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THE CONSTITUTIONAL PERSPECTIVE OF INDOONESIAN SOCIAL SECURITY SYSTEM

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ABSTRACT

Some of the values contained in the regulation of the National Social Security System Law (SJSN) and the Social Security Management Agency Law (BPJS) are contrary to constitutional values. The purpose of this paper is to examine the conflict of values. The study was conducted using normative legal research methods, which focused on the statutory and theoretical approach. This study found that social welfare mandated by the 1945 Constitution to the state is developed through the national social security system: (a) as an obligation, (b) to empower the weak and incapable people to develop themselves in accordance with human dignity, and (c) in order to fulfill basic needs, both the right to education, the right to health, and the right to get a job. In addition, although the 1945 Constitution does not specify the pattern of the social security system to be developed, the SJSN Law and the BPJS Law use a mixed model between social insurance from participants and social assistance from the state to the poor. Based on this, it is recommended to adjust the formulation of legal norms of the SJSN Law and BPJS Law contained with constitutional values.

1. Introduction

The idea of general welfare or social welfare was first put forward by Ir. Soekarno at the BPUPKI Meeting on June 1, 1945 which discussed the basis of the state, where Ir. Soekarno proposed Pancasila as the basis of the state, with one of the bases being "social welfare", which was intended for the state to provide welfare guarantees and equality to all people.¹ This was then formulated in Chapter XIV of the 1945 Constitution (before the amendment) under the name "On Social welfare", which was stated in Article 32 (formulating the national economy, branches of production, and natural resources) and

1 Jimly Asshiddiqie, *Economic Constitution*, Jakarta, Kompas Book Publishers, 2010, page. 219–220.

Article 33 (formulating regarding the poor and abandoned children). After the fourth amendment to the 1945 Constitution, it was amended into Chapter XIV under the name "National Economy and Social Welfare", which was stated through Article 33 (formulating the national economy, production branches, natural resources, and economic democracy) and Article 34 (formulating the poor and abandoned children, the national social security system, as well as health care facilities and public services).

The provisions of Article 34 of the 1945 Constitution relating to social welfare state that: "(1) the poor and abandoned children are cared for by the state, (2) the state develops a social security system for all people and empowers the weak and indigent in accordance with human dignity, (3) the state is responsible for the provision of health care facilities and proper public service facilities, and (4) further provisions regarding the implementation of this article are provided for in law." From the formulation of the provisions of Article 34 paragraph (2) of the 1945 Constitution, there are several elements that need attention, namely: (a) *the state develops*, (b) *the social security system*, (c) *for all people*, (d) *empowers the weak and indigent*, and (e) *in accordance with human dignity*. In order to provide comprehensive and integrated social protection, through the Decree of the People's Consultative Assembly of the Republic of Indonesia Number X / MPR / 2001, assigned the President to develop a national social security system in order to provide social protection for the community that is more comprehensive and integrated.

Related to this, the 1945 Constitution guarantees the protection of human rights, including the *right to develop themselves through the fulfillment of basic needs and the right to receive education for the welfare of mankind* (Article 28C paragraph (1) of the 1945 Constitution), *the right to work* (Article 28D paragraph (2)), *the right to live a prosperous life of birth and mind* (Article 28H paragraph (1)), *the right to facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice* (Article 28H paragraph (2)), as well as *the right to social security that allows his full development as a dignified human being* (Article 28H paragraph (3)). The provisions of human rights protection as mentioned contain constitutional values that correlate with the state's obligation to develop the national social security system. Law No. 39 of 1999 concerning Human Rights states "every citizen has the right to social security needed to live a decent life and for his full personal development". Therefore, the development of the national social security system must pay attention to the values mandated by the constitution.

When considering the provisions of Law No. 40 of 2004 concerning the National Social Security System (SJSN Law) and Law No. 24 of 2011 concerning the Social Security Organizing Agency (BPJS Law), as an implementation of the provisions of Article 34 paragraph (2), Article 28D paragraph (2), and Article 28H paragraph (1), (2), and (3) of the 1945 Constitution, it must be seen whether the two laws have fulfilled the principle or values of constitutionality as stated above. Some issues that can be raised include: whether the realization of the social security system is a state obligation or can be immediately handed over to public legal entities, whether the scope of the social security system has

covered the areas referred to in the constitution (education, health, and employment), whether the nature of social security is in the form of assistance from the state or contributions (insurance), whether the social security system must be followed by all people, and so on. Meanwhile, research conducted by Hennigusnia and Ardhan stated that the SJSN Law and BPJS Law were in accordance with constitutional values.² This opinion is contrary to the opinion of Ardiansah and Silm Oktapani who stated that there were problems in the implementation of SJSN and BPJS which caused the contribution system to be carried out.³ This study will thoroughly look at various indicators to see the conformity of the values in the SJSN Law and BPJS Law with the constitution, namely by examining the indicators of organizers, contributions, participants, objectives, and scope.

As is known, the issue of social welfare does not seem to have been the focus of studies from constitutional law experts and administrative law experts in Indonesia, so there is still little research and books that discuss this matter. Therefore, this paper will analyze whether the substance of the regulation of the SJSN Law and the BPJS Law is in accordance with the values and provisions of the 1945 Constitution.

2. Research Methods

This research used a normative type of legal research, also used a *statute* and *conceptual approach*, obtained from legal materials through statutory and literature studies, which are then analyzed deductive-qualitatively.

3. Results And Discussion

To realize the ideal of a welfare state (*social service state*) is needed, it is necessary to have an active role and state intervention in almost all sectors of public life, in order to improve the welfare of the people, through the implementation of *bestuurszorg* or *public service*.⁴ The concept of *welfare state* is an idea of a state that uses a democratic system of government that is responsible for the welfare of its people, in order to reduce the suffering of its people, such as poverty, unemployment, health, education, and so on, which is implemented through public policies that are service, assistance, protection, and prevention of social problems.⁵

The *welfare state* is a concept of governance in which the state plays an important role in the protection and promotion of the overall economic and

2 Hennigusnia and Ardhan Kurniawati., Constitutional Review of the National Social Security System and Social Security Administration Agency, *Employment Journal*, Vol.16 No.2, 2021, page. 103.

3 Ardiansah and Silm Oktapani., Politics of Law the Fulfillment of the Right To Health for the Indonesian People Based on the Sjsn Law and Bpjs Law, *IUS Journal of Law and Justice Studies*, Vol.8 No.1, 2020, page.164–79

4 Saut P Panjaitan., The Relevance of the Development of Administrative Law in the Administration of Local Government in Indonesia, in *Potpourri of Administrative Law Development*, Malang, Inara Publisher, 2023, page.85, 87, 88, 89.

5 V. Hadiyono., Indonesia in Answering the Concept of a Welfare State and Its Challenges, *Journal of Law, Politics and Power*, Vol.1 No.1, 2020, page. 23.

social welfare of its citizens.⁶ It is based on the principles of equal opportunity, equal wealth, and public responsibility for those who are unable to take advantage of the minimum provisions for a good life. At its core, the concept of the welfare state involves assistance from the state, with non-cash services provided (e.g. in health, employment, education, and police) as well as cash provided directly to individual beneficiaries (such as maternity and child care assistance, unemployment assistance, and housing purchase assistance). These policies are funded through redistributionist taxation, which includes taxing the greater income of people with higher incomes. In addition to guaranteeing the level of people's welfare within a certain standard, this concept also helps reduce the gap between rich and poor.⁷ The concept of the welfare state is divided into 2 (two) sub-models, namely the universal model, with provisions that include everyone, regardless of rich or poor, and a selective model, with provisions that include only those who are considered most in need. By quoting the opinion of Gosta Esping-Andersen,⁸ it can be known the classification of the welfare state, namely *liberalism*, *christian democracy (conservatism)*, and *social democracy*. In *the liberal welfare state*, it is based on market domination and the provision of self-sufficient services, and the state intervenes only in social protection related to poverty reduction and the provision of basic necessities on an ad-hoc basis. This model is believed to cause dualism between poor and non-poor groups. This model is run by Australia, Canada, Japan, and the United States.

The *christian-democratic welfare state* is based on the principles of *subsidiarity* and decentralization, dominated by social insurance schemes, involving middle-class people in the provision of private welfare for its own benefit (Bismarck's model of the German welfare state), and the state engaging in limited services. This model is run by Austria, Belgium, France, Germany, Spain, and Italy. The *social-democratic welfare state*, based on the principles of universalism, provides equal access to services and assistance to all citizens, regardless of income. In this model, the state grants autonomous freedom to citizens and limits dependence on family and markets. Policy is perceived as anti-market politics, by providing optimal universal services, issuing personal (and family) insurance options, and by emphasizing the provision of *full-employment* for all citizens, and some benefits related to income through the tax system. This model is run by Denmark, Finland, the Netherlands, Norway, and Sweden. Most developed countries as mentioned are grouped into OECD (*Organization for Economic Cooperation and Development*) countries.

As is known, there are various models of *welfare states*, namely⁹: (a) *institutional/universal model* or *the scandinavian welfare state*, as adopted in Sweden, Finland, Norway, and Denmark, which is influenced by liberalism,

6 Setiyono, Budi., *Model & Desain Negara Kesejahteraan*, Bandung, Nuansa Cendekia, 2018, page.35.

7 *Ibid*, page. 36.

8 *Ibid*, page. 42–46.

9 Hadiyono., Indonesia in Answering the Welfare State Concept and Its Challenges, *Jurnal Hukum Politik Dan Kekuasaan*, Vol.1 No.1, page.26.

which views that welfare is the right of all citizens, so services must be provided permanently regardless of the social and economic position of the community, (b) the *corporate model/Bismarck model* adopted in Germany and Austria. This model is the same as the institutional/universal model, where the social security system is carried out institutionally and broadly, but what distinguishes it is that contributions to various social security come from three parties (government, business, and labor /workers), and the provision of social security is given to those who work or who are able to contribute through insurance schemes, (c) *residual* model, which implements selective and conservative-influenced services, driven by neo-liberal and free-market ideologies. In this model, the state provides social services, especially in the field of basic needs to underprivileged and disadvantaged groups, such as the poor, unemployed, disabled, elderly people who are not rich, and so on. However, the social services provided are relatively small, not permanent/short-term, rigorously selected, and efficient, in order to empower the community. This model is run in Anglo-Saxon countries, such as the United Kingdom, the United States, Australia, and New Zealand, and (d) *the minimal model*, which is characterized by very little government spending on social development. Social security and welfare programs are provided sporadically, partially, and minimally generally given to government employees, such as in Brazil, Italy, Spain, Chile, Sri Lanka, the Philippines, South Korea, and Indonesia.

The practice of the welfare state in Indonesia is manifested in the form of social welfare development that approaches the concept of *welfare pluralism*, considering that until now there has not been a single country that adheres to the concept of *welfare society* purely. Indonesia adheres to a *welfare state system* with a new variant, namely *participatory* or *contributory welfare state* which refers to the concept of *welfare pluralism*. However, social welfare for all Indonesian people has not been realized equally. This is reinforced by field data that Indonesia's Human Development Index (HDI) is included in the medium category, which is ranked 108. Therefore, the direction of national economic policy must be oriented towards the institutionalization of *the staatsidee* of the Indonesian nation to realize general welfare. The vehicle for institutionalizing *the staatsidee* as formulated in Article 33 of the 1945 Constitution is the conception of the welfare state.¹⁰

The administration of social welfare is also the maintenance of the public interest. Prajudi Atmosudirdjo¹¹ stated that there are four basic theories regarding public interest, namely: (a) *security theory*, which prioritizes a safe, orderly, and peace life for the community, (b) *welfare theory*, which focuses on meeting the basic needs of the community, both clothing, shelter, food, health, and job opportunities, (c) *life efficiency theory*, which requires people to live

10 Lismanto, Lismanto and Yos Johan Utama., Grounding Administrative Law Instruments as a Tool for Realizing Social Welfare in the Perspective of a Democratic State, *Indonesian Journal of Legal Development*, Vol.2 No.3, 2020, page.423; Also see Ahmad Dahlan and Santosa 'Irfaan., Gassing the Welfare State, *El-Jizya : Journal of Islamic Economics*, Vol.2 No.1, 2014, page.1–22.

11 Prajudi Atmosudirdjo, *State Administration Law*, Jakarta, Ghalia Indonesia, 1986, page.28.

efficiently so that prosperity and productivity can be increased, and (d) *welfare society* theory, which emphasizes the need to create happiness and shared prosperity, where *social tensions* can be overcome steadily, and followed by efforts to equalize the income level of the community. The things referred to in the four theories regarding public interest, may still be used as a reference for the government in the implementation of *bestuurszorg* or *public services*. Based on this opinion, it appears that the common good and common prosperity are also part of the public interest. General welfare or social welfare is one of them organized with a social security system.

ILO Convention No. 102 of 1952 states that:

"Social security is the protection which society provides for its members through a series of public measures: (a) to offset the absence or substantial reduction of income from work resulting from various contingencies (notably sickness, invalidity, old age and death of the breadwinner), (b) to provide people with health care, and (c) to provide benefits for families with children."

Kertonegoro stated "social security¹² is efforts and protection to reduce risks or events that can cause the loss or decrease of most income made by the government and/or society, which is grouped into (a) social *services* in the form of prevention and development in the fields of health, religion, family planning, education, legal aid, and so on; (b) *social assistance* in the form of recovery and healing, such as natural disaster relief, the elderly, orphans, people with disabilities, and so on; (c) *social infrastructure* in the form of guidance in the form of improving nutrition, housing, transmigration, cooperatives, and so on; and (d) *social insurance* in the field of labor protection, specifically for workers who always face economic risks."

Social Security According to the 1945 Constitution, SJSN Law and BPJS Law

In the Preamble of the 1945 Constitution Indonesia, it was mandated that the purpose of the state was to improve the welfare of the people. The Indonesian Constitution establishes several basic values regarding social welfare as stated earlier, namely: (a) it is the obligation of the state, (b) in order to promote general welfare, (c) it is organized through the national social security system, (d) for all people, and (e) realizing social justice.

Meanwhile, the SJSN stipulated in the provisions of Article 34 paragraph (2), and related to the protection of human rights as stipulated in Article 28C paragraph (1), Article 28D paragraph (2), and Article 28 H paragraph (1), (2), and (3) of the 1945 Constitution contains the following basic constitutional values: (a) state obligations, (b) for all people, (c) empowering the weak and indigent, (d) in accordance with human dignity, (e) to meet basic needs and education for the welfare of mankind, (f) to work (g) for the welfare of the born and inward, and (h) to obtain equal opportunities and benefits.

12 H. Zaeni Ashhadie, *Legal Aspects of Social Security for Workers in Indonesia*, Jakarta, PT. Raja Grafindo Persada, 2013, page.26–34.

There are 3 (three) models in the implementation of SJSN, namely¹³: "(a) using *social assistance* mechanisms to underprivileged populations, both in the form of cash transfers and certain services, whose budget can come from the state and/or society, and be given to poor, elderly, sick, or unemployed people, (b) *compulsory social insurance/insurance mechanisms*, financed from contributions or contributions paid by participants, and (c) *voluntary insurance* mechanisms or voluntary savings, whose contributions are paid by participants (or with employers) according to their level of risk and desire, to third parties (insurers).

If examined the substance regulated in the SJSN Law and BPJS Law, social security is a form of social protection to ensure that all people can meet the basic needs of a decent life. Meanwhile, SJSN is defined as a procedure for implementing social security by several social security agencies. The purpose of SJSN is to guarantee the fulfillment of the basic needs of a decent life for each participant and/or their family members. SJSN is organized based on humanitarian principles (respect for human dignity), benefit principles (efficient and effective management), and social justice principles (ideal goals) for all Indonesian people.

When viewed from the perspective of Islamic Law, it can generally be argued that in the concept of *maqasid ash-shari'ah* is a solution and bridges the conflict between the welfare state where *the* state plays a role in realizing social welfare and the liberal state that marginalizes the role of the state. In the concept of *maqasyid ash-shari'ah*, Islamic economic principles are applied by prioritizing justice, togetherness, and trust.¹⁴ In the context of building social responsibility, Islamic values contain religious meanings and dimensions, where *zakat* and *sadaqah* are institutions that can realize social welfare for the poor.¹⁵ However, to realize this, most leaders of Muslim countries pay little attention to fostering a sense of social responsibility and improving the social welfare of citizens. According to the perspective of Islamic law, there is a principle that humans have the right to welfare and the state is obliged to improve welfare, provide proper education, and play an active role in all aspects of community life in order to realize social welfare so that people are free from poverty, free to choose decent work, have property rights that function socially, have the right to education, and the right to prosperity.¹⁶ Economic behavior in Islam is also oriented towards increasing faith, so that his life remains *istiqomah*, which is to get divine pleasure. However, this Islamic economic system is always related to the practice and building of society that relies on the Qur'an and al-hadits, so that this economic system can be practiced anywhere. One of the basic principles in the Islamic economic system is social security, whereby every individual is guaranteed the right to live in a state in accordance with their basic

13 Andika Wijaya, *Indonesian Social Security Law*, Jakarta, Sinar Grafika, 2018, page. 3–4.

14 Agus Riwanto and Sukarni Suryaningsih., Realizing Welfare State and Social Justice: A Perspective on Islamic Law, *Volksgeist: Journal of Legal and Constitutional Sciences*, Vol.5 No.1, 2022, page.41–51

15 Sulaiman Lebbe Rifai., Social Responsibilities and Human Welfare Developments: An Islamic Perspective, *SSRN Electronic Journal*, 2022, page.7

16 Sri Kusriyah., The Principles of the Welfare State in an Islamic Perspective, *Journal of the Rule of Law*, Vol. 5 No.4, 2022, page. 284–99.

needs, and it is the duty of scholars and the state to guarantee the right of citizens to live a decent life.¹⁷

From the regulations contained in the SJSN Law and the BPJS Law, several value indicators can be analyzed as follows:

3.1 The social security organizing agency, called BPJS, is a legal entity formed to organize social security programs by law. This legal entity is a transformation and amalgamation of various state-owned social security organizing bodies, such as Jamsostek, Taspen, Asabri, and Askes. In addition to BPJS, it is also known as the National Social Security Council (DJSN) which is responsible to the President, as a body that has the function of formulating general policies and synchronizing the implementation of SJSN. DJSN has the task of conducting studies and research related to the implementation of social security, proposing investment policies for the national social security fund, and proposing social security budgets for recipients of contribution assistance and the availability of operational budgets to the Government. Meanwhile, the authority of the DJSN includes monitoring and evaluating the implementation of social security programs, including the level of financial health of BPJS. Thus, DJSN has a position that can be analogous to a kind of supervisor or supervisor of BPJS,¹⁸ even though there is actually a BPJS Supervisory Board and an Internal Supervisory Unit that supervises the directors. Supervision by DJSN of BPJS is external supervision.

According to the BPJS Law, the legal status of BPJS is a public legal entity, which is responsible to the President. BPJS consists of BPJS Kesehatan to organize health insurance programs, and BPJS Employment to organize work accident insurance programs, old age insurance, pension insurance, and death insurance. BPJS can act on behalf of the Republic of Indonesia as a member of an organization or member of an international institution.

In the General Explanation of the SJSN Law and the BPJS Law, it is said that "*SJSN is basically a state program that aims to provide certainty of protection and social welfare for all Indonesian people. Through this program, everyone can meet the basic needs of a decent life in the event of things that can result in loss or reduction of income, due to illness, accident, loss of job, entering old age, or retirement.*" Based on this, the question arises whether the state mandated by the constitution to develop SJSN may delegate its obligations to a public legal entity. The interpretation of the phrase "developing a social security system" is not just about making regulations, giving delegation to public legal entities, and requiring people to be participants, but has a deeper meaning of being directly responsible for the implementation of the social security system. The care of the poor and abandoned children in the context of social welfare, for example, must be maintained by the state. Maintenance and development

17 Heri Sudarsono., *The Concept of Islamic Economics: An Introduction*, Yogyakarta, Ekonisia, 2002, page.98.

18 Andika Wijaya, *Indonesian Social Security Law*, Jakarta, Sinar Grafika, 2018, page.9

by the state is an active act, therefore the law must strictly reflect the constitutional order.¹⁹ The maintenance and development of social welfare and SJSN can be carried out in various ways, either carried out alone by the state or by social insurance and social security, provided that state power is not lost and the burden of state responsibility is not forgotten.²⁰ The state policy made must not contradict the constitution. Therefore, the mandate to BPJS by law actually contains a constitutional problem,²¹ because the constitutional mandate requires the state to organize it, through the ministry of health, ministry of education, and ministry of manpower. This mandate gives the impression that the state is taking off a heavy financial burden to organize SJSN. This shows that SJSN Indonesia is not run with *social service*, *social assistance*, or *social infrastructure* efforts by the state, because the role of the state is not directly to organize SJSN, but by other parties, namely BPJS. This means that the principle of the Indonesian welfare state as mandated by the Preamble of the 1945 Constitution to prosper the people, shows a *minimal model* with a relatively small budget in providing SJSN contribution assistance for the poor and displaced people. Similarly, the position of BPJS that can represent the state in establishing international cooperation, gives the impression that the state fully gives confidence to BPJS to act on behalf of the state to cooperate with other organizations or institutions at home or abroad, even though the implementation of social security is the government's duty²² in the context of maintaining and promoting general welfare²³.

When compared with the Islamic legal system, it can be seen that social and individual welfare are placed to complement each other. Therefore, whoever is entrusted with the fulfillment of social needs is a mandate and gives the right to obtain needs from him and others, as long as it is done in cooperation with the *khalifah*.²⁴ However, the state is legally and morally responsible for providing for the basic needs of society, especially to the indigent members of society. Therefore, observance of the laws of the country is related to the moral obligation to provide for the basic needs of the poor, and it is the right of the people to demand basic necessities when they are in a state of suffering. As a result, his life and property have always been sacrificed to protect the country.²⁵

3.2 Dues, which are amounts of money paid regularly by participants, employers, and/or the government. For social security participants, this

19 Jimly Asshiddiqie, *Economic Constitution*, Jakarta, Kompas Book Publishers, 2010, page.288.

20 *Ibid*

21 Hennigusnia and Ardian Kurniawati., Constitutional Review of the National Social Security System and Social Security Administration Agency, *Employment Journal*, Vol.16 No.2, 2021, page. 103–120.

22 H Yacob Djasmani., As a Duty of Government, *Journal of Legal Issues*, Vol.40 No.1, 2011, page. 53–59.

23 Chuasanga A., Ong Argo Victoria. Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol.2 No.1, 2019

24 Afzalur Rahman, *Islamic Economic Doctrine*, Yogyakarta, PT. Dana Bhakti Waqf, 1995, page.50–51.

25 *Ibid*, page.140–41.

contribution is mandatory whose amount is determined based on a certain percentage of wages or a certain nominal amount. For the poor and indigent people are given contribution assistance by the government. Social security funds are managed and developed by BPJS in accordance with the investment policy proposed by DJSN by placing them or developing them by taking into account the principles of prudence, liquidity, solvency, fund security, transparency, and adequate results. Social security funds are trust funds or entrustment funds for participants, for the benefit of participants and BPJS operations, so they must be managed carefully and safely. BPJS is authorized to place Social Security Funds for short-term and long-term investment activities. It appears that BPJS operations must be financed by participants, even though participants are taxpayers. If the SJSN program is directly managed and becomes the responsibility of the state, then participant contributions will no longer be mandatory, because social security is managed from taxes paid by participants. With the pattern contained in the SJSN Law and BPJS Law, it indicates that SJSN Indonesia's business is in the form of *social insurance*,²⁶ where participants are those who pay mandatory contributions. Up to this point, the Indonesian welfare state model contains elements of the corporate model or *bismarck model*, where those who bear the costs of SJSN come from the mandatory contributions of participants, employers, and the government. The pillars of the implementation of SJSN Indonesia thus have the character of *compulsory insurance* and *social assistance* from the government in the form of assistance provided to the poor and indigent. Social assistance is an effort to overcome fundamental economic risks experienced by the public, such as famine, disease outbreaks, natural disasters, and so on, which are funded through the state budget. While social insurance is an effort to overcome economic risks by transferring these risks to an insurance company. As is known, the idea of social insurance was first put forward by German Chancellor *Otto von Bismarck* in the late 19th century, who introduced health insurance, workers' insurance, and compulsory old-age insurance to protect his people from financial uncertainty.²⁷ Then in the state of Wisconsin the United States in 1911 made legislation regarding workers' compensation, which was followed by other states so that the United States implemented social insurance. The SJSN Law applies a combination of the two systems, namely social insurance and social assistance. The principles that characterize the social security system with the pattern of social insurance, namely;²⁸

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- 26 Arief Budiono and Wafda Vivid Izziyana., Policy for the Implementation of the National Social Security System through BPJS with an Insurance System," *Law Pro Justitia* II, no. 1 (2016): 52–70.
- 27 Leah Rogne, *Social Insurance and Social Justice: Social Security, Medicare, and the Campaign Against Entitlement*, New York, Springer Publishing Company, 2009, page.26–27.
- 28 Spiritual Concern, *Social Security in Indonesia: Efforts to Provide Social Protection to the Community*, Jakarta, Secretariat General of the House of Representatives of the Republic of Indonesia, 2013, page.56–57.

First, the social security program grows in line with the country's economic growth, *second*, it involves the participation of the community in financing, *third*, it is mandatory so that it can be followed by most people and can be imposed by imposing sanctions. While the idea of social assistance was written by *Jean Louis Vives* (1526) in the book *De Subventionem Pauperum*, which explained the assistance for the poor carried out and provided input on how to improve the assistance that had been given to be more even, because social solidarity that made dependence between human beings in society to fight poverty, which must be carried out at the national level.²⁹ In practice in many countries, the administration of social security is carried out centrally by the state, since it is public domain and non-profit in nature. The provisions of Article 34 paragraph (2), Article 28C paragraph (1), Article 28D paragraph (2), and Article 28H paragraph (1), (2), and (3) of the 1945 Constitution actually have a character that prioritizes state obligations in order to organize SJSN. Therefore, the mandate of the 1945 Constitution to "develop a social security system" should be reviewed again in accordance with constitutional values, whether it should be organized by social insurance.

This needs to be stated considering the legal considerations of the Constitutional Court judges in Decision Number 138/PUU-XII/2014 dated December 7, 2015, which stated that "The Court is of the opinion that social insurance as a social security system is in line with the values of Pancasila and the mandate of the 1945 Constitution, because it will create social justice by fostering awareness of individual obligations to society or the public collectively as the embodiment of a cultural life that prioritizes the common good." Against these legal considerations, there was a leap of thinking, namely from what should be a "state obligation" to "an individual obligation" collectively working together to bear the costs of SJSN as a manifestation of common life. The Constitutional Court does not seem to be careful in seeing the nature of the purpose of statehood, the ideal of social welfare and the mandate to develop the social security system contained in the 1945 Constitution, namely the obligation of the state to realize the dignity of humanity as a whole. So that the obligation cannot necessarily be imposed on individuals or communities to bear the period of achieving their own welfare through public legal entities.

In the concept of an Islamic state, the state is responsible for providing basic needs for all people, so that the state not only provides social security but also general security. While funds or dues can be obtained from zakat, infaq, and saddaqa collected to the state treasury. The principle of general assurance permeates all levels of society, so that each individual holds responsibility for himself, his family, and society.³⁰

29 Vladimir Rys, *Reinventing Social Security Worldwide: Back to Essentials*, Bristol, The Policy Press, 2010, page.12.

30 Afzalur Rahman, *Islamic Economic Doctrine*, Yogyakarta, PT. Dana Bhakti Waqf, 1995, page.149.

3.3 Participant, is any person including foreigners who work for at least 6 (six) months in Indonesia, who have paid dues. This participation is mandatory, which is intended so that all people become participants so that they can be protected. Concretely, the participants in the SJSN Law are actually employers and workers, especially in the formal sector. For workers in the non-formal sector, such as farmers, fishermen, and independent workers can become voluntary participants, although the participation rate is still low.³¹ In the SJSN Law, SJSN participation must be registered by the employer in stages. In the case of constitutional review of the provisions of Article 13 paragraph (1) of the SJSN Law regarding the obligation of employers to register their workers to become SJSN participants, it is stated in the judge's legal consideration as contained in the Constitutional Court Decision of the Republic of Indonesia Number 70 / PUU-IX / 2011 dated August 8, 2012 states that the protection, promotion, and enforcement of human rights are the responsibility of the state, so that these obligations must be guaranteed in law. Meanwhile, it is stated that the obligation to gradually register SJSN participants by employers must not eliminate the right of workers to become SJSN participants. In Presidential Regulation Number 109 of 2013 concerning the Staging of Social Security Program Participation, social security participants are distinguished from wage earners (workers at state administration employers and workers at employers other than state administrators) and non-wage earners (employers, workers outside the employment relationship or independent workers, and other workers who do not receive salaries or wages). Compulsory participation is a solution to the inability of the community to see future risks and indiscipline in saving, therefore the management of social security funds is intended to provide socio-economic protection for the future of participants. The State, through the government, must increase the expansion of the scope of participants on an ongoing basis by including people working in the informal sector, the poor, the elderly, the unemployed, and so on.³² The participation of recipients of contribution assistance from the government is closely related to the country's financial capacity. For the health sector, for example, through Government Regulation Number 76 of 2015 concerning Amendments to Government Regulation Number 101 of 2012 concerning Recipients of Health Insurance Contribution Assistance, distinguishes the understanding of poor and indigent people. The poor are people who have no source of livelihood and/or have a source of livelihood but do not have the ability to meet basic needs that are decent for their lives and/or family. While an indigent person is a person who has a source of livelihood, salary, or wages, who is only able to meet basic decent needs

31 Wahyu Kurniawati and Riris Diana Rachmayanti., Identifying the Causes of Low JKN Participation in Informal Sector Workers in Rural Areas, *Indonesian Journal of Health Administration*, Vol.6 No.1, 2018, page.33-39.

32 H. Bambang Purwoko., Implementation of Social Security System (SJS) in International Perspective, *E-Journal WIDYA Ekonomika*, Vol.1 No.1, 2016

but is unable to pay contributions for himself and his family. The provisions of the 1945 Constitution as mentioned earlier require that all people be protected their rights to live decently, so that informal workers, the poor, and the indigent have constitutional rights and therefore must be mobilized to become participants of SJSN. This is intended to guarantee equal opportunities and benefits for all people to get social welfare through SJSN.

In the concept of Islamic law, the responsibility of the state to fulfill basic needs is given to the indigent members of society, on the basis of principles, the rights of the poor, the prohibition of accumulating property, everyone pays according to his ability, everyone is assisted according to his needs, given social security and provided social reserves in the form of general security.³³

3.4 The purpose, is to guarantee the protection of everyone's right to social security to be able to meet the basic needs of a decent life and improve human dignity, for each participant and/or his family. The basic needs of a decent life are the essential needs of everyone in order to live a decent life, for the realization of social welfare for all Indonesian people. In the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 13 of 2012 concerning the Components and Implementation of the Stages of Achieving Decent Living Needs, which defines the needs of a decent life as the standard needs of a single worker/worker to be able to live a physically decent life for the needs of 1 (one) month. The objectives of SJSN are seen to provide very minimum achievement in the development of social welfare. Looking at the provisions contained in the 1945 Constitution as mentioned, it can be stated that the purpose of holding SJSN as a whole and comprehensively is to empower the weak and incapable in accordance with human dignity, develop themselves, fulfill basic needs, get education, and live a prosperous life born and inward. In short, the 1945 Constitution envisions the implementation of SJSN to realize a complete Indonesian human being who is prosperous in birth and mind, in accordance with human dignity.

Welfare issues are closely related to poverty issues, including inequities to access to power and social status. Welfare has the connotation of being fulfilled or fulfilled one's needs outwardly and mentally to live life reasonably. While poverty connotes the lack/ absence of a person's need to live a reasonable life, both in the form of absolute poverty, namely a condition where a person lacks resources to meet the needs of daily life, such as lack of clothing, food, shelter, health, and education, as well as relative *poverty*. Initially, the concept of welfare was aimed at overcoming absolute poverty, which was done by means of *residual remedies* with charitable or charitable programs. In its development, social welfare issues no longer only provide assistance in fulfilling basic needs, but also reach programs that provide access to social justice and social status

33 Afzalur Rahman, *Islamic Economic Doctrine*, Yogyakarta, PT. Dana Bhakti Waqf, 1995 page.166–69.

as well as welfare services as a whole and integrated³⁴, through the provision of job training, job search assistance, subsidies for the establishment of new businesses, educational scholarships, health services, and so on, which are not only intended for the poor but also intended for all citizens. For many countries in the world social welfare systems are weakened by poor allocation of funds, imperfect policies, poor authority and responsibility, and weak coordination among ministries. The SJSN desired by our constitution must remain focused on the ultimate goal, namely social welfare for all people, with social protection policies that can ensure poverty alleviation in order to improve people's welfare. Therefore, the state should develop a strong SJSN by reducing the weaknesses as mentioned.

In the concept of Islamic law, the purpose of the Islamic state is to ensure social welfare for all people, without questioning who is trusted to control the sources of production, provided that the sources of production and natural resources controlled are intended for the benefit of the people. This is because of the value in Islamic law that individuals are part of society.³⁵

3.5 The scope of social security, includes health insurance, work accident insurance, pension insurance, old age insurance, and death insurance for the entire population through compulsory worker contributions. When viewed from the provisions of the constitution, there is a basic value contained in "social welfare", namely to promote general welfare and realize social justice. Meanwhile, SJSN is held in order to empower the weak and indigent, in accordance with human dignity. Furthermore, the MPR Decree mandates that the government provide social protection for the community that is more comprehensive and integrated. Meanwhile, the protection of human rights related to social, economic, and cultural rights as formulated so that the state realizes the fulfillment of basic needs, provides the right to education for the welfare of mankind, the right to live a prosperous life outwardly and mentally, and the right to self-development. Based on this, it appears that there is a gap in terms of the scope of social welfare and the fulfillment of social, economic, and cultural rights contained in the constitution and the SJSN Law. Based on this, SJSN should pay attention to the protection, fulfillment, and enforcement of second-generation human rights in the social, economic, and cultural fields (such as the right to work, the right to get wages, the right to food, the right to housing, the right to health, and the right to education, as well as the right to enjoy scientific progress) as well as the human rights of the third generation, namely rights in development (such as the right to obtain adequate housing and the right to obtaining adequate health services).³⁶ The purpose and scope of carrying out

34 Deysi Liem Fat Salim, Nontje Rimbing, and Theodorus H. W. Lumunon., *Accessibility of Health Financing in the National Health Insurance Program*, *Lex Et Societatis*, Vol.8 No.4, 2020, page.104–114

35 Afzalur Rahman., *Islamic Economic Doctrine*, Yogyakarta, PT. Dana Bhakti Waqf, 1995, page.51.

36 Jimly Asshiddiqie., *Fundamentals of Post-Reformation Indonesian Constitutional Law*, Jakarta, PT. Bhuana Popular Science, 2007, page.624.

general welfare and realizing social justice, in accordance with the dignity of humanity, and in the context of self-development into a whole person, are basic values that should be the main concern in the SJSN Law. *Self-actualization* is one of the basic needs of human life, in addition to clothing, shelter, and food, guarantees of possession, *self-esteem*, and *love*.³⁷ The implementation of social welfare programs must be integrated with the administration of government in a broad sense. Paying attention to this, the scope of SJSN should also pay attention to educational issues, in order to educate the nation's life. SJSN does not yet contain the scope of social welfare, and must be developed again in the field of education, and also includes people who work in the informal sector, and the poor. The Healthy Indonesia Card (KIS) and Smart Indonesia Card (KIP) programs are government programs in the field of health social security and education for underprivileged participants, which are regulated through Presidential Regulation Number 7 of 2014 concerning the Implementation of the Family Welfare Deposit Program, Smart Indonesia Program, and Healthy Indonesia Program to Build Productive Families, including social security in the field of education. Meanwhile, the SJSN Law and the BPJS Law do not include social security in the field of education.

In the concept of Islamic law, the responsibility of the state in providing social security basically guarantees the fulfillment of the basic needs of the community individually, due to its inability to fulfill these needs, both clothing, food, and shelter. Therefore, people's obedience to the state also depends on the fulfillment of these basic needs. The state makes moral efforts to invite the public to participate in helping the indigent, through *infaq*, *zakat*, and *shaddaqaah* to the state treasury,³⁸ both guarantees to individuals and family guarantees and social responsibilities for individuals.

However, the basic constitutional values after the amendment are focused on guaranteeing the existential nature of man as a social personality in order to achieve the goal of a whole and complete human life. Building a dignified legal state is nothing but placing the dignity of Indonesian people as the center of its orientation (*anthropocentric*), by developing laws that have a consumer, responsive, and progressive perspective to humanize Indonesian people.³⁹ A dignified rule of law will be realized if the fundamental value of Pancasila becomes the core component of the rule of law,⁴⁰ especially through popular national economic development based on Pancasila.⁴¹

37 Saut P Panjaitan., *Basics of Legal Science*, Jakarta, Erlangga Publishers, 2021, page.54.

38 Afzalur Rahman, *Islamic Economic Doctrine*, Yogyakarta, PT. Dana Bhakti Waqf, 1995, page.140, 144.

39 A. Mukhtie Fadjar., The Struggle for a Dignified State of Law, in *Building a Dignified State of Law*, Malang, Setara Press, 2013, page.6–7.

40 *Ibid*

41 Deviana Yuanitasari and Susilowati Suparto., The Role of The State in The People's Economic System Based on Pancasila to Realize Social Welfare has been, *Acta Diurnal*, Vol.4 No.1, 2020, page.36–51.

Based on the description presented, it can be known the difference in constitutional values between the 1945 Constitution and the SJSN Law and the BPJS Law, as follows:

Table 1: Comparison of Constitutional Values with the Values of the SJSN Law and BPJS Law Regarding SJSN

No.	Indicators	Values		Description
		1945 CONSTITUTION	Social Security Law and BPJS Law	
1	Organising Body	States	BPJS (Public Entity), DJSN	Legal -
2	Dues	The burden on the state budget (for the poor, the needy, and the underprivileged) with the pattern of <i>social assistance</i>	Participant contributions (social <i>insurance</i>), and the state budget (for the poor, needy, and poor).	-
3	Participants	All Indonesian people (whole and comprehensive)	Formal workers (informal workers have not been prioritised, neither have the poor, the needy, and the underprivileged)	-
4	Objectives	Empowering the weak and underprivileged, in accordance with human dignity, to develop themselves, fulfil their basic needs, get an education, and live in physical and mental prosperity.	Guarantee the protection of everyone's right to the fulfilment of a decent basic life, in order to improve human dignity	-
5	Scope	Indonesian people who are physically and mentally prosperous and dignified (education, health, employment)	Health insurance and labour insurance	-

Source: *Processed from the 1945 Constitution as well as the SJSN Law and the BPJS Law*

In contrast to Alfritri's opinion⁴², criticism of the SJSN Law and the BPJS Law as stated in the table has also been raised by Nanang Sri Darmadi. Which states that the SJSN Law and the BPJS Law are contrary to the values of Pancasila which uses a social insurance model and is organized by public legal entities.

42 Alfritri., Welfare State Ideology in the Basis of the Indonesian State, *Journal of the Constitution*, Vol.9 No.3, 2012.

With this model, the implementation of SJSN developed by the Government is only an effort to mobilize public funds, which will eventually be utilized by the interests of certain groups with a business orientation.⁴³

Based on this, in the framework of legal development towards advanced Indonesia in 2045, the SJSN Law and BPJS Law must be restated to the values of Pancasila as contained in the 1945 Constitution as the basic norms of other norms consistently, especially those related to the maintenance of the poor and abandoned children and the realization of social welfare.⁴⁴ In that order, the SJSN Law and BPJS Law need to be revised by taking into account the paradigm of national legal development as a certain way of view (vision), which contains a certain set of assumptions, norms, or values that become a source of assessment and determining benchmarks for legal development, namely Pancasila and the 1945 Constitution.⁴⁵ The SJSN Law and the new BPJS Law must be laws that are oriented towards social welfare and bringing social justice, taking into account the values of the constitution, such as state obligations, empowering weak and incapable people to develop themselves in accordance with human dignity, and to fulfill basic needs, both the right to education, the right to health, and the right to get a job.⁴⁶

4. Conclusion

Based on the description presented, it can be concluded that the formulation of values contained in the SJSN Law and the BPJS Law is not in accordance with the constitutional values contained in the 1945 Constitution, especially the values regarding the state's obligation in organizing the national social security system, which empowers weak and incapable people to develop themselves in accordance with human dignity, and the fulfillment of basic needs. Therefore, it is necessary to revise the SJSN Law and BPJS Law which are adjusted again with constitutional values related to human rights guarantees related to the rights of self-development in the social and economic fields to be able to live a prosperous life outwardly and mentally.

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43 N S Darmadi., Criticism of the Implementation of the National Social Security System in Indonesia, *Journal of Legal Reform*, Vol.II No.2, 2015, page.265.

44 Joni Emirzon., *Reform of Indonesian National Law in the Industrial Era 4.0: Thoughts of Professor of Law*, Depok, Rajawali Press, 2021, page.15, 21–22.

45 Saut.P.Panjaitan., *Basics of Legal Science*, Jakarta, Erlangga Publishers, 2021, page.200.

46 *Ibid*, page.204.

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