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# Black Swan Theory: Legal Policy of the Indonesian National Healthcare

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Article	Abstract
<p><b>Keywords:</b> Black Swan, Theory; Health; Service; Indonesia</p> <p><b>Article History</b> Received: Jun 11, 2021; Reviewed: Jun 17, 2021; Accepted: Feb 14, 2022; Published: Mar 1, 2022</p>	<p><i>The Indonesian National Health Service (NHS) is part of Indonesia's national social security system. Its implementation is full of problems, such as the rejection of patients, the NHS payment which is lower than the real health cost, sanctions and fines, etc. The Indonesian National Social Security System, especially the NHS services, was established by the state to give social protection for its citizens. The Black Swan Theory is based on the presumption that all swans are white, thus in this case, the Indonesian NHS is truly a program aimed to give social security in the health sector, just as the general conditions of social securities applied in other countries. This research studies this theory to explore the paradoxes which happen in the Indonesian NHS to find the black swan. In this case, the black swan is a paradoxical symbol regarding the regulations and the problems of the Indonesian NHS. This research uses the juridical-doctrinal or the normative method and is descriptive research with a qualitative approach. Based on the Black Swan theory, this research tries to find paradoxical, extreme, and unpredictable discrepancies in the Indonesian NHS. It is found that the Indonesian NHS is a black swan or unpredicted according black swan theory. The objectives, practice, and regulations of this NHS is truly different from the NHS which is supposed to be given to the Indonesians. It transfers the government's burden in establishing the health service and the rights of the citizens to the citizens, coupled with the threat of sanctions which is unknown in NHS. The applied Indonesian NHS has an extensive impact towards hundreds of millions of Indonesian citizens.</i></p>



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## INTRODUCTION

One of the aims in establishing the Republic of Indonesia Unified State as set forth in the Preamble of the Republic of Indonesia's 1945 Constitution is to improve the people's welfare. According to Anies Baswedan as quoted by Wisnu, "The state is established with a common pledge to advance social welfare. The social security system is established to make sure that this pledge may be fulfilled for all citizens."

In line with the mandate of the 1945 Constitution Article 34 paragraph (2) on the state's obligation to develop the social security system for all Indonesian people and also the stipulation of Law No. 40/2004 on the National Social Security System, including Jamkesmas (*Jaminan Kesehatan Masyarakat* or the National Public Health Insurance), are integrated into one system, established by an agency formed by the government, namely the Social Security Administrator for Health or BPJS (*Badan Penyelenggara Jaminan Sosial*).

Law No. 24 of 2011 also stipulates that the National Health Security (*Jaminan Kesehatan Nasional*/JKN) will be established by BPJS, which consists of BPJS Health and BPJS Workforce. The National Health Security (NHS) is established by BPJS Health, and its implementation started on January 1st, 2014 (Hasrillah et al., 2016).

As an administering agency, BPJS Health is a public legal entity which is formed to establish the NHS program, aiming to fulfill the people's needs for health. It obliges everyone to pay premiums each month. To support the establishment of the NHS, BPJS may work together with the health facilities through cooperation agreements (Shihab, 2012). The government allocates only 3-5% of national budget to provide healthcare for its citizens and this allocation is inadequate (Khakim, 2021). The NHS concept must be stipulated in legal regulations, as according to Barr cited by Pakpahan and Sihombing (Pakpahan and Sihombing, 2012)

The objective is simply to organize the system in a way that treats each member of society with dignity and respect (Rumpia & Tisnanta, 2018). As noted earlier, health social security promotes individual respect and dignity through the philosophy implying that those who make contributions earn the right to the benefits (Malcom Payne, 2014).

Government-sponsored Social Security emerged about a century ago, providing effective protection, particularly coverage and cost distribution (Irwanto & Razy, 2021). The Government Intervention on the social welfare systems have grown to account for substantial portions of government budgets as a duty of the welfare state (Nicholas Barr, 2012). The budget of Indonesian government is actually certainly inadequate, where the allocated national budget for health care and health security always remains in deficit.

Generally, in some other countries, the Social Security System is always organized by the government, and the funding is the responsibility of the state (Kartikawati, 2021). The NHS program is a form of universal health insurance, where

the people's health costs are funded by the state. If the state's funds are insufficient to cover the needs, the state will take larger proportions of the NHS using the social insurance scheme, a combined system between the funds by the state and the obligation of the citizens (Kadarisman, 2015).

The government of Indonesia is supposed to try a different policy, requiring citizens to fulfill the budget for national healthcare and NHS. The government made a law to collect money from citizens to cover its minimum budget that government has allocated, making the NHS of Indonesia earn its status as a Black Swan phenomenon.

Generally, the implementation and the philosophy of this program are the same in all countries. But, in Indonesia, there is a significant difference. Citizens who are not registered or those who do not pay dues are subject to certain sanctions as stipulated in the Law on BPJS. The Law No. 24 of 2011 Article 17 paragraph (2) states that the administrative sanctions as stated in paragraph (1) may be in the form of written warning; fine; and/or rejected access to certain public services, such as the processing of business permits, building permits, or proof of land and building tenure rights (Usman & Kara, 2016).

These dues and sanctions make the Indonesian National Social Security System paradoxical, as the government has left its responsibility in the hands of the citizens. Generally, in the perspective of the Black Swan theory, the national social security system is for the sake of citizens' welfare. Thus, the state establishes the social security for the citizens to support their livelihoods (Sudrajat, 2020).

The Black Swan theory explores the chance for an unreasonable anomaly, where in this paper, it regards social security in Indonesia. It is based on an extreme and a different condition from the usual social securities. Correa describes Black Swan theory as follows:

Even if we don't understand it, Black Swans have turned the most important events in the modern history. Based on the presumption that all the swans are white, because all the swans observed before were white, until an explorer discovered one black; the Old-World statement of impossibility "black swan" were used to describe anything impossible or not existing.

A social security is either a common or a special matter established by the state (as of other countries) to give social protection to the citizens. The presumption that the Indonesian social security gives social protection to the citizens just like other social welfares in general is the presumption that "all swans are white" when it refers to the Black Swan theory.

According to the same theory, it is highly possible for a different phenomenon to happen, just like the presence of a black swan (an extreme condition) through an event or a momentum which was previously deemed impossible or non-existent. The

presence of this non-existence is a presumption or a new fact. In this case it is the Indonesian national social security system, or the NHS. The question whether this difference is outstanding (a paradox which may either be positive or negative). According to Taleb (Taleb, 2007) stated that:

It can identify main features of black swan events. A positive black swan event has favorable consequences for development. For example, the discovery of a new vaccine, the Internet, the mobile phone. On the contrary, negative black swan events come with disfavorable and possibly catastrophic consequences. For example, the economic crisis or epidemic.

Taleb (Richardson, 2013) refers to a black swan as an event with the following three attributes. Firstly, it is an outlier, as it lies outside the realm of regular expectations. Secondly, it carries an extreme impact. Thirdly, despite its outlier status, human nature makes us concoct explanations for its occurrence after the fact. Aven (Aven, 2017) refers to a black swan as a surprisingly extreme event relative to one's belief/knowledge.

Departing from the description above, this research investigates the following problems: (1) Is the NHS as part of the National Social Security System a paradox or a black swan for the social security program, and (2) how should the Indonesian Health Security give social protection for its citizens?

## METHOD

In line with the definition, Narbuko and Achmadi in Sonata (Sonata, 2017) stated that research is "A systematic thought on the various types of problems whose resolutions require the collection and the interpretation of facts." Meanwhile, Arikunto (Nursanjaya, 2002) stated that the research method is used by researchers in collecting research data.

This research uses the juridical-doctrinal or the normative method. This is descriptive research with a qualitative approach. According to Locke, Spirduso, and Silverman in Creswell (Yusanto, 2019), "Qualitative research is interpretative research. Thus, bias, values, and assessment of the researcher are clearly stated in the research report. Such openness is regarded as beneficial and positive."

## RESULTS AND DISCUSSION

### **The Paradox of the Social Security System in the Indonesian National Health Security According to the Black Swan Theory**

The people's right to an adequate living standard in the aspects of health and welfare is a human right which is acknowledged by the countries of the world, including Indonesia. (Pratiwi et al., 2017). In line with the mandate of the Constitution and the Universal Declaration of Human Rights, Law No. 6 of 2009 on Health

stipulates that every person has the right to access health services (Susanti, 2017). Social security is also aimed to create an opportunity for poor people to obtain a dignified standard of life, so that poverty is not inherited from one generation to the next (Sayekti & Sudarwati, 2010)

These are the ideals of Indonesia's founding fathers, as stated in the third principle of the state paradigm, namely Pancasila, stating "Social justice for all Indonesian citizens". This is a social security vision which is commonly applied and known as "white swan". There is almost no country in this world not setting the policy to encourage the economic welfare for its citizens (Alim, 2010).

It is unthinkable for a Social Security program to become a truly different mechanism from those that should exist. The presence of the black swan in the social security program gives an extreme impact, even though the chance for a black swan's existence in social security is very low.

The analysis on the social security system in Indonesia, especially regarding the NHS makes the writers realize that the Indonesian citizens actually have demanding interests and needs for the social security system, including the NHS. There were 79.5 million Indonesians facing multidimensional poverty, which accounted for 31.5% from the total of 252 million people – where 3 out of 10 households experienced multidimensional poverty (Windria, 2016). This condition makes Indonesia need to undergo significant social policy development.

According to Sumarto, Indonesia's welfare regime relied on the community to provide social protection for the poor. Such policy reform provides a mandate for the government of Indonesia to provide social protection for the poor. Social Security is an instrument in achieving social welfare, and it serves as a system which regulates social services and institutions to assist individuals and groups to achieve an adequate health and living standard facilitated by the government to guarantee the provision of basic welfare services. The state is funded by its people through economic productivity, taxation system, and human resources (Purwana, 2014).

Under the Ministry of Health, the government has applied some regulations concerning the implementation of the BPJS Health program, including tariff and procedures in obtaining health services. This NHS implementation is expected to ease the barrier, especially among the poor, to gaining access to medical treatment at health service facilities due to fund issues (Darmawati et al., 2015).

The presence of this unpredictable black swan may be observed from the series of regulations paradoxical to national social security, which is supposed to give social protection to its citizens. The black swan is a paradoxical symbol between a concept and an expected concept. The social security system, in this case the health security, may become paradoxical if it is formulated, implemented, and regulated in compliance with stipulations which may create something that stray away from how the social security or the health security should really be.

There are many problems which regard the BPJS Health services in the field; *First*, there are still many cases where patients as BPJS Health members are rejected from obtaining examination rooms by hospitals; *second*, there are still many patients who must pay for medications or blood, while these services should be covered or provided by BPJS; *third*, patients are discharged before they recuperate, as they have used up the INA CBGs packet; *Fourth*, many patients must be put in a long waiting list to obtain surgery procedures (Tris et al., 2019).

Another problem lies in the amount of tariff, in which the hospitals as BPJS Health partners experience losses in implementing this program. This loss is due to the amount of tariff written at the Indonesian Case Based Group (INA-CBGs) packet which is lower than the real cost of health treatment at hospitals. The research conducted by Muchlis and Maulina (Handayani & Suharmiati, 2018) found that the CRR (Cost Recovery Rate) or the real cost of treatment at the INA CBGs tariff is lower than the CRR tariff of hospitals. It is shown that the CRR to the INA CBGs tariff is around 90.85% to 65,98%.

A bitter reality must be experienced when most hospitals still experience a negative price gap between the hospital tariff claim compared to the INA CBGs tariff (Mardiah, 2016). This means that hospitals and health facilities must take the loss when treating BPJS patients based on the INA CBG's. Hospitals are demanded to give prime services as people's lives are paramount, but the funding does not allow sustainable operation for the long run. Several hospitals choose to lower the service quality from the standard to help keep the BPJS Health program running.

A hospital representative stated that a patient with a certain disease must effectively be treated more than four days. The due of the INA CBG's may only accommodate treatment for four days. But if the patient's condition requires longer treatment, the hospital must cover the patient's cost, which could be fatal for the patient concerned.

Data show that health fund never reached 5% until 2020. In 2014 at the time the health security was implemented, the health fund allocated by government accounted for 3.4%, 3,9% in 2015, 4.9% in 2016, 4.6% in 2017, and 3.9% from 2018 to 2019. Because of Corona virus, the health fund budget rose to 5.2% in 2020 and 6.2% in 2021 (Ministry of treasury, 2021).

The health and the social security quality have also decreased compared to the quality before the NHS establishment of BPJS Health. This degrading quality may be seen from the fact that BPJS does not cover all health claims. The implementation of this NHS impacts the removal of Jampersal (Childbirth Insurance), the decrease of treatments in the aspects of medical examination, drug administration, and inpatient services (Pratiwi et al., 2017).

In her dissertation, Niah (Niah, 2016) also found that the coordination problem is a serious case in implementing the BPJS. The weak coordination in the

implementation of BPJS is also shown by rejected BPJS patients from their rights to obtain health services as the people must actually pay. This should not happen since they have regularly paid for the medical treatments.

There are many problems in the field. It shows a rare risk on the paradoxical black swan according to the Black Swan theory in the Indonesian NHS. The more problems there are, the higher the chance for the emergence of the black swan in the NHS will be. According to Avis (R Avis, 2017):

Some risks are rare and catastrophic and can only be explained in retrospect. These risks are called black swans they can cause massive amounts of destruction and change the course of history. These risks are always unprecedented and thought not possible to exist. Using these categories, we can look at any system (including the NHS), do a little research, and determine their states.

Nassim Nicholas Taleb labelled these outliers black swans because they serve as an analogy to these rare risks that can go unseen because of process called induction. The induction process attempts to make sweeping conclusions about a system by implying unseen characteristics about a whole system through positive observations of a partial system. For hundreds of years, European biologists and bird experts only saw white swans. Through induction, they concluded the world only contained white swans. When they travelled to Australia, the sighting of black swans forever altered their perception of all swans.

There are several problems in NHS as stated in the table:

**Table 1. The Health Security Problem**

No.	Problem of Financials	Problem of Service
1	Deficits due to higher expenses	National coverage not up to standard
2	Low Health fund from government	Limited access to health service for patients with health security due to over capacity
3	Lack of consistency to pay health security	Discrimination among patients because of lower INA CBG's than real cost of health service
4	Rising medical cost	Degraded health facility quality due to deficit in INA CBG's
5	Indonesian case base group (INA CBG's) is much lower than real cost of health service	Delayed payment to Health personnel (doctor, nurses, midwife) due to mechanism of health security fund claim by health facilities
6	Lengthy and complex process of Claim for payment of health service under health security,	Overcapacity in Hospitals due to the health facilities rank 1 and rank 2 referring patients to hospitals

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leading to deficit in the health  
facility operations, and some  
health facilities have gone  
bankrupt

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Source: Author analysis, 2022

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BPJS covers health or workforce securities for all citizens registered in the BPJS registration list, where every person is obliged to pay some dues at a certain amount. At a glance, the BPJS Management method looks like other insurances. The difference is that BPJS is one of the governmental programs which aim to guarantee protection for its people (Usman, 2016).

According to Suprpto (Widaty, 2017), capitation funds is the amount of pre-paid monthly cost to health facilities based on the number of registered NHS participants without calculating the type nor the amount of health services given. (Fitrianeti et al., 2017). The determination of the tariff claim from the BPJS for the community health centers as First-Level Health Facilities leads to a problem since this is small and off the standard cost of health service, “Who then should cover this deficit?”

The NHS Services cause another paradox at the field of public satisfaction or the social security service level which does not experience significant improvements. According to the research, health security systems are defined as comprising all the organizations, institutions and resources that are devoted to producing health actions (Awofeso et al., 2012). Despite increased funding since decentralization of the health system commenced in 2001, health system performance has remained unsatisfactory in Indonesia. A recent survey on the level of satisfaction with public health services revealed that only 58 percent of people surveyed found the services satisfactory.

The Black Swan phenomenon in the NHS is seen from its low performance. Poor health system functioning is likely to be a major contributor to Indonesia’s reduction in consumer trust in the health security system and consequent unwillingness to utilize its services, unsatisfactory referral systems, which encumber efforts to provide hospital beds to those who really need it, poor clinical governance and accountability, manifested in low quality of hospital services and high incidence of adverse health outcomes in hospital.

The sign of the black swan phenomenon in Indonesia’s health security is not only seen from the emergence of problems. One of the paradoxes of the Law on the National Social Security System and the Law on BPJS is that they have fundamentally changed the state obligation in providing health security to become the people’s obligation (Budiono and Izziyana, 2016). The people’s rights are changed into their obligations (Riant Nugroho, 2019).



The hope to receive social security according to the human dignity becomes mere mirage. This condition happens because, according to Absori, the formulation of law is based on the desires of the authorities which are supported and set forth in laws (Nugroho, 2016). Parallel to that, according to David Easton in Suprpto (Widaty, 2017), the authorities in a political system namely members of the executive, legislative, judicative institutions and administrators may leave their interests in the NHS. Instrumentally, it is not an independent matter, but it strives to achieve its own objective goals. Lascoumes and Le Gales in Kuhnle and Sander stated (Kuhnle & Sander, 2010)

We mainly present two arguments (1) public policy instrumentation is a major issue in public policy, as it reveals a (explicit) theorization between the governing and the governed: every instrument constitutes a condensed form of knowledge about social control, and (2) that instruments at work are not neutral devices: they produce specific effects, independently of the objective pursued (the aims ascribed to them).

The implicit intention in the implementation of the Indonesian NHS by BPJS Health may be seen from how BPJS Health conceptualizes itself. It conceptualizes itself as a public agency which is formed to establish the social security program. As a public legal entity, BPJS has the power and the authority to govern the public through the authority in creating regulations (Solechan, 2019). This self-conceptualization is highly misleading and unjustifiable. As a public entity, BPJS must have the role in providing services to the public, instead of becoming a controlling authority.

The NHS concept implemented by BPJS Health has a hidden agenda, intended to achieve social control and goals according to the interests of the related parties by shifting the burden of the social security establishment from the state to its citizens. The application of the insurance system in the social security establishment becomes a practical solution to the government's low commitment and the weak social policies.

The application of the NHS with the insurance paradigm is a real effort of the government to shift the burden of the social security system responsibility to the citizens. To compare with other states on the implementation of NHS, in Europe, Australia, and Taiwan, the public health is funded up to 80% from the total health costs by the government. Meanwhile, in Indonesia, 70% of the health costs are left to the burden the patients and their families have to bear.

Sanctions seem to come in handy as a measurable instrument imposed by the state to enforce an obligation burdening the citizens. Sanctions lead to a shift – from the social security as the right of the citizens that the state must fulfill to an obligation that the citizens must perform.

The concept and the implementation of the Indonesian NHS is a black swan in the Black Swan theory which overturns all social security concepts and

implementations. The Indonesian NHS is an anomaly or a paradox of social security as stated in the law. This is not a social insurance but rather a derivation of a black swan in the form of obligatory health insurance because, with the NHS, the state actually avoids funding the NHS.

The aim of such an NHS is certainly very different from the right concept of Social Security. The government has changed the white swan into a black one. Thus, even though it is similar, the Indonesian NHS cannot be called a Social Security. The Indonesian NHS contains highly paradoxical objectives, patterns, and implementations and, it expects people to comply and obey. According to the Black Swan Theory, it is a true paradox.

This aspect of interest is one of the indicators that the NHS is not an ideal NHS— or a white swan, but it has transformed into a black swan because it has deviated, it is extremely different and unpredictable. This is not according to Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution which mandates social security and health security as the rights of the citizens, and the state is obliged to fulfill them.

Thus, because these funds are obtained from tax, the people are obliged to pay for the health services of themselves and of other citizens. In short, no lunch is free for people who actually have the obligation to pay the monthly dues or premiums, whether or not they are sick and whether or not they use it.

The concepts of dues and sanctions have led Indonesia's national social security system to a paradoxical state as the national social security system because what should have been the state's responsibility is now left to the citizens. The concept and the formulation of the NHS through the BPJS Health are deemed to be uncommon in the national social security, where the state's principal roles are gone and replaced with that of the citizens.

Thus, there is a likelihood that the Indonesian NHS is not up to standard of a true national social security system which gives social protection in the aspect of health, but it is a paradoxical black swan; it seems like it is a social security system while it is not. The anomalistic and paradoxical concept is known as a black swan in the Black Swan theory as it differs from the real condition and the real concept of the NHS.

The Black Swan theory in the affair of health treatments is when there is the aim to earn money by making use of health services as the most profitable business unit. The aim is to collect trillions by accelerating health treatments and by showing the high performance when the aim is financial gain. Similar characters and similar financial motives prevail in social security.

The state has collected public funds at a staggering amount to make sure of the NHS's establishment. In comparison, the amount of the initial capital is not proportional to the dues collected from BPJS Health in 2016, which was 67.4 trillion rupiahs (Maulida, 2017). Then, in 2017, it increased to 74.25 trillion rupiahs (Nirwan

J, 2017). In line with that, BPJS obtained operational funds achievement with the legal basis of the Governmental Decree No. 87 of 2013, implying that based on the operational data sourced from the NHS, as much as 10% from the total NHS dues are collected by BPJS Health (Putri, 2012).

Meanwhile, the government refuses to give or to allocate extra funds for health (Aurora, 2019). This small allocation shows that the government does not actually have a serious intention in developing the national social security system; therefore, they prefer policy systems which shift the obligation of the government to the citizens (Budiono, 2020).

The sanction imposition represents a barrier to obtaining certain public services as stated in Article 17 of the Law on BPJS, including a barrier to the processing of business permits, building permits, or proof of land and building tenure rights. Such a sanction is a constitutional violation of the citizens' rights and reckoned to be an arbitrary action. It represents abuse of authority that harms and shrinks the citizens' rights to only mere objects of the BPJS. This is highly paradoxical in the social security system.

In this case, togetherness may be perceived as the state's effort to flee away from developing the social security system in the effort to achieve social welfare. The state does not give attention towards health, thus there is actually no such thing as the national social security.

This is what is called the black swan paradox of the Indonesian social security system – something which seems to be a social security system, but actually is not. Substantially, it is not a real NHS system, but it is an extreme paradox with great impacts from the social security. The presumption on the Social Security System is generally always organized and is the responsibility of the state, including its funding. This is what is called as the ideal condition. The hope to obtain social security which suits the human dignity becomes mere mirage. The Indonesian NHS actually has its own mission. BPJS concepts itself as a public agency which has the power and the authority to control the public.

The black swan phenomenon in the NHS may bring greatly catastrophic impacts as there are mounting problems in BPJS Health's, such as the rejection of patients, discrimination, lower-than-the-real-cost tariff claim, the decreasing social security quality compared to before the social security era, and falling public's satisfaction towards the NHS. The Black Swan in the NHS may also be seen in the regulation requiring the citizens to pay dues to gain access to the NHS services.

The people or the social security patients must pay dues in compliance with the NHS mechanism; they pay for their own risks, while the state only manages the funds. It is ironic when the welfare rate is still low, but the people are burdened with the obligation to develop the social security system. Regarding the condition of poverty, there are 79.5 million Indonesian citizens who experience multidimensional poverty,

accounting for 31.5% from the total of 252 million citizens, where 3 out of 10 households experience multidimensional poverty (Shihab 2013).

The phenomenon of the black swan theory in the NHS may be seen from the fact that there is the goal to achieve money by making the health services become the most profitable business unit. It is proof that the Indonesian NHS is a black swan which flips all concepts on the social security system, which is clear from the reality that the state only provides two trillion rupiahs to establish the BPJS, compared to the NHS dues collected, reaching hundreds of trillions of rupiahs. The state's health allocation is at a low percentage. This marks the state's unwillingness to establish the NHS.

The state does not pay attention to health, thus there is actually no such thing as a national social security system. The state has actually moved the burden of its responsibility to the shoulders of the citizens through legal instruments, to cover the unwillingness to develop the national social security. It is as if the state's presence could not be felt especially by those who are weak or weakened, poor or impoverished.

### **How the Indonesian Health Security Should Give Social Protection to its Citizens**

The establishment of the social security for all citizens as mandated by the Constitution Article 28H paragraph (3) on the rights of Social Security and Article 34 paragraph (2) of the Republic of Indonesia's Constitution, which states, "The state develops a social security system for all citizens and empowers the weak and the poor according to the human dignity." Then, Article 34 paragraph (2) of the 1945 Constitution states, "The state develops a social security system for all citizens and empowers the weak and poor citizens according to human dignity" (Rumpia & Tisnanta, 2018).

This constitutional mandate serves as the basis emphasizing that Indonesia should strive with all efforts so that there is a social security according to the human dignity (Jabbar, 2020). The people must obtain health services justly and equally. One of the basic principles of health development is that every person has the same right to obtain the highest degree of health, without discrimination on race, group, religion, and socio-economic status (Nopiani, 2018).

The discussion on social security is inseparable from the history of its first-ever emergence in the United States with the issuance of the Social Security Act in 1935. It was to resolve the problems of the unemployed, the elderly, the ill, and children due to economic depression (Suryani & Suharyanto, 2016). Even though the establishment of social security in developed countries have recently experienced changes, basically, the establishment of social security is essentially a form of the state's protection towards the people (Susetio, 2017).

Social security is basically the establishment of the state's social functions to the people. The state's social function is an obligation and a service of the state. Social security is not only at the economic aspect. The state does not consider profit or loss in providing social security to its people. Recalling that social security is not supposed to be profit-oriented, it should not serve as the state apparatus to help gain financial profit. This all refers to the essence of what is known as "social security".

The state runs its protective function to vulnerable citizens through the provision of support, specifically benefits or other mechanisms. Apart from that, the benefits are also given to other vulnerable and disadvantaged groups facing issues such as disability, illnesses, and pregnancy or those who are unable to obtain income or to pay for basic services.

There are some arguments running on how the social security (in this case the health security) will be 'Universally' established (for all citizens), or should it only be given to certain groups of citizens (selective, just as to poor or displaced people)? There are other arguments on what type of social security should be given, income transfer, in-cash benefits or in-kind benefit? Not all social securities are given in the form of money. There are some benefits which are given in the form of in-kinds or services in the form of health, education, residential services, and many more.

The social security concept in welfare states is usually based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility from the state to those who are unable to provide their own minimum needs to allow them to live a decent life or to those from disadvantaged groups (McLean & McMillan, 2009).

The NHS, as part of the National Social Security, is required as the government's intervention in handling social problems. One of the effective governmental intervention facilities is through a funding policy (state budget) that allocates significant amounts of money for public expenditures, including the social aid programs to eradicate poverty (Tarsanto, 2015).

The social aid program is in the form of social security and NHS systems which function as social protection. Without the system that guarantees health funding to the citizens, there will be more poor people who will not obtain the health services they need, especially if they must pay for the services themselves (out of pocket) in the fee for services system (Kadarisman, 2015). The aim of health services as mandated by the Law is to provide health protection so that the participants may gain access to health treatment and protection in fulfilling basic health needs.

The achievement of welfare and prosperity for all Indonesian citizens is one of the favorable objectives desired by Indonesia's founding fathers. The researchers of people economics perceive that the economic development process in Indonesia is straying away from the principles of social justice, prosperity and welfare for all Indonesian citizens.

Poverty happens because developmental policies do not side with the people and that there is the tendency for market economy – the strongest are able to access more productive economic sources. As a consequence, poverty and social gap emerge as impacts of the aforementioned development processes.

The constitutional mandates outlined in Article 28 paragraph (3) and Article 34 paragraph (2) and also the phrase “To advance social welfare” in the Preamble of the Republic of Indonesia’s Constitution mean that Indonesia must have a great role in creating welfare for its people. This conception means that the state must actively be involved in increasing the people’s degree of livelihood to achieve welfare. Concretely, The state is responsible for the socio-economic problems faced by many people (Suparjan, 2010).

As a state, Indonesia has the main task to bring welfare to its people. The people’s welfare is the state’s responsibility. The state must still guarantee the welfare rights of the citizens. The social security system and the NHS are some of the efforts in developing and in providing social protection to bring welfare to the people.

Regarding the Indonesian NHS, it is actually an unideal paradox. The constitution obliges the state to develop social security systems for all people. The state has changed the state’s responsibility into the people’s obligation, namely the obligation to participate in that insurance. The state should have a dominant role in establishing and in funding the NHS by increasing the allocation of health funds which is still low (5%), as it is the task and the responsibility of the state (Pakpahan & Sihombing, 2012).

## CONCLUSION

In the concept and in the establishment of NHS, the state only becomes a facilitator between the people and the Social Security Administrator for Health with the concept of insurance (the official form of BPJS is public agency). The state positions itself as an insurance agent and it has a role to monitor the fulfillment or rights of the social security from the employers or from the citizens, rather than becoming the guarantor of the social security system. The state must also be present in the NHS and fix the INA CBG, so that the NHS is not present as the burden of the health facilities, which may lead to health facilities’ bankruptcy or the rejection of the NHS-BPJS patients.

The state positions itself and BPJS at the superiority realm, and acts as the ‘Giver’, benefactor, and God of help as well as a debt collector. The BPJS concept as a public agency which has the authority to control and to bind the public and to give certain sanctions for the citizens is a paradoxical concept which must be eradicated. BPJS and NHS must be responsive and they must become the state’s facilities in providing social services.

In terms of the solutions of the problem, the state must take a dominant proportion in the payment of NHS, with a more adequate allocation of funds. The lack of funds after the state takes the dominant proportion of the funds is fulfilled from the dues of the economically-capable citizens as a form of citizen participation since the funding of NHS requires large sums of money.

Government must ensure the INA CBG's or payment for health service in health facility under health security gets updated to cover CRR (cost of recovery rate or real cost of health services) and take a policy to simplify the payment claim of health service by health facility to prevent bankruptcy of health service. Regarding the solutions for people and community, they can switch to healthy lifestyle and be more consistent to pay the health security.

## REFERENCES

- Alim, M. (2010). *Asas-asas Negara Hukum Modern Dalam Islam (The Principles of Modern Law in Islam)*. LKIS.
- Aurora, W. I. D. (2019). Perbandingan Sistem Kesehatan di Negara Maju dan Negara Berkembang. *Jambi Medical Journal*, 7(2), 206–214. <https://doi.org/10.22437/jmj.v7i2.8030>
- Awofeso, N., Mohan, A., & Asnaripa, A. (2012). Exploring Indonesia's "low hospital bed utilization low bed occupancy-high disease burden" paradox. *Jurnal Of Hospital Administration*, 2(1).
- Darmawati, Angkasa, M. P., & Isrofah. (2015). Analisis Faktor yang Mempengaruhi Kepatuhan Perawat Menggunakan Alat Pelindung Diri di RSUD Bendan Kota Pekalongan. *Pena Jurnal Ilmu Pengetahuan Dan Teknologi*, 28(2), 165–180.
- Ekonomi Kompas. (2017). *Sepanjang 2016 Pendapatan BPJS Kesehatan Rp. 67,4 triliun (In 2016, the Income of BPJS Health is Rp. 67,4 trillion)*.
- Fitrianeti, D., Waris, L., & Yulianti, A. (2017). Penganggaran dan Penerimaan Dana Kapitasi Program JKN di Daerah Terpencil Kabupaten Kepulauan Mentawai. *Jurnal Penelitian Dan Pengembangan Pelayanan Kesehatan*, 1(2), 92–101. <https://doi.org/10.22435/jpppk.v1i2.8105.92-101>
- Handayani, L., & Suharmiati, S. (2018). Unit Cost Rumah Sakit dan Tarif INA-CBGS. *Buletin Penelitian Sistem Kesehatan*, 21(4), 219–227. <https://doi.org/10.22435/hsr.v21i4.45>
- Harvelian, A. (2016). Mahkamah Konstitusi dan Penguatan Kosntitusi Ekonomi Indonesia. *Jurnal Konstitusi*, 13(3), 530–551. <https://doi.org/10.31078/jk1333>
- Hasrillah, H., Cikusin, Y., & Hayat, H. (2016). Implementasi Pelayanan Kesehatan Masyarakat Melalui Program BPJS Kesehatan (Studi pada Puskesmas Kedungkandang Kota Malang). *Jurnal Inovasi Penelitian*, 1(12), 2869–2882. <https://doi.org/10.47492/jip.v1i12.594>
- Hidayah, N. P. (2020). Comparative study of legal protection for migrant workers in

- participation of social security programs in Indonesia and Singapore. *Legality Jurnal Ilmiah Hukum*, 28(1), 47–59. <https://ejournal.umm.ac.id/index.php/legality/article/view/11786/pdf>
- Irwanto, A., & Razy, F. (2021). Pertanggungjawaban Hukum Dokter Program Internsip dalam Pelayanan Kesehatan Terhadap Pasien. *Audito Comparative Law Journal (ACLJ)*, 2(2), 57–65. <https://doi.org/10.22219/aclj.v2i2.16501>
- Jabbar, L. D. A. A. A. (2020). Pertanggung Jawaban BPJS Kesehatan Terhadap Pelayanan Asuransi Kesehatan Masyarakat. *Jurist-Diction Law Journal*, 3(2), 387–400.
- Kadarisman, M. (2015). Analisis Pelaksanaan Sitem Jaminan Sosial kesehatan Paska Putusan MK Nomor 007/PUU-111/2005 (Analysis of the Health Social Security System Post-Constitutional Court Decree No. 007/PUU-111/2005). *Jurnal Hukum Ius Quia Iustum*, 22(3).
- Karmeli, E. (2008). Krisis Ekonomi Indonesia. *Journal of Indonesian Applied Economics*, 2(2), 164–173. <https://doi.org/10.21776/ub.jiae.2008.002.02.3>
- Kartikawati, D. R. (2021). Tanggung Jawab Rumah Sakit terhadap Pemenuhan Hak Pasien pada Masa Pandemi COVID-19. *Indonesia Law Reform Journal (ILREJ)*, 1(3), 318–335.
- Khakim, A. (2021). Problematika Pengaturan dan Penerapan Sanksi Pidana Atas Pelanggaran Pasal 15 Undang-Undang Nomor 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial. *Audito Comparative Law Journal*, 2(1), 43–56. <https://doi.org/10.22219/aclj.v2i1.15159>
- Kumparan Bisnis. (2018). *Sepanjang 2017 BPJS Kesehatan Catat Pendapatan Iuran Rp. 75, 25 triliun (In 2017, BPJS Health Noted the Due Income of Rp. 75, 25 Trillion)*.
- Mardiah. (2016). Cost Recovery Rate Tarif Rumah Sakit dan Tarif INA-CBG's Berdasarkan Clinical Pathway pada Penyakit Arteri Koroner di RSUP Dr. Mohammad Hoesin Palembang Tahun 2015 (Cost Recovery Rate of Hospital and INA CBG's Tariffs based on Clinical Pathway on Coronary. *Jurnal Administrasi Rumah Sakit*, 2(3).
- McLean, E. I., & McMillan, A. (2009). *The Concise Oxford Dictionary of Politics*. Oxford University Press.
- Mudiyono. (2002). Jaminan Sosial di Indonesia: Relevansi Pendekatan Informal. (Social Security in Indonesia: Relevance of the Informal Approach). *Jurnal Ilmu Sosial Dan Ilmu Politik*, 6(1), 68–69.
- Narbuko, N., & Ahmadi, A. (1997). *Metodologi Penelitian (Research Methodology)*. Bumi Aksara.
- Niah, N. S. (2016). Pelaksanaan Kebijakan Badan Penyelenggaraan Jaminan Sosial (BPJS) di Kabupaten Jombang. *JPAP: Jurnal Penelitian Administrasi Publik*, 2(1), 1–32. <https://doi.org/10.30996/jpap.v2i01.698>
- Nopiani, N. (2018). Implementasi Program Pembangunan di Bidang Kesehatan dalam



- Meningkatkan Kualitas Kesehatan Masyarakat. *JISIP: Jurnal Ilmu Sosial Dan Ilmu Politik*, 8(3), 130–134. <https://doi.org/10.33366/jisip.v8i3.1797>
- Nugroho, S. S. (2016). Pengembangan Epistemologi Ilmu Hukum Berbasis Transendental. *Perspektif: Kajian Masalah Hukum Dan Pembangunan*, 21(2), 97–104.
- Nursanjaya, N. (2002). *Memahami Prosedur Penelitian Kualitatif*.
- P Lascoumes, & Gales, P. Le. (2007). Introduction: Understanding Publik Policy Through Its Instrument from the Nature of Instruments to the Sociology of Public Policy Instrumentations. *Governance: An International Journal of Policy, Administrations and Institutions*, 20(1).
- Pakpahan, R. H., & Sihombing, E. N. A. M. (2012). Tanggung Jawab Negara dalam Pelaksanaan Jaminan Sosial. *Jurnal Legis*, 9(2), 163–174. <https://doi.org/10.54629/jli.v9i2.383>
- Pratiwi, E. R., Syahbandir, M., & Yahya, A. (2017). Perlindungan Hukum Terhadap Hak Asasi Pasien Pengguna Badan Penyelenggara Jaminan Sosial Kelas 3. *Syiah Kuala Law Journal*, 1(1), 119–139. <https://doi.org/10.24815/sklj.v1i1.12270>
- Purwana, A. E. (2014). Kesejahteraan Sosial dalam Perspektif Ekonomi Islam. *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial*, 11(1), 21–42. <https://doi.org/10.21154/justicia.v11i1.91>
- Putri, A. E. (2012). Transformasi Badan Penyelenggara Jaminan Sosial (Transformation of the Social Security Administering Body). *Jurnal Legislasi Indonesia*, 9(2).
- R Avis. (2017). *Land As Insurance Part 2: The Black Swan Theory*. Verge Permaculture.
- Richardson, J. (2013). *Book Review: Antifragile*. Sage Journals. <https://doi.org/10.1177/1946756713491391>
- Rothstein, B. (2001). The Universal Welfare State As a Social Dilemma. *Sage Journal*, 13(2), 213–233. <https://doi.org/10.1177/104346301013002004>
- Rumpia, J. R., & Tisnanta, H. S. (2018). Hukum dan Bahasa: Refleksi dan Transformasi Pemenuhan Hak Ekonomi, Sosial dan Budaya. *Lentera Hukum*, 5(2), 230–247. <https://doi.org/10.19184/ejlh.v5i2.7534>
- Sayekti, N. W., & Sudarwati, Y. (2010). Analisis Terhadap Badan Penyelenggara Jaminan Sosial (BPJS). *Jurnal Ekonomi & Kebijakan Publik*, 1(1), 1–24. <https://doi.org/10.22212/jekp.v1i1.72>
- Shihab, A. N. (2012). Hadirnya negara di tengah rakyatnya pasca lahirnya undang – undang nomor 24 tahun 2011 tentang Badan Penyelenggara Jaminan Sosial (The State's Presence Among the People Post-Issuing of the Law No. 24 of 2011 on BPJS). *Jurnal Legislasi Indonesia*, 9(2).
- Solechan, S. (2019). Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan Sebagai Pelayanan Publik. *Administrative Law & Governance (ALGJ)*, 2(4), 686–696. <https://doi.org/10.14710/alj.v2i4.686-696>
- Sudrajat, T. (2020). Perlindungan Hukum dan Pemenuhan Hak Pekerja pada Program

- Jaminan Kesehatan Nasional. *Pandecta: Jurnal Penelitian Ilmu Hukum*, 15(1), 1–10. <https://doi.org/10.15294/pandecta.v15i1.23647>
- Suryani, A. I., & Suharyanto, A. (2016). Implementasi Program Badan Penyelenggaran Kesehatan (BPJS) dalam Meningkatkan Pelayanan Administrasi Kesehatan di Rumah Sakit Umum Sibuhuan. *Publikauma*, 4(1), 86–99. <https://doi.org/10.31289/publika.v4i1.889>
- Susanti, E. (2017). Kualitas Pelayanan yang diterima Pasien BPJS dan Non BPJS di Poliklinik Rawat Jalan Rumah Sakit PKU Muhammadiyah Gombong Tahun 2017. *Jurnal Penelitian Dan Kajian Ilmiah Menara Ilmu*, 11(78), 39–47. <https://doi.org/10.33559/mi.v11i78.425>
- T Aven. (2017). On the Meaning of Black Swan Concept in A Risk Context. *Safety Science Journal*, 57(1), 44–51. <https://doi.org/10.1016/j.ssci.2013.01.016>
- Taleb, N. N. (2007). *The Black Swan: The impact of the Highly Improbable*. Random House Inc.
- Thomson, L. H. (1994). The Advantages and Disadvantages of Different Social Welfare Strategies. *Journals Of Social Security Bulletin*, 57(2), 10–11.
- Tris, T. P., Lanin, D., & Mubarak, A. (2019). Pelaksanaan Kualitas Pelayanan Kesehatan. *Jurnal Manajemen Dan Ilmu Administrasi Publik*, 1(3), 51–55. <https://doi.org/10.24036/jmiap.v1i3.48>
- US General Accounting Office. (1991). *Social Security: Analisis of A Proposal to Privatize Trust Fund Reserves*. US Government Printing.
- Usman, C., & Kara, M. (2016). Analisis Pengelolaan BPJS Kesehatan dalam Perspektif Ekonomi Islam (Studi Kasus BPJS Kesehatan Makassar) (Analysis of the BPJS Health Management in the Perspective of Islamic Economy: Case Study of Makassar BPJS Health). *Jurnal Iqtisaduna*, 2(1).
- Widaty, D. (2017). Analisis Pemenuhan Indikator Pembayaran Kapitasi pada Fasilitas Kesehatan Tingkat Pertama di Surabaya. *JAKI: Jurnal Administrasi Kesehatan Indonesia*, 5(2), 111–116.
- Windria, Y. (2016). Analisis dan Pemetaan Kemiskinan Multidimensi Provinsi Sumatera Barat. *Optimum: Jurnal Ekonomi Dan Pembangunan*, 10(1), 24–31.
- Yusanto, Y. (2019). Ragam Pendekatan Penelitian Kualitatif dan Kuantitatif. *Journal of Scientific Communication*, 1(1), 1–13.