

**POLITIC OF LAW OF PRESIDENTIAL REGULATION NUMBER 64 OF
2020 AFTER THE SUPREME COURT DECISION NUMBER 7**

P/HUM/2020

THESIS

BY:

AHMAD JAILANI

NIM 17230096

CONSTITUTIONAL LAW DEPARTMENT (SIYASAH)

SYARI'AH FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

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MALANG

2020

STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**POLITICS OF LAW OF PRESIDENTIAL REGULATION NUMBER 64
YEAR 2020 AFTER THE RULES OF THE SUPREME COURT NUMBER
7 P/HUM/2020**

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 10 December 2020

Writer,



Ahmad Jailani
SIN 17230096

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State that the student's thesis has been completed and is ready to be tested by the thesis examiner team.

Thus to be understood.

Malang, 10 December 2020

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MOTTO

“Salus Populi Suprema Lex Esto”

(Kesejahteraan Rakyat adalah hukum tertinggi)

~Marcus Tullius Cicero~



FOREWORD

By thanking Alhamdulillah for the presence of Allah SWT. who has bestowed all the blessings of taufiq and his guidance, until the completion of this thesis. Prayers and greetings may still be poured out to our esteemed Prophet Muhammad SAW. Which always gives us guidance from the dark ages to the bright path of light. We thank:

1. Prof. Dr. H. Abdul Haris, M.Ag, as the Rector of Maulana Malik State Islamic University Ibrahim Malang;
2. Prof. Dr. H. Saifullah, SH, M.Hum, as the Dean of the Faculty of Sharia Maulana Malik Ibrahim Malang State Islamic University;
3. Dr. H. Aunul Hakim, S. Ag., As the Head of the Department of Constitutional Law (Siyasah) Faculty of Syari'ah State Islamic University Maulana Malik Ibrahim Malang;
4. Irham Bashori Hasba, MH, as the author's Supervising Lecturer during a lecture at the Faculty of Shari'ah, Islamic State University of Maulana Malik Ibrahim Malang. Thank you to the author for giving me the time, advice, support to complete this research;
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6. All Staff Lecturers of the Faculty of Sharia, Islamic State University of Maulana Malik Ibrahim Malang;
7. Both parents who always support and pray for their children, and
8. Companions in arms majoring in Constitutional Law class 2017 who have provided support, both physically and mentally.

We realize that this research report is still far from perfect, therefore the compiler receives constructive criticism and suggestions for a better future. Hopefully with this report can develop knowledge and be useful for readers.

Malang, 10 December 2020

Writer,



Ahmad Jailani
SIN 17230096

TRANSELITERATION GUIDELINES

A. General

Transiteration is the transfer of Arabic writing into Indonesian (Latin) writing, not translating Arabic into Indonesian. Included in this category are the Arabic names of the Arabs, while the Arabic names of the Arabs are written as the national language spelling, or as written in the book that is the reference. Writing book titles in footnotes and bibliography, still uses this transliteration provision.

There are many options and transliteration provisions that can be used in writing scientific papers, whether they are international standards, national standards or provisions specifically used by certain publishers. The translation used by the Sharia Faculty of the State Islamic University of Maulana Malik Ibrahim Malang uses EYD plus, namely the translation of the Joint Decree (SKB) of the Minister of Religion, Education and Culture of the Republic of Indonesia. The writing of Arabic-Latin transliteration in this thesis uses translation guidelines based on the joint decision of the Indonesian Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia No. 158 tahun 1987 and No. 0543b / U / 1987 which can be largely described as follows:

B. Consonant

List of Arabic letters and transliteration into Latin letters can be seen on the following pages:

Arabic letters	Name	LetterLatin	Name
ا	Alif	No symbolized	symbolized Not
ب	Ba	B	Be
ت	Ta	T	Te
ث	S a	S	Ice (with dots above)
ج	Jim	J	Je
ح	H { a	H {	Ha (with dots above)
خ	Kha	Kh	Ka and Ha
د	Dal	D	De
ذ	Z al	Z	Zet (with dots above)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ش	Syin	Sy	Es and ye
ص	S { ad	S {	Es (with dots below)
ض	D} ad	D {	De (with dots below)
ط	T { a	T {	Te (with dots below)
ظ	Z} a	Z {	Zet (with dots below)
ع	'Ain	' _____	inverted apostrophe

غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
هـ	Ha	H	Ha
أ / ء	Hamzah	_____'	Apostrophe
ي	Ya	Y	Ye

Hamzah (أ) which is located at the beginning of the word follows the vowel without any sign. If it is located in the middle or at the end, it is written with a sign (').

C. Vowels, Long, and Cut

Arabic vowels, like Indonesian vowels, consist of a single vowel or monophthong and a double vowel or diphthong.

A single vowel in Arabic whose symbol is a sign or vowel, the transliteration is as follows:

Sign	Name	Latin Letter	Name
اَ	Fath {ah	A	A
اِ	Kasrah	I	I
اُ	D {ammah	U	U

D. Vowels

أو = aw

أى = ay

أُ = u

إى = i



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ABSTRACT

Ahmad Jailani, NIM 17230096, 2020. Title of Political Law of Presidential Regulation Number 64 of 2020 Post Supreme Court Decision Number 7 / P / Hum / 2020. Thesis. Department of Constitutional Law. Faculty of Sharia. Maulana Malik Ibrahim State Islamic University of Malang. Advisor, Irham Bashori Hasba, M.H.

Keywords: Political Law, Presidential Regulation, Maqasid Sharia

Presidential Regulation Number 64 of 2020 concerning Health Insurance is an objective in regulating BPJS health contributions in Indonesia. The existence of this Presidential Regulation has reaped pros and cons among the public. This regulation came after the Supreme Court issued Decision Number 7 / P / HUM / 2020.

The problem in the research is to explore How the Legal Politics of Presidential Regulation Number 64 of 2020 Post-Supreme Court Decision Number 7 P / Hum / 2020 and What are the Implications of Presidential Regulation Number 64 of 2020 Post Supreme Court Decision Number 7 P / Hum / 2020 on the welfare of society in the middle The COVID-19 pandemic. This type of research used is juridical normative. Approaches in research include a *historical approach*, a *case approach*, a *statutory approach*, a *conceptual approach*. Types and legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. The method of analysis used in this research is normative juridical analysis method.

The result of this research is 1). That Presidential Regulation Number 64 Year 2020 which was issued by the President is legally still valid because the Perpres itself is regulated in a hierarchy of laws and regulations and is made to carry out higher legislative orders or to exercise governmental power. 2). the President's policy of increasing BPJS contributions through Presidential Regulation Number 64 of 2020 is not appropriate because the increase in BPJS dues at this time will make it even more difficult for the community because the economic capacity of the community is considered low plus during the COVID-19 pandemic. The government in making policies, especially Presidential Regulations, is expected to pay more attention to the hierarchy of laws and regulations so that there is a harmonization between policy products made so that they do not conflict with other higher regulations and take policies related to the public interest are expected to pay more attention to the condition of society so that decisions or policies taken it does not become a polemic or can harm many people.

ABSTRAK

Ahmad Jailani, NIM 17230096, 2020. Politik Hukum Perpres Nomor 64 Tahun 2020 Pasca Putusan Mahkamah Agung Nomor 7/P/Hum/2020. Skripsi. Jurusan Hukum Tata Negara. Fakultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing Irham Bashori Hasba, M.H.

Kata Kunci : Politik Hukum, Peraturan Presiden, Maqasid Syariah

Peraturan Presiden Nomor 64 Tahun 2020 Tentang Jaminan Kesehatan merupakan tujuan dalam pengaturan iuran BPJS kesehatan di Indonesia. Adanya Perpres tersebut menuai Pro dan kontra di kalangan masyarakat. Regulasi ini hadir pasca Mahkamah Agung mengeluarkan Putusan Nomor 7/P/HUM/2020.

Problem dalam penelitian ialah mengupas Bagaimana Politik Hukum Peraturan Presiden Nomor 64 Tahun 2020 Pasca Putusan Mahkamah Agung Nomor 7 P/Hum/2020 dan Bagaimana Implikasi Peraturan Presiden Nomor 64 Tahun 2020 Pasca Putusan Mahkamah Agung Nomor 7 P/Hum/2020 terhadap kesejahteraan masyarakat di tengah Pandemi COVID-19. Jenis Penelitian yang digunakan yaitu Yuridis Normatif. Pendekatan dalam penelitian antara lain pendekatan historis (*historical approach*), pendekatan kasus (*case approach*), pendekatan perundang-undangan (*statute approach*), Pendekatan konseptual (*conceptual app-roach*). Jenis dan bahan hukum yang digunakan adalah bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Metode analisis yang digunakan dalam penelitian ini menggunakan metode analisis yuridis normatif.

Hasil penelitian ini adalah, 1). Peraturan Presiden Nomor 64 Tahun 2020 yang dikeluarkan oleh Presiden secara legalitas tetap sah karena Perpres sendiri memang diatur dalam hierarki peraturan-perundang-undangan dan dibuat untuk menjalankan perintah Peraturan Perundang-undangan yang lebih tinggi atau dalam menyelenggarakan kekuasaan pemerintahan. 2). Kebijakan Presiden kembali menaikkan iuran BPJS melalui Peraturan Presiden Nomor 64 Tahun 2020 tidak tepat karena kenaikan iuran BPJS pada saat ini akan semakin mempersulit masyarakat karena kemampuan ekonomi masyarakat dinilai rendah ditambah lagi saat pandemi covid-19. Pemerintah dalam membuat kebijakan khususnya Peraturan Presiden diharapkan lebih memperhatikan hierarki peraturan perundang-undangan agar terdapat harmonisasi antara produk kebijakan yang dibuat sehingga tidak bertentangan dengan peraturan lain yang lebih tinggi dan mengambil kebijakan yang berhubungan dengan kepentingan umum diharapkan lebih memperhatikan kondisi masyarakat sehingga keputusan atau kebijakan yang diambil tersebut tidak menjadi polemik atau dapat merugikan orang banyak.

ملخص

أحمد الجيلاني ، رقم هوية الطالب ١٧٢٣٠٠٩٦ ، ٢٠٢٠. عنوان السياسة القانونية للمرسوم الرئاسي رقم ٦٤ لعام ٢٠٢٠ بعد قرار المحكمة العليا رقم 7 / P / Hum 2020. مقال. قسم القانون الدستوري. كلية الشريعة. جامعة مولانا مالك إبراهيم الإسلامية الحكومية في مالانج. المستشار / ارهام بشوري حسبة م.

الكلمات الدالة: القانون السياسي ، النظام الرئاسي ، مقاصد الشريعة.

اللائحة الرئاسية رقم ٦٤ لعام ٢٠٢٠ بشأن التأمين الصحي هي هدف في تنظيم مساهمات BPJS الصحية في إندونيسيا. وضعت حكومة الولاية لوائح بحيث يطيع الناس القواعد ويطيعونها. يجني وجود هذا النظام الرئاسي الإيجابيات والسلبيات بين الجمهور. وذلك لأن هذه اللائحة كانت موجودة بعد أن أصدرت المحكمة العليا القرار رقم 7 / P / HUM 2020.

تتمثل صياغة المشكلة في البحث في استكشاف كيفية نشر القانون السياسي لللائحة الرئاسية رقم 64 لعام 2020 قرار المحكمة العليا رقم 7 / P / Hum 2020 وكيف تداعيات اللائحة الرئاسية رقم 64 لعام 2020 بعد قرار المحكمة العليا رقم 7 / P / Hum 2020 بشأن رفاة المجتمع في وسط وباء COVID-19. نوع البحث المستخدم معياري. نهج البحث المستخدم هو النهج التاريخي ، نهج الحالة ، نهج النظام الأساسي ، النهج المفاهيمي. أسلوب البحث في هذه الدراسة يفحص القوانين وكتب القانون والمجلات القانونية وتلك المتعلقة بموضوع البحث. أنواع ومصادر البيانات المستخدمة هي البيانات والمواد القانونية الأولية والمواد القانونية الثانوية المواد القانونية الثالثة.

نتائج هذه الدراسة هي أولاً ، لتحليل جوهر القانون السياسي لللائحة الرئاسية رقم 64 لسنة ٢٠٢٠ بعد قرار المحكمة العليا رقم 7 ص / هم / 2020 ، تكون العواقب وخيمة إذا استمرت الحكومة ، بصفتها المسؤول المختص في مجالها ، في التصديق على هذه اللائحة التي تتجاهل قرار المحكمة العليا. ثانيًا ، الرد على تداعيات اللائحة الرئاسية رقم 64 لعام ٢٠٢٠ بعد قرار المحكمة العليا رقم 7 / P / Hum 2020 بشأن رفاة المجتمع وسط وباء COVID-19 ، منذ الوباء ، تم تحميل المجتمع أعباء إضافية من قبل الحكومة مع صحة

أحدث بيربرس على التأمين الصحي ، أحدها يحتوي على زيادة في مساهمات **BPJS**. هذا لا
يتماشى مع مبادئ دولة الرفاه وشريعة المقاصد.



CHAPTER I

INTRODUCTION

A. Research Background

The government as the bearer of the people's mandate is fully responsible for the prosperity and welfare of the people. To achieve prosperity, the government sets various policies with various programs, one of which is health insurance. If governments are unable to meet the basic needs of their people, they will sow the seeds of destruction through social anxiety and political instability.

Health is a shared responsibility of both the government and the community which must be realized in the form of providing various health efforts to the entire community through the implementation of quality and affordable social security development.¹ The government is required to be able to create a rule which will become legality in a program that will be realized with the aim of establishing a quality and quality health service system. Health has an important role in people's lives, because health is an asset to body, soul and social welfare for every individual in a nation.²

Procurement and enforcement of regulations related to the National Health Insurance BPJS Health program is nothing but a manifestation of the ideals of the Indonesian nation. As stated in the 2nd paragraph of Constitution in

¹ Hafid Abbas, et.al., *Human Rights Handbook for Doctors and Patients in Preventing Medical Malpractice*, Human Rights Research and Development Agency, Ministry of Law and Human Rights RI, 2008, 1.

² Indra Perwira, *Health as Human Rights*, in Bagir Manan, et.al., *Dimensions of Human Rights Law*, PSKN FH UNPAD, Bandung, 2009, 138.

1945 of the Republic of Indonesia³ which reads as follows: "And the struggle for the Indonesian independence movement has come to a happy and safe moment to deliver the Indonesian people to the front gates of the independence of the Indonesian state, which is independent, united, sovereign, just and prosperous." Then, the aspirations of the related nation matter of advancing the general welfare is also in line with the goals of the Indonesian nation. Explicitly, this is stated in the 4th paragraph of Constitution in 1945 of the Republic of Indonesia which reads as follows: "... to protect the entire Indonesian nation and all Indonesian bloodshed and to promote public welfare, educate the nation's life, and participate in implementing world order based on independence. , eternal peace and social justice ... ".

There are at least two goals desired by the state in the context of implementing social justice, namely for universal ideals of an orderly world based on social justice, and it is also written in the state constitution, one of which is in Article 27 which states that every citizen has the right to earn a living and life. worthy.⁴ A decent living and living is often referred to as the level of people's welfare, equal distribution of welfare, access to basic necessities and basic services; as well as other indicators that cannot be measured in quantity alone, but in the quality of meeting needs.

The procurement and enforcement of regulations related to the JKN BPJS Health program is actually a realization of the realization of respect for

³ *The 1945 Constitution of the Republic of Indonesia*, Jakarta, BhuanalIlmuPopular, 149.

⁴ Makmur Keliat, "More Fair?" published on the daily Kompas, 15 October 2020.

human rights values. In this case, the context is the human rights belonging to citizens as stated in Article 28 H paragraph (1) of Constitution in 1945 of the Republic of Indonesia which reads as follows: "Everyone has the right to live in physical and mental prosperity, residing and getting a good and healthy living environment. and entitled to health services. "⁵

It can be observed that Article 28 H paragraph (1) of Constitution in 1945 of the Republic of Indonesia means that everyone has the right to certainty in social protection and welfare. As a form of personification of the state, government is a legal subject. As a legal subject, the government is given the right to take actions (*bestuurhandlingen*) in order to carry out its duties and functions in providing services to the community. Therefore, with these actions, the government is obliged to guarantee the rights of every citizen.⁶In 2018 the president signed Presidential Regulation Number 82 of 2018 which regulates Health Insurance. Through this regulation, the government is trying to improve the implementation of the National Health Insurance (JKN) program so that it is fully beneficial for the entire community. The Presidential Regulation on Health Insurance is also a regulation that replaces Presidential Regulation Number 12 of 2013 which has undergone many changes, and the last is through Presidential Regulation Number 28 of 2016 which regulates similar issues.⁷

⁵ The 1945 Constitution of the Republic of Indonesia, Article 28 H paragraph (1): "Every person has the right to live in physical and mental well-being, to have a place to live, and to have a good and healthy living environment and the right to obtain health services".

⁶ Syofyan Hadi, Tomy Michael, "*Principles of Defense (Rechtmatigheid) in Decision Standing of State Administration*", Journal of Cita Hukum, Vol. 5, No. 2, 2017, 385.

⁷ Ady Thea DA, "*Here are 12 Provisions in the Presidential Regulation on Health Insurance that Needs to be Observed*", <https://www.hukumonline.com/berita/baca/lt5bab443c5f973/inilah-12-ketentuan-dalam-perpres-jaminan-kkes-yang-perlu-dicermati/>, accessed on 1 August 2020.

On October 24, 2019, the president signed Presidential Regulation Number 75 of 2019 concerning Amendments to Presidential Regulation Number 82 of 2018 concerning Health Insurance (Perpres on First Amendment of Health Insurance). This regulation was proposed by the Minister of Finance Sri Mulyani Indrawati, then placed in the State Gazette of the Republic of Indonesia Year 2019 Number 210. The government considers it necessary to improve the quality and sustainability of the Health Insurance program. So, some adjustments are needed which in turn spearheaded the issuance of the Presidential Regulation.⁸

The government has stipulated the Presidential Decree on Health Insurance for the First Amendment to be effective as of January 1, 2020. Of the many amendments to the previous regulations, some of which regulate the amount of contribution rates for several segmentations of participants.⁹ For example, Article 34 regulates the contribution rates for Non-Workers (BP) and Non-Receiving Workers (PBPU). For individual participants who are members of the Class III cluster, the contribution rate will increase to IDR 42 thousand from IDR 25 thousand; Rp110 thousand from Rp.51 thousand for class II; and Rp160 thousand from Rp. 80 thousand for class I.

From this the problem arises, the central government argues that the provisions governing the increase in the contribution rate are only enforced in order to improve health insurance management for the people as a whole. The

⁸ Hendra Friana, "Jokowi Signs Presidential Decree 75/2019, BPJS Health Fees Officially Rises", <https://tirto.id/jokowi-teken-perpres-752019-iuran-bpjs-keseh-resmi-naik-ekNS>, accessed on August 1, 2020.

⁹ Specifically, the provisions regarding the new mechanism related to the BPJS Health JKN contribution rate which took effect as of January 1, 2020 can be seen in several articles, such as in Articles 29, 30, 32, 33, and Article 103A.

government believes that these provisions exist for a better and sustainable ecosystem in the JKN program. In other words, what is really happening is that the government is trying to save the BPJS which continues to lose money. Launching from the Katadata.co.id page, BPJS Kesehatan has experienced a fluctuating financial deficit since then until now. In 2014, BPJS 'financial deficit was "only" at 1.9 trillion, then jumped sharply to Rp9.4 trillion in 2015, decreased to Rp6.7 trillion in 2016, and again soared to reach Rp.13.8 trillion in 2017, and sloping at Rp. 9,¹⁰

Error in emphasizing addressat norm (legal subject that is the target of a norm) in Article 34. It needs a solution that the most effective is to "enlarge" the financial income of BPJS Health. However, the mechanism used is just wrong. On the pretext of emphasizing the appeal to the public to pay dues in accordance with regulations, the government has instead set regulations that concentrate on the participant fee rates themselves. In this case, the government's logic is questionable. The author can say that it is true that if the BPJS experiences a financial deficit due to a lack of income, the government should impose regulations that focus on BPJS "participants" to be more cooperative.¹¹

Through Decision No. 7 P / HUM / 2020 dated March 31, 2020, the Supreme Court stated that Article 34 paragraph (1) and (2) Perpres No. 75 of 2019 concerning Amendments to Presidential Decree No. 82 of 2018 concerning

¹⁰ Agatha Olivia Victoria, "Sri Mulyani Explains Four Causes of BPJS Finance Deficit", <https://katadata.co.id/berita/2019/08/21/sri-mulyani-beberkan-empat-penyebab-defisit-bpjs-keuangan>, accessed on July 1, 2020.

¹¹ <https://fh.unpad.ac.id/konstellation-polemik-k-Increase-tarif-iuran-bpjs-kkes/>, accessed on 15 October 2020.

Health Insurance is canceled.¹²This means that the provisions contained in the article do not have binding legal provisions. Based on the statement of the Supreme Court, the article contradicts several laws and regulations, namely:

1. Article 23 A, Article 28 H, Article 34 of Constitution in 1945 of the Republic of Indonesia.
2. Article 2, Article 4, Article 17 paragraph (3) of Law Number 40 Year 2004 concerning the Social Security System.
3. Article 5 paragraph (2) in conjunction with Article 171 Health Law.

Thus, the provisions regarding the increase in BPJS Health contribution rates contained in Article 34 paragraph (1) and (2) of the First Amendment of the Presidential Regulation on Health Insurance are declared invalid and BPJS contributions return to their original rates as regulated in Presidential Decree No. 82 of 2018 concerning Health Insurance.¹³

On May 5, 2020, the President officially signed Presidential Decree No. 64 of 2020 concerning the Second Amendment to Presidential Regulation Number 82 of 2018 concerning Health Insurance. In this case, it means that the government complies with the Supreme Court decision for only 3 months, namely April, May and June 2020.¹⁴After that, the BPJS Health contributions were raised again. Thus this Presidential Regulation at the same time strengthens executive power that goes far beyond the legislature and the judiciary. In fact, in a democratic country, the executive, legislative and

¹²<https://litigation.co.id/administrasi-negara/618/sebab-ma-balkan-k-increase-iuran-bpjs>, d accessed on 15 October 2020.

¹³<https://pshk.or.id/blog-id/tiga-cacat-hukum-kepuhan-jokowi-npapan-iuran-bpjs-and-the-consequences/>, accessed on 15 October 2020.

¹⁴<https://www.jogloabang.com/keseh/perpres-64-2020-perubahan-kedua-perpres-82-2018-jaminan-kkes>, accessed on 15 October 2020.

judiciary have the same high position. Apart from a legal point of view, the increase in BPJS Kesehatan premiums, if seen from the point of view of empathy for the people, has injured humanity, the authors consider that the Government does not have sensitivity and empathy for the mystical atmosphere and the economy of the people who have been hit by Covid-19. The people are already angry with the many burdens of life that are borne alone without any responsibility from the government. In a country that is currently hit by the Covid-19 pandemic, the economic and health crisis is a major obstacle. and people's low purchasing power is behind it and becomes a burden to life. The author considers that currently the public has not been able to fully comply with the First Amendment of the Presidential Regulation on Health Insurance, especially with regard to Article 34 mentioned above, as well as to the Presidential Decree No. 64 of 2020.¹⁵

Not a few people are confused, because in addition to having to be burdened by the obligation to pay higher dues, they are also afflicted by ignorance of the definite reason for them to carry out this obligation. The protests and criticisms made by the public are evidence that the government is not right to raise the JKN BPJS Health fee. It takes real efforts that are able to calculate in order to create a middle way that in addition to overcoming the problem of BPJS Health's financial deficit also balances the standard of life of the community as a whole, especially in the current COVID-19 pandemic.

¹⁵<https://news.detik.com/berita/d-5127498/ini-alasan-ma-kini-setl-kTerbang-iuran-bpjs-kkes>, accessed on 15 October 2020.

The government must be serious in realizing the aspirations of the Indonesian people to build certainty of social protection and welfare for all citizens, through the BPJS Health JKN program, the efforts that must be taken are none other than efforts that rely on the ease of the community to contribute to the JKN BPJS program. Health is running as mandated in the legislation. So that in the end, the aspirations of the nation that have been mandated in the supreme state constitution can actually be realized.

Based on the discourse regarding the problems that have been elaborated above, the author will conduct a thesis research with the title "POLITICS OF THE PRESIDENT LAW NUMBER 64 OF 2020 AFTER THE RULES OF THE SUPREME COURT NUMBER 7 P / HUM / 2020"

B. Statement of Problem

1. How is the Legal Politics of Presidential Regulation Number 64 of 2020 After the Decision of the Supreme Court Number 7 P / Hum / 2020?
2. What are the implications of Presidential Regulation Number 64 of 2020 after the Supreme Court Decision Number 7 P / Hum / 2020 on the welfare of the community amid the COVID-19 Pandemic?

C. Objective of Research

The objectives to be achieved are as follows:

1. To analyze the substance of the Political Law of Presidential Regulation Number 64 of 2020 Post Supreme Court Decision Number 7 P / Hum / 2020.

2. To describe the implications of Presidential Regulation Number 64 of 2020 after the Supreme Court Decision Number 7 P / Hum / 2020 on the welfare of the community amid the COVID-19 pandemic.

D. Benefit of Research

With research on the Legal Politics of the Establishment of Presidential Decree Number 64 of 2020 after the Supreme Court Decision Number 7 P / Hum / 2020 (Judging from the State of Welfare and Maqasid Al-Syari'ah Theory) as described above, it is hoped that the results of this study can provide benefits the following:

1. Theoretical Benefits

The results of this study are expected to provide scientific contributions and can be used as reference material for both students, teachers and practitioners in the field of law in terms of writing scientific papers related to Legal Politics related to the Establishment of a National Health Insurance Presidential Decree in terms of welfare State Theory and Maqasid Al. -Syari'ah.

2. Practical Benefits

The results of this research can then provide meaningful input in the application and formation of laws in Indonesia, especially regarding the making of laws and regulations that are in accordance with the conditions of the community when it is worsened by the weakening of the community's economy caused by natural and non-natural symptoms such as COVID-19.

E. Research methods

The research is a translation from English, namely research. The word research comes from re (return) and to search (search). Research means searching again .. therefore, research is basically "a search effort". If a study is a search effort, then the question arises what is it looking for? Basically what is sought is true knowledge or knowledge.¹⁶

The research method consists of two words, namely the method word and the research word. Method is a scientific activity related to a way of working to understand a subject or object of research, an effort to find answers that can be scientifically justified.¹⁷

1. Types of research

The type of research that the author uses in the preparation of writing legal research is normative juridical research or literature, namely legal research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. These materials are arranged systematically, studied, then a conclusion is drawn in relation to the problem under study. Legal research that is carried out by examining library materials or secondary data can be called normative legal research or literature law research. The normative legal research or literature includes:¹⁸

1. Research on legal principles
2. Research on legal systematic

¹⁶ Zainuddin Ali, MA, *Legal Research Methods*, (Jakarta: Sinar Grafika, 2016), 1.

¹⁷ Rosady Ruslan, *Research Methods of Public Relations and Communication*, (Jakarta: Rajawali Pers, 2003), 24.

¹⁸ Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta, UI Press, 1986), 34.

3. Research on the level of verbal and horizontal synchronization
4. Comparative law
5. Legal history

This research uses a normative juridical approach, namely doctrinal legal research which refers to legal norms,¹⁹ so this research emphasizes secondary sources of material, both in the form of statutory regulations, Supreme Court decisions, as well as western legal theories and Islamic legal theories, in addition to examining legal principles that are theoretical and scientific in nature to analyze the problems discussed.²⁰

This literature research intends to examine more deeply the background of the current situation and social phenomena, individuals, groups, institutions, and society. This is because this study emphasizes the analysis or review of secondary data by understanding that positive law is a set of rules or positive norms in the statutory system that regulates all human life. So from this research it is hoped that a detailed and systematic description of Indonesian law related to the Legal Politics of the Establishment of Presidential Decree Number 64 of 2020 Amid the Covid-19 Pandemic Post-Supreme Court Decision Number 7 P / Hum / 2020.

2. Research Approach

The research approach is a method or way of conducting research.²¹ From the meaning of the concept, it is clear that what is desired is

¹⁹ Bambang Waluyo, *Legal Research Methods*, (Semarang, PT. Ghalia Indonesia, 1997), 13.

²⁰ Soerjono Soekanto, Sri Mamudji, *Normative Legal Research A Brief Overview*, (Jakarta, PT. Raja Grafindo Persada, 1995), 13.

²¹ Suharsimi Arikunto, *Research Procedure: A Practice Approach* (Jakarta: Rieneka Cipta, 2002), 23.

information in the form of a description and requires the meaning that is in the legal material. In accordance with the type of research, namely normative legal research (normative juridical), more than one approach can be used. In this study, researchers used a conceptual approach.²²

A conceptual approach (conceptual approach) is an approach that examines the concepts of views and doctrines that develop in law and religion. This briefing was carried out to examine more deeply the Legal Politics of the Establishment of Presidential Decree Number 64 of 2020 in the midst of the Covid-19 Pandemic after the Supreme Court Decision Number 7 P / Hum / 2020 which was reviewed from the State of Welfare Theory and Maqashid Al-Syari'ah, so that later You will find a common ground for both similarities and differences which will be very helpful in the analysis process.

The statutory approach is an approach in the form of statutory regulations as a basic reference in conducting research. The statute approach is used to examine statutory regulations which in normalization still lacks or even foster deviant practices both at the technical level or in their implementation in the field. This approach is carried out by examining all laws and regulations that are related to the problem (legal issue) being examined. This statutory approach, for example, is carried out by studying

²² Abdulkadir Muhammad, *Law and Legal Research* (Bandung: PT. Citra Aditya Bakti, 2004), 113.

the consistency / suitability between the Basic Law and the Law, or between one Law and another.²³

The case approach is one type of approach in normative legal research where researchers try to build legal arguments in the perspective of concrete cases that occur in the field, of course, these cases are closely related to legal cases or events that occur in the field. For this reason, this type of approach usually aims to find the value of truth and the best way out of legal events that occur in accordance with the principles of justice. This approach is carried out by analyzing cases related to the legal issues at hand. The cases that are reviewed are cases that have received a final court decision.²⁴

The historical approach (historical approach) is the approach used to find out the historical values that become the background and which influence the values contained in a statutory regulation. The historical approach (historical approach) is widely used to research and examine the history of its relation to the discussion which is the topic of discussion in legal research. Usually researchers want truth not only based on dogmatic truth, but also want historical truth contained in statutory regulations. This approach is carried out in the framework of understanding the philosophy of the rule of law from time to time, as well as understanding changes and

²³ Peter Mahmud Marzuki, *Legal Research*, Prenada Media, Jakarta, 2005, 87-91.

²⁴ Soerjono Soekanto and Sri Mamuji, *Normative Legal Research (A Brief Overview)*, Rajawali Pers, Jakarta, 2001, 14.

developments in the philosophy underlying these legal rules.²⁵

3. Type of Data

The type of data used in this research is the type and source of data that will be used as the basis for supporting this research is the data collected comes from secondary data. The secondary data referred to include, among others, primary legal materials, secondary legal materials and tertiary legal materials in the form of basic norms, legislation, results of scientific research, books and so on.²⁶

a. Primary legal material

Namely, legal materials that have binding power as the main basis used in the framework of this research are Presidential Regulation Number 64 of 2020 and the Decision of the Supreme Court Number 7 P / HUM / 2020.

b. Secondary legal material

Are materials that are closely related to primary legal materials and can assist / support, analyze and understand primary legal materials, such as research results, seminar results, works from legal circles, and other documents that are closely related to the Presidential Regulation regarding the increase in BPJS contributions.

²⁵ S. Nasution, *Research Methods (Scientific Research) Thesis proposal, Research Design, Hypothesis, Validity, Sampling, Population, Observation, Interview, Questionnaire*, (PT. Bumi Aksara, Jakarta, 4th Printing, 2011), 16.

²⁶ Amiruddin, Zainal Asikin, *Introduction to Legal Research Methods*, (Jakarta, Raja Grafindo Persada, 2004), 309.

Legal materials which consist of legal books or journals containing basic principles (principles of law), views of legal experts (doctrines), results of legal research, legal dictionaries, and legal encyclopedias. Interviews with sources, a legal expert to provide a legal opinion about a phenomenon, can be interpreted as secondary legal material. However, it is necessary to look at the scientific capacity and should not be involved with the incident so that the comments given become objective which will later be used as analysis in this study.²⁷

c. Tertiary legal materials

Is a legal material that provides instructions or explanations for primary and secondary legal materials such as legal dictionaries, encyclopedias, and others related to it.

The collection of legal materials in library research is by means of documentary techniques, which are collected from a review of library study archives such as books, papers, articles, magazines, journals, newspapers or the work of experts. In addition, viewing video sites from YouTube is also one of the techniques for gathering legal materials that support documentary techniques in this research and serves to obtain legal materials that support research if needed.

4. Data Processing Methods

In the data processing section, the procedures for processing and analyzing legal materials include:

²⁷ Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2019), 169.

a. *Editing*

The first stage is carried out to re-examine the data that has been obtained, especially from its completeness, clarity of meaning, suitability and relevance to other data groups with the aim of whether the data is sufficient to solve the problems under study to reduce errors and shortages of data in research and to improve data quality.²⁸

b. *Classification*

Reducing existing data by arranging and classifying the data obtained into certain patterns or certain problems to make it easier to read and discuss according to research needs.

c. *Verifying*

Data verification is proving the correctness of data to ensure the validity of data that has been collected. This verification is done by digging deeper into the contents of the legislation to be studied so as to describe the results of whether the data is suitable for analysis.²⁹

d. *Analyzing*

Analyzing is the process of simplifying words into a form that is easier to read and easier to interpret. The process of presenting classified data is interpreted by linking existing data sources while being analyzed according to the items studied in this study. The results of the analysis of

²⁸ Moh. Nazir, *Research Methods*, (Jakarta: Ghalia Indonesia, 2011), 346.

²⁹ Nana Sudjana, Awal Kusuma, *Research Proposal in Higher Education*, (Bandung: Sinar Baru Alnesindo, 2008), 84.

the issues discussed were reviewed in this study and then described descriptively in the research report. The data analysis used by the author is juridical normative, namely legal research carried out by examining library materials or secondary data as a basis for research by conducting a search of the regulations and literature related to the problem under study.³⁰ To support this normative legal research the author also uses empirical legal research, namely the approach carried out by field research by observing and observing what is happening in the field, the application of these regulations in practice in society.³¹

F. Previous research

This previous research is very important in order to find points of difference and similarities as well as a comparison in this study. To the best of the researcher's knowledge, several titles have been found that have to do with this research, so that it is easier to understand the similarities and differences, the writer will present a table as follows:

1. Monica Pertiwi, Herbasuki Nurcahyanto, "The Effectiveness of the Bpjs Health Program in the City of Semarang (A Case Study of Patients Using Bpjs Health Services at Spondol Puskesmas)". This study discusses public complaints about the services of this program. Health services at the Spondol puskesmas cannot be said to be effective, seen from the many patient complaints about the long

³⁰ Soerjono Soekanto dan Sri Mamudji, *Normative Legal Research*, (Jakarta: Raja Grafindo Persada, 2006), 35.

³¹ Soerjono Soekanto dan Sri Mamudji, *Normative Legal Research*, (Jakarta: Raja Grafindo Persada, 2006), 47-48.

process and long queues. In addition, the waiting room is not too large with a large number of patients, making the waiting room not conducive. Such circumstances make many patients stand and wait outside. This should also be of concern to both the government and the Srondol Community Health Center as the health service provider to provide comfort to patients while doing medication. This research uses a quantitative approach. The data was collected by using interview techniques, documentation, literature study and observation. The data analysis technique used in this research is descriptive quantitative data analysis technique, namely by describing the research results and analyzing the data obtained from the research results. Both discuss the treatment and welfare of the community, seen from the government under it, which handles the focus on the effectiveness of services to the community. namely by describing the research results and analyzing the data obtained from the research results. Both discuss the treatment and welfare of the community, seen from the government under it, which handles the focus on the effectiveness of services to the community. namely by describing the research results and analyzing the data obtained from the research results. Both discuss the treatment and welfare of the community, seen from the government under it, which handles the focus on the effectiveness of services to the community.

2. Faisal Ridho, "Implementation of Bpjs Policy in Increasing National Health Insurance in Probolinggo Regency". This study discusses the policy from the government regarding the National Health Insurance program that is not maximal in its implementation, especially in terms of health service

administration and there are still many people who have not registered as members of the BPJS Kesehatan. This research will be conducted at the BPJS Kesehatan office and Waluyo Jati Kraksaan Regional Hospital. Researchers consider the implementation of the BPJS policy regarding the National Health Insurance program there are still problems and the government must respond immediately to the problems of the BPJS health program so that it can be implemented optimally and so that the impact of the BPJS health program can be felt by the community. The method used to solve the problems in this study is a qualitative method. Together discussed the BPJS policy in increasing National Health insurance. Focus on inhibiting factors in implementing BPJS policies in increasing the National Health Insurance.

3. Rika Nuryanti, "The Influence of Service Quality and Service Justice on Patient Satisfaction at the Participants of Bpjs Kesehatan Puskesmas Sukodono", This study discusses the mechanisms in service in Sragen BPJS Kesehatan in its implementation is still far from the meaning of justice. In the card activation process, it can only be used a week after registration. Faske refused PBI participants to seek treatment. In health facilities I, the inpatient room is still very limited, poor service is seen in the reluctance of the facilities to be used or not serious in treating patients. Referrals from health institutions that are limited and not flexible, and medical costs that are not fully covered by BPJS Kesehatan
- Consist of research methodology, research variables, population and samples, data and data sources, data collection techniques, and data analysis techniques;

Together discussed the aspects of social justice that exist in the community.

Focus on service quality and patient satisfaction as well as BPJS contributions.

Table 1.1

Previous Research

NO	Researcher Name and Title	Formulation of the problem	Research Findings	Difference
1.	Monica Pertiwi, Herbasuki Nurcahyanto, "The Effectiveness of the Bpjs Health Program in the City of Semarang (A Case Study of Patients Using Bpjs Health Services at Spondol Puskesmas)"	1. How is the Program Effectiveness BPJS Health in Semarang City? 2. What are the inhibiting factors in the effectiveness of the BPJS program Health on Semarang city?	1. In this study, find indicators of program understanding and indicators of the BPJS program objectives Health is an effective indicator or can be said to be effective. 2. Conformity between the three elements of implementation program (program, user, and organization) has not been going well and <i>the output</i> which is not in accordance with expectations become one of the inhibiting factors in implementing the BPJS program Health in Semarang City.	In this study, the problems studied were more on the indicators and the percentage level of feasibility of BPJS services carried out in the city of Semarang.
2.	Faisal Ridho, "Implementation of Bpjs Policy in Increasing National Health	1. How is the implementation of BPJS policies in increasing the	1. This research finds various problems regarding the improvement of the national	This study discusses the BPJS policy in increasing

	Insurance in Probolinggo Regency"	National Health Insurance in Probolinggo Regency? 2. What are the inhibiting factors in implementing BPJS policies in increasing the National Health Insurance in Probolinggo Regency?	health insurance id Probolinggo district 2. This research finds inhibiting factors in the implementation of policies on national health insurance and then there are several solutions that can be found in this research.	health insurance in Probolinggo Regency
3.	Rika Nuryanti, "The Effect of Service Quality and Service Justice on Patient Satisfaction in Bpjs Healthcare Participants in Sukodono Health Center, Sragen "	1. Is there a significant influence between Service Quality and Patient Satisfaction? 2. Is there a significant effect between fairness of service on patient satisfaction?	The research found that the service quality variable, the BPJS service justice variable, simultaneously and had a positive effect.	In this study, prioritizes the effect of service and justice on BPJS patients.

Based on some of the previous studies above, the most fundamental difference lies in the focus of the research. 2 research by Monica Pertiwi, Herbasuki Nurcahyanto and Rika Nuryanti on indicators and the level of feasibility of the percentage of service-based BPJS services and the level of justice for BPJS participants. In this study it refers more to empirical, but on the other hand there is

how the role of Law No. 40 of 2004 concerning the National Social Security System. Meanwhile, the research conducted by Faisal Ridho focuses on the direction of BPJS policies in increasing health insurance in the sense of how the law functions to protect the public in obtaining health insurance mandated by the 1945 Constitution. The three previous studies above have different findings. by the authors of this study. The findings in the research of Presidential Decree Number 64 of 2020 concerning health insurance caused social unrest, namely the increase in BPJS contributions accompanied by the current VOVID-19 pandemic which had a negative impact on people's buying and selling power. This research also provides an overview of the politics of law on the issuance of the Presidential Regulation.

G. Structure of Discussion

In this thesis, the arrangement is carried out systematically which is divided into four (4) chapters. Each chapter consists of several sub-chapters which are useful for explaining the scope and problems of the object under study. The order and layout of each chapter and sub-chapter and the subject of discussion are as follows:

CHAPTER I INTRODUCTION, consisting of the background of the problem, the formulation of the problem which contains two questions, research objectives, research benefits, research methods consisting of five points, namely: (Research Types, Research Approaches, Types of data and legal materials, Data Collection Methods, and Data processing methods.), Previous research and writing systematics. In this chapter, the authors present an overview to provide a universal pattern of research reports. It is hoped that this explanation will provide an overview

of the concept of this research which will eventually find the problems to be examined.

CHAPTER II LITERATURE REVIEW consists of a normative juridical review as a theoretical basis for analyzing the problem (problem formulation). Development of data / information, substantially and methods relevant to the research problem. In addition, it also includes discussion of the theory of the Welfare State, Political Law, Maqosid Al-syari'ah, all of which are related to the decision of the Supreme Court in deciding cases related to the formation of Presidential Regulation Number 64 of 2020. This chapter also discusses research methodologies which include, types research, methods of approach, types and sources of legal materials, techniques of collecting legal materials and techniques of analysis of legal materials.

CHAPTER III RESEARCH RESULTS AND DISCUSSION. Contains data descriptions of the results of literature research that are edited, classified, verified, and analyzed to answer the problem formulation, namely the first discussion is what is the background of the birth of Presidential Regulation Number 64 of 2020, then what is the decision of Presidential Regulation Number 64 of 2020 when viewed from the theory of the Welfare State Political Law, Maqosid Al-syari'ah.

CHAPTER IV CLOSING, which consists of conclusions and recommendations / suggestions. Short answers to each point of the problem statement. Suggestions or recommendations, namely, suggestions to parties related to research for the good of society and suggestions for further research in the future.

CHAPTER II

LITERATURE REVIEW

Political policies are taken in determining generally applicable legal rules in order to strengthen the formation of sustainable laws and regulations. Since the drafting of the SJSN Law and the BPJS Law until the issuance of these regulations, they have reaped pros and cons among the public and academics. Political theory of law as a tool of analysis in order to sharpen the direction of the formation of regulations related to the right to health, the character of legal products in the midst of a pandemic. The theory of the welfare state makes a theory that is in line with the basis of the Indonesian State and affirms that the State whose government guarantees the implementation of the people's welfare. Maqasid sharia becomes a balancing theory between the political theory of law and the welfare state, in this case the maqasid sharia provides the concept of knowing the wisdom of the values of sharia targets' which are expressed and implied in the Qur'an which aims to benefit humans by meeting the needs of *dharuriyah*, *Hajj* and *Tahsiniyah*.

1. Definition of Legal Politics

Legal politics according to Abdul Hakim G. Nusantara is legal policy (*legal policy*) which is to be implemented and implemented nationally by a certain government.³² Meanwhile, Satjipto Rahardjo sees Political Law as a necessity to make choices regarding goals and methods to be used to achieve these goals.³³

³² The opinion of A. Hakim G. Nusantara quoted by Mulyana W. Kusuma, *perspective, theory, and legal wisdom*, (Rajawali Pers, Jakarta, 1986), 42.

³³ Satjipto Rahardjo, *Law Science*, (Bandung: Bandung Alumni Publisher, 1986), 334.

Tengku M. Radhie defines legal politics as a statement of the will of the state authorities regarding the laws that apply in their territory and regarding the direction in which the law is developed. So how the law will regulate the life order of the people comes from legal politics.³⁴

The politics of law in the context of realizing a national legal system will be determined by various factors, such as the basis and style of politics to be built, the economic system to be developed including an understanding of security, and also about the development of society, the reality and structure of society as well as global trends that influence it. .³⁵

LJ van Apeldorn further limits the political understanding of law to written law. He uses the term political legislation, which is defined as setting the objectives and contents of statutory regulations. law, the rule of law, and enforcement itself.³⁶

Because law politics is projected to create an *ius constituendum* for certain fields (substance) in society, Bagir Manan argues that politics is none other than political economy, culture politics, politics of defense and security (Defense and Security), and politics of politics itself. . So the politics of law includes the politics of law formation, the politics of legal determination and the politics of law enforcement and enforcement.³⁷

³⁴ Tengku M. Radhie, "Renewal and Political Law in the Context of National Development" in Priama Magazine, Number 5 Year II December 1973, 42.

³⁵ A. Mukthie Fadjar, *Several Legal and Legal Development Problems. Development*, (Malang: Publisher of Faculty of Law, Universitas Brawijaya, 1996), 2.

³⁶ Padmo Wahyono, "Investigating the Process of the Formation of Legislation, Justice Forum No. 29 / April 1991, 65 in Kotan Y. Stefanus, *Development of State Government Power*, (Yogyakarta: Publishing UAJ Yogyakarta, 1998), 11.

³⁷ Bagir Manan. "National Law Development" Writing Contribution for Mochtar Kusumaatmadja's Book: *Educators and Statesmen, Collection of Writing Respect for the 70 Years of Prof. Dr. Mochtar Kusumaatmadha, SH., LLM*, (Bandung: Alumni Publisher, 1999), 223-263.

Bagir Manan argues that legal politics consists of legal politics that are permanent (permanent) and legal politics are temporary in nature. What remains related to the legal attitude which will always be the basis for policy formation and law enforcement. For Indonesia, permanent legal politics include: (1) There is an Indonesian legal system; (2) A national legal system built on and to strengthen the principles of Pancasila and Constitution in 1945; (3) There is no law that grants privileges to certain citizens based on ethnicity, race or religion. Even if there are differences, it is solely based on national interests in the framework of national unity and unity; (4) Formation of law takes into account the plurality of society; (5) Customary law and other unwritten laws are recognized as a subsystem of national law as long as it is evidently alive and maintained in the community; (6) The formation of the law is entirely based on community participation; (7) Laws are formed and enforced for the sake of general welfare (social justice for all people) the creation of a democratic and independent Indonesian society and the implementation of a law-based and constitutional state.³⁸

Temporary Law Politics is a policy that is determined from time to time as needed.³⁹ Included in this category are things such as determining priorities for the formation of colonial legislation, reforming laws and regulations that support national development and so on.

M. Mahfud MD in a book that is lifted from his dissertation at Gajah Mada University provides a definition of legal politics as Legal Polio which will be and

³⁸ Bagir manan, "National Law Development" Contribution of writings to Mochtar Kusumaatmadja's book: *Educators and Statesmen, Collection of Writing Respect for 70 Years of Prof. Dr., Mochtar Kusumaatmadja SH., LLM*, (Bandung: Alumni Publisher, 1999), 200-203.

³⁹ Winardi, Sirajuddin, "Political Law", (Malang: Setara Press, 2019), 7.

has been implemented nationally by the Indonesian government which includes: (1) legal development which consists of making and updating legal materials. in order to be in accordance with labor; (2) implementing existing legal provisions, including affirming institutional functions and fostering law enforcers. "⁴⁰

Bintan Saragih in his book *Politics Hukum*, provides the definition of legal politics as "policies" taken (taken) by the state (through its institutions or officials) to determine which laws need to be replaced, or which need to be changed, or which laws need to be maintained, or laws regarding what needs to be regulated or so that the administration of the state and government can take place in a good and orderly manner so that the goals of the state (such as the welfare of the people) can be realized gradually and in a planned manner.

Hikmahanto Juwana divides legal politics into two dimensions; The first dimension is legal politics which is the basic reason for the issuance of statutory regulations (basic policy), while the second dimension of legal politics is the purpose or reason behind the enactment of laws and regulations. "⁴¹

Bernard L. Tanya emphasized that legal politics is always ideal, and departs from idealism. According to Bernard, political law is more like ethics, which demands that a chosen goal must be justified by reason that can be tested and tested with moral criteria. So that the polick of law has an ideological function for two fundamental things; namely (1) providing a basic point of departure and direction for the legal order in managing various problems in various fields in order to

⁴⁰ M. Mafad MD, *Politics in Indonesia*, (Qakarta: LP3ES, 1999), 9.

⁴¹ Hikmahanto Juwana, " *Political Law of Economic Law in Indonesia* " Article in the Journal of Law Volume 1, Number 1.University of North Sumatra, (2005), 24-39.

achieve common goals, (2) directing and mobilizing all the potential that the law has to achieve common goals.

Based on various definitions of legal politics as described above, it can be concluded that legal politics is a policy as a basis for administering the state, especially in the field of law regarding laws that will run, are ongoing and have been in effect which are taken from the values that grow and live and apply in society to achieve the goals of the state as stated in the 4th paragraph of the Preamble to Constitution in 1945.

Article II of the Transitional Rules of Constitution in 1945, which have now been amended to Article I of the Amendments to the Amendments to the Amendments to the Transitional Rules of Constitution in 1945, have indicated that the government is the maker of laws in Indonesia in order to realize the ideals of national law. In formulating and stipulating the legal politics that has been and will be carried out, legal politics devolves legislative authority to state administrators, but still observes the values prevailing in society.⁴² then the flow of legal politics that is intended is in order to achieve the aspired state goals in accordance with national needs.

Law as a social rule or norm is inseparable from the prevailing values in a society, that it can be said that law is a reflection and concretization of the values that one day prevail in society.⁴³ The relationship between law and politics lies in the fact that the two cannot be separated both in its formation and implementation.

⁴² Frans Magnis Suseno, *Political Ethics: Basic Principles of Modern State*, (Jakarta: Gramedia Pustaka Utama, 1994), 310-314.

⁴³ Soerjono Soekanto, *Principles of Legal Sociology*, (Jakarta: Raja Grafindo Persada, 1999), 14.

Diponegoro University Constitutional Law Expert, Soehardjo SS, argues that law and politics are a pair. This is evidenced by the significant influence of political configuration on legal products in Indonesia.

National law is all laws that apply in the territory of the Republic of Indonesia, both in the form of written and unwritten laws. Legislation is one form of written law that exists. Laws and regulations and the process of their formation play a significant role in the development of national laws. This is because, in the State of Indonesia, laws and regulations are the main way of creating laws, legislation is the main foundation of the national legal system. In addition, laws and regulations are very effective instruments in achieving legal reform (*law reform*) because of its binding and compelling legal force. Statutory regulations also provide higher legal certainty than customary law, or jurisprudence law.

Legislation is a written regulation that contains legally binding norms and is established or stipulated by state institutions or authorized officials through the procedures stipulated in Law number 12 of 2011 concerning the formation of statutory regulations. Meanwhile, the formation of statutory regulations includes the stages of planning, preparation, discussion, ratification or stipulation, and enactment.

From a political perspective, law is seen as a political product or the result of considerations and the formulation of public policies. The House of Representatives has the power to form laws and each bill is discussed by the House of Representatives and the President for mutual approval.⁴⁴ Likewise, the President

⁴⁴ See Article 20 paragraph (1) and (2) Body of the 1945 Constitution.

has the right to submit a bill to the House of Representatives.⁴⁵ So that the ratification of a Draft Laws and Regulations into a Law is a form of mutual agreement between the President (Executive) and the House of Representatives (Legislative). This is the law politics that is currently running as mandated by the Constitution.

In statutory law regulations in Indonesia, the power of law obtained in a law is in accordance with the hierarchy of existing laws and regulations. The hierarchy of statutory regulations is as follows:

- a. Constitution in 1945;
- b. MPR Decree;
- c. Laws / Government Regulations in Lieu of Laws;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regulation; and
- g. District / City Regional Regulations.

No single law may conflict with the hierarchy of statutory regulations. When there is an overlap of existing laws and regulations or the content of which is contrary to the higher hierarchy, there is an evaluation mechanism for it. For statutory regulations that are contrary to the Constitution, namely Constitution in 1945, the review mechanism is by submitting a request for a judicial review at the Supreme Court.

In relation to the material content of laws and regulations in Indonesia, it must reflect important principles. These principles, namely:⁴⁶

- a. *The principle of protection*, namely that the content of each statutory regulation must provide protection to create public order;

⁴⁵ See Article 5 paragraph (1) Body of the 1945 Constitution.

⁴⁶ The explanation of Article 6 paragraph (1) and (2) Article 10 letter d Law Number 24 of 2011 concerning BPJS State Gazette of the Republic of Indonesia Number 116 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5256.

- b. *Humanitarian principles*, namely that the content of each statutory regulation must proportionally reflect the protection and respect for human rights and the dignity of every Indonesian citizen;
- c. *The principle of kinship*, namely that the content of each statutory regulation must reflect deliberation to reach consensus in every decision making;
- d. *The principle of archipelago*, namely that the content of each statutory regulation must take into account the interests of the entire territory of Indonesia, as well as the content of the laws and regulations that are part of the national legal system based on Pancasila and Constitution in 1945;
- e. *Unity in Diversity Principle*, namely that the content of each statutory regulation must take into account the diversity of the population, religion, ethnicity and class, regional special conditions and culture in the life of the community, nation and state;
- f. *Principle of Justice*, namely that the content of each statutory regulation must proportionally reflect justice for every citizen;
- g. *The principle of equality in law and government*, namely that the contents of each statutory regulation must not contain anything that is discriminatory based on background, among others; religion, ethnicity, race, class, gender or social status;
- h. *The principle of order and legal certainty*, namely that the content of each statutory regulation must be able to create order in society by guaranteeing legal certainty;
- i. *The principle of balance, harmony and harmony*, namely that the contents of each statutory regulation must reflect balance, harmony and harmony between the interests of individuals, society and the interests of the nation and state.

Apart from these principles, there is a scope or area of study from legal politics, which is as follows:

- a. The process of extracting the values and aspirations that develop in society by state officials who are authorized to formulate legal politics;
- b. The process of debate and the formulation of these values and aspirations into a draft of laws and regulations by state administrators who have the authority to formulate legal politics;
- c. State administrators authorized to formulate and determine legal politics;
- d. Laws and regulations containing legal politics;
- e. The factors that influence and determine a political law which will be, is being, and has been determined;
- f. The implementation of laws and regulations which are the implementation of the legal politics of a country. "⁴⁷

⁴⁷ Bernard L. Tanya, *Legal Polyclinic Agenda for Maritime Affairs*, (Yogyakarta Genta Publuhing. 2011), 1-12.

Thus, law as a means of community dimensional renewal is marked by changes in society and these changes have been directed or directed towards the achievement of legal politics in the field of legislation established by legislators. The existing legal principles formulated in the form of statutory regulations can be said to be useful or not when the law with these principles is executed properly or not. If it is executed incorrectly, it will certainly have bad consequences for the community, and this is clearly against the objectives of the state. Meanwhile, if executed properly, laws and regulations can be said to be beneficial to society in line with and in line with the ideals of national law.

A. Welfare State

In the context of welfare, it refers to an ideal model of development that is focused on increasing welfare through giving a more important role to the state in providing universal and comprehensive social services to its citizens.⁴⁸

Because the State is the highest organization among one group or several groups of people who have aspirations to live together in certain areas and have sovereign government.⁴⁹ And welfare is the welfare of society and individuals. Community welfare is the welfare of all individuals as a whole as members of society. In this case the welfare meant is the welfare of the community. And the welfare of the individual is a welfare that concerns the psyche (state of mind).

⁴⁸ <http://www.suharto/Pdf/Reinventing>. Depsos. accessed on 11 September 2020 at 23.12, 7.

⁴⁹ Moh Mahfud MD, *Basic and Indonesian State Administration Structure* (Revised Edition), (Jakarta: Renaka Cipta), 64.

1. Definition

According to Bessant, Watts, Dalton and Smith, the basic idea of the welfare state goes back to the 18th century when Jeremy Bentham (1748-1832) promoted the idea that the government has the responsibility to guarantee the greatest happiness / welfare of the greatest number of their citizens. Bentham uses the term "utility" to explain the concept of happiness or well-being. Based on the principle of utilitarianism that he developed, Bentham argued that something that can cause extra happiness is something good, and vice versa, something that causes pain is bad. According to him, government actions should always be directed to increase the happiness of as many people as possible.

From the viewpoint of Esping Anderson (1990), that the welfare state is not a concept with a standard approach. The welfare state is more often identified from the attributes of social service and transfer policies provided by the State (government) to its citizens, such as education services, income transfers, poverty reduction, so that both (welfare state and social policy) are often identified.⁵⁰ The welfare state, in essence, refers to the active role of the state in managing and organizing all social welfare, be it health, social services and others, which includes the responsibility of the State to ensure the availability of basic welfare services at a certain level for its citizens'.

Black's Law Dictionary states: The Welfare State is a nation whose government runs various social insurance programs, such as unemployment

⁵⁰ Siswo Yudo Husodo, *Dream of a Welfare State, introduction*, Cetkn I, July/2006, 8.

compensation, pensions, cash assistance for families, food stamps, and assistance for the blind or deaf-also the notion of welfare-state as a regulator:

Welfare State a nation in which the government underscores various social insurance programs, such as unemployment compensation, old age pensions, family allowances, food stamps, and aid to the blind or deaf also termed welfare regulatory state.⁵¹

Collin Colbuid English Dictionary: as quoted by Safri Nugraha states: The welfare state is a government system that provides free social services in terms of: health, education and financial assistance for residents who are unable to work due to old age, unemployment or illness.

Welfare State as' a system in which the government provides free social services such as health and education, and gives money to people when they are unable to work for example because they are old, unemployed, or sick.⁵²

Based on the description above, it can be seen that in the welfare state, the state intervenes and "intervenes" in efforts to improve the welfare of the entire community. This is done through a number of government programs and policies. Within the welfare state, the main functions and roles of welfare development are:⁵³

- a. Encouraging social investment (social investment) through the preparation and provision of human resources or a quality workforce.
- b. Increasing the Human Development Index (HDI) through policies and social services that have a direct impact on increasing the empowerment of the people in accessing social, economic, education and health resources and services.
- c. Strengthening the role and mandate of state obligations in realizing a real equality of life through the social protection system.

⁵¹ Bryan A Garner, *Seventh Edition's Black's Law Dictionary*, West Group St Paul, Minn, 1990, 1588.

⁵² Collin Colbuid English Dictionary, 1997, 1898, in Safri Nugraha, *Pivatisation of State Enterprises In The 20th Century A Step Forwards Or Backwards*, Faculty of Law UI, Jakarta, 2004, 1.

⁵³ In Edi Suharto, *MOSA's State of Welfare and Reinventing*, accessed from <http://www.policy.hu/>, 5.

Meanwhile, in the context of Indonesia, Hamid S. Atamimi, explained that: Since its establishment, the Indonesian State has been determined to establish itself as a state based on law (Reechtstaat). Even the Indonesian Reechtstaat is the Reechtstaat which "advances the general welfare", "educates the nation's life", and realizes a social justice for all Indonesian people. "Reechtstaat is a material Reechtstaat, the social one, which Hatta called the management state, a *Verzorgingsstaat* translation. ⁵⁴

This is as confirmed in the 4th paragraph of the preamble to the 1945 Republic of Indonesia Constitution, namely:

*"... to protect the whole Indonesian nation and all the blood of Indonesia and to promote public welfare, to educate the nation's life, and to participate in implementing world order based on independence, eternal peace and social justice ... "*⁵⁵

The protection of the entire Indonesian nation and all Indonesian bloodshed requires the active involvement of all Indonesians. In addition, the government as the mandate holder is obliged to provide the maximum possible protection for the entire Indonesian nation. The aim or aspiration to advance the general welfare is the basic reason and direction for the development of the Indonesian nation. Especially by easing the burden of BPJS dues amid the current COVID-19 pandemic.

In the concept of general welfare, the position of the Indonesian people is not an object solely for the benefit of the government and ultimately the state (from the point of view of the State Budget or for reasons of the financial

⁵⁴ Prajudi Atmosudirjo, *State Administrative Law*, (Jakarta: Ghalia Indonesia, 1994), 18.

⁵⁵ See Paragraph 4 of the 1945 Constitution.

deficit of BPJS contributions) but the real people besides the object should also be the subject of development (development target). The regime in power should ideally prioritize the welfare of all Indonesian people.

B. Maqasid Al-Shari'ah

The concept of Maqasid Syari'ah is to realize goodness as well as to avoid badness or to benefit and reject harm (dar'u al-mafasid wa jalb al-masalih), a term that is equivalent to the essence of the Maqasid Sharia is maslahat, because Islam and maslahat are like brothers. inseparable twins.

a. Definition

Maqasid Sharia consists of two vocabularies, namely al-maqasid and al-syari'ah. Al-maqasid is the plural form of the word almaqasid from the root al-qasd. Etymologically, al-qasd has several meanings, including the following:

First, the straight path (istiqamah al-tariq). this meaning refers to the word of Allah surah al-Nahl (16): 9 وَعَلَى اللَّهِ قَصْدُ السَّبِيلِ that Allah has the right to explain the straight path and invites creatures to always be on the straight path. This invitation is based on irrefutable evidence and arguments. The opposite of al-qasd is al-jair (a distorted path). The second is the most important goal (ali'timad wa al-amm). This meaning is often used and referred to by fiqh scholars and ushul fiqh scholars. The goal (almaqasid) is a reference in every act of mukallaf and the law changes along with the change in goal (al-maqasid). It is the innermost element that forms the basis for every

person's actions. The goals and intentions in this case are not fundamentally different.⁵⁶

In terminology, shari'ah are the laws of Allah which are intended for humans which contain wisdom and prosperity in life in this world and in the hereafter. Thus, any rule that replaces justice with injustice, compassion with the adversary, good with evil, or wisdom with nonsense, is a rule that does not belong to shari'ah.

Mohamad Zaidi Abdul Rahman summarizes the definitions of maqasid al-shari'ah from several maqasid experts by explaining that maqasid al-syari'ah is a meaning and secret that can be understood than Islamic sharia in the whole or most of the syari'ah process. In another definition, it is explained that maqasid al-syari'ah is an objective purpose that comes from sharia and the secrets that are laid by sharia makers for each of its laws. Al-Raysuni formulated these two definitions as objects determined by the Shari'a to be achieved for the benefit of humans.⁵⁷

According to Jasser Audah, maqasid al-syari'ah is the benefit or collection of benefit which is the purpose of enacting the law based on the explanation of shari 'or according to the strong suspicion of a muitahid. If this benefit did not exist then the law would not be mandated at all.⁵⁸

⁵⁶ Abd al-Rahman Ibrahim al-Kailani, *Qawaid al-Maqasid inda al-Imam al-Shatibi: 'Ardan wa Dirasatan wa Tahlilan* (Damishq: Dar al-Fikr, 2000), 44. See also Abd al-Qadir ibn Hirz Allah, *Dawabit I'tibar al-Maqasid fi Mahal al-Ijtihad wa Athruha al Fiqhiyyi* (Riyad: Maktabah al-Rushd, 2007), 25. See also Ibn al-Manzur, *Lisann al-Arab Juz III* (Beirut: Dar al-Lisan al -Arabic), 96.

⁵⁷ Mohamad Zaidi Abdul Rahman, "The Application of Maqasid Al-Syari'ah in State Administration: An Overview of Islamic History," *Journal of Fiqh*, No. 12 (2015), 13.

⁵⁸ Jasser Audah, *al-ijtihad al maqasidi*, (ttp al-syabkah al-arabiyyah li al-Abhas, 2011), 17.

Jasser Audah also explains *maqāṣid al-syari'ah* applicatively. According to him, *maqāṣid al-syari'ah* is a branch of Islamic science that answers all difficult questions and is represented by a word that looks very simple, namely "why?", Such as the following questions? Why does a Muslim pray? Why are zakat and fasting one of the pillars of Islam? Why is being nice to neighbors an obligation in Islam? Why is drinking even a small amount of alcohol a big sin in Islam? Why was the death penalty prescribed for people who raped or killed deliberately?.⁵⁹

The definition above is very clear and at the same time differentiates between *maqasid al-syari'ah* and *illat*, wisdom, and other terms. This definition also has consequences in the application of the law which differs from one term to another.

Illat is a characteristic that causes the enactment of law with conditions in the form of a clear character, a definitive and limited nature, and a nature that is correlative with the law.⁶⁰ *Illat* must be clear and concrete, while wisdom is sometimes abstract. Meanwhile, wisdom is the goal and the result of making a law stipulate. One of the important points that becomes the difference between *illat* and wisdom is that *illat* must be a clear and limited nature, which is the natural cause of a *shari'at*, while wisdom is unclear and unlimited.

⁵⁹ Jasser Audah, *al-ijtihad al maqasidi*, (ttp al-syabkah al-arabiyyah li al-Abhas, 2011), 4.

⁶⁰ Abdul Karim Zaidan, *al-wajiz fi Ushul Fiqh*, (ttp: Maktabah al-basair, tt), 203.

In fact, the Shari'a is set to aim at realizing the benefit of mankind in this world and the Hereafter.⁶¹ Some of the definitions of Maqashid sharia that were put forward by several previous scholars, among others;

- a. *Al-Imam Al-Ghazali*, Stating that Maqashid sharia, safeguarding the aims and objectives of sharia is a fundamental effort to survive, withstand the factors of damage and encourage prosperity.
- b. *Al-Imam Al-Syathibi*, Saying that Maqashid sharia is divided into two: first, relating to God's intention as the maker of Sharia and secondly related to the intent of mukallaf. Returning to the meaning of Shari'i (Allah) is benefit for his servants inside. Second, a place in the world and the hereafter. And returning to the intention of mukallaf by avoiding the damage in the world, therefore there must be an explanation between benefit (maslahah) and damage (mafsadah;
- c. *Ahmad al-Raysuni*, Mentioning that Maqashid sharia are the goals set by sharia to be achieved for the benefit of mankind;
- d. *Abdul Wahab Khallaf*, Mentioning that, the general purpose when Allah established His laws was to realize the benefit of mankind by fulfilling the needs of dharuriyah, hajiyah and tahsiniyah.⁶²

From the above understanding, it can be concluded that, Maqashid sharia is Allah SWT as the maker of sharia to provide benefits to humans, namely by fulfilling the needs of dharuriyah, hajiah and tahsiniyah, so that humans can live in goodness and become good servants of Allah. The conclusion is that Maqashid Shari'ah is a concept to know wisdom (values and objectives of syara 'which are expressed and implied in the Al-Qur'an and Hadith) established by Allah SWT for humans while the ultimate goal of the law is one, namely mashlahah or goodness and welfare of mankind both in this world and in the hereafter.⁶³

⁶¹ Ahmad Warson Munawwir, *al-Munawwir Arabic-Indonesian Dictionary*, cet. 14 (Surabaya: ProgressivePustakaPublishers,1997), 712.

⁶² <https://muamala.net/pengentuk-maqashid-syariah/>, accessed on November 1, 2020.

⁶³ Abd al-Qadir ibn Hirz Allah, *Dawabit I'tibar al-Maqasid fi Mahal al-Ijtihad wa Athruha al-Fiqhiyyi*, (Riyad: Maktabah al-Rushd, 2007), 179.

The scholars provide an overview of the Maqasid Sharia theory, namely that the Sharia Maqasid must be centered and resting on five main points of benefit, namely:

1. Benefit of Religion (hifzal-din)

The right to worship and practice religious teachings. This right is not only about maintaining the sanctity of religion, but also building religious facilities and creating healthy patterns of relationships in practicing religion, both among religions and with different religions. Allah also commands mankind to continue to uphold religion, this is written in His Word, Surat Ash-Shura verse 13:

شرع لكم من الدين ما وصى به نوحا والذي اوحينا اليك وما وصينا به
ابراهيم وموسى وعيسى ان اقيموا الدين ولا تتفرقوا فيه كبر على المشركين
ما تدعوهم اليه الله يجتبي اليه من يشاء ويهدي اليه من ينيب

"He has taught you what religion He revealed to Noah and what we have revealed to you and what we have testified to Abraham, Moses and Jesus, namely: Establish religion and do not be divided about it. very hard for those polytheists of religion that you exclaim them to him. Allah draws to that religion the person He wants and gives directions to His (religion) those who return (to Him) ". (Ash-Shura verse 13)

2. Benefit of the Soul (hifzal-nafs)

Maintain haq alhayat (*right to life*). This right is not just a tool for self-defense, but this right is also directed at creating a better quality of life for oneself and society. The right to life is oriented towards improving the quality of human life as a whole, not partially.

3. Benefit of reason (hifzal-aql),

Also known as haq al-ta'lim (*right to education*), this is oriented towards the preservation of reason called the fulfillment of intellectual rights

for every individual in society. This includes theft of one's copyrights, works and creations / intellectual property rights. This is explained in the word of Allah QS At-Tiin Verse 4:

لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَن تَقْوِيمٍ

"Indeed, we have created man in the best possible form, but this beautiful form is useless, if there is no second thing, namely reason. "

4. Benefit of Offspring (hifzal-nasl)

What is meant by Islamic protection for offspring is by requiring marriage and prohibiting adultery, determining who should not be married, how the methods of marriage are in accordance with the Shari'a and carried out with what conditions must be fulfilled, so that the marriage is considered valid and a mixture of two humans of different types are not considered valid and are the legal descendants of their father. does not only regulate that, but also prohibits things that bring in the case of adultery. As is

The word of Allah Taala QS, An-Nisa verse 4:⁶⁴

وَأَتُوا النِّسَاءَ صَدُقَتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هِيَ

"Give dowry (dowry) to the woman (whom you marry) as a voluntary gift. Then if they give you a portion of the dowry with pleasure, then eat (take) the gift (as food) which is delicious again with good results. " (QS An-Nisa verse 4)

5. Benefit of Assets (hifz al-mal)

Islam requires regulations regarding muamalah such as buying and selling, leasing, pawning, and so on, as well as prohibiting fraud, usury and obliging

⁶⁴ Ahmad Warson Munawwir, *al-Munawwir Arabic-Indonesian Dictionary*, cet. 14, (Surabaya: Progressive Pustaka Publishers, 1997), 712.

people who damage other people's property to pay for it / compensate for loss, property damaged by children under dependents, even those damaged by their pets. The benefits of property (hifz al-mal) have been reflected in His words QS An-Nisa 29.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who believe, do not eat each other's wealth in a way that is false, except by way of commerce that applies equally to you. and do not kill yourselves. Indeed, Allah is Most Merciful to you. " (QS An-Nisa verse 29)

Each level has its own classification, namely primary / primary rank (dharuriyyat), needs / secondary rank (hajjiyat) and complementary / tertiary rank (tahsiniyyat). In the determination of the law, this ranking order will show its importance when it conflicts with its benefit. The dharuriyyat rank took first place, then the hajjiyat preceded the tahsiniyyat rank. It could be interpreted that the third rank complements the second rank and the first rank is complemented by the second rank.⁶⁵

Dharuriyyat interpreted as a need that cannot be tolerated or postponed in order to maintain the integrity of the five points of benefit (al-aged al-khamsah), either by upholding the main principles, establishing the rules, rejecting the misery (al-mafasid) which or will that happened. Delaying or negating the first rank will threaten the existence of the five points. Hajjiyat is a condition which does not threaten the existence of the five points, but will only cause difficulties. For example, rukhsah is allowed to mengqasar or mengqasar for travelers.

⁶⁵ See Fathurrahman Djamil, *Philosophy of Islamic Law*, (Ciputat: Logos Wacana Ilmu, 1997), 126.

Meanwhile, tahsiniyyat is defined as a need that supports the improvement of human dignity in society and before God, of course paying attention and conformity to their appropriateness.⁶⁶

Based on the theoretical description above, a paradigm can be drawn regarding the issuance of Presidential Decree Number 64 of 2020 concerning National Health Insurance starting from the Politics of Law, the State of Welfare and the Maqasid Sharia, there is an essence that is mutually correlated. The politics of law can become an analytical knife to examine more deeply the hierarchy of the related laws and regulations. The welfare state is closely related to what happens in society when the legislation in question has been published. Maqasid sharia is a theory that is full of the meaning of benefit and justice for society after the issuance of the Presidential Decree on health insurance. Therefore, the author uses an analysis knife from the three theories that have been mentioned in order to achieve a deep urgency regarding the various regulations covering the Presidential Regulation on national health insurance to the welfare of the community that must be considered after the issuance of Presidential Regulation Number 64 of 2020 concerning National Health Insurance

⁶⁶ Muhammad Sa'id Ramdan al-Buti, *Dawabit al-Maslahah fi al-Shari'ah al-Islamiyah* (Beirut: Muassisah al-Risalah, 2000), 110-111. See Fathurrahman Djamil, *Philosophy of Islamic Law* (Ciputat: Logos Wacana Ilmu, 1997), 126-127.

CHAPTER III

RESEARCH RESULTS AND DISCUSSION

A. Political Law of Presidential Decree Number 64 of 2020 concerning National Health Insurance

1. Definition of National Health Insurance

National Health Insurance (JKN) is a Government program that was formed to provide assurance of comprehensive health insurance for all Indonesian people to live a healthy, productive and prosperous life. Health is the basic right of every person, and all citizens are entitled to optimal health services. Constitution in 1945 has a mandate that health insurance for the community, especially for the poor and underprivileged, is the responsibility of the central and regional governments. The amended 1945 Constitution, to be precise in Article 34 paragraph 2 states that the state develops a Social Security System for all Indonesian people.

The government implemented Constitution in 1945 by issuing Law No. 40 of 2004 concerning the National Social Security System (SJSN) to provide comprehensive social security for everyone in order to meet the basic needs of a decent life towards the realization of a prosperous, just, and prosperous Indonesian society.⁶⁷ Law No. 36/2009 on Health also emphasizes

⁶⁷ TNP2K, the National Health Insurance Program (JKN), accessed from <http://www.tnp2k.go.id/id/tanya-awab/klaster-i/program-jaminan-kesehat-an-nasional-jkn/>. November 5, 2020.

that everyone has the same rights in gaining access to resources in the health sector and obtaining safe, quality and affordable health services.

In the Academic Manuscript of the National Security System (SJSN) Law 2004, it is stated that the National Health Insurance Program (JKN Program) is a government and community program with the aim of providing comprehensive health insurance assurance for every Indonesian so that the Indonesian population can live healthy, productive, and prosperous.⁶⁸

UU no. 40 of 2004 concerning the National Social Security System (SJSN) does not specify the definition or meaning of JKN in any of its paragraphs or articles. However, by compiling several articles and paragraphs regulating social security programs, benefits, objectives and implementation procedures, there are several definitions formulated in the National Health Insurance Program, including:

*"The social security program that guarantees the cost of health care as well as the fulfillment of basic health needs that is carried out nationally is compulsory for all Indonesian citizens by paying periodic fees or fees paid by the Government to the non-profit health social security administering agency - BPJS Kesehatan."*⁶⁹

BPJS Kesehatan also carries out a government function (governing function) in the field of public services (public services) which were previously partially run by State-Owned Enterprises and partly by government agencies. The combination of the two functions of government

⁶⁸ Article 1 point 1 Law Number 40 of 2004 *Concerning the National Guarantee System of the State* Gazette of the Republic of Indonesia of 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456.

⁶⁹ Article 1 point 1 Law Number 40 of 2004 *Concerning the National Guarantee System of the State* Gazette of the Republic of Indonesia of 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456.

enterprises is reflected in the status of BPJS Kesehatan as a public legal entity that carries out public service functions in the field of national social security administration.

BPJS Kesehatan was formed with initial capital financed from the APBN and subsequently has its own assets which include BPJS Kesehatan assets and social security fund assets from sources as stipulated in law. The authority of BPJS Health covers the entire territory of the Republic of Indonesia and can represent Indonesia on behalf of the country in relations with international agencies. This authority is a separate characteristic that is different from legal entities and other state institutions. Thus, BPJS Kesehatan is called as a form of State-Owned Legal Entity (BHMN), so that the implementation of its duties is accountable to the President.⁷⁰

2. Mechanism for Implementing National Health Insurance

With the commencement of the National Health Insurance (JKN) program as of January 1, 2014, all health insurance programs that have been implemented by the government which include (Askes PNS, JPK Jamsostek, TNI, Polri, and Jamkesmas), are integrated into one scope, namely the Health Social Security Administration (BPJS Health). With the Jamkesmas program, the government is responsible for paying JKN contributions for the poor and

⁷⁰ Guidebook for Information on Social Security Administering Bodies, Optimizing the role of the 2017 edition.

needy people who are registered as Contribution Beneficiaries (PBI) participants.⁷¹

a. Principles of Implementing the National Health Insurance Program

In accordance with Law no. 40 of 2004 concerning SJSN, National Health Insurance is managed with the following principles:⁷²

- 1) Gotong royong, With the obligation of all participants to pay contributions, there will be a principle of mutual cooperation in which the healthy helps the sick, and the rich helps the poor;
- 2) Non-profit, Social Security Administering Bodies are strictly prohibited from making a profit. Contributions collected from the community are mandated fees, so the results of their development must be used for the benefit of the participants;
- 3) Openness, prudence, accountability, efficiency and effectiveness. This management principle underlies the entire management of funds originating from participant contributions and development proceeds;
- 4) Portability. This principle guarantees that even if participants change their place of residence or work, as long as they are still in the territory of the Republic of Indonesia they can still exercise their rights as JKN participants;
- 5) Participation is mandatory, so that all people become participants so that they can be protected (the government's hope). The application of JKN is still adjusted to the economic capacity of the people and the government and the feasibility of implementing the program;
- 6) Trust Fund, funds collected from participant contributions are funds deposited with the administering body to be managed properly for the benefit of the JKN program participants;
- 7) The results of the management of social security contributions are used entirely for program development and for the benefit of the participants as much as possible;

b. JKN Participant Conditions

As explained in the principles of implementing the JKN program above, membership is mandatory. Participants are everyone, including

⁷¹ NTNP2K, the National Health Insurance Program (JKN), accessed from <http://www.tnp2k.go.id/id/tanya-awab/klaster-i/program-jaminan-kesehat-an-nasional-jkn/>. Retrieved 5 November 2020.

⁷² Law Number 40 of 2004 concerning the National Guarantee System, accessed from <http://luk.staff.ugm.ac.id/atur/bpjs/> UU no. 40-2004SJSN.pdf. Retrieved 5 November 2020.

foreigners who have worked for at least 6 (six) months in Indonesia, who have paid contributions. JKN Participants consist of Contribution Beneficiary Participants (PBI) and Non-Contribution Beneficiary Participants (Non PBI).⁷³

1). Contribution Beneficiary Participants (PBI)

In Government Regulation Number 101 of 2012 concerning Recipients of Health Insurance Contribution Assistance, it states that:

- a) The Minister of Social Affairs stipulates the criteria for the poor and disadvantaged people after coordinating with the Minister and / or leaders of related institutions.
- b) The results of the data collection on the poor and the underprivileged carried out by the institution that organizes government affairs in the statistical sector (BPS) are verified and validated by the Minister of Social Affairs to be used as integrated data.
- c) The integrated data set by the Minister of Social Affairs is broken down by province and district / city and becomes the basis for determining the national PBI amount for Health Insurance.
- d) The Minister of Health registers the national number of PBI Health Insurance as participants of the Health Insurance program with BPJS Kesehatan.

For 2014, PBI JKN participants amounted to 86.4 million people whose data refers to the Integrated Database (BDT) of the Social Protection Program Data Collection (PPLS) which was conducted in 2011 by BPS and managed by the Secretariat of the National Team for the Acceleration of Poverty Reduction (TNP2K).⁷⁴ However, given the dynamic participation data, where

⁷³ Law Number 40 of 2004 concerning the National Guarantee System, accessed from <http://luk.staff.ugm.ac.id/atur/bpjs/> UU no. 40-2004SJSN.pdf. Retrieved 5 November 2020.

⁷⁴ Law Number 40 of 2004 concerning the National Guarantee System, accessed from <http://luk.staff.ugm.ac.id/atur/bpjs/> UU no. 40-2004SJSN.pdf. Retrieved 5 November 2020.

there are deaths, newborns, change of address, or participants are civil servants, the Minister of Health issued Circular Number 149 of 2013 which provides the opportunity for Local Governments to propose replacement participants whose number is equal to the number of participants. was replaced. Participants who can be replaced are those who have died, are PNS / TNI / POLRI, retired PNS / TNI / POLRI, their whereabouts are not known, or participants have other health insurance. In addition, the dynamic nature of this participation also concerns the transfer of the participants' welfare level, so that many participants who were previously registered as Jamkesmas participants are no longer joining the UDB.⁷⁵

2). Participants for Non-Contribution Assistance Recipients (Non PBI)

Non-PBI Participants in JKN are everyone who is not classified as poor and underprivileged, who pays their dues individually or collectively to BPJS Kesehatan. Non PBI JKN participants consist of:

- a) Participants who receive wages and members of their families, namely Everyone who works for an employer and receives a salary or wage, including among others Civil Servants, Members of the TNI, Members of the Police, State Officials, Government Employees of Non Civil Servants, Private Employees, and other meet the criteria of wage earners.
- b) Workers who do not receive wages and members of their families, namely anyone who works or does business at their own risk, among others, workers outside of work relationships or independent workers, and so on.

⁷⁵Law Number 40 of 2004 concerning the National Guarantee System, accessed from <http://luk.staff.ugm.ac.id/atur/bpjs/> UU no. 40-2004SJSN.pdf. Retrieved 5 November 2020.

- c) Not recipient workers and members of their families, everyone who does not work but is able to pay health insurance contributions, including investors, employers, pension recipients, veterans, independence pioneers, and other non-workers who meet the criteria of non-wage earners.

c. Dues

Provisions regarding delegated health insurance contributions to be further regulated in a Presidential Regulation include:⁷⁶

- 1) Percentage of wages for determining the nominal amount of contributions for participants receiving wages (Delegation of Law No. 40 of 2004 Article 27 paragraph 1)
- 2) The nominal amount of contributions for participants who do not receive wages and the review period (Delegation of Law No. 40 of 2004 Article 27 paragraph 2)
- 3) Amount of nominal contributions for aid recipients (Delegation of Law No. 40 of 2004 Article 27 paragraph 3)
- 4) The wage limit for calculating the contributions of participants who receive wages (Delegation of Law No. 40 of 2004 Article 27 paragraph 4)
- 5) Proportion of contributions that are gradually borne jointly by workers and employers (Delegation of Law No. 40 of 2004 Article 27 paragraph 1)
- 6) The amount of additional contributions for additional family members (Delegation of Law No. 40 of 2004 Article 28 paragraph 1).

d. Benefits Package

Provisions regarding the delegated health insurance benefit package to be further regulated in a Presidential Regulation include:⁷⁷

- 1) Health service packages including drugs and medical materials that are covered, limited or not covered (Delegation of Law No. 40 of 2004 Article 22, paragraph 1 and Article 26)
- 2) The amount of the breakdown of fees and types of servants who are subject to the reduction of fees (Delegation of Law No. 40 of 2004 Article 22 paragraph 2).

⁷⁶ Law Number 40 of 2004 concerning the National Guarantee System, accessed from [http://luk.staff.ugm.ac.id/atur/bpjs/UU no. 40-2004SJSN.pdf](http://luk.staff.ugm.ac.id/atur/bpjs/UU%20no.%2040-2004SJSN.pdf). Retrieved 5 November 2020.

⁷⁷ Jamsosindonesia, *SJSN (National Social Security System) Health insurance program*, accessed from [Http://www.jamsosindonesia.com/sjsn/Program/program_jaminan_keseh](http://www.jamsosindonesia.com/sjsn/Program/program_jaminan_keseh). Retrieved 5 November 2020.

e. Providing Services

Provisions regarding the provision of health insurance services which must be further regulated in a Presidential Regulation include:⁷⁸

- 1) Compulsory compensation provided by BPJS to participants in areas where health facilities are not yet available that meet the requirements to cooperate with BPJS (Delegation of Law No. 40 of 2004 Article 23 paragraph 3).
- 2) Standard class of service in hospitals (Delegation of Law No. 40 of 2004 Article 23 paragraph 4).

3. National Health Insurance Administrators

Based on Law Number 40 of 2004 and Law Number 24 of 2011, the Social Security Administering Body or BPJS was formed, which is an institution formed to administer the National Social Security program and the BPJS Health program officially came into effect on January 1, 2014.

Social Security Administering Bodies (BPJS) are legal entities established by law to administer social security programs.⁷⁹ BPJS according to the SJSN Law is a transformation of the existing social security administering bodies and it is possible to form new administering bodies in accordance with the dynamics of social security developments.⁸⁰

⁷⁸ Jamsosindonesia, *SJSN (National Social Security System) Health insurance program*, accessed from http://www.jamsosindonesia.com/sjsn/Program/program_jaminan_keseh. Retrieved 5 November 2020.

⁷⁹ Article 1 point 6 Number 40 of 2004 *Concerning The National Guarantee System of the State Gazette* of the Republic of Indonesia of 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456.

⁸⁰ Elucidation of paragraph 11 *Law Number 40 of 2004 concerning the National Guarantee System of the State Gazette* of the Republic of Indonesia of 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456.

BPJS Kesehatan and BPJS Ketenagakerjaan are public legal entities under the BPJS Law. The three criteria below are used to determine that BPJS is a public legal entity, namely:

- a. the manner in which the legal entity is established or the occurrence of the legal entity is carried out by means of a public law construction, namely that it is established by the ruler (State) by law;
- b. Its working environment, namely in carrying out its duties the legal entity generally acts with the public and acts in the same position as the public;
- c. The authority, the legal entity is established by the ruler of the State and is given the authority to make decisions, decrees or regulations that are generally binding.

BPJS is a public legal entity that meets the three requirements above.

The three requirements are listed in various norms in the BPJS Law, namely:

- a. BPJS was formed by Law No. 24 of 2011 concerning Social Security Administering Bodies.⁸¹
- b. BPJS functions to carry out public interests, namely the National Social Security System (SJSN) which is based on the principles of humanity, benefits and social justice for all Indonesian people.⁸²
- c. BPJS is given a delegation of authority to make general binding rules.⁸³
- d. BPJS is in charge of managing public funds, namely social security funds for the benefit of Jkn participants.⁸⁴
- e. BPJS has the authority to supervise and examine the compliance of participants and employers in fulfilling their obligations in accordance with the provisions of the national social security legislation.⁸⁵

⁸¹ Bodies Article 5 Article 10 letter d Law Number 24 of 2011 *Concerning BPJS State Gazette* of the Republic of Indonesia Number 116 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5256.

⁸² Bodies Article 2 Law Number 24 of 2011 *Concerning BPJS State Gazette* of the Republic of Indonesia Number 116 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5256.

⁸³ Article 48 paragraph (3) Law Number 24 of 2011 *Concerning BPJS State Gazette* of the Republic of Indonesia Number 116 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5256.

⁸⁴ Bodies Article 10 letter d Law Number 24 of 2011 *Concerning BPJS State Gazette* of the Republic of Indonesia Number 116 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5256.

⁸⁵ Article 11 letter c Law Number 24 of 2011 *Concerning BPJS State Gazette* of the Republic of Indonesia Number 116 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5256.

- f. BPJS acts on behalf of the Republic of Indonesia as a member of an international organization or institution.⁸⁶
- g. BPJS has the authority to impose administrative sanctions on participants or employers who do not fulfill their obligations.⁸⁷
- h. The appointment of members of the Supervisory Board and members of the Board of Directors by the President, after going through a public selection process.⁸⁸

BPJS is obliged to convey accountability for the implementation of its duties in the form of program management reports and annual financial reports that have been audited by a public accountant to the President, with a copy to the DJSN, no later than June 30 of the following year. and BPJS announces program management reports and annual financial reports to the public in the form of executive summaries through the BPJS website and through at least 2 (two) printed mass media that have national circulation, no later than July 31 of the following year. BPJS Kesehatan is domiciled and headquartered in the capital city of the Republic of Indonesia. BPJS Kesehatan has representative offices in the provinces and branch offices in districts / cities.

In order to carry out its functions as the organizer of the social health insurance program for all Indonesian residents, BPJS Kesehatan is tasked with:⁸⁹

⁸⁶ Article 51 paragraph (3) Law Number 24 of 2011 *Concerning BPJS State Gazette* of the Republic of Indonesia Number 116 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5256.

⁸⁷ Article 11 letter f Law Number 24 of 2011 *Concerning BPJS State Gazette* of the Republic of Indonesia Number 116 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5256.

⁸⁸ Articles 28 to 30 Law Number 24 of 2011 *Concerning BPJS State Gazette* of the Republic of Indonesia Number 116 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5256

⁸⁹ Article 11 Law Number 24 of 2011 *Concerning BPJS State Gazette* of the Republic of Indonesia Number 116 of 2011, Supplement to the State Gazette of the Republic of Indonesia Number 5256.

- a. Receive JKN Participant registration;
- b. Collect JKN contributions from Participants, Employers, and the Government;
- c. Manage JKN funds;
- d. Finance health services and pay JKN benefits;
- e. Collect and manage JKN Participant data;
- f. Provide information about the implementation of JKN.

To carry out these tasks, BPJS Kesehatan is given the authority to:⁹⁰

- a. Collecting contribution payments;
- b. Placing social security funds for short-term and long-term investments by taking into account the aspects of liquidity, solvency, prudence, security of funds, and adequate returns;
- c. Supervise and examine the compliance of Participants and Employers in fulfilling their obligations;
- d. Make an agreement with health facilities regarding the amount of payment for health facilities that refers to the standard tariff set by the Government.

BPJS Kesehatan builds a network of health facilities by working with government-owned or private health facilities to provide health services for JKN participants and their families. In this health facility is divided into three main groups, namely health facilities level I, health facilities level II, and health facilities III. The first level health facilities provide non-specialized health services, while the advanced level health facilities provide specialized and subspecialistic health services. Supporting health facilities that provide medicine, optics, and other medical support.⁹¹

4. National Health Insurance and community welfare

After undergoing the last amendment on August 10, 2002, Constitution in 1945, there is a chapter XIV entitled National Economy and Social Welfare, which consists of two articles, Article 33 and Article 34.

⁹⁰ Quoted from, www.jamsosindonesia.com 2019, accessed on 10 November 2020.

⁹¹ Quoted from, www.jamsosindonesia.com 2019, accessed on 10 November 2020.

Article 33 emphasizes the National Economy and Article 34 emphasizes the Social Welfare aspect.⁹² This view has a bigger economic role, namely the principle of togetherness and the principle of kinship remain the main features of the Indonesian economic ecosystem. Meanwhile, referring to the amendment to Article 34 which has such a meaningful meaning is the inclusion of the aspirations to develop a social security system contained in Article 34 paragraph 2, which reads: "The state develops a social security system for all people and empowers weak and incapable people accordingly with human dignity ". Thus, what has been stated in the above-mentioned Constitution, all Articles 33 and 34 along with their verses constitute an effort to realize people's welfare and achieve common benefit. Further as such,⁹³

Law Number 40 of 2004 concerning the National Social Security System (SJSN Law), is projected to provide a foundation for realizing the mandate implied in Constitution in 1945. In it, there is a spirit to recognize social security as the right of all citizens, to obtain social welfare and justice. , since in the womb until death, as the principles contained in the social security system, and in fact have also been implemented, among others with the existence of PT (Persero) Jamsostek, Askes Indonesia, Taspen and Asabri.⁹⁴

In the SJSN Law, a program of Health Insurance (JK), Work Accident Insurance (JKK), Old Age Security (JHT), Pension Security (JP) and Death Security (JKM) is designed for all people, which are arranged in stages.

⁹² Article 33 and 34 of the 1945 Constitution R.I.

⁹³ Quoted from, www.jamsosindonesia.com 2019, accessed on 10 November 2020.

⁹⁴ Quoted from, www.jamsosindonesia.com 2019, accessed on 10 November 2020.

Previously, a termination guarantee was also drafted, but this was canceled because it was covered by the severance pay provisions stipulated in Law No. 13 of 2003 concerning Manpower.⁹⁵

Until now, the coverage of social security programs is still very low. Likewise, the benefits that have been enjoyed by the participants are still not comprehensive, as well as being very low and the government is currently trying to make people have health insurance, whether it is contributed from the government or independently. The implementation is still "fragmented" and more or less discriminatory. Conceptually the government also still needs to make improvements, even corrections to policies that have been issued by including several regulations when there is an urgent and compelling situation in a government wheel.

Hereby the SJSN Law is designed to increase the number of participants, increase the quality, benefits and coverage of programs that can be enjoyed by all Indonesian people, although it must be implemented in stages. Viewed from the substance aspect, the SJSN Law is an implementation of Constitution in 1945. This is where a "macro scenario", "the road map", "road map" is needed on how to properly and truly implement the SJSN Law for the creation of social welfare and justice.

From the existing substance, such as the formation of Law Number 40 of 2004, a German consultant research institute, GTZ, in its study report for

⁹⁵ Quoted from, www.jamsosindonesia.com 2019, accessed on 10 November 2020.

Bappenas concluded that Indonesia applies the principles of a "social state model" by accommodating the principles of a welfare state model. ".⁹⁶

It is understandable that the SJSN Law stipulates the source of social security financing through the social insurance mechanism. The community, workers and employers, in this case including the government as employers for civil servants, military / police, participate in paying state fees and taxes for disadvantaged groups of people in the sense that the state pays social security contributions for the less fortunate. This is a form of the mandate contained in Constitution in 1945, Article 34 paragraph 1, in the SJSN Law, it is known as a recipient of contribution assistance.

The SJSN Law has a mission to integrate all social security programs for all people, both those who are well off and the less fortunate. The approach is carried out comprehensively, not partially, both in terms of the approach of community groups and the types of benefits of the social security program to be facilitated. The result is to open up opportunities to create welfare and social justice for all people.

B. Politics of National Health Insurance Law in Legislation

1. National Health Insurance in Constitution in 1945

The laws and regulations that order and give authority to the administration of JKN extend from Constitution in 1945 of the Republic of Indonesia to Ministerial and Institutional Regulations. The government has

⁹⁶Quoted, <https://www.kompas.com/skola/read/2020/01/15/150000469/bpjs--princip-jenis-tugas-wewenang-organ-dan-tarif?page=all>, accessed on 10 November 2020.

enacted 22 (twenty two) laws and regulations which form the legal basis for the administration of the JKN program and the management of the Healthcare BPJS. Until the end of February 2014, the legal basis for administering the JKN program and BPJS Health governance is regulated in 2 (two) Articles of the 1945 NRI Constitution, 2 laws, 6 Government Regulations, five Presidential Regulations, 4 Ministerial Regulations, and 1 (one) Regulation. BPJS Health.⁹⁷ From the various legislation above, up to now, there have been many changes in each of the content contained therein.

Article 28H and Article 34 of Constitution in 1945 of the Republic of Indonesia are the highest legal basis that guarantees the constitutional rights of citizens to health services also obliging the Government to build a system, governance of the implementation of social services where it is health services, this has been integrated with the implementation of social security programs, namely BPJS.⁹⁸

The legal basis for Health Insurance, as stipulated in the 1945 NRI Law Article 28 H, is as follows:

First, Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to obtain health services. *Second*, every person has the right to get special facilities and treatment to get the same opportunities and benefits in

⁹⁷ The National Security Council (DJSN), *Understanding the 4th Series of Health Insurance*, (Jakarta: Friedrich Ebert Stiftung, 2012), 13.

⁹⁸ The National Security Council (DJSN), *Understanding the 4th Series of Health Insurance*, (Jakarta: Friedrich Ebert Stiftung, 2012), 15.

order to achieve equality and justice. Third, everyone has the right to social security which enables his complete development as a useful human being.

On the basis of this, Law no. 40 of 2004 concerning the National Social Security System (SJSN), one of which is JKN, which is implemented by the Health Social Security Administering Body (BPJS).⁹⁹

The issuance of Law Number 40 of 2004 concerning the National Social Security System (SJSN) mandates that every person or citizen has the right to social security both in terms of health and even social services from the government in order to fulfill the basic needs of a decent life and increase their dignity towards the realization of a prosperous, just and prosperous Indonesian society. The social security programs as stipulated in the Law include:¹⁰⁰

- a. health insurance;
- b. accident insurance;
- c. pension plan;
- d. pension guarantee, and
- e. life insurance.

Furthermore, the legal basis for the existence of Health Insurance is also stipulated in Constitution in 1945 of the Republic of Indonesia Article 34, namely:¹⁰¹

- a. The article states that the poor and neglected children are cared for by the state.

⁹⁹ The National Security Council (DJSN), *Understanding the 4th Series of Health Insurance*, (Jakarta: Friedrich Ebert Stiftung, 2012), 14

¹⁰⁰ Quoted from, <http://sehatnegeriku.kemkes.go.id/baca/rilis-media/20131227/009480/dasar-hukum-jaminan-kkes/>, accessed on 20 November 2020.

¹⁰¹ The National Security Council (DJSN), *Understanding the 4th Series of Health Insurance*, (Jakarta: Friedrich Ebert Stiftung, 2012), 17.

- b. The article states that the state develops a social security system for all people and empowers weak and underprivileged people according to human dignity.
- c. The state is responsible for the provision of adequate health care facilities and public service facilities.

2. Juridical Basis for National Health Insurance in Health Law

a. RI Law Number 40 of 2004 concerning the National Social Security System

In 2004, the DPR passed Law Number 40 of 2004 concerning the National Social Security System (SJSN).¹⁰² This system provides guaranteed social protection and welfare for all people. Every citizen is guaranteed the right to a decent life in the event of an unfavorable situation which can result in loss or reduction of income, either due to illness, accident, loss of job, old age and retirement. The law regulates social security with an insurance scheme approach that requires formal workers to take part in social security in the aspects of health insurance, work accident insurance, termination of employment, old age and pension benefits and death security.¹⁰³

Law Number 40 of 2004 states that the implementation of SJSN is based on insurance. Then, the Social Security Administering Body (BPJS) program, every participant who is considered capable, such as workers whose salaries are in accordance with the regional minimum wage (UMR), are required to

¹⁰² Law Number 40 of 2004 *Concerning the National Social Security System*, State Gazette of the Republic of Indonesia of 2004 Number 150, Supplement to the State Gazette of the Republic of Indonesia Number 4456.

¹⁰³ Muh. Kadarisman, *Analysis of the Implementation of the Health Social Security System Post-Constitutional Court Decision No. 07 / PUU-III / 2005*, (Jakarta: Jurnal Hukum IUS QUIA IUSTUM NO. 3 VOL. 22 JULI 2015: 467-488), 468.

pay a fee whose amount has been regulated in laws / which have been determined by the government.¹⁰⁴

The purpose of implementing health insurance is to ensure that participants receive health care benefits and protection in meeting basic health needs. The benefits that can be obtained from the national health insurance / social health insurance include providing comprehensive benefits with affordable premiums, social health insurance applying the principles of cost and quality control, social health insurance guarantees sustainability (certainty of sustainable health service financing), and health insurance. social has portability so that it can be used in all regions of Indonesia.¹⁰⁵

The philosophy of social security as referred to in law number 40 of 2004 is rooted in the capitalist system because social security is translated as a strategy to provide reserve funds to overcome economic risks that arise systemically in the economic cycle of capitalism (crisis) in the sense of being on guard when something happens. which is not desired from both an economic and social point of view.¹⁰⁶ Social security as mandated in law number 40 of 2004 is administered by four administering bodies, namely:

- 1) Limited Liability Company (Persero) Labor Social Security (Jamsostek);

¹⁰⁴ Muh. Kadarisman, *Analysis of the Implementation of the Health Social Security System Post-Constitutional Court Decision No. 07 / PUU-III / 2005*, (Jakarta: Jurnal Hukum IUS QUIA IUSTUM NO. 3 VOL. 22 JULI 2015: 467-488), 469.

¹⁰⁵ Ministry of Health of the Republic of Indonesia, *Handbook of Socialization: National Health Insurance (JKN) in the National Social Security System* (Kementrian Kesehatan Republik Indonesia), 14.

¹⁰⁶ Salamuddin Daeng, *Social Security and the Position of the 1945 Constitution*, (December, Free Trade Watch 2011).

- 2) Limited Liability Company (Persero) Public Employee Savings and Insurance Fund (Taspen);
- 3) The Company Limited Liability Company (Persero) the Indonesian Armed Forces Insurance (ASABRI); and
- 4) Limited Liability Company (Persero) Health Insurance (ASKES).

b. Law of the Republic of Indonesia Number 24 of 2011 concerning the Problem Guarantee Agency

Basically, there are two aspects that encourage the formation of laws governing Social Security Administering Bodies (BPJS). First, the constitutional mandate contained in the Preamble to Constitution in 1945 of the Republic of Indonesia states that the noble ideals of the nation are to create justice and guarantee the social welfare of its people. Pancasila as the philosophical foundation of the state mandates the welfare of society in the fifth precept which reads social justice for all Indonesian people. The body of Constitution in 1945 also has several articles which form the basis for the need for laws governing the Social Security Administering Bodies.¹⁰⁷

Law Number 24 of 2011 regulates the functions, powers and obligations of the BPJS in Indonesia. The function of the BPJS is to register participants, collect contributions from participants or employers, receive contributions from the government, in this case, assistance for BPJS Health, manage social security contribution funds, manage participant data mechanisms, pay benefits and or provide services obtained

¹⁰⁷ Trisna Widada, *The Role of the Health Social Security Administration (BPJS) and Its Implications for Community Resilience (Study at Hasanuddin Damrah Manna Regional Hospital, (South Bengkulu Regency, Bengkulu Province)*, (National Defense Journal, Vol. 23, No 2, August 2017: 199- 216), 202.

from program participation. the. The BPJS 'authority is to collect contributions, place social security fund investments, supervise and check participant compliance, associate or terminate contracts with service providers, impose administrative sanctions, and report participant non-compliance to the authorized agency. BPJS also has several obligations, including providing a single identity number,¹⁰⁸

Parsing from the explanation above, the formation of Law Number 24 of 2011 concerning the Social Security Administration (BPJS Law), clearly states that the BPJS formed by the BPJS Law is a public legal entity. The BPJS formed by the BPJS Law are the Health BPJS and the Employment BPJS.¹⁰⁹

The two BPJS (BPJS Kesehatan dan Ketenagakerjaan) basically carry the state mission to fulfill the constitutional rights of every citizen for social security and welfare by organizing a health insurance program that aims to provide certainty, protection and social welfare for all Indonesian people. The implementation of strong and sustainable social security is one of the pillars of creating a welfare state, in addition to other pillars, namely education for all, wide open employment opportunities,

¹⁰⁸ Trisna Widada, *The Role of the Health Social Security Administration (BPJS) and Its Implications for Community Resilience (Study at Hasanuddin Damrah Manna Regional Hospital, (South Bengkulu Regency, Bengkulu Province)*, (National Defense Journal, Vol. 23, No 2, August 2017: 199- 216), 208.

¹⁰⁹ Trisna Widada, *The Role of the Health Social Security Administration (BPJS) and Its Implications for Community Resilience (Study at Hasanuddin Damrah Manna Regional Hospital, South Bengkulu Regency, Bengkulu Province)*, (National Defense Journal, Vol. 23, No 2, August 2017: 199- 216), 202.

stable economic growth, progress in the health sector, guaranteed and just people's welfare.

The important role of the BPJS in implementing social security programs covering the entire population of Indonesia, the BPJS law provides clear boundaries of functions, duties and authorities to BPJS. Thus, it is necessary to know exactly the limits of responsibility and at the same time it can be used as a means to measure the performance of the two BPJS in a transparent manner. The limitations of the functions, duties and authorities are as follows:¹¹⁰

Table 2.1 Duties, functions and authorities

Duties	Functions	Authorities
a. Conduct and / or accept participant registration; b. Collect and collect contributions from participants and employers; c. Receiving contribution assistance from the Government; d. Manage Social Security Funds for the benefit of participants;	a. Organizing a work accident insurance program; b. Organizing an old age insurance program; c. Organizing pension security programs, and d. Organizing a death insurance program.	a. Collect payment of the amount against the participants; b. Managing Social Security Funds for short and long term investments by considering aspects of liquidity, solvency, prudence, security of funds, and appropriate results; c. Supervise and examine the compliance of

¹¹⁰ The National Guarantee Council (DJSN), *Understanding Health Insurance Series 2*, (Jakarta: CV Komunitas Pejaten Mediatama, 2012), 20.

<p>e. Collecting and managing data on social security program participants;</p> <p>f. Pay benefits and / or pay for health services in accordance with the provisions of the social security program; and</p> <p>g. Provide information about the implementation of social security programs to participants and the public.</p>		<p>participants and employers in fulfilling their obligations in accordance with the provisions of laws and regulations on the national social security system;</p> <p>d. Make an agreement between health facilities regarding the amount of payment for health facilities that refers to the standard tariff set by the Government;</p> <p>e. Creating or terminating employment contracts with existing health facilities in accordance with regulations;</p> <p>f. Impose administrative sanctions to participants or employers who do not fulfill their obligations; Report all forms of violations to the competent authorities regarding their non-compliance in paying contributions or non-fulfillment of other mandated obligations in</p>
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		<p>accordance with the provisions of laws and regulations; and</p> <p>g. Cooperating with other parties (health care providers) with the aim of administering social security programs.</p>
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The BPJS Law stipulates that the Health BPJS has the function of administering the health insurance program. Health insurance according to the SJSN Law is administered nationally based on the principles of social insurance and equity principles, with the aim of ensuring that participants receive health care benefits and protection in meeting basic health needs.¹¹¹

According to the SJSN Law, the work accident insurance program is implemented nationally based on the principle of social insurance, with the aim of ensuring that participants receive health service benefits and cash compensation if a worker experiences a work accident or suffers from occupational disease.

Furthermore, the old-age security program is implemented nationally based on the principles of social insurance or compulsory savings, with the aim

¹¹¹ Dewan jaminan Nasional (DJSN), *Paham jaminan Kesehatan Seri ke 2*, (Jakarta: CV Komunitas Pejaten Mediatama, 2012), 21.

of ensuring that participants receive cash when entering retirement, experiencing permanent total disability, or passing away.¹¹²

Then the pension security program is implemented nationally based on the principle of social insurance or compulsory savings, to maintain a decent degree of life when participants lose or decrease their income due to retirement age or experience permanent total disability. This pension guarantee is provided on a defined benefit basis.¹¹³

Meanwhile, the death insurance program is held nationally based on the principles of social insurance with the aim of providing death benefits paid to the heirs of participants who die.

In other words, the duties of BPJS include membership registration and management of membership data, collection, collection of contributions including receiving contribution assistance from the Government, management of Social Security Funds, payment of benefits and / or financing of health services and tasks of delivering information in the context of socializing social security programs and information disclosure. .

Membership registration tasks can be carried out passively in the sense of accepting registration or actively in the sense of registering participants. The authority to collect Contribution payments, which means requesting payment in

¹¹² Dewan jaminan Nasional (DJSN), *Paham jaminan Kesehatan Seri ke 2*, (Jakarta: CV Komunitas Pejaten Mediatama, 2012), 22.

¹¹³ Dewan jaminan Nasional (DJSN), *Paham jaminan Kesehatan Seri ke 2*, (Jakarta: CV Komunitas Pejaten Mediatama, 2012), 23

the event of delinquency, congestion, or underpayment, the authority to supervise and the authority to impose administrative sanctions given to BPJS strengthen the position of BPJS as a public legal entity.

The authority to collect Contribution payments, which means requesting payment in the event of delinquency, congestion, or underpayment, the authority to supervise and the authority to impose administrative sanctions given to BPJS strengthen the position of BPJS as a public legal entity.¹¹⁴

C. National Health Insurance in Presidential Regulation Number 75 of 2019 in conjunction with Presidential Regulation Number 64 of 2020

Law No. 40/2004 on the National Social Security System (SJSN) is an effort by the Republic of Indonesia in the field of legislation to ensure the fulfillment of the right to health of all citizens. The Law states that the government is responsible for the availability of services, the availability of access to both facilities and information, the availability of equal resources, and striving for feasibility and affordability in the health sector. Furthermore, the government is also responsible for administering health insurance through the national social health insurance system for every citizen. The continuity of Law Number 40 of 2004 concerning SJSN is the issuance of Law of the Republic of Indonesia Number 24 of 2011 concerning Social Security Administering Bodies (BPJS). The law explains that the BPJS consists of BPJS Kesehatan and BPJS Ketenagakerjaan. BPJS Kesehatan is a government policy program to provide

¹¹⁴ The National Security Council (DJSN), *Understanding Health Insurance Series 2*, (Jakarta: CV Komunitas Pejaten Mediatama, 2012), 28.

National Health Insurance. BPJS Kesehatan has been implemented since January 1, 2014. In implementing the BPJS program, many obstacles are experienced, one of which is the potential funding deficit which increases every year.¹¹⁵

Based on data from BPJS Kesehatan in 2014, BPJS experienced a deficit of 1.94 trillion, at the end of 2015 BPJS experienced a deficit of 5.85 trillion and according to the Director of development planning for BPJS Kesehatan Mundiharno, the potential deficit in 2016 was around 9.2 trillion. President Director of the Health Insurance Agency (BPJS) for Health, Fachmi Idris, in a public presentation of the 2015 BPJS Health, Wednesday, April 13, 2016, explained that the deficit occurred because actuarially the amount of participant contributions was lower than the health costs incurred.¹¹⁶ In implementing the SJSN Law and the BPJS Law, the government implements its policies through Government Regulations and Presidential Regulations, one of which is Presidential Regulation Number 12 of 2013 concerning Health Insurance which has undergone three changes, the first change being Presidential Regulation Number 111 Year 2013, the second amendment to Presidential Regulation No. 19/2016 concerning Health Insurance and the third amendment to Presidential Regulation Number 28 of 2016 concerning Health Insurance.¹¹⁷

¹¹⁵ Julian Simanjuntak, *Analysis of Policy Changes to Presidential Regulation No. 19 of 2016 concerning Health Insurance into Presidential Regulation No.28 of 2016 concerning Health Insurance*, (Journal of Indonesian Health Policy, Vol. 05, No. 4 December 2016). 194.

¹¹⁶ <http://health.kompas.com/read/2016/04/14/130000823/Klaim.Berobat.BPJS.K.Kesehatan.Lmore.Besar.ari.Preception..> quoted on 15 November 2020.

¹¹⁷ Julian Simanjuntak, *Analysis of Policy Changes to Presidential Regulation No. 19 of 2016 concerning Health Insurance into Presidential Regulation No.28 of 2016 concerning Health Insurance*, (Journal of Indonesian Health Policy, Vol. 05, No. 4 December 2016). 194.

The second amendment to Presidential Regulation Number 19 of 2016 was carried out in the spirit of improving the conditions of the administration of the National Health Insurance, among others, to meet the adequacy of contributions, regulate membership, regulate fines, regulate fraud prevention. However, in its implementation, it is only in a period of not more than thirty days that the Presidential Regulation is changed to Presidential Regulation No. Health. In the systems theory described by Easton, a policy-making process begins with an input process that describes all requests that require a problem-solving solution.¹¹⁸

It is not enough, the Presidential Regulation governing national health insurance always changes and the last changes were in 2020 during the Covid-19 pandemic. Before proceeding to further discussion, at least the author will present some changes to the President's regulation on health insurance after the third amendment Presidential Regulation and thereafter, as follows:¹¹⁹ First; Presidential Regulation of the Republic of Indonesia Number 19 of 2016 concerning Second Amendment to Presidential Regulation Number 12 of 2013 concerning Health Insurance, Second; Republic of Indonesia Presidential Regulation Number 28 of 2016 concerning Third Amendment to Presidential Regulation Number 12 of 2013 concerning Health Insurance, Third; Presidential Regulation Number of the Republic of Indonesia 82 of 2018 concerning Health

¹¹⁸Auguba, M. K, *Participatory Policy Making in the Context of Contitution Review in Ghana*. (Grounding With People: Journal of Politics and Law, 2013), 99-110.

¹¹⁹ Julian Simanjuntak, *Analysis of Policy Changes to Presidential Regulation No. 19 of 2016 concerning Health Insurance into Presidential Regulation No.28 of 2016 concerning Health Insurance*, (Journal of Indonesian Health Policy, Vol. 05, No. 4 December 2016), 198.

Insurance, Fourth; Presidential Regulation Number of the Republic of Indonesia 82 of 2018 concerning Health Insurance, Fifth; Presidential Regulation Number 75 of 2019 concerning Amendments to Presidential Regulation Number 82 of 2018 concerning Health Insurance, and fifth; Presidential Regulation Number 64 of 2020 concerning Health Insurance.¹²⁰

The issuance of presidential regulation number 64 of 2020 concerning health insurance after the Supreme Court Decision number 7 P / HUM / 2020 became a polemic. This is because the results of the material test or judicial review cancel the increase in contributions in one of the articles in presidential regulation number 75 of 2019. The Supreme Court (MA) canceled the regulation on increasing BPJS contributions for non-wage worker participants (PBPU) and non-workers. (BP) this will take effect from January 1, 2020 as stated in Article 34 paragraph (1), (2) Perpres No. 75 of 2019. This article contains details of the increase in BPJS Health contributions for PBPU and BP for Class III categories from IDR 25,500 to IDR 42,000. Then Class II participants from Rp. 51,000 to Rp. 110,000 and Class I participants from Rp. 80,000 to Rp. 160,000.

The Supreme Court (MA) stated that the decision to cancel the BPJS Health premium increase should take effect from the date it was decided on February 27, 2020 or not be retroactive. Therefore, people who have already paid contributions since January 1, 2020 until before this decision was made, still refer to Presidential Decree No. 75 of 2019.¹²¹

¹²⁰ Quoted from, <http://www.jamsosindonesia.com/regulasi/documents/17/peraturan-presiden>, accessed on 16 November 2020.

¹²¹ Quoted from <https://www.hukumonline.com/berita/baca/lt5e8c04de0d65a/penjelas-hukum-soal-polemik-iuran-bpjs-keseh-pasca-putusan-ma>, accessed on 16 November 2020.

However, in the payment dues for the March 2020 period, BPJS Kesehatan still applies the new tariff or refers to Presidential Decree 75 of 2019. BPJS Kesehatan states that it has not canceled the increase in the contribution of the National Health Insurance-Indonesian Health Card (JKN-KIS) program because it is still waiting for the government to change the provisions in article 34 paragraph (1) and (2) Presidential Regulation Number 75 of 2019 (Perpres 75/2019) or Supreme Court Decree are valid for 91 days.¹²²

The issuance of Presidential Regulation Number 64 of 2020 concerning Second Amendment to Presidential Decree No. 82 of 2018 concerning Health Insurance still reaps pros and cons, pros for the government and cons for the community. This Presidential Regulation is even seen by some as a legal disobedience by the President as head of state. The issuance of Presidential Regulation Number 64 of 2020 concerning health insurance regulates the increase in BPJS contributions, the President is considered to have exceeded the constitutional mandate (one of which), especially Article 1 paragraph 3 to comply with the law resulting in disobedience of law or legal denial. The President's move by continuing to increase BPJS contributions through a new provision with a different sounding norm is legal smuggling.¹²³

Based on Presidential Regulation (Perpres) Number 64 of 2020 concerning the Second Amendment to Presidential Decree Number 82 of 2018 concerning Health Insurance quoted in Jakarta, Wednesday, the government sets

¹²² Quoted from <https://www.hukumonline.com/berita/baca/lt5ec2410e61850/soal-iuran-bpjs-keseh--presiden-di-putusan-ma-final-dan-mengikat>, accessed on 16 November 2020.

¹²³ Quoted from , <https://www.hukumonline.com/berita/baca/lt5ec2410e61850/soal-iuran-bpjs-kkes--presiden-di-putusan-ma-final-dan-mengikat/>, accessed on 16 November 2020.

the premium for Class III independent participants of IDR 42,000 starting July 2020. However, participants only need to pay a fee of Rp. Rp. 25,500, and the remaining Rp. 16,500 is subsidized by the central government, in accordance with the provisions in Article 34 paragraph 1 of the Perpres. Participants in the Non-Receiving Wage Workers (PBPU) and Non-Employee (BP) segments are independent participants who are divided into three classes for benefiting from treatment.¹²⁴

However, the Perpres, as stated in Article 34 paragraph 1 (b), stipulates that in 2021, the subsidy paid by the central government will be IDR 7,000 from the subsidy per July 2020 which was IDR 16,500. So starting in 2021, independent class III participants will pay a fee of IDR 35,000. The government also regulates something new in this Presidential Regulation, namely in Article 29 paragraph 4, that the Regional Government contributes in paying contributions for PBI Health Insurance Participants according to the regional fiscal capacity. Further provisions regarding the Contribution payment contributions for participants paid by the Regional Government will be regulated in the Minister of Finance Regulation.¹²⁵

Meanwhile, for independent class participants, other benefits will begin to increase gradually on July 1, 2020. Article 34 paragraph 3 of the Presidential Regulation states that the contribution of participants with class I care benefits will be IDR 150,000. This fee has increased from the previous amount of Rp.

¹²⁴ Quoted from , https://www.hukumonline.com/berita/baca/lt5ebcc99a20832/j_Run-putusan-ma-perpres-ini-tendah-iuran-bpjs-kkes--tapi/, accessed on 16 November 2020.

¹²⁵ Quoted from, <https://setkab.go.id/iuran-bpjs-keseh-batal-naik-per-april-2020/>, accessed on 16 November 2020.

80,000. Then, Article 34 paragraph 2 of the Presidential Regulation states that the contribution for participants with class II care benefits becomes Rp 100,000. The previous fee for participants with class II treatment benefits was IDR 51,000. Article 34 paragraph 6 of the Presidential Decree explains that the provisions for the amount of contributions above will take effect on July 1, 2020, for class III to take effect from the beginning of the year in 2021.¹²⁶

D. The View of Maqasid Sharia on the Formation of Presidential Regulation Number 64 of 2020 After the Decision of the Supreme Court Number 7 P / Hum / 2020 on the welfare of the community amid the Covid-19 Pandemic

Decision of the Supreme Court (MA) Number 7 / P / HUM / 2020 has granted a judicial review regarding Presidential Regulation (Perpres) Number 75 of 2019 concerning Amendments to Presidential Decree No 82 of 2018 concerning Health Insurance, in particular the regulations for increasing BPJS contributions which reach 100 percent as of January 1, 2020. The Supreme Court (MA) canceled the regulation on the increase in BPJS contributions for non-wage worker (PBPJ) and non-worker (BP) participants which took effect from January 1, 2020 as stated in Article 34 paragraph (1), (2) Presidential Regulation No. 75 of 2019. This article contains details of the increase in BPJS Health contributions to reach 100 percent. With details, PBPJ and BP fees for Class III from IDR 25,500 to IDR 42,000. Then Class II participants from Rp. 51,000 to Rp. 110,000 and Class I participants from Rp. 80,000 to Rp. 160,000.¹²⁷

¹²⁶ Quoted from , https://www.hukumonline.com/berita/baca/lt5ebcc99a20832/j_Run-putusan-ma-perpres-ini-tendah-iuran-bpjs-kkes--tapi/, accessed on 16 November 2020.

¹²⁷ Quoted from, <https://finansial.bisnis.com/read/20200513/215/1239949/setelah-dibatalkan-ma-jokowi-k-Return-n-Increase-iuran-bpjs-kkes>, accessed on 17 November 2020.

The grant of the Material Test request requested by the Indonesian Dialysis Care Community (KPCDI) received appreciation from various parties, especially among the legal profession. A member of the Amicus Advocacy Team and the BPJS Health Care Community, Johan Imanuel, stated that the president as the defendant must immediately implement the Supreme Court decision. For the appreciation given by the legal community to KPCDI, this matter has also been regulated in the law regarding the right to a judicial review. This right is a right as regulated in Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, in particular Article 31 A. In its decision the Supreme Court, shows that:¹²⁸

1. In the formulation of general policies and synchronization of the implementation of the National Social Security System which is implemented by the National Social Security Council (DJSN), and
2. In the implementation of the social security program carried out by BPJS, in practice there has been a problem so far. These issues include:¹²⁹
 - a. Legal structure, in the form of lack of good coordination (sectoral ego) between one ministry and another in managing the implementation of the Social Security System;
 - b. Legal substance, in the form of: overlapping rules applied and inconsistencies between one agency and another in the law enforcement process;
 - c. Legal culture, in the form of many disgraceful and disgraceful behavior from policy makers, stakeholders and the public in the field of social security.

Taking into account the factual considerations in Presidential Decree Number 75 of 2019, the fact is that it does not take into account the ability of the community to pay the increase in BPJS contributions. Factual

¹²⁸ Quoted from, <https://www.hukumonline.com/berita/baca/lt5e66f953a2c00/pasca-putusan-ma--aturan-kerdekaan-iuran-bpjs-kkes-harus-dievalu?page=3>, accessed on 17 November 2020.

¹²⁹ See Supreme Court Decision Number 7 P / HUM / 2020, 64.

considerations emphasize more on adjusting contributions, because of this budget deficit.¹³⁰

The Supreme Court considers mistakes and fraud in the management and implementation of the social security program by BPJS which results in a deficit in the Social Security Fund (DJS) for Health, which should not be borne by the public, by increasing the Contribution for PBPB Participants and BP Participants as regulated in the provisions of Article 34 paragraphs 1 and 2 of Presidential Decree Number 75 of 2019. Especially in the current global economic conditions which are currently uncertain due to the Covid-19 pandemic situation. The management and implementation of social security programs by BPJS must find a good and wise solution without having to burden the community to bear the losses incurred.¹³¹

With the mistakes and frauds that occur, it will ultimately harm the life of the nation and state. Therefore, a joint awareness is needed in the form of political will from the President and his staff as government power holders with good will from the community and state administrators.¹³²

Based on considerations from the juridical, sociological and philosophical aspects mentioned above, there is a substantial juridical flaw in the provisions of Article 34 paragraph (1) and (2) Presidential Regulation Number 75 of 2019, because it is contrary to the provisions of Article 2 of Law Number 40 of 2004 concerning System National Social Security which

¹³⁰ See Supreme Court Decision Number 7 P / HUM / 2020, 60.

¹³¹ See Supreme Court Decision Number 7 P / HUM / 2020, 65.

¹³² See Supreme Court Decision Number 7 P / HUM / 2020, 66.

outlines that: "SJSN is implemented based on the principle of humanity, the principle of benefit, and the principle of social justice for all Indonesian people" and contradicts Article 2 of Law Number 24 of 2011 concerning Social Security Administering Bodies, which emphasizes that the implementation of a national social security system BPJS must be based on the principles of:¹³³

- a. Humanity;
- b. benefits; and
- c. social justice for all the people of Indonesia.

A further juridical consequence in the conditions that occur, is to cause Article 34 paragraphs 1 and 2 of Presidential Decree Number 75 of 2019 a quo to be null and void (*nietig*) and do not have binding legal force, therefore all legal consequences arising from provisions, policies and decisions based on these provisions are automatically deemed to have never existed (*ex tunc*).¹³⁴

In order to provide legal certainty to the public and guarantee the implementation of social security to run well, the Supreme Court considers it necessary to describe the legal effect (legal effect) on the contributions that have been paid before the provisions of Article 34 paragraphs 1 and 2 of Presidential Regulation Number 75 of 2019 are canceled. According to the Supreme Court, this is the government's authority to further regulate it in a transparent and wise manner.¹³⁵

¹³³ See Supreme Court Decision Number 7 P / HUM / 2020, 67.

¹³⁴ See Supreme Court Decision Number 7 P / HUM / 2020, 68.

¹³⁵ See Supreme Court Decision Number 7 P / HUM / 2020, 68.

E. Implications of Presidential Regulation Number 64 of 2020 After the Decision of the Supreme Court Number 7 P / Hum / 2020 on the welfare of the community amid the Covid-19 Pandemic

1. The Covid-19 pandemic and the implementation of the National Health Insurance in Indonesia

The WHO first declared a global pandemic on March 11, 2020, the number of infections worldwide has reached more than 121,000.¹³⁶ Instead of Indonesia still feeling safe from the virus outbreak that has paralyzed some countries in the world, President Joko Widodo in early March, who had put the public in a comfort zone, had to admit defeat with reports of cases of Covid-19 caused by the virus. SARS-Cov-2 or known as the Corona virus.

Covid-19 is a disease that has been studied, the cause of which is the Corona virus which attacks the respiratory tract. This disease was first detected in Wuhan, China.¹³⁷ It is known that SARS-Cov-2 is not a new type of virus.¹³⁸ However, in the scientific explanation a virus is capable of mutating to form a new genetic makeup, more specifically the virus remains the same type and only changes uniformly. The name SARS-Cov-2 is given

¹³⁶ World Health Organization, WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020, accessed from <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19—11-march-2020>, accessed on 17 November 2020

¹³⁷ Helda Davidson, First Covid-19 case happened in November, China government records show - report2020, accessed from <https://www.theguardian.com/world/2020/mar/13/first-covid-19-case-happened-in-november-china-government-records-show-report>, accessed on 17 November 2020.

¹³⁸ Helda Davidson, First Covid-19 case happened in November, China government records show - report2020, accessed from <https://www.theguardian.com/world/2020/mar/13/first-covid-19-case-happened-in-november-china-government-records-show-report>, accessed on 17 November 2020.

because the corona virus has a close genetic relationship with the viruses that cause SARS and MERS.¹³⁹

The existence of the conditions that have been mentioned above seems to make the government not stay silent to overcome the virus, especially in providing policies in the health sector. This is indeed the right step because in fighting the virus there are not a few and that are issued. The APBN is the main pillar in raising funds for operations to combat the virus. It is not surprising that within almost half a year this virus has attacked the State Budget, which has often been discussed in plenary sessions. The purpose of this discussion is none other than to save the APBN from falling apart. As a result, the government signed presidential regulation number 64/2020 concerning health insurance, which in the article was changed to increase BPJS contributions. It is not wrong if the government increases these fees. However, the presidential regulation was too hasty in issuing it. With a pandemic like this where the economic sector is paralyzed with uncertain income, it must be burdened again with an increase in BPJS contributions. Like you have fallen down by a ladder too.

Through the Constitution, Article 28 of the Indonesian Constitution, the State mandates the implementation of health for all Indonesian people to the Government and all government executing agencies / positions. Formally, the implementation of the National Social Security System has also been

¹³⁹ NIH, New coronavirus stable for hours on surfaces SARS-Cov-2 stability similiar to original SARS 2020, quoted from [https // www.sciencedaily.com / releases / 2020/03 / 200317150116htm](https://www.sciencedaily.com/releases/2020/03/200317150116htm), accessed on 17 November 2020.

regulated in Law No. 40 of 2004 concerning the National Social Security System (SJSN). Based on Law no. Law No. 40 of 2004, regulates the implementation of the National Social Security System which includes health insurance, work accident insurance, pension security, old age security, and death security for all residents through mandatory worker contributions.¹⁴⁰

BPJS has a very strategic position as the provision of services and facilities that provide space for the community to gain access to health services. The existence of the BPJS is a means of obtaining affordable health services for all levels of society. The operation of health activities through the BPJS is supported by funds, one of which is allocated from the state budget by the government in the form of subsidies for the poor. Another source of funds, obtained from contributions paid by BPJS participants, the amount is determined according to the class and the services provided are based on regulations set by the Government.¹⁴¹

Through judicial institutions, communities who are dissatisfied with health services and the obligation to pay BPJS dues demand their rights from the Government by filing a judicial review of Presidential Regulation (Perpres) Number 75 of 2019 concerning National Health Insurance.¹⁴² Through Decision No.7 P / HUM / 2020 dated March 31, 2020,

¹⁴⁰ FC Susila Adiyanta, *Urgency of Universal Health Coverage for the Implementation of Public Health Services during the Covid-19 Pandemic*, (Administrative Law & Governance Journal. Volume 3 Issue 2, June 2020), 274.

¹⁴¹ FC Susila Adiyanta, *Urgency of Universal Health Coverage Policy for Public Health Service Delivery during the Covid-19 Pandemic*, (Administrative Law & Governance Journal. Volume 3 Issue 2, June 2020), 275.

¹⁴² Case Number 7 P / HUM / 2020 concerning a suit for judicial review of Presidential Regulation (Perpres) Number 75 of 2019 concerning Health Insurance.

the Supreme Court (MA) has canceled the rate increase after granting a judicial review of Presidential Regulation Number 75 of 2019 concerning Amendments to Presidential Regulation Number 82 of 2018 concerning Health Insurance . With the Supreme Court Decision, the provisions of Article 34 paragraph (1) and (2) Presidential Decree Number 75 Year 2019 contradict a number of provisions above, including Constitution in 1945, Law Number 40 Year 2004 concerning the National Social Security System and Law Number 36 Year 2009 regarding Health is declared to have no legal force and is no longer valid. As a consequence of the Supreme Court's decision, the cancellation of the increase in BPJS Health contributions should take effect from the date it was decided on February 27, 2020 or not retroactive.¹⁴³

Presidential Decree Number 82 of 2018 concerning Health Insurance, which also regulates the amount of new contributions for participants in the National Health Insurance-Indonesian Health Card (JKN-KIS) program. Presidential Regulation Number 75 of 2019 will come into effect in 2020.¹⁴⁴

The government's policy to increase the health insurance program fee during the Covid-19 pandemic has drawn a lot of criticism and caused a prolonged polemic from various circles of society. Regardless of the view that

¹⁴³ The Supreme Court canceled the regulation on the increase in BPJS contributions for non-wage worker (PBP) and non-worker (BP) participants which has been in effect since January 1, 2020 as stated in Article 34 paragraph (1), (2) Presidential Regulation No. 75 of 2019. This article contains details of the increase in BPJS Health contributions, PBP and BP contributions for the Class III category from IDR 25,500 to IDR 42,000. Then Class II participants from Rp. 51,000 to Rp110,000 and Class I participants from Rp. 80,000 to Rp160,000.

¹⁴⁴ By the Indonesian Dialysis Patient Community (KPCDI), the increase in BPJS contributions for groups I and II determined by the Government based on Presidential Regulation (Perpres) Number 64 of 2020 concerning the Second Amendment to Presidential Regulation Number 82 of 2018 concerning Health Insurance was sued

states that the Government's Decree is not populist, the Government's policy to stipulate that the increase in contributions is part of a strategy to overcome the deficit in the program's financing, which is experiencing a growing deficit.¹⁴⁵

Launching from the Katadata.co.id page, BPJS Kesehatan has experienced a fluctuating financial deficit since then until now. In 2014, the BPJS financial deficit "only" stood at 1.9 trillion, then jumped sharply to Rp9.4 trillion in 2015, decreased to Rp6.7 trillion in 2016, and again soared to reach Rp13.8 trillion in 2017, and sloping to Rp9.1 trillion in the following year.¹⁴⁶

The JKN program was created to create justice and social welfare for every community. This program exists to provide assurance of social protection and welfare for all Indonesian people, as mandated by Constitution in 1945. Referring to the statement at the beginning of this research, there is a clear mismatch between how the ideals echoed by the JKN program and the provisions provisions in regulations governing their existence.

The situation in a country that is currently hit by the Covid-19 pandemic, the economic and health crisis is the main problem, and the uncertain cycle of people's purchasing power is behind it. The author considers that currently the public has not been able to fully comply with the

¹⁴⁵ FC Susila Adiyanta, Urgency of Universal Health Coverage for Public Health Service Delivery during the Covid-19 Pandemic, (Administrative Law & Governance Journal. Volume 3 Issue 2, June 2020), 277.

¹⁴⁶ Agatha Olivia Victoria, "Sri Mulyani Explains Four Causes of the BPJS Financial Deficit", <https://katadata.co.id/berita/2019/08/21/sri-mulyani-beberkan-empat-penyebab-defisit-bpjs-keuangan>, accessed on 17 November 2020.

First Amendment of the Presidential Regulation on Health Insurance, especially to Article 34 which has been described above, even to the Presidential Regulation Number 64 of 2020.¹⁴⁷ Not a few people are confused, because in addition to having to be burdened by the obligation to pay higher dues, the public is increasingly confused by ignorance of the exact reasons for carrying out this obligation.

2. Governance of the State Budget for National Health Insurance during the Covid-19 Pandemic

It is almost seven years since the National Health Insurance Program-Healthy Indonesia Card (JKN-KIS) has been present to provide health insurance benefits for the population of Indonesia. In its journey, JKN-KIS has proven to not only provide health insurance, but has a tremendous domino effect. For example, JKN-KIS also contributes to the economic and social sectors. In terms of human capital, JKN-KIS contributes to increasing life expectancy. From 1% additional use of inpatient services adds 0.31 years to life expectancy.¹⁴⁸

The pandemic period creates a separate obstacle in running the wheels of state government, especially in the budget allocation issued. The total cost of handling the impact of Covid-19 by the end of 2020 is IDR 677.20 trillion during this pandemic, the picture is as follows:¹⁴⁹

¹⁴⁷ Agatha Olivia Victoria, "Sri Mulyani Explains Four Causes of the BPJS Financial Deficit", <https://katadata.co.id/berita/2019/08/21/sri-mulyani-beberkan-empat-penyebab-defisit-bpjs-keuangan>, accessed on 17 November 2020.

¹⁴⁸ BPJS Kesehatan, Good Governance Realizes Ecosystem Improvement of the JKN-KIS Program, MEDIA INFO BPJS KESEHATANEDISI 86, 10.

¹⁴⁹ Quoted from, <https://kemenkeu.go.id/covid19>, accessed on 18 November 2020.

- a. Health sector Rp. 87.55 T;
- b. National Economic Recovery: Rp. 589.65 T;
- c. Demand Side Rp.205, 2 T, and
- d. Supply Side: Rp384.45 T;

From the points regarding the budget allocation above, of course it is not far from the APBN, because all matters relating to the budget are sourced from the APBN. Law Number 9 of 2020 concerning the State Revenue and Expenditure Budget for Fiscal Year 2021 is the annual financial plan for the state government approved by the House of Representatives.

The implementation of good governance in the JKN-KIS program ecosystem includes 3 (three) things, namely services, finance and government.¹⁵⁰In this ecosystem, each party, both from BPJS Health, government, stakeholders, participants and health facilities have their respective roles and functions. This ecosystem will certainly run well if the chain of systems connecting the parts can be integrated and move according to their respective functions so that the implementation of the JKN-KIS Program can run optimally.¹⁵¹

The government has issued Presidential Regulation (Perpres) Number 25 of 2020 concerning Governance of the Social Security Administering Bodies (BPJS). This provision regulates the implementation of BPJS governance starting from investment, information technology, data and

¹⁵⁰ BPJS Kesehatan, Good Governance Realizes Ecosystem Improvement of the JKN-KIS Program, MEDIA INFO BPJS KESEHATANEDISI 86, 4.

¹⁵¹ BPJS Kesehatan, Good Governance Realizes Ecosystem Improvement of the JKN-KIS Program, MEDIA INFO BPJS KESEHATANEDISI 86, 9.

information, fees, risk management and internal control to organ code of ethics. BPJS.¹⁵²

This Presidential Decree has comprehensively regulated what BPJS Kesehatan should do in implementing the JKN-KIS program. With good governance, it is hoped that the JKN-KIS program ecosystem will be healthier and more sustainable. Before the Presidential Decree that regulated this governance, BPJS Kesehatan was still a BUMN, its governance are TARIF, which are transparency, accountability, responsibility, independency, participation and fairness. Then because BPJS in Indonesia also refers to the governance of the International Social Security Association (ISSA), so they add PPD, namely predictability, participation and dynamism. Then both the BPJS Kesehatan and BPJS Ketenagakerjaan management must refer to the PPD TARIF Principle. If I'm not mistaken, Perpres 25 adopts the BUMN principle first and the ISSA reference.¹⁵³

Principally, investment governance must prioritize the principle of prudence and investment development results as much as possible for the benefit of the participants according to the SJSN principles. In terms of the type of investment chosen must be in accordance with the characteristics of the claims that exist in each program. For example, long-term investments such as land and buildings may only be made in social security funds whose claim characteristics are also long-term, such as Old Age Security Funds

¹⁵² BPJS Kesehatan, Good Governance Realizes Ecosystem Improvement of the JKN-KIS Program, MEDIA INFO BPJS KESEHATANEDISI 86, 10.

¹⁵³ BPJS Kesehatan, Good Governance Realizes Ecosystem Improvement of the JKN-KIS Program, MEDIA INFO BPJS KESEHATANEDISI 86, 12.

(JHT) and Pension Security Funds (JP). For programs with short-term claim characteristics, such as JK-NKIS, Work Accident Security (JKK), Death Security (JKM) must be placed in short-term investment instruments as well because they require immediate liquidity such as deposits and shares.¹⁵⁴

Regarding the management of fees, there are at least 2 things that need to be considered by BPJS. First, the amount of fees. Based on the regulations for the implementation of the SJSN program, the government must evaluate the contributions at least every 2 years for the JKN-KIS, JKK, JKM and JHT programs. Meanwhile, the evaluation of contributions for the JP program is carried out no later than 3 years.¹⁵⁵

The purpose of the evaluation in accordance with this Perpres is to see to what extent the contribution is sufficient in financing benefits. In relation to the relaxation of contributions, a scenario needs to be prepared for recovery after the relaxation of contributions is completed so that future defaults do not occur. Second, collection of fees. Both BPJS Kesehatan and BPJS Ketenagakerjaan must be able to collect contributions according to workers' wages / salaries, the number of workers in the company and the SJSN programs that are followed in accordance with the membership staging provisions.¹⁵⁶

¹⁵⁴ BPJS Kesehatan, Good Governance Realizes Ecosystem Improvement of the JKN-KIS Program, MEDIA INFO BPJS KESEHATANEDISI 86, 14.

¹⁵⁵ BPJS Kesehatan, Good Governance Realizes Ecosystem Improvement of the JKN-KIS Program, MEDIA INFO BPJS KESEHATANEDISI 86, 15.

¹⁵⁶ BPJS Kesehatan, Good Governance Realizes Ecosystem Improvement of the JKN-KIS Program, MEDIA INFO BPJS KESEHATANEDISI 86, 17.

To optimize the collection of contributions, the two BPJS need to collaborate with agencies that have duties, functions and authorities related to compliance with paying dues, such as the Manpower Office and other related agencies that are related to the application of administrative sanctions.¹⁵⁷

In accordance with the Presidential Decree number 25 of 2020, the national health insurance agency has a very good governance. So that when there is a non-natural disaster like today, namely the Covid-19 pandemic, at least the organizers of the national health insurance are deemed able to overcome, especially in terms of budget, so as not to experience such a large deficit in the state budget.

D. The View of Maqosid Sharia on The Formation of Presidential Regulation Number 64 of 2020 after The Supreme Court Decision Number 7 P/Hum/2020 on The Welfare Of The Community Amid The Covid-19 Pandemic

In terms of terminology, maqashid syar'iah can be interpreted as the values and meanings that the maker of the Sharia (Allah SWT) aims to achieve behind the making of Sharia and law, which is researched by mujtahid scholars from Sharia texts.¹⁵⁸ There are only three maqashid, namely dlaruriyat, hajiyat, tahsiniyat. Daruriyat, there must be to protect the benefit of the world and the hereafter. If this does not exist there will be destruction in this world and the hereafter. The degree of damage caused is the extent to which the daruriyat is lost. There are five maqashid al-dlarûriyât, namely: safeguarding religion,

¹⁵⁷ BPJS Kesehatan, Good Governance Realizes Ecosystem Improvement of the JKN-KIS Program, MEDIA INFO BPJS KESEHATANEDISI 86, 18.

¹⁵⁸ Jasser Auda, *Fiqh al- Maqāshid Ināṭat al-Ahkām bi Maqāshidihā*, (Herndon: IIIT, 2007), 15.

guarding the soul, maintaining descent, safeguarding property, maintaining reason. Maqashid hajiyyat is to remove distress from life..mukallaf While Maqashid *tahsiniyat* is to perfect the two previous Maqashid, which includes the perfection of customs, and noble morals.¹⁵⁹

Legal politics of the establishment of Presidential Regulation Number 64 of 2020 Post Supreme Court Decision Number 7 P / Hum / 2020 with Maqashid Sharia are very closely related, because the purpose of maqashid sharia itself is to achieve mashlahah, while the purpose of legal politics is the goal to regulate the human race. for the benefit of all. The point of reference is the concept of mashlahah.

Islamic jurisprudence experts divide the scope of the discussion area of fiqh (which is related to ijtihad) into two, namely for muamalah and worship. The space of ijtihad in the muamalah field is wider than the field of worship which is ta'abbudi in nature. The main purpose and content of Islamic Sharia is Maslahah for all Ummah. Even Ulama 'such as Imam Al-Ghazzali, Asy-Syathibi and others, have formulated that the aim of Islamic Sharia is to benefit and reject harm.¹⁶⁰

The socio-political dynamics are not only evident from the spirit of regional autonomy which is quite high, but also marked by the emergence of various political parties, whether having religious, religious neutral or interfaith characteristics. Of course this has influenced the course of a political law. Parties

¹⁵⁹ Ahmad al-Raisuni, *Nadariyât al-Maqāṣid Inda al-Imâm al-Shâthibi*, (Beirut: Muassasah al-Jami'ah, 1992), 117.

¹⁶⁰ Ahmad al-Raisuni, *Nadariyât al-Maqāṣid Inda al-Imâm al-Shâthibi*, (Beirut: Muassasah al-Jami'ah, 1992), 119.

with religious nuances seem to carry religious messages even though political nuances also seem inevitable.

Maqashid sharia as a legal political concept is basically an attitude of life whose ultimate goal is for the common good, so that adab is also associated with the laws of sharia and monotheism. Civilized humans fully realize their responsibility to Allah SWT by understanding, fulfilling and improving every aspect of themselves towards the perfection of life.

One of the scholars, Imam Asy-Syatibi, formulated maqashid sharia into 5 core things, namely as follows:¹⁶¹

- 1) Hifdzun ad-din (Guarding Religion);
- 2) Hifdzun an-nafs (Guarding the Soul);
- 3) Hifdzun Aql (Keeping Intellect);
- 4) Hifdzun Nasl (Maintaining Descendants), and
- 5) Hifdzun Maal (Safeguarding Property).

The purpose of these five things is not only for a handful of meanings, but it has a very broad meaning. When Maqosid Syariah is faced with non-sharia / general knowledge such as laws in Indonesia, it is very suitable to be used as a tool for analysis of a study. The emergence of Presidential Regulation Number 64 of 2020 concerning health insurance after the Supreme Court decision Number 7 P / HUM / 2020 has become a new history in research. Why is that, because maqasid sharia embodies goodness as well as avoids evil, or takes advantage and rejects madharat. The term which corresponds to the essence of

¹⁶¹ <https://gazwa.id/blog/maqashidsyariah/#:~:text=Maqashid%20syariah%20bila%20diartikan%20secara,dunia%20maupun%20%20akhirat%20mereka.&text=SeJadi%20substansi%20dari%20maqashid%20syariah%20itself%20is%20the%20problem>, accessed on 20 November 2020.

maqashid al-syari'ah is maslahat, because the stipulation of law in Islam must lead to maslahat.

In the midst of the Covid-19 pandemic, the government is currently issuing a policy that argues that saving the state budget will actually boomerang for them. People who have been miserable by the pandemic have resulted in a paralyzed economy which has an effect on the income of every individual. The condition of the country that is currently being hit by the Covid-19 pandemic, the economic and health crisis is the main obstacle, and the low purchasing power of the people is behind it. The author considers that currently the public has not been able to fully comply with the First Amendment of the Presidential Regulation on Health Insurance, especially to Article 34 as mentioned above, as well as to the Presidential Regulation No. 64 Year 2020. Not a few people are confused, because in addition to having to be burdened by the obligation to pay rising dues, they are also afflicted by ignorance of the definite reasons for them to carry out this obligation.¹⁶²

Maqashid al-syari'ah is an important aspect in the development of legal politics. This is at the same time an answer that Islamic law can and is very likely to adapt to social changes that occur in society and when sudden situations are very urgent. The adaptations carried out by the maqasid of sharia are still based on strong and solid foundations and are still in the scope of universal shari'ah. This is also proof that Islam is always suitable for every era and in every place

¹⁶² Excerpted from, <https://fh.unpad.ac.id/konstellation-polemik-k-Increase-tarif-iuran-bpjs-kkes/>, accessed on 20 November 2020.

CHAPTER IV

CLOSING

A. Conclusion

Based on research data that has been carried out related to the Political Law of Presidential Decree Number 64 of 2020 Post Supreme Court Decree Number 7 P / Hum / 2020 and how the implementation of regulations regarding public welfare in the midst of the COVID-19 pandemic, it can be concluded as follows:

1. That the Legal Politics of Presidential Regulation Number 64 of 2020 After the Supreme Court Decision Number 7 P / HUM / 2020 there have been legal actions. The President violated the provisions of Article 31 of the Law on the Supreme Court by replicating an arrangement that had been declared invalid. The deficit condition of the Social Security funds for health, which is actually caused by a mistake in the management and implementation of the social security program by BPJS, is actually borne by the people. On this basis, the policy of increasing BPJS contributions violates the principles of humanity, benefit and social justice in the administration of National Social Security as regulated in Law no. 40 of 2004 concerning the National Social Security System and Law no. 24 of 2011 concerning BPJS. This Perpres legally remains valid because the Perpres itself is regulated in a hierarchy of statutory regulations. In addition, this Presidential Decree was made to carry out the orders of higher laws and regulations or to exercise government power.

2. Whereas the fact that Presidential Regulation Number 64 of 2020 is a return to the initial rate is very inappropriate because in the MA 7P / 2020 decision, there is a legal rule stated by the Supreme Court judge that the policy of increasing BPJS dues violates the law because it is not based on adequate judgments , sociological and philosophical. Therefore, although the nominal increase in contributions in Perpres 64/2020 is different, the act of replicating similar policies on the same basis only shows that the President is playing with the Supreme Court Decision and does not respect the law. The increase in BPJS contributions will certainly worsen the welfare of the poor in the midst of the Covid-19 pandemic. Instead of improving and strengthening the affordability of BPJS services for the little people, the President is actually burdening the people with an increase in BPJS contributions. Even though the loss of livelihoods and income for the poor is a common understanding today in the midst of a pandemic. This adds to the bad list of the President's policies that do not side with the little people in the midst of the Covid 19 Pandemic.

B. Suggestion

Based on the conclusions that have been described, the authors can provide the following suggestions:

1. The government in making policies, especially Presidential Regulations, is expected to pay more attention to the hierarchy of laws and regulations so that there is a harmonization between the policy products made so that they do not conflict with other higher regulations.

2. For state officials or decision makers, before making policies related to the public interest, they are expected to pay more attention to the condition of the community so that the decisions or policies taken do not become polemic or can harm many people, which in the end the decisions or policies taken are related to legal issues that can harm all parties.



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