

Legal Status of The Social Security Administrator (BPJS) As A Public Legal Entity

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Abstract

The Social Security Administrator (Badan Penyelenggara Jaminan Sosial/BPJS) as an independent public legal entity has its legal position and authority. Because of the regulation issued by the Ministry of Health, the independence of BPJS is interfered with. The relationship that has not been well organized and elegant between BPJS and the Ministry of Health has caused many program problems in the field. Therefore, we need to figure out where the position of BPJS is as a state institution with a public legal entity. The BPJS forms the basis of the Welfare State, through which the government carries out its role of providing basic citizens' rights to life. Based on Article 28 H and 34 of the 1945 Constitution, the National Social Security System (SJSN) law was established. The Social Security Administrator for Health (BPJS Kesehatan), a legal entity established by the law to administer social security programs, was then formed. Based on those bases, the relationship between BPJS of Health and the Ministry of Health is functional so that the BPJS as a state institution responsible to the President has complete independence.

Keywords: Social Security Administrator for Health; public legal entity; legal position.

Abstrak

Kedudukan hukum dan kewenangan Badan Penyelenggara Jaminan Sosial (BPJS) sebagai badan hukum publik yang independen, diakibatkan adanya regulasi seharusnya menjadi kewenangan dari BPJS Kesehatan akan tetapi dikeluarkan oleh Kementerian Kesehatan. Adanya hubungan yang belum tertata dengan baik dan elegan antara BPJS dan Kementerian Kesehatan, yang telah menyebabkan banyak permasalahan program di lapangan. Maka kita perlu mengetahui dimana kedudukan BPJS sebagai lembaga negara yang berbadan hukum publik. BPJS menjadi dasar dari Welfare State, melalui badan tersebut pemerintah menjalankan perannya memberikan hak hidup dasar kepada warga negaranya. Perintah UUD 1945 Pasal 28 H dan Pasal 34 dibentuklah undang-undang Sistem Jaminan Sosial Nasional (SJSN) dibentuklah Badan Penyelenggara Jaminan Sosial (BPJS), badan hukum yang dibentuk dengan UU untuk menyelenggarakan program jaminan sosial, dengan dasar tersebut hubungan BPJS Kesehatan dengan Kementerian Kesehatan adalah hubungan fungsional sehingga BPJS sebagai lembaga negara yang bertanggung jawab kepada Presiden memiliki independensi yang utuh.

Kata kunci: Badan Penyelenggara Jaminan Sosial; badan hukum publik; kedudukan hukum.

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Introduction

Indonesia adheres to the dynamic side of the rule of law or the welfare state. To achieve a goal as a rule of law, it demands consequences for the role of the state (Mahfud MD, 2013). The active role of the state in carrying out public welfare, among others, by providing public services, runs the country's goal namely the prosperity and welfare of the citizens (Fuady, 2009). The concept of welfare is closely related to the socio-economic policy that is used for the prosperity of the citizens.

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One of the functions of the country is to expand social services to individuals and families in specific matters such as social security, health, social welfare, education and training, and housing (Tjandra, 2008). This activity provides broad benefits for the welfare of the citizens. At present, the country has a goal that all Indonesian citizens are protected by national health insurance so that they can meet the basic needs of everyone's life. In its implementation, the country must pay attention to basic rights, rights inherent from birth include the right to health care; and the right of self-determination.

The International Labor Organization (ILO) has a vision of social protection. In 1944 the ILO focused its vision on health rather than socio-economic conditions. The concept of health objectives expands access to health care to be fairer and more equitable payment mechanisms. The welfare-based on social security included medical protection and overall care. In Western countries, the ILO's policies have developed very rapidly, and with its support, welfare has improved. Social protection must be regulated by the country in the hope that it will support its citizens' standard of living to be achieved. Over time there have been important changes in the ILO's vision of expanding social security through a decentralized mechanism, citizens-based interests, and an increase in the informal economy. (Demoutiez, Antwi, Mendo and Sarah Ba, 2019).

The policy is implemented by several countries, one of which is Ghana. The institutional arrangements between decentralized administrative systems, national policies, and scope expansion are well correlated. This policy was tested in all regencies in the country of Ghana to establish the National Health Insurance Law, and the ILO, as its director. In Ghana, the state-owned welfare program establishes three types of health insurance schemes in the country: District Mutual Health Insurance Scheme, private mutual health insurance scheme, and Private Commercial Health Insurance where the National Health Insurance Board is formed to provide technical support to district-owned insurance. As time goes by, in 2012 Ghana revised the law and brought regional insurance and private insurance schemes into one. All policies were formulated at the national level and the Ministry of Health managed the National Health insurance scheme. Society-based health planning and services in Ghana are based on the principles of justice, solidarity, risk pooling, cross-subsidies, partnerships, democratic participation of all stakeholders, sustainability, and geographical and financial outreach for all.

On December 10, 1948, the United Nations (UN) which was affirmed in the ILO convention, stated: "Everyone as a member of the society has the right to social security and the right to exercise economic, social, and cultural rights which are indispensable for his dignity and free growth through national proposals or international cooperation and in accordance with the arrangements and resources of each country". In the 58th session on May 25, 2005, in Geneva, the World Health Assembly (WHA) decided that the health financing system in many countries had been further developed to ensure access to the services needed while protecting against family financial risks. The WHA also issued a resolution on sustainable health financing through insurance and social health insurance. WHA encourages the World Health Organization (WHO) to provide support to member

countries to evaluate the impact of changes in the health financing system on health services towards universal health coverage.

The decentralization policy made by the ILO is not all implemented by countries in the world. Indonesia is an example, before 2011 health social security schemes were in each region, in accordance with their respective regional policies and programs. There were also central government programs in the Ministry of Health and organization which are still state-owned enterprises. After 2011 the policy became centralized but the role of the regional government remained in synergy with the central government.

The national health insurance program implemented by BPJS of Health is an implementation of the country's obligation to protect the rights of its citizens, specifically related to welfare. The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) Article 34 paragraph 2 reads: "the country develops a social security system for all people and empowers the weak and incapable in accordance with human dignity". Based on the mandate of this Constitution, in 2004 Law No. 40 of 2004 concerning the National Social Security System (SJSN was passed). It was then drafted and developed Law Number 24 of 2011 concerning the Social Security Administrator (BPJS) consisting of BPJS of Health and BPJS of Employment. Operationally, the implementation of national health insurance is contained in Government Regulations, Presidential Regulations, and the Minister of Health Regulations. These regulations include: Government Regulation No. 101 of 2012 concerning Acceptance of Output Assistance (PBI) and Presidential Regulation No.111 of 2013 concerning Health Insurance which has been amended, is currently changed to Presidential Regulation No. 28 of 2016.

The 1945 Constitution Article 28 H paragraph (1), (2), and (3) and Article 34 paragraph (1), (2), and (3), states the relationship between health care and social security. There are two Articles regulated in the constitution which prove the importance of social security and health. The country is responsible for adequate health services and public service facilities. This is the highest legal basis that guarantees citizens' constitutional rights to health services and requires the government to develop systems and governance for the delivery of health services. It also requires the government to implement national social security programs.

With the implementation of Law Number 40 of 2004 concerning the National Social Security System, the Indonesian people have a social security system for all Indonesian people. Article 5 of Law Number 40 of 2004 mandates the establishment of a body called the Social Security Administering Body which must be formed by law. The formation of this Law concerning the organizing body of social security is the implementation of Law No. 40 of 2004 after the Constitutional Court ruling on case Number 007/PUU-III/2005, as well as to provide legal certainty for the Social Security Organizing Agency in implementing social security programs throughout Indonesia.

When starting on January 1, 2014, BPJS was formed from the transformation of PT (Persero) Askes Indonesia, PT (Persero) Jamsostek, PT (Persero) Taspen, and PT Asabri, which were tasked to provide health insurance to five community groups at once, namely:

Participants of Civil Servants, Pension Recipients (PNS/PP), private employees, participants of the Jamkesmas program in various regions, poor people covered by the Contribution Beneficiary (PBI) program as well as independent participants (individuals who register as participants of BPJS of health). During the period until May 1, 2019, participants of the BPJS of Health have increased to 221,105,092 people. After a participant joined on January 1, 2014, he or she obtained health insurance according to the National Health Insurance (JKN) scheme with a set of Indonesian Case Base Group (INA-CBG) financing systems and tiered services to meet medical needs.

Article 1 Paragraph (6) of Law Number 40 of 2004 defines the Social Security Administrator (BPJS) as a legal entity formed by law to organize social security programs. According to the SJSN Law, Article 5 Paragraph (3) BPJS is a transformation of the social security organizing body that is now in place. It is possible to form a new organizing body in accordance with the dynamics of the development of social security. In this law, the BPJS is stipulated as a public legal entity which has the characteristics formed under the law/authority. The public legal entity has the power to take decisions and make regulations that bind people or general (Chidir Ali, 1987).

The BPJS has the function of organizing public interests, namely the National Social Security System (SJSN) which is based on the principles of humanity, benefits, and social justice for all Indonesian people. One thing that is very important and will be the subject of discussion is in the law. BPJS is given a delegation of authority to make general binding rules. Another authority contained in Law Number 24 of 2011 BPJS is tasked with managing public funds, namely social security funds for the benefit of participants. BPJS has the authority to supervise and examine the compliance of participants and employers in meeting their obligations in accordance with the provisions of the National Social Security legislation. For this reason, BPJS has the authority to impose administrative sanctions on participants or employers who do not fulfill their obligations. It can be seen that the authority of BPJS only exists in participants and employers.

The consequence of the implementation of social security requires strategic planning, consistent operational implementation along with sufficient and continuously available funding. It is because essentially social security is a community welfare program with a permanent dimension for life. Funding for the social security system must involve all stakeholders including employers, job recipients, and the government. One of the keys to success in the implementation of a social security system is effective and efficient supervision accompanied by effective enforcement.

This can happen, for example, if the quality of supervision over the implementation of social security is limited or the authority of the Social Security Administration Agency is limited in making operational rules or the limited authority to regulate health facilities for the implementation of services. The immediate impact will be found in the emergence of complaints from society as program participants. Therefore, strengthening BPJS in the field is a strong foundation for the social security organizing body in expanding the participation of an effective and sustainable social security system.

The problems in front of us are regulatory, compliance, and legal issues that can arise at any time in the course of the BPJS as a public legal entity. This legal problem covers many things. For example, there are potential conflicts of authority, disharmony of legislation, overlapping supervision, fraud in the implementation of social security, and other problems related to the position of BPJS as a public legal entity.

The problem in this research is related to the legal position and authority of the BPJS as a public legal entity that still looks uncertain. These problems are caused by regulations related to BPJS of Health operations, which should be under the authority of the BPJS of Health but issued or regulated by the Ministry of Health. The relationship has not been arranged properly and elegantly, both between BPJS and the Ministry of Health, which has caused many problems in the programs. This relationship needs to be improved and refined so that in the future it will be more effective in achieving the goals of public welfare in accordance with the country's goals.

This inelegant relationship results from a lack of understanding that BPJS is a public legal entity. BPJS of Health has the authority to make regulations in accordance with its authority. For example, the regulations issued by the Ministry of Health Number 52 of 2016 concerning Health Service Rates Standard which stipulates the amount of tariff used by BPJS to pay benefits to providers (health service providers). Whereas in the BPJS Law, the BPJS service tariff is determined based on the BPJS agreement together with the Health Facilities Association concerning the tariff standards set by the Government. Therefore, what the Ministry of Health should make is a standard reference rate, not a tariff as indicated in the contents of this regulation.

What needs to be investigated is that in the SJSN Law and BPJS Law it was never mentioned that there is supervision conducted by the Minister. In addition to these Articles, other Articles are contradictory and can lead to the possibility of a conflict of authority between the BPJS of Health and the Ministry of Health. The disharmony of the Presidential Regulation on National Health Insurance with the BPJS Law and the SJSN Law resulted in a potential conflict of authority in formulating operational policies for the implementation of a national guarantee system by the BPJS of Health. As a result, there is an opinion that BPJS of Health does not understand as a public legal entity. Therefore, in this study, we will analyze how BPJS is positioned as a public legal entity.

The discussion of the Social Security Administrator (BPJS) previously existed but this study has some different points from the previous research. First, Widodo Suryandono stated that social security could not be enjoyed by some people, especially people who could not afford this which should be guaranteed by the constitution. Second, Roberia showed that the conceptual health insurance in the Indonesian constitution is in the form of social health insurance for all people and adheres to the main principle of cooperation in accordance with Pancasila. Both of these studies have differences with this study where the author emphasizes the position of the National Social Security Administrator as a public legal entity in accordance with its authority.

Research Problems

Based on the above background, the formulation of the problem is taken as follows, *first*, why does Social Security become the basis of Welfare State in Indonesia?; and *second*, how does the Social Security Administrator become a state institution that has a position as a public legal entity?

Research Method

The type of this research is legal research with a normative juridical approach. This study was conducted from the existing legal regulations because there was no rule of law for the problem at hand (Soekanto, 2012). This research explained the legal position and authority of the BPJS as a public legal entity. This normative research used secondary data sources obtained from interviews or other means supplemented by primary legal materials, secondary legal materials, and tertiary legal materials and primary data (Zainal, 2007), with interviews of social security experts. The time of the study was conducted in September-November of 2016.

Data collection using secondary data was done by collecting normative legal materials by way of searching, collecting, and studying documents both conventionally and using information technology (internet). Furthermore, legal materials were processed in stages as explained by Van Hoecke quoted by Bernard Arief Sidharta, namely structuring, describing, and systematizing legal materials, which are carried out in three stages, namely: technical stages, teleological stages, and external systematization stages. Research using primary data was carried out using observation using in-depth interview techniques on the sample and making observations. The sampling technique in this study was purposive sampling (certain considerations).

The data were analyzed and processed using qualitative methods: conceptualization, categorization, and relations. Systematized data or legal materials were then interpreted using purposive interpretation, namely contextual legal interpretation, which in the process of interpretation took into account important factors from the relevant legal context, namely text, original and historical background, prior interpretations, dynamics society, case findings presented in the data and the views of experts, which produced the final meaning that was relevant to the situation and conditions. Therefore, the ultimate goal of this legal study was to see whether BPJS as a public legal entity is in accordance with existing provisions, which ultimately provides the final result of a quality health and social security service and provides a confident path that BPJS of Health has been implemented to improve the welfare of the Indonesian citizens.

Discussion

The Implementation of Social Security as a Welfare State

The country must protect its citizens. Protection requires the country to guarantee and protect constitutional rights. Through regulations, a country can provide basic rights

so that society can enjoy the basic rights that should be owned. In its implementation, a country must play an active role in fulfilling the constitutional rights of citizens.

Social justice must have striven for two things, which include: making corrections and improvements to the conditions of inequality experienced by the weak by presenting empowering social, economic, and political institutions; and positioning every rule (Ronald, Cohen, & Jerald Greenberg, 1982). The welfare state began to emerge from the turn of the 20th century when many countries supported widows due to the abandonment of their husbands because of the second world war. The welfare state is designed to provide the facilities needed to care for children so that there is no neglect of children. The development of policies from time to time the country began to expand the provision of social security to citizens as a transition to the “war on poverty”. However, with the development of the welfare state, there is a lot of debate over who has the right to “deserve and not deserve” to receive assistance, dependency on getting help, and whether assistance from the government will reduce poverty or increase poverty (Kendrex, 2015).

According to Dewey in Folbre, N, and Wolf, D. (2012), the family also has the role of aligning personal and public interests. This is due to the existence of “intergenerational transfers” which makes the burden of the state reduced, seen from parents’ concern for their children, and vice versa. This activity is what makes state expenditure decrease.

The welfare state will affect fiscal sustainability (Martin, 2012). Assistance provided by the country will automatically become a supporting pillar for the less fortunate so that it can produce well, for example starting from the small thing of health insurance then the individual gets health care so that the individual can produce for himself and his family. In contrast to the views of Claus Off that: the welfare system is seen as disrupting the development of capital and investment (disincentive to investment) because of high taxes and strict regulations as businesses are considered to make disincentives and the level of profits obtained is small and unattractive; and welfare systems, socio-economic rights, and the strong role of trade union associations are seen as reducing incentives to work harder (disincentive to work), than if they work under a free market system environment (Elviandri, Dimiyati and Absori, 2019).

The presence of the Indonesian citizens overcomes a socio-economic imbalance by applying the ideology of the Pancasila nation that guarantees social justice for all people and is contained in the constitution Article 34 paragraph (2) of the 1945 Constitution “the country develops a social security system for all society and empowers weak and disadvantaged people in accordance with the dignity of humanity”. There is one government task that is irreplaceable from the past until later in the future, namely: making public policies; carrying out public policies; and carrying out the evaluation of public-monitoring policy included in the evaluation. So that the role of government in the future must build an excellent public policy (Fuady, 2010).

Early on the independence of the Indonesian, the country had formulated and implemented social security by proving it in the formulation of the 1945 Constitution of the Republic of Indonesia. From the period of the government, the service was increasingly

improved, starting from the civil servants, labor guarantees, forms of ownership and currently in the form of public bodies using 9 principles one of them is the principle of no profit, The BPJS was formed to cover the majority of Indonesians who have a road map of all Indonesian citizens participating in the BPJS, especially in health social insurance or Universal Health Coverage (UHC). The Social Security Administrator Act was established through the National Social Security System Law Number 24 of 2004 which aims to provide certainty of social protection and welfare for all Indonesian society. With this program, every person is expected to be able to fulfill the basic needs of a decent life. In line with Kaplow and Shavell (2003), social policy must be assessed fully based on effects on individual welfare, including the rule of law that must affect individual welfare. The welfare state can have effects that can be exploited in individual welfare through social security.

Universal health coverage can be realized if there is a commitment of the government and citizens who together succeed in this social security program. The cooperation principles that are applied can help the successful implementation of social security. Indicators of success of social security programs can be seen from the community which can meet the basic needs of a decent life/increase in health status, easy to use health services, and greater use of health services for preventive and health promotion. The principle of mutual assistance in social security is reflected in the ideology of the Indonesian citizens and is contained in TAP MPR Number II / MPR / 1978 1978, namely:

Social justice for all Indonesian citizens, Indonesian people realize the same rights and obligations to create social justice in the lives of Indonesian citizens. In this context a noble act is needed in reflecting the attitudes and atmosphere of family and cooperation ... likewise it is necessary to develop an attitude of giving help to people who need to be able to stand alone

Indonesia has a desired founding fathers concept that the religious welfare state concept is more than just the concept of the welfare state. The welfare state has a vertical line towards democratic governance. Democratic governments have obligations or functions that are responsible for the welfare of the people, while the word "religious" means that all aspects of our lives in the nation and state must be based on divine values of belief in the one and only God. The first precept, as an effort taken by the Indonesian citizens for the welfare of its people which in its actions is accompanied by God and in the practical order contained in the values of religious teachings adopted by each religion (Hidayat, 2016).

From Pancasila, the five precepts of the Indonesian nation descends in the 1945 Constitution of the Republic of Indonesia. Mahfud MD conveyed the 1945 Constitution of the Republic of Indonesia emphasized the government's obligations inherent in the state of material law (welfare state) namely promoting public welfare and realizing social justice for all people (Mahfud MD, 2003). Some arguments that can be issued from the 1945 Constitution to explain this are: In paragraph IV opening of the 1945 Constitution, Article 24H paragraph (3), and Article 34 paragraph (2), and in general explanation (number II).

From the spirit of the 1945 Constitution, one of the efforts to improve people's welfare is the SJSN Law. SJSN is only a program that is specialized as a national social security system, and some bodies organize national social security called the National Social Security Administrator. The Social Security Administrator, the only body currently established to organize social security, both national health insurance and employment. The basic assumption regarding the idea of welfare state according to Ainur Rofiq is that a state that embraces the welfare state can at least provide services to its people by providing public services such as health, education, housing, and other social services. Besides, the citizens are guaranteed to have social security for education, good quality health services, housing provided by the state, and public transportation that is comfortable and affordable (Rofiq, 2015).

Social Security is the overall right of every person to obtain security at a certain level, both automatically and not automatically. It is based on law and can be valued in money. The social security system is an effort to realize prosperity, provide a sense of security throughout human life, through a system approach, which must be orderly, systematic, measurable, the role of the state, and society all depends on the philosophy of the established country goals. However, we are well aware that there is no definition of social security that can be accepted and applied in general. The explanation that is often used throughout the series is the obligation undertaken by the state to protect its citizens from all consequences arising from inevitable disruption, or because of the reduced income they need to maintain a decent standard of living.

Social security has various meanings but the aims and objectives are commonly the same. Social security is based on the law as a constitutional order and as an effort to manage risks. Social assistance income also supports the disadvantaged citizens as savings/subsidies for distribution returning from tax revenue for the welfare of the citizens especially. It is one of the ways of the country to reduce poverty and to provide basic protection for its citizens.

The SJSN Law has made it clear that the social security pillar consisting of social assistance is a system for poverty reduction funded from taxes (which is included in the APBN and issued as PBI) and contributions from the public or employers. These conditions are the government's commitment to protecting its society. Health insurance in Indonesia has existed since the independence of the Republic of Indonesia. These ideals are contained in the 1945 Constitution of the Republic of Indonesia, namely social welfare for all Indonesian people. This became the foundation of the Indonesian country to organize social security for its citizens.

The history of the implementation of welfare related to social security can be seen from the government program from 1945 to 1968. There was health insurance for civil servants, in 1947 health insurance for workers, in 1953 the establishment of state social security funds, in 1950-1992 the development of healthy funds for the citizens, in 1971 the establishment of Perum Asabri, in 1997 the establishment of Perum Astek, from 1984 to 1992 the establishment of Perum Husada Bhakti, in 1992 the establishment of PT. Asabri,

in 1994 the implementation of the Health Card (health insurance for the poor and disadvantaged), in 1995 the establishment of PT. Jamsostek, from 2004 to 2007, the implementation of Askeskin, in 2008 the implementation of Jamkesda (as an implementation of the JPKM form by the local government) which began to develop since the early 2000s, in 2009, Health insurance for state and other officials); (xxi) the implementation of Jampersal which began in 2011 (delivery guarantees for pregnant women who “do not” have health insurance) and 2014 guarantees for all Indonesian people to date.

The BPJS Law is not merely formed. The process is quite long starting from the formation of Law Number 40 of 2004 concerning the National Social Security System (SJSN), the issuance of the SJSN Law due to the economic crisis that occurred in 1998, and at that time Indonesia was predicted will be the slowest to recover. Unfortunately, Indonesia does not yet have solid social security which covers most of the entire Indonesian people even though PT. Health Insurance (AsKes), Pension Savings (Taspen), Workers’ Social Security (Jamsospek), and Asabri.

President Habibie on October 3, 2000, received consideration from the Supreme Advisory Council (DPA) with Number 30/DPA/2000 whose contents conveyed that a national social security organizing body should be immediately formed. In 2001 the People’s Consultative Assembly (MPR) also responded to the importance of the Guarantee program Social by issuing a decision namely TAP MPR Number 10/MPR/2001 which assigned the President to form a National Social Security System (SJSN) to provide comprehensive and integrated social protection. It is in accordance with the 4th amendment, Article 34 Paragraph 2 of the 1945 Constitution reads: the state develops social security for all people and empowers people who are weak and unable to match human dignity.

October 19, 2004 Law Number 40 of 2004 concerning the National Social Security System was passed. The National Social Security System is organized based on 9 principles, namely: mutual cooperation, non-profit, openness, prudence, accountability, portability, mandatory participation, trust funds. The results of the management of social security funds are used entirely for program development and the maximum benefit of the participants. The nine (9) principles can be explained, as follows: *first*, the principles of mutual cooperation. This principle is realized in the mechanism of mutual assistance from advantageous participants to those who are less advantageous, those at low risk helping those at high risk, and those who are healthy helping those who are sick. *Second*, the non-profit principle. It is not for profit. The principle of non-profit has the main goal of meeting the maximum interests of participants and non-profit performance indicators.

Togetherness or mutual assistance activities can make good for the common good. Solidarity and togetherness can contribute to implementing social security to be successful (Renate Douwes, Maria Stuttaford, and Leslie London, 2018). The principle of mutual cooperation in implementation in social security is also applied in several countries, this is in line with what was conveyed by Paul Hund and Gunilla Beckman that the state has

responsibility for welfare to establish institutional arrangements for active participation and can work well.

Third, the openness principle. This management principle is applied and underpins all fund management activities originating from participant contributions and the results of their development. This principle is also a consequence of mandatory transactions. If everyone is obliged to contribute except those borne by the government, everything must be done openly, done in accordance with good governance. This is very different from a trading business as it aims to make a profit.

Fourth, the precautionary principle. The trust fund must be managed very carefully, thoroughly, safely, and in an orderly manner by the administrator. *Fifth*, accountability. In this provision, the principle of managing funds carefully, securely, thoroughly, and in an orderly manner. *Sixth*, the portability principle. This principle applies to participants' rights. Portable means that it can be carried everywhere, always following the participants. In this principle, the participant must always be safe (security) whenever and wherever he or she is in the territory of Indonesia. Social Security is intended to provide ongoing guarantees until the participant dies. Participants who change jobs or change their residence within the territory of the Unitary Republic of Indonesia must always receive benefits when the risks are experienced.

The development of current infrastructure and the expansion of government and private sector businesses throughout the archipelago will cause residents to move more frequently. To guarantee the sustainability of guarantees, no matter where the population is in the country, the principle of portability requires the implementation of social security at the national level. Based on this principle also, the Constitutional Court stipulates that the exclusive administration by the Regional Government is contrary to the 1945 Constitution. Because of the implementation of exclusive social security of a region or when a participant moves to another region, it is probable for a certain time the right to guarantee will be terminated. When people are sick, sickness is a trigger to get the right to guarantee health services in health facilities.

Seventh, the principle of membership is mandatory. It is a requirement that all Indonesian people become participants, although in its implementation it still adapts and considers the economic capabilities of the people and is carried out in stages. *Ninth*, Principles of Trust Funds. The results of the management of Social Security funds are used entirely for program development and the maximum benefit of the participants. Article 4 of the SJSN Law is the optimal formulation to explain what is meant by the principles of social security.

In the case of Health Insurance, the SJSN Law outlines the implementation for all people and there is no discrimination between private employees, civil servants, or independent employees and their family members. Health insurance is also not limited by the number of children, because essentially all Indonesian citizens have the same rights. Similarly, foreign nationals who have lived for at least 6 months and paid dues are entitled to social security. This is a large scope that will be held by BPJS. To obtain faster coverage

for the entire population of a workforce can guarantee his parents or other family members and even his helpers by paying the contributions that are paid.

Law Number 24 of 2011 concerning BPJS, stagnated for 7 years from the formulation of the SJSN Law. In the long process of the formation of the BPJS Law, it ended on the court where the people demanded the government to the Central Jakarta District Court to form the BPJS Law. It was stated that the defendants have neglected to implement the SJSN Law. They were to immediately implement the SJSN Law with concrete steps as follows: (1) enacting the Law on the Social Security Administrator (BPJS) in accordance with the instructions in article 5 paragraph (1) of the Law SJSN, (2) establishing the implementation of regulations for Government and Presidential as mandated by the SJSN Law, (3) making adjustments to 4 (four) BUMNs that administered social security to the SJSN Law. From the results of the decision, the defendant (Government) appealed to the Supreme Court on December 3, 2012 Number 40/PDT/2012/PT-DKI, with the Supreme Court ruling canceling the decision of the Central Jakarta District Court with Pdt.G/2010/PN.JKT.PST, dated July 13, 2011. Finally, the BPJS Bill in 2010 was formed at the initiative of the DPR.

The length of the BPJS Law-making process is full of challenges both at the executive, legislative and up to institutions that will be transformed, which are actually to create better welfare of the people. BPJS Law Article 5 paragraph 2 BPJS consists of BPJS of Health and BPJS of Employment. BPJS of Health runs a health program and BPJS of employment organizes work accident insurance, old-age insurance, pension, and death insurance programs.

The SJSN Law Number 40/2004 underwent seven material tests and the BPJS Law 5 times. The first material test of the National Social Security System Law was submitted by several representatives of the Regional Government, the Provincial Parliament of East Java, the Management Unit of the JPKM Rembang regency and the Management of the Association of the Board of Public Health Maintenance Maintenance Organizers (Perbapel JPKM) of DKI Jakarta who argued that their rights and authorities and constitutional rights were impaired. by the enactment of the SJSN Law. The applicant cannot accept only one BPJS standing in the center (Jakarta), the applicant wants the BPJS to also stand in the regions.

The consideration of the Constitutional Court is related to the terminology of “the country in Article 34 paragraph (2) of the 1945 Constitution, to the understanding of the welfare state, actually refers more to the implementation of the function of state social services for the people or their citizens. Thus, these functions are part of the functions of the holders of government power, and so that these functions can function, the holders of government power, the country needs authority. The power of the government is divided into two namely central and regional so that the regional government is also attached to the function of social services. Thus, the regional government also has the authority to carry out the intended function. This is a logical consequence of the adoption of the autonomy doctrine, as stipulated in Article 18 paragraph (2) of the 1945 Constitution which

reads “The provincial, regency and the city-regional government regulates and co-administered tasks”, while in paragraph (5) it is emphasized that the autonomy meant is the broadest possible autonomy except for governmental affairs which by law are determined as the affairs of the central government. Government involvement here is not only the central government but the regional government.

The Constitutional Court also stated that it disagreed with the central government regarding the implementation of health insurance, which was exclusively the authority of the central government. It also disagreed with the regional government regarding the implementation of health insurance, which was exclusively the authority of the regional government. The Constitutional Court did not agree because if interpreted in accordance with the central government’s argument, it will constitutionally contradict the mandate of Article 18 of the 1945 Constitution and if it follows the local government’s line of thought, it is probable that only certain regions can meet health insurance and can also result in there is no guarantee for everyone to obtain the same standard of health service between regions if there is migration. As a result, it will conflict with the mandate of Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which mandates that the right to health insurance must be enjoyed by everyone or all people.

The Constitutional Court Decision Number 007 of 2005 stated the cancellation of Article 5 paragraph (1), (3), and (4) of Law No. 40 of 2004 concerning the Establishment of 4 SOEs, namely PT Askes, PT Jamsostek, PT Taspen, and PT Asabri to become BPJS. The Constitutional Court still applied Article 5 paragraph (1) which stated “The Social Security Administrator must be formed by Law”, and Article 52 which states that “when this Law comes into force, PT Jamsostek, PT Askes, PT Taspen, and PT Asabri remains in effect as long as it has not been adjusted to this Law”. And Article 52 paragraph (2) which reads “all provisions governing the Social Security Administrator as referred to in paragraph (1) are adjusted to this Law no later than 5 (five) years after this Law is ratified.

Material test 3 took place over the contribution clause contained in Article 17 of the SJSN Law. The petition of applicant number 50/PUU-VIII/2010 questioned Article 17 of the SJSN Law which states that: (1) each participant is obliged to pay dues the amount is determined based on a percentage of wages or a certain nominal amount; (2) Every Employer is obliged to collect contributions from workers, add contributions that become their obligations, and pay these contributions to the Social Security Administrator regularly; and (3) The number of contributions as referred to in paragraph (1) and paragraph (2) is determined for each type of program regularly in accordance with the social, economic development, and basic needs of a decent life. The Decision stated that it rejects the petition for the number of the applicant’s fees and rejected the petition of the applicant in full.

One of the material tests on the BPJS Law was on August 10, 2012, with the reading of the verdict on October 15, 2012 (Judgment Verdict Number 82/PUU-X/2012). The material test was carried out on Article 1 Paragraph 1 of Law 24/2011 concerning the Social Security Administrator (BPJS) which stated that “The employer is gradually required to

register himself and his workers as participants to BPJS in accordance with the social security program that is followed”.

Article 15 paragraph 1 of 2011 now reads, “Employers are gradually required to register themselves and their workers as participants to BPJS, in accordance with the social security program that is followed. And workers have the right to register as participants in the social security program at the employer’s responsibility if the employer has not registered its workers with BPJS”. This decision was signed on 15 October 2012 by the Chairman of the Constitutional Court, Moh. Mahfud M.D.

Another judicial review with the decision of the Constitutional Court Number 26/PUU-XII/2014 Article tested Article 60 (3) resulted in BPJS Law ruling was rejected. Constitutional Court Decision Number 138/PUU-XIII/2014 Article tested Article 15 paragraph (1) and (2), Article 16 (1), and (2), Article 17 (1), (2) c, and (4), Article 19 (1), (2) and (3). The decision rejected the request. Decision of the Constitutional Court Number 119/PUU-XIII/2015 Article tested, Article 4 letter g, with the ruling of the decision rejected. The decision of the Constitutional Court Number 47/PUU-XIII/2015. The articles tested, Article 21 (2), 25 (1), 41 (1), 42, and Article 43, by the ruling, were rejected.

The UN World Organization encourages the understanding of all people who have basic needs that must be met, one of them is health. This instrument defines health as an individual right and in a congressional manner that the state has responsibility for health. The formation of organs from the United Nations is the Economic and Social Council (ECOSOC). This council is tasked with making recommendations in promoting respect for human rights and receiving reports from specialized UN agencies such as WHO dealing with health issues, ILO, and UNESCO (Davidson, 1994). The International Convention on Economic, Social and Cultural Rights (ECOSOC) established by the United Nations in 1966 also recognizes the right of everyone to enjoy the highest standards that can be achieved in physical and mental health.

As a human right, the right to health is a right inherent in a person because of his or her birth as a human being, not because of a person or state. Therefore, it certainly cannot be revoked and violated by anyone. In accordance with human rights norms, the country is obliged to respect, protect, and fulfill these health rights. In the Paris charter (1990) 34 participating countries stated that (Davidson; 1994):

Human rights and fundamental freedoms are the rights of all human beings who are obtained from birth, cannot be revoked and guaranteed by law. The protection and promotion of these rights is the Government’s first responsibility. Respect for this right is an essential guarantee in dealing with a country that is too strong.

Soekarno in his speech delivered:

“..... If we are looking for democracy, it should not be Western democracy, but a life-giving consultation, namely *economische* democratic politics which is capable of bringing about social welfare! ... “Therefore, if we truly understand, remember, love the people of Indonesia, let us accept the principle of the *rechtvaardigheid sociale*, which is not only political equality but also on the economic field. We must carry out equality, meaning the best common welfare”.

Indonesia adheres to a welfare state which is a commitment of the government as a host of the state, which aims to prosper the people. The establishment of the Social Security Administrator provides opportunities for all people everywhere as a whole. Thus, later all the people of Indonesia will get health benefits both promotive, preventive, curative, and rehabilitative. Preparations for the independence of the leaders of Indonesian country fighters formed the state of Indonesia as a welfare state (Kusuma, 2006). This is reflected in the Constitution of the Republic of Indonesia (RIS) Article 35 which reads: "The ruler can advance social security and certainty, especially the assurance and guarantee of labor conditions and good labor conditions, prevention and eradication of unemployment and the provision of supplies for the day parents and care for widows and orphans". And Article 36 which, among others, reads, "Elevating the prosperity of the people is a matter that is continuously carried out by the authorities, with the obligation to always guarantee for everyone a degree of life in accordance with dignity for themselves and their families". When compiling the 1950 Constitution, the principles of the welfare state were maintained by both the RIS and the Republic of Indonesia. Article 35 of the RIS Constitution was made Article 36 of the 1950 Constitution by removing the word "as much as possible". Article 36 reads, "The ruler promotes social security and certainty and so on". Article 37 added a paragraph that reads, "The authority prevents organizations that are private monopolies that harm the national economy according to the regulations established by the Law". The 1945 Constitution becomes a source of Indonesian national law in the field of Social Security, which confirms that Social Security (social security) is a "Right" is not a "Special Rights".

Health must be an important consideration in every development policy. One form of implementation is the government's obligation to provide an adequate budget for health development that involves the wider community by organizing social security. State policies implementing welfare states were established to create a strong "locking" effect as group beneficiaries to maintain (or even expand) existing policies. However, this image of stability is difficult to survive with increasing evidence of class divisions developing at the level and structure of society. The concept of a welfare state will unite the interests of low- and middle-income and upper-income citizens, because the country's policy to provide welfare is opposition, namely the collection of taxes to finance the welfare concept offered by the country with the aim of distribution to reduce poverty (Marius, 2019).

Under the welfare approach to policy assessment, the first determines how a policy affects the welfare of each individual. Welfare conception, in the welfare economic tradition, is a comprehensive tradition. This includes not only the direct benefits individuals get from the consumption of goods and services, but also the degree of fulfillment of an individual's aesthetics, their feelings for others, and other things they value. Social policy must be assessed entirely based on effects on individual welfare, and social policy (Kaplou and Shavell, 2003). The concept of a welfare state does not only include a description of a way to organize welfare or social services but also a normative

concept or an ideal approach that emphasizes that every person must obtain social services as his right (Suharto, 2014).

The existence of the BPJS, if it is referred to as a welfare state, can be drawn a red thread, because BPJS develops social welfare which is one of the main objectives of the constitution of the Republic of Indonesia, which we now refer to as a modern state. The situation was also explained by Habermas that a modern country must be able to guarantee the welfare of all people. Furthermore, Habermas stated that several guarantees given by the state as an indication of a modern state were manifested in the protection of: "The risk of unemployment, accident, illness, old age, and death of the breadwinner must be covered largely through welfare provisions of the state" (Minanda, 2010). Social security services currently organized make understanding that the Indonesian country adheres to the understanding of the welfare state.

Seven years after the SJSN Law was established, the BPJS was formed. This took quite a long time to implement social security provided by a special body. Before the formation of the BPJS, the Government had conducted a study of the implementation of social security in several countries, namely:

a. Social Security in Germany

The latest branch of social insurance in Germany is long-term care insurance (statutory long-term care insurance), which was introduced in stages starting in 1994. The German social security system is widely adopted by European and Asian countries including Indonesia. The German social security system exerted considerable influence in the development of the social security system in Indonesia, which was marked by the birth of Law no. 40 of 2004 concerning the National Social Security System (SJSN) as a gateway to a new era of social security system reform in Indonesia. Some things that can illustrate the influence of Germany in the development of social security systems in Indonesia include (Irfani, 2012):

- 1) The social security system in the SJSN Law covers several branches of social security similar to social security in Germany including health insurance, work accident insurance, pension insurance, old-age insurance, and life insurance.
- 2) The basic principles of administering social security as outlined in the SJSN Law are in line with the principles of the implementation of the German social security system.
- 3) Social security funding as regulated by the National Social Security System Law is largely sourced from participant contributions and not from state tax revenues. This financing scheme is the main characteristic of the Bismarck Model implemented by Germany.

b. The United States Social Security

The United States first enacted Social Security on August 14, 1935, under the name of the OASDI (Old-Age, Survivors, and Disability Insurance) program. The Social Security System in America was administered by a single law and administered by a national Social Security Administration (SSA) government body and managed by the

Federal government under the Department of Social Services. American Social Security programs are monopolistic at the national level and include old-age insurance and health insurance (Shihab, 2013).

c. Social Security in Thailand

The social security program in Thailand is still very young compared to European countries, because in 1990 the new Social Security Law was formed, and even then, it was not implemented after six new social security laws took place precisely in March 1991. The funds collected were managed by a tripartite body. The Social Security Board, which consists of 15 people representing the government, employers, and workers, each has 5 people. The Social Security Office (SSO) is under a centrally managed Department of Labor and Welfare. Currently, all formal workers have become participants because of its mandatory nature. Government employees are guaranteed without any deductions or fees from employees, which means premiums are paid by the government. Social Security presented includes health insurance, pensions, and pension funds.

For informal sector workers and other population groups not included above, the government established the National Health Security, known as the “30 Baht” policy, which is managed by an autonomous body at the central level. With 30 Baht, the participant chooses the place of service to be used, and all health care facilities from the examination, medicine, surgery, and even intensive service, if necessary, only pay 30 baht once in the hospital or medical treatment. However, 30 baht was considered burdensome, eventually, 30 baht were removed, service was obtained free of charge (Thabrany, 2014).

d. Social Security in Australia.

Social Security in Australia has undergone a drastic change since 1992, namely from the implementation of a pure demographic program which was then overhauled with a demographic method based on a means-test system. The social security reform in Australia is focused on the establishment of an independent, healthy, and strong family program (strong, healthy, and independent family plan). With a strong and independent family, it is a solid foundation for the development of the Social Security system towards the goal of the welfare state. The following are the agencies that are related and responsible for the success of social security (Shihab, 2013).

First, family and community service is a demographic system that is modified with a means test system that is intended for every citizen as needed including foreign nationals and/or foreign students who receive financial sponsorship from the Australian government. This demonstration scheme is organized by the Commonwealth Department of Family and Community Service and is funded by the state budget/tax.

Second, the community development plan. It is a community empowerment program organized by Government Agencies equivalent to Ministries with financing in effect sharing between the Federation Government and the state government. The

program is in the form of job training and work practices aimed at disadvantaged communities to make professional independent workers so that they can be free from poverty in the future. This program is aimed at certain communities not to depend entirely on the provision of workers given the limited employment opportunities in Australia.

Third, concession based plan. Is part of the Social Security portability program that specifically applies to citizens in need such as large family stakeholders, retirees, and students. The form of the concession given is in the form of discounted tickets for land, sea, and air transportation that use government-owned public transportation services. Foreign students sponsored by the Australian government are also entitled to concessions. Then the application of discounts for rental apartments is given specifically for pensioners, widows, and single parents who are low income.

Fourth, the superannuation plan is a mandatory pension program for residents who work with a participant fee of 9%. This compulsory pension program has been in effect since 1992 as a complement to the demographic scheme so that the budget for the demographic scheme can be controlled. The enactment of the mandatory pension program is also a screening process so that communities in Australia do not depend entirely on demographic programs. This compulsory pension program is valid for every citizen/community member who earns as low as AUD 450 per month.

Fifth, work injury plan. Is one of the mandatory social insurance programs in Australia for workers who receive fixed wages as bound by collective labor agreements related to employment relations. This accident program is funded by participant contributions according to the wage ceiling and is organized by the social insurance institution and the implementation of the Superannuation Plan (Shihab, 2013).

The implementation of social security in Indonesia in principle has differences from other countries. Even though there are some similar policies, but overall the implementation does not have in common, Indonesia has its characteristics: BPJS is a government organ that reports directly to the President, has the social security council is also directly responsible to the president, unlike Germany which is managed by the private sector (Statutory Health Insurance (SHI) model) even though it is regulated by the government. Sources of social security funds in Indonesia from the state budget and public funds, a national social security system based on the principles of humanity, benefits, and social justice for all Indonesian people. Social security management has a centralist mode at the national level with mandatory membership.

The Social Security Administrator as a State Institution that is a Public Legal Entity

A country cannot develop social security without the assistance of a state organ to run it, because social security is one of the functions and objectives of the state. This is in line with (Kalsen, 2007) which states:

“Anyone who carries out the functions established by the legal order is an organ ... Country organs in the narrower sense selected or appointed to occupy their functions professionally ... the activities of organs are blamed on the country, considered to be a country function because they are referred to as country functions because they are called the organs of the country ... the country acts only through its organs”.

Some are explicitly called by name, and some are explicitly stated only for their function. There are also state institutions or organs that are mentioned both in name and function or authority which will be regulated by a lower regulation. At the central level, it can be differentiated into four institutional levels, namely (Huda, N, 2017):

- a. Institutions formed under the Constitution which are regulated and further determined in or with laws, Government Regulations, Presidential Regulations, and Presidential Decrees;
- b. Institutions that are formed based on laws that are regulated or further determined in or by Government Regulations, Presidential Regulations, and Presidential Decrees;
- c. Institutions formed based on Government Regulations or Presidential Regulations that are further determined by Presidential Decree;
- d. Institutions that are formed based on Ministerial Regulation which is further determined by Ministerial Decree or official decision under the Minister.

Health social security which is carried out by the Social Security Administrator for Health (BPJS Kesehatan) of a country body that currently functions as the operator of social security operations in Indonesia. The basis of the implementation carried out on the orders of the ideals of the state to realize the rights of citizens and is the duty of the state to organize.

The ideal is to provide social justice for all Indonesian people, namely to provide social welfare for all Indonesian people. Welfare is found in the Five Principle, Pancasila. Justice contained in Pancasila as a form of welfare efforts provided by the country through social security is to provide social security, the basic life of citizens can be fulfilled. It is especially social security in the health sector which we now know so high that health services are difficult to reach by the community middle down. If this situation can be anticipated or can be overcome by the government, basic life needs will be met.

The view of the life of the Indonesian nation is outlined in the Preamble to the 1945 Constitution of the Republic of Indonesia paragraph 4: “... The constitution of the Indonesian state, which was formed in the composition of the Republic of Indonesia which sovereigns the people based on the Godhead of the Almighty, just and civilized humanity, the unity of Indonesia, and people led by wisdom in consultation/representation, and by realizing social justice for all the people of Indonesia”. Social security is a form of social welfare in which the 1945 Constitution is contained in Article 34 paragraph (1) which reads “The poor and neglected children are cared for by the country”. Article 34 Paragraph (2) “The state develops a social security system for all people and empowers weak and incapable people in accordance with the dignity of humanity”, and article 28H paragraph

(3) “Everyone has the right to social security that enables his full development as dignified humans”.

The welfare of the people of the country does not fool around with a strong constitutional order to protect their citizens and provide welfare to be one of the noble goals of the country. On the orders of the 1945 Constitution of the Republic of Indonesia especially in Article 28 H paragraph (3) to provide comprehensive social security, the state develops a National Social Security System (SJSN) for all people by considering that everyone has the right to social security.

In the implementation of social security programs carried out by the Social Security Administrator (BPJS). In accordance with the National Social Security System Law No. 40 of 2004 Article 5 paragraph (1) states that BPJS must be established by law. The existence of a national social security system is a state program that provides certainty of protection and social welfare for all people as mandated in Article 28H paragraph (1), paragraph (2), paragraph (3), and Article 34 paragraph (1) and paragraph (2) 1945 Constitution. In addition, in the Decree of the People’s Consultative Assembly Number X/MPR/2001 the President is assigned to establish a national social security system to provide more comprehensive and integrated social protection for the people.

The enactment of the SJSN Law No. 40 of 2004 the Indonesian people have a social security system for all Indonesian people. To realize a national social security system, a social security organizing body in the form of a public legal entity needs to be formed, which is based on the principles of mutual assistance, non-profit, openness, prudence, accountability, portability, mandatory participation, trust funds and the results of the management of social security funds used all for the development of the program and the maximum benefit of the participants.

The establishment of the law on BPJS is the implementation of Law no. 40 of 2004 concerning the National Social Security System after the Constitutional Court Ruling on case Number 007/PUU-III/2005, this was to provide legal certainty for the establishment of the Social Security Administering Body in implementing social security programs throughout Indonesia. If seen from its existence above, the BPJS is categorized in one of the state institutions. According to Jimly Asshiddiqie:

“In country organizations, there are two main interrelated elements, namely organ and function. The organ is the status of the form or container while the function is the movement of the container in accordance with the purpose of its formation. In the 1945 Constitution of the Republic of Indonesia, these elements are explicitly mentioned and explicitly functioned”.

The country organization and its function explicitly mentioned by the 1945 Constitution are, the MPR, the President and Vice President, the State Ministry, the Presidential Advisory Council, the Regional Government, the House of Representatives, the Regional Representative Council, the Election Commission, the Central Bank (Bank Indonesia) Financial Examination Board, Supreme Court, Judicial Commission, Constitutional Court, Indonesian National Armed Forces (TNI), Indonesian National Police, other bodies whose functions are related to justice.

In the 1945 Constitution of the Republic of Indonesia NIV Article 34 paragraph (2) “The state develops a social security system for all people and empowers people who are weak and unable to comply with human dignity”, and Article 28 H paragraph (3) “Everyone has the right to social security that allows development as a whole as a dignified human being”. The constitution mandates the existence of a social security system, although explicitly within the state organ of the organization which is in the 1945 Constitution of the Republic of Indonesia is not mentioned, but from that order, it can be said that the existence of the BPJS whose function is to organize social security is referred to in the 1945 Constitution of the Republic of Indonesia.

The National Social Security Administrator (BPJS), is not a name determined by the 1945 Constitution, but by the SJSN law and the BPJS law that functions to administer a social security system in accordance with the constitutional mandate. This means that the existence of a state institution called BPJS is very important for constitutional democracy, although its regulation and formation is based on law and is not mentioned directly by the Basic Law, the existence of BPJS as a state institution is as meaningful as state institutions that are his name clearly stated in the 1945 Constitution of the Republic of Indonesia. This situation is the same as the existence of the National Commissioner for Human Rights (Komnas HAM). The existence of Komnas HAM as an effort to protect and promote human rights, the country deliberately formed a commission called Komnas HAM to protect human rights.

BPJS with the Ministry in a constitutional democratic country system or a democratic rule of law, both have the same degree of interest. Although in the 1945 Constitution of the Republic of Indonesia which is mentioned by the State Ministry in Chapter V Article 17, BPJS is not explicitly mentioned by the name of the organ. In this case, although it is not mentioned in the Constitution, it does not mean that the Country Ministry is more important than the BPJS, but both are equally important in the constitutional. Independent BPJS is very necessary because, as a state institution, BPJS has the duties, functions, and authorities that have been regulated in the Act. It is as stated by Jimmy Ashidique that independents categorize them into three forms of independence, namely: 1) Institutional or structural independence which is reflected in the mechanism external relations between state institutions; 2) Functional independence that is reflected in the decision-making process, which can be in the form of: goal independence, which is free in setting main objectives or policies; and instrument independence, which is free in setting policy instruments that are not self-determined; and 3). Administrative independence, namely the existence of freedom in determining administrative policies to support the two types of independence mentioned above (institutional and functional independence), in the form of: financial independence, namely the freedom to determine the supporting budget; and personnel independence, namely the freedom to regulate and determine the appointment and dismissal of personnel themselves (Awalludin, 2017).

In terms of hierarchy, we can see a level plane. In terms of hierarchy, there are three layers in state institutions namely: high state institutions, state institutions only, and

regional institutions. To facilitate understanding, constitutional organs at the first layer can be called state high institutions, namely: 1) President and Vice President; 2) House of Representatives (DPR); 3) Regional Representative Council (DPD); 4) People's Consultative Assembly (MPR); 5) Constitutional Court (MK), 6) Supreme Court (MA); and 7) Supreme Audit Agency (BPK). Second layer organs of state institutions, namely: 1) Minister of State; 2) Indonesian National Army; 3) National Police; 4) Judicial Commission; and 5) General Election Commission, and Central Bank (Asshiddiqie, 2010).

The case of obtaining authority can be categorized as obtained authority from the Basic Law. Some get their authority from the law, who get authority from the 1945 Constitution of the Republic of Indonesia, for example, the Judicial Commission, the Indonesian National Army, and the National Police. While institutions whose authority is from the law, for example, are the National Human Rights Commission, the Indonesian Broadcasting Commission, and so on. The position of these institutions is equal to each other, not higher or stronger (Asshiddiqie, 2010).

The position of the BPJS can be likened to Bank Indonesia. The name and authority of the central bank not listed or not explicitly mentioned in the 1945 Constitution, in Article 23D of the 1945 Constitution only states "The State has a central bank whose composition, position, authority, responsibility, and independence are regulated by law". That the central bank was given the name "Bank Indonesia" was the forming of the invited law as well as the authority to be regulated by law.

Likewise, with the position of the General Election Commission (KPU), the KPU only mentioned its main authority, namely as the organizing body of the general election. The name of the institution is not explicitly mentioned. The provisions of Article 22E paragraph (5) of the 1945 Constitution read "General elections shall be held by a national, permanent and independent election commission". Whereas in paragraph (6) reads "Further provisions on general elections are regulated by law" Related to the name in the Act it could not be the General Election Commission. The third layer organ is a regional institution, based on its authority from the regulator or formation under the law. For example, the National Ombudsman Commission was formed based on a Presidential decree. This means that its existence is legally based only on the policy of the President's policy (Asshiddiqie, 2010).

On the other hand, BPJS cannot be equated with BKKBN and BPOM because BPJS with its duties, functions, and authorities are regulated by laws other than that BPJS is formed on the mandate of the constitution. BKKBN and BPOM as non-ministerial government agencies, historically BKKBN and BPOM are regulated in President Regulation Number 3 of 2013. BPJS in the formulation of policies does not depend on other ministries, but functional synergistic relations BPJS needs to coordinate with other government agencies. Based on the discussion above it can be concluded that the BPJS can be aligned at the second layer, it is based on:

- 1) the contents of the material are contained in the 1945 Constitution of the Republic of Indonesia or an order from the constitution;

- 2) the formation by law and have authority;
- 3) the similarity to State Ministry, BPJS is responsible to the President.

BPJS as a state institution formed by the mandate of the Act has a position as a very powerful state organ. In Law No. 24 of 2011 Article 5 paragraph (1) BPJS must be formed by law. To improve the dignity and degree of citizens of the country the obligation to fulfill guarantees for health, housing, education, employment, and so on, these conditions are as citizens' rights that must be fulfilled and protected by the state. This obligation is contained in Law No. 39 of 1999 concerning Human Rights Article 8, the protection, promotion, and fulfillment of human rights is primarily the responsibility of the government. In line with this, BPJS on behalf of the state carries out social security in accordance with the fifth precepts of Pancasila and the 1945 Constitution states that the state organizes social security to prosper the people and provide justice. That goal strengthens the rights of citizens that must be given by the state to its people.

So that the current accountability of BPJS must continue to strive to fulfill the rights of citizens in accordance with their obligations and authority, namely the provision of social security which is one of the rights included in economic and social rights such as health and others. Justice and human dignity, social security is a right that must be obtained so that the state has responsibilities as explained above. (Sambouw, 2015). If the state fails to provide guarantees for the fulfillment of the rights of its citizens, the state can also be said to violate the rights in the covenant this is what Ifdal Kasim said as stated in the Limburg Principles below. (Sambouw, 2015):

1. Fail to take steps as requested by the agreement;
2. Fail to immediately remove obstacles which according to the obligation must be removed so that a bias can be fulfilled immediately;
3. Fail not to delay fulfilling a right which according to the agreement must be done immediately;
4. Deliberately do not meet international minimum standards in terms of fulfilling their obligations, in which case the fulfillment of those obligations falls under their authority;
5. Limit a right recognized in an agreement that is not in accordance with the agreement;
6. Deliberately slow down or stopping the gradual realization of a right, unless the action is within the limits permitted by the agreement or the action is caused by a lack of available resources or force majeure;
7. Fail to provide reports as requested by agreement.

The Limburg principles guide the state to always strive for the fulfillment of the rights of its citizens, if a country experiences a decline then the state also must seek assistance so that the fulfillment of the rights of citizens can be fulfilled. This can be further explained if BPJS cannot fulfill the statutory status, then the role of the state must strive to be in accordance with the responsibilities given by the constitution. Mahfud MD stated that a government in a good country has a good constitution and the government implements a good constitution in the practice of his administration (Mahfud MD, 2003).

Indonesia also adheres to the principle of good governance which is open, clean, authoritative, transparent and responsible governance, conceptually it can be understood that positioning the people to be able to regulate their economy through social security carried out by the state (Kadarisman, 2015), with the hope of society can increase the degree and dignity. In line with this Suparman Marzuki stated the country's responsibility in carrying out obligations to fulfill civil rights as well as the obligation to protect the certainty of the state to take certain steps by moving state organs to seek protection (Marzuki, 2019). As explained above, the government has the obligation to respect, protect, uphold and advance the rights of citizens through BPJS that has been regulated based on laws and regulations and international law (Triputra, 2017).

From the description above the accountability model of BPJS as a public legal entity reflects the Indonesian nation as a welfare state because the institution has characteristics in its operation aimed at the public interest or for the welfare of the people in the hope of improving the standard of living of the community in accordance with human dignity, and this is in accordance with the state's obligation to play an active role in fulfilling constitutional rights, namely guaranteeing and protecting citizens. The Preamble of the 1945 Constitution in which the function of the state is to protect the entire Indonesian nation and all of Indonesia's blood and to promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace, and social justice ... "and at the end of paragraph IV it was stated that one of the bases of the five basic principles of the country (Pancasila) is to realize social justice for all Indonesian people, then the body of the 1945 Constitution Article 34 provides a firm understanding of how the country must be able to actively develop social welfare.

The function of the welfare state has the broadest meaning shown by the welfare of citizens and social justice for all people by providing public services with public services such as health, education, and social services. With the implementation of the National Social Security System, social security administration in Indonesia is a form of a welfare state.

Conclusion

The Indonesian country is a Welfare State or a modern state characterized by providing welfare to its people. Social security is organized based on the order of the 1945 Constitution of the NRI article 28H and Article 34 paragraph (1) and (2). The National Social Security System (SJSN) is a procedure for administering social security to ensure all people meet the needs of a decent life. By order of Article 5, the SJSN Law was established and then Social Security Administrator (BPJS) was formed. In Article 5 of the BPJS Law, it was stressed that the BPJS legal entity was a public legal entity in which the function of the BPJS was to organize a social security program.

BPJS is a state institution whose function explicitly is contained in the 1945 Constitution of the Republic of Indonesia. Like Bank Indonesia in Article 23D of the 1945 Constitution, it is explicitly stated the Central Bank. As an organ or state institution that

carries out state tasks in the field of social security, BPJS certainly has the duties, functions, and authorities that are supporting state power. As a state agency mentioned above, the BPJS can be aligned institutional position in the constitutional ranks with Bank Indonesia, the National Police, and the KPU Directors and Supervisory Board that are elected through the Selection Committee which is forwarded to the Parliament and appointed by the President. Placing BPJS relations with institutions/ministries that are also responsible to the President in the constitutional context as functional relations between institutions. It is because BPJS is not subordinate to ministries or sub-ministries. It forms a check and balance relationship as a public legal entity responsible to the President.

Suggestion

Based on the discussion and conclusions above, the researcher recommends the following suggestions: *first*, calling for consistency of the country in carrying out social security as a mandate from the constitution; *second*, placing BPJS as a Public Legal Entity that has the authority to determine regulations in accordance with its authority, functions, and duties; and *third*, establishing functional relationships and good coordination between state institutions and BPJS. In making decisions, BPJS involves relevant institutions as a basis for consideration of approval so that decisions made are not in conflict with existing policies and as an effort to minimize losses incurred to the society.

References

- Asshiddiqie, J. (2010). *Perkembangan dan Konsolidasi lembaga Negara Pasca Reformasi*. Jakarta: Sinar Grafika.
- Awaluddin, A. (2017). Kewenangan Komisi Kepolisian Nasional dalam Mewujudkan Tata Kelola Kepolisian yang Baik. *Jurnal Media Hukum*. 24(1), 52-61. <https://doi.org/10.18196/jmh.2017.0089.52-61>
- Busemeyer, M. R., & Iversen, T. (2020). The Welfare State with Private Alternatives: The Transformation of Popular Support for Social Insurance. *The Journal of Politics*. 82(2), 671-686. <https://doi.org/10.1086/706980>
- Chidir, A. (1987). *Badan Hukum*. Bandung: Alumni.
- Douwes, R., Stuttaford, M., & London, L. (2018). Social Solidarity, Human Rights, and Collective Action: Considerations in the Implementation of the National Health Insurance in South Africa. *Health and Human Rights Journal*. 20(2), 185-196. Retrieved from <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2018/12/Douwes.pdf>
- Folbre, N., & Wolf, D. (2013). The Intergenerational Welfare State. *Population and Development Review*. 38, 36-51. Retrieved October 22, 2020, from <http://www.jstor.org/stable/23655285>
- Fuady, M. (2009). *Teori Negara Hukum Modern (Rechtstaat)*. Bandung: Refika Aditama.
- Greenberg, J., & Cohen, R. L. (2014). *Equity and Justice in Social Behavior*. Massachusetts, America: Academic Press.

- Hidayat, Arif. (2016). *Mengawal Pemenuhan Hak Konstitusional Warga Negara atas Jaminan Sosial*. Presented in National Seminar, November 24.
- Huda, N. (2017). Potensi Sengketa Kewenangan Lembaga Negara dan Penyelesaiannya di Mahkamah Konstitusi. *Jurnal Hukum IUS QUIA IUSTUM*, 24(2), 193–212. <https://doi.org/10.20885/iustum.vol24.iss2.art2>
- Hunt, P and Backman, G. (2008). Health Systems and The Right to The Highest Attainable Standard of Health. *Health and Human Rights Journal*. 10 (1). 81-92. Retrieved on Februari, 9 2020, from <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2013/07/7-Backman.pdf>.
- Ilmar, Aminuddin, Asikin, H. Zainal. (2014). *Hukum Tata Pemerintahan*. Jakarta: Kencana.
- Irfani, N. Organisasi Jaminan Sosial Republik Federal Jerman. Retrieved on Januari 13, 2017. from <http://www.jamsosindonesia.com/kjs/files/Mancanegara/Organisasi%20Jaminan%20Sosial%20di%20Jerman.pdf>
- Kadarisman, M. (2015). Analisis tentang Pelaksanaan Sistem Jaminan Sosial Kesehatan Pasca Putusan Mahkamah Konstitusi No. 07/PUU-III/2005. *Jurnal Hukum IUS QUIA IUSTUM*. 22(3), 467–488. <https://doi.org/10.20885/iustum.vol22.iss3.art7>
- Kalsen, H. (2007). *Teori Umum tentang Hukum dan Negara*. Bandung: Nusamedia.
- Kendrex, J E K, (2015). Punishing the Poor Through Welfare Reform: Cruel and Unusual. *Duke Law Journal*. 64. 124-128. Retrieved on Februari 15, 2020 from https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1007&context=dlj_online
- Ljunge, M. (2012). The Spirit of the Welfare State? Adaptation in the Demand for Social Insurance. *Journal of Human Capital*. 6 (3). 219-220. Retrieved on Februari 9, 2020, from <http://www.jstor.org/stable/10.1086/667723>
- Mahfud, MD. (2003). *Demokrasi dan Konstitusi di Indonesia*. Yogyakarta: Rineka Cipta.
- Marzuki, S. (2019). Politik Hukum Hak Asasi Manusia Tentang Kebebasan Beragama Pasca Orde Baru. *Jurnal Hukum IUS QUIA IUSTUM*. 26(2), 215–237. <https://doi.org/10.20885/iustum.vol26.iss2.art1>
- MD, M. M. (2000). Politik Hukum Hak Asasi Manusia di Indonesia. *Jurnal Hukum IUS QUIA IUSTUM*. 7(14), 1–30. <https://doi.org/10.20885/iustum.vol7.iss14.art1>
- Riawan, W.T. (2008). *Hukum Administrasi Negara*. Yogyakarta: Atma Jaya.
- Rofieq, A. (2011). PELAYANAN PUBLIK DAN WELFARE STATE. *Governance: Jurnal Ilmu Pemerintahan*. 2(1), 99–111. Retrieved from <http://jurnal.unismabekasi.ac.id/index.php/governance/article/view/719/605>
- Sambouw, S.T. Perlindungan Hukum Hak Asasi Manusia Terhadap Hak Ekonomi Sosial Budaya Masyarakat Di Pulau Marore Kabupaten Kepulauan Sangihe Sulawesi Utara. *Jurnal Lex Administratum*. 3 (5). 89-99. Retrieved on July 9, 2020 from <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/8711/8275>
- Scott, D. (1994). *Hak Azazi manusia*. Jakarta: Pustaka Utama Grafiti.
- Shihab, N.A. (2013). *BPJS Jalan Panjang Mewujudkan Sistem Jaminan Sosial Nasional*. Depok: Cinta Indonesia.
- Soekanto, S. (2012). *Pengantar Penelitian Hukum*. Jakarta: UI-Press.

- Suharto, E. (2006). Peta dan Dinamika Welfare State Dibeberapa Negara: pelajaran yang dapat dipetik untuk membangun Indonesia. Downloaded on Mei 13, 2019, from <http://www.policy.hu/suharto/Naskah%20PDF/UGMWelfareState.pdf>.
- Thabrany, H. (2009). Badan Penyelenggara Jaminan Kesehatan Nasional: Sebuah Policy Paper dalam Analisis Kesesuaian Tujuan dan Struktur BPJS. Retrieved from <https://staff.ui.ac.id/system/files/users/hasbulah/material/bpjsnsionalataubpjsd.pdf>
- Triputra, A. Y. Implementasi Nilai-Nilai Hak Asasi Manusia Global ke dalam Sistem Hukum Indonesia yang Berlandaskan Pancasila. *Jurnal Hukum IUS QUIA IUSTUM*. 24(2). 289-290, retrieved on Juli 11, 2020 from <https://journal.uui.ac.id/IUSTUM/article/view/7342/7409>.