

JUSTICE IN THE IMPLEMENTATION OF NATIONAL HEALTH INSURANCE IN INDONESIA

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Abstract: *This article provides an analysis of the implementation of the National Health Insurance (JKN) based on the Law of the Republic of Indonesia Number 40 of 2004 concerning the National Social Security System. In the implementation of the National Health Insurance, which is part of social security, only provides guarantees to the poor, this is contrary to the purpose of the establishment of social security legislation which guarantees to provide Jamian to all Indonesian citizens without being based on the social, cultural and economic conditions of citizens which causes injustice because it is contrary to the constitution of the republic of Indonesia. Another fact that can be observed is the gap in health facilities and health resources between provinces, districts/cities. The number of doctors who are only scattered in big cities, hospital facilities and health centres between the island of Java and eastern Indonesia which creates a very large gap and is very influential in health services. People in cities and on the island of Java can enjoy all the benefits of health insurance, this is inversely proportional to JKN participants on the islands, especially those in eastern Indonesia.*

Keywords: *National Health Insurance (JKN), Republic of Indonesia, social security.*

Introduction

The right of every human being to health was first established in the Constitution of the World Health Organization (World Health Organization) in 1946. As the authority of the world health organization within the scope of the United Nations (UN), in WHO's basic rules there are human rights enshrined In the principles which state that the right to health is the right of every human being regardless of race, religion, political beliefs, economic or social conditions, this principle defines health as a state of complete physical, mental and social well-being and not just the absence of disease or disability. This WHO definition is indeed revolutionary and has become a reference for various countries. Currently it has become a reference and is a broad definition of health (Giorgi, 2012). This is in line with the definition contained in Law of the Republic of Indonesia Number 36 of 2009 concerning Health in Article 1 to 1 which reads as follows "Health is a state of health, both physical, mental, spiritual and social which enables every person to live a productive life in a healthy manner. soscial and economic".

In the constitution of the Republic of Indonesia, the state has promised all members of the state to provide a decent life for all its citizens, which is outlined in the form of norms in a number of articles in the 1945 Constitution of the Republic of Indonesia. These promises are a contract. between the state and its citizens which will later be implemented by the government in power through statutory regulations which are the basis for implementing a program by the state to its citizens. Promises to citizens begin in Chapter X of the 1945 Constitution of the Republic of Indonesia, namely Article 27 paragraphs (1), (2) and (3).

These articles each provide a guarantee that all citizens have the same position before the law and government, a guarantee of the right of all citizens to get decent work and the obligation of all citizens to participate in defending the country. In Chapter X A Article 28 A to Article 28 i contains human rights which can be translated as human rights for all citizens.

Specifically, Article 28 H paragraph (3) provides a guarantee that every citizen has the right to social security provided by the state, which is further explained in 34 paragraph (2) that the state develops a social security system for all citizens by developing weak communities in accordance with with human dignity. This is a form of state presence in providing protection to its citizens in guaranteeing citizens' constitutional rights. To realize the mandate of Article 34 paragraph (2), in accordance with the provisions in Article 34 paragraph (4), a law was created with a social security system. Based on the attribution of Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Law Number 40 of 2004 concerning the Social Security System was born, which was promulgated on October 19 2004 and recorded in the State Gazette of the Republic of Indonesia of 2004 Number 150. This Law aims to to provide guarantees that every person has the right to social security to be able to fulfill the basic needs of a decent life and increase their dignity towards the realization of a prosperous, just and prosperous Indonesian society. Starting from the momentum of the enactment of NRI Law Number 40 of 2004 concerning the National Social Security System (SJSN) on October 19 2004, the Government and the House of Representatives (DPR) consisting of 8 (eight) chapters and 53 articles, at this time Indonesia entered a new phase in social security consisting of (1) Health Insurance, (2) Work Accident Insurance, (3) Old Age Security, (4) Pension Security and (5) Death Security. This law explains that the National Social Security Program will be implemented on humanitarian principles, benefit principles, and social justice principles, which are aimed at providing guarantees for the fulfillment of basic needs for a decent life for each participant and their family members (Arfianto, 2006).

Result and discussion

Citizens' Rights to National Health Insurance

At the end of the 20th century in the world, Social Security developed very rapidly, but in several countries quite a few people opposed social security. The reason for this opposition is because some community groups and social organizations think that social security, which mostly uses subsidies from the government, is considered too expensive and is seen as just a waste of money and can disrupt a country's fiscal stability. However, on the other hand, most people also think that social security will provide protection against increasing unemployment and poverty. In conditions like this, social security is what is most needed. Especially in developed countries (including the transition economies of Central and Eastern Europe), social security systems have to respond to new demographic challenges, such as aging and changes in family structure, with significant impacts on the financing of social protection. In some countries, there is dissatisfaction with the administration of social security, and there is a desire to review the role of the state, the responsibilities of social partners and greater participation from the private sector is desired (ILO, 2018).

Health services are a fundamental right of every human being, this has been regulated in Article 5 paragraph (1), (2) of the Law of the Republic of Indonesia Number 39 of 2009 concerning Health, in paragraph (1), it can be interpreted that every citizen has equal rights

in obtaining health services, whether promotional, preventive, curative and rehabilitative. Furthermore, paragraph (2) means that every citizen has the right to quality health services that can improve their level of health so that they can live a life worthy of physical and spiritual health while still receiving affordable health services that are not economically burdensome. The National Health Insurance Program (JKN) is a health insurance program implemented by the government as an order from the constitution to fulfill basic health rights for all citizens. JKN is part of the National Social Security System (SJSN) which is organized by the government with a mandatory social insurance mechanism for all Indonesian residents. Based on the NRI Law Number 40 of 2004 concerning SJSN with the aim of providing basic health needs for the entire population by paying contributions, while for the poor and disadvantaged the contributions are borne by the state. This is one of the government's efforts to fulfill citizens' rights to health services. As is known, human rights include, among others, "the right to development; right to peace; and the right to healthy and balanced environment" (Muladi, 2004).

One of the development goals in the health sector in Indonesia, in 2014 the government launched a road map for implementing Health Insurance to achieve Universal Health Coverage (UHC). As a form of concern and seriousness by the government in its efforts to implement the JKN program for the entire population of Indonesia through the implementation of NRI Law Number 40 of 2004 concerning SJSN. This law is a mandate from the constitution to gain access to social security so that every resident can fulfill basic living needs and improve their dignity. The implementation of JKN uses the principles of social insurance and equity, which means that it provides justice for all. The social insurance mechanism was initially expected to contribute to controlling health financing and ensuring continuous financing. In this way, the guarantee of health services for all residents will continue until the next change occurs.

In the Constitution of the Republic of Indonesia, in the 2nd (two) amendment, the right to social security has been regulated in Article 28 H paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The basic principles shared by all Indonesian citizens which are the ideals of the founders of the Republic of Indonesia as contained in the concept of the second paragraph in the preamble to the opening of the 1945 Constitution of the Republic of Indonesia are to deliver the Indonesian people to the front gate of Indonesian independence. independent, united, sovereign, just and prosperous. This is one of the foundations of the Indonesian nation's philosophy towards a more prosperous life.

Based on Presidential Regulation Number 82 of 2018 concerning the National Health Insurance System which has undergone several changes, since January 2014 the National Health Insurance (JKN) has been implemented with the aim of providing guaranteed health services to the entire population, including promotive, preventive, curative and rehabilitative. Especially for people who are classified as poor and underprivileged, their contributions are guaranteed by the state and will be registered by the state as National Health Insurance (JKN) participants as regulated in Article 14 Paragraph (1) and (2) of the NRI Law Number 40 of 2004 concerning SJSN. Further regulations regarding recipients of contribution assistance are regulated by Government Regulation Number 101 of 2012 concerning Recipients of JKN Contribution Assistance. Then the implementing regulations are regulated by Presidential Decree Number 12 of 2013 concerning the JKN System, which has been discussed several times and is currently Presidential Decree Number 82 of 2019 About the JKN System. JKN is one part of the national social security system

program regulated in NRI Law Number 40 of 2004 concerning SJSNI and NRI Law Number 24 of 2011 concerning BPJS. JKN is organized by BPJS Health, which is a transformation of PT Askes (Persero). JKN participants are all Indonesian residents, including foreigners who have worked for at least 6 (six months) in Indonesia and are required to participate in the JKN program. Based on the JKN road map created by the government, it was announced that at the end of 2019 all Indonesian residents would be registered as JKN participants, but this target was not met so that universal health coverage had not been achieved. Until the end of October 2020, the number of JKN participants had only reached 87% of the total population of Indonesia.

Compulsory participation, as regulated in Article 14 of the Republic of Indonesia Law Number 24 of 2011 concerning BPJS, whose norms require all Indonesian people to become participants in social security, in this case the National Health Insurance. Achieving universal health coverage is not an easy thing to achieve. This requires cooperation between all institutions involved in implementing JKN, and between all these institutions there must be a unified perception of the meaning of Universal Health Coverage (UHC). In order to optimize the achievement of UHC, it is necessary to review the JKN roadmap or road map, so that the goal of registering all citizens to become participants can be achieved (Mundiharno, 2012). In the perspective of National Health Insurance, Universal Health Coverage has several points of view; (1) coverage of participation where the meaning of UHC can be interpreted as meaning that coverage of participation must be comprehensive, in the sense that all residents must be registered as JKN participants; (2) access for all residents to health service facilities, meaning that the government must be able to increase the number of health facilities so that all citizens can access health service facilities easily; (3) it can also be interpreted that people's out of pocket payments are getting smaller so that financial catastrophes do not occur which can cause participants to fall into poverty. Because the state provides health insurance to all citizens, Article 28 H paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides a guarantee for all citizens to receive Social Security, the state should proactively register all citizens without conditions to become National Health Insurance participants. as a form of state compliance with the constitution. Currently, National Health Insurance membership consists of:

Recipients of Contribution Assistance (PBI) as regulated in Presidential Regulation Number 101 of 2012 concerning Recipients of Health Insurance Contribution Assistance, PBI participants in this case are the poor and underprivileged

Non-recipients of contribution assistance (Non PBI) consisting of Wage Recipient Workers (PPU) are participants who work in the informal sector consisting of PPU State Administrators consisting of State Officials, Central/Regional Civil Servants (PNS), PNS employed in BUMN/BUMD, TNI/PNS TNI, POLRI/PNS POLRI, DPRD and Non-State Servant Government Employees (PPNPN), PPU Non-State Organizers consist of State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD) and Private

Non-Wage-Earning Worker Participants (PBPU) are anyone who works or does business at their own risk, consisting of: Notaries/Lawyers, Private Practicing Doctors/Midwives, Traders/Service Providers, Farmers/Ranchers, Fishermen, Drivers, Ojeks, Mechanics and other workers who are able to pay contributions.

Non-Worker (BP) is every person who is not part of the community who is registered and whose contributions are paid by the Central/Regional Government, PPU and PBPU, which

consists of: BP State Organizers and BP Non-State Organizers. State Administrators consist of State Official Pension Recipients (PP), Central/Regional Civil Servant PP, TNI PP, POLRI PP, Veterans and Independence Pioneers.

Justice in the Implementation of National Health Insurance

The Republic of Indonesia places Pancasila as the state philosophy and is also referred to as the source of all sources of law in carrying out national and state civilization, this is because the principles contained in Pancasila very clearly mention the word justice in the formulation of the second principle and justice in the formulation of the principle. fifth. This makes Pancasila the foundation of the state in providing justice for all Indonesian citizens. That is why legal ideals will always be part of the philosophical values contained in Pancasila, which is the foundation of the Indonesian nation state which leads to justice (Yusuf, 2015). Laws must contain elements of values that are fair to all citizens. Even though justice seems abstract, it must be the basis for the state in carrying out national life. In various legal literature and research, there are many theories that discuss justice. One of the theories of justice is ethical theory, which aims solely to achieve justice. Legal implementation of ethical theory departs from a belief that justice will be realized or, conversely, justice will not be realized (Apeldoorn, 1995). Law according to this theory aims to present or realize the meaning of justice. Philosophical thinking is based on the perspective of three layers of legal science (dogmatics, legal theory and legal philosophy) in interpreting justice and of course is very beneficial in legal practice. From the thoughts of various philosophers, including Aristotle to today's philosophers, they have provided various references on the regulatory function in legal practice.

Departing from different thought bases in 3 schools of thought regarding the theory of justice consisting of utilitarianism, transcendental intuitionism, and contractarianism, in implementing solutions to problems of injustice, they often do not focus on one of the three schools of thought, so they often use conflicting approaches. between one another. The intuitionist school of explaining injustice is only based on considerations of conscience which cannot be quantified so it is very far from a scientific approach. The second school of thought is utilitarianism which was initiated by Jeremy Bentham in Kusumaningrum and Adian (2014), using a justice approach with the jargon "Greatest happiness for the greatest number", where happiness can be quantified from the greatest number of people who experience justice.

When looking at justice in the implementation of JKN, of course we don't just look at participation numbers and participant obligations, but the government's role in fulfilling the number of health facilities is also very important from a justice perspective. The development of health facilities is still dominated on the island of Java, we can see this from the number of hospitals and the distribution of doctors, dentists and specialist doctors, 70% of which are still on the island of Java. This health facility will certainly have an impact on access to health services which still experiences disparities between health services on the island of Java and other islands, especially in the Eastern Indonesian archipelago. Nationally, in 2022 the ratio of beds in hospitals collaborating with BPJS Health will be 2 per 1000 participants, this is still far from the WHO (World Health Organization) recommendation of 5 per 1000 population. If we look at the ratio per province, there is also a very large comparison between the island of Java and outside Java, especially eastern Indonesia.

Specifically for first level health facilities or community health centers, currently there are 10,228 community health centers collaborating with BPJS Health, these health centers are in sub-districts in 514 districts/cities throughout Indonesia. Even though the physical health center building exists, the facilities and infrastructure owned by the health center are not evenly distributed. Based on data from the Health Human Resources Information System (SISDMK), only 39.6% of community health centers have 9 (nine) appropriate types of health workers (nakes), namely: (1) doctors or primary care doctors; (2) dentist; (3) nurse; (4) midwife; (5) public health workers; (6) environmental sanitation personnel; (7) medical laboratory technology expert; (8) nutrition workers; and (9) pharmaceutical staff. A health center is said to be sufficient or adequate if there is at least 1 (one) person from each type of health worker (Indonesian Ministry of Health, 2021). The province with community health centers that meet 9 (nine) types of health workers according to the highest standards based on data from the Ministry of Health is DI Yogyakarta province (88.4%), followed by Bangka Belitung Islands province (81.3%) and Central Java province (70.6 %). Meanwhile, the lowest percentage of provinces with community health centers that meet 9 (nine) types of health workers according to standards is Papua province (6.1%), followed by West Papua province (8.5%), and Maluku province (10.6%). From the data above we get information that the distribution of doctors, dentists and paramedics is also very unequal between one province and another, this will of course greatly affect the services of the national health insurance program to people in rural areas who should have the same rights as people in the city.

Puskesmas which function as gatekeepers in health services must be supported by the availability of further referral health facilities or hospitals. Some large hospitals do not yet have facilities that meet standards in health services, for example the availability of specialist doctors, most of which are in big cities, as well as hospital medical facilities which are still very limited. As an illustration, the percentage of class C district/city hospitals that have 4 basic specialist doctors and 3 supporting specialist doctors in 2020 is 69.8% with the highest percentage in the provinces of Aceh (95.8%), Central Java (91.1%) and Bengkulu (90%) while the provinces with the lowest percentages are Papua Province (20%), Riau Islands (25%) and West Papua (25%).

According to Minister of Health Regulation Number 340/MENKES/PER/III/2010 concerning Hospital Classification, Article (3) states that hospitals must have service capabilities of at least general medical services, emergency services, nursing services, outpatient care, inpatient care, operations/surgical services, basic specialist medical services, medical support, pharmacy, nutrition, sterilization, medical records, administrative and management services, public health education, corpse screening, laundry and ambulances, maintenance of hospital facilities, and waste processing.

Currently, with around 245 million JKN participants, of course they will not receive the same health services, this is due to the distribution of health resources and facilities that have not been distributed fairly. The impact of this condition is the emergence of disparities and injustice in health services. In Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that "everyone has the right to live in physical and spiritual prosperity, to have a place to live and to have a good living environment and has the right to receive health services" has not been fulfilled evenly, even in several cities, some of the people participating in JKN have received the benefits of good health services. Apart from that, Article 2 of the NRI Law Number 40 of 2004 concerning SJSN states

explicitly that the national social security system is implemented based on humanitarian principles, the principle of benefit and the principle of social justice for all Indonesian people.

If we examine the opinion of Amartya (2009), he says that at least humans can feel and enjoy the essence of justice even though ideal justice is utopian and is not needed based on minimizing and eradicating injustice by not relying on justice which is very difficult to achieve, but by using injustice as a basis for resolving injustice while remaining based on resolving the problem of injustice in order to restore justice as a right that every individual should have. Even though justice according to Amartya Sen is a utopia, from empirical conditions it is very clear that the state has not been able to provide a sense of justice in health services which is one of the basic human rights.

Next, Amartya looks at justice by reducing injustice by taking a comparative approach to see facts about justice in various societies. Sen sees that there are very pluralistic facts in terms of justice. Sen agrees with seeing justice by taking a multiculturalistic approach. In terms of Sen's model of comparative approach to justice, which departs from justice practices in actual cultures, these are also multiculturalistic steps. This means that he does not start from just a theory of justice but rather starts from the practice of justice that exists in various "cultures" in society. This means that the approach was initially pluralistic and led to multiculturalism. He not only arrived at a diversity of concepts of justice but through comparison, discussions and dialogue, from various very diverse concepts of justice he finally arrived at a justice that was very multiculturalistic and mutually acceptable. Because justice practices exist in various cultures, it must start from there to contribute to the creation of justice and eliminate injustice, and not just build a multicultural society's ideal of justice and match it to a theoretical ideal model. This is in line with the "practical comparative" method adopted by him with Adam Smith, Karl Marx, and not the "ideal transcendental" method adopted by John Rawls, John Locke, Immanuel Kant, etc. (Amartya, 2009).

In the 1945 Constitution of the NRI Constitution, the founding fathers of the nation agreed on the concept of a welfare state as formulated in paragraph IV of the 1945 NRI Constitution. As said by Ahmad Ali, the aim of the law was focused on the aspect of "justice". Meanwhile, Gustav Radbruch formulated the aim of law or the ideal of law as the realization of "justice" in addition to the usefulness and certainty of the law itself (Ali, 2002). Meanwhile, according to Aristotle, the aim of law is to realize the value of justice in society. The justice referred to is *ius suum quique tribuere*, which means giving to each person what is their share or right. To be able to achieve the principles of justice, namely *honeste vivere* (living honorably), *alterum non laedere* (not disturbing other people), *suum quique tribuere* (giving to each person what is his or her right) (Tanya, et al., 2007).

Conclusion

The implementation of the Law of the Republic of Indonesia Number 40 of 2004 concerning the Social Security System which is a delegation of Article 28 H and Article 34 Paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia has not been implemented properly as intended by the aim of establishing the Republic of Indonesia as stated in declare in the 4th paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia that the state will guarantee prosperity for all its citizens.

The state should guarantee basic health services for all citizens and improve the health service system and increase the distribution of doctors by making policies in distributing doctors and specialist doctors.

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