

Free Health Insurance Model For The Poor After The Health Omnibus Law

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Abstract

Health is one of the basic needs of society, so health is a right for every citizen protected by the Constitution. Every country recognizes that health is the greatest capital to achieve prosperity. Free health insurance for the poor is a poverty issue that is not only a state problem, but a problem that is the responsibility of all levels of society. In dealing with this poverty problem, the government's ability is very limited, therefore poverty alleviation must be resolved together, between the government, the business world and economic actors, along with all components of society in general. In the view of natural law, health is the right of all individual people. According to Aristotle, natural law is universal principles that come from reason and human ethical goals. Unlike the theory of legal positivism from John Austin, free health insurance for the poor will only apply and must be implemented if the order is issued by a legitimate authority. This policy is not considered a moral obligation, but rather a legal policy that depends on the decision of the ruler or government.

Keywords : Free Health Care, Poor Society, Natural Law Theory, Positivism Legal Theory

INTRODUCTION

In the development of modern states today, the manifestation of the government's concern for its people must take shape in two aspects, namely the context of justice and legality. The first context talks about the community's need for a sense of justice amidst social dynamics and conflicts. In the second context, it concerns what is called positive law, which is a rule established by a legitimate state authority and in its enforcement is imposed in the name of law (Wibowo et al., 2004).

The conception of a state of law as such is the essence to realize the goals of the state, namely the perfect happiness for humans as individuals and social beings (Ridwan, 2009). As SF Marbun said, that a state based on law must be based on good and fair laws. A good law is a democratic law based on the will of the people in accordance with the legal awareness of the people, while a fair law is a law that is in accordance with and fulfills the intent and purpose of each law, including in the field of health (Marbun, 1997).

The good goals of the state are all centered on the creation of people's welfare, and that welfare is the highest law for the state and state power (*salus populi suprema lex*). Thus, the goal of a state of law is the maintenance of order, security, and the implementation of public welfare in the broadest sense, including in the political, economic, social and cultural aspects (Ridwan & Sudrajat, 2009). This aspect of the state's goals by Charles E. Marriam is referred to as a welfare state.

This conception is also generally affirmed in the fourth paragraph of the 1945 Constitution, that the establishment of the Government of the State of Indonesia is aimed: "... to promote the general welfare, to enlighten the life of the nation, and to realize social justice for all Indonesian people UU (1945)." To realize Indonesian governance as an ideal state of law, of course, it must be implemented in the form of services to the community, including in the fields of health, education and social affairs.

Health is a right and guaranteed in the laws and regulations, then to realize these rights required health funds or health financing. For the imposition of health financing derived from the Government, Regional Government and Private and other sources (UU, 2009). Based on the provisions of Article 170 of Law Number 36 of 2009 concerning Health, it can be interpreted that it is impossible for the government to bear or implement health financing alone. For this reason, the obligation of the community is to participate in realizing health in the environment, family, and themselves is a form of social justice in health services, including in health financing. The responsibility for fulfilling healthy living needs is also the responsibility of the community, so the Government also regulates community participation in health services.

The right to a standard of living adequate for health and well-being of himself and of his family is a human right and recognized by all nations in the world, including Indonesia. The recognition is contained in the 1948 United Nations Declaration of Human Rights. Article 25 Paragraph (1) of the Declaration states, everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Based on the Declaration, after World War II, several countries took the initiative to develop social security, including health insurance for all residents (Universal Health Coverage). In the 58th session in 2005 in Geneva, the World Health Assembly (WHA) emphasized the need to develop a health financing system that guarantees community access to health services and provides protection to them against financial risks. The 58th WHA issued a resolution stating that sustainable health financing through Universal Health Coverage is carried out through a social health insurance mechanism. The WHA also suggested that WHO

encourage member countries to evaluate the impact of changes in health financing systems on health services as they move towards Universal Health Coverage.

In Indonesia, the philosophy and foundation of the state, Pancasila, especially the 5th precept, namely social justice for all Indonesian people, also recognizes the basic rights of citizens to health. This right is also included in the 1945 Constitution of the Republic of Indonesia Article 28 H and Article 34, and is regulated in Law Number 23 of 1992 which was later replaced by Law 36 of 2009 concerning Health. In Law 36 of 2009 it is emphasized that everyone has the same right to obtain access to resources in the health sector and obtain safe, quality, and affordable health services. On the other hand, everyone also has an obligation to participate in the social health insurance program. To realize the global and constitutional commitments above, the government is responsible for implementing public health insurance through the National Health Insurance (JKN) for individual health. Therefore, every individual, family and community has the right to obtain protection for their health, and the state is responsible for ensuring that the right to a healthy life is fulfilled for its population, including for poor and underprivileged communities.

The formation of the National Social Security System, is realized through Law Number 40 of 2004 concerning the National Social Security System (UU SJSN) which has health insurance programs, work accident insurance, old age insurance, pension insurance and death benefits.

Health insurance as part of the social security system in Indonesia is indeed a form of social assistance program for health services for poor and underprivileged communities. This program is nationally organized so that there is cross-subsidy in order to realize comprehensive health services for poor communities. In essence, health services for the poor are the responsibility and carried out jointly by the Central Government and Regional Governments. The Provincial/Regency/City Governments are obliged to contribute to produce optimal services.

During the leadership of President Joko Widodo, President Joko Widodo simplified several regulations through the Omnibus Law method. Omnibus law is a method that focuses on simplifying the number of legal products because it revises or revokes many legal regulations at once, changes, eliminates and/or establishes new regulations, such as several provisions in Law Number 40 of 2004 concerning the National Social Security System.

Law Number 40 of 2004 concerning the National Social Security System after the Health Omnibus Law, of course, there are several problems, such as the target. The target in the Healthy Card program is poor and vulnerable residents with a minimum domicile of 3 (three) years. Meanwhile, in the Health Insurance (JKN) program, all Indonesian residents are required to become health insurance participants managed by BPJS. JKN participants are then further distinguished by the Contribution Assistance Recipients (PBI), namely Health Insurance participants for the poor and underprivileged as mandated by the SJSN Law whose contributions are paid by the government as participants in the Health Insurance program. PBI participants are the poor who are determined by the government and regulated through government regulations. Then there are Non-PBI Participants, namely; Wage-earning workers and their family members; Non-wage earning workers and their family members; Non-workers and their family members.

Regarding free health insurance for the poor, it is every individual's right, and this is in accordance with the theory of natural law. The theory of natural law was first pioneered by Aristotle. Aristotle was the first thinker on law to distinguish between natural law and positive law. Natural law is a rule that applies always and everywhere because of its inherent connection. Natural law never changes, never disappears and applies by itself. Natural law is distinguished from positive law, which entirely depends on human provisions (Sinaulan, 2021). The Theory of Natural Law prioritizes "the search for justice" (Huijbers, 1995), so that various

theories regarding justice and a just society, both concerning rights and freedoms, power opportunities, income and prosperity.

Free health insurance for the poor in the theory of legal positivism argues that there is no other law except the orders of the ruling authority, or a legal norm can be said to be valid if it is established by the state and refers to higher norms. Adherents of legal positivism argue that there is no law other than positive law. Positive law is very different from other schools of law based on morality, religion, and community customs.

In the school of legal positivism, written law is highly glorified, so that the consequence of this school is that it considers that there are no legal norms outside of positive law. Indeed, the view that glorifies positive law is an excessive appreciation of the power that has the authority to make written laws, so that the source of power from power is law.

A key positivist thinker, John Austin, defines law as, "...a rule laid down for the guidance of an intelligent being by an intelligent being having power over him (Austin, 1985)." Austin teaches:

- a) The nature of law is a command. All positive law is a command from the sovereign (sovereignty). "Every law or rule is a command. Or, rather, laws or rules, properly so called, are a species of commands."
- b) Proper law is a logical, fixed, and closed system. "...which are included in the literal acceptance of the term law, and those which are by a close and striking analogy, though, improperly termed laws, there are numerous applications of the term law, which rest upon a slender analogy and are merely metaphorical or figurative...."
- c) Positive law must contain elements of command, sanction, obligation, and sovereignty. Anything outside of that is not law, but positive morality.

Legal positivism of free health insurance is based on Law Number 40 of 2004 concerning the National Social Security System. Health Insurance (JKN) is a social security program that is organized nationally based on the principles of social insurance and the principle of equity with the aim of ensuring that participants receive the benefits of health care and protection in meeting basic health needs.

There are two principles, namely:

1. The principle of social insurance includes: 1) mutual cooperation between the rich and the poor, the healthy and the sick, the old and the young, and those with high and low risk; 2) mandatory and non-selective membership; 3) contributions based on a percentage of wages/income; 4) non-profit.
2. The principle of equity, which is equality in obtaining services in accordance with their medical needs which are not related to the amount of contributions they have paid.

Based on the description above, the problems are:

1. Why is free health insurance for the poor not working effectively?
2. What is the role and responsibility of the government in providing Free Health Insurance for the Poor After the Health Omnibus Law?
3. What is the model of Free Health Insurance for the Poor After the Health Omnibus Law in the future (*ius constituendum*)?

RESEARCH METHODS

The method used is the normative legal method using a legal approach, conceptual approach, and analytical approach. The legal material search technique uses interview and literature research techniques. Then the research analysis with qualitative data analysis. According to Peter Mahmud Marzuki, normative legal research is the process of discovering legal rules, legal principles and legal doctrines to answer legal questions that arise (Marzuki, 2008).

RESULT AND DISCUSSION

Free Health Care for The Poor is not Effective

Health insurance is a guarantee provided by, both from the central or regional governments and from the private sector, to ensure that residents can access health services. Health insurance generally guarantees benefit holders to be able to access health facilities at affordable costs. Poor and vulnerable residents generally have low ability to pay, so the cost of health services becomes a barrier for poor and vulnerable residents. The existence of health insurance will reduce obstacles in the form of costs for poor and vulnerable residents. Thus, poor and vulnerable residents can maintain their health which will directly affect their productivity.

Health insurance is also a mechanism of mutual cooperation or health financing contributions, to ensure quality health services for health insurance recipients. By participating in mutual cooperation, people can get health services whenever they need them, without being hampered by costs that are considered difficult. The services received will also not be limited to basic services. People will get health services that are always improving, along with the increase in mutual cooperation or financing contributions.

Government policies on health insurance and insurance organizing bodies, both for national and local/regional schemes, need to be known and understood by the entire community. Given the current problems, namely the lack of public understanding in following the procedures of the National Health Insurance (JKN), it is hoped that with a comprehensive understanding of the existing health insurance, it will be able to improve the quality of services for health insurance participants, so that in the end it will have implications for increasing public understanding of rights and obligations and can utilize health insurance properly and correctly.

There are several types of health insurance available, namely (Nainggolan & Sitabuana, 2022):

1. National Health Insurance (JKN): The National Health Insurance is a health insurance that exists during the presidency of President SBY. With this health insurance, the government hopes that all Indonesian citizens can have a healthy, prosperous, and productive life guarantee.
2. Social Security Organizing Agency (BPJS): The name BPJS may be familiar and has been mentioned frequently. BPJS is actually a social security organizing agency of the JKN which came into effect on January 1, 2014. There are two types of BPJS that you can use, namely BPJS Kesehatan (Health) and BPJS Ketenagakerjaan (Employment). BPJS Kesehatan membership is mandatory for all Indonesian citizens. And as a member of BPJS Kesehatan, you are required to pay dues in a predetermined amount. However, the government also provides facilities for those from poor and underprivileged backgrounds to receive BPJS Kesehatan services without having to pay dues. These participants are referred to as BPJS PBI Participants (Contribution Assistance Recipients) and its members are Indonesian citizens who previously had KIS, Jamkesda, Jamkesmas, and KJS.
3. Indonesia Healthy Card (KIS): The Indonesia Healthy Card was launched during Jokowi's administration, which is not much different from the JKN during SBY's administration. However, in practice, this KIS program is not running well. KIS recipients are people from poor and underprivileged backgrounds whose data is taken from BPJS PBI participants so that there is no overlap between data in BPJS Kesehatan and KIS.
4. KJS (Jakarta Healthy Card): Recipients of the Jakarta Healthy Card are poor residents of Jakarta who have become participants of Jamkesda, KJS, and KIS. Similar to KIS, the data of KJS recipients is also taken from the data of BPJS PBI participants. So that there is no overlap between the data of BPJS PBI participants and KJS recipients.
5. Community Health Insurance (Jamkesmas) and Regional Health Insurance (Jamkesda):

Jamkesmas and Jamkesda are health insurance that are both intended for poor citizens. However, Jamkesmas itself is a health financing program provided by the government to ensure that poor people can live healthy and productive lives. In essence, Jamkesmas is not much different from other health insurance programs. It's just that Jamkesmas is only given to poor residents. Jamkesmas ownership indicators are grouped together with BPJS Contribution Assistance Recipient (PBI) ownership because of the similarity in the form of the program. The BPJS Kesehatan PBI program provides BPJS Kesehatan membership free of charge to poor and vulnerable residents. Meanwhile, Jamkesda has a similar scheme to Jamkesmas. It's just that if Jamkesmas comes from the APBN and is a central government program, Jamkesda uses the APBD and aims to cover the shortcomings of Jamkesmas assistance recipients in an area.

The state's effort to provide health services is by launching the National Health Insurance (JKN) Program. This program is organized by BPJS (Social Security Organizing Agency) which is an institution established based on Law Number 24 of 2011 concerning BPJS which is mandated in Law No. 40 of 2004 concerning the National Social Security System (SJSN). This National Health Insurance (JKN) is used as a government effort to protect small communities who have been struggling to get health services.

In government health facilities, programs are provided which are considered to make it easier for people to access them through several health cards or programs. One of them is the National Health Insurance program which is a government program that aims to provide comprehensive health insurance certainty for every Indonesian citizen so that Indonesian people can live healthy, productive, and prosperous lives. The benefits of this program are provided in the form of comprehensive individual health services, covering health improvement services (promotive), disease prevention (preventive), treatment (curative) and recovery (rehabilitative) including drugs and medical materials using quality and cost-controlled service techniques (managed care).

The National Health Insurance program is organized based on the principle of social insurance, and the principle of equity, which is equality in obtaining services in accordance with medical needs that are not related to the amount of dues that have been paid. This program uses the principle of social insurance, mutual cooperation or the principle of helping each other, where this principle intends that healthy participants contribute to other participants who are sick. This means that healthy participants' contributions will help other participants who are sick and need health service fees at health facilities, this is mandatory and non-selective, for payments for people who are not included in the Contribution Assistance Recipient participants are paid personally, while for poor (underprivileged) people are paid by the government because they are included in the Contribution Assistance Recipients.

Free health insurance for the poor is not effective because there are still problems from the health insurance program for the poor that are not on target, such as population data that does not match the reality on the ground. There are still many complaints from poor people about the data collection of the cards they have. In addition to the problem of poor data collection, the problem of less than optimal socialization is also a cause of the inefficiency of Jamkesmas. This is because those who have Jamkesmas cards do not know what Jamkesmas is and what the benefits of Jamkesmas are. So many people who have had the card do not use it when seeking treatment at a Community Health Center or Hospital. Therefore, free health insurance for the poor has not been running optimally.

The Role And Responsibility Of The Government In Providing Free Health Insurance For The Poor After The Health Omnibus Law

The concept of omnibus law is a common thing in the formation of laws and regulations. Omnibus comes from the Latin "omnis" which means all (Anggraeni & Rachman,

2020). This concept has inspired many lawmakers in Anglo-Saxon countries. Even some countries that adhere to the Continental European legal system have also used this method, including the United States (The Omnibus Act of June 1868, The Omnibus Act of February 22, 1889), Canada (Criminal Law Amendment Act, 1968-69), the Philippines (Tobacco Regulation Act of 2003), Argentina, Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan,¹ Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland,² Taiwan, and Thailand (Fitryantica, 2019).

In Indonesia, the discourse on the use of the omnibus law method was conveyed by the President of the Republic of Indonesia, Ir. H. Joko Widodo in 2019 in his state speech during his inauguration as President before the People's Consultative Assembly on October 20, 2019. Omnibus law became the president's focus to be able to solve the problem of overlapping regulations and bureaucracy. It is hoped that the existence of this omnibus law can provide good service to the community and attract foreign investors to invest their capital in Indonesia (Prabowo et al., 2020). The beginning of the omnibus law scheme in Indonesia was an adjustment to the rate of investment which led to the achievement of the goal of facilitating the entry of foreign investors to conduct activities in Indonesia. This is evidenced by the direction from Indonesian President Joko Widodo that there will be 3 laws that will be made as a form of omnibus law, namely taxation, job creation, and MSME empowerment. However, the concept has shifted significantly. This is strongly influenced by the existence of laws in Indonesia which are often overlapping and there is a disharmony between one legal regulation and another, both horizontally and vertically (Aditya & Fuadi, 2021).

Based on a search of legal materials obtained, there are several types of laws and regulations that have been passed, including 7,621 Ministerial Regulations that were passed from October 2014 to 2018, 765 Presidential Regulations that were passed in the last four years, and 452 Government Regulations that were passed and enacted in recent years. Knowing the many types of laws and regulations that are enacted in Indonesia, this then becomes a historical record which was then by the World Bank in the Regulatory Quality Index, positioning Indonesia in 92nd position out of 193 as a country with a hyperregulation state position (Sihombing & Syaputra, 2020).

Regarding the basis for managing health is Law Number 36 of 2009 concerning Health. On the basis of consideration that part of a Health Law states that health is a basic human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in¹ Pancasila and the 1945 Constitution of the Republic of Indonesia. Health is part of human rights and is the responsibility of all parties.

The current Health Law is seen as a time to be changed. The omnibus law method is seen as a suitable method to address changes and improvements to the Health Law itself. In addition to having weaknesses that make it difficult to implement regulations, it is also unable to function because it is considered less anticipatory in dealing with social and technological changes. Therefore, this law urgently needs to be repaired and improved.

This proposal is based on various considerations such as those related to the service problems of the Social Security Organizing Agency (BPJS) Kesehatan which is still experiencing many shortcomings in service to the community and the existence of discrimination (Elsye, 2021). Referring to the Attachment to Presidential Regulation Number 18 of 2020 concerning the 2020-2024 National Medium-Term Development Plan (hereinafter referred to as the 2020-2024 National Medium-Term Development Plan). The 2020-2024 National RPJM), it is stated that the health sector is included in the category of human resource development which is the focus of the 2020-2024 National RPJM.

According to the Minister of Health through the Head of the Health Financing Agency

of the Ministry of Health and the Insurance Center, Donald Pardede, emphasized that the National Health Insurance (JKN) is not a free health service program. "JKN is a health insurance program that guarantees equity and justice and community independence. Donald said, everyone has a risk of getting sick, and the cost can be very high. Therefore, JKN protects Indonesian citizens from experiencing social disruption shocks, which can push them to the brink of poverty when they are sick. For poor people who are unable to afford it, the contributions are borne by the government.

Nationally, free health services for the poor have been implemented since 2005. The government continues to increase the budget for free health services from Rp 2.1 trillion in 2005 to Rp 8.2 trillion in 2013, or an increase of up to 400%. With increasing funds, the target of free health services also increased from 36.1 million people in 2005 to 86.4 million people in 2013 and reached 2.9 million pregnant women who could get free childbirth.

In 2014, free health services were implemented for all residents through the National Health Insurance (JKN) program through the Social Security Organizing Agency (BPJS Kesehatan). JKN and BPJS Kesehatan were launched by President Susilo Bambang Yudhoyono on December 31, 2013 at the Bogor Palace, West Java, with a coverage of 121.6 million people.

Indonesia is the largest country that has health insurance under one state agency, namely BPJS Kesehatan. This program is not inferior to the American health insurance program known as Obamacare. It is only natural that the SJN program should be grateful for and jointly succeeded for a healthier Indonesia. In line with the increasingly widespread free health services, even in 2014 it was targeted to reach all residents, the government continues to build and encourage the availability of adequate health facilities and health workers.

The JKN program is certainly for poor communities to regain their health. Because with the JKN program, poor communities will automatically become JKN Contribution Assistance Participants financed by the government. The JKN program opens the widest possible access for poor communities to get free health services so that their health status can improve.

Regarding the health omnibus law, the omnibus law method is seen as a suitable method to address changes and improvements to the Health Law. However, it has weaknesses, so regulations are difficult to implement and also cannot function because they are considered less anticipatory in dealing with them.

Free Health Insurance Model for The Poor After the Future Health Omnibus Law (Ius Constituendum)

Health is one of the basic needs of society, so health is a right for every member of the community that is protected by the Constitution. Every country recognizes that health is the greatest capital to achieve prosperity. Therefore, improving health services is essentially an investment in human resources to achieve a prosperous society.

Individually, the health aspect affects the work productivity of the individual. The health condition of a worker certainly contributes to work attendance, output produced, and the level of income earned. While socially, a person's health condition affects the running of the social interaction process carried out by the individual with the community around him. On a macro level, the level of public health in a country also affects development in that country.

In the view of natural law, health is the right of all individual communities. According to Aristotle, natural law is universal principles that originate from reason and human ethical goals. According to him, it comes from the idea of universal justice and goodness that must be realized in people's lives. Furthermore, in Aristotle's view, the state (polis) has a major role to regulate and enforce justice and maintain the welfare of the community. The state has a moral responsibility to ensure that every citizen has fair access to basic resources, including health. Because poor people are often marginalized and have difficulty accessing health services, the

state needs to take an active role in providing health access for them. Thus, free health insurance for the poor can be considered as fulfilling the state's responsibility in the context of natural law.

Unlike the theory of legal positivism from John Austin, free health insurance for the poor will only apply and must be implemented if the order is issued by a legitimate authority. This policy is not considered a moral obligation, but rather as a legal policy that depends on the decisions of the rulers or the government. In contrast to the theory of natural law, which sees justice as an important element, Austin separates law from morality, so the implementation of free health insurance is purely a matter of positive law, which is ratified or determined by the ruler.

One of the hallmarks of Austin's legal positivism is the strict separation between law and morality. According to him, whether a law is just or not is a separate issue from its validity. Therefore, in Austin's view, the free health insurance policy for the poor is not judged based on moral goodness or social justice, but whether the order is formally valid or not.

From this perspective, Austin would view free health insurance as a legitimate obligation as long as the policy is regulated and implemented by a legitimate authority. If the government decides that free health insurance is needed for public policy reasons, then it is valid as positive law, regardless of the morality of the policy.

According to Law Number 17 of 2023 Concerning Health, health is a person's healthy state, both physically, mentally, and socially and not just being free from disease to enable him to live productively. The law also states that health is one of the elements of public welfare. Because the condition of public welfare is related to the level of poverty, the level of poverty is also related to the level of public health. Poverty causes a person to be unable to meet sufficient food needs, resulting in a decline in the quality of his health. Poor conditions also cause individuals to be unable to pay for the costs of maintaining and treating their health (Hardiansyah, 2011). Graphically, the relationship can be seen in the vicious circle of poverty.

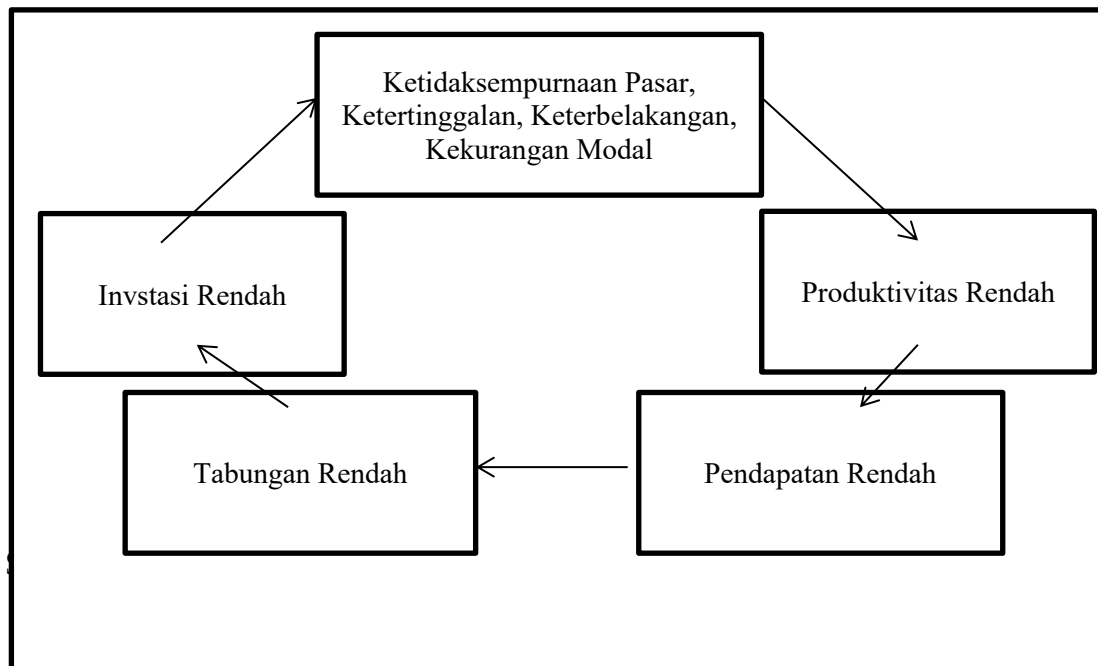


Figure 1. The Vicious Cycle of Poverty

In developing countries like Indonesia, in order to improve the welfare of the community, the role of the government is needed through public services to be able to meet the basic needs of its people, such as health, education, and other basic necessities.

The Community Health Insurance Program is a guarantee of protection for comprehensive health services, which includes promotive, preventive, curative and rehabilitative services provided in stages to the community/participants whose contributions are paid by the Government. The source of funds for the Jamkesmas program is obtained from the central government through the mechanism of social assistance funds in the state revenue and expenditure budget (APBN). This program aims to improve access and quality of health services for all poor and underprivileged communities in order to achieve optimal health status effectively and efficiently.

Various existing health insurance and insurance programs have guaranteed around half of the Indonesian population. Every health insurance and insurance program must have different capacities and coverage of benefits. The differences in capacity and coverage in these programs cause many expensive medical services that are not guaranteed.

The Social Security Organizing Agency itself has been regulated in Law Number 24 of 2011 concerning its duties and functions in guaranteeing social protection for all people so that they can meet basic living needs, as well as regulating the supervision and management of trust funds carried out by BPJS. The JKN program is a form of reform in the health sector which aims to overcome the problems of fragmentation and division of health insurance. This problem occurs in the schemes of the Community Health Insurance (Jamkesmas) and Regional Health Insurance (Jamkesda) which result in uncontrolled health costs and quality of service. The National Health Insurance (JKN) is part of the National Social Security System (SJSN) which is carried out through a mandatory social health insurance mechanism.

This is in accordance with Law Number 40 of 2004 concerning SJSN which aims to meet the basic health needs of the community that are decent and given to every individual who has paid contributions or whose contributions are paid by the government.

The National Health Insurance Roadmap serves as a guide for all parties to understand and prepare to play an active role both before and after the operation of BPJS on January 1, 2014. This Roadmap also serves as a guide in providing direction and guidance to achieve comprehensive membership in the National Health Insurance program. This roadmap becomes an instrument for coordinating development in the field of public welfare, especially in the health sector. The purpose of preparing this Roadmap is to provide direction and steps that need to be taken systematically, consistently, coherently, in an integrated and measurable manner from time to time in order to:

- a. Prepare for the operation of BPJS on January 1, 2014
- b. Achieve health insurance for all Indonesian people
- c. Organize health insurance in accordance with the provisions stated in Law No. 40 of 2004 concerning SJSN, Law/2011 concerning BPJS, and its implementing regulations

The National Health Insurance as a form of social health insurance program provides several benefits to the community. First, JKN provides comprehensive benefits with affordable premiums. Second, social health insurance applies the principle of cost and quality control, so that JKN participants can get quality services at a reasonable and controlled cost. Third, social health insurance guarantees sustainability (certainty of sustainable health service financing). Fourth, social health insurance has portability so that it can be used throughout Indonesia. In JKN itself, Jamkesmas participants will be automatically registered as Contribution Assistance Recipient (PBI) participants, so that poor people do not need to fear losing their right to be able to get proper health services.

The JKN program guarantees the existence of services and equitable guarantees for all Indonesian citizens without exception. National Health Insurance health services are carried

out in health facilities that have been designated or collaborated with BPJS Kesehatan, such as advanced health facilities such as public and private hospitals.

Free health insurance for the poor is a poverty issue that is not only a state problem, but a problem that is the responsibility of all levels of society. In dealing with this poverty problem, the government's capacity is very limited, therefore this poverty alleviation must be resolved jointly, between the government, the business world and economic actors, and all components of society in general.

The concept of social security in a broad sense includes every effort in the field of social welfare to improve the standard of living of human beings in overcoming backwardness, dependence, neglect and poverty, including free health insurance. This concept has not been running optimally in Indonesia, due to the government's limitations in the field of financing and the ego-sectoral nature of several interested parties in social security.

Past experience in poverty reduction shows various weaknesses, including: (i) still oriented towards macro-economic growth, without regard to the aspect of equity, (ii) policies are still centralistic, (iii) more caricative than transformative, (iv) positioning the poor as objects rather than as subjects, (v) the orientation of poverty reduction tends to be caricative and momentary, from sustainable productivity improvement, (vi) as well as generic views and solutions to existing poverty problems without regard to existing pluralism (KPK, 2002).

Free health insurance for the poor is caused by the income of a community that is below a certain poverty line. Therefore, often poverty reduction efforts only rely on efforts to increase the income of the community. This is different from the reality on the ground, because the problem of poverty is not only sourced from economic problems, but also includes various other problems that are plural.

According to the author, the model of free health insurance for the poor after the Health Omnibus Law in the future (*ius constituendum*) is to create a single institution model in the form of a trust institution from all people. This is important, because in this way the collection of funds will be quickly realized. A single institution in the sense of the organizer of the National Social Security System as a single container or umbrella that houses the program organizers so that the implementation of the program can be carried out by several program organizers, especially free health insurance for the poor. The single institution is led by a Director, under the National Social Security Council (DJSN), who is directly responsible to the President. The model in the future is the Organizing Agency for Free Health Insurance for the Poor.

CONCLUSION

Free health insurance for the poor is not working effectively, because the implementation of the health insurance program for the poor is not on target and does not match the reality on the ground.

The role and responsibility of the government in providing free health insurance for the poor after the Health Omnibus Law, that health is part of human rights and is the responsibility of all parties. Law Number 36 of 2009 concerning Health that exists today is seen as a time to be changed. The omnibus law method is seen as a suitable method to overcome changes and improvements to the Health Law itself. However, this health omnibus law method also has weaknesses that make it difficult to implement regulations, and cannot function because it is considered less anticipatory in dealing with it.

The model of free health insurance for the poor after the Health Omnibus Law in the future (*Ius Constituendum*), namely by forming an Organizing Body to implement a national health insurance program for all Indonesian people, namely the Organizing Body for Free Health Insurance for the Poor. The government needs to evaluate the two laws based on the 1945 Constitution and not harm the people, especially the poor, and the creation of derivative

policies related to free health insurance for the poor. In the view of natural law, the state is obliged to guarantee the rights of free health for the poor, while in the theory of legal positivism, the Law is a legitimate legal product, where the state has a formal responsibility to ensure its implementation in accordance with the law.

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