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THE ACCOMPLISHMENT OF HALAL AND TAKAFUL PRINCIPLES OF THE MEDICAL BENEFIT

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Abstract The obligation for joining the Medical Benefit could bring up a burden for some citizens because they must pay regular fee for the membership. Therefore, the research aimed to review the Medical Benefit membership and its contract in accordance with Islamic Law, especially for non-subsidy participant and its social perspective. This research was categorized as legal research method by using legislative and qualitative approaches. The results shows that most non-subsidy participants are sometimes reluctant on the amount of the contribution compared to the obtained facilities. The medical benefit is actually identical to the principle of takaful contract such as assistance, mutual cooperation and wakalah (agency). Unless holding a tabarru 'account, the element of insurance still appears such as granting the entire fund at which rises the issue of charred funds. Besides, the grants had yet based on participants' awareness. In addition, its transactions create an element of usury related to the existence of fines and uncertainty because the object guaranteed is unpredictable. Therefore, it brings up the emergence of the maysir element related to the benefits of service. Those unlawful elements should be ommited in order to be fulfill its halal and shariah compliance. Besides, it recommended to create Islamic Contract of the Medical Benefit.

Keywords: Medical Benefit; Contract; Mutual Cooperation; Assistence

INTRODUCTION

Health is one of basic rights for every person and all Indonesian citizens have the right to access health services. In accordance with the 1945 Constitution of the Republic of Indonesia in Article 28H paragraph (1) which states "every person has the right to live in physical and spiritual prosperity, to live in a place of residence, and to have a good and healthy living environment and the right to receive health services." Besides, Article 28H paragraph (3) states "Everyone has the right to social security which enables his/her full development as a capable human being." The second article is the foundation for the government to fulfill public welfare in the health sector.

Therefore, as one of the human rights of citizens related to health services, the Indonesian Government created the Medical Benefit Program as an effort to develop people's health. This national social security system is implemented through the mandatory Social Health Insurance mechanism based on Law of the Republic of Indonesia Number 40 of 2004 concerning the National Social Security System. This social security system is administered through the Social Security Administering Agency. The Social Security Administering Body, hereinafter in Indonesian term abbreviated as BPJS, Article 5 subsection (2) of the law states that the Social Security Administering Body (BPJS) is further divided into 2 (two) types, namely Medical Benefit and Employee Benefit.

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Employee Benefit is a legal entity established to administer work accident insurance programs, death insurance programs, pension insurance programs and golden ages insurance. Medical Benefit is a public legal entity whose function is to provide health insurance programs for all Indonesian residents, including foreigners who work for a minimum of 6 (six) months in Indonesia. Organizing a health insurance program, so that participants receive health care benefits and protection in meeting basic health needs, which is provided to everyone who has paid contributions or whose contributions are paid by the government. The implementation of the obligation to become medical benefit participants will be carried out in stages and no later than January 1 2019. All Indonesian residents are required to have medical benefit. This is in accordance with Law of the Republic of Indonesia Number 24 of 2011 concerning Social Security Administering Bodies in Article 14 which states that "Every Indonesian citizen and foreign citizen who has resided in Indonesia for a minimum of six months is required to become a member of medical benefit."

Participation in the Health Social Security Administering Body is divided into two types of contributions in accordance with the Presidential Regulation of the Republic of Indonesia Number 82 of 2018 concerning Health Insurance and underwent two changes with the latest amendment being the Presidential Regulation of the Republic of Indonesia Number 64 of the Year, namely Participants Receiving Assistance Health Insurance Contribution and Non-Subsidy. Medical Benefit Subsidy recipients are participants who receive contribution assistance, namely contributions paid by the Government for the poor and underprivileged as participants in the Social Security program. Participants who are not recipients of contribution assistance (PBI) are participants who are not classified as poor and underprivileged people consisting of workers who receive wages and their family members, workers who do not receive wages and their family members and non-workers and their family members. These contributions are paid no later than the 10th of each month.

Late payment of premiums or monthly contributions for more than 1 (one) month from the 10th will result in the participant's guarantee being temporarily suspended. Thus, their membership status will be temporarily suspended automatically by the system. Late payment does not automatically result in a fine. The elimination of late fines was a response to the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN MUI) Number: 98/DSN-MUI/XII/2015 concerning Guidelines for Organizing Sharia Health and Social Security, in the Fatwa DSN MUI recommends that late payment fines be imposed. is not in accordance with Islamic law and falls into the category of usury. Usury is additional taking, both in buying and selling transactions and borrowing and lending in a false way or contrary to the principle of muamalah in Islam. However, the presidential regulation states that "Within 45 (forty five) days from the active participation status as intended in paragraph (3) again, participants as intended in paragraph (1) are obliged to pay a fine to BPJS Health. for every inpatient health service he receives."

However, in reality, these fines are not completely eliminated. Based on the article above, fines still apply to BPJS Health participants who are in arrears in paying their contributions if within 45 (forty five) days after the BPJS card is activated the participant uses their BPJS Health card to undergo inpatient treatment. The fine consists of paying medical costs of 2.5% (two point five percent) multiplied by the hospitalization costs and multiplied again by the number of months in arrears. The imposition of these fines raises legal issues that deserve to be studied according to Islamic law. One of them is the emergence of the issue of usury. BPJS Health is also implemented through the Social Health Insurance

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mechanism. This system is identical to conventional insurance, which in its mechanism contains elements of gharar, maysir, usury and the like which are prohibited by Islam. (Ahmad Wardi Muslich, 2010)

The monthly contribution that must be paid regularly by the participants is called a guarantee fund. However, the benefits can only be accesed by participants when they are sick. In other words, if the participant is in helathy condition, the participant cannot access the funds just for medical health check. As the result, if a participant rarely or never uses BPJS Health funds, the contributions paid cannot be withdrawn. Even when he dies, there is no compensation fund. This could cause a polemic regarding the provisions of the non-PBI BPJS Health contribution grant funds and create an element of uncertainty in the benefit of the funds. The uncertainty is referred to as an element of gharar in Islamic law. Gharar can be interpreted as both parties in the transaction not having certainty regarding the goods that are the object of the transaction regarding the quality, quantity, price and delivery time of the goods so that the second party suffers a loss (Syafei, 2001). However, the public is still required to participate in the BPJS Health program as stipulated in Law Number 24 of 2011 concerning Social Security Administering Bodies.

Based on this description, research is needed to determine the participation of the Social Security Administering Agency for Health which is not a recipient of contribution assistance regarding its contract and clarity on the status of contribution funds that have been paid by BPJS Health participants who are not recipients of contribution assistance based on Islamic Law. The problems were formulated as:

1. Whether the contract of participation in the Social Security Administering Body for non-subsidy recipients fulfill the takaful elements?
2. Whether the provisions for grant funds based on the informed consent of non subsidy national health security participants fulfill the provisions of Islamic Law?
3. Whether transactions between national health security and its non subsidy participants contain prohibited elements in Islamic law?

METHOD

This research method was the most important part of a research because this research method will be the direction and guidance for a research (ND & Yulianto, 2010). Based on the formulation of the problem studied in this research, the type of research used in this research was normative legal research. Normative legal research is legal research that places law as a building system of norms. (ND & Yulianto, 2010) The approach used in this research was a statutory approach, namely an approach that examines statutory regulations or various legal rules which are the focus of the central theme of the research.(Jhonny Ibrahim, 2006) Thus, the context of the norm building system in this research is the command norms (obligations) contained in Article 14 of Law of the Republic of Indonesia Number 24 of 2011 concerning Social Security Administering Bodies to be obliged to become participants in the Social Security program. However, this obligation is in contact with fulfilling sharia principles in the national health membership contract.

Later, the analysis was carried out using deductive logical thinking. Deductive logic was a method of thinking by drawing conclusions from general rules to specific matter. (Jhonny Ibrahim, 2006). This means that this research begins with general rules regarding the obligations of Indonesian citizens to become National Health Security participants, and then specific conclusions are drawn regarding the clarity of the categories of participation

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contracts and provisions for grant funds and whether they contain elements of prohibitions in Islamic law or whether they are not related to transactions between National Health Insurance Agency with with non-subsidy participants. The conclusions were analyzed more to obtain prescriptive, namely providing arguments for the results of the research that has been carried out.(Jhonny Ibrahim, 2006) This prescription was intended to provide an assessment of whether a non-subsidy Health membership contract should be appropriate or not in relation to the clarity of the contract category and grant fund provisions as well as transactions between them containing elements of prohibition in Islamic law or not.

RESULTS AND DISCUSSION

Analysis of Non Subsidy Participant of National Health Security Contract

The law regulates the procedures for registration with BPJS Health as written in Law of the Republic of Indonesia Number 24 of 2011 concerning Social Security Administering Bodies which states in Article 16 section (1) Every person, apart from Employers, Workers and Contribution Assistance recipients, who meets the requirements for participation in the Social Security program is obliged to register themselves and their family members as Participants with BPJS, in accordance with the Social Security program they are participating in and in Article 16 section (2) states that Every person as referred to in paragraph (1) is obliged to provide complete and correct data regarding himself and his family members to National Health Security. Article 18 paragraph (2) also states that recipients of Contribution Assistance are obliged to provide complete and correct data regarding themselves and their family members to the Government to be submitted to BPJS.

These procedures will relate to the type of contract with BPJS Health. Prospective participants can choose to come to the BPJS Health office or register online. The data entered to complete the registration form must match correct personal identity so that the registrant must be of legal age (17 years) or be considered competent to carry out legal obligations. This registration cannot be done with just one name on the family card, but all family members listed on the family card must be registered at once.

Upon registration, prospective participants will receive a virtual account (registration code number). Payment of the first contribution is no later than 14 (fourteen) days to 30 (thirty) calendar days from when the virtual account is received. Payment can be made at merchants who have collaborated according to the amount of the selected class fee. When the contribution payment has been completed, prospective participants will receive a membership card from the BPJS Health office. Participants who register online will receive an E-ID card and the participant can print it themselves or pick it up at the branch/city BPJS Health Office. Furthermore, prospective participants are officially active as members of BPJS Health and are not recipients of contribution assistance. During registration, prospective participants will fill out a registration form which contains binding provisions.

There is a provision on the participant agreement registration form in provision number 8 which states that they agree that the contributions paid will not be returned even if they have not received the benefit of health services and that the contributions have been committed to helping other participants in need as a form of mutual cooperation. The term contribution is related to participation in the National Health program. This contribution is not related to the terms insurer or insured thus National Health Insurance membership results in no policy being issued to National Health security participants because the BPJS Health system is in the form of membership. This means that prospective BPJS Health

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participants simply come and register themselves and their family members. After that, you will get an identity card.

In contrast to insurance, the agreement is based on the policy, the member is named as the insured and guarantor and the insurance payment is said as a premium. This agreement shows that the registration procedure for prospective National Health Insurance participants who are not recipients of contribution assistance does not reflect the form of insurance. However, the procedure for submitting a claim when the participant experiences illness and experiences health service facilities from submitting the claim shows a form of insurance. Apart from that, the contribution paid will not be returned even if you have not received the benefit of health services. This also shows that there is an insurance element because there is no refund, giving rise to the element of forfeited funds contained in insurance.

However, on the other hand, provision number 8 is also attached to provision number 6, namely that the contribution must be paid no later than the 10th of each month. Based on this, the agreement is that the contributions must be given to help other participants in need as a form of mutual cooperation. This mutual cooperation is identical to the form of takaful (Fauzia, 2017). The principle of takaful implemented in sharia insurance. Thus, provision number 8 in the participant registration form explains that the essence of BPJS Health is identical to takaful (Sharia insurance), namely the value of helping. However, the thing that differentiates contracts in takaful (sharia insurance) from BPJS Health is that in takaful, the funds paid by participants are not all donated to the takaful company but rather a certain portion is determined by the takaful (sharia insurance) company and these funds go into the tabarru' account. Tabarru' means mutual kindness and assistance among others. (Mohd Nor, 2016), The funds from the tabarru' account are used to help one of the takaful (syariah insurance) participants who get injured and some of the funds that do not come from the tabarru' account are from the participant's savings account and can be taken back by the takaful (syariah insurance) participant.

This is different from participant agreement (informed consent) provision number 8 stated on the registration form where BPJS health participants (in this case non-PBI participants) are asked to willingly donate all the funds. However, consent to a sincere request for a grant is not solely based on the participant's awareness but is further strengthened on the basis of the statutory obligation to become a participant.

Apart from that, Provision Number 12 in the Participant Agreement (Informed Consent) states "gives BPJS Health the power to manage the trust funds belonging to all participants which are a collection of contributions and the results of their development for the payment of benefits to participants and operational financing for the organizers of the national health insurance program." This provision mentions the term granting of mandate. (Setiyowati, 2019) This is identical to the wakalah contract in Islamic law related to takaful (syariah insurance). Wakalah in takaful (syariah insurance) is managing funds from takaful participant contributions to invest funds while providing benefits from these contributions and will disburse funds when there are claims due to disasters faced by takaful participants. Thus, the provisions for granting mandate for funds by BPJS Health are the same as the power of attorney in wakalah contracts in managing takaful (syariah insurance).

Funds donated in total by BPJS Health participants will be included in social security fund assets in accordance with Law of the Republic of Indonesia Number 24 of 2011 concerning Social Security Administering Bodies. Article 43 paragraph (1) letter a states that

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"one of the social security fund assets comes from social security contributions including contribution assistance" funds will be managed in several sectors for BPJS operations in accordance with the provisions of Article 41 paragraph (1) letter d "BPJS assets are sourced from operational funds taken from social security funds" and Article 43 paragraph (2) letter b "Social security fund assets are used for operational funds for social security program organizers." Furthermore, the funds from the participants are managed as a whole by BPJS Health and then distributed to the participants. Thus, there is no special tabarru' account so there are no returns for participants.

Based on the description above, it can be concluded that the contract when the participant registers as a BPJS Health participant is in principle identical to the elements of takaful (syariah insurance) although there are several things that give rise to the perception of insurance. However, the characteristics show things that are identical to takaful, especially the elements of mutual assistance, mutual cooperation, giving mandate (wakalah). However, the difference is that takaful (syariah insurance) in Islamic law is sincere based on one's own awareness, different from BPJS Health's form of takaful (syariah insurance) and sincerity which is required by law. Apart from that, the absence of a tabarru' account shows the perception that there is an insurance element. However, in general, if you follow the law, BPJS Health is not insurance because the terms insured and insured appear. Therefore, the contract is identical to takaful (Sharia insurance) although there are still several insurance elements.

Analysis of Grant Fund Provisions for National Health for Non Subsidy Participant Agreement (Informed Consent) According to Islamic Law

The previous discussion discussed the types of membership contract categories for participants who are not recipients of National Health Insurance contribution assistance which are identical to the elements of takaful (syariah insurance). This means that National Health Insurance Agency, in its transaction mechanism, cannot violate things that are considered prohibited in takaful (syariah insurance) transactions because some BPJS Health participants are not Muslim. Therefore, these transactions should not conflict with Islamic law, including those relating to the ownership status of contribution funds, especially non-subsidy participants (recipients of contribution assistance). Non-subsidy participants are anyone who is excluded in subsidy recipients (the poor and the underprivileged) and pays their contributions individually or collectively.

If the participant has received a National Health Security participant card, and at any time there is a risk to the participant, then the participant can submit a claim to National Health Security Agency to receive treatment according to the class chosen. The types of classes in its services are divided into classes I, II and III according to the contribution payment group. The Health Agency is obliged to pay health facilities for services provided to Participants no later than 15 (fifteen) days after receiving complete claim documents. The amount of payment to health facilities is determined based on an agreement between the agency and the health facility association in the area by referring to the standard rates set by the Minister of Health.

Based on this, the Indonesian Ulema Council (MUI) issued a fatwa related to the implementation of National Health Security. The MUI fatwa or decision was issued through the consensus of the Ulama of the Indonesian Fatwa Commission V which was held at the at-Tauhidiyah Islamic Boarding School, Cikura, Tegal, Central Java on 19-22 Sha'ban 1436 H/7-

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10 June 2015. Regarding the BPJS Fatwa This health is stated in the decision of Commission B 2 on contemporary fiqh issues regarding national health insurance guidelines and National Health Security. This decision resulted in several things for the MUI to pay attention to the program, including the transactional mode carried out by National Health Security Agency. MUI welcome the issuance of Law of the Republic of Indonesia Number 24 of 2011 concerning Social Security Administering Bodies. MUI was also grateful that the government, both at the central and regional levels, had made various efforts in the form of programs to increase the ease of public access to health facilities. However, it seemed that in general the Health security programs had not reflect the ideal concept of social security in Islam, especially when viewed from the legal relationship or contract between the parties. These parties include participants, The National Health Agency, and the government.

In principle, The Health security contract has similarities with takaful (Sharia insurance) in that it contains a grant agreement related to participation. This is in accordance with Provision Number 8 in the Participant Agreement (Informed Consent) which states "Agree that the contributions paid will not be returned even if you have not received the benefit of health services and the contributions have been given to help other participants in need as a form of mutual cooperation." The statement of sincerity in the agreement is the same as the meaning of the grant. However, grants to The Health Insurance require that the contribution funds be paid in full.

The context of the grant in The Health Insurance is considered not to meet the requirements of the grant itself because the grant must actually be given voluntarily and based on the grantor's own initiative, and the grant statement must also be given personally from the owner of the property, whereas in the Health Agency contract, it is a grant that is required by law. Although the aim is mutual assistance, not all participants realizes and have fully intention to donate. This is different from the application of grants to takaful (syariah insurance) which applies the pillars of grants to the process as an important contract in the operational system of takaful (syariah insurance). Therefore, grants must pay attention to the pillars. If one of the pillars of the grant is missing, it will result in the validity of the grant being lost. Based on the pillars of grants, the qobul (acceptance) must be clear from the grantor's own wishes without an y coercion from anywhere. Gifts or sincerity that originate from coercion or are required because of certain provisions of the contract can be considered void in Islamic law.

Non-subsidy Health Security participants give their mandate of attorney to The Health National Security Agnecy as mentioned in Provision Number 12 (twelve) of Participant Agreement (Informed Consent), as explained in the previous chapter, that this grant of mandate is called a wakalah contract in Islamic Law where the Agency is the representative of the participants at which it is similar to takaful (syariah insurance), the takaful (syariah insurance) fund manager is appointed as a representative of the takaful (syariah insurance) participants. Therefore, one of the funds entered and managed by the Health Agency comes from non-subsidy participant contribution funds and comes from the government to pay contributions for subsidy participants every month. BPJS Health officers explained that the funds that come in from each participant each month do not always remain idle. This means that every day the funds are rotated because every day there are claims from participants from various regions and regions.

Health Security registration is required for all members registered on 1 (one) family card at once. However, the problem is if participants register and do not experience illness

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thus they do not need access to services. Contributions paid cannot be withdrawn. Based on this, it causes forfeited funds in participant contributions, especially non-subsidy. Even though participant fees are a trust fund. Trust Funds are contributions and the results of their development are funds entrusted by participants to be used as much as possible for the benefit of social security participants. Later, this benefit will be given to those who are at risk of illness. However, what about the rights of participants who do not experience risk while the contributions paid are considered as trust funds and if an event occurs where the participant dies, the participant does not receive any compensation funds. Based on this, there is uncertainty about the ownership status of contribution funds. These funds should remain the property of the participants in terms of ownership rights, so that no forfeited funds should arise from non-subsidy participant contributions. In order to fulfill the takaful (syariah insurance) contract, because registration of contract participation with BPJS Health includes elements like takaful (syariah insurance), then in terms of transactions it should be identical to takaful (syariah insurance).

Takaful (Sharia insurance) itself does not result in forfeited funds on the contributions that have been paid because the contributions have been divided into appropriate fund placement, namely divided into 2 (two) accounts, namely a savings account and a tabarru' account. If there is a takaful (syariah insurance) member who experiences the risk of illness, funds will be taken from the tabarru' account, which from the start is based on a grant agreement between takaful (syariah insurance) members, while in relation to savings accounts, participants can take back the contributions paid if is no longer able to continue paying the takaful (syariah insurance) contributions. This means that there is no element of forfeited funds in takaful (Sharia insurance) so that it fulfills the elements of mutual help and welfare.

Thus, the management of Health Security funds when compared with takaful (syariah insurance) does not fulfill the principle of Social Justice for All Indonesian People, namely the principle that is fair to all levels of Indonesian society. The meaning for all levels of society of this principle should not actually differentiate in terms of the type of the Health Security membership even though the element used in it is an element of cross-subsidy between participants. Moreover, transactions can result in forfeited funds from contributions from BPJS Health participants, not PBI. Therefore, this is felt to be unfair and unfulfilled these principles. In fact, the aim of the The Health Security program is for collective prosperity. However, this prosperity can be achieved if the placement of non-PBI participant contribution funds has been set aside specifically, such as a tabarru' account with a grant agreement which is based on the participant's own wishes and not from any coercion or statutory obligation.

Transactions Between The National Health Security Agency and Its Non-Subsidy Participants According to Islamic Law

Transactions for administering social security by the Health Security Agency between the agency and its participants who are not recipients of contribution assistance include several things including those related to contribution funds from participants who are not recipients of contribution assistance, claims, health service benefits provided by The Health Security membership.

The MUI itself does not actually issue any haram fatwa related to the implementation of the Health Social Security Administering Agency. However, the MUI only issued

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recommendations containing the views of ulama regarding the Health security services, where so far there are a number of things in BPJS Health that are not in line with Islamic law according to the explanation above. This decision ultimately gave rise to a polemic regarding the transactional mode carried out by BPJS Health. Referring to the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and several literatures, the polemic is that in general the BPJS Health program is considered not to reflect the ideal concept of social security in Islam. This non-ideality can be seen from the legal relationship or contract between parties, especially for participants who are not recipients of contribution assistance). If clarity on the status of the contract with the agency is not fulfilled, it is considered to violate several elements of Islamic law, including the emergence of elements of riba (usury) and uncertain events, giving rise to elements of gharar (unclarity) and maysir (gambling).

Element of usury in the National Health Insurance Transactions

Riba literally means increasing, developing, or growing. According to technical terms, usury means taking additional money from basic assets or capital in vain. (Mohamed Imtiyaz et al., 2017) There are several opinions in explaining usury, but in general there is a common thread which confirms that usury is additional taking, both in buying and selling transactions and borrowing and borrowing which is false or contrary to the principle of muamalah in Islam. The issue of usury at the Health Security Transaction arises when participants are late in paying contributions so that BPJS Health imposes fines. Likewise, when the benefits received by non-subsidy participants are greater than the contributions paid.

Previously, the sanction applied to non-subsidy x`membership in arrears was that the membership status would be immediately deactivated if the contribution was late for 3 (three) months and would be subject to a fine of 2% (two) or 3% (three) percent per month. This rule requires the public to pay a fine of 2% (two) or 3% (three) percent of the total amount of membership fees multiplied by the number of months in arrears. This is considered interest which is prohibited in Islamic law.

This is in accordance with the MUI Ulema Fatwa.

In response to this, BPJS Health has changed the fine with new rules which stipulate that if a participant is 1 (one) month in arrears in paying their contributions, their status will immediately be automatically deactivated by the system. Participants must pay their outstanding fees first so that the card has active status so that participants can experience the benefits. Participants are no longer subject to late fines, but fines still apply to participants who receive inpatient services within 45 (forty five) days of active membership status again. Participants are subject to a fine of 2.5% of the cost of inpatient services multiplied by the number of months in arrears provided that the maximum number of months in arrears is 12 (twelve) months and the maximum fine is IDR 30,000,000.00 (thirty million rupiah). It was formulated in Government Regulation in 2018 and its updated regulation in 2020 stated above.

The fine in the regulation consists of paying medical costs of 2.5% times the cost of hospitalization and multiplied again by the number of months in arrears. Specifically for subsidy participants, it will be paid by the government and for business entities it will be paid by the employer and for participants who cannot afford it must be proven by a certificate from the authorized agency. This fine aims to provide a deterrent effect on participants who make mistakes or are careless due to late payment of contributions. The

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reason for imposing this fine is because many people use BPJS Health only when they need it, even though BPJS Health is mutually beneficial, meaning that the payment of monthly contributions by participants is really needed by other participants and the fine will later return to the community again.

The previous fine was only 2% to 3% of the total class fees in arrears, whereas the new fine provisions, if you look at its application, are 2.5% multiplied by the cost of hospitalization and multiplied again by the number of months in arrears. The current imposition of fines results in larger fines than previous fines. Automatically, usury arising from the calculation will also be greater than the possibility of usury from calculating the previous fine. The imposition of these fines actually burdens participants. This will be contrary to the principles contained in the Health Security contract and transaction, especially the Principles of Social Justice for All Indonesian People, where non-PBI participants must pay a fine that is greater than the previous fine provisions which are considered detrimental and considered unfair. Even though the obligations related to late contributions were previously paid by non-subsidy participants when they reactivated their Health Security membership cards.

Moreover, if you look at the fact that public health is the government's responsibility to facilitate public health services, this is in accordance with the 1945 Constitution of the Republic of Indonesia in Article 34 paragraph (2) which states "The State develops a social security system for all people and empowers the community. who are weak and incapable in accordance with human dignity" and Article 28H which basically regulates that everyone has the right to receive social security from the government without exception. People who are classified as non-PBI participants have also tried to take part in BPJS Health on the legal basis of the law which requires them to become participants at their own expense and then pay the fine, which is a burden that is entirely borne by the community, especially non-subsidy Health Security participants.

The second imposition related to usury in the contract is that claims received by the Health Agency participants can be greater than the contributions paid because there are additional fees. This is due to a mismatch between the amount of contributions and the benefits obtained. On the other hand, it is considered to contain elements of usury because the procedure for paying its contributions is carried out through conventional national banks which are generally implemented. When viewed from a fund management perspective, the investment sector is not clear because investment in the agency is carried out in all sectors whose profits can also contain elements of riba (additional). This is different from the takaful (syariah insurance) sector where investment funds are channeled to halal sectors.

In conclusion, the imposition of fines, payment of claims that exceed the contribution funds paid, procedures for payment of Health Security contribution funds which are carried out through conventional national banks and unclear management of funds in the investment sector have caused the Health Security Contract to be considered to trigger elements of usury.

Elements of Gharar (Unclarity) in the Object of the Contract

Therefore, carrying out transactions or providing conditions in contracts that contain gharar elements is not permitted. Operationally, gharar usually means that both parties in a transaction do not have certainty regarding the goods that are the object of the transaction

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regarding the quality, quantity, price and delivery time of the goods so that the second party suffers a loss. It is considered that, in terms of the harmony of the contract of the security has not fulfilled the mu'qad 'alaih, namely the objects being contracted or the object of the contract, so this gives rise to an element of gharar on the object being contracted. Apart from that, regarding the qobul agreement or agreement that occurred at BPJS Health, it does not explain in detail the contents of the Participant's Agreement (Informed Consent), which is only related to the agreement regarding classes but there is no explanation either verbally or in writing regarding the management of funds and submissions claim.

The contract of getting medical benefit may be considered gharar because people are required to take part in government programs without exception by paying contributions every month and people do not know whether they will experience risks or not. If the Health security participant experiences a risk, it is clear that there is a reciprocal relationship between the agency and its participants. However, if there is no risk, people may feel disadvantaged because the money they have paid each month cannot be taken back. It also contains gharar when non-subsidy participants have to regularly pay contributions, but when participants cannot pay contributions, their membership will be immediately deactivated. As a result, if you need treatment, you will be rejected and will not receive services from the hospital. It means there is gharar in the object of the contract.

In conclusion, there is an obligation to pay monthly contributions and when a claim occurs. it is unclear how much will be received, which amount can be greater than the amount of contributions paid or it can be less than the contribution and when participants cannot pay card fees cannot be used and will be denied health services. This is considered an element that characterizes gharar (obscurity).

Maysir (Speculative) Elements in Providing Benefits

Maysir means a profitable business or risk involved in a transaction where there will be one party who benefits and there is a party who will feel disadvantaged or someone who benefits from another party while the other party does not get anything (Ahamed Aswer et al., 2019). The maysir element arises because of the gharar element. At which, The Health Security Agenct operated cheap contributions, with the assumption that it will help with expensive treatment, this will actually cause BPJS Health to be inconsistent with sharia because the system refers to conventional insurance. People pay a small premium, without knowing whether they will get sick or not and use medical costs that are greater or less than the contribution compared to the obligation to pay a predetermined amount of the contribution every month.

Non-subsidy participants can choose health service facilities in accordance with the chosen class facility. However, there is no clarity regarding the amount related to the claim payments. The participants may receive the total contributions that have been paid vice versa they also may receive nothing. It occurs an element of maysir (speculative) while a person obtain benefit greater but the contributions are smaller. Actually, it does not matter when the contribution includes grant funds are intended for mutual assistance as applied in takaful contract. The object of maysir arises when the participants get a claim with a value greater than the contribution they paid and on the contrary there are also participants who never access the benefits.

Even though maysir is forbidden in Islam based on the evidence of the Qur'an Surah Al-Maidah verse 90 which means: "O you who believe, indeed (drinking) wine, gambling

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(sacrificing to) idols, casting lots of fortunes with arrows, are including acts of the devil. So stay away from those actions so that you will get good luck." According to Ushul Fiqh, the word "fajtanabihu" is a shigat used in the Qur'an which means prohibition or haram, so masyir is forbidden according to the text of the Qur'an. Therefore, to avoid the element of maysir (gambling), the management of contributions paid by its participants can be divided into appropriate fund allocations. The allocation of these funds must be clear, for example for participants who are sick, the costs are taken from tabarru' funds which participants give voluntarily with the principle of mutual help. Investment funds are savings funds from contributions paid every month and can be withdrawn according to the time specified in the contract. Ujrah funds as wages for the agency. Thus, the calculation and distribution of these funds clearly does not contain any maysir elements because they are divided according to the Health maysir (gamble/gamble) arises because of the element of gharar (unclarity) which is also found in the contract related to the risk of illness.

CONCLUSION

1. The contract when prospective participants register as The National Health Security participants is identical to the elements of takaful (syariah insurance), namely the values of mutual help, mutual cooperation and wakalah (giving mandate). However, the managing contribution funds is still identical to the conventional insurance. It is indicated by the from the requirement to give the entire contribution and it results the funds being forfeited. This element does not fulfill to the takaful principles.
2. The grant provisions in the The Health Security Participant Agreement (Informed Consent) for non-subsidy at which requires participants to donate their entire contribution, which is not fit. Islamic Law regulates that grants must be given voluntarily, while grants in the Participant's Agreement (Informed Consent) include obligations imposed by law. Apart from that, grant funds are followed by a wakalah (mandate) agreement to manage the participants' trust funds. However, this fund management mandate is not followed by halal investment provisions according to the Shari'a.
3. Transactions between BPJS Health and non-PBI participants include payment of contributions. If there is a delay, it can give rise to an element of usury due to the imposition of fines when paying contributions late and within a period of 45 (forty five) days used for inpatient care. Apart from that, contribution payment transactions are considered usury because they are paid through conventional banks. Usury also appears in claims because the value of claims received by participants can exceed the contributions paid. The element of gharar arises in the object of the contract because what is guaranteed is a person's health and illness which cannot be guaranteed. This gharar element also has the effect of giving rise to an element of maysir in that participants can obtain a claim value that is greater than the contribution paid when they fall ill, on the other hand, participants experience losses when they cannot experience the benefits and do not get a refund of the contribution they paid.

Based on the conclusions above, the suggestions that can be given are:

1) BPJS Health should allocate tabarru' funds so that it does not result in all of the participant's funds being forfeited so that the contract fulfills takaful (syariah insurance)

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2) There should be regulations regarding the management of BPJS Health trust funds invested in sectors that are halal according to sharia.
3) The element of usury can be eliminated by eliminating fines. The elements of gharar and maysir can be minimized if all the elements of takaful (syariah insurance) are fulfilled.

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