



SOCIAL SECURITY PROGRAMS IN ISLAMIC LAW: A COMPARATIVE STUDY OF FATWA INSTITUTIONS ON INDONESIA'S HEALTH INSURANCE

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ABSTRACT

This research addresses the divergence of scholarly opinions regarding the legal status of Indonesia's National Health Insurance in Law Number 24 of 2011 on the Social Security Administering Body, and its implications for sharia compliance. The controversy arises from varying arguments put forth by the Indonesian Ulema Council (MUI) and Nahdlatul Ulama as the largest Islamic organization in Indonesia, which has implications for the pro-people government program. The study aims to identify and analyze the factors contributing to the disparities in fatwas issued by MUI and NU concerning national health insurance in Law Number 24 of 2011. Additionally, it examines the role of scholars in shaping public policies to ensure their alignment with sharia principles. The method used in this study is by employing a descriptive-analytical approach, this research combines document studies and interviews for data collection. Qualitative analysis, guided by *ushul fiqh* and *fiqh siyasa* principles, is used to evaluate the controversies surrounding national health insurance issues. The research reveals that discrepancies in fatwa rulings are rooted in differences in the focus of study. MUI emphasizes the contractual aspect, deeming National health insurance incompatible with Sharia principles. In contrast, NU highlights the program's societal benefits, considering it Sharia-compliant due to its social insurance components. This study demonstrates that scholars' involvement in policy formulation is essential to ensure compliance with Islamic law. This research offers a comprehensive analysis of the national health insurance controversy from a scholarly perspective, shedding light on the critical role of scholars in policy-making processes in predominantly Muslim countries.

1. Introduction

The recommendations stemming from the nationwide gathering (*Ijtima*) of MUI's Fatwa Commission, concerning the National Health Insurance, had a profound impact and garnered significant attention in the media, particularly in electronic outlets. Nevertheless, it's worth noting that in the preceding year, 2014, a fatwa had already been issued by several Islamic organizations, branding BPJS as non-compliant with Islamic principles.¹ Curiously, this earlier fatwa received limited media coverage and remained relatively obscure to the public. To illustrate, the Council of Hisbah of the Islamic Union (Persis) had issued a fatwa, dated January 21, 2014, unequivocally declaring BPJS as 'haram' due to its classification as a conventional insurance vehicle, deemed to incorporate objectionable elements like *riba*, *maisir*, *jahalah*, and *gharar*.² This fatwa was officially published in the 18th edition of *Istifta Buletin at-Taubah, At-Taubah Institute*, dated January 31, 2014.

In the context of media coverage surrounding the fatwa issued by the Indonesian Ulema Council (MUI) regarding the National Health Insurance, there are suspicions that certain strategies have been employed to cast doubt upon and diminish the credibility of the MUI.³ These strategies encompass three distinct approaches. Firstly, media outlets have consistently and vigorously reported that the MUI has unequivocally declared the National Health Insurance as "haram" (forbidden). It is noteworthy that during the *Ijtima' Ulama V* in Tegal in 2015, the MUI, in fact, merely recommended that adjustments be made to the National Health Insurance system to ensure compliance with Sharia principles. Secondly, subsequent to the widespread dissemination of the fatwa, which led to social unrest, the media endeavors to mitigate the situation by emphasizing that the term "haram" is not explicitly present within the text of the fatwa. Thirdly, the media strives to construct a narrative that fosters the perception of inconsistency within the MUI by highlighting instances where the MUI amended its fatwa subsequent to meetings held with the Financial Services Authority (OJK) and the National Health Insurance. These suggest a deliberate effort within media coverage to undermine the MUI's authority and credibility by potentially misrepresenting its stance on the National Health Insurance and portraying the institution as inconsistent in its pronouncements.⁴

In the same year, Hizbut Tahrir Indonesia (HTI) also issued a fatwa declaring the National Health Insurance (*Badan Penyelenggara Jaminan Sosial- Kesehatan*) as

¹ Alifah Ratnawati, Widiyanto bin Mislana Cokrohadisumarto, and Noor Kholis., Improving the satisfaction and loyalty of BPJS healthcare in Indonesia: a Sharia perspective, *Journal of Islamic Marketing*, Vol.12, no.7, 2021, page.1319.

² Riba refers to the prohibition of usury or interest, which is considered unjust gain in financial transactions and is forbidden in Islamic law. Maisir refers to gambling or any form of speculation that involves excessive uncertainty and is considered unlawful in Islam. Jahalah involves transactions with ambiguity or a lack of clear knowledge, leading to potential disputes, and is prohibited in Islamic law. Gharar describes uncertainty or excessive risk in contracts, making the outcome unknown, and is not permissible in Islamic finance.

³ Mughni Labib., BPJS Kesehatan dalam Perspektif Hukum Islam (Studi Fatwa Majelis Ulama Indonesia dan Fatwa Nahdlatul Ulama), *Jurnal Hukum Islam*, Vol.16, no.2, 2018, page.145.

⁴ Husni Mubarrak., Kontroversi Asuransi di Indonesia: Telaah Fatwa Majelis Ulama Indonesia (MUI) tentang Badan Penyelenggara Jaminan Sosial (BPJS), *Tsaqafah*, Vol.12, no.1, 2016, page.113.

impermissible (*haram*) on several grounds. Among these reasons is the assertion that the National Health Insurance system runs counter to the principles of health assurance in Islam. Furthermore, HTI contends that the BPJS program seeks to shift the responsibility of the state onto society, imposing an additional financial burden on individuals in the form of monthly premium payments for BPJS participation.⁵ This program is viewed as originating from non-Muslim concepts. Subsequently, East Java's Rabithah Alawiyah issued a fatwa permitting BPJS, but with certain conditions. It allows BPJS if individuals voluntarily participate in it and do so with the intention of engaging in acts of charity (*tabarru'*). If these two conditions are not met, BPJS is deemed invalid and impermissible (*haram*) since participation is driven by the desire to receive healthcare services in return. Consequently, the BPJS program is regarded as a form of gambling, which is explicitly prohibited in Islamic principles.

Subsequently, during the Ijtima' Ulama V of MUI's fatwa commission, it was determined that the structure of social assurance as organized by the National Health Insurance, particularly with regard to contractual arrangements, does not align with Sharia principles due to the presence of *gharar*, *maysir*, and *riba*. Consequently, the MUI recommended that the government establish, implement, and provide social assurance services in accordance with Sharia principles while ensuring the delivery of excellent services. It is important to note that the fatwa did not explicitly employ the term "haram," as it was reported by the mass media, a characterization that could potentially have led to unrest among the Muslim community.⁶ Interestingly, the fatwa elicited an exceptional response from various quarters. However, it should be noted that the fatwa was, in fact, issued more than a month prior, specifically on June 7-10, 2015, during the "The Fifth Ijtima' Ulama of Indonesia's Fatwa Commission" in Tegal. The initial coverage of this fatwa by mass media outlets occurred on July 29, 2015. This timeline highlights a gap of over a month during which the fatwa did not receive attention or elicit a response from either the media or the general public.

Subsequent to this, there was a notable surge in public interest when Nahdlatul Ulama (NU), through *Bahtsul Masâ'il*, officially declared during its 33rd congress in Jombang that the National Health Insurance (BPJS) adheres to *muamala fihiyya* principles and is in accordance with Islamic Sharia. NU's position maintains that BPJS represents a form of mutual assistance or *shirka ta'awun*, rather than *takaful* or conventional insurance, thus rendering it *halal*, or permissible.⁷ This declaration intensified discussions surrounding BPJS, leading to increased controversy within society. In fact, the disproportionate media coverage often resulted in the appearance of unethical comments on social media platforms. Consequently, there is a pressing need for research to delve into the controversies arising from these contrasting fatwas regarding the national health insurance. Such research is imperative for gaining a comprehensive understanding of the underlying issues and formulating responses that are both appropriate and non-counterproductive.

This research aims to address three fundamental questions that pertain to the

⁵ Alifah Ratnawati, and Noor Kholis, Measuring the service quality of BPJS health in Indonesia: a sharia perspective, *Journal of Islamic Marketing*, Vol.11, no.4, 2020, page.1029.

⁶ Anna M Gade., Islamic law and the environment in Indonesia: Fatwa and Da'wa, *Worldviews: Global Religions, Culture, and Ecology*, Vol.19, no.2, 2015, page.168.

⁷ Wenistya Puji ArIinda., *Pandangan tokoh Nahdlatul Ulama (NU) dan Muhammadiyah kota Madiun tentang BPJS Kesehatan*, Ponorogo: Doctoral dissertation, STAIN Ponorogo, 2016.

complex and contentious issue of the legal status of National Health Insurance (BPJS Kesehatan) within the context of Islamic jurisprudence. Firstly, it seeks to unravel the arguments employed by scholars when formulating fatwas on this insurance. This inquiry delves into the theological and legal reasoning behind their positions, shedding light on the diverse perspectives and principles that inform their religious rulings. By examining the intellectual foundations of these fatwas, the research seeks to provide a comprehensive understanding of the multifaceted discourse surrounding the insurance program. Secondly, the research endeavors to investigate the reasons behind the divergence of opinions among scholars regarding the legal status of the insurance program, as manifested in their respective fatwas. This examination explores the factors contributing to the disparities in scholarly perspectives, which have led to contrasting rulings on the program's conformity with Sharia principles. By identifying these underlying factors, such as differing interpretations of Islamic legal principles or varying emphases on specific aspects of the program, the research aims to elucidate the complexity of this issue and foster a nuanced comprehension of the debates within the scholarly community. Lastly, the research scrutinizes the role of ulama, Islamic scholars, in overseeing and influencing public policies formulated by the government. It investigates how ulama engage in shaping policies to ensure their alignment with both the welfare of the people and Islamic Sharia. By assessing the extent of ulama involvement and their impact on policymaking processes, this research seeks to highlight the crucial role of religious scholars as stakeholders in the governance of public affairs, particularly in the context of formulating policies that are not only pro-people but also in accordance with Islamic principles.

2. Research Methods

This research falls within the realm of normative legal research, as it primarily draws upon data derived from Law Number 24 of 2011 on the Social Security Administering Body and various documents related to National Health Insurance (BPJS Kesehatan). These documents encompass legislative regulations and publications issued by authoritative fatwa institutions, notably the Indonesian Ulema Council's Fatwa Commission and the Nahdlatul Ulama's Board of Fatwas. Additionally, the research leverages fatwas issued by other institutions as comparative materials to enhance the depth of analysis.

The research methodology adopted is descriptive-analytical in nature, with the overarching goal of elucidating the controversies encircling scholars' fatwas concerning National Health Insurance and the respective arguments put forth by these scholars. Furthermore, a comparative approach is incorporated to scrutinize both the fatwas themselves and the arguments therein. Data collection is executed through a comprehensive examination of legislative regulations linked to National Health Insurance and documents containing scholars' fatwas issued by pertinent fatwa institutions. This is complemented by interviews conducted with officials representing these fatwa institutions, serving to augment the insights derived from the document analysis. The qualitative data analysis is conducted employing the Ushul Fiqh (Principles of Islamic Jurisprudence) approach, which is employed to dissect the foundational underpinnings of scholars' fatwas regarding National Health Insurance. Furthermore, the Fiqh Siyasah (Jurisprudence of Governance) approach is utilized to explore the role of scholars in actively participating in the formulation

of public policies.⁸

3. Results and Discussion

3.1. Indonesian Ulema Council Fatwa Commission on National Health Insurance

National health insurance began its operations on January 1, 2014, while BPJS On July 1, 2014, the BPJS Employment program was initiated, marking a significant development in Indonesia's social security landscape. Prior to this transformation, the National Health Insurance scheme was known as Askes (Health Insurance) and operated under the management of PT Askes Indonesia (Persero). However, a pivotal shift occurred in accordance with Law No. 24 of 2011 on BPJS, leading to the conversion of PT Askes Indonesia into the National Health Insurance entity on January 1, 2014. The legislation mandates that every Indonesian citizen and foreign resident residing in Indonesia for at least six months must become a member of BPJS, as stipulated by Article 14 of the BPJS Law. Companies bear the obligation of enrolling their employees as BPJS members, while individuals or families without formal employment are required to complete their registration with BPJS. Each BPJS participant is obliged to make contributions, the amount of which is contingent upon their individual choices. To alleviate the financial burden on the underprivileged, the government extends coverage for BPJS contributions through the Assistance Contribution program.⁹

Importantly, BPJS participation is obligatory not only for those in the formal sector but also encompasses informal sector workers. These workers must register themselves and make contributions based on their preferred benefit level. The overarching objective is to gradually implement universal healthcare coverage, with the aspiration that all Indonesian citizens will have access to this comprehensive healthcare system by 2019.¹⁰ Additionally, the Indonesian Ulema Council's (MUI) Fatwa Commission issued a significant fatwa on BPJS during the Ijtima' Ulama event in Tegal. This fatwa asserts that the structure of social assurance established by the National Health Insurance, particularly with regard to contractual arrangements, is incompatible with Sharia principles due to the presence of gharar (uncertainty), maisir (gambling), and riba (usury). Gharar is identified in the context of BPJS because it guarantees uncertain events, such as illnesses whose occurrence cannot be predicted. The mandatory monthly premiums further compound this concern, as they create a contract that guarantees uncertain outcomes.¹¹ The absence of the predicted event coupled with the continued payment of premiums constitutes gharar and is even considered a form of zhulm (oppression), akin to the prohibition in Islam against selling uncertain items, such as fish that are still in a pond or unripe fruits. These concerns underscore the imperative of aligning insurance practices with Sharia principles.

The BPJS insurance program also encompasses elements of maisir, as the monthly

⁸ Sugiyono Sugiyono. (2009). *Metode Penelitian Kuantitatif, Kualitatif dan R & D*, Bandung: Alfabeta.

⁹ Rolindrawan, Djonii., The impact of BPJS health implementation for the poor and near poor on the use of health facility, *Procedia-Social and Behavioral Sciences*, Vol.211, no.5, 2015, page.555.

¹⁰ Sanusi Bintang, Mujibussalim Mujibussalim, and Fikri Fikri., Decentralization of Indonesia social health insurance, *International Journal of Law and Management*, Vol.61, no.2, 2019, page.312.

¹¹ Bagas Heradhyaksa and Nurul Hikmah., The Comparison Between Conventional, Sharia, and Social Insurance in Indonesia, *Diponegoro Law Review*, Vol.4, no.2, 2019, page.219.

contributions collected are directed towards financing participants' medical treatments. In situations where these funds prove insufficient, the deficit is covered by drawing from the premiums of other participants, the nature of which remains ambiguous—whether they constitute a "gift" or "charity".¹² This ambiguity arises because individuals joining BPJS do not expressly intend their contributions as acts of charity when enrolling, given that the agreement hinges on inherent uncertainty.¹³ Consequently, this arrangement falls within the domain of *maisir*, a practice prohibited in Islam, as elucidated in Al-Maidah [5]:91.

Moreover, BPJS insurance harbors an element of *riba* (*usury*), as it mandates that the collected social assurance funds must be deposited and managed in a custodian bank, which is a state-owned enterprise, as articulated in Article 40 of the BPJS Law. Consequently, these funds may be invested in various avenues such as fixed deposits, bonds, corporate bonds, mutual funds, properties, and direct participation, as delineated in Article 11 of the BPJS Law. Notably, this article does not impose any restrictions on the utilization of BPJS funds in Sharia-compliant investments. Consequently, these investments may become entangled in transactions involving *riba* elements, a clear contravention of Islamic principles.¹⁴

The MUI Fatwa Commission relies on four categories of evidence when formulating its fatwa: the Qur'an, hadiths (prophetic traditions), *ijma'* (consensus of Islamic scholars), and Fatwa DSN (National Sharia Board Fatwa). Within the context of the fatwa, the Commission references specific Qur'anic verses, including those found in Al-Baqarah [2]:275-280; Ali Imran [3]:130; An-Nisa' [4]:36-39; Al-Baqarah [2]:177; At-Taubah [9]:71; and Al-Maidah [5]:2. These verses underscore foundational principles related to benevolence and compassion toward parents, relatives, orphans, the destitute, and other vulnerable segments of society. They emphasize the significance of altruism and generosity in the path of Allah while cautioning against avarice and self-centeredness. Furthermore, these verses underscore that obedience to Allah encompasses all facets of life, including the provision of support to relatives and orphans. This reinforces the core notion that Islam aspires to achieve a universal form of assurance that extends to all individuals and society at large, fostering a life characterized by Islamic values within a harmonious and supportive environment.¹⁵

Numerous hadiths serve as corroborating evidence, including those that draw an analogy between believers and a unified body.¹⁶ These hadiths underscore the imperative for believers, akin to the components of a single body, to nurture mutual love and provide assistance to one another, as further expounded in the works of Muslim. Additionally, these hadiths caution against involvement in any form of *riba*

¹² Mohammad Hossain., Effectiveness of Laws Related to Medical Negligence in Bangladesh, *Lex Publica*, Vol.9, no.2, 2022, page.34.

¹³ Surabhi Chopra., Legislating safety nets: Comparing recent social protection laws in Asia, *Indiana Journal of Global Legal Studies*, Vol.22, no.2, 2015, page.579.

¹⁴ Neni Sri Imaniyati, Neneng Nurhasanah, Aneu Maryani, and Ihsana Sabrina Barualogo., *The Implementation of Health BPJS Connected to Balance Principle in Economic Law and Sharia Principles*, Belanda, Atlantis Press, 2020, page.161.

¹⁵ Gillian Rice., Islamic ethics and the implications for business, *Journal of business ethics*, Vol.18, no.10, 1999, page.348.

¹⁶ Syeda Shazia Bukhari., *Ensiklopedi Hadis Kitab 9 Imam*, Jakarta, Lidwa Pustaka, 2011, page.31

(usury).¹⁷ Furthermore, the concept of *ijma'* (consensus of opinion among Islamic scholars) accentuates the unanimous agreement among Muslims across time and place to extend support, bear collective responsibilities, and ensure the welfare of one another. This consensus aligns with the overarching commitment to safeguard the vulnerable, champion the oppressed, and provide succor to those enduring hardship. Lastly, the fatwas articulated by scholars encompass DSN-MUI Fatwa No. 21, which delineates "Guidelines for Sharia Insurance," DSN-MUI Fatwa No. 52, which delves into "*akad wakalah bil ujah* in Sharia Insurance and Sharia Reinsurance," and DSN-MUI Fatwa No. 43, which addresses compensation (*ta'widh*). These fatwas collectively contribute to the comprehensive framework highlighting the importance of adhering to Sharia-compliant principles within the realm of insurance practices.

These three components—*gharar*, *maisir*, and *riba*—constitute fundamental principles that must be upheld within the framework of a Sharia-compliant insurance enterprise. Consequently, the fatwa implicitly underscores the imperative for National Health Insurance to align with the principles of Sharia-compliant insurance, as elucidated in DSN-MUI Fatwa No. 21, which expounds upon the "Guidelines for Sharia Insurance." The additional DSN-MUI fatwas serve to bolster and reinforce this assertion.

3.2. Bahtsul Masâ-il of Nahdlatul Ulama on National Health Insurance

During the 33rd NU Congress held in Jombang, East Java, the *Bahtsul Masâ-il* NU issued a fatwa pertaining to National Health Insurance, with the central question being whether the concept of National Health Insurance within BPJS aligns with Islamic Sharia principles. BPJS, being a government initiative aimed at ensuring social protection and welfare for all citizens (as stipulated in BPJS Law Number 40/2011), is consistent with the ethos and objective of "*at-ta'mîn at-ta'âwunî*." This concept involves the collective pooling of contributions by various individuals to establish a fund that can be used to provide financial support to participants affected by unforeseen calamities.

The arguments underpinning this fatwa draw upon *Al-Fiqh al-Islâm wa Adillâtuh*, which unequivocally affirms the permissibility of *at-ta'mîn at-ta'âwunî* in accordance with the views of contemporary jurists. This is primarily due to its alignment with the principles of *tabarru'* (voluntary charity) and mutual assistance in goodness (*ta'âwun*) mandated by Islamic law. Furthermore, this endeavor is driven by a non-profit orientation.¹⁸ Additionally, *Tuhfatul Muhtâj fî Syarh al-Minhâj* underscores the significance of adhering to government-prescribed contribution amounts, emphasizing the general applicability of such directives.¹⁹

Two hadiths attributed to the Prophet, as documented by Imam Muslim, recount instances involving the Ash'ariyyin people who found themselves depleted of provisions during a battle. In response to this situation, they gathered whatever remnants were left and evenly apportioned them among the group.²⁰ Imam an-Nawawi's interpretation suggests that this collective action was undertaken with the

¹⁷ Ibn Majah., *Ensiklopedi Hadis Kitab 9 Imam*, Jakarta, Lidwa Pustaka, 2011, page.97.

¹⁸ Az-Zuhaili, Wahbah., *Al-Fiqh al-Islamiy wa Adillatuhu*, Damaskus, Dar al-Fikr, 1997, page.54.

¹⁹ Muhamad Hâdimî., *Ethics of Islam*, Turki, Hakikat Kitâbevi, 2005, page.97.

²⁰ Shahih Muslim., *Ensiklopedi Hadis Kitab 9 Imam*, Jakarta, Lidwa Pustaka, 2011, page.91.

intent of mutually justifying their actions or relinquishing their individual shares equitably. Additionally, there exists a hadith from the Prophet that instructs believers to alleviate the burdens of those undergoing distress.²¹

The second inquiry pertains to whether the BPJS program encompasses elements of usury or not. It is established that the BPJS program lacks usurious elements and cannot be equated with conventional insurance.²² This distinction arises from the fulfillment of all requisite criteria, classifying it as *at-ta'mîn at-ta'âwunî*. Regarding the permissibility of the government mandating citizens' participation in the BPJS program, it is permissible under the condition that the state's financial resources are insufficient, and the contribution rate imposed remains within the financial means of individuals who possess surplus wealth relative to their standard needs over a year. This stance is grounded in *Bughyah al-Mustarsyidîn*, which outlines one of the obligations of affluent individuals according to Islamic law, involving the provision of clothing to the unclothed, feeding the hungry, and facilitating the release of captives, both Muslim and dhimmi, in cases where *baitul mal* (public treasury) does not suffice. Additionally, reference is drawn from *Fath al-Mu'în*, affirming that the address for averting imminent danger encompasses individuals who receive assistance when *Baitul Mâl* is inadequate and no one pays zakat or its equivalent. Another point of reference substantiating this fatwa is derived from *Bughyah al-Mustarsyidîn*, which underscores that when the government decides to collect a specified amount from select individuals annually for the greater good, and this imposition is adhered to voluntarily without coercion, then the levy is deemed permissible.²³ However, if compulsion is involved, it constitutes an unjust consumption of others' assets without justification under any circumstances.

3.3. Analyzing the Convergence and Divergence of Fatwas: A Comparative Examination

Upon closer scrutiny, it becomes evident that there are disparities between the fatwa issued by the Ijtima' Ulama Fatwa Commission and the one issued by Bahtsul Masâ-il, despite both institutions being authoritative bodies for issuing fatwas. The former operates under the Indonesian Ulama Council (Majelis Ulama Indonesia), while the latter is affiliated with NU (Nahdlatul Ulama). These disparities are prominently highlighted in the content of their respective fatwas. The Fatwa Commission contends that the contractual framework employed within the National health insurance program does not align with Sharia principles. In contrast, NU's Bahtsul Masâ-il asserts the opposite stance, asserting that the contract is Sharia-compliant as it falls under the category of *at-ta'mîn at-ta'âwunî*, denoting social insurance.

However, upon conducting a comprehensive examination of the content and nuances within the fatwas issued by both institutions, a noteworthy point of convergence becomes apparent. Within the NU's fatwa, there are subsequent recommendations, stipulating that certain aspects of the National health insurance program require refinement to better adhere to the principles of *at-ta'mîn at-*

²¹ Ibid, Page.73.

²² Asman Abnur., Analysis on BPJS Kesehatan from Various Disciplines, *Global Review of Islamic Economics and Business*, Vol.2, no.3, 2015, page.161.

²³ Harvey S. Rosen., 1992, Public finance, In *The encyclopedia of public choice*, pp. 252-262. Boston, Belanda, Springer US;

ta'âwunî. This indicates that the implementation of the National health insurance program, which has been in effect since January 2014, does not entirely align with Sharia principles.²⁴ Consequently, it underscores the necessity for improvements to bring the program into compliance with Sharia tenets.

Upon a meticulous examination of the arguments and evidentiary foundations put forth by both fatwa institutions, it becomes evident that they adopt distinct approaches. In accordance with their respective fatwa guidelines, the MUI Fatwa Commission systematically presents its evidence in a hierarchical fashion.²⁵ This approach commences with reference to the Qur'an, which stands as the preeminent source of Islamic jurisprudence, followed by the Hadiths of the Prophet Muhammad, constituting the secondary source. Consensus (*Ijma'*) within the scholarly community is the subsequent tier in their evidentiary hierarchy. Subsequently, the fatwas issued by scholars, including those from the National Sharia Council (DSN), are introduced into the discourse. In contrast, the structure of arguments employed by Bahtsul Masâ-il adopts a different configuration. Their approach initiates with the opinions (*aqwâ'*) of scholars aligned with the Sunni Four Schools of Jurisprudence (Hanafi, Maliki, Shafii, and Hanbali schools of jurisprudence). If applicable, verses from the Qur'an and Hadiths of the Prophet are subsequently incorporated into their framework.

This distinctive approach is driven by the organizational affiliation of NU (Nahdlatul Ulama) with a specific school of thought, notably the Sunni Four Schools of Jurisprudence. Furthermore, NU's adherence to this school of thought is manifestly oriented towards its juristic opinions (*qaulî*) and associated methodology (*manhâj*). Consequently, when a juristic opinion (*qaul ulama*) is identified within this framework, it is readily invoked. It is essential to clarify that NU's reference to the textual sources of the Qur'an and Hadith is still maintained, albeit filtered through the interpretations of earlier scholars, adhering to their chosen school of thought.²⁶

While there exist disparities in their perspectives, a closer examination of the core arguments presented by both fatwa institutions reveals a fundamental classification of the National health insurance program as falling within the ambit of insurance. This classification aligns with Article 19(1) of the Social Security Law (UU SJSN), which explicitly delineates that nationally orchestrated health coverage operates on the foundational tenets of "social insurance" and "equity principles." However, the assessment conducted by the MUI Fatwa Commission underscores a salient observation – the practical execution of the National health insurance program continues to exhibit adherence to established "conventional insurance" practices. Consequently, it does not fully adhere to the prescribed tenets of "Sharia insurance." This observation is substantiated by the arguments articulated by the MUI Fatwa Commission, which routinely reference the fatwas of the National

²⁴ Bahjatul Imaniyah., The Contract of the Social Security Agency for Employment (BPJS Ketenagakerjaan) in The Perspective of Shar {î} a Economic Law, *Al-Ihkam: Jurnal Hukum & Pranata Sosial*, Vol.14, no.12, 2019, page.125.

²⁵ Greg Barton, Ihsan Yilmaz, and Nicholas Morieson., Religious and pro-violence populism in Indonesia: The rise and fall of a far-right Islamist civilisationist movement, *Religions*, Vol.12, no.6, 2021, page.397.

²⁶ Achmad Kemal Riza., Contemporary fatawa of Nahdlatul Ulama: between observing the madhhab and adapting the context, *Journal of Indonesian Islam*, Vol.5, no.1, 2011, page.56.

Sharia Council (DSN). In particular, they draw attention to the operational framework underpinning Sharia insurance, explicitly citing Fatwa DSN-MUI No. 21, elucidating the "Guidelines for Sharia Insurance," and Fatwa DSN-MUI No. 52, which expounds upon the "Agency (*wakalah*) Contract with Fee in Sharia Insurance and Sharia Reinsurance." Likewise, through a meticulous analysis of pertinent verses and hadiths, the MUI Fatwa Commission endeavors to establish these as supportive evidences for Sharia insurance.

Conversely, the fatwa issued by NU's Bahtsul Masâ-il explicitly designates National health insurance as Sharia insurance, characterized by the classification of "*at-ta'mîn at-ta'âwunî*." Consequently, this categorization aligns with Sharia principles, albeit with an acknowledgment of the requisite enhancements needed in its practical implementation to ensure alignment with Sharia insurance specifications. In light of the preceding exposition, it becomes evident that the substantive essence of both fatwas does not inherently contradict one another. In essence, both fatwas share a common objective – to facilitate the harmonization of the National health insurance program, a government initiative instituted since 2014, with Sharia principles, particularly those related to Sharia insurance. The underlying premise is that the National health insurance program, while in operation, has not achieved full adherence to Sharia principles.²⁷ This sentiment is explicitly conveyed through the recommendations articulated by the MUI Fatwa Commission, which call for the government to institute, organize, and deliver social coverage grounded in Sharia principles while ensuring the provision of exemplary services. Similarly, the recommendations from NU's Bahtsul Masâ-il emphasize the need for enhancements in the program's implementation to align it with the concept of "*at-ta'mîn at-ta'âwunî*." These include aspects such as abstaining from coercive practices in participation, participants being solely motivated by altruistic intentions (devoid of personal gain), ensuring equity in service provision (eliminating discrimination among participants), and converting surplus contributions beyond cost requirements into forms of charity or endowments in accordance with government regulations. Thus, the key distinction lies primarily in the language and formulation of the fatwas rather than their core substance.

Differences in the wording and phrasing of a fatwa can significantly influence the public's comprehension of its content.²⁸ This phenomenon is particularly relevant in the context of fatwas, which are closely intertwined with legal matters, specifically Islamic jurisprudence, as they encapsulate scholars' perspectives and legal opinions. Scholars craft fatwas employing well-established legal terminology, usually conveying their rulings in precise and lucid language while referencing the five principles (*ahkâm al-khamsah*) to minimize potential interpretations and ambiguities. However, despite these variances in the manner of articulation, Mufti Madinah Al Habib Zain bin Ibrahim bin Sumaith and Rabithah Alawiyah East Java concur on the permissibility of the National health insurance program under Sharia law when it is instituted by the government with the purpose of pooling funds from

²⁷ Anita Nidasari, Rini Khoirinnisa, and Chandra Wijaya., The Strategy Development Business Insurance Case on Indonesia Insurance Practices, *Journal of Islamic Strategic and Development Studies*, Vol.1, no.1, 2021, page.29.

²⁸ Fariz Alnizar, Amir Ma'ruf, and Fadlil Munawwar Manshur., The language of fatwa: Understanding linguistic violence in the Indonesian ulama council's fatwa on Ahmadiyah, *Ahkam: Jurnal Ilmu Syariah*, Vol.21, no.1, 2021, page.25

the populace to provide financial assistance for medical treatment to individuals in need. This framework falls within the realm of cooperative insurance (*ta'awuni/ijtima'*). Consequently, their fatwa aligns with the fatwa issued by *Bahtsul Masail NU*, given that both are institutionalized by governmental bodies. However, the National health insurance program is deemed impermissible under Sharia law if its establishment by the government is motivated by profit-seeking intentions (profit-oriented), as it would then fall under the category of qimar (gambling). This stance corresponds with the fatwa issued by the Ijtima' Fatwa Commission of MUI due to the profit-oriented nature of the program, which does not conform to the Sharia insurance guidelines.

Agustianto, who serves as the Chairman of the Association of Islamic Economics Experts in Indonesia, posits that the National Health Security concept and the BPJS (Social Security Administering Body) implementation are in alignment with *at-ta'mîn at-ta'âwunî*, a principle strongly endorsed by Islamic Sharia. This concept of social security, expressed as *at-ta'mîn at-ta'âwunî*, is a practical manifestation of the Quranic directive urging people to collaborate (*ta'âwun*) and safeguard each other. Within the Quran and the sayings of the Prophet Muhammad PBUH, there exist numerous injunctions encouraging mutual support, protection, and compassion among individuals. It is further expounded that within the realm of Islamic studies, social security encompasses two primary categories: traditional social security and social security manifesting as social insurance (*at-ta'mîn at-ta'âwunî*). Traditional social security assigns the responsibility to the state for meeting citizens' basic needs through charitable instruments such as zakat, infaq or waqf, and even taxation. This form of social security aims to provide for the needs of segments of the population that necessitate state assistance. Conversely, the second category of social security necessitates that all citizens contribute affordable premiums, thus adopting the format of social insurance. The notion of social security framed as insurance (*at-takâful al-ijtimâ'*) represents a foundational element of Islamic economics, an idea underscored by Ahmad Muhammad 'Assal, a Professor at Riyadh University, in his work titled "Al-Nizam al-Iqtishâdih al-Islâmî.

The legal standing of National health insurance hinges on multiple considerations, encompassing the transparency of its contractual agreements (*akad*), the category of insurance it falls under, the utilization of premiums gathered, and the administrative procedures.²⁹ It is imperative that all these facets harmonize with Sharia principles, as delineated in the National Sharia Council's (DSN) fatwa concerning Sharia insurance regulations (Fatwa DSN MUI No. 21). To offer further precision, the DSN MUI issued a fatwa in 2015 (Fatwa DSN MUI No. 98 Year 2015), which furnishes directives for executing National health insurance in a manner congruent with Sharia principles.

3.4. Ulama Fatwas and Common Good in Islamic Law

Indonesia is classified as a welfare state, as articulated in the preamble of the 1945 Constitution (UUD 1945), which implies that the government bears the responsibility of formulating policies across various welfare domains and enhancing the quality of public services by furnishing essential amenities to the populace. This encompasses

²⁹ Darius Erlangga, Shehzad Ali, and Karen Bloor., The impact of public health insurance on healthcare utilisation in Indonesia: evidence from panel data, *International journal of public health*, Vol.64, no.13, 2019, page.610.

a comprehensive interpretation of social security, entailing endeavors in the sphere of social well-being aimed at ameliorating human living conditions and addressing issues such as underdevelopment, dependency, neglect, and poverty. However, the effective realization of these goals has been impeded by fiscal constraints of the government and the sector-specific interests of diverse stakeholders engaged in social security.³⁰ Consequently, it is imperative for the government to assume full responsibility and be transparent in safeguarding the well-being of its citizens.

The mandate conveyed in the preamble of the Constitution is further expounded upon within its body. Article 28 H, subsection (3) of the 1945 Constitution articulates, "Every individual possesses the entitlement to social security that facilitates their complete development as a dignified human being." Additionally, Article 34, subsection (2) of the same Constitution underscores the state's responsibility in delivering this social security, affirming, "The state shall formulate a social security system encompassing the entire populace and uplift the vulnerable and disadvantaged in accordance with the principles of human dignity." This constitutional directive was subsequently translated into action through the Decree No. X/MPR/2001 of the People's Consultative Assembly of the Republic of Indonesia (*Majelis Permusyawaratan Rakyat Republik Indonesia/MPR-RI*), which tasks the president with establishing a comprehensive and integrated social protection system (*Sistem Jaminan Sosial Nasional/SJSN*) to cater to the entirety of the Indonesian population.

In accordance with Law No. 40/2011 concerning BPJS (Social Security Administering Body), the National Social Security System is a government initiative with the objective of ensuring the provision of social protection and welfare for the entire populace. As articulated in this law, social security encompasses a form of social protection that guarantees that every citizen can fulfill their fundamental living necessities in a dignified manner (stipulated in Article 3). The implementation of state-provided social security is conducted progressively, as elucidated in Article 14, subsection (1) and subsection (2) of Law No. 40/2004. Moreover, Article 17, subsection (4) specifies that contributions to the social security program for impoverished individuals are covered by the government and fall under the category of government-subsidized contributions (as stated in Article 10, subsection (2) of Law No. 12/2009). From the foregoing exposition, it becomes evident that social security programs in both the realms of healthcare and employment are commendable initiatives, in alignment with constitutional mandates, for the welfare and benefit of the people. However, these programs have been devised without comprehensive involvement of all stakeholders, including religious scholars, resulting in various issues. One of these concerns pertains to the dimension of religious law, specifically Islamic law.³¹

This holds significant importance, particularly in light of Article 29, subsection (1) of

³⁰ Rudy Hendra Pakpahan and Eka NAM Sihombing., Tanggung Jawab Negara Dalam Pelaksanaan Jaminan Sosial Responsibility State In The Implementation Of Sosial Security, *Jurnal Legislasi Indonesia*, Vol.9, no.2, 2018, page.164.

³¹ Shahidul Islam, Nazlida Muhamad, and Vai Shiem Leong., Healthcare quality for Muslims: TCCM and TSR frameworks analyses, *Journal of Islamic Marketing*, Vol.14, no.3, 2023, page.778; See to, Asif Ahmed Qureshi., Analyzing the sharia'ah compliant issues currently faced by Islamic insurance, *Interdisciplinary Journal of Contemporary Research in Business*, Vol.3, no.5, 2011, page.279.

the constitution, which explicitly asserts that "The state is founded upon the belief in the One and Only God." According to Hazairin,³² the essence of this article implies that no legislation emanating from any authority, be it executive, legislative, or judicial, should be in contradiction with religious laws, which encompass Islamic law as well.³³ Consequently, Islamic law is recognized as a positive legal source within our nation's legal framework. Additionally, Hartono Mardjono posits that Article 29, subsection (1) of the 1945 Constitution encompasses three key facets, one of which obliges our country to formulate legislation or policies that reflect a commitment to faith in God.³⁴ The interpretations of Article 29, subsection (1), as articulated by both Hazairin and Hartono Mardjono, encompass Islamic Sharia, necessitating the enactment of state regulations and government policies, including those related to health social security in the form of insurance, which are applicable to the Muslim community (Sopa, 2013). This practice has been a historical precedent in our country dating back to the era of Dutch colonialism. Prior to the establishment of Islamic law as codified regulations, judges in the Religious Court or Sharia Courts were guided by the principles outlined in 13 fiqh books when deliberating and adjudicating cases presented before the court.³⁵

Based on the preceding exposition, it becomes evident that religious scholars wield considerable influence in supervising public policies through their issuance of fatwas. Since the establishment of the scholars' organization within MUI in 1975, the fatwas rendered by religious scholars have demonstrated significant efficacy, enjoying compliance from both the Islamic community and the government alike. Notably, the government's adherence to these fatwas is exemplified by their integration into legislative frameworks.³⁶ Consequently, the pertinent question arises regarding the absence of involvement of religious scholars in the case of National health insurance, leading to the creation of a product that runs counter to Sharia principles. In the event that health coverage assumes the form of insurance, it would be ideal for the government to refer to the guidelines delineated in fatwa DSN-MUI No. 21 of 2001, which pertains to "Guidelines for Sharia Insurance." Furthermore, since the conclusion of the Ijtima' Ulama V (National Scholars' Conference) organized by the MUI in June 2015, there have been no discernible indications of the government's earnest commitment to conform to that particular fatwa. One plausible explanation could be that the fatwa lacks comprehensive directives on how to manage National health insurance in accordance with Sharia principles. If this is indeed the case, it might be a reasonable explanation. Alternatively, the government's perplexity could be compounded by subsequent fatwas from the largest Islamic organization, NU, which were issued by Bahtsul Masâ'il during its 33rd National Meeting in Jombang, East Java, on August 3, 2015. These fatwas concluded that the existing National health insurance program adheres to Sharia principles.

³² Hazairin Hazairin., *Demokrasi Pancasila*, Jakarta, Tintamas Indonesia, 1973, page.75.

³³ Ibid., Page.73.

³⁴ Mardjono, Hartono., *Menegakkan syariat Islam dalam konteks keindonesiaan: proses penerapan nilai-nilai Islam dalam aspek hukum, politik, dan lembaga negara*, Laos, ATF Press, 1997, page.31.

³⁵ Sopa Sopa., *Sertifikasi Halal Majelis Ulama Indonesia: Studi atas Fatwa Halal MUI terhadap Produk Makanan, Obat-Obatan dan Kosmetika*, Jakarta, Gaung Persada Press, 2013, page.134

³⁶ Wendy L. Adams., *Pola Penyerapan Fatwa Majelis Ulama Indonesia dalam Peraturan Perundang-Undangan 1975-1997, Disertasi Doktor Ilmu Agama Islam*, Jakarta, Perpustakaan Pascasarjana UIN Syarif Hidayatullah, 2002, page.51.

The government's response should not be characterized by passivity or indecision. Instead, it should take prompt action by engaging relevant stakeholders such as the Financial Services Authority (OJK), MUI (Indonesian Ulema Council), and the Ministry of Health to enhance the administration of National health insurance in adherence to Sharia principles. There are two viable courses of action. First, there is the option of enhancing the management of the existing National health insurance program, which can be achieved by drawing upon the guidance provided in fatwa DSN-MUI No. 21 of 2001, titled "Guidelines for Sharia Insurance." Second, there is the prospect of establishing a Sharia-based National health insurance system, a course of action endorsed by MUI. In this regard, the National Sharia Council (DSN) has issued fatwa No. 98/DSN-MUI/XII/2015 concerning the "Guidelines for the Implementation of Sharia Health Social Security." This fatwa serves as a follow-up to the fatwa issued by the MUI's fatwa commission in December 2015. The ultimate decision on which option to pursue lies within the purview of the government.

4. Conclusion

In summary, this study, as outlined in the preceding description, leads to the following conclusions: there exist disparities in the fatwas concerning national health insurance between the MUI Fatwa Commission and NU's Bahtsul Masâ'il, stemming from the contrasting arguments employed by these two fatwa institutions. Consequently, the legal conclusions drawn from these fatwas diverge, with the MUI asserting that national health insurance is incompatible with Sharia principles, while NU takes an opposing stance.

The discrepancy in the fatwa rulings can be attributed to differences in the focal points of the respective studies. The MUI's examination places a greater emphasis on "contracts," leading to the determination that National health insurance is inconsistent with Sharia principles due to its utilization of the "conventional insurance" model, which entails elements of gharar, maisir, and usury. In contrast, the NU study places a stronger emphasis on the objectives and advantages of national health insurance, which offers protection and healthcare coverage to all Indonesians, particularly the underprivileged. Consequently, it is regarded as in accordance with Sharia principles because it encompasses social insurance (ta'min at-ta'awuni). However, it is essential to note that there is a point of convergence between the two fatwas, namely the recommendations provided by both fatwa institutions, which stress the necessity for enhancements in the management of national health insurance services. A legal dispute arose concerning BPJS-Kesehatan because religious scholars, as key stakeholders, were not engaged in the development of this government program aimed at benefiting the public. Consequently, this commendable program is not in compliance with Islamic law. Despite the constitutional mandate (Article 29 of the 1945 Constitution) calling for "the involvement of religious scholars" in crafting public policies by legislative, executive, and judicial bodies to ensure that the resulting policies adhere to Islamic law.

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