

# The Implementation of Health BPJS Connected to Balance Principle in Economic Law and Sharia Principles

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**Abstract**—Article 28 H of the 1945 Constitution stipulates that everyone has the right to obtain health services. To conduct this mandate, January 1st, 2014, the government formed Health Care and Social Security Agency (BPJS). Article 29 (2) of the 1945 Constitution provides a mandate, namely that the state guarantees the independence of each population to embrace their respective religions and worship according to their religion and beliefs. For Muslims, all aspects of life are worship and therefore must comply with religious provisions. Likewise, in the implementation of Health BPJS, it conducts the governing function in the field of public services. For this reason, a study was conducted with the aim at finding the implementation of Health BPJS from balance principle in Economic Law and the organization of Health BPJS connected to sharia principles. The study was conducted by a normative juridical approach, analytical descriptive as the nature of research, secondary data, and analysis techniques of qualitative data through legal interpretation. In conclusion, the implementation of Health BPJS connected to the balance principle did not fulfill the balance principle between the interests of the parties in the agreement. Judging from sharia principle, the implementation of Health BPJS still includes elements of usury (additional), *maisir* (speculative/luck), and *gharar* (unclear things) that are prohibited in Islam.

**Keywords:** BPJS, balance principle, economic law, sharia principle

## I. INTRODUCTION

Article 28 H of the 1945 Constitution stipulates that everyone has the right to obtain health services. To carry out this mandate, January 1, 2014, the government formed Health Care and Social Security Agency (BPJS/*Badan Penyelenggara Jaminan Sosial*). In line with this, article 29 (2) of the 1945 Constitution provides a mandate, namely that the state guarantees the independence of each population to embrace

their respective religions and worship according to their religion and beliefs. For Muslims, all aspects of life are worship and therefore must comply with religious provisions. Likewise, in the implementation of Health BPJS, it conducts the governing function in the field of public services.

In the implementation of BPJS as a public health management institution, there are still questionable instruments from sharia aspects, which in practice, BPJS management in Indonesia is regulated in Presidential Regulation Number 12 Year 2013 concerning Health Insurance. BPJS management functions to cover health insurance for every community recorded in BPJS participant list, and each community is required to pay a certain nominal fee. Regulations regarding the mechanism for payment of BPJS contributions are listed in Act Number 40 Year 2011 Article 17 concerning the National Social Security System (*SJSN/Sistem Jaminan Sosial Nasional*) and Law Number 24 Year 2011 concerning BPJS stipulating that each BPJS participant is required to pay dues, meaning that people or participants of social security are forced to finance the risks faced by themselves, and the state only manages these funds. Therefore, if the participants of Health BPJS do not pay contributions, they will be subject to sanctions or penalties [1].

BPJS as a health institution should be able to overcome health problems for the community, but in its implementation, unexpected phenomena appeared and occurred, for example, at the time of community claims acceptance must undergo so many difficult processes, and the giving claims complained by the public were considered unsatisfactory [1]. Additionally, in its management, unclear management occurs when a claim occurs even though the participant has not paid the entire contribution. If there is no claim during the agreement period, the contributions paid during the payment period will expire. For this reason, the study on the implementation of Health