

# APPLICATION OF THE ISTISHLAH CONCEPT IN THE FATWA INSTRUMENT REGARDING SOCIAL SECURITY ADMINISTRATOR AGENCY (BPJS) PRODUCTS SYARIAH HEALTH

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## Abstract

This study explores the concept of istishlah (seeking public interest) as a method used by the Indonesian Ulema Council (MUI) in formulating fatwas (Islamic legal rulings) to address contemporary issues. Focusing on MUI's fatwa regarding Sharia-compliant products from the Social Security Administering Body (BPJS Kesehatan Syariah), the research examines the position of istishlah within Islamic law, the criteria established by MUI for Sharia Health Social Security Agency (BPJS) products, and how the sharia label affects people's medical treatment preferences. The study employs library research and interviews with MUI Fatwa Commission members to analyze the application of istishlah in addressing the complexities of social security within an Islamic framework, aiming to promote public welfare in accordance with Sharia principles.

**Keywords:** *Istishlah, MUI (Indonesian Ulema Council), BPJS Kesehatan Syariah (Sharia Health Social Security Agency), Sharia Compliance, Islamic Law, Social Security, Public Welfare*

## A. Background of the problem

As an independent country, Indonesia has chosen a democratic system of government. *religious nationalist*, where the government and legislative bodies as the bearers of the people's mandate are fully responsible for the prosperity and welfare of the people. One of the mandatory programs that the government must pay attention to is improving the level of public health services in order to create social welfare. Health is a basic right of every citizen, and is even one of the determining factors of the welfare of the population. The right to a healthy life is a human right recognized by all nations in the world, including Indonesia. The philosophy and foundation of the Pancasila state in Indonesia also recognizes the basic rights of citizens to health. This right is also stated in the 1945 Constitution Article 28H and Article 34. To realize the mandate of the law above, the government established Social Security Administering Body (BPJS) Health as a complement to existing health services. The debate surrounding the establishment of BPJS Kesehatan was quite heated, various considerations about cost-benefit, nationalism, justice between regions and groups, work and considerations of different geographical and economic conditions have also been discussed in depth.

The birth of BPJS Kesehatan has drawn much criticism and even long debates, starting from poor management, allegations of corruption, inappropriate distribution, to the issuance of a fatwa by the Indonesian Ulema Council (MUI) stating that BPJS Kesehatan is not in accordance with Islamic sharia principles. The emergence of the fatwa then sparked pros and cons from various levels of society. Specifically, the fatwa issued by the MUI is not intended to hinder access to health services from the government to the people, but rather to improve the shortcomings of the BPJS system itself. As a forum for Muslims to ask questions, the MUI is obliged to respond to all problems addressed to it. It is true that the MUI fatwa does not have permanent power, but that does not mean it can be ignored. The MUI fatwa can be used as a source of regulation or positivized so that it becomes a reference in a regulation in positive law in Indonesia, as has been implemented by the Financial Services Authority (OJK), the Ministry of Finance and Bank Indonesia in the sharia economic fatwa. Based on the fact that Muslims in Indonesia are the largest Muslim population in the world, it automatically provides an understanding that Muslims in Indonesia have the right to enjoy health services that are in accordance with the principles of sharia law that they believe in.

Basically, MUI appreciates the seriousness of the government in providing the best health services from the previous systems. However, on the other hand, MUI also provides input in the form of a fatwa related to the operation of BPJS Kesehatan which is not in accordance with the principles of sharia law. The operation of BPJS Kesehatan is considered to still contain elements that are forbidden in Islamic muamalah activities, such as:

1. *Harm*, that is elements of fraud and coercion. A person who is bound by a BPJS contract does not know something that is being contracted, this ignorance is detected as an element of unwillingness,
2. *Maisir*, that is a business activity that is based on luck,
3. *Usury*, which is a profit model that is not permitted by Islamic law.

The MUI assessed that the BPJS Health system does not separate *tabarru'* funds (donations) and mandatory participant premium funds in the management of Social Security funds collected in BPJS Health, while in sharia insurance, especially social insurance, a distinction must be made between *tabarru'* funds and non-*tabarru'* funds.

In the National Health Insurance (JKN) program, the collected social funds can be invested by BPJS. This is also a point that must be readjusted to sharia law. Because if the social funds are invested by BPJS, the applicable investment system is feared to be increasingly inconsistent with the principles of sharia law desired by Muslims. Not to mention the government regulation that requires all people to participate in social insurance, even though participating in social insurance is a choice, not an obligation. Likewise, the nature of people's health insurance (coverage) is the responsibility of the state, not imposed on the people. All of these deficiencies that are not in accordance with sharia principles are what MUI wants to perfect so that the Muslim community can enjoy the government's health programs with peace of mind. Although in fact the implementation of BPJS does seem to ease the burden on the community in improving health standards, when viewed from the principles of contracts in insurance, the BPJS Health system still contains elements that are not in accordance with sharia law principles.

According to Islamic law, good intentions must be carried out with a good system, not by justifying all means, because the truth resulting from human thought agreement is a pseudo truth. While the truth based on revelation (read: holy book) is the ultimate truth. Therefore, MUI responded quickly to the growing polemic. MUI as a representative of Muslims approached BPJS Kesehatan and suggested to immediately create a BPJS Kesehatan Syariah product. In the fatwa decision No: 98/DSN-MUI/XII/2015, the MUI National Sharia Council issued a Guideline Implementation of Sharia Health Social Security. So through this fatwa, it is expected that the government and related parties can immediately create BPJS Health Sharia products in order to create welfare that is free from violations of sharia law. In Islamic legal discourse, consideration of welfare becomes very important in determining legal provisions. In fact, the core objective of sharia (*maqāshid al-syarī'ah*) when imposing law is for the welfare of humanity both in this world and in the hereafter. It is on this principle that various rules for formulating fatwas are built, including the fatwa on the BPJS Kesehatan Syariah product. The application of this *istishlah* concept allows every Islamic legal expert to produce a relatively comprehensive legal formulation.

## **B. Formulation of the problem**

### **1. Problem Identification and Problem Formulation**

From the background of the problem above, in this study, the author wants to limit himself to the problem of the concept of *istishlah* as a method of fatwa of the Indonesian Ulema Council (MUI) and its application in the formulation of fatwas in answering contemporary problems. The subject of the MUI fatwa studied in this study is the MUI fatwa that uses the *istishlah* method in its determination, namely The fatwa issued in 2015 on the Guidelines for the Implementation of Sharia Social Health Insurance. The fatwa is limited to the results of the MUI fatwa at the Central level through the Fatwa Commission Session, the Fatwa Commission Ulama Ijtima, and the National Sharia Council, or which is of the same level, which meets specifically to determine a fatwa. From this problem limitation, the research problem can be formulated as "How is the concept and application of *istishlah* in the MUI Fatwa on BPJS Syariah Health?". From this problem formulation, it is derived in the form of three main research questions as follows:

- a. What is the position of *istishlah* as one of the methods of determining Islamic law?
- b. What are the criteria set by the Indonesian Ulema Council (MUI) regarding Sharia Health Social Security Agency (BPJS) products?
- c. How does the role of the sharia label as a moderator variable affect the influence of BPJS Kesehatan Syariah product attributes on people's desire for medical treatment in Pekanbaru?

### **2. Focus on the Problem**

This research aims to answer the main problems and gain new knowledge regarding:

- a. The position and arguments for istishlah in Islamic legal istinbath, as well as differences among scholars in its use as legal evidence;
- b. The institutions and methodology of the Indonesian Ulema Council's fatwas and the position of istishlah in this methodology; and
- c. Application of istishlah in the fatwa of the Indonesian Ulema Council regarding BPJS Syariah Health.

### **C. Objectives and Benefits of Research**

#### **1. Objectives and Benefits of Research**

This research contributes to the field of sharia and law. This research is expected to provide the following benefits:

1. Expanding researchers' insights into the field of istishlah studies and their application in determining contemporary law;
2. Providing a new perspective in terms of discussing istishlah as a legal basis for current issues, by taking the pattern that has been applied through the fatwa of the Indonesian Ulema Council on BPJS Syariah Health as a model;
3. Providing encouragement for Islamic law scholars to further optimize this istishlah methodology in exploring and establishing laws, especially those related to contemporary issues. Because with the models of istishlah application in establishing laws applied by the MUI through its fatwas, it will add to the vastness of the sources of Islamic law.
4. To be a source of inspiration and reference for Islamic law scholars, including policy makers, in the development and implementation of law, especially Islamic law in Indonesia today. And for the Muslim community, the results of this study are expected to be able to create public welfare after the polemic of conventional BPJS Health participation, to then switch to BPJS Health which is in accordance with sharia principles.

### **LITERATURE REVIEW**

#### **2.1 The Concept of Istishlah in Islamic Law**

Islamic law is a set of regulations based on the revelation of Allah SWT. and the Sunnah of the Prophet Muhammad. regarding the behavior of themukallaf human beings which are recognized and believed to be binding on all people of the Islamic faith. The aim of Islamic law in general is to prevent damage and bring benefit. Directing humans to the truth to achieve happiness in life in this world and in the afterlife<sup>1</sup>

The dynamics of Islamic law are formed due to the interaction between revelation and reason. This is what developed into *ijtihad*, namely a scientific effort to explore and find laws for things that are not explicitly stipulated (*manshus*) in the Qur'an and Sunnah. Because not every problem of the Muslim community from generation to generation requires written evidence from the Qur'an and Sunnah. The role of reason must be included because in essence the majority of legal evidence is implicitly stated in the Qur'an and Sunnah. It only takes hard work to explore it further.

The integration between revelation and reason suggests that there are two sources of Islamic law. First, the primary source of law. This source consists of four main sources; the Qur'an, Sunnah, Ijmak and Qiyas. Second, the secondary source of law, namely the previous sharia (*syar'u man qablana*), the opinions of the Prophet's companions (*as-Shahabi madhhab*), habits/customs (*al-'urf*), *istihsan*, *istishlah*, and *istishab*.<sup>2</sup>

Thus, there are ten sources of Islamic law, four agreed upon sources of law and six disputed sources of law. However, some scholars say that the status of the six sources of law that are still being disputed is only as legal evidence, not a source of law, and some even consider them to be merely a method of *ijtihad*.<sup>3</sup> According to Wahbah al-Zuhaili, the six legal sources disputed above indeed have the status of legal sources, but he added a seventh legal source, namely *saddu adz-dzari'ah*.<sup>4</sup>

The source of law that is the focus of this research is *istishlâh*. *Istishlah* is a concept in the study of Islamic law that makes *mashlahah* (human interests/needs) which are not bound (*mursalah*) into a secondary source of law. This concept is also better known as *al-mashlahah al-mursalah*. This concept of reasoning was initially developed in the Malikiyah school of Islamic legal thought (*madzhab*). But actually this concept has been known and used by the

<sup>1</sup> Amir Syarifudin, *Usul Fiqh* volume 1 (Jakarta: Logos Wacana Ilmu, 1997) pp. 4-5.

<sup>2</sup> Abdul Wahhab al-Khallaf, 'The Science of Usul Fiqh (Kuwait: Dar al-Qalam, 1978) pp. 21-22.

<sup>3</sup> Amir Syarifuddin, *Op.Cit.*, volume 2, p. 305.

<sup>4</sup> Wahbah az-Zuhaili, *Ushul Fiqh al-Islami*, (Beirut: Darul Fikri, tt) p. 401.

first generation of *ijtihad* experts from among the companions and *tabi'in*. And it turns out that it was later taken over by Imam Ghazali from the Syafiiyah school with several improvements.<sup>5</sup> The basis of thought that forms this concept is the easily grasped fact that Islamic law in its various legal products always leads to *mashlahah* (what is in the interests and needs of humans in their lives in the world). This means that this concept indirectly explains that humans are not required to do something unless it is indeed a necessity for their lives in the world and even in the afterlife. Likewise, humans are not prohibited from doing something, unless it is basically dangerous and impoverishes their lives, both in the world and even in the afterlife.

Therefore, efforts to realize *maslahah* and prevent *mafsadah* (damaging things) are something that is very much needed by everyone. A *maslahah* must be in line with the goals of the sharia, even if it is contrary to human goals, because human *maslahah* is not always based on the will of the sharia, but is often based on the will of lust.<sup>6</sup> In the study of *istishlah*, there are five objectives of the Shari'a that must be maintained, namely: the preservation of religion, soul, reason, lineage and property. If someone performs actions that are essentially to maintain the five aspects of the objectives of the Shari'a, it is called *mashlahah*. Apart from that, efforts to reject all forms of harm related to the five aspects of the objectives of the Shari'a are also called *mashlahah*.<sup>7</sup>

The benefit referred to in the concept of *istishlah* does not differentiate between worldly benefits and the benefits of the hereafter, because both of these benefits, if aimed at maintaining the five objectives of the sharia above, are included in the concept of *istishlah*. Thus, the worldly benefits achieved by a Muslim must be aimed at the benefits of the hereafter. It also needs to be explained that the five objectives of sharia are discussed in the legal concept *istishlah* above is very closely related to health. Because health is one of the main supports in carrying out worship to Allah SWT. and working and other activities. Without good health conditions, then by itself various efforts to fulfill basic obligations will be difficult to implement. In other words, it can be concluded that health is the main capital in achieving the goals of Islamic law. Contextually, the concept of *istishlah* should be able to embody in making various legal decisions related to contemporary social problems, especially as one of the methods of determining law in the fatwa of the Indonesian Ulema Council regarding BPJS Syariah Health.

## **2.2 The Urgency of Al-Wâzi' As-Sulthâniy**

In terms of language, the word Al-Wâzi' can be interpreted as a legal rule that can prevent someone from doing evil (*sin*).<sup>8</sup> While the word As-Sulthâniy means government or power. So it can be concluded that what is meant by Al-Wâzi' As-Sulthâniy in the concept of *istishlah* study is the role and support of the government in implementing just and wise sharia law.<sup>9</sup>

Allah SWT said:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَىٰ

Meaning: "O you who believe, obey Allah and obey the Messenger (His), and the *ulil amri* among you."<sup>10</sup>

Wahbah Zuhaili, a commentator and contemporary *fiqh* expert, commented on the verse above: "Obedience to Allah and His Messenger is an obligation, namely by carrying out the rules of Allah SWT. and following the *Sunnah* of the Messenger of Allah. Likewise, it is obligatory to obey the people who take care of the affairs of this *ummah*, namely the rulers who carry out the affairs of the *ummah*. And also the experts in *ijtihad* in the Shari'a from the *ulama* and just rulers. And if there is a dispute in the argument, it is obligatory to judge it by returning to Al-Quran and *Sunnah*. And that (referring to the Koran and *Sunnah*) cannot be done except based on the understanding of scholars who are sincere to Allah and His Messenger."<sup>11</sup>

Based on the verse above, it is understood that the law of obeying the government is obligatory, but it should be noted that the command to obey the government is not coupled with the word "obey"; as the word "obey" is coupled with Allah and the Messenger. The absence of the word "obey" to the government is to signal that obedience to them does not stand alone but is related or conditional on obedience to Allah and the Messenger. This means that if the ruler's order contradicts the values of the teachings of Allah and His Messenger, then it is not permissible to obey them. Because it is not permissible to obey a creature in order to commit a sin against Allah SWT. Integration

<sup>5</sup>Ali Yafie, *Contextualization of Islamic Doctrine in History: The Concepts of Istihsan, Istishlah, and Mashlahat Al-Ammah* (Edited by) Budhy Munawar-Rachman (Jakarta: Paramadina Foundation, 1994), p. 362

<sup>6</sup>Nasrun Haroen, DR., H., MA, *Usul Fiqh I*, Ciputat: PT Logos Wacana Ilmu, 2nd ed., 1997, p. 114.

<sup>7</sup>Ibid.

<sup>8</sup>Ibn Manzur, *Lisan al-'Arab* (Beirut: Dar Sadir, n.d.) vol. 8, p. 390.

<sup>9</sup>Ibn 'Ashur, *Maqâsid as-Syari'ah* (Cet. II, Jordan: Dâr an-Nafa'is, 2001) p. 388.

<sup>10</sup>QS. An Nisa'/5: 59.

<sup>11</sup>Wahbah az-Zuhaili, at *Tafsir al Wasith*, 1/336.



between the government and the ulama is very necessary, in order to create the public interest desired by Islamic law itself. The role of the government is very important in making the fatwa formulated by the ulama a success. Because the fatwa will not have permanent and binding power unless assisted and supported by the government at the stage of its legalization so that it becomes a legal product that has permanent and binding power.

In terms of health, the Indonesian government has indeed carried out its duties to provide health insurance through The 1945 Constitution, Article 28H and Article 34 and regulated in Law Number 23 of 1992, was later replaced by Law Number 36 of 2009 concerning Health. According to Law Number 36 of 2009, it is emphasized that everyone has the same rights in obtaining access to health resources and obtaining safe, quality, and affordable health services. The government is responsible for implementing social health insurance for the community through the National Health Insurance (JKN) for individual health.

To fulfill this responsibility, the government has pioneered the implementation of social security schemes in the health sector, including through PT. Askes and PT. Jamsostek which serve civil servants, pensioners, veterans, and private employees. However, health services to the community are still considered low. This condition is caused by limited access to health services influenced by the economic capacity of the community. Moreover, when health costs continue to increase over time, it makes residents increasingly distant from achieving health services. Therefore, the government provides health insurance through the form of the Community Health Insurance (Jamkesmas) and Regional Health Insurance (Jamkesda) schemes for underprivileged families.

In 2004, Law Number 40 concerning the National Social Security System (SJSN) was issued. Law Number 40 of 2004 mandates that social security is mandatory for all residents including the National Health Insurance (JKN) and also through a Social Security Administering Body (BPJS) which is a health program provided by the government. Operationally, the implementation of JKN is outlined in Government Regulations and Presidential Regulations, including Government Regulation Number 101 of 2012 concerning Contribution Assistance Recipients (PBI), Presidential Regulation Number 12 of 2013 concerning Health Insurance and the JKN Roadmap (National Health Insurance Roadmap). Law Number 24 of 2011 also stipulates that National Social Security will be organized by BPJS, consisting of BPJS Health and BPJS Employment.

The SJSN Law and the BPJS Law define the word "transformation" as a change in the form of the social security program to BPJS. The change in form to BPJS means a change in the characteristics of the social security organizing body as an adjustment to the change in the philosophy of organizing the social security program. Characteristic changes are interpreted as changes in the form of a legal entity that includes the establishment, scope of work and authority of the agency followed by changes in organizational structure, work procedures and organizational culture. Transformation has become an important vocabulary since the last seven years in Indonesia, precisely since the enactment of the SJSN Law on October 19, 2014.

Transformation can present a new identity in the implementation of social security programs in Indonesia which is regulated in Law No. 24 of 2011 concerning the Social Security Administering Body (BPJS Law). The general explanation of the BPJS Law mandates 4 establishment of BPJS and institutional transformation of PT. ASKES, PT. ASABRI, PT. JAMSOSTEK, and PT. TASPEN into BPJS which is followed by the transfer of participants, programs and rights and obligations. The BPJS Law stipulates that PT Askes (Persero) is declared dissolved when BPJS Kesehatan commences operations on January 1, 2014, as conveyed by the Board of Commissioners and Directors of PT. Askes. The preparation period for the transformation of PT. Askes into BPJS Kesehatan is approximately 2 years, starting from November 25, 2011 to December 31, 2013.

### **2.3 The Urgency of Al-Wâzi' Ad-Dîniy**

As Al-Wâzi' As-Sulthâniy, the role of Al-Wâzi' Ad-Dîniy is also no less important in the process of making mankind aware of obeying the laws of Allah SWT. Ad-Dîn means religion, its definition according to language terminology can be interpreted as a collection of practical laws based on a supreme belief that requires deeds that aim to regulate mankind.<sup>12</sup> Sometimes that collection of beliefs is false, sometimes it is true, and sometimes it is a combination of true and false. If the collection is true, then it is called a true religion and if it is false it is also called a false religion. True religion is the beliefs, creeds and laws that come from God Almighty, while false religion comes from other than God. Religion is a very important foundation for human life. With religion, a person will find a context where he can relate to his God, or vice versa. With religion, humans can also regulate their personal lifestyle in particular, and the wider community in general. Human mentality is always regulated by religion, where people who have more faith in God, it is clear that in their lives they will be calmer in doing something or acting.

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<sup>12</sup>Muhammad Husain Thabathabai, al-Mizan, volume 15, p. 8.

The maturity of religious awareness is full of assumptions, because faith and divine experience are very difficult to measure or assess scientifically. We can only observe religious life through behavior that appears as a statement of a person's worldly life. Religious awareness is a part or aspect that is present (felt) in the mind and can be tested through introspection or it can be said that it is a mental aspect and activity. Ibn 'Asyur in his book; Maqâsid as-Syari'ah, explains that Al-Wâzi' Ad-Dîniy is one of the factors in which a person can realize his status as a servant of Allah SWT. When that status is realized, then he must be aware that a servant must obey and comply with the rules and laws of Allah SWT. This law is known in the study of Islamic jurisprudence with the term "sharia".<sup>13</sup>

Studying the science of sharia is one of the most important parts of the entire teachings of Islam. With this knowledge, a Muslim can know what is halal and what is haram, so that he can actualize his Islam well, correctly, and perfectly. This form of actualization is what is meant by the term Al-Wâzi' Ad-Dîniy.

In the process of actualizing Islam in life, humans do not have the same ability to explore the laws and wisdom of Islamic law. Special expertise is needed to find it. Islam is also not in a position to require every Muslim to be able to issue the laws and wisdom of Islamic law. Everything is simply left to those who have the right to explain it, namely qualified scholars who are known to be consistent and trustworthy in carrying out and conveying religious teachings. They are the scholars described by Ibnu Qayyim al Jauziyyah as people who hold the seal of Allah SWT. (al muwaqqi' 'an rabb al 'alamin). And it is not surprising that the Messenger of Allah. stated that they were the heirs of the prophets from the side of preaching. Because, apart from their superiority and the same position as the prophet in matters of preaching, they also carry a heavy burden of mandate to convey Islamic teachings from the correct perspective.<sup>14</sup>

The Muslim community as a whole must realize that the Islamic religion that they embrace has obliged them to return to the scholars, to seek the correct answers to all the problems of life that they go through, especially at a time when Islamic teachings are now often stigmatized badly and tend to cause Muslims to have a phobia or hate the teachings of their own religion. That is why previous scholars agreed that the safest attitude is to follow the scholars. And if the ulama is wrong in his ijtihad, then the lay people will not bear the mujtahid's sins or mistakes, in fact the mujtahid will get a reward.<sup>15</sup> But of course, that is by following the scholars who truly have the character of scholars.

Allah SWT said:

فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ<sup>16</sup>

Meaning: "So ask people who have knowledge (ulama) if you don't know."

And as previously interpreted by Wahbah Zuhaili in the letter An Nisa', verse 59:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَى

Meaning: "O you who believe, obey Allah and obey the Messenger (His), and the ulil amri among you."<sup>17</sup> that in addition to meaning government, ulil amri also means ulama. This means that Muslims are also obliged to obey ulama who always try to explore and find sharia laws for the benefit of humanity in general; so that humans are protected from sin and close to the grace of Allah SWT.

In the Indonesian context, Islamic scholars gather in an institutional forum known as the Indonesian Ulema Council (MUI), as one of the religious institutions that has a fatwa institution to determine a number of problems with an Islamic legal approach. MUI has produced various legal fatwas. From the fatwas issued, many contemporary problems have no legal precedent in classical fiqh studies. So, inevitably, the process of determining the law requires an in-depth study. One of the things that must be considered in the process of determining the law, in addition to the normative arguments from the Qur'an and Sunnah, must also pay attention to the impact and legal consequences that arise. This is where the concept of istishlah finds its significance. Because a fatwa is not free from considerations of the benefits and harms that will arise in the future. In the science of ushul fiqh, fatwa means an opinion put forward by a mujtahid or faqih on the answer submitted by the person requesting the fatwa in a case which is not binding. The fatwa put forward by the mujtahid or faqih does not have to be followed by the person requesting the fatwa and the fatwa has no binding force.<sup>18</sup> This is because the fatwa of a mufti or cleric in one place may be different from the fatwa of another cleric in the same place.

<sup>13</sup> Ibn 'Ashur, Muhammad at-Tahir, Maqâsid as-Syari'ah, Jordan: Dâr an-Nafa'is 2001, Cet. II, p. 387.

<sup>14</sup> Abd al Karim Ali an Namlah, al Muhazzab fi 'Ilm Ushul al Fiqih al Muqaran, 1/7.

<sup>15</sup> Abd al Karim Ali an Namlah, al Muhazzab fi 'Ilm Ushul al Fiqih al Muqaran, 5/2358

<sup>16</sup> QS. An Nahl/16: 43, and QS. al Anbiya'/21: 7.

<sup>17</sup> QS. An Nisa'/5: 59.

<sup>18</sup> Abdul Aziz Dahlan, et al., ed., Encyclopedia of Islamic Law, volume I, 3rd printing, (Jakarta: PT. Ichtiar Baru Van Hoeve, 1993), p. 326.

Fatwas tend to be dynamic because they are a response to new developments being faced by the community requesting the fatwa, the content of the fatwa itself is not necessarily dynamic, but at least responsive. The act of giving a fatwa is called *futya* or *iftâ'*, which is a term that refers to the profession of giving advice. The party giving the fatwa is called a *mufti*, while the party requesting it is called a *mustafti*. The requester of the fatwa can be an individual, an institution, or anyone who needs it.<sup>19</sup> In the context of health, MUI has responded to government policies on BPJS Kesehatan products that are still conventional and not in accordance with sharia principles. So that MUI finally issued a fatwa through the National Sharia Council of the Indonesian Ulama Council No. 98/ DSN-MUI/ XII/ 2015 concerning "Guidelines for the Implementation of Sharia Social Health Insurance".

## **2.4 The concept of BPJS Syariah Health**

The BPJS management system requires a sharia unit to run its operational system in accordance with sharia principles. When a social security program is managed by an institution, such as BPJS, the sharia principles of *al-takmîn al-ta'âwunî* should be applied. To implement these principles, a Sharia Unit is needed.

Solutions to prevent *gharâr* (Participants pay monthly premiums, but it is not clear how much they will receive (it could be more, it could be less) is through voluntary savings since the premium payment was intended by the participant in the contract. So it is not claimed that those who pay more premiums will receive more and vice versa with voluntary savings as charity to help others without looking at the size of the premium received. The solution to avoid gambling elements, financial calculations can be profitable, can be loss. Not mentioning that BPJS participants who are sick mean profit, conversely when healthy means loss. The management of premiums paid by BPJS participants should be divided into three fund allocations, namely *tabarru'* funds, savings (investment) and wages (*ujrah*) for BPJS managers.

With this fund distribution, the allocation is clear, for participants who are sick, the costs are taken from the *tabarru'* fund which is given voluntarily by participants with the principle of *ta'âwun*. This investment fund is a savings fund from premiums paid every month and can be withdrawn according to the time specified in the contract. While this *ujroh* is a wage for BPJS managers whose funds come from premiums paid by participants whose amounts have been determined in the contract according to the agreement. So the calculation and distribution of these funds clearly do not contain any elements of gambling because they are divided according to their intended use without any tug-of-war between the sick and the healthy.

The solution to usury, when the claim received by BPJS participants is greater than the premium paid, it contains elements of usury and is included in usury *fadhîl*. While when there is a delay in paying premiums, BPJS sets a fine which is also included in usury *nasî'ah*. The solution for BPJS management when there is a claim received by participants that is greater than the premium paid, the payment is taken from the *tabarru'* fund (voluntary/virtue) so that there is no *riba fadhîl* (not the same money received with the premium paid) with the sharia principle of *al-takmîn al-ta'âwunî* (social insurance). Thus the fine imposed on BPJS participants, with the *tabarru'* fund, the late payment can be covered without asking for a fine from BPJS participants, so that it is not avoided from *riba nasî'ah*.

## **2.5 Impact of BPJS Syariah Health Product Fatwa on Interest in Medical Treatment**

### **The community in Pekanbaru**

Muslim communities around the world have formed a potential market segment due to their specific patterns in consuming a product. This consumption pattern is regulated in Islamic teachings in accordance with the principles of sharia. In Islamic teachings, Muslims are not allowed to consume certain products because the substances they contain or the processes that accompany them are not in accordance with the principles of sharia. With these strict rules, marketers have the opportunity to target the special Muslim market. The strict teachings of Islamic law to avoid things that are forbidden by Allah SWT and to carry out whatever is commanded makes Muslim consumers not permissive consumers in their consumption patterns. They are limited by the *halal* and *haram* contained in the texts of the Qur'an and Hadith which are the main guide for them.

For Indonesia itself, with a Muslim population reaching 85% of the total number of citizens, the Indonesian market is automatically a very large Muslim consumer market. In relation to the BPJS Kesehatan product which is currently being promoted by the government in terms of social health security for the community, it is certainly inseparable from the very tempting business potential. Therefore, the sharia economic community strongly supports the presence of BPJS Kesehatan Syariah. With the presence of BPJS Kesehatan Syariah, it is hoped that the problem of health services which is still a heavy burden for most citizens can be resolved little by little. This state policy for

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<sup>19</sup>Kafrawi Ridwan, et al., ed., Encyclopedia of Islam, volume II, 4th ed., (Jakarta: PT. Ichtiar Baru Van Hoeve, 2001), p. 16.

the welfare of the Indonesian people is a new milestone in Indonesia, where the state is increasingly showing its role in developing the welfare of the people as aspired by the founders of this nation.

## **RESEARCH METHODOLOGY**

### **3.1 Data collection technique**

The technique of collecting information and data in this research was carried out through library research, using library sources that are related to the research topic that has been formulated, both primary and secondary sources. Primary sources related to the study of istishlah in this study were obtained from Usul Fiqh books written by the Salaf scholars related to the discussion of istishlah, as mentioned in the previous sub-chapter. In addition to these books, the results of the fatwas of the Indonesian Ulema Council were also used as primary data in this research study, both those that have been codified and those that have not been recorded. To complete the data from written data sources, the author also conducted data tracking from unwritten sources, namely through interviews. Interviews were conducted with the MUI Fatwa Commission, among others. While secondary data was obtained from sources that were directly or indirectly related to the main discussion of this study, both in classical and contemporary books.

### **3.2 Data Analysis Techniques**

After the data is collected, it is classified according to its proportion, then processed using descriptive analysis and comparative methods. Through this method, the author attempts to systematically and objectively present the data using the ushul fiqh approach and the established theoretical framework.

Data that is directly related to the research is described and analyzed using content analysis techniques, namely analyzing data according to its content; an effort to examine the meaning of the content of a form of information contained in a document.<sup>20</sup> In analyzing the data, this study uses two methods; inductive and deductive. The data collected from the literature, both primary and secondary, will be used as a determination of the analysis of this istishlah problem. This means that after collecting general data, analysis is carried out with various approaches to specific matters.<sup>21</sup> While the use of deductive methods in this study by analyzing data and applying some specific data to form generalizations based on the relationship of similarities. In this context, the legal products of fiqh that have been produced by the Indonesian Ulema Council, using the istishlah argument will be used as data and analyzed to obtain a conclusion regarding the model of applying istishlah in determining the law in general.

## **Conclusion**

The application of the istishlah concept by the Indonesian Ulema Council (MUI) in formulating the fatwa on BPJS Kesehatan Syariah demonstrates a practical approach to addressing contemporary socio-economic issues within an Islamic legal framework. By carefully considering the *maslahah* (public benefit) and avoiding elements contrary to Sharia principles (such as *gharar*, *maisir*, and *riba*), MUI aims to guide the development of social security products that are both effective and religiously sound. This approach reflects the dynamic nature of Islamic jurisprudence, where traditional legal principles are applied to modern challenges to promote the well-being of the Muslim community. The availability of BPJS Kesehatan Syariah seeks to reconcile the need for accessible healthcare with the desire of Muslims to adhere to their religious values, ultimately contributing to a more inclusive and ethically grounded social security system in Indonesia.

## **REFERENCES**

- Agustianto, "BPJS dan Jaminan Sosial Syari'ah", *dakwatuna.com*, Diakses Tanggal 25 Oktober 2015.
- Al-Ghazâli, Muhammad, *Al-Mustasfa min 'Ilmi al-'Uşul*, Madinah: al-Madînah al-Munawwarah li at-Tiba'ah, th
- Al-Khallaf, Abdul Wahhab, *Ilmu Ushul Fiqh*, Kuwait: Dar al-Qalam, 1978.
- Al-Maghlûth, Sami bin Abdullah, *Atlas Perjalanan Nabi Muhammad*, Penerjemah Dewi Kourniasari dkk, Jakarta: Al-Mahira, 2008.
- Amir Syarifudin, *Ushul Fiqh jilid 1*, Jakarta: Logos Wacana Ilmu, 1997.
- An-Nabhani, *Membangun Sistem Ekonomi Alternatif Perspektif Islam*, Surabaya: Risalah Gusti, 2009.
- Antonio, Muhammad Syafii, *Bank Syari'ah Dari Teori ke Praktik*, Jakarta: Gema Insani, 2011.

<sup>20</sup> See Earl Babbie, *The Practice of Social Research*, (California: Wadsworth Publishing, 1980), p. 267

<sup>21</sup> Winarno Surahmad, *Introduction to Scientific Research: Basics, Methods and Techniques*, (Bandung: Tarsito, 1985), p. 42



- . *Prinsip Dasar Operasi Asuransi Takaful dalam Arbitrase Islam di Indonesia*, Jakarta: Badan Arbitrase Muamlat Indonesia, 1994.
- Anwar, Syamsul, *Hukum Perjanjian Syariah: Studi tentang Teori Akad dalam Fikih Muamalah*, Jakarta: Rajawali Pers, 2012.
- Ash-Shiddieqy, M. Hasbi, *Sejarah dan Pengantar Ilmu Al-Quran /Tafsir*, Jakarta: Bulan Bintang, 1952
- As-Sya'rawi, Muhammad Mutawalli, *at-Taubah*, Mesir: Dar El-Nadwah, 1990
- Aziz, Nashr Farid dan Abdul, *Qowa'id Fiqhiyyah*, 2005. Chapra, Umar, *Al-Qur'an Menuju Sistem Moneter Yang Adil*, Yogyakarta: PT Dana Bakti Prima Yasa, 1997.
- Az-Zuhaili, Wahbah, *Al-Tafsir al-Munir*, Syiria: Dâr al-Fikri, 2009, Cet. 10
- . *Ushul Fiqh al-Islami*, Beirut: Darul Fikri, t.t.
- Babbie, Earl, *The Practice of Social Research*, California: Wadsworth Publishing, 1980.
- Baits, Ammi Nur, "Alasan MUI Melarang BPJS", Dewan Pembina Konsultasi Syariah, Tahun 2015.
- BPJS "BPJS Kesehatan", Jln. Let. Jend. Suprpto Cempaka Putih Jakarta Pusat, 2014.
- Chapra, M. Umer, *Sistem Moneter Islam*, diterjemahkan: Ikhwani Abidin Basri, *The Islamic Foundation*, Jakarta: Gema Insani Press dan Tazkia Cendekia, 2010.
- Dahlan, Abdul Aziz, dkk, ed, *Ensiklopedia Hukum Islam*, jilid I, cet III, Jakarta: PT.Ichtiar Baru Van Hoeve, 1993.
- Dakhi, Rahmat Alyakin, "Analisis Kebijakan Jaminan Kesehatan Nasional (JKN)", Program Doktor Ilmu Kesehatan Masyarakat Fakultas Kesehatan Masyarakat Universitas Sumatera Utara Medan 2014.
- Djazuli, A, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam dalam Menyelesaikan Masalah Praktis*, Jakarta: Kencana Media Group, 2006.
- Feny, Author, "Syarat Mendapatkan Kartu Perlindungan Sosial", Dinas Tenaga Kerja dan Sosial/Disnakersos (Gedung Dibaleka II Komplek Balaikota Depok Lantai 8, Jl. Margonda Raya No. 54 Depok, 2013.
- Hamidullah, Muhammad, *The Prophet's Establishing a State and His Succession*, Pakistan: Hijra Council, 1988.
- Haroen, Nasrun, *Ushul Fiqh I*, Ciputat : P.T. Logos Wacana Ilmu, Cet. II, 1997
- Hartati, Ita, "Dana kapitasi BPJS Kesehatan: Pelaksanaan dan Pertanggungjawabannya", Artikel, Balai Diklat Keuangan Makassar, 2014.
- Harun, Nasrun, *Fikih Muamalah*, Jakarta: Gaya Media Pratama, 2011.
- Hasan, M. Ali, *Berbagai Macam Transaksi Dalam Islam*, Jakarta: Rajawali Pers, 2010.
- Ibnu 'Alawi, Muhammad, *Al-Qawa'id al-Asâsiyyah fi 'Ulûm al-Qur'an*, Jeddah: Maktabah al-Malik Fahd al-Wataniyyah, 1424 H, Cet. II.
- Ibnu 'Âsyûr, Muhammad at-Tahir, *At-Tahrîr wa al-Tanwir*, Tunis: ad-Dar Tunisiyyah, 1984
- . *Maqâshid al-Syari'ah*, Jordan: Dâr an-Nafa'is, 2001, Cet. II.
- . *Ushûl an-Nizâm al-Ijtima'î fi al-Islâm*, Tunis: As-Sharikah at-Tûnisiyyah li at-Tauzi', 1979.
- Ibnu Khaldun, Abdurrahman, *Diwan al-Mubtada' wa al-Khabar fi Tarikh al-'Arab wa al-Barbar wa Man 'Asharahum min Zawi al-Sya'ni al-Akbar*, Beirut: Dâr al-Fikri, 2001.
- Ibnu Manzur, *Lisan al-'Arab*, Beirut: Dar Shadir, t.t.
- Iqbal, Muhammad, *Asuransi Umum Syari'ah dalam Praktik, Upaya Menghilangkan Garar, Maisir, dan Riba*, Jakarta: Gema Insani Press, 2005.
- Jum'ah, Ali, *Al-Bi'ah wa al-Hifaz 'Alaiha min Manzhur Islami*, Kairo: Syarikah al-Wabil, 2009, Cet. I.
- Karim, Adiwarmas Aswar karim, *Ekonomi Islam Suatu Kajian Kontemporer*, Jakarta: Gema Insani press, 2012.
- Mushlehuddin, Muhammad, *Asuransi Dalam Islam*, 2002. Peraturan Badan Penyelenggara Jaminan Sosial (BPJS) Nomor 1/2014.
- Muslim, *Shahîh Muslim*, Dâr al-Fikr Beirut, t.t.
- Peraturan Presiden Nomor 32 Tahun 2014 Tentang Pengelolaan dan Pemanfaatan Dana Kapitasi Jaminan Kesehatan Nasional, Tahun 2014.
- Putusan Ijtima' Ulama MUI, 7-10 Juni 2015.
- Ricardo, "Di Balik Keluarnya Fatwa MUI BPJS Kesehatan Tak Sesuai Hukum Islam", *Berita Harian JPNN*. PT. Jawa Pos National Network, 2015.
- Ridwan, Kafrawi, dkk, ed, *Ensiklopedia Islam*, jilid II cet. IV, Jakarta: PT. Ichtiar Baru Van Hoeve, 2001.
- Sadeq, A.M., "Factor Pricing and Income Distribution from An Islamic Perspective" yang dipublikasikan dalam *Journal of Islamic Economics*, 2013.
- Shiddieqy, Ash-Hasbi, *Alquran dan Terjemahnya*, Departemen Agama RI., Jakarta: PT. Tanjung Mas Inti Semarang, 2012.
- Sudarsono, Heri, *Bank dan Lembaga Keuangan Syari'ah, Deskripsi dan Ilustrasi*, Yogyakarta: Ekonisia, 2012.
- Sula, Muhammad Syakir, *Asuransi Syari'ah (Life and General) Konsep dan Sistem Operasional*, Jakarta: Gema Insani Press, 2004.

- Surahmad, Winarno, *Pengantar Penelitian Ilmiah: Dasar, Metode dan Teknik*, Bandung: Tarsito, 1985.
- Sutedi, Adrian, *Perbankan Syari'ah Tinjauan dan Beberapa Segi Hukum*, Bogor: Perpustakaan Nasional, KDT Ghalia Indonesia, 2009.
- Tijan, Antia, "Analisa Kebijakan Undang-undang Implementasi BPJS 1 Januari 2014", Magister Ilmu Keperawatan Universitas Indonesia, 2014.
- TNP2K (Tim Nasional Percepatan Penanggulangan Kemiskinan), "Program Penanggulangan Kemiskinan", TNP2K 2014.
- Udzma, Rizka Syafaatul, "Evaluasi Jaminan Kesehatan Nasional dalam Upaya Peningkatan Mutu Pelayanan Kesehatan di Indonesia", Program Studi Ilmu Farmasi Sekolah Tinggi Ilmu Kesehatan Ngudi Waluyo, 2014.
- Undang-undang Nomor 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial.
- Undang-Undang Republik Indonesia Nomor 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional. Tahun 2012.
- Undang-Undang Dasar RI. Tahun 1945 Tahun 2013.
- Wardah, "*Gharâr*", Makalah, IAIN Antasari Banjarmasin Tahun 2010.
- Widodo, Hertanto, dkk, *Panduan Praktis Operasional Baitul Mal Wat Tamwil (BMT)*, Bandung: Mizan, 1999.
- Yafie, Ali, *Kontekstualisasi Doktrin Islam Dalam Sejarah: Kosep-konsep Istihsan, Istishlah, Dan Mashlahat Al-Ammah* (Edit.) Budhy Munawar-Rachman (Jakarta : Yayasan paramadina, 1994
- Yudistia, Radit, "Panduan cara daftar BPJS kesehatan online dan syarat-syaratnya, *Artikel*, Tahun 2014.
- Zuhdi, Masjfuk, *Masail Fikihiyah*, CV. Haji Masagung, Jakarta, 2009.
- Zuhri, Muh, *Riba dalam Alquran dan Masalah Perbankan*, Jakarta: Raja Grafindo Persada, 2008.