



CONSTITUTIONALITY AND LEGAL RECONSTRUCTION OF SOCIAL SECURITY SYSTEM FROM PANCASILA AND CONSTITUTIONAL PERSPECTIVES

M. Iqbal Wibisono

Faculty of Law, Universitas Wahid Hasyim, Semarang, Indonesia

miqbalwibisono.unwahas@gmail.com

ARTICLE INFO

Keywords:

Constitutionality; Social Security; Constitution; Welfare.

ABSTRACT

This study aims to evaluate the constitutionality of the social security system in Indonesia, especially the National Social Security System (*Sistem Jaminan Sosial Nasional*/SJSN) and the Social Security Administering Body (*Badan Penyelenggara Jaminan Sosial*/BPJS), in order to guarantee the basic rights of citizens in accordance with the 1945 Constitution. This study uses a normative legal approach by analyzing existing regulations and the Constitutional Court's decision regarding the constitutionality of SJSN and BPJS. The findings show that SJSN and BPJS, which are regulated in Law Number 40/2004 and Law Number 24/2011, are constitutional according to the Constitutional Court. However, in practice, there is a discrepancy between the implementation of the system and the mandate of the 1945 Constitution which requires the state to provide fair social security for all people, especially in terms of coverage for vulnerable groups and informal workers. Its implementation still faces obstacles in terms of effectiveness, affordability, and equity. This study suggests the need for reconstruction of the social security system with a more responsive approach to the real needs of the community, as well as strengthening supervision to be in line with constitutional principles and Pancasila values.

A. INTRODUCTION

Health is a basic human right that must be fulfilled as part of social welfare and Indonesia's national goals.¹ As a country based on the principle of welfare, Indonesia has a responsibility to ensure that every citizen has access to adequate health services. This is in line with the concept of a welfare state, which positions the government as a provider of extensive social services for

¹ Urip Santoso. "Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 361.

the community.² Health development not only contributes to improving the quality of life of the community but also plays an important role in national productivity and achieving national development goals.³

However, the reality on the ground shows that there is inequality in access to health services, especially in remote and less developed areas.⁴ Although the government has attempted to provide health insurance to the poor through various programs, challenges in implementation remain.⁵ Factors causing this inequality include changes in disease patterns, limitations in health technology, and an out-of-pocket financing system, which still burdens many people.⁶ In addition, the low health culture in society, where many people prefer to seek treatment after being sick rather than taking preventive measures, further exacerbates this problem.⁷

In the context of regulation, the government's efforts to address the problem of access and equal distribution of health services are reflected in the National Health Insurance (*Jaminan Kesehatan Nasional*/JKN) policy regulated in Law No. 40 of 2004 concerning the National Social Security System (*Sistem Jaminan Sosial Nasional*/SJSN) and Law No. 24 of 2011 concerning the Social Security Administering Body (*Badan Penyelenggara Jaminan Sosial*/BPJS).⁸ The establishment of BPJS Kesehatan aims to provide health insurance for all Indonesian people with the principles of mutual cooperation, non-profit, and openness. However, in practice, this system still faces various technical and administrative obstacles, such as limited health facilities, an imbalance between participant contributions and claim costs, and a lack of integration between various health services.⁹

² Hennigusnia Hennigusnia and Ardhian Kurniawati. "Tinjauan Konstitusi Terhadap Sistem Jaminan Sosial Nasional Dan Badan Penyelenggara Jaminan Sosial." *Jurnal Ketenagakerjaan* 16, no. 2 (2021): 105. See also, Marthen Arie and Zulkifli Aspan. "Application of The Concept of Welfare State in The Implementation of Health Social Security Programs." *Alauddin Law Development Journal* 5, no. 3 (2023): 499.

³ Anwar Usman. "The Role of Indonesian Constitutional Court in Strengthening Welfare State and the Rule of Law." *Lex Publica* 7, no. 1 (2020): 21.

⁴ Urip Santoso. "Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 363.

⁵ Marthen Arie and Zulkifli Aspan. "Application of The Concept of Welfare State in The Implementation of Health Social Security Programs." *Alauddin Law Development Journal* 5, no. 3 (2023): 501.

⁶ Urip Santoso. "Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 363.

⁷ Wahyu Sriutami, Ahmad Wira, and Muchlis Bahar. "Analisis Peran Asuransi Syariah Dalam Mewujudkan Keadilan Sosial: Sebuah Systematic Literature Review." *Human Falah: Jurnal Ekonomi dan Bisnis Islam* 11, no. 2 (2024): 53.

⁸ Urip Santoso. "Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 364.

⁹ Hennigusnia Hennigusnia, and Ardhian Kurniawati. "Tinjauan Konstitusi Terhadap Sistem Jaminan Sosial Nasional Dan Badan Penyelenggara Jaminan Sosial." *Jurnal Ketenagakerjaan* 16, no. 2 (2021): 106.

From a legal perspective, the construction of SJSN in the Indonesian legal system seeks to provide certainty of protection and equitable social welfare.¹⁰ The main principles of SJSN include mandatory participation, trust funds, and management that is oriented towards the interests of participants. However, there are several limitations in the implementation of previous programs, such as Jamsostek or *Jaminan Sosial Tenaga Kerja* for private sector workers, Taspen or *Tabungan dan Asuransi Pegawai Negeri* for civil servants, and Asabri or *Asuransi Sosial Angkatan Bersenjata Republik Indonesia* for military and police personnel. which only cover a small portion of the community and have not provided equal protection. Therefore, reconstruction of the health insurance system is needed to be more efficient and oriented towards the welfare of the wider community.¹¹

In addition to the legal aspect, the reform of the health insurance system also has a strong constitutional basis. Changes to Articles 33 and 34 of the 1945 Constitution after the fourth amendment emphasized that the state has a responsibility to provide adequate public services, including health facilities and a social security system.¹² Article 34 of the 1945 Constitution explicitly states that the state is obliged to develop a social security system that aims to empower the weak and underprivileged. This shows that social welfare is not only an individual responsibility, but also an obligation of the state in ensuring social justice for all Indonesian people.¹³

The reform of Indonesia's health insurance and broader social security system is not only a legal necessity but also a constitutional mandate. The fourth amendment to the 1945 Constitution, particularly Articles 33 and 34, reinforced the role of the state in providing public services, including health care and social protection.¹⁴ Article 34 explicitly obligates the state to develop a social security system aimed at supporting the poor and underprivileged, reflecting a constitutional vision where social welfare is a collective responsibility and a key component of social justice.¹⁵

¹⁰ Urip Santoso. "Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 363.

¹¹ Widya Hartati. "Juridical Study on the Transformation of PT. Askes (Persero) Into the Social Insurance Management Agency on Health." *Jurnal IUS Kajian Hukum dan Keadilan* 3, no. 3 (2015): 21.

¹² Urip Santoso. "Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 365.

¹³ Wahyu Sriutami et al., "Analisis Peran Asuransi Syariah Dalam Mewujudkan Keadilan Sosial: Sebuah Systematic Literature Review." *Human Falah: Jurnal Ekonomi dan Bisnis Islam* 11, no. 2 (2024): 59.

¹⁴ Urip Santoso. "Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 366.

¹⁵ Wahyu Sriutami et al., "Analisis Peran Asuransi Syariah Dalam Mewujudkan Keadilan Sosial: Sebuah Systematic Literature Review." *Human Falah: Jurnal Ekonomi dan Bisnis Islam* 11, no. 2 (2024): 64.

Despite this strong constitutional foundation, significant debate remains over the effectiveness and alignment of current social security mechanisms with constitutional principles.¹⁶ Key concerns include whether the system adequately guarantees citizens' basic rights, and whether it provides equitable coverage across critical sectors such as health, employment, and education. Studies such as Sumadi,¹⁷ highlight the implementation challenges faced by the BPJS, particularly related to coverage gaps, administrative efficiency, and the tension between a contribution-based model and the state's responsibility to support vulnerable populations.

Recent literature further underscores these challenges. Harahap et al.¹⁸ explore the legal and welfare disparities faced by private lecturers, revealing how BPJS Ketenagakerjaan's coverage is insufficient for ensuring fairness in employment-based social security. Similarly, Imaniyah¹⁹ examines BPJS Ketenagakerjaan through the lens of Sharia economic law, questioning the compatibility of existing contracts with Islamic principles. These studies reveal gaps not only in policy implementation but also in legal and ethical frameworks, indicating the urgency for reform. By considering the various aspects above, this study aims to evaluate the effectiveness of the implementation of SJSN and BPJS in ensuring equal access to health for the people of Indonesia. This study will also analyze various obstacles in the implementation of the health insurance system, both in terms of regulation, implementation, and the social and economic challenges faced. This paper contributes to the existing discourse by analyzing the constitutional and legal gaps in the current social security framework, with a particular focus on the effectiveness and inclusivity of BPJS programs. The novelty lies in integrating legal analysis with policy review and highlighting the state's constitutional obligation to ensure social justice for all, especially amid increasing socio-economic inequality.

B. RESEARCH METHODS

This article employs a normative legal research method, which is a conceptual approach focused on the analysis of legal norms, principles, and doctrines. Rather than relying on empirical data, this method draws from

¹⁶ Saut Parulian Panjaitan et al., "The Constitutional Perspective of Indonesian Social Security System." *Jurnal Hukum* 40, no. 1 (2024): 47.

¹⁷ Ahmad Fadlil Sumadi. "Hukum dan Keadilan Sosial dalam perspektif hukum ketatanegaraan." *Jurnal Konstitusi* 12, no. 4 (2015): 856.

¹⁸ Arifuddin Muda Harahap et al., "Social Justice in the Welfare of Private Lecturers: A Legal Review of Salaries, Certification, and BPJS Ketenagakerjaan in Indonesia." *Jurnal IUS Kajian Hukum dan Keadilan* 12, no. 3 (2024): 666.

¹⁹ Bahjatul Imaniyah. "The Contract of the Social Security Agency for Employment (BPJS Ketenagakerjaan) in The Perspective of Shar {ī} a Economic Law." *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 14, no. 12 (2019): 87.

secondary legal sources such as legislation, legal literature, and judicial decisions to examine the structure and constitutionality of Indonesia's social security system. The main object of this study is the regulations governing social security in Indonesia. Several regulations that are the focus of the analysis are Law Number 40 of 2004 concerning the SJSN, which is the main basis for organizing social security in Indonesia. In addition, Law Number 24 of 2011 concerning the BPJS is also studied to understand the role and obligations of public legal entities in implementing social security programs. This study also uses various secondary legal sources, including literature books that discuss the social security system and court decisions related to the implementation of social security policies. The analysis of court decisions aims to identify how the law is applied in practice and how the various regulations are interpreted by the judiciary. With this approach, this study seeks to provide an understanding of the constitutionality of social security regulations in their application.

C. FINDINGS AND DISCUSSION

1. Regulations on Social Security in Indonesia

Social security in Indonesia is one of the state's efforts to guarantee the welfare of the community, which is a mandate of the 1945 Constitution (*Undang Undang Dasar/UUD*). The basic principles contained in this constitution emphasize that the state is responsible for providing social protection for all Indonesian people. In this context, the second amendment to the 1945 Constitution introduced Article 28H paragraph (3) and Article 34 paragraph (2), which states that every citizen has the right to receive social security as part of efforts to create welfare. This provision underlies the establishment of a more structured SJSN through Law Number 40 of 2004 concerning SJSN and Law Number 24 of 2011 concerning the BPJS.²⁰

The SJSN is designed to provide comprehensive social protection for all Indonesian people. In this framework, social security is not only limited to formal workers, but also includes informal sector workers who are not registered in the traditional social security system. Thus, SJSN aims to ensure that all levels of society receive social protection according to their abilities and needs.²¹

The main legal basis governing social security in Indonesia is Law No. 40 of 2004 concerning the SJSN, which comprehensively regulates various aspects of social security, including financing, participation, and management

²⁰ Hennigusnia Hennigusnia and Ardhian Kurniawati. "Tinjauan Konstitusi Terhadap Sistem Jaminan Sosial Nasional Dan Badan Penyelenggara Jaminan Sosial." *Jurnal Ketenagakerjaan* 16, no. 2 (2021): 109.

²¹ Andika Wijaya. *Hukum Jaminan Sosial Indonesia*. Sinar Grafika, 2022.

of the social security program itself. One of the main principles outlined in this law is (1) mutual cooperation, which requires all participants to contribute according to their ability to finance the social security system. Another principle is (2) non-profit, where the funds collected are only used for the benefit of participants, not for the benefit of other parties. In addition, (3) openness and accountability in the management of social funds are important so that the management of these funds can be accounted for to the public. Furthermore, (4) portability is also an important principle, which ensures that participants' rights remain valid even if they change jobs or regions. Furthermore, the principle (5) of mandatory participation is another main principle, where every individual, both formal and informal workers, must be a participant in this social security system. Finally, (6) trust funds must be managed carefully and in the interests of participants, prioritizing the principle of prudence in their management.²²

The social security program regulated in the SJSN Law includes five main schemes, namely: (1) Health Insurance, (2) Work Accident Insurance, (3) Old Age Insurance, (4) Pension Insurance, and (5) Death Insurance. Each program aims to provide protection against social risks experienced by participants. For example, Health Insurance aims to provide access to health services for all Indonesian people, while Work Accident Insurance provides protection to workers who experience accidents in their work.

Law No. 24 of 2011 concerning BPJS mandates the establishment of BPJS as a public legal entity responsible for the implementation of SJSN.²³ BPJS consists of two main entities: BPJS Kesehatan, which manages the National Health Insurance (*Jaminan Kesehatan Nasional/JKN*) program, and BPJS Ketenagakerjaan, which manages the Work Accident Insurance, Old Age Insurance, Pension Insurance, and Death Insurance programs.²⁴ BPJS operates with a social security principle that is different from commercial insurance, where the benefits provided focus more on social protection than financial gain. The main roles of BPJS include participant registration, collection

²² Hennigusnia Hennigusnia and Ardhian Kurniawati. "Tinjauan Konstitusi Terhadap Sistem Jaminan Sosial Nasional Dan Badan Penyelenggara Jaminan Sosial." *Jurnal Ketenagakerjaan* 16, no. 2 (2021): 110. See also, Bagas Heradhyaksa and Nurul Hikmah. "The Comparison Between Conventional, Sharia, and Social Insurance in Indonesia." *Diponegoro Law Review* 4, no. 2 (2019): 221.

²³ Solechan Solechan. "Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan Sebagai Pelayanan Publik." *Administrative Law and Governance Journal* 2, no. 4 (2019): 689.

²⁴ Widya Hartati. "Juridical Study on the Transformation of PT. Askes (Persero) Into the Social Insurance Management Agency on Health." *Jurnal IUS Kajian Hukum dan Keadilan* 3, no. 3 (2015): 19. See also, Prima Maharani Putri and Patria Bayu Murdi. "Pelayanan kesehatan di era jaminan kesehatan nasional sebagai program badan penyelenggara jaminan sosial kesehatan." *Jurnal Wacana Hukum* 25, no. 1 (2019): 80.

of contributions, and payment of benefits to participants in accordance with applicable provisions.²⁵

As part of this social security system, each participant has the right to receive benefits from the social security program they participate in, in accordance with applicable provisions. Participants also have the right to receive transparent information regarding their rights and obligations, as well as to submit complaints or complaints related to services provided by BPJS. Conversely, participants also have an obligation to register themselves, pay contributions regularly, provide correct and accurate data to BPJS, and follow the established benefit claim procedures. Participation in this social security program is mandatory for all workers, both in the formal and informal sectors. Informal sector workers can register independently, while formal workers are required to be registered by their employers. In addition, foreign workers who work in Indonesia for more than six months are also required to participate in the BPJS program.

However, even though the regulations regarding SJSN and BPJS have been clearly regulated, their implementation still faces various challenges. One of the main problems is the compliance of employers and participants in registering with BPJS, especially in the informal sector. Many informal workers are still not aware of the importance of social security and have not been registered in this system. In addition, financial imbalance is a serious problem, especially in BPJS Kesehatan, which is experiencing a budget deficit due to high claims that exceed contribution revenues. This is exacerbated by the imbalance between participants receiving contribution assistance and independent participants who actively pay contributions. Limited access and quality of services are also challenges, especially in certain areas, which causes health services for BPJS participants to be uneven. The financing model applied in this social security system, which adopts the social insurance model (Bismarck Model), has also been criticized because it is considered a burden on society, while the state is not fully responsible for organizing social security.²⁶

In response to these limitations, adopting a hybrid model—which combines elements of the Bismarck system with the Beveridge Model—could be more effective. Such a model would allow for state-funded basic coverage to ensure universal access, while still retaining contribution-based mechanisms for expanded benefits. This approach could balance equity and sustainability

²⁵ Saut Parulian Panjaitan et al., "The Constitutional Perspective of Indonesian Social Security System." *Jurnal Hukum* 40, no. 1 (2024): 54.

²⁶ Alfitri Alfitri. "Ideologi Welfare State Dalam Dasar Negara Indonesia: Analisis Putusan Mahkamah Konstitusi Terkait Sistem Jaminan Sosial Nasional." *Jurnal Konstitusi* 9, no. 3 (2012): 462. See also, Roziqin Roziqin. "Urgency of reforming the social security organizing body in the welfare state framework." *Al Wasath Jurnal Ilmu Hukum* 1, no. 1 (2020): 10.

by increasing state responsibility without undermining the role of individual contributions.

As an alternative, elements of the Beveridge Model—in which social security is funded through general taxation and universally provided by the state—could be incorporated to improve equity and access.²⁷ A hybrid model, blending the two systems, would allow the state to guarantee a basic level of protection funded by taxes, while retaining contribution-based schemes for additional benefits. This approach could enhance inclusivity, reduce inequality, and better align the system with Indonesia's constitutional mandate for universal social welfare.

2. Constitutional Analysis of Social Security Program and its Legal Implications

Social security in Indonesia is regulated in the SJSN which aims to provide social protection to all Indonesian people. This system, which is regulated in Law Number 40 of 2004 concerning SJSN and Law Number 24 of 2011 concerning the BPJS, has become an important object of study in the constitutionality test at the Constitutional Court (*Mahkamah Konstitusi*/MK). The national social security system in Indonesia, which is regulated through SJSN and BPJS, has been tested for its constitutionality in several Constitutional Court decisions. As a country of law, Indonesia requires all applicable legal systems, including social security, to be in line with the basic principles of the 1945 Constitution (UUD 1945). Therefore, the test of this law at the Constitutional Court aims to ensure its conformity with the constitution and ensure that the social security system can provide adequate protection for all Indonesian people.

The Constitutional Court's decisions in several cases have confirmed the constitutionality of the social security system regulated in the SJSN and BPJS. One important decision is Decision No. 007/PUU-III/2005, which tests the conformity of the SJSN Law with Article 28H Paragraph (3) and Article 34 Paragraph (2) of the 1945 Constitution.²⁸ The Constitutional Court in its decision stated that the state is obliged to provide social security for all Indonesian people and that social security is a basic right of every citizen to

²⁷ Brian, Abel-Smith. "The Beveridge Report: its origins and outcomes." *International Social Security Review* 45, no. 1-2 (1992): 11. See also, Helmuth Cremer, and Pierre Pestieau. "Social insurance competition between Bismarck and Beveridge." *Journal of Urban Economics* 54, no. 1 (2003): 189.

²⁸ Hennigusnia Hennigusnia and Ardhian Kurniawati. "Tinjauan Konstitusi Terhadap Sistem Jaminan Sosial Nasional Dan Badan Penyelenggara Jaminan Sosial." *Jurnal Ketenagakerjaan* 16, no. 2 (2021): 111. See also, Achmad Johansyah and Siti Hajati Hoesin. "Implementation Of Social Security As A Form Of Assurance Of Workers' Rights In Obtaining Employment Social Security Protection In Indonesia." *Unram Law Review* 6, no. 1 (2022): 24.

develop themselves fully and with dignity. In this case, the Constitutional Court emphasized that the state must provide inclusive access to social security for all people without exception.²⁹

In addition, in Decision No. 50/PUU-VIII/2010, the Constitutional Court also assessed the constitutionality of BPJS as a public legal entity responsible for organizing social security programs.³⁰ This decision emphasizes that BPJS, as a public legal entity, has the authority to manage social security funds originating from participant contributions, both from workers and employers.³¹ BPJS is also required to be non-profit and transparent in managing the funds received, and is responsible to the President as a form of state accountability in the social security system.³²

The Constitutional Court's decisions have significant legal implications for the implementation of the social security system in Indonesia. One of the main implications is the affirmation that the social security system must cover all Indonesian people without exception. However, in practice there are still gaps in the implementation of social security programs, especially related to the coverage of participants which is more focused on formal workers, while informal workers and other vulnerable groups sometimes do not receive the same protection. Therefore, the development of a more inclusive social security system is very important to guarantee social protection for the entire community.

In addition, the Constitutional Court's decision also emphasizes the state's obligation to provide sufficient funds for social security participants who are less fortunate. This is in accordance with the principle stated in Article 34 Paragraph (2) of the 1945 Constitution, which mandates the state to develop a social security system for all people, taking into account the empowerment of weak communities. The state, in this case, is required to provide assistance to groups of people who are unable to pay contributions, so that they continue to receive social protection.

As an implication, BPJS, as the main organizer of the social security system, has a very vital role in ensuring the sustainability and efficiency of the social security program. As a public legal entity, BPJS is not only tasked with

²⁹ Helmuth Cremer, and Pierre Pestieau. "Social insurance competition between Bismarck and Beveridge." *Journal of Urban Economics* 54, no. 1 (2003): 191.

³⁰ Hennigusnia Hennigusnia and Ardhian Kurniawati. "Tinjauan Konstitusi Terhadap Sistem Jaminan Sosial Nasional Dan Badan Penyelenggara Jaminan Sosial." *Jurnal Ketenagakerjaan* 16, no. 2 (2021): 112.

³¹ Achmad Johansyah and Siti Hajati Hoesin. "Implementation Of Social Security As A Form Of Assurance Of Workers' Rights In Obtaining Employment Social Security Protection In Indonesia." *Unram Law Review* 6, no. 1 (2022): 25.

³² Hennigusnia Hennigusnia and Ardhian Kurniawati. "Tinjauan Konstitusi Terhadap Sistem Jaminan Sosial Nasional Dan Badan Penyelenggara Jaminan Sosial." *Jurnal Ketenagakerjaan* 16, no. 2 (2021): 113.

managing contribution funds, but also ensuring that the funds are used in accordance with the principle of mutual cooperation and for the benefit of participants. In this case, BPJS must maintain transparency and accountability in the management of funds so that there is no misuse that is detrimental to participants.

Decision No. 138/PUU-XII/2014 which tests the sustainability of BPJS in carrying out its duties also emphasizes that BPJS must be able to manage funds efficiently and effectively to provide optimal benefits for social security participants.³³ BPJS is also expected to expand the scope of social security participants, including the informal sector, so that the social security system becomes more inclusive and can cover all levels of society.³⁴

The implementation of a social security system in accordance with the constitution is very important to protect the rights of the people, especially the right to social security as stated in Article 28H Paragraph (3) and Article 34 Paragraph (2) of the 1945 Constitution. In this case, the Constitutional Court plays a role as a guardian so that the social security system can function properly and provide benefits to all Indonesian people. Therefore, the decisions issued by the Constitutional Court provide clear direction regarding the principles of inclusivity and justice in the social security system.

The Constitutional Court's decisions related to the social security system in Indonesia demonstrate the state's commitment to providing comprehensive social protection for all Indonesian people. The Constitutional Court has interpreted and strengthened the importance of the alignment between the SJSN, BPJS, and the constitution, by emphasizing the need for an inclusive and fair system. However, effective and equitable implementation still requires serious efforts from the government and related institutions to expand the coverage of participants and ensure adequate social protection for all Indonesian people.³⁵

In addition, in terms of the constitutionality of social security in Indonesia, there are perspectives that need to be further examined regarding the constitutional understanding contained in the 1945 Constitution and the

³³ Bisariyadi Bisariyadi. "Pergulatan Paham Negara Kesejahteraan (Welfare State) dan Negara Regulasi (Regulatory State) dalam Perkara Konstitusional." *Jurnal Hukum Ius Quia Iustum* 23, no. 4 (2016): 545.

³⁴ Achmad Johansyah and Siti Hajati Hoesin. "Implementation Of Social Security As A Form Of Assurance Of Workers' Rights In Obtaining Employment Social Security Protection In Indonesia." *Unram Law Review* 6, no. 1 (2022): 37.

³⁵ Anwar Hidayat. "Analysis of Social Security Administrators from a Constitutional Law Perspective." *Fox Justi: Jurnal Ilmu Hukum* 14, no. 02 (2024): 165. See also, Ayunita Nur Rohanawati and Mailinda Eka Yuniza. "Problems with the Institutional Form of the Implementing Agency of Social Security in Indonesia." *Jurnal Hukum Ius Quia Iustum* 31, no. 1 (2024): 135.

regulations stipulated in the SJSN Law and the BPJS. Panjaitan et al.³⁶ compare the fundamental differences between the constitutional understanding in the 1945 Constitution and the regulations in the SJSN and BPJS. First, the 1945 Constitution mandates the state as the main organizer of social security, while SJSN and BPJS assign this role to BPJS and DJSN, which raises questions about the reduction of the state's role in managing social security.³⁷ Second, the 1945 Constitution imposes social security financing on the state budget, especially for the poor, while SJSN and BPJS introduce a social insurance model that requires participant contributions, in addition to state assistance. This prioritizes community participation, but can be burdensome for lower economic groups. Third, the 1945 Constitution guarantees universal social protection for all Indonesian people, while the SJSN and BPJS prioritize formal sector workers, while informal workers and vulnerable groups receive less attention. Fourth, the 1945 Constitution emphasizes the empowerment of weak communities and the fulfillment of basic rights, while the SJSN and BPJS focus on protection in the health and employment sectors, which are considered too narrow and do not fully reflect the principles of social justice of Pancasila and the 1945 Constitution.³⁸

3. Reconstruction of the Implementation of the Social Security System in Indonesia

Reconstruction of the implementation of the social security system in Indonesia is very necessary to increase inclusiveness, efficiency, and justice, with the main goal of providing comprehensive social protection for all people. One sector that needs to be improved is the JKN, which has been regulated in Presidential Regulation Number 111 of 2013. Although this system already exists, various challenges such as funding issues, participant compliance, and supervision by BPJS Kesehatan are still obstacles.³⁹ Therefore, reconstruction is needed in several aspects to achieve these goals.

One of the main problems in the social security system is the funding mechanism. Santoso,⁴⁰ stated that the payment system in social security must

³⁶ Saut Parulian Panjaitan et al., "The Constitutional Perspective of Indonesian Social Security System." *Jurnal Hukum* 40, no. 1 (2024): 58.

³⁷ Diah Arimbi. "Legal status of the social security administrator (BPJS) as a public legal entity." *Jurnal Dinamika Hukum* 19, no. 3 (2019): 849.

³⁸ Saharuddin Daming. "Deviasi Hukum dan Moral dalam Sistem Regulasi dan Pelayanan Badan Pelaksana Jaminan Sosial Kesehatan." *Pandecta Research Law Journal* 15, no. 2 (2020): 321. See also, Esterlita Nova Yaser Rantung et al., "Tanggung-Jawab Negara Atas Pemenuhan Kesehatan Di Bidang Ekonomi, Sosial Dan Budaya." *Lex Privatum* 11, no. 4 (2023): 39.

³⁹ Athalia Revanna Salangka. "Pengawasan Bagi Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Dilihat Dari Hukum Administrasi Negara." *Lex Privatum* 12, no. 3 (2023): 62.

⁴⁰ Urip Santoso. "Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 368.

be more responsive to the real needs of participants, not only based on the capitation system used previously. The capitation system does not always reflect the health needs of participants, so it needs to be replaced with a payment system that is more in accordance with the number of visits and types of care needed. This real-needs-based payment will increase the efficiency of funds and the quality of health services. With a more accurate system, social security funds can be used more efficiently, providing more targeted protection.

Another significant problem is participant compliance in paying contributions. Although JKN is mandatory, there are still many participants who do not pay regularly. To overcome this, more intensive education is needed, which integrates the values of Pancasila, especially the first, second, and fifth principles. Education based on the noble values of Pancasila is expected to increase public awareness of the importance of social security as part of social responsibility. By increasing public participation through ongoing education, compliance in paying contributions can be maintained, which in turn will strengthen the sustainability of the JKN program.⁴¹

It is also important to strengthen the legal culture in the social security system. This is not only about educating participants, but also involves strengthening the capacity and character of health facility workers. Health workers need to be trained to understand and implement the values of Pancasila in their services. Thus, they not only provide quality health services, but also adhere to high moral principles. This is important to create a system that is not only efficient, but also fair and humane.

Effective supervision is essential to ensure the successful implementation of the social security system. BPJS Kesehatan must have a more transparent and accountable supervision system, covering fund management, service quality, and participant compliance. In addition, supervision needs to involve various stakeholders, so that this program can run according to its purpose of providing equitable social protection. Good supervision will ensure that there is no misappropriation in the management of funds and health services provided.

Reconstruction in terms of regulation is also very necessary. One of the suggested changes is regarding Article 39 in Presidential Decree Number 111 of 2013 which regulates payments to health facilities. The payment system must better reflect the real needs of participants, not just based on the number of visits. With this change, payments to health facilities will be fairer and more proportional. In addition, the division of authority between Puskesmas and hospitals must also be clarified, with Puskesmas focusing on promotive and

⁴¹ Sopa Sopa et al., "Social Security Programs in Islamic Law: A Comparative Study of Fatwa Institutions on Indonesia's Health Insurance." *Jurnal Hukum* 40, no. 1 (2024): 189.

preventive tasks, while hospitals focus on curative and rehabilitative services. This clear division of tasks will increase the efficiency of services and the quality of social security.

Reconstruction of the social security system also needs to involve the management of medical device procurement. Santoso,⁴² proposed that medical device procurement be managed by a special non-profit government agency, to reduce procurement costs and ensure the quality of medical devices. More efficient management in medical device procurement will ensure that health facilities receive equipment that meets standards, at more affordable prices. This will reduce the burden on health facilities and ensure better services for JKN participants.⁴³

The social security financing system must also be adjusted to the economic conditions of the community, especially the poor and informal workers. Many of them have difficulty contributing regularly, so there needs to be fairer cross-subsidies and more targeted state assistance.⁴⁴ The allocation of the budget for social security must be more transparent and focused on the groups most in need, so that the benefits of the program can be felt evenly by the entire community.

In terms of social security management, strong and systematic supervision is essential. BPJS must have an integrated supervision mechanism, covering all aspects, from fund management to service quality. The National Social Security Council (*Dewan Jaminan Sosial Nasional/DJSN*) needs to play a more active role in evaluating BPJS policies and supervision, to ensure that this program runs according to its objectives and provides maximum benefits to the community.⁴⁵ Participant compliance in paying contributions also needs to be continuously monitored and encouraged with ongoing education.

Restructuring the authority of health facilities, especially health centers and hospitals, is also part of this reconstruction. Health centers must be strengthened in their capacity to handle curative and rehabilitative care, so that more people have access to quality health services. Hospitals and other health facilities need to be aligned with their obligations to serve all levels of society without exception. In general, the reconstruction of the social security system in Indonesia must be carried out to create a system that is fairer, more

⁴² Urip Santoso. "Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 366.

⁴³ Aria Yuditia et al., "Pelaksanaan Jaminan Kesehatan Nasional Oleh BPJS Berdasarkan Undang-Undang No. 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional." *Jurnal Magister Ilmu Hukum* 6, no. 1 (2021): 53.

⁴⁴ Sopa Sopa et al., "Social Security Programs in Islamic Law: A Comparative Study of Fatwa Institutions on Indonesia's Health Insurance." *Jurnal Hukum* 40, no. 1 (2024): 201.

⁴⁵ Muhammad Zulfi Arisandi. "Mekanisme Pengawasan Terhadap Peserta Bpjs Ditinjau Dari Perspektif Hukum Administrasi Negara." *Journal of Law (Jurnal Ilmu Hukum)* 7, no. 1 (2021): 132.

efficient, and can accommodate all levels of society. Through improvements in regulation, funding, management, and supervision, as well as by involving active community participation, Indonesia can achieve a social security system that is more equitable and in accordance with the social needs of the community.⁴⁶ The Pancasila-based approach must also be the basis for the implementation of social security, to ensure that the goal of creating equitable social welfare can be achieved.

D. CONCLUSION

The conclusion of this study shows that the social security system in Indonesia, although clearly regulated through Law No. 40 of 2004 and No. 24 of 2011 concerning BPJS, still faces various challenges in its implementation. Some of the main problems identified include low participant compliance, especially from the informal sector, an imbalance between claims and contributions, and inefficient fund management. Although the Constitutional Court emphasized that the state is obliged to provide inclusive social security in accordance with the mandate of the 1945 Constitution, in practice there are still gaps, especially in reaching vulnerable groups and informal workers. Therefore, a reconstruction of a more inclusive and efficient social security system is needed, with an emphasis on improvements in funding mechanisms, a payment system based on real needs, and strengthening supervision and transparency in the management of BPJS. In addition, public education based on Pancasila values can increase awareness and compliance in paying contributions, so that social security can be more equitable and just. With these steps, the social security system in Indonesia can be more in accordance with constitutional principles and support the achievement of equitable social welfare for all people.

BIBLIOGRAPHY

Journals:

- Abel-Smith, Brian. "The Beveridge Report: its origins and outcomes." *International Social Security Review* 45, no. 2 (1992): 5-16.
- Alfitri, Alfitri. "Ideologi Welfare State Dalam Dasar Negara Indonesia: Analisis Putusan Mahkamah Konstitusi Terkait Sistem Jaminan Sosial Nasional." *Jurnal Konstitusi* 9, no. 3 (2012): 449-472.
- Arie, Marthen, and Zulkifli Aspan. "Application of The Concept of Welfare State in The Implementation of Health Social Security Programs." *Alauddin Law Development Journal* 5, no. 3 (2023): 494-504.

⁴⁶ Ayunita Nur Rohanawati. "Jaminan Sosial Tenaga Kerja di Indonesia Sebagai Negara Kesejahteraan Ditinjau Dari Perspektif Hukum Progresif." *Justitia et Pax* 32, no. 1 (2016): 130.

- Arimbi, Diah. "Legal status of the social security administrator (BPJS) as a public legal entity." *Jurnal Dinamika Hukum* 19, no. 3 (2019): 829-855.
- Arisandi, Muhammad Zulfi. "Mekanisme Pengawasan Terhadap Peserta Bpjs Ditinjau Dari Perspektif Hukum Administrasi Negara." *Journal of Law (Jurnal Ilmu Hukum)* 7, no. 1 (2021): 127-139.
- Bisariyadi, Bisariyadi. "Pergulatan Paham Negara Kesejahteraan (Welfare State) dan Negara Regulasi (Regulatory State) dalam Perkara Konstitusional." *Jurnal Hukum Ius Quia Iustum* 23, no. 4 (2016): 531-551.
- Cremer, Helmuth, and Pierre Pestieau. "Social insurance competition between Bismarck and Beveridge." *Journal of Urban Economics* 54, no. 1 (2003): 181-196.
- Daming, Saharuddin. "Deviasi Hukum dan Moral dalam Sistem Regulasi dan Pelayanan Badan Pelaksana Jaminan Sosial Kesehatan." *Pandecta Research Law Journal* 15, no. 2 (2020): 311-341.
- Harahap, Arifuddin Muda, Hisam Ahyani, Miftakhul Huda, Naeli Mutmainah, Naelul Azmi, and Sérgio António Neves Lousada. "Social Justice in the Welfare of Private Lecturers: A Legal Review of Salaries, Certification, and BPJS Ketenagakerjaan in Indonesia." *Jurnal IUS Kajian Hukum dan Keadilan* 12, no. 3 (2024): 650-674.
- Hartati, Widya. "Juridical Study on the Transformation of PT. Askes (Persero) Into the Social Insurance Management Agency on Health." *Jurnal IUS Kajian Hukum dan Keadilan* 3, no. 3 (2015): 16-39.
- Hennigusnia, Hennigusnia, and Ardhian Kurniawati. "Tinjauan Konstitusi Terhadap Sistem Jaminan Sosial Nasional Dan Badan Penyelenggara Jaminan Sosial." *Jurnal Ketenagakerjaan* 16, no. 2 (2021): 103-120.
- Heradhyaksa, Bagas, and Nurul Hikmah. "The Comparison Between Conventional, Sharia, and Social Insurance in Indonesia." *Diponegoro Law Review* 4, no. 2 (2019): 209-225.
- Hidayat, Anwar. "Analysis of Social Security Administrators from a Constitutional Law Perspective." *Fox Justi: Jurnal Ilmu Hukum* 14, no. 02 (2024): 161-168.
- Imaniyah, Bahjatul. "The Contract of the Social Security Agency for Employment (BPJS Ketenagakerjaan) in The Perspective of Shar {î} a Economic Law." *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 14, no. 12 (2019): 67-98.
- Johansyah, Achmad, and Siti Hajati Hoesin. "Implementation Of Social Security As A Form Of Assurance Of Workers' Rights In Obtaining Employment Social Security Protection In Indonesia." *Unram Law Review* 6, no. 1 (2022): 21-45.
- Johansyah, Achmad, and Siti Hajati Hoesin. "Implementation Of Social Security As A Form Of Assurance Of Workers' Rights In Obtaining Employment

- Social Security Protection In Indonesia." *Unram Law Review* 6, no. 1 (2022): 21-45.
- Panjaitan, Saut Parulian, Joni Emirson, Iza Rumesten RS, and Suci Flambonita. "The Constitutional Perspective of Indonesian Social Security System." *Jurnal Hukum* 40, no. 1 (2024): 42-60.
- Putri, Prima Maharani, and Patria Bayu Murdi. "Pelayanan kesehatan di era jaminan kesehatan nasional sebagai program badan penyelenggara jaminan sosial kesehatan." *Jurnal Wacana Hukum* 25, no. 1 (2019): 80.
- Rantung, Esterlita Nova Yaser, Toar Neman Palilingan, and Theodorus HW Lumonon. "Tanggung-Jawab Negara Atas Pemenuhan Kesehatan Di Bidang Ekonomi, Sosial Dan Budaya." *Lex Privatum* 11, no. 4 (2023): 32-45.
- Rohanawati, Ayunita Nur, and Mailinda Eka Yuniza. "Problems with the Institutional Form of the Implementing Agency of Social Security in Indonesia." *Jurnal Hukum IUS QUIA IUSTUM* 31, no. 1 (2024): 128-150.
- Rohanawati, Ayunita Nur. "Jaminan Sosial Tenaga Kerja di Indonesia Sebagai Negara Kesejahteraan Ditinjau Dari Perspektif Hukum Progresif." *Justitia et Pax* 32, no. 1 (2016): 121-132.
- Roziqin, Roziqin. "Urgency of reforming the social security organizing body in the welfare state framework." *AL WASATH Jurnal Ilmu Hukum* 1, no. 1 (2020): 1-12.
- Salangka, Athalia Revanna. "Pengawasan Bagi Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Dilihat Dari Hukum Administrasi Negara." *Lex Privatum* 12, no. 3 (2023): 55-68.
- Santoso, Urip. "Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan." *Jurnal Pembaharuan Hukum* 1, no. 3 (2014): 360-369.
- Solechan, Solechan. "Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan Sebagai Pelayanan Publik." *Administrative Law and Governance Journal* 2, no. 4 (2019): 686-696.
- Sopa, Sopa, Rini Fatma Kartika, Nurhadi Nurhadi, Dina Febriani Darmansyah, and Taufiqurokhman Taufiqurokhman. "Social Security Programs in Islamic Law: A Comparative Study of Fatwa Institutions on Indonesia's Health Insurance." *Jurnal Hukum* 40, no. 1 (2024): 187-203.
- Sriutami, Wahyu, Ahmad Wira, and Muchlis Bahar. "Analisis Peran Asuransi Syariah Dalam Mewujudkan Keadilan Sosial: Sebuah Systematic Literature Review." *Human Falah: Jurnal Ekonomi dan Bisnis Islam* 11, no. 2 (2024): 51-69.
- Sumadi, Ahmad Fadlil. "Hukum dan Keadilan Sosial dalam perspektif hukum ketatanegaraan." *Jurnal Konstitusi* 12, no. 4 (2015): 849-871.

- Usman, Anwar. "The Role of Indonesian Constitutional Court in Strengthening Welfare State and the Rule of Law." *Lex Publica* 7, no. 1 (2020): 11-27.
- Yuditia, Aria, Yusup Hidayat, and Suparji Achmad. "Pelaksanaan Jaminan Kesehatan Nasional Oleh BPJS Berdasarkan Undang-Undang No. 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional." *Jurnal Magister Ilmu Hukum* 6, no. 1 (2021): 43-61.

Books:

- Wijaya, Andika. *Hukum Jaminan Sosial Indonesia*. Sinar Grafika, 2022.