

## The ideal role of welfare state in the concept of health social insurance of BPJS based on justice values

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### Abstract

This research aim is to analyze the role of the welfare state in BPJS. Government Social Health Insurance currently known as BPJS (Social Security Administering Body) is an institution that organizes social Security. One fundamental problem in the concept of BPJS social insurance is its mandatory concept for participating in BPJS, there is a confusion about the obligation to participate in which the participation in compulsory is the participation of social Security programs, not in a form of membership in institutions such as BPJS. This research is conducted in a doctrinal and non-doctrinal method of research. The nature of this research lies on the reconstruction of the concept of health insurance based on values of justice is descriptive research. Descriptive research is a research method that tries to describe the object or subject under research in accordance with what it is. The role of the idea of the State in placing the BPJS as underwritten by the State fully optimally becomes the absolute responsibility of the State's role for the welfare of the community so that the citizen or society does not have to pay even for the degradation payment for the inpatient class in case of hospitalization. This is to realize the state that could suffice enough to be called a welfare state.

**Keywords:** Ideal Role, *Welfare State*, *Health Insurance*, *BPJS*, *Justice Values*

### 1. Introduction

The main problem with the distribution of health services in Indonesia is the issue of poverty. Highly expensive healthcare costs caused the opportunity for everyone to enjoy their rights in health is difficult to achieve. When making health issues as a human rights issue, then that means that everyone is entitled to the same benefits and the State is responsible for realizing them. As a guarantee of access for all Indonesian citizens to get health care, the government provides social protection.<sup>1</sup> Since the beginning of the country Indonesia was formed to this day the issue of social Security and welfare continues to be a crucial issue that needs attention. The absence of established social Security system has resulted in many problems related to people's lives, including the disadvantaged economic life that resulted in people becoming poor, health services that are not optimal and not comprehensive resulting in suffering, and education that is not pro-people, and others etc<sup>[2]</sup>.

Social Security is one form of social protection to ensure that all citizens met the basic needs of decent living.<sup>3</sup> One of the government's efforts is the birth of Social Security Administering Agency (BPJS). BPJS is a legal entity established by law to organize a social Security program. Every Indonesian Citizen (WNI) is required to follow BPJS Health program. The question is why it is a mandatory, whereas in civil cases, everyone should have the right to choose what program they want to use.

Moreover, not all Indonesian citizens can participate, of the Social Security system, as well as Indonesian citizens working abroad, they must bear their own health expenses in the country where they work, this is certainly felt as unfair. In the technical context, minimal and uneven distribution of health facilities (faskes), especially the first level, ie puskesmas, private clinics, and independent medical doctors, caused some participants of the National Health Insurance (JKN) to be unable to access health services. On the other hand, a number of health facilities are overwhelmed by patients. The Social Security Administering Agency (BPJS) Health Program is an option, whereas the enthusiasm of the community is very high in welcoming the health program. Unfortunately, the enthusiasm of the community was not matched by the proper BPJS referral system<sup>[4]</sup>.

Chairman of the House Commission IX Dede Yusuf said that, there are at least four weaknesses of the implementation of BPJS<sup>[5]</sup>. First, to say the weakness of BPJS is mostly on the matter of administration and service. Both of them are still complicated and their supervision is weak. Thus, the queue of participants BPJS who want to be served in the hospital long enough. This is because the human resources are lacking. Secondly, sometimes the hospitals or clinics make inappropriate service data<sup>[6]</sup>. The National Health Insurance Program (JKN) implemented by the Social Security Administering Agency (BPJS) of Health is not only rejected by a number of people, but also by doctors who spearheaded the program implementers. Doctors who are members of the United Indonesia Doctors (DIB) as an alternative organization of the Indonesian Doctors Association (IDI) are currently

<sup>1</sup> Titon Slamet Kurnia, 2007, Hak atas Derajat Kesehatan Optimal Ham di Indonesia, Alumni, Bandung, hal. 5

<sup>2</sup> Hartini Retnaningsih, dkk, 2013, Upaya Memberikan Perlindungan Sosial Kepada Masyarakat, Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Sekretariat Jenderal DPR Republik Indonesia, Jakarta, hal. 9-10.

<sup>3</sup> Mundiharmo, Hasbullah, Tabrany, dkk, 2014, Roadmap Kesehatan Nasional, Jakarta: Dewan Jaminan Sosial, hal. 3

<sup>4</sup> NN, Minim Fasilitas Kesehatan, Peserta JKN Sulit Akses Pengobatan, <http://sp.beritasatu.com/home/minim-fasilitas-kesehatan-peserta-jkn-sulit-akses-pengobatan/52979>, diakses pada tanggal 15 Januari 2015

<sup>5</sup> Rr Laeny Sulistyawati dan Debbie Sutrisno, Pelaksanaan BPJS Kesehatan Dievaluasi, Republika 11 Maret 2015, h. 3

<sup>6</sup> Ibid.

seriously discussing a program that is certainly not only harm the people, but also hospitals and medical workers <sup>[7]</sup>.

Interesting phenomenon is, BPJS or President Jokowi's Sakti Card Healthcare Program, that is for poor people, neglected children and beggars who have no identity, whether will not be served by BPJS or other social health insurance like Healthy Indonesia card. While it is clear that in Article 34 of the 1945 Constitution, the poor and neglected children are being taken care by the government, but the reality seen is that it actually shows that the state turn a blind eye and does not provide access to such social health insurance widely.

In Fact, Recent development shows that, BPJS Health Insurance according to the results of Ijtima MUI fatwa commission is not according to sharia. even though the results of Ijtima meeting held by ulama (Islamic Priest) of MUI in 2015 which took place in Tegal did not mention that BPJS Health is haram. In addition there are some parts of BPJS Health provisions that are not in accordance with sharia <sup>[8]</sup>. the Fatwa (MUI's official viewpoint which usually considered as a non-official law by Indonesian's Islamic believer) on BPJS Health that is not according to sharia appears because the policy is considered to contain elements of gharar, maisir and usury. Another reason, that BPJS Health membership is also considered unfair because it still distinguishes the background of the participants <sup>[9]</sup>.

Decision of the B 2 Masail Fiqhiyyah Mu'ashirah Commission (Contemporary Jurisprudence Issue) on Fifth Ijtima 'Ulama Fatwa Commission of Indonesia 2015 About The Guarantee of National Health Guidance And BPJS Health also highlights in the event of late payment of Contribution for Wage Workers, it is subject to administrative penalty of 2% (two percent) per month of total contributions in arrears at most for 3 (three) months. The penalty is paid in tandem with the total contributions paid by the Procuring Entity. While the delay in payment of contributions to non-payers and non-worker recipients shall be liable to a 2% (two per cent) monthly penalty of the total outstanding contributions in the amount of 6 (six) months paid together with the total outstanding contributions.

Based on this, the implementation of social Security by BPJS Health, especially those related to the contract between the parties, is not in accordance with the principles of shari'ah, because it contains elements of gharar, maisir and riba. This certainly reinforces the author's allegations that the BPJS has a side of injustice, both in terms of national concept and Islamic aspect of sharia. BPJS Health does not reflect the ideal role of the welfare state in the concept of social insurance, therefore the concept of BPJS needs to be reconstructed. Besides the

difficulty of claiming procedures, the condition of hospitals in partnership with BPJS and the low level of public knowledge about BPJS will surely result in BPJS constraint maximally, and again, patients experiencing emergency conditions will be harmed. The existence of portability and membership, the concept of justice is not reflected in the concept of social health insurance in Indonesia. Thus the reconstruction of the concept of social health insurance Based on the value of justice needs to be studied, on what is the role of the welfare state in the current BPJS Health social insurance. As a breakthrough to provide alternative health insurance concept of health based on the ideal values of justice in Indonesia.

## 2. Method of Research

The paradigm used by the author is the paradigm of constructivism. This paradigm considers that reality is the result of construction or formation of man himself <sup>[10]</sup>. This research is a non-doctrinal research <sup>[11]</sup>. The nature of research on the reconstruction of the concept of health insurance based on health values of justice is descriptive research. Descriptive research is a research method that tries to describe the object or subject under study in accordance with what it really is <sup>[12]</sup>. The problem approach used in this research is the empirical approach <sup>[13]</sup>. Sources of data used in this study are primary and secondary data.

Data collection techniques used in empirical legal research have 3 (three) techniques that can be used, either individually or separately or used together simultaneously. The three techniques are interviews, questionnaires or questionnaires and observations. The analysis used in this research is using qualitative analysis. Qualitative analysis is inductive <sup>[14]</sup>.

## 3. Research Results And Discussion

### 3.1 Welfare State

Jean Jacques Rousseau states that the country is born from a community agreement or often known as the Social Contract. <sup>15</sup> The state born out of the community agreement means that society submits to the creation of a state sovereignty. The covenant mind of society is to find a form of unity, which defends and protects the common power besides literally, getting out of the welfare state is a prosperous state. In term, the understanding of the welfare state is an ideal model of development that is focused on improving welfare by providing a more important role to the state in providing universal and comprehensive social services to its citizens. <sup>16</sup> In a historical perspective, the doctrine of the welfare state, which seeks to pursue the middle path between capitalism and socialism, is the culmination of the struggle for the political rights of citizenship. In addition to demanding individual

<sup>7</sup>NN, BPJS Pasti Bikin Rumah Sakit Bangkrut, <http://sinarharapan.co/index.php/news/read/31536/bpjs-pasti-bikin-rumah-sakit-bangkrut.html>, diakses pada tanggal 15 Januari 2015.

<sup>8</sup> NN, Pemerintah-MUI Sepakat BPJS Kesehatan Direvisi Agar Sesuai Syariah <http://mui.or.id/mui/homepage/berita/berita-singkat/pemerintah-mui-sepakat-bpjs-kesehatan-direvisi-agar-sesuai-syariah.html>, diakses pada tanggal 23 Agustus 2015.

<sup>9</sup> Indra Akuntono, MUI Benarkan Keluarkan Fatwa BPJS Tak Sesuai Syariah Islam, <http://nasional.kompas.com/read/2015/07/30/06455821/MUI.Benarkan.Keluarkan.Fatwa.BPJS.Tak.Sesuai.Syariah.Islam>, diakses pada tanggal 23 Agustus 2015.

<sup>10</sup>Zainal Arifin, 2012, Penelitian Pendidikan Metode dan Paradigma Baru. Rosdakarya, Bandung, h. 140

<sup>11</sup>Soetandyo Wignjosoebroto, 2002, Hukum: Paradigma, Metode dan Dinamika Masalahnya. Perkumpulan HuMa dan ELSAM, Jakarta, h. 121.

<sup>12</sup> Sukardi, 2012, Metodologi Penelitian; Kompetensi dan Praktiknya, Sinar Grafika Offset, Jakarta, h.157

<sup>13</sup> Ibid. hal 7

<sup>14</sup> Noeng Muhajir, 1996, Metodologi Penelitian Kualitatif, Rake Sarasih, Yogyakarta, h.151

<sup>15</sup> Soehino, 2001, Ilmu Negara, Liberty, Yogyakarta, h. 118.

<sup>16</sup> Syed Nawab Haider Naqvi, 2003, Menggagas Ilmu Ekonomi Islam, alih bahasa M. Saiful Anam dan M.Ufuql Mubin, Pustaka Pelajar, Yogyakarta, h. 116.

freedom, welfare state also instills a sense of responsibility in society by ensuring that individuals and families can meet certain basic needs, in sickness, aging, and in unemployment [17].

Referring to Spicker, Midgley, Tracy and Livermore, Thompson, Edi Suharto concluded that, the definition of welfare has at least four meanings:

1. As a condition of well-being (well-being). This understanding usually refers to the term social welfare (social welfare) as a condition of the fulfillment of material and non-material needs. Midgley, et al (2000: xi) defines social welfare as "... a condition or state of human well-being. "Prosperous conditions occur when human life is safe and happy because the basic needs of nutrition, health, education, shelter, and income can be met; As well as when human beings are protected from the major risks that threaten their lives.
2. As social services. In the UK, Australia and New Zealand, social services generally cover five forms, namely social Security, health services, education, housing and personal social services.
3. As social benefits, especially in the United States (US), given to the poor. Since most of the welfare recipients are poor, disabled, unemployed, these circumstances lead to negative connotations to welfare terms, such as poverty, laziness, dependency, which is more properly termed "social illfare" rather than "social welfare"
4. As a planned process done by individuals, social institutions, communities and government bodies to improve the quality of life (first meaning) through the provision of social services (second understanding) and social benefits (third meaning) [18].

Understanding of the welfare of the state can not be separated from the four definitions of welfare above. Substantially, the welfare state includes the first, second and fourth welfare, and wants to erase the negative image in the third means. In broad outline, the welfare of the state refers to an idealized model of development focused on improving welfare by providing a more important role to the state in providing universal and comprehensive social services to its citizens. , For example, statement that the welfare of the state "stands for a developed ideal in which welfare is provided comprehensively by the state of the best possible standards. " [19]

The welfare state seeks to reduce the negative excesses arising from liberalism as in pure capitalism, and to activate the role of the state. With this step they hope to reduce the attractiveness of socialism, while strengthening the position of capitalism. This concept gained the first momentum after the great depression of the 1930s in America, and then after the Second World War - in response to the challenges of capitalism and the difficulties of depression and war. According to some of his critics, he represents a social management movement from above aimed at securing the social order without transforming the essential power of the

ruling strata to the subordinate majority.<sup>20</sup> The generosity of the welfare state and the size of the welfare state have different effects on social capital, we reassess the power of the main theoretical explanations in the field and the findings of earlier empirical work. the authors strongly support the notion of institutional theory that there is a positive relationship between high levels. Generosity of generosity and social capital. In addition, the authors partially confirm neoclassical attention and communitarian theories for a negative correlation between large-sized welfare states and social capital [21].

The welfare state can be defined as a social welfare system that plays a major role in the state or government (to allocate a portion of public funds to ensure the fulfillment of the basic needs of its citizens) [22]. From this Explanation can then be drawn a conclusion that the welfare state are there to protect the community, especially the weak, such as the poor, disabled, unemployed and so forth.

The key features of a welfare state are :

1. Separation of power based on trias politica is seen as no longer applicable. Efficiency considerations are more important than political considerations, so the role of the executive organs is more important than the legislative organs;
2. The role of the state is not limited to maintaining Security and order alone, but the state actively plays a role in organizing the interests of the people in the social, economic and cultural fields. So planning is an important tool in the welfare state;
3. The welfare state is a material law state that places social justice rather than formal equality;
4. As a consequence of the foregoing matters, in the welfare state, property rights are no longer regarded as absolute rights, but are deemed to have a social function, this means there are limits to their freedom of use;
5. There is a tendency that the role of public law is increasingly important and increasingly urgent, due to the increasing role of the state in social, economic and cultural life [23].

The government in the welfare state is given the task of building public welfare in various fields with the consequence of giving independence to the state administration in running it. The government in this framework is granted independence to act on its own initiative and not always on parliamentary proposals.

Social Security protection recognizes several complementary approaches that are planned over the long term to cover all people gradually in line with the development of the economic capacity of the community. The first approach is the social health insurance approach or compulsory social insurance, which is financed by the contribution / premium paid by the worker and / or employer. Such contribution / premium shall always be related to the level of income / wage paid by the employer. The second approach is social assistance in the

<sup>17</sup> Ibid., h. 117

<sup>18</sup> Edi Suharto, Peta Dan Dinamika Welfare State Di Beberapa Negara: Pelajaran apa yang bisa dipetik untuk membangun Indonesia, <http://www.policy.hu/suharto/Naskah%20PDF/UGM WelfareState.pdf>, h. 2

<sup>19</sup> Paul Spicker, 1995, *Social Policy: Themes and Approaches*, London: Prentice Hal, page, 82

<sup>20</sup> Umer Chapra, 2000, *Islam dan Tantangan Ekonomi*, alih bahasa I khwan Abidin Basri Gema I nsani Press, Jakarta, h. 113.

<sup>21</sup> Emanuele Ferragina, *The welfare state and social capital in Europe: Reassessing a complex relationship*, International Journal of

Comparative Sociology DOI: 10.1177/0020715216688934, 2017, page 1

<sup>22</sup> Ridwan HR, 2007, *Hukum Administrasi Negara*, PT. Raja Grafindo Persada, Jakarta, h. 8.

<sup>23</sup> Ibid. , h. 13.

form of cash providers and services with sources of financing from the State and other social assistance <sup>[24]</sup>.

Some countries that embrace welfare state has been providing social Security in the form of noble-social insurance. Especially because the benefits of social assistance require large funds and do not encourage people to plan for their welfare. In addition, funds collected in social health insurance can be a national saving. Overall, national social Security can support sustainable national development. Arrangements in social Security in terms of type consist of health insurance, work accident insurance, work termination insurance coverage, retirement coverage, pension and death charity <sup>[25]</sup>.

### 3.2 Health Social Security Under Law 40 of 2004 on National Social Security System

The principles that characterize social Security programs are:

- a. First, that social Security program grows and develops in line with the economic growth of a State.
- b. Second, there is the role of participants to contribute to finance social Security programs, through insurance mechanisms, either social / commercial or savings.
- c. Third, starting from formal groups, non-formal and new independent community groups
- d. Fourth, the membership is mandatory, so the law "the law of large numbers" Can be quickly fulfilled,
- e. Fifth, the important role of government in it.
- f. The six are "not for profit" and the seventh, turns out to be a large public fund mobilization instrument, able to form a large national savings, thus giving economic impact / development in general. The Social Security System is an "engine of development", that is the engine of a nation's development.

The role of the State, not only in the form of regulation, but also as the organizer, the employer who must participate in paying the dues, and even as the person in charge of the survival of the social Security program, including subsidizing, if necessary. For people who can not afford the social Security program, the state can organize a social assistance or social service program, which its activities can be "deposited" in the implementation of the Social Security program.

In providing a social security, in accordance with the context of Pancasila, social security must be provided fairly. Aristotle teaches two kinds of justice namely distributive justice (Distributief) and commutative justice (commutatief). Distributive justice requires that everyone gets what is his rights or quota; *Suum cuique tribuere* (to reach his own). This quota is not the same for everyone, depending on wealth, birth, education, abilities, and so on; Its nature is proportional. What is fair here is that if everyone gets his rights or his quota proportionally given the education, position, ability, and so forth. Distributive justice is the government's duty to its citizens, determining what citizens can demand. Distributive justice is a legislator's obligation to be considered in drafting legislation. This justice are given to everyone according to their merits or abilities <sup>[26]</sup>.

The Social Security Program is actually well known in Indonesia, as it has been conducted by PT (Corporation) Askes Indonesia, PT Taspen, PT Jamsostek and PT Asabri,

but it is seen from the amount of membership, the type of program and the quality of the benefits, as well as the principles of implementation and regulation improvement. Participants of social security programs in Indonesia, compared to other countries, are still too few (about 20%). Benefits from participants are also very limited. The principle / system of operation also varies, resulting in a social injustice, because it requires new laws that are expected to cover the entire implementation of social security programs, increasing the number of participants, increasing benefits and more fair. Which came to be known in Law No. 40 of 2004 on the National Social Security System.

Broadly speaking, Law Number 40 Year 2004 regarding National Social Security System, is designed to:

- a. Fulfilling the mandate of the 1945 Constitution, particularly Article 34 Paragraph (2) "The State develops social security system for all people and empowers the weak and incapable of humanity"
- b. Increase the number of participants of social Security programs in Indonesia. This is because, so far, the participants of the social Security program in Indonesia are still very low.
- c. Increase the scope of benefits / benefits enjoyed by participants of the social Security program. This is because the benefits of social security programs have not been fully enjoyed by most Indonesians. For Civil Servants not yet covered the Work Accident Insurance program, while for private formal worker group, not yet have health insurance program and pension guarantee.
- d. Improving the quality of benefits that can be enjoyed by participants of social security programs, in order to meet the basic needs of decent living.
- e. The implementation of social justice in the implementation of social security programs for all Indonesian people. With the development of the National Social Security System, it is hoped that the implementation of integrated social security program, *sinchron*, will be implemented through a system approach applicable to all Indonesians.
- f. The implementation of the principles of the implementation of social security programs is in accordance with known universal principles, such as the principle of mutual cooperation, membership is mandatory, non-profit, transparent, prudent and accountable
- g. Performed gradually, both from the aspect of the type of program and membership by considering the feasibility of the program. By anticipating the implementation of the National Social Security System in accordance with Law No. 40 of 2004 on the National Social Security System, it may take at least 20 to 25 years to cover all Indonesians. This is caused, among others, by the need for a 15-year grace period to ensure the establishment of a formal pension guarantee program..

In Law Number 40 Year 2004 regarding National Social Security System, the types of social security programs that will be held includes :

- a. Health insurance.
- b. Accident insurance.
- c. Retirement Insurance.
- d. Pension Insurance
- e. Life insurance.

<sup>24</sup>Ibid. , h. 4

<sup>25</sup>Ibid. , h. 5

<sup>26</sup> Sudikno Mertokusumo, op cit., hal. 101-102.

In addition to, in Law Number 40 Year 2004 regarding the National Social Security System, in order to fulfill the provisions of the 1945 Constitution Article 34 paragraph (1), the government then opened the participation of the social security program of the community with "beneficiaries of contributions", ie participants from the poor and Not able, whose fees are paid by the government. This program is basically a social assistance program, which is "deposited" in the implementation of the National Social Security System. In addition, to ensure the continuity of the social security program, the Government may take special measures to ensure the financial health of the Social Security Administering Body. This can, among other things, be accomplished through the excavating it from other sources of funds, provisions on contributions and benefits, including subsidies, if necessary.

In Law Number 36 of 2009 on Health, Article 5 Paragraph (1) stipulates that everyone has equal rights in obtaining access to health resources. Furthermore, paragraph (2) affirms that every person has the right in obtaining safe, qualified, and affordable health services. Then in paragraph (3) states that everyone is entitled independently and is responsible for determining his own health services necessary for himself. Furthermore, Article 6 affirms that everyone is entitled to a healthy environment for the achievement of health status. To ensure the fulfillment of the right to a healthy life for all citizens including the poor and needy, the government is responsible for the availability of resources in the health sector that is equitable and the best for all people to obtain the highest degree of health.

### 3.3 Health Insurance Based on Law no. 24 Year 2011 on BPJS

Law Number 40 Year 2004 regarding National Social Security System is the foundation for the presence of Social Security Administering Body or BPJS. In accordance with Law No. 40 of 2004 on the National Social Security System, BPJS is a non-profit legal entity. Based on Law No. 24 of 2011, BPJS will replace a number of social security institutions in Indonesia, namely the health insurance of PT Askes Indonesia into BPJS Health and social security agencies of PT Jamsostek labor into BPJS Employment. Transformation of PT Askes and PT Jamsostek into BPJS are done gradually. In early 2014, PT Askes will become BPJS Health, then in 2015 the PT Jamsostek turn into BPJS Employment.

This institution is responsible directly to the President. BPJS is headquartered in Jakarta, and may have representative offices at the provincial level as well as branch offices at the municipal district level. Implementation of BPJS health insurance in Indonesia is technically regulated by Presidential Regulation No. 12 of 2013 on Health Insurance.

BPJS Health (Badan Penyelenggara Jaminan Sosial Kesehatan) is a state-owned enterprise that specially assigned by the government to organize a guaranteed health care for all Indonesian people, especially for Civil Servant, Civil Servant Pensioner, Army and police (TNI / POLRI), Veterans, Independence Pioneers and their families and Other business entities or ordinary people.

BPJS Health together with BPJS Employment (formerly Jamsostek) is a government program in National Health Insurance (JKN) unity which was inaugurated on December 31, 2013. BPJS Health start their first operation since January 1, 2014, while BPJS Employment start since 1 July 2014.

BPJS Health was previously named Askes (Health Insurance), managed by PT Askes Indonesia (Persero), but in accordance with Law no. 24 Year 2011 on BPJS, PT. Askes Indonesia changed to BPJS Health since January 1, 2014.

Every Indonesian citizen and a foreigner who has been living in Indonesia for at least six months shall be a member of BPJS. This is in accordance with Article 14 of the BPJS Law. Each company must register its employees as a member of BPJS. While a person or family who does not work at the company must register themselves and their family members on BPJS. Each participant will be drawn to BPJS a dues whose amount is determined later. As for the poor, the contribution of BPJS are borne by the government through the program of Contribution help. Being a BPJS participant is not only mandatory for workers in the formal sector, but also informal workers. Informal workers are also required to become members of BPJS Health. Workers must register themselves and pay dues according to the desired level of benefits. Universal health insurance is expected to begin in phases in 2014 and by 2019, it is expected that all Indonesian citizens already have health insurance. Former Minister of Health Nafsiah Mboi stated BPJS Health will be endeavored to cover all kind of disease with Increasing efficiency efforts. BPJS Health Participant is every person, including foreigner who work at least 6 (six) months in Indonesia, who has paid dues, it covers :

1. Beneficiaries of Health Insurance Contribution (PBI): the poor and the needy, with the determination of the participants in accordance with the provisions of legislation.
2. Non-Beneficiary of Health Insurance Contribution (Non PBI), consisting of :
  - a. Wage Workers and their family members
  - b. Government employees;
  - c. Members of the TNI (Indonesian Army);
  - d. Members of the Police;
  - e. State officials;
  - f. Non Government Officer Government;
  - g. Private employees; and
  - h. Workers who do not include the letter a to f who receive the Wages.

Including foreigners who work in Indonesia for a minimum of 6 (six) months.

- a. Non-Wage Workers and members of their families
- b. Workers outside the employment relationship or Self-employed; and
- c. Workers who do not include letter a who are not Wage earners.

The registration process of the participant of BPJS is divided into three namely registration for Beneficiary of Contribution / PBI, For Wage Employee Beneficiary / PPU and Registration for Non-Wage Worker / Non-Worker / Non-Wage Workers. The Data Collection of Poor and Disadvantaged Persons participating in PBI is conducted by an agency conducting Government affairs in the field of statistics (Badan Pusat Statistik) verified and validated by the Ministry of Social Affairs. In addition to the PBI participants set by the Central Government, there are also residents who are registered by the Regional Government based on the Decree of Governors /

Regents / Mayors for LGs that integrate the Jamkesda program into the JKN program. Procedure of registration For Wage Worker / Beneficiary Workers, is :

1. Company / Business Body shall register all employees and their family members to BPJS Health Office by Submitting :
  - a. Registration Form of Business body / Other Legal bodies
  - b. Data Migration of employees and family members in the format specified by BPJS Health.
2. Company / Business Entity receives Virtual Account number (VA) for payment to Bank that has cooperated (BRI / Mandiri / BNI)
3. Proof of Payment of contribution shall be submitted to BPJS health Insurance Office to be given a JKN card or e-ID Print independently by Company / Business Entity.

Registration Procedure For Non-Wage Workers / Non-Workers

1. Prospective participants register individually at BPJS Health Office Register all family members in Family Card
2. Fill out the Participant's Field List (DIP) form by attaching:
  - a. Photocopy of Family Card (KK)
  - b. Photocopy of ID card / Passport, each 1 sheet
  - c. Photocopy of the Savings Book of one of the participants in the Family Card
  - d. 3 x 4 Cm photographs, one piece for each person.
3. After registering, prospective participants obtain Virtual Account Number (VA)
4. Make payment of contributions to the Banks that work together (BRI / Mandiri / BNI)
5. Proof of payment of dues submitted to the office BPJS Health to be put JKN card. Registration other than the BPJS Health Office, can be through BPJS Health website

### 3.4 The Role of the State of Social Security System BPJS Health for All Indonesian People

Welfare becomes an opening word in the organization of social security systems. Welfare is the goal of the Indonesian state, since the formulation of the 1945 Constitution.<sup>27</sup> The issue of welfare and social justice for all Indonesian people. This is a must have constitutional and operational guarantees in reality in the life of society, nation and state through the system or ideology of the state of law (*rechtsstaat*) adopted by the Indonesian people, that is not merely "formele *rechtsstaat*" which is a "rechtsdogmatiek" solely based on law, but rather an ideals of the legal state in the form of material "rechtsstaat" namely "wohlfahrstaat", social service state. an Idea of welfare state, which in terms of "grondrechten" is not only "politieke rechten mere", but complete with "economische, sociale en kulturele rechten".

The welfare must be enjoyed sustainably, fairly and equitably reaching all the people on every strata. The dynamics of the development of the Indonesian nation has grown to fit the challenge following the demands of handling unresolved issues. One of them is about the implementation of social security system for all Indonesian people as mandated in

Article 28H paragraph (3) that states "Every person has the right to social security which enables his self-development as a dignified human being" and Article 34 paragraph (2) The State of the Republic of Indonesia in 1945 which reads "The State develops social security system for all people and empowers the weak and incapable of humanity in accordance with dignity.

In Indonesia there have actually been several social security programs organized with social insurance and social savings mechanisms, in accordance with the foregoing definition, but the membership of the program only covers some of the people who work in the formal sector. Most others, especially those working in the informal sector, have not received social protection. In addition, these programs have not been fully able to provide fair protection to participants and the benefits provided to participants are still insufficient to ensure their well-being.

One fundamental problem in the concept of social insurance of BPJS is the nature of its forceful participatory in BPJS, there is a confusion about the obligation to participate in which the participation should be compulsory in the participation of social security programs, not in a membership in institutions such as BPJS. The fundamental issue in this social security membership is when to follow or become a participant can only be done by registering to BPJS (Article 16 of the BPJS Law).

Every citizen can only participate in a social security program if they register to be a participant of BPJS and pay dues every month charged by BPJS with arbitrary, then how about the rights of people who do not have access to information or there is no BPJS office where they live so they can not enjoy the service guarantee Social rights ?. A citizen who has not signed up to become a participant of BPJS means that he does not participate in a social security program organized by the government even though BPJS itself is more practically a public institution that serves as a social security provider with a paradigm and insurance system.

The Social Security administration policy is only by BPJS which is a separate public legal entity outside the government or quasi government / *parastatal*.<sup>28</sup> Whereas the obligation to provide social security is charged by the constitution to the government in terms of funding and operations but instead transferred to other parties. It can be interpreted that the government delegates its obligation to fulfill the right of every citizen to obtain the social security to the legal entity outside the government as well as to transfer the necessary funding burden from the government bag to the participating citizen.

The capitation rate system is the payment of upfront claims each month on health facilities on the basis of the number of patients enrolling in the health facility without accounting for the type and number of health services provided. INA-CBG's tariff system is a package-claimed payment system with a grouping of disease diagnoses and procedures. This system tariff system benefits BPJS Health to control the cost of claims. This system is effective but it oppresses health facilities to serve with claims under the cost of health services so that health facilities are reluctant to provide the poor or giving them a poor service.

BPJS Health implements this tariff system because BPJS operates with the insurance paradigm of business logic in

<sup>27</sup> Tim Penyusun Revisi Naskah Komprehensif, 2010, Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Latar Belakang, Proses, dan Hasil Pembahasan 1999-2002, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi; Jakarta, h. 27

<sup>28</sup> (Hasbullah Thabrany 2008: 40)

order to help the state finances so as to increase income and simultaneously reduce expenditure. This paradigm can be seen in Government Regulation No. 87 of 2013 on Management of Social Security Assets whereby it is permissible for BPJS Health to invest assets in various instruments where for Social Security Health there are 3 instruments that can be made in the event of investment without restrictions namely Government Securities, Bank of Indonesia (BI) Securities so it is quite clear that BPJS Health is designed to absorb Government Securities and BI.<sup>29</sup>

BPJS, as the sole organizer of social security system, is not ready to carry out its duties as a provider of social security system in this vast country due to various limitations owned by BPJS so that there are many complaints about the slow performance of BPJS in terms of health service and employment. These complaints include claims of payment services by partner agencies and by participants. The inability of BPJS in covering services throughout Indonesia is certainly not in line with the human rights of citizens who need to access national social security services but are hampered by the inaction of BPJS institutions. Individual self-awareness of financial issues not only prepares them for as candidates for The difficult economic conditions that may arise in the future but also to support the country's development strongly.<sup>30</sup>

The concept of the SJSN Law on BPJS as a single forum for the organizers has actually been annulled by the Constitutional Court because it is contradictory to the constitution through its decision on the case number 007 / PUU-III / 2005 to the public on 31 August 2005. The Constitutional Court declares in Article 5 paragraph (2), paragraph (3) And paragraph (4) of Law no. 40 of 2004 concerning SJSN that the four Persero (PT Askes, PT Taspen, PT Asabri and PT Jamsostek) are joined in to one as BPJS, declared as contradictory to the 1945 Indonesian Constitution and have no binding legal force.

The Constitutional Court is of the opinion that Article 5 paragraph (2), paragraph (3) and paragraph (4) of the SJSN Law cover the opportunity of the Regional Government to develop a sub-system of national social security in accordance with the authority derived from the provisions of Article 18 paragraph (2) 5) 1945 Constitution of 1945. In this decree, the Constitutional Court has stated that the concept of the four state-owned enterprises engaged in insurance is not feasible to be BPJS because it is not in accordance with the constitution but in the BPJS act these four state-owned insurance is combined to become BPJS instead.

The existence of the BPJS is also not in accordance with the mandate of the SJSN Law which mandates that social security may be held by some social security providers, whereas in the BPJS Act the implementation of social security is submitted to an organizing body. Implementation of social security system only by one of these institutions makes BPJS running and performing slowly because of so large workloads borne by BPJS in implementing the national social security program.

The ideals of social justice require the creation of a just and equitable prosperity of the people, as a reactief verzet against the past verplunderingsprocess, and as the basic principle in

organizing the welfare of the people. The role of the idea of the State in placing the BPJS underwritten by the State fully optimally becomes the absolute responsibility of the State's role for the welfare of the community so that the citizen or society does not have to pay even the degradation of the inpatient class of hospitalization. This is to create a welfare state government system. Thus the existence of a social security system and an institution called BPJS (Social Security Administering Body) is one way to meet the basic needs of decent living and enhance its dignity towards the realization of a prosperous, just and well Indonesian society.

The absolute obligation of the State by providing the National Social Security System is drawn up with reference to the provision of universal social security as has been held by developed and developing countries for a long time.<sup>31</sup>

Thus it has been constitutionally mandated to the State to develop social security for all the people. Article 28 H paragraph 3 of the 1945 Constitution states that social security is the right of every citizen. Furthermore, the need for an immediate development of the National Social Security System (SJSN) is emphasized in Article 34 Paragraph 2 of the Amendment of the 1945 Constitution of 2002 which states that - The State develops a social security system for all people and empowers the weak and incapable of humanity ". Without the details of the social security program to be developed, it is understood that the mandate requires the implementation of comprehensive social / comprehensive social security programs as other countries have done, although it is done gradually.

#### 4. Conclusion

Welfare has become an opening word in the organization of social security systems. Welfare is the goal of Indonesia, since the formulation of the 1945 Constitution. The issue of welfare and social justice for all Indonesian people has been coordinated. This must have constitutional and operational guarantees in real life in the community, nation and state through the system or ideal state of law (rechtsstaat) adopted by the Indonesian nation. The welfare must be enjoyed sustainably, fairly and equitably reaching all the people on all strata. The existence of BPJS (Social Security Administering Body), one of such social security system. One fundamental problem in the concept of social insurance BPJS is the nature of BPJS of forced participatory, there is a confusion about the obligation to participate in which the participation is compulsory is the participation of social security programs, and not membership in institutions such as BPJS. The fundamental issue in this social security membership is when to follow or become a participant can only be done by registering to BPJS (Article 16 of the BPJS Law). The concept of the SJSN Law on BPJS as a single forum for the organizers has actually been annulled by the Constitutional Court because it is contradictory to the constitution through its decision on the case number 007 / PUU-III / 2005 to the public on 31 August 2005.

The existence of the BPJS is also not in accordance with the mandate of the SJSN Law which mandates that social security may be held by some social security providers, whereas in the

<sup>29</sup> (Mohammad Zaki Hussein, 2015 : 2)

<sup>30</sup> Murat Yldrm, Fatih Bayram, Ahmet Ouz, Gülay Günay, Financial Literacy Level of Individuals and Its Relationships to Demographic Variables, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, Vol.8 No.3 2017, page 19

<sup>31</sup> Noor Hazilah Abd. Manaf, (2005), "Quality management in Malaysian public health care", International Journal of Health Care Quality Assurance, Vol. 18 Iss 3 page 204,

BPJS Act the implementation of social security is submitted to an organizing body. Implementation of social security system only by one of these institutions makes BPJS running and performing slowly because of so large workloads borne by BPJS in implementing the national social security program.

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