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Jalan Srijaya Negara, Palembang, South Sumatra 30139, Indonesia.  
Phone: +62711-580063 Fax: +62711-581179  
E-mail: sriwijalayawreview@unsri.ac.id| sriwijalayawreview@gmail.com  
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## Philosophical Underpinnings of Social Insurance Mechanisms within the Framework of Health Insurance

Theta Murty<sup>a</sup>, Sukarmi<sup>a</sup>, Yenny Eta Widyanti<sup>a</sup>, and Amelia Sri Kusuma Dewi<sup>a</sup>

<sup>a</sup> Faculty of Law, Brawijaya University, Indonesia. Corresponding author Theta Murty, email: [thetamurty@student.ub.ac.id](mailto:thetamurty@student.ub.ac.id)

Article	Abstract
<p><b>Keywords:</b> Indonesian Health Insurance (BPJS); Philosophical underpinnings; Social Insurance Mechanism.</p> <p><b>Article History</b> Received: Mar 15, 2024; Reviewed: Jul 14, 2024; Accepted: Jul 29, 2024; Published: Jul 31, 2024.</p> <p><b>DOI:</b> 10.28946/slrev.Vol8.Iss2.3665.pp303-317</p>	<p>Indonesia, as a country that adheres to the concept of a welfare state, seeks to achieve social welfare development by implementing a national social security system, particularly health insurance, managed by the Health Social Security Administration Agency (BPJS). It is regulated in Article 19, paragraph 1 of Law No. 40 of 2004 concerning the National Social Security System (SJSN). The fundamental principles of social insurance include mandatory participation, equitable health coverage, and contributions proportional to income. The philosophical issue at hand is whether implementing health insurance via the social insurance mechanism effectively guarantees the interests of the community while upholding the values of welfare and justice, as prescribed by the concept of the welfare state. This paper analyses the philosophical foundation underlying social insurance as a mechanism for implementing health insurance in Indonesia. This study employs normative research methods, utilising legislation as the analytical starting point. A philosophical examination is necessary to understand why, after a decade of implementing national health insurance, the state's goal of achieving welfare and social justice in health services for Indonesian citizens remains unmet. This analysis seeks to identify new mechanisms to fulfil the goals outlined in Law No. 40 of 2004.</p>

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## INTRODUCTION

Social welfare development in Indonesia refers to the concept of a welfare state.<sup>1</sup> It is based on the Preamble of the 1945 Constitution of the Republic of Indonesia Paragraph IV. It states "... Pursuant to which, in order to form a Government of the State of Indonesia that shall protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order..." and the fifth principle of Pancasila "Social justice for all

<sup>1</sup> Munir Fuady, *Theory of the Modern State of Law (Rechtstaat)* (Bandung: Refika Aditama, 2009); Suci Flambonita Panjaitan, Saut P., Joni Emerson, Iza Rumesten RS, "The Constitutional Perspective of Indonesian Social Security System," *Jurnal Hukum UNISSULA* 40, no. 1 (2024): 24, <https://doi.org/http://dx.doi.org/10.26532/jh.v40i1.36933>.

Indonesian people" and the 1945 Constitution of the Republic of Indonesia emphasise that the principle of social justice mandates the responsibility of the government in the social welfare development. The implementation of the Social Security System as mandated by the 1945 Constitution mainly refers to Article 28H Paragraphs (1), (2) and (3) and Article 34 Paragraphs (2) and (3). Indonesia has implemented the mandate through Law Number 40 of 2004 on the National Social Security System, hereinafter referred to as the National Social Security System Law. The National Social Security System is a procedure for organising a guarantee program by a social security organising agency. The social security system is an effort to realise welfare, provide a sense of security for an individual's entire life through a regular, systematic, and measurable system approach, and have the role of the country and society, which certainly depends on the philosophy of the establishment of the.<sup>2</sup> Health insurance is one of the scopes of social security. Health Insurance in Indonesia follows the Social Insurance mechanism. This is also in accordance with the National Social Security System Law Article 19 Paragraph (1). The principles of social insurance include (a) mutual collaboration between the rich and the poor, the healthy and the sick, the old and the young, and the high and low risk; (b) compulsory and non-selective membership; (c) contributions based on a percentage of wages/income; and (d) non-profit health. From this explanation, health insurance provided by the government through social insurance is compulsory. Compulsory is defined as forcing or based on what is ordered *by statute* or mandated by legal process.<sup>3</sup> In other words, health insurance in Indonesia requires all citizens to become social health insurance participants.<sup>4</sup> Specifically, the social security program for all Indonesians is organised by a public legal entity called the Social Security Management Agency (BPJS) and health insurance is named the Social Security Management Agency for Health (BPJS for health) as regulated in Law Number 24 of 2011 on the Social Security Management Agency. The social insurance mechanism used in providing health insurance is divided into two forms, namely the Social Security Management Agency for Health-Contribution Assistance Recipients (BPJS Kesehatan PBI) (i.e. that receives government aid for the low-income family only) and the Social Security Management Agency for Health- Non-Contribution Assistance Recipients (translated into BPJS Kesehatan Non-PBI)-i.e. pays the contributions individually. The problem arose when the national health insurance was implemented for ten years, since it was first launched on January 1, 2014. Using the social insurance mechanism cannot meet social justice and welfare that can guarantee the interests and welfare of individuals in the health sector. It is proven that the mechanism has yet to reach all Indonesian people, as indicated by the BPJS Kesehatan Information and Documentation Management Officer (PPID) (referred to as e-PPID BPJS) in December 2022. Data shows that only 248,771,083 people out of 272.7 million people in Indonesia are

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<sup>2</sup> Diah Arimbi, *Basic Legal Concepts for the Implementation of National Health Insurance in Indonesia* (WawasanIlmu, Banyumas, Central Java, 2022); Student Bram et al., "Ratio Legis of Norms on the Regulation of National Health Insurance in the Law of Republic of Indonesia Number 40/2004 Concerning National Social Security," *Societatea de Stiinte Juridice Si Administrative* 25, no. 40 (2020): 95–102, [www.pusdatin.kemkes.go.id](http://www.pusdatin.kemkes.go.id):

<sup>3</sup> Roberia, *Health Insurance Law* (Jakarta: Gramata Publishing, 2019).

<sup>4</sup> Qun Wang et al., "Preferences for Long-Term Care Insurance in China: Results from a Discrete Choice Experiment," *Social Science and Medicine* 281 (2021): 114104, <https://doi.org/10.1016/j.socscimed.2021.114104>.

registered. Other categories need help with unpaid contributions. More than fifteen million (precisely 15,623,749) participants have not paid contributions and are considered in arrears. Hence, the burden on the community increases to bear the arrears of contributions, and with these arrears, no participants are activated from BPJS participants. From these conditions, this study aims to determine the philosophical basis for implementing health insurance in Indonesia through the social insurance mechanism because this insurance mechanism is not in accordance with the Constitution's mandate. This article analyses social insurance used as a mechanism to collect funds from the community to implement health insurance in Indonesia based on a legal view that focuses on the value of welfare and social justice.

## RESEARCH METHODS

This study applied a normative legal method through the use of legal rules and legal doctrines to address legal issues at hand<sup>5</sup> in which specifically focused on health insurance and social insurance. The object of this study was the law used as a norm or rule. Norms in this study referred to law, government regulation, and others.<sup>6</sup> Relevant approaches were employed to compile precise, logical and accurate legal arguments.<sup>7</sup> Legal arguments were used to solve legal issues, namely the statute approach, the National Social Security System Law, the conceptual approach (i.e., the social insurance concept), and the historical approach. Primary data were gained through the 1945 Constitution of the Republic of Indonesia and legislation relevant to the subject of study. Secondary data were gained through law books, legal journals, research results, and other secondary legal materials.

## ANALYSIS AND DISCUSSION

The philosophical study is defined as a basis or reason that laws are formed based on the way of life, legal awareness and ideals, including the spiritual atmosphere and philosophy of life of Indonesia, which is rooted in Pancasila values and the Preamble of the 1945 Constitution of the Republic of Indonesia. The philosophical basis is the fundamental philosophy or life perspective that is the foundation for ideas when incorporating aspirations into draft legislation. Pancasila, the philosophical basis of Indonesia, in principle, functions to explain that no legislation is made and is invalid if it contradicts Pancasila as the philosophy and foundation of Indonesia.<sup>8</sup> Regulations must be consistent with Pancasila since Pancasila is Indonesia's fundamental law source, serving as the guiding concept and foundation for the nation and state.<sup>9</sup>

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<sup>5</sup> Peter Mahmud Marzuki, *Legal Research*, 16th Print (Jakarta: KencanaPrenada Media Group, 2021).

<sup>6</sup> Salim HS Erlies Septiana Nurbani, *The Application of Legal Theory to Thesis and Dissertation Research* (Jakarta: PT Raja GrafindoPersada, 2013).

<sup>7</sup> Ahsan Yunus Irwansyah, *Legal Research Choice of Methods and Practice of Article Writing*, Yogyakarta (Mirra Buana Media, 2021).

<sup>8</sup> Sri Wahyuni Laia and Sodialman Daliwu, "The Urgency of Philosophical, Sociological, and Juridical Foundations in the Formation of Democratic Laws in Indonesia," *Journal of Education and Development* 10, no. 1 (2022): 548.

<sup>9</sup> I Komang Adi Saputra and I Gusti Ngurah Dharma Laksana, "Juridical, Sociological and Philosophical Analysis of Law Number 44 of 2008 Concerning Pornography," *Journal of Kertha Wicara* 9, no. 8 (2020): 1–8.

The value of Pancasila is the source of basic law. Objectively, Pancasila embodies the Indonesian nation's law, conscience, life perspective, and moral excellence, condensed into five principles.<sup>10</sup> As a philosophy of the Republic of Indonesia, Pancasila emphasises five fundamental principles: the divine, human, unity, populism, and justice.<sup>11</sup> Thus, thorough or comprehensive consideration is needed to produce academic papers, especially in the philosophical foundation section. Legislators' philosophical foundation is based on what values a law is made of and how it relates to that foundation.<sup>12</sup> The fifth precept of Pancasila is social justice for all Indonesian people. It states that the state has an obligation to create welfare for its citizens by providing social security, especially health insurance. Likewise, to explain the philosophical foundation of health insurance in Indonesia as social insurance, it is recommended that social insurance be defined and that lawmakers' considerations in the National Social Security System Law regarding societal values associated with health insurance be analysed.

### Concept of Social Insurance

Social insurance, in general, includes the following: insurers (usually an organisation under the authority of the government); insureds (usually outside community members/certain groups of society); risk (a loss that has been arranged and determined in advance); and mandatory (based on a provision of law or other regulations).<sup>13</sup> Social insurance is one type of insurance managed not for profit but for social security for a group of people.<sup>14</sup> According to Hasbullah Thabrany, social insurance is based on basic principles, including compulsory membership, the same health insurance package (relatively the same, egalitarian equity), and contributions proportional to income and earnings.<sup>15</sup> Sri Redjeki Hartono argues that social insurance has special characteristics: a). insurer (usually an organisation under the government's authority); b). insured (usually the outside community members/certain groups of people); c). risk (a loss arranged and determined in advance); and d). mandatory (based on a provision of law or other regulations).<sup>16</sup> She also mentions that according to Article 1 Paragraph (3) of the National Social Security System Law, social insurance is a mechanism for collecting mandatory funds

<sup>10</sup> Kaelan, *Pancasila Philosophy The Way of Life of the Indonesian Nation* (Yogyakarta: Paradigma, n.d.).

<sup>11</sup> Kaelan.

<sup>12</sup> Otti Ilham Khair, "Analysis of Philosophical, Sociological and Juridical Foundations in the Formation of the State Capital Law," *Journal of Academic Research Innovation* 2, no. 1 (2022): 5.

<sup>13</sup> Hilda Yunita Sabrie and Rizky Amalia, "Characteristics of Legal Relations in Jasaraharja Insurance Against Claims of Victims of Public Transport Accidents," *Jurnal Yuridika* 30, no. 3 (2015): 395, <https://doi.org/DOI:10.20473/ydk.v30i3.1949>; François Gerard, Clément Imbert, and Kate Orkin, "Social Protection Response to the COVID-19 Crisis: Options for Developing Countries," *Oxford Review of Economic Policy* 36, no. April (2020): S281–96, <https://doi.org/10.1093/oxrep/graa026>; Stephen Devereux, "Social Protection Responses to COVID-19 in Africa," *Global Social Policy* 21, no. 3 (2021): 421–47, <https://doi.org/10.1177/14680181211021260>.

<sup>14</sup> Man S. Sastrawidjaja, *Legal Aspects of Insurance and Securities* (Bandung: Alumni, 2003); Bea Cantillon, Martin Seeleib-Kaiser, and Romke van der Veen, "The COVID-19 Crisis and Policy Responses by Continental European Welfare States," *Social Policy and Administration* 55, no. 2 (2021): 326–38, <https://doi.org/10.1111/spol.12715>.

<sup>15</sup> Hasbullah Thabrany, Ed., *Health Funding and Alternative Mobilization of Health Funds in Indonesia* (Jakarta: Raja Grafindo Persada, 2005).

<sup>16</sup> Sri Rejeki Hartono, *Insurance Law and Insurance Companies* (Jakarta: Sinar Grafika, 1995).

derived from contributions to protect socio-economic risks that befall participants and/or their family members.<sup>17</sup>

Considering the various definitions mentioned above, social insurance basically has similarities with insurance in general; what distinguishes it is the mandatory and non-selective nature of membership. The mandatory nature is stipulated in legislation, specifically in the National Social Security System Law, which requires a group of people to participate in a social security program organised by an organising body called the Social Security Management Agency (BPJS). The mandatory element is what distinguishes social insurance from insurance agreements in general. The characteristics of social insurance include mandatory premiums based on a percentage of income, an emphasis on social adequacy, benefits determined by legislation, a large government role, non-profit purpose, and mutual cooperation, such as healthy groups helping the sick, the young helping the old, and the rich helping the poor.<sup>18</sup>

According to Man S Sastrawidjaja, the elements of social insurance include: 1). being organised as stipulated by legislation; 2). the binding that occurs among the parties based on its law; 3). a mandatory nature for those who meet the legislation requirements; 4). in general, the organiser or insurer is the government; 5). preference is given to protecting matters relating to social risk rather than individual risk; 6) providing social security to the community or a group of people and for non-profit purposes; 7). the comparison between premiums and benefits is regulated progressively; 8). the government determines the amount of premium through legislation; 9). the amount of compensation is determined by legislation and emphasises social adequacy rather than private equity; and 10). there is no choice regarding the issue of interests and events (*evenement*).<sup>19</sup>

In Indonesia, social insurance involves individuals who can afford to pay premiums and those who do not receive financial support from the government.<sup>20</sup> Social insurance is a legal obligation, while commercial insurance is a contractual agreement. The rights and obligations of the parties in social insurance are governed by laws and regulations, which serve as the basis for fulfilling these rights and obligations. Social insurance is universal, organised nationally by the government rather than locally or regionally, and is a government program implemented by the government, not the private sector. As a conclusion to the concept of social insurance, a comprehensive interpretation of social insurance is based on its fundamental principles. These principles include: (i) the principle of solidarity or cooperation, (ii) the principle of efficiency (controlled benefits), (iii) the principle of equity (for everyone), (iv) the principle of portability (ease in moving to a place of residence or work), and (v) the principle of non-profit purposes. Furthermore, other principles include (vi) the principles of responsiveness (responsive to

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<sup>17</sup> Wang et al., "Preferences for Long-Term Care Insurance in China: Results from a Discrete Choice Experiment."

<sup>18</sup> Ali Ghufroon Mukti and Moertjahjo, *Health Insurance System: The Concept of Integrated Decentralization*, Master of Health Insurance Financing and Management Policy, (Yogyakarta: Gajah Mada University in collaboration with the Regional Social Security Association, 2008).

<sup>19</sup> Man S. Sastrawidjaja and Endang, *Insurance Law, Protection of the Insured, Deposit Insurance* (Bandung: Insurance Business, Alumni, 2004).

<sup>20</sup> Hasbullah Thabrany, *National Health Insurance*, 2nd ed. (Jakarta: Rajawali Pers, 2015).

various demands and changes in living standards) and (vii) the coordination of benefits (preventing duplication of coverage or payments).<sup>21</sup>

These are the considerations of lawmakers regarding the National Social Security System Law about the values of health insurance. Based on the explanation of the general part of the National Social Security System Law, it states that the values expected to be fulfilled by the National Social Security System Law are the values of assurance, protection and welfare.<sup>22</sup> From these three values, a law is created based on three principles: the principle of civilised humanity, the principle of benefits, and the principle of social justice for all Indonesian people. The principle of humanity refers to the respect for human dignity, while the principle of benefit is an operational principle that demonstrates effective and efficient management. The principle of justice is idiomatic concept which derives from the second and fifth principles of Pancasila. The principles include the principles of cooperation, non-profit purposes, openness, portability, compulsory membership, trust funds, and the principle that the results of the management of the national social security fund are in the form of dividends from shareholders for the benefit of social security participants. These values and principles are outlined in Article 19, Paragraph 1. It states that implementing health social security is national-based and uses the principle of social insurance. Article 19 Paragraph 1 is implemented by the Social Security Management Agency for Health, which the Social Security Management Agency Law regulates.

### Legal Relations in Social Insurance

A legal relation (*rechtsbetrekkingen*) is a connection between two or more legal entities involving interactions among individuals, individuals and society, or different societies. One party's rights and obligations are juxtaposed with the other party's rights and obligations in this legal relationship.<sup>23</sup> Legal relations can arise from intentional legal acts (*rechtshandeling*) that result in rights and obligations governed by law.<sup>24</sup> Legal acts include unilateral actions like making a will or gift, two-party actions like buying and selling, and work agreements.<sup>25</sup> This encompasses legal relationships within the insurance field. We will begin by examining the legal connection in insurance to understand the legal foundation of social insurance, which is based on insurance principles. Social security, in its original meaning, is defined as social insurance.<sup>26</sup> Insurance, legally speaking, is a contract.<sup>27</sup>

In Indonesia, the government has established social insurance as a means of providing social security to society.<sup>28</sup> Insurance consists of four primary components: an agreement, a

<sup>21</sup> Hasbullah Thabrany, *Health Funding* (Jakarta: Rajawali Pers, 2015).

<sup>22</sup> Law on Social Security Explanation Section, “The National Social Security System Is Basically a State Program That Aims to Provide Certainty of Protection and Social Welfare for All Indonesian People.” n.d.

<sup>23</sup> Soeroso, *Pengantar Ilmu Hukum*, Cetakan Ked (Jakarta: Sinar Grafika, 2006).

<sup>24</sup> Oleg M. Yaroshenko et al., “Gender Inequality in Social Security on the Basis of the ECtHR Case-Law,” *Sriwijaya Law Review* 6, no. 2 (July 13, 2022): 224, <https://doi.org/10.28946/slrev.Vol6.Iss2.1878>, pp224-238.

<sup>25</sup> Soeroso, *Pengantar Ilmu Hukum*.

<sup>26</sup> Sentanoe Kertonegoro, *Jaminan Sosial, Prinsip Dan Pelaksanaannya Di Indonesia* (Jakarta: Mutiara Sumber Widya, 1987); Francine D. Blau, Josefine Koebe, and Pamela A. Meyerhofer, “Who Are the Essential and Frontline Workers?,” *Business Economics* 56, no. 3 (2021): 168–78, <https://doi.org/10.1057/s11369-021-00230-7>.

<sup>27</sup> Hartono, *Insurance Law and Insurance Companies*.

<sup>28</sup> Man S. Sastrawidjaja, *Hukum Asuransi* (Bandung: Alumni, 2010).

premium, compensation, and an *evenement*.<sup>29</sup> The premium is the payment made by the insured to the insurer in exchange for services related to transferring risk.<sup>30</sup> The government establishes premium payments based on wages in social insurance. The third element is compensation, which refers to the insurer's responsibility to compensate the insured in case the insured event,<sup>31</sup> The fourth element is an *evenement*, which means the event must be of a nature that is unexpected or not within normal human experience, and in insurance, such an indeterminate or uncertain event is known as risk.<sup>32</sup>

Social insurance should also meet the four requirements mentioned above. This section will address the four aforementioned factors in social insurance. The primary component is engagement. Engagement refers to a collection of regulations that govern the execution of commitments or, in legal terms, the rules that govern legal connections between legal entities. An obligation arises from a contract and legal requirements, as mentioned in Article 1233 of the Civil Code. Legal interactions do not spontaneously occur in the law of engagement. They are established through legal acts (*rechthandeling*) performed by the involved parties, resulting in rights and obligations. An obligation arises from a contract or activities that comply or do not comply with the law.

There are two sources of engagement: agreements and laws. Social insurance is a component of the legal relationship established by legislation. Both the insured and the insurer are required to adhere to the legal provisions that establish their rights and responsibilities. The legislation governs the rights and responsibilities of both parties. Failure to fulfil rights and obligations constitutes a breach of the law. Article 1352 of the Civil Code specifies that duties created by law originate solely from the law itself or from the law in response to individuals' acts. According to Article 1352 of the Civil Code, obligations stemming from the law can be categorised into two types: 1) obligations that are solely created by the law and 2) obligations that result from laws as a consequence of human behaviour. Social insurance implemented by the Social Security Management Agency for Health is established according to Article 19 Paragraph (1) of the National Social Security System Law. The legal relationship between the parties to social health insurance can be depicted in the chart below.

Figure 1 depicts the three entities involved in health social insurance: the government, responsible for implementing social security as outlined in the Constitution; BPJS, the agency managing social security as the insurer; and citizens as the insured participants. In this case, the government, including both the central and local governments (as the subsidy is obtained from local government funds), is represented by specific institutions. The Ministry of Finance manages the financial operations of BPJS, while the Ministry of Health regulates the benefits provided by health social insurance funds. Additionally, the Ministry of Social Affairs is responsible for regulating participants of BPJS who are categorised as Contribution Assistance

<sup>29</sup> Hanna Henriksson et al., "Cardiorespiratory Fitness, Muscular Strength, and Obesity in Adolescence and Later Chronic Disability Due to Cardiovascular Disease: A Cohort Study of 1 Million Men," *European Heart Journal* 41, no. 15 (2020): 1503–10, <https://doi.org/10.1093/eurheartj/ehz774>; Sastrawidjaja and Endang, *Insurance Law, Protection of the Insured, Deposit Insurance*.

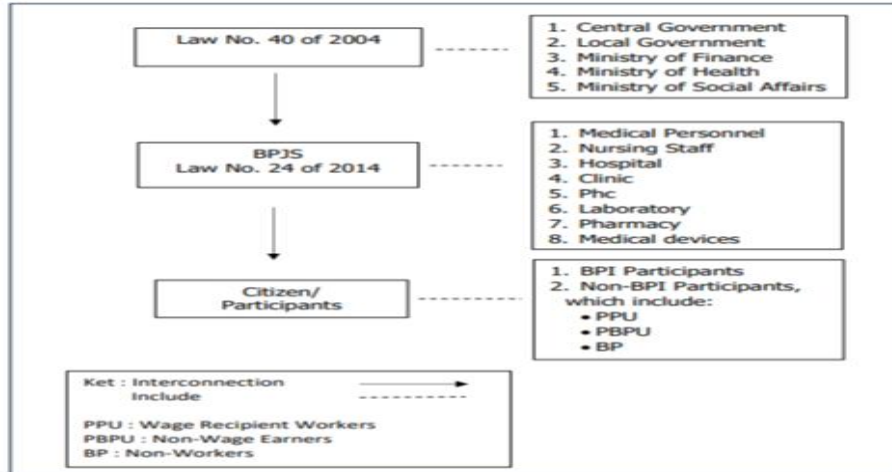
<sup>30</sup> Soeisno Djojosoedarso, *Prinsip-Prinsip Manajemen Resiko Dan Asuransi* (Jakarta: Salemba Empat, 1999).

<sup>31</sup> Sastrawidjaja and Endang, *Insurance Law, Protection of the Insured, Deposit Insurance*.

<sup>32</sup> Pangaribuan Emmy Simanjuntak, *Hukum Pertanggungjawaban, Seksi Hukum Dagang* (Yogyakarta: Fakultas Hukum UGM, 1990).

Recipients (BPI). In addition, the government granted the mandate to the Social Security Management Agency (BPJS). BPJS was established under the provisions of Law No. 24 of 2014, which defines it as a Social Security Management Agency. It is a legally recognised entity responsible for managing social security programs, as stated in Article 1 Paragraph (1) of the BPJS Law.

**Figure 1: Legal Relationship of the Parties to Health Social Insurance**



*Source: e-PPID BPJS Kesehatan*<sup>33</sup>

The primary objective of BPJS, as outlined in Article 3 of the BPJS Law, is to ensure that every participant and family member has access to the necessities required for a decent life. BPJS has been entrusted with overseeing the comprehensive administration of social insurance funds to benefit social insurance participants. This involves collaborating with medical professionals such as doctors, dentists, health workers, hospitals, clinics, health centres, laboratories, and pharmacies to provide healthcare services and fulfil its obligations to its participants.

The legal relationship between the Social Security Management Agency (BPJS) and government-owned hospitals and health centres is mandated by legislation, indicating that these hospitals and health centres, along with their medical personnel, health workers, laboratories, and pharmacies, are automatically designated as its partners. On the other hand, privately owned health facilities are required to establish binding contracts with the Social Security Management Agency (BPJS). The third-party consists of citizens who, under the law, are required to participate in the Social Security Management Agency (BPJS). BPJS is comprised of two entities, the Social Security Management Agency (BPJS) for Employment and the Social Security Management Agency (BPJS) for health, as stipulated in Article 5 Paragraph (2).

The Social Security Management Agency (BPJS) for Health further categorises its participants into two groups: Contribution Assistance Recipients (translated into PBI) and Non-Contribution Assistance Recipients (Non-PBI). BPI refers to Contribution Assistance Recipients, which applies to BPJS participants whose premiums are entirely covered by the government. The second group, Non-BPI, includes participants whose premiums are not funded by the government. Non-BPI can be categorised into three distinct groups: wage earner, which

<sup>33</sup> Sari Quratulany, "Legal Relatioalth Social Insurance", Interview conducted by Author on November 20, 2023, Palembang, BPJS Palembang.



refers to wage-receiving workers; non-wage earner, which refers to non-wage receiving worker; and non-worker which refers to individuals who are not employed. In compulsory social insurance, the second element is the insurance premium, typically calculated based on the wage determined by statutory regulations. The premium for social insurance managed by BPJS is called the Social Security Fund. This trust fund belongs to all participants and consists of contributions and returns on its investments. BPJS manages this fund to provide benefits to participants and finance the operational aspects of the Social Security program, as stated in Article 1 Paragraph 3 of Law No. 24 of 2014 of the Social Security Management Agency (BPJS).

The regulation that governs social security funds in Indonesia is Presidential Regulation Number 64 of 2020. This regulation amends Presidential Regulation Number 82 of 2018, specifically regarding health insurance. Article 34 of this regulation states that the monthly contribution for health service benefits in class III treatment rooms is Rp. 35,000. However, it should be noted that the government subsidises this amount by Rp. 7,000, resulting in a final contribution of Rp. 35,000 per month. The monthly contribution for health services in class II treatment rooms is Rp. 100,000, while for class I treatment rooms, it is Rp. 150,000 per month per person. The third element is compensation. For social insurance administered by the Social Security Management Agency (BPJS) for health, participant compensation is meant to be in the form of benefits, or social security benefits that are participants' and/or their families' legal rights, as specified by the National Social Security System (SJSN) Law Article 1 Paragraph (9) and by the Social Security Management Agency (BPJS) Law Article 1 Paragraph (5). Moreover, this is clarified in Presidential Regulation 82 of 2018 regarding Health Insurance, specifically in Article 46 paragraph (1), which states that every participant has the right to receive health insurance benefits through individual healthcare services. These services include promotive, preventive, curative, and rehabilitative services, as well as drug services, medical devices, and consumable medical materials, all based on the participant's medical needs.

Therefore, it may be inferred that social insurance benefits members of the Social Security Management Agency for Health (BPJS Kesehatan), which includes medical and non-medical services. The fourth element in social insurance regulated by BPJS health is an uncertain event or *evenement*, which refers to illness. *Evenement* is closely related to the insured interest. If the interest occurs, then a new claim can be made. In health insurance, participants who are sick at a certain time can get benefits in the form of health services. Individuals desire to avoid the experience of illness and the uncertainty of its occurrence. Consequently, it is imperative for the government to offer assurances and safeguards to its citizens. This ensures that when illness does strike, the community is not burdened with exorbitant expenses for healthcare services, thereby alleviating the strain on the community's well-being. The information is derived from our Constitution, namely from Article 28 H Paragraph (3) and Article 34 Paragraphs (2) and (3) of the 1945 Constitution.

### **Philosophical Basis for Providing Health Insurance in the Form of Social Insurance**

In the discussion of legal politics in Indonesia, Mahfud MD positions the law as a tool to achieve state goals.<sup>34</sup> In Indonesia, state goals can be found in the 4th paragraph of the

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<sup>34</sup> Mahfud MD, *Political Law in Indonesia* (Depok: Rajawali Press, 2011).

Preamble of the 1945 Constitution of the Republic of Indonesia which states "...then from that to protect the entire Indonesian nation and the entire homeland of Indonesia and to advance the general welfare, educate the nation's life, and participate in implementing world order based on eternal independence and social justice". From the opening of the 4th paragraph of the 1945 Constitution, the Social Security Health that has been explained previously is considered as a tool to achieve the state's goal, namely that everyone is entitled to social security to be able to meet the basic needs of a decent life and improve their dignity towards the realisation of a prosperous, just and prosperous Indonesian society.<sup>35</sup>

Prosperity is the goal of life for all groups of people without exception, no matter their race, region or nationality. All countries around the world were established with the aim of improving the welfare of their people. Likewise with Indonesia, the country was built with the struggle of the Indonesian people as evidence of the collective determination of the Indonesian people to achieve prosperity, free from colonisation, oppression by other countries, and poverty. Therefore, social protection has been provided to all Indonesian citizens since the establishment of the country.

The purpose of the Indonesian state, as stated in the Preamble of the Constitution, is that the ultimate goal of the formation of the Indonesian state is to realise *public welfare*, not individual welfare, namely the welfare state. This is the philosophical basis for forming the National Social Security System Law, which upholds the value of welfare and justice, provides protection for all Indonesian people, and aims to make a prosperous country for all Indonesian people. When talking about social health insurance, it is better to first explain social security.<sup>36</sup> Social security is part of the efforts towards social welfare, as stated in the Constitution.

Social security is a protection effort provided by the state to citizens in the form of access to meet their basic needs through programs managed by the government, such as health, education, economic, and other programs. This is what Scotland said, quoted by Friedlander: "Social security is a program of protection provided by social legislation against sickness, unemployment, death of wage-earner, old-age or disability dependency and accidents - contingencies against which the individual cannot be expected to protect himself".<sup>37</sup> Social security is generally organised through a system that contains programs under government control, which are two (2) types, namely social assistance (*public assistance*) and social insurance (*social insurance*),<sup>38</sup> This is in line with what is said in the article. Theobald stated, as quoted by Friedlander, "There are two main systems of achieving economic security: a program of public assistance (or social assistance), which is financed by taxation, and a program of social insurance financed ... by contributions from the beneficiary and his or her employer".<sup>39</sup>

<sup>35</sup> SJSN Law, "“menimbang,”" n.d.

<sup>36</sup> Alessio M. Paces and Maria Weimer, "From Diversity to Coordination: A European Approach to Covid-19," *European Journal of Risk Regulation* 11, no. 2 (2020): 283–96, <https://doi.org/10.1017/err.2020.36>; Eszter Hargittai et al., "Americans' Willingness to Adopt a COVID-19 Tracking App," *First Monday*, October 6, 2020, <https://doi.org/10.5210/fm.v25i11.11095>.

<sup>37</sup> Walter Friedlander and Robert Apte, *Introduction to Social Welfare*, 5th ed. (New Jersey: Prentice Hall International, 1980).

<sup>38</sup> Hartini Retnaningsih, *Security in Parliamentary Perspective* (Malang: InteligenciaIntrans Publishing, 2017).

<sup>39</sup> Friedlander and Apte, *Introduction to Social Welfare*.

From the description above, the state provides two social security systems to its citizens, namely through social assistance and a system financed through a social insurance mechanism. This is in line with what is described in the Academic Paper of the SJSN Law Chapter I Introduction section B. Pillars of Social protection, where it is explained that in an effort to improve the welfare of the population, there are three pillars of complementary approaches but different patterns of implementation, namely: The first pillar uses the mechanism of *social assistance* to the underprivileged population, either in the form of cash assistance or certain services, to meet basic needs; The second pillar uses the mechanism of *compulsory social insurance*, which contributions or dues paid by participants finance. With the obligation to become a participant, this system can be widely implemented for all people and ensure the sustainability and professionalism of its implementation; and the Third Pillar uses a *voluntary insurance* mechanism or voluntary savings mechanism whose contributions or premiums are paid by participants (or together with employers) according to the level of risk and desire. This third pillar is a type of commercial insurance, and in addition, after the person concerned becomes a participant in social insurance. The implementation of voluntary insurance is managed commercially and regulated by the Insurance Law.<sup>40</sup> Of the three pillars above, the one used by the government in the implementation of health insurance in Indonesia is the social insurance mechanism.

The implementation of social health insurance carried out with an insurance mechanism is not new to social security organisers in the world, Germany and France have long used social insurance mechanisms as their health insurance financing programs, but in both countries, the health insurance management institution is not a "*single player*" but "*multi players*", this means that the health insurance management body there is not one or single but.<sup>41</sup> Social insurance, social savings and social assistance mechanisms can be used to provide social security to the community. Social insurance is considered to reduce the burden on the state budget (APBN) in providing social assistance funds, which are very limited. With a social insurance mechanism based on the principle of mutual cooperation, it is a powerful state tool used in almost all developed countries to deal with socio-economic threats that may occur to each of its citizens. The principle of trust funds is obtained from social insurance, where funds collected from participant contributions are entrusted to the organising body to be managed as well as possible in order to optimise these funds for the welfare of participants. The collected Social Security trust funds can be a source of investment that leverages the Social Security system for national economic growth and provides protection through a social insurance system.<sup>42</sup> The program is a national savings movement based on social solidarity and mutual cooperation from a financial perspective.

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<sup>40</sup> National Social Security System Team, "National Social Security System (NA-SJSN)," n.d.

<sup>41</sup> Roberia, "Construction of Health Insurance for All Indonesian People in Realising the Welfare State According to the Indonesian Constitution" (PDIH University of Indonesia, 2013).

<sup>42</sup> Thien Khai Tran et al., "The Impact of the Covid-19 Pandemic on College Students: An Online Survey," *Sustainability (Switzerland)* 13, no. 19 (2021): 1–19, <https://doi.org/10.3390/su131910762>; Guendalina Capece and Francesco Lorenzi, "Blockchain and Healthcare: Opportunities and Prospects for the Ehr," *Sustainability (Switzerland)* 12, no. 22 (2020): 1–17, <https://doi.org/10.3390/su12229693>.

Health care is characterised by *uncertainty*,<sup>43</sup> because no one knows when he or she will get sick and what kind of sickness will be suffered, although everyone will realise the risk of sickness will come at any time. The social security health system is considered as a solution to this. A person's unpreparedness when sickness comes, which requires a person to prepare a lot of money to get a cure for his illness, can be helped if he has health social security from the government. The mechanism of social insurance is considered as a way out in dealing with this problem, with the mandatory nature of social insurance for all citizens allowing the principle of mutual cooperation between the rich helping the poor, the young helping the old who are more vulnerable to illness and the healthy helping the sick to run optimally to help the community. The principle of compulsory participation allows every citizen to become a health insurance participant so that everyone can be protected; even though participation is compulsory, its implementation is still adjusted to the economic capacity of the government and the people.

Social insurance aims to ensure that access to health services for all people, regardless of their economic status, can be fulfilled; this must also be in line with the readiness and availability of health facilities that are evenly distributed throughout Indonesia.<sup>44</sup> This aligns with the approach taken in the academic paper on the National Social Security System Law, which states that the National Social Security System "is built primarily with social insurance mechanisms and social savings so that it will not burden the state revenue and expenditure budget. However, in accordance with the mandate of the 1945 Constitution Article 34 paragraph (1), for residents who are unable to receive social assistance, part or all of the contributions for residents who are unable to be borne by the government in accordance with the financial capacity of the state."<sup>45</sup> Basically, the health needs of each individual vary in their level of need; this is due to the nature of *uncertainty*, which cannot be measured identically for each individual. Each person's basic health needs vary greatly by day, month and year.

This is the reason why basic health needs cannot be calculated with certainty and cannot be uniform for each individual, this depends on the condition of each individual's body, some are prone to illness, some are rarely sick, some have never been sick at all, and also emergency conditions that cannot be predicted in advance such as accidents, disasters, weather factors, the environment and so on. Everyone does not want to get sick because they do not want to get health services. The concept of basic services is an efficient management concept that divides health services starting from the basic level, which is called primary care or first-level health facilities, such as health services at health centres, private clinics, or general practice doctors and dentists. Usually, health services at this first level are provided for patients with common illnesses community, such as cough, runny nose, fever, heat, and diarrhoea, whose symptoms can still be overcome by the first-level health facility. If the first health service results require more advanced/specialised services, they will be referred to a special doctor for advanced treatment at a hospital or main clinic with a specialist doctor.

## CONCLUSION

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<sup>43</sup> Thabrany, National Health Insurance.

<sup>44</sup> Thabrany.

<sup>45</sup> National Social Security System Team, "Academic Paper on National Social Security System (NA-SJSN)," n.d.

Social insurance was chosen as a mechanism for the implementation of health insurance by the government of Indonesia for Indonesian citizens because the social insurance mechanism is considered the most relevant and can reduce the burden on the state (APBN) in providing health insurance funds. The philosophical basis is that the social insurance mechanism, which is mandatory for all citizens, is a manifestation of human, welfare, and justice values outlined in the state constitution, namely the Constitution of the Republic of Indonesia in 1945. The national social security system implements the Constitution by using the principles of fair and civilised humanity, the principle of benefits, and the principle of social justice for all Indonesian people, which are identically sourced from Pancasila. However, after ten years of implementing the national health guarantee organised by BPJS Kesehatan, the goal of prospering and providing a sense of justice for Indonesian citizens, especially in the provision of proper health services and facilities as mandated by the Constitution, has not been fully achieved. Therefore, social insurance as a mechanism used to achieve welfare and justice for citizens needs to be reviewed, and a new mechanism is found that can realise the mandate of the Indonesian Constitution.

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