RESPONSIBILITY OF THE STATE IN THE FORM OF HEALTH INSURANCE BASED ON LAW NUMBER 24 OF 2011 ABOUT SOCIAL SECURITY ADMINISTRATIVE AGENCY, IN PERSPECTIVE OF ISLAMIC LAW

ABSTRACT
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At the beginning of 2014 right on January 1st, the Government of Indonesia through the Ministry of Health operated the National Health Insurance Program. The program was organized by The Social Security Administrative Agency (BPJS) which is an institution established based on Regulation No. 24 of 2011 about BPJS mandated in Regulation No. 40 of 2004 about national Social Security System. This National Health Insurance is viewed as the Government's efforts to protect the small community that has been difficult to obtain health services. People are required to pay Reviews their own health care and other fellow citizen. Whereas the field showed the fact that not all Indonesian citizen can afford to pay the fees so they could not become the members of BPJS. This study will focus on the form and the responsibility of the Government about health Insurance under the Regulation No. 24 of 2011 about BPJS, and how the views of Islamic law in the concept and practice according to Regulation No. 24 of 2011. The method used in this study was a normative juridical research method.

Keywords: Health Insurance, Regulation No. 24 of 2011, Islamic Law Perspective

A. INTRODUCTION

Health is one of the basic human needs, therefore health as a right for every citizen is protected by the Law. Each country recognizes that health is the biggest capital to reach prosperity. Therefore, improvement of health services is basically an investment in human resources in order to achieve a prosperous society. In the developing countries such as Indonesia, in order to improve the welfare of the people it needed the government role through public services to meet the basic needs of people such as health, education, and other basic necessities.¹

¹ Alif Hubaib Khariza, Program Jaminan Kesehatan Nasional, Vol. 3, Number 1, January-April, 2015

Government and the legislature as the caretaker of the society’s aspiration through elections take full responsibility for the prosperity and welfare of the society. To realize the prosperity and welfare, the Government set various policies with various programs.

One of them is to provide health insurance, because health is the basic need of every human being. As already
understood, that in going through this life, human is always confronted with something uncertain, this might be beneficial, but may be vice versa. Humans expect security on their property, health and wellness, but man can only be attempted. Social security is taken in consideration that the State is responsible for the welfare of its people. The state is obliged to provide accesses to earn a decent living for all people, providing decent jobs, opening the opportunity to participate in various forms of economic activities that can provide benefits and kindness to them, so that they can meet their basic needs such as food, clothing and housing, and then increased to supplementary (tertiary) needs in accordance with the level of capabilities.2

In matters of improving the welfare of its people, particularly in the areas of health, Allah has provided the basis and foundation, as can be seen: In the Holy Quran (of Surah At-Taubah: 71)

The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish prayer and give zakah and obey Allah and His Messenger. Those - Allah will have mercy upon them. Indeed, Allah is Exalted in Might and Wise. The word of Allah in surah Al-Maidah verse 2.3

And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah ; indeed, Allah is severe in penalty.

In the verses above, we are commanded to do good to orphans, the poor, slaves and so on. Then the command to give infaq in the way of Allah and warnings of the curmudgeonly and miserly and the explanation that obedience to Allah is not only to worship, but also covers the entire methodology of the divine as giving property. All stressed that Islam was aimed at realizing the general guarantee covering all Muslim and communities so that they live in the shade of the glorious flag in safety, peace and mutual help.

At the beginning of 2014 right on January 1st, the Government of Indonesia through the Ministry of Health operated National Health Insurance Program (JKN). This

program was held by BPJS (Social Security Administrative Agency) which is an institution established based on Law No. 24 of 2011 on BPJS mandated in Law No. 40 of 2004 on National Social Security System (SJSN). The National Health Insurance (JKN) was served as the Government's efforts to protect the small community that had been difficult to get health care.

This is the background of the issues in making up this theme, since the Insurance of People's Health is the responsibility of the State, not the people, and in the National Health Insurance Program (JKN) the social funds collected can be invested by the Social Security Administrative Agency of Health (BPJS) where the Government requires all people to participate in social insurance and pay the premium, whereas not all Indonesian citizens can afford to pay the premiums and generally the program of BPJS of health was not reflect the ideal of social security in Islam yet, so those who were not listed in Social Security Administrative Agency (BPJS) could not received health care.

B. FORMULATION OF THE PROBLEMS

Based on the description of the background above, the issues to be discussed are:

1. How were the forms and responsibilities of the States towards health insurance according to Law No. 24 of 2011 concerning on Social Security Administrative Agency (BPJS)?

2. How was the view of Islamic law on the concept and practice of health insurance as stipulated in Law No. 24 of 2011 on Social Security Administrative Agency?

C. RESEARCH METHODOLOGY

1. Type of the Research

To get the data in order to outline the Health Insurance for those who cannot afford to pay the premiums of BPJS (Social Security Administrative Agency for Health) in the perspective of Islamic law, the type of research that the writer used in this study was a normative legal research method.

In doing normative legal research, also called doctrinal legal research, the writer only used sources of secondary data such as the rules of
legislation, court decisions of law theories and opinions of notable legal scholars, whereas the analysis was carried out in the form of normative-qualitative analysis.  

Research method is part of the science which studies how the working procedure to seek the truth. Research method itself learns about research methods, knowledge about the tools in the study. 

According Soerjono Soekanto, normative research or literature research is legal research done by researching library materials or secondary data. Normative legal research aims to understand the relationship between the sciences of law with positive law.

A normative legal research is a library research, which is a study on secondary data. Those secondary data was divided into general secondary data and secondary data in the legal field. This method aims to collect data and information with the help of the various books, law magazines, legal articles and other documents.

2. Sources of Legal Materials

a. Primary Legal Materials

Primary legal materials are materials that are authoritative which means to have authority. Primary legal materials in this study consisted of regulations about cash waqf and other related regulations, namely:

a) Constitution of 1945
b) Law No. 40 of 2004 on the National Security System
c) Law No. 24 of 2011 on Health Security Administrative Agency
d) Law No. 36 of 2009 on Health

b. Secondary Legal Materials

Secondary Legal Materials in this study were

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5Noeng Muhadjir, Metode Penelitian Kualitatif edisi IV, Yogyakarta, Rake Sarasin, 2000, pp. 5-6.
7Ronny Hanitijo Soemitro, Metode Penelitian Hukum dan Jurimetri Cetakan Ketiga, Ghalia Indonesia, Semarang, 1988. Pg. 11.
8Peter Mahmud Marzuki, Penelitian Hukum, Kencana, Jakarta, 2005, p. 141.
legal materials that explain the primary legal materials, among others:
1. Opinions of experts associated with the title of the research;
2. Reading books related to the title of the research; and
3. Results of research and elements of other relevant literature.

c. Tertiary Legal Materials

Tertiary Legal Materials in this study were supporting legal materials taken from magazines, newspapers, internet and legal dictionary.

3. Procedures of Collecting Legal Materials

The procedure used by the writer was in the form of literature study method and the method of documentation. Literature study method that takes data from the literature was used to search for concepts, theories, opinions, and findings which are closely related to the subject matter of this research. Method of documentation was one way of collecting the data that the researcher used to inventory records, transcripts books, or other materials associated with this research. Documents can be used as stable, rich and encouraging sources.

The searching of legal literature and other information was performed off line (books) and online (internet). Offline library materials can be obtained from a private collection and library such as books, law journals and others, while the on-line library materials can be obtained by using internet access.

4. Analysis of Legal Materials

After all the legal materials were gathered, it was then followed by managing, editing, and analyzing of legal materials. Managing legal materials was done by summarizing and reviewing these materials, then management of legal materials was done by editing data. Editing the data is an activity in which the writer checks the materials that have been collected.10

Analysis of the materials that have been collected was conducted by using qualitative methods. A qualitative approach focused on the general principles underlying the

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9Soerjono Soekanto, op. Cit, p. 55.
embodiment units’ symptoms in human life.\textsuperscript{11}

Analysis of legal materials was done qualitatively for the withdrawal of the conclusions, it was not only aimed to determine the extent of the health insurance in the perspective of Islamic law, but also aimed to understand the constraints that arise in the implementation. Qualitative analysis was also conducted to reveal the extent of the consistency of the Health Security Agency.

D. RESEARCH RESULTS AND DISCUSSION


The National Health Insurance Program (JKN) is a state’s effort in providing social protection that has been set up what is the obligation of the State in the fulfillment of these guarantees, as stipulated in article human rights in the health field.

Article 28 H of Constitution 1945 formulated that:

1) Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.

2) Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.

3) Every person shall have the right to social security in order to develop oneself fully as a dignified human being.

4) Every person shall have the right to own personal property, and such property may not be unjustly held possession of by any party.

As in the Constitution 1945 of the Republic of Indonesia, the duty of the State was stated in the provisions of article 34 paragraph (1) and (3) which reads:

1) Impoverished persons and abandoned children shall be taken care of by the State, while paragraph

\textsuperscript{11}Burhan Ashshofa, \textit{Metode Penelitian Hukum}, Jakarta: Rineka Copyright 2004, p. 20.
3) The state shall have the obligation to provide sufficient medical and public service facilities.

National social security is a state program that aims to provide certainty protection and social welfare for all the people. The consequences of the concept of the Prosperous State, is that the State is responsible for the prosperity of its people, by taking part on its citizens affairs starting from the cradle to the grave, so it is like no one aspect of life of its citizens which are not taken care by the government.

One form of State responsibility in the life of society is in the field of health to achieve the highest health status. The realization of the right to a high level healthy life of every member of society is the responsibility of the Government.

The National Health Insurance (JKN) gradually began on January 1st, 2014. This plan was confirmed in Law No. 40 of 2004 on National Social Security System (UU SJSN) as the legal basis for the implementation of the Constitution. Then its implementation was continued to the Social Security Administrative Agency (BPJS) in accordance with the Law on National Social Security System. Moreover, its implementation then passed to the Social Security Administrative Agency (BPJS) in accordance with the Law on National Social Security System.

In Article 3 of Law No. 24 of 2011 on Social Security Administrative Agency stated that:
"BPJS aimed to realize the implementation of the provision of guarantee for the fulfilling of the appropriated basic need of life for each participant and/ or his/ her family member”.

The right for a healthy life is a fundamental right that must be guaranteed, because health is a part of the primary needs of every human being. Body and soul healthy condition will allow each man to perform activities and work. Health is also part of the requirements towards a
prosperous life. Such rights are one of the basic rights in health care.

According to Article 1 paragraph 1 of Law No. 36 of 2009 on Health, what referred to health “is a healthy state of physical, mental, spiritual, which allows anyone to socially and economically productive”. The societies’ right to a healthy life is a fundamental right that must be guaranteed. Since health is a part of the primary needs of every human being. Body and soul healthy condition will allow each man to perform activities and work. Health is also part of the requirements towards a prosperous life. Everyone has the right to health as the wording of Article 4 of Law No. 36 of 2009 on Health. In explanation of this article stated that, "The right to health which is mentioned in this article is the right to obtain medical care from health care facilities in order to realize the highest health status". Further, the provisions on the right to health care are also defined in Article 5 to Article 8 on the Law of Health as follows:

In Article 5 of the Law of Health stated that:
1. Everyone has the same right to gain access to resources in the health sector.
2. Everyone has the right to obtain safe, qualified and affordable health services.
3. Everyone is entitled to independently and responsibly decide the necessary health services for himself.

As for the provisions of Article 6 states that "Everyone deserves a healthy environment for the achievement of health status". So the right to a healthy life and the right to health care are basic rights of every person.

Government in Law of Health provisions further determined that it’s the Government’s responsibility to fulfill and ensure the realization of these rights. Obliged to maintain and improve health care which is qualified, equitable and affordable by the whole society. Then the responsibility must be borne by the Government in the health sector is to ensure the availability of health resources as needed as well as all forms of health care efforts for the fulfillment of the public's right to health. Health resources may include: health professionals, health care facilities, medical devices and pharmaceuticals, as well as other resources.
2. **Islamic Law Perspective on the Concept and Practice of Health Insurance as Stipulated in Law No. 24 of 2011 on Social Security Administrative Agency**

Islamic Shari’a is the rule that is both psychologically and physically, religious and secular. Shari’a is acting on the strength of faith and morality in addition to the power and the State. Shari’a has implication of reprisal in the world and the hereafter. Shari’a determines everything as *halal* and *haram* based on the nature and essence, not merely the outward appearance, which is used as the basis of the provisions of law in general. Allah forbids eat up the property and rights of others in the wrong way. Since its law has clearly defined in Al-Qur`an and Sunnah.  

In Al-Qur`an, Allah says in Surah Al-Baqarah verse 188:

“And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].” (188)

Health insurance should be the responsibility of the state. Because the Prophet Muhammad SAW has specialized responsibility to take care of people’s affairs to the state. The Prophet declared, "al-Imam ra'in mas'ulun wa huwa 'an ra'iyyatih." (Imam [head of state] was like a shepherd, he alone is responsible to the people). The statement, "Wa huwa" (only he) is a form of Hashr, which limits the liability to only charge to the state, and should not be taken over by others. Therefore, health insurance is an obligation of the state, which should be given to the people. So, these are people's rights.

“Health is one of the rights for the human body” the words of the Prophet Muhammad SAW. Since health is a human right, something that according to human nature, Islam stressed the need to keep *istiqomah* to enforce Islam.

The only way is to carry out His commands and leaving his ban. Allah says: "O mankind, there has to come to you instruction from your Lord and healing for what is in the breasts and guidance and mercy for the believers". (QS: Yunus 57)

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Islam also explains that justice is an action that is required, either to yourself, or to others. It is a concept where all have equal rights including the rights of citizens in obtaining health services as described above regardless of anyone. In this study is a portrait of how the health care system of the lower classes of society (the poor).  

In Islam, poverty is can lead to disbelief, so it must be made to be disappeared, or at least reduced. The most fundamental source in the fight against poverty is zakat.  

Furthermore, Islam stresses the guarantee or protection of Allah for those who are weak, and the believers as part of their mandatory as a helper and advocate against others.  

Related to warranty or self-protection by Islamic studies above, the Universal Declaration of Human Rights of the United Nations in 1948, Article 22 and Article 25 also states that: "Everyone, as a member of society, has the right for the guarantee of every person, as a member of society, has the right to social security in the event of unemployment, sickness, disability unable to work, widowhood, old age."

Recognition of social security as part of Human Rights has been approved by the Republic of Indonesia. This is evident in the Law No. 39 of 1999 on Human Rights. Article 41 paragraph (1) of this law determines that: "Every citizen is entitled to social security needed for a decent life and for personal development as a whole".

The right to social security arises because it is natural that the man in his life in this world is not always mortal or immortal. In the human finitude there are often misfortune or fortune.  

Social security occupy a very important position in Islam, therefore, substantially, the Indonesian government's program implemented social security system in Indonesia, through the concept of National Health Insurance (JKN) that have been enacted in 2004 and through the establishment of BPJS (Social Security Administrative Agency) promulgated in 2011, in fact the demands and imperatives of shari’a teachings. Yet there are differences regarding the

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15 Ibid. p. 238.
social security system in Islam and system of guarantees in the legislation, both in ordinances and mechanism especially regarding the fees.

If look at the BPJS (Social Security Administrative Agency) Law in which one clause of Article 17 states that every participant of Social Security Agency is required to pay dues. This means that here the people / participants of social security are as if seen as independent and the state as disclaim liability for providing social security to the community.

As a participant Social Security Agency of Health if it did not pay the fee then he will be penalized. This is very different from the social security system in Islamic law, in the regulation it can be seen that health care is given to those who pay premiums and declared destitute by the state, while those who cannot afford would not get access to health services.

Dues shall be submitted to the government which could be in the form of zakat that must be distributed by the government to apply Islamic law, could also be a tax, from the tax revenue it is supposed that the government provides social funds to the community in education and health. If BPJS is diverted into tax mandatory for the community and public health is devoted to serving the law it is permitted according to some scholars, let alone there is a plan requiring BPJS to the entire population by 2019.

If the contribution uses conventional insurance system participants who register are required to pay premiums every month to buy services on risks that are not necessarily happen then this law seen as Haram in fatwa of Indonesian Ulema Council No. 21/DSN-MUI/X/2001.

E. CONCLUSION AND SUGGESTION

1. Conclusions

After undertaking various discussion and analysis the writer concluded that:

1. The form of complete responsibility for health insurance with the establishment of Law No. 24 of 2011 on BPJS Social Security Administrative Agency is the people's basic needs fulfilled by the state as an effort to achieve prosperity of its people.

Law No. 24 of 2011 on
Social Security Administrative Agency stated that the insurance was only to those who pay premiums and declared destitute by the state, while those who do not declared destitute and cannot afford to pay the premiums, will not get health insurance in the form of health care as provided by Social Security Administrative Agency (BPJS).

2. The concept and practice of health insurance in the provisions of Islamic law. In the concept of Islamic law every citizen has the right to get health insurance as stipulated in Surah At-Tauba: 71 and Surah Al-Maidah: 2, in Islamic law all citizens, especially the poor get the same service, without any difference. The State may collect a fee with the funding form of State assets, namely tax, zakat, sadaqah Infaq and to the people who are well off which are managed by the state’s health insurance fund.

2. Suggestions

Health services occupy a very important position in the Shari'a, namely maintaining the self (soul) which called by the scholars with the term *Hifz al nafs*, in this case there are a several suggestions from the writer:

1. The concept of National Health Insurance program should be reviewed, especially by governments and parliaments who carry out the policy in several terms.

2. The Indonesian Ulema Council as the institution of Islamic religious law should take part in managing National Health Insurance program and establish Fatwa.

3. Health services should be implemented equally, there should be no separation between the poor, middle and rich.
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