

The Local Government Policies of Health in the Era of Autonomy

Siti Afiyah

Student Doctoral of Law,
Brawijaya University

Prof. Dr. Sudarsono, S.H., M.S

Profesor of State Law
Brawijaya University

Dr. Bambang Winarno, S.H., M.S

Doctor of Bisnis Law
Brawijaya University

Dr. Sihabudin, S.H., M.H

Doctor of Bisnis Law
Brawijaya University

Abstract- In writing this paper the author discusses how the local government areas of health policy in the era of regional autonomy. The background of this paper that there is a lack unconnect between the Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System with Article 18 paragraph (2) of Law - Constitution of the Republic of Indonesia 1945 makes the rules is not logic. The problem studied in this research is : How should the next setting on the authority of government (central) with the local government in the field of medical. To answer of considered problems the authors use the method of approach legislation. Based on the results of the study, the authors obtained the answers to the problems that exist, there should be a revision of Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System, namely by giving authority to local governments to make the social security system prevailing in the area. Responding to the things mentioned above, the legislature should amend Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System that better reflect the principles of autonomy.

Index Terms— policy , local government and health

I. INTRODUCTION

The dynamics of development of Indonesia has raised the following challenges demands of handling various problems unsolved. One is the administration of social security for all citizens, which is mandated in Article 28 paragraph (3) of the right to social security and Article 34 paragraph (2) of the Constitution of the Republic of Indonesia in 1945. Social security is also guaranteed in the Declaration of the United Nations nations on Human Rights and reaffirmed in the 1948

ILO Convention No. 102 of 1952 which urged all countries to provide minimum protection to all workers. in line with these provisions, the Assembly of the Republic of Indonesia in Decree Number X / MPR / 2001 assigns the President to establish a National Social Security System in order to provide a comprehensive social protection and integrated.

Regional autonomy policy into a framework for regional government in formulating and formulate policy formulation for the regional administration in accordance with the authority, needs, and abilities in the area of implementing government affairs which are the local responsibility. It suitable with the Law of the Republic of Indonesia Number 23 Year 2014 concerning Local Government as amended for the third time with the Law of the Republic of Indonesia Number 32 of 2004, the regional administration carried out by loading the principle of decentralization and co-administration with broad autonomy within the system and the principles of the Republic of Indonesia.

In an effort to actualize the function of the regional administration, local government has formulated various policies that have a context and a different function. Government policy is structured to provide enhanced services, participation, initiative, and community development aimed at improving people's welfare. The basic gist of existing policy formulation process, directed to the optimization and utilization of various resources (resources) that owned the area and in accordance with the powers, abilities, and needs of the region. Another consideration is the attention to the peculiarities and advantages that exist. Context and long-term time frame, the policy set forth in Local Rule.

Health is one of the fundamental rights for the people. This has become one of the government's obligations to its citizens, especially for the poor, but in fact is happening today is still low level of public health, especially the poor, low level of public health caused by their inability to get health care because of the high cost of the service to be paid, it can be illustrated that maternal mortality and infant mortality rates for the poor are three times higher than the non-poor. The poverty rate causes the poor are not able to meet the demand for health services are relatively expensive. If not addressed, the condition will worsen the health condition of the people of Indonesia, as the economic crisis has increased the number of poor people and lead to higher health care costs, so the more pressing because of the access they are increasingly unaffordable costs.

Considering health is an important aspect in the life of society, then the government should create an adequate health development as an improvement to the poor level of health over the years. The central government shall be consistent to maintain the direction of autonomy that empowers public health. Decentralization in the health sector which has been the Government's policy in the area of community development paradigm that has been a top-down to participatory, which society relies on the strength and local resources. With the participatory patterns, processes ongoing regional autonomy in Indonesia today, will be on the right track when the time comes.

The problem we face today is the inadequacy of legal products both at central and local level that can support the implementation of public participation in the process of birth of each policy. Because in fact meet the needs of the poor has not changed, still poor people have difficulty in obtaining health care. The purpose of a state is to provide welfare to all people. Whoever and whatever their status, are entitled to well-being in life. So the existence of institutions named BPJS (Social Security Agency) is one way to meet the basic needs of living and improve the dignity towards the realization of a prosperous Indonesia, fair and prosperous.

The purpose of the National Social Security System to guarantee the fulfillment of basic needs of living for each participant and / or their family members. Thus BPJS distribute welfare as well as protection for all Indonesian people. National Social Security System (national social security system) is a system of organization of state and government programs to provide social protection, so that every resident can meet the basic needs of living, towards the realization of social welfare for the entire population of Indonesia. Social security is required in case of things that are not desired to mengakibatkan loss or reduction in income a person, either as it enters old age or retirement, or because of health problems, disability, loss of a job, and so forth. Law No. 24 of 2011 on the Social Security Agency (BPJS) implementation of Law No. 40 of 2004 on National Social Security System (Navigation). BPJS aims to realize the implementation of the provision of guarantees fulfillment of a decent life for participants and their families. So with the formation BPJS (both BPJS Health and Employment) their health insurance which is a basic necessity of living for all citizens of Indonesia.

So the government launched a mega project to provide national security system. It is unfortunate that the provisions regarding UUSJSN there are problems associated with synchronization. Law No. 40 of 2004 on National Social

Security System (Navigation) as a forerunner to the establishment BPJS there is a discrepancy with the 1945 Constitution sinkronan see terms below: The formulation of Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System, which states : (1) Social Security Agency shall be established by Law.

(2) Since the enactment of this Act, the body of social security that is expressed as the Social Security Agency in accordance with this Act.

(3) Social Security Agency as referred to in paragraph (1) is :

a. Limited Liability Company (Persero) Social Security Workers (Jamsostek);

b. Limited Liability Company (Persero) Savings and Insurance Fund Servants (TASPEN);

c. Limited Liability Company (Persero) Social Insurance Indonesian Armed Forces (Asabri); the and, d. Limited Liability Company (Persero), Indonesia Health Insurance (Askes).

(4) If necessary other than the Social Security Agency referred to in paragraph (3), can be created by the Act.

Indeed, the regulation precludes the possibility of local governments to develop social security systems that exist in the area, this is of course contrary to Article 18 paragraph (2) LAW - BASIC LAW OF THE REPUBLIC OF INDONESIA 1945, which states: (2). The provincial, district, and city set up and manage their own affairs according to the principles of autonomy and assistance.

Should organizing body referred to in Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System interpreted the Social Security Agency in the center formed by the Act and the Social Security Agency in the area formed by local regulations, it is more representative of the rule of law, because it is not contrary to Article 18 paragraph (2) of Law - Constitution of the Republic of Indonesia in 1945.

Legal certainty is a state in which a rule is created and enacted exactly as set out clear and logical. Obviously in the sense that there is no blurring or doubts norm (multiple interpretations) and logical in the sense of becoming a norm system with other norms that do not clash or conflict of norms¹. Legal certainty refers to the application of the law is clear, permanent, consistent and consequently, the implementation of which can not be influenced by the circumstances of the subjective nature². Legal certainty is also the goal of every law. Legal certainty will be achieved when the words and sentences law so clearly structured so as not to give rise to different interpretations. Legal certainty is closely linked with law enforcement. Law enforcement itself is a process to realize the wishes come true law³.

The lack connected between Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National

¹ Ubaidillah Abdul Rozak, *Pendidikan Kewarganegaraan (Civic Education) Demokrasi, Hak Asasi Manusia dan Masyarakat Madani*, Edisi Revisi, (Jakarta : ICCE Uin Syarif Hidayatullah 2006). p. 27

² Raimond Flora Lamandasa, *Penegakkan Hukum (online)*, <http://raimondfloramandasa>, 4 February 2014

³ Abdul Rachmad Budiono, *Pengantar Ilmu Hukum*, Bayumedia Publishing, Malang, 2005, p. 22

Social Security System with Article 18 paragraph (2) of Law - Constitution of the Republic of Indonesia Tahun 1945 make the rules is not logical.

Every citizen has the right to health, including the poor, it is necessary for a system to regulate the implementation of efforts to fulfill the right of citizens to remain healthy. The quality of Indonesian public health during this relatively low, for this community, especially the poor tend to be less health them. This can be due to the low level of understanding of the importance of health in life, when people's consciousness about the maintenance and protection of health is very important to achieve the level of health highest. On the other hand, the low level of public health can be caused by their inability to get health care because of the high cost of the service to be paid.

After knowing the above norm conflict, we must know what exactly the role of government. Related to this social security. The role of government is to provide cost-effective health services without lowering the quality of services, the role of government is needed, namely :

1. Central Government National Health Insurance Scheme (JKN) held through BPJS Health. One is in an effort to improve the quality of health services in the administration of the National Health Insurance as mandated by Law No. 40 of 2004 on National Social Security System (Navigation), and the Law 24 of 2011 on the Social Security Agency (BPJS). The government deems it necessary arrangements concerning the management and monitoring of capitation funds JKN at first-level health facilities. In connection with the institutional capacity of the Act BPJS not authorized for investigation, but managers could BPJS filed parties are not willing to pay a premium to the court.

2. Local governments BPJS coordinate with local governments must ensure that poor people should not be rejected by the hospital (area). Companies that have not registered their workers as participants BPJS then to companies and workers will not get public services is even possible to get the sanctions would not be granted a business license and other permits. while for informal workers or individuals they also will not be getting a public service instance can not obtain a driving license. picture of future sanctions will like it as mandated by Law No. 24 of 2011 on BPJS all formal and informal workers should be BPJS participants. BPJS in collaboration with local government authorities to impose sanctions on companies that do not register their workers as members BPJS. So it can be said that the key to the success of the program BPJS in the hands of local government, because the local government through the relevant agencies such as the licensing body or authority to do pegawai Manpower and impose sanctions. Because BPJS the central government programs are also required local governments success of the program.

Based on the background that has been presented above, the authors take the formulation of the problem, namely: How should the next setting on the authority of government (central) with the local government in health. In general, the purpose of this study was to determine and analyze the future regulation of authority between government (center) with the local

government in the health sector. This study is a normative legal research. The approach used in this study is the approach of legislation (Statute Approach) and approximation theory (theoretical approach). Legal materials used in this study are: a. Primary legal materials, ie materials legally binding, in the writing of this law include: Undang-Undang Constitution of the Republic Indonesia 1945, Act of national security systems. Secondary law in this study as a support in the study of textbooks written by lawyers, articles, internet, and other sources that have a relationship to support this research. In this study law Materials Processing done deductively, the author uses qualitative data analysis techniques to collect data, to qualify and then connect the theory related to the problem and the last stage is to draw conclusions from research sources are processed, which in turn can know the legal protection of workers migrant.

II. DISCUSSION

National Social Security System is one form of social protection held by the Republic of Indonesia in order to guarantee its citizens a decent basic living needs. According to Law No. 40 In 2004, the Social Security program replaces the existing social security are considered less provide maximum benefits for its users. Over the last few decades, Indonesia has undertaken several social security programs. Act that specifically regulate social security for private employment is Act No. 3 of 1992 neighbor Employment Guarantee (Jamsostek), which includes health care insurance program, accident insurance, pension and life insurance. For Civil Servants (PNS), has developed programs Savings and Insurance Fund Servants (TASPEN) established by the Government Regulation No. 26 of 1981 and the Health Insurance program (Askes) held under Government Regulation No. 69 of 1991 which is mandatory for civil servants / Pension Recipients / Pioneer Independence / Veteran fund family members. For soldiers Indonesian Armed Forces (TNI), members of the Indonesian National Police (INP), and PNS Department of Defense / Military / Police and their families have implemented social insurance program of the Armed Forces of the Republic of Indonesia (Asabri) in accordance with Regulation No. 67 of 1991 Pemerintah which is a change on Government Regulation No. 44 of 1971.

These programs cover only a fraction above the community. Most people do not obtain adequate protection. In addition, the implementation of various social insurance programs are able to provide fair and adequate protection to the participants in accordance with the benefits of the program are the rights of participants.

In connection with the foregoing, deemed necessary to develop the Social Security System that is able to synchronize the implementation of various forms of social security are implemented by multiple providers in order to reach a wider membership and provide greater benefits for all participants.

National social security system made in accordance with the "paradigm of the three pillars" recommended by the International Labour Organisation (ILO). The pillars are: First pillar using mechanisms explored social assistance (social assistance) to residents who are less able, both in the form of cash or certain services, to meet the basic needs of decent. Financing social assistance can be sourced from the State Budget and or of the Society. 4 The mechanism of social assistance is usually given to Disabled Issues Social Welfare

(POM) that people who really need, for example the poor, sick, elderly, or when forced to idle.

In Indonesia, social assistance by the Government is now more emphasis on empowerment in the form of counseling, rehabilitation and empowerment that leads to the independence of the POM. Expected after they were able to contribute independently to enter the insurance mechanism. Local knowledge in the community also has long been known that the efforts of the community, either independently, self-help, and mutual assistance, to meet the welfare of its members through a variety of social assistance efforts, joint ventures, social gathering, and so on. Local knowledge will continue to grow as a supplementary social security system because local knowledge is not able to be a powerful system, includes many people, and do not guarantee its continuity.

The government is encouraging the growth of self-help society to meet the growing prosperity with good climate and developing, among others, by giving incentives to be integrated in the national social security system.

The second pillar of social insurance mechanisms or social relationships mandatory or compulsory insurance, financed from contributions or contributions paid by the participants. With liabilities to participants, this system can be widely held for all the people and assured continuity and professionalism of its implementation.

In the event that a participant is labor in the formal sector, dues paid by all workers or employers or jointly by a certain percentage of wages. The mechanism of social insurance is the backbone of social security funding in almost all countries. This mechanism is the country's efforts to meet the minimum basic needs of the population by incorporating them actively through the payment of dues. Large contributions associated with the level of income or wages community (usually a certain percentage of participants who are not burdensome) to ensure that all participants are able to makes contributions.

Membership shall constitute a solution of the inability of residents see the future risk and lack of discipline of saving for the future residents. Thus the social security system also educate the community to plan for the future. Due to the nature of the compulsory participation, social security fund management is done as much as possible to improve the socio-economic protection for participants. Because it is compulsory, then social security is to be governed by a separate law.

In many countries that have implemented social security system well, expanded coverage of the participants carried out in stages in accordance with the economic ability and readiness of the government as well as its implementation. Stages usually starts from labor in the formal sector (labor that entered into a working relationship), subsequently extended to workers in the informal sector, to then reach the stage of the entire population coverage.

Efforts administration of social security as well to the entire population will end in failure because of funding and management capabilities requires accumulation of ability and experience. Group of residents who had only receiving social assistance, is generally poor, can become a social security program participants, in which some or all fees are paid by the government for themselves. Gradually this aid is reduced to decrease the dependence on government assistance. Therefore, the government needs to pay attention to the expansion of employment opportunities in order to reduce government aid fund contributions for residents who can not afford.

The third pillar of voluntary insurance mechanisms (voluntary insurance) or voluntary savings mechanism whose contributions or premiums paid by the participant (or joint employer) in accordance with the level of risk and desire. The third pillar is a type of insurance that is commercial in nature, and in addition after the relevant social insurance participated. Implementation of voluntary insurance commercially managed and regulated by the Insurance Act.

Social assistance programs for members of the public who do not have the financial resources or access to services that can meet their basic needs. This assistance is given to members of the public who proved to have an urgent need, in the event of natural disasters, social conflicts, illness, or job loss. The Trust Fund is taken from the state budget and from local public funds.

Social insurance program is mandatory, funded by contributions drawn from the company and the workers. Dues to be paid by the participant determined by the level of income / salary, and based on a minimum living standards prevailing in the society. Insurance offered by the private sector voluntarily, which can be purchased by participants if they want to get a higher social protection than they receive social security contributions from compulsory social insurance programs. Contribution to the private insurance program is different according to the risk analysis of each participant.

Related unconnected between Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System With Article 18 Paragraph (2) of Law - Constitution of the Republic of Indonesia Year 1945 and who makes the rules is not logical, given that there are regional command authority to manage health affairs, based on the legal issues, the author tries to dig, what the real source of the problem so that the conflict of norms. Through the method of thinking philosophy is expected to be able to know the essential truth of the source of the problem.

Philosophy is a way of thinking that is firm and thorough discuss anything in depth. Philosophy of science is a separate branch of philosophy. This branch specifically examine and study in depth knowledge. In talks philosophy of science, there are at least three issues that become the object of study, namely ontology of science, science and axiology epistemologi science⁴.

The views Jujun S on the matter are as follows:

a. To get a true understanding of the linkages between science and morals, the discussion of this issue should be approached from the aspects that are more detailed in terms of ontology, epistemology, and axiology.

b. Interpret the nature of science and morality should take into account historical factors, both the historical development of science itself, as well as the use of science in the sphere of human history.

c. Ontologically in a form that will be used as the selection penelaahannya object (object ontological / formal object) science is guided by a moral code based on the principle does not change human nature, not degrading, and does not interfere with the problems of life.

d. Epistemologically, scientific efforts are reflected in the scientific method that based on logical process-hypothetico-

⁴ M. Nazir, *Membangun Ilmu dengan Paradigma Islam*, (Pekanbaru: 1999, Susqa Press) p. 87

verification with a moral code that based on finding the truth, which is done with honesty, without the benefit of certain direct and based on the strength of the argument as such.

e. In axiological science should be used and exploited for human benefit by improving their quality of life and with due regard to human nature, human dignity, and balance / preservation of nature. Scientific effort is done with the use and utilization of scientific knowledge communally universal⁵.

Ontological problems as described by Jujun S above, in this study is that there is an issue where the local government authority in managing health, limited by Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System.

Associated with the ontological foundation, what objects studied science? object is learned here. Ontological problems in this research is the meaning of autonomy. Based on the results of research contemplation, meaning Regional autonomy is right, and the authority of local governments to regulate and manage the interests of the community. Given there is disagreement or lack sinkronan between Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System With Article 18, paragraph 2 and paragraph 5 of Law - Constitution of the Republic of Indonesia Year 1945 course there are values of legal certainty neglected. Supposedly local authorities to create a social security system is not restricted by law.

Sociological problems as described by Jujun S above, axiological foundation of science should be used and exploited for human benefit by improving their quality of life with due regard to human dignity. Axiological runway can be described to what form of knowledge that science is used. Jujun S.Suriasumantri interpret axiology as theoretical value related to the usefulness of the knowledge acquired. Axiological problems in this study, to what exactly this regional autonomy, based on the contemplation of researchers, there could actually be achieved because it is useful to promote the area, because there is nothing better understand the potential of the area and the problems of the region in addition to his own government, as close to the community.

Epistemological grounding can be described how the process which allows draws knowledge in the form of science. What is the procedure. What are the things that must be considered in order to signify the right knowledge. What criteria. What is called the truth. Are there any criteria. Method / technique / means what helps us in getting knowledge in the form of science⁶.

The problem of epistemological in this study⁷, how can local governments to be able to continue to manage a local level social security system, and to be able to provide the legal certainty, Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System Must Synced With Article 18 Paragraph (2) of Law - Constitution of the Republic of Indonesia Year 1945 for the system implementation of state programs and the government to provide social protection, and that every resident can meet

⁵ Jujun S. Suriasumantri. *Filsafat Ilmu Sebuah Pengantar Populer*. (Jakarta : 2009, Pustaka Sinar Harapan), p. 33

⁶ Jujun S. Suriasumantri. *Ilmu dalam Perspektif Moral, Sosial, dan Politik : Sebuah Dialog tentang Dunia Keilmuan Dewasa ini*. (Jakarta : 1996, Gramedia media utama, p.15-16

⁷ Jujun S. Suriasumantri. (2009) op.cit., p.33

the basic needs of living, towards the realization of social welfare for the entire population of Indonesia can run efficiently without There are legal issues. Social security is one form of social protection to ensure that all people in order to meet the basic needs of a decent life.

The formulation of Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System, which states:

- (1) Social Security Agency shall be established by Law.
- (2) Since the enactment of this Act, the body of social security that is expressed as the Social Security Agency in accordance with this Act.
- (3) Social Security Agency as referred to in paragraph (1) is:
 - a. Limited Liability Company (Persero) Social Security Workers (Jamsostek);
 - b. Limited Liability Company (Persero) Savings and Insurance Fund Servants (TASPEN);
 - c. Limited Liability Company (Persero) Social Insurance Indonesian Armed Forces (Asabri); and
 - d. Limited Liability Company (Persero), Indonesia Health Insurance (Askes).
- (4) If necessary other than the Social Security Agency referred to in paragraph (3), can be created by the Act.

Indeed, the regulation precludes the possibility of local governments to develop social security systems that exist in the area, this is of course contrary to Article 18 paragraph (2) LAW - BASIC LAW OF THE REPUBLIC OF INDONESIA 1945, which states:
(2). The provincial, district, and city set up and manage their own affairs according to the principles of autonomy and assistance.

Should the organizing body as referred to in Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System interpreted the Social Security Agency in the center formed by the Act and the Social Security Agency in the area formed by the regulations area, it is more representative of the rule of law, because it is not contrary to Article 18 paragraph (2) of Law - Constitution of the Republic of Indonesia Year 1945.

III. CONCLUSION

In response to the things mentioned above, the legislature should amend Article 5 of the Law of the Republic of Indonesia Number 40 Year 2004 on National Social Security System that better reflect the principles of autonomy

REFERENCES

- [1] Abdul Rachmad Budiono, *Pengantar Ilmu Hukum*, Bayumedia Publishing, Malang, 2005
- [2] Jujun S. Suriasumantri. *Filsafat Ilmu Sebuah Pengantar Populer*. Jakarta : 2009, Pustaka Sinar Harapan
- [3] Jujun S. Suriasumantri. *Ilmu dalam Perspektif Moral, Sosial, dan Politik : Sebuah Dialog tentang Dunia Keilmuan Dewasa ini*. Jakarta : 1996, Gramedia media utama
- [4] M. Nazir, *Membangun Ilmu dengan Paradigma Islam*, Pekanbaru: 1999, Susqa Press
- [5] Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban*, UKI Press, 2006
- [6] Sri Soemantri, *bunga rampai hukum tata Negara Indonesia, alumni Bandung*, 1992