) procedures, as well as assistance for participant complaints, is to improve member satisfaction and program sustainability (Mzee, 2013).

The problems and shortcomings in the technical field in the Government JKN program organized by Healthcare BPJS have led to the government's efforts to prosper its citizens through the health sector (Pasaribu, 2019). The health of every citizen is protected by the state, is one of the manifestations of the state's efforts in achieving the goal of Sharia (maqashid Sharia), hifd nafs which is integrated with other elements of maqashid sharia. Maqashid is divided into three levels; daruriyat, hajiyat, tahsiniyat (Toriquddin, 2014). Daruriyat must exist to maintain the world and the hereafter. If this does not exist, there will be damage in the world and the hereafter, as the concept of as-Syatibi divides it into five main goals; protecting religion, mind, offspring, property, and soul (Toriquddin, 2014). Article no 19 of Law paragraph (2) of Law No. 40, 2004 states that the purpose of health insurance is to provide health care and protection to its members is in line with maqasid sharia at the daruriyat level to protect the people live (Pasaribu, 2019).

CONCLUSION

The implementation of Indonesian Healthcare Insurance and Social (BPJS) for health is a mandate of Law Number 24 of 2011 concerning health insurance for Indonesian citizens. In the view of Maqashid Shari'ah, it is nothing but to create human benefit, both individually and collectively in society. The benefit in question is the benefit of physical and spiritual or spiritual

benefits in the five principles of Al-Usulul Al-Khamsah that covering in religion, soul, mind, property, and offspring. BPJS has placed protecting the soul as a basic human need that must be fulfilled as mandated by the constitution.

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