

## INDONESIAN EMPLOYMENT INSURANCE: A POLICY REVIEW

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### Abstract

*The issue of Human Rights (HAM) is becoming an increasingly important agenda, the international community continues to urge all member states of the United Nations to take various steps and actions, including making laws to eliminate discrimination and violence against women. Indonesia's policy to ratify the global law mentioned above, is suspected by the rampant problems of violence faced by almost every nation and country on this earth. The research methodology used is library research which is carried out by searching, taking an inventory and studying laws and regulations, doctrines, and other secondary data, which are related to the focus of the problem. in the legal framework Indonesia has provided guarantees for human rights (both women and men) as stated in the second amendment of the 1945 Constitution of Article 28 A-J and Law No. 39 of 1999 on Human Rights. UU no. 7 of 1984 concerning the Elimination of Discrimination Against Women or the Ratification of the Women's Convention, which states that the state will make maximum efforts to eliminate all forms of discrimination against women, including violence against women, in particular sexual violence is regulated in the Child Protection Law and the Criminal Code, while other forms of protection for victims of sexual crimes.*

**Keywords:** Human Right, Protection, Rape, Indonesia.

### Abstrak

Isu Hak Asasi Manusia (HAM) menjadi agenda yang semakin penting, masyarakat internasional terus mendesak semua negara anggota PBB untuk mengambil berbagai langkah dan tindakan, termasuk membuat undang-undang untuk menghapus diskriminasi dan kekerasan terhadap perempuan. Kebijakan Indonesia untuk meratifikasi hukum global tersebut di atas, ditengarai dengan maraknya permasalahan kekerasan yang dihadapi oleh hampir setiap bangsa dan negara di muka bumi ini. Metodologi penelitian yang digunakan adalah penelitian kepustakaan yang dilakukan dengan mencari, menginventarisasi dan mempelajari peraturan perundang-undangan, doktrin, dan data sekunder lainnya, yang berkaitan dengan fokus masalah. dalam kerangka hukum Indonesia telah memberikan jaminan terhadap hak asasi manusia (baik perempuan maupun laki-laki) sebagaimana tertuang dalam amandemen kedua UUD 1945 Pasal 28 A-J dan Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia. UU No. 7 Tahun 1984 tentang Penghapusan Diskriminasi Terhadap Perempuan atau Ratifikasi Konvensi Perempuan, yang menyatakan bahwa negara akan berupaya semaksimal mungkin untuk menghapuskan segala bentuk diskriminasi terhadap perempuan, termasuk kekerasan terhadap perempuan, khususnya kekerasan seksual yang diatur dalam Anak UU Perlindungan dan KUHP, sedangkan bentuk-bentuk perlindungan lain bagi korban kejahatan seksual

**Kata Kunci:** Hak Asasi Manusia, Perlindungan, Pemerkosaan, Indonesia.

## PRELIMINARY

National development is carried out in the context of developing human beings and all Indonesian people to create a prosperous, just, and comprehensive society based on Pancasila and the 1945 Constitution. In the implementation of national development, workers play a key role in the goals of this country's economic development. In accordance with the obligations and positions of the workforce and related agencies, manpower development is needed as an increase in quality, participation, and ideals in establishing and upholding human rights and obligations and dignity. In this case, manpower development must be carried out effectively in order to establish the rights and obligations of all workers as the main actors of national development and also to develop the country's economic industry<sup>1</sup>.

In the context of national development, manpower protection is needed, because manpower protection plays an important role and is related to the interests of workers, entrepreneurs and/or companies, and the government and society. Therefore, an effective way is needed from the relevant agencies and institutions. Manpower development is carried out through adjustments between the center and the regions in accordance with the principle of integration. Employment development has scale and representation in many aspects, such as government, workers or laborers, companies, and communities. Therefore, a mutually supportive integration is needed in the implementation of manpower development<sup>2</sup>.

Workers' social security is considered a form of defense that is very beneficial for the workers themselves and their families, and can avoid accidents caused by risks in doing work. During work, workers will certainly have risks and dangers that can occur, such as the risk of dismissal, work accidents, disability and even deaths<sup>3</sup>.

Risk is uncertainty in an ongoing activity (whether it is work or something outside of work). Another definition of risk is loss or the possibility of loss. Risk is divided into three parts, namely: financial risk, operational risk, and pure risk. Imam Soepomo as quoted by Hafiz believes that if workers do not complete their work except for their own fault, social security is a relief for workers. Therefore, if workers lose wages for the following reasons, they can guarantee determination of their earnings for reasons against their will<sup>4</sup>.

The purpose of labor protection is to guarantee the rights, opportunities and equal rights of workers in all aspects without discrimination, so that the welfare of workers and their families is realized in a series of fair employment systems. In Article 100 paragraph 1 of Law no. 13 of 2003 concerning Manpower states "*To improve the welfare of workers/laborers and their families, employers are obliged to provide welfare facilities*".

It is explained in Pancasila and the 1945 Constitution of the Republic of Indonesia, as citizens, social security for workers must be carried out in accordance with the expectations of the Indonesian people. With the validity of Law no. 40 of 2004 concerning the National Social Security System (SJSN) is used as the legal basis regarding protection and social security for all Indonesian people, which is enhanced in Law No. 24 of 2011 concerning the Social Security Administering Body (BPJS). The law ordered to change PT. Jamsostek became a public legal

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- 1 Junaidi Abdullah, 'Bentuk-Bentuk Jaminan Sosial Dan Manfaatnya Bagi Tenaga Kerja Dalam Hukum Ketenagakerjaan Indonesia', *Yudisia*, 9.1 (2018).
  - 2 Wan Ezah, 'Analisis Upaya Badan Penyelenggara Jaminan Sosial (BPJS) Ketenagakerjaan Kantor Wilayah I Riau Dalam Meningkatkan Kepersetaan Tenaga Kerja Informal Di Kota Pekanbaru' (Universitas Islam Negeri Sultan Syarif Kasim, 2019).
  - 3 Sasongko Budi Laksono, 'Analisis Efektivitas Dan Efisiensi Pelaporan Tenaga Kerja Dengan Menggunakan Sistem Manual Dan Sistem Online (Studi Kasus Bpjs Ketenagakerjaan Cabang Gresik)', *Jurnal Manajerial*, 5.2 (2019), 40–50.
  - 4 Hafiz Sutrisno, 'Pengaruh BPJS Ketenagakerjaan Dalam Meningkatkan Kesejahteraan Tenaga Kerja', *PREPOTIF : Jurnal Kesehatan Masyarakat*, 4.1 (2020), 78–84  
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entity. The decision is effective from January 1, 2014 PT. Jamsostek changed to BPJS Employment. BPJS is a public legal entity that plays an important role and is obliged to the president to implement the Death Security (JKM), Old Age Security (JHT), Work Accident Insurance (JKK), and Pension Security (JP) programs. Valid for all workers in Indonesia and foreign workers who work in Indonesia for approximately six months.

In the process of implementing BPJS Employment, provisions related to the increase and development of employment or company membership will be the main reference for the performance and function of BPJS Workers whether implemented evenly for all workers. It can be seen that BPJS Workers is a program that prioritizes the welfare of all workers and their families, therefore when registering to become a BPJS Workers membership, both formal and informal workers, their right to work is highly prioritized.

BPJS Workers is aware of the importance of this responsibility, so that it continues to develop its performance in all parts of the service, as well as plan steps and think about what benefits can be felt directly by workers and their families. Currently, by improving the management system, BPJS Workers steps not only promote welfare for workers and entrepreneurs, but also participate is important for the level of economic growth of the country and the prosperity of the Indonesian people. Based on the above background, how is the Service and Effectiveness of the Employment Guarantee Policy by BPJS Workers?.

## RESEARCH METHODS

This type of research is normative legal research. Data collection techniques use data collection methods, namely library research. The processed data will be processed and processed by performing data checking (editing), data marking (coding), data legal reconstruction (reconstructing) and data systematizing (systematizing). Data analysis used qualitative analysis with inductive conclusion drawing technique.<sup>6</sup>

## DISCUSSION

The implementation of the social security program is one of the responsibilities and obligations of the state which is useful as social and economic protection for the community. In Indonesia itself, it is developing a social security program whose social security is funded by participants, and is limited to people working in the formal sector.<sup>7</sup>

The history of the establishment of PT Jamsostek (Persero) begins with Law no. 33 years old 1947 Juncto Law no. 2 of 1951 concerning Work Accidents, Regulation of the Minister of Labor (PMP) Law no. 48 of 1952 Juncto PMP No. 8 of 1956 concerning Arrangements for assistance for the effort to provide workers' health, PMP No. 15 of 1957 concerning the establishment of the Workers' Social Foundation, PMP No. 5 of 1964 concerning the establishment of the Social Security Fund Foundation (YDJS), with the principles of Manpower, the enactment of Law no. 14 years

1969. Chronologically, the process of creating social security for workers is becoming more and more transparent. Then, from the changes and progress that includes the legal basis, the order of protection or the implementation model, in 1977 there was an important historical basis through the issuance of PP No. 33 of 1977 concerning the implementation of the labor social insurance program (ASTEK), requires that every employer or private entrepreneur and BUMN to participate in the ASTEK program. PP No. 34 of 1977 concerning the establishment of an ASTEK organization, namely Perum Asteks.

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<sup>5</sup> Zulkarnain Ibrahim, 'Pengaturan Dan Penegakan Hukum Pengupahan Dalam Sistem Hukum Ketenagakerjaan', *Jurnal Hukum Ius Quia Iustum*, 22.4 (2015), 652.

<sup>6</sup> Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Malang: Banyu Media Publishing, 2005).

<sup>7</sup> Adrian Sutedi, *Hukum Perburuhan* (Jakarta: Sinar Grafika, 2009).

<sup>8</sup> Ghazmahadi, *Era Baru Jaminan Sosial Nasional : Menciptakan Rasa Aman Dalam Bekerja Dan Usia Tua* (Jakarta: BPJS Ketenagakerjaan, 2012).

What follows is the formation of law no. 3 year 1992, About Labor Social Security (JAMSOSTEK). And through PP No.36/1995 it was determined that PT Jamsostek was the body in charge of the Social Security for Workers. The Jamsostek program has benefits for workers and their families through protection and certainty for receiving family income which is lost half or all of the social consequences. In 2004, the government also issued Law No. 40 of 2004 concerning the National Social Security System, this law is related to the revision of the 1945 Constitution concerning amendments to Article 34 paragraph 2, this protection is useful in giving workers a sense of security, which then workers can focus on to increase productivity at work<sup>9</sup>.

The actions of PT Jamsostek (Persero) prioritize the needs and normative rights of workers in Indonesia through 4 protection programs which include the Work Accident Insurance Program (JKK), Death Insurance (JKM), Old Age Security (JHT) and Health Care Insurance (JPK) for all workers and their families will continue until the implementation of Law No. 24 of 2011. In 2011 according to the mandate of the law, Law No. 24 of 2011 on the Social Security Administering Body was enacted. On January 1, 2014 PT Jamsostek will switch as a Public Legal Entity<sup>10</sup>.

Starting July 1, 2015 PT Jamsostek (Persero) has changed to BPJS (Social Security Administering Body) for Employment, but is always responsible for implementing social security programs for workers, including Work Accident Insurance, Death Insurance, Old Age Security with the addition of Pension Security. The importance of responsibility requires BPJS Workers to improve its capabilities in all service areas and provide developing programs so that workers and their families can enjoy the benefits generated. In addition, improvements to the implementation system will not only provide benefits for employers and workers but also increase economic growth and community welfare<sup>11</sup>.

The budget for health and other insurance is getting higher every year which makes aspects of life in the health sector called a luxury. There are various private health insurances in Indonesia that offer services with the usual facilities to the best but the costs incurred are also not small for the people of Indonesia. So, BPJS Health, which is present in various circles of society, including for workers, has produced a solution for people's anxiety to pay insurance costs which are considered expensive. However, BPJS Health which has various benefits and advantages is not without its drawbacks as well. The advantages and disadvantages of BPJS Workers will be described below, but first, the basic program of BPJS Workers will be explained.<sup>12</sup>

BPJS Employment has a basic program that has its respective roles and benefits, which are as follows

1. Old Age Security Program (JHT) Aims as a guarantee for members to get a certain amount of cash if they have retired, suffer from permanent total disability, or die. Given in the form of cash based on the amount of contribution collected and added to the results of the addition. The stipend that must be paid for the JHT program from BPJS Workers is 5.7% percent of the total wages received. The details are 3.7% percent of costs are charged to the office and 2% percent is charged to workers.
2. Work Accident Insurance Program (JKK)

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<sup>9</sup> Zulkarnain Ibrahim, 'Hak Azasi Manusia Di Bidang Perburuhan Dan Hak Buruh Untuk Hidup Sejahtera', *Simbur Cahaya*, 15.43 (2010), 14–15.

<sup>10</sup> Zen Zanibar, 'Perizinan Dan Ketenagakerjaan (Fenomena Otonomi Daerah Merespons Pasar Global)', *Simbur Cahaya*, 17.4, 114–15.

<sup>11</sup> Nurhadi, *Mengembangkan Jaminan Sosial Mengentaskan Kemiskinan* (Yogyakarta: Media Wacana, 2007).

<sup>12</sup> Yaumil Achir, 'Sistem Jaminan Sosial Yang Berkeadilan Dan Berkemanusiaan', in *Seminar Nasional Menggalang Masyarakat Indonesia Baru Yang Berkemanusiaan Ikatan Sosiologi Indonesia* (Bogor, 2000).

Has a function as a 'guarantee' for members to receive financial assistance due to work accidents. According to the National Social Security Council (DJSN), work accidents are accidents experienced during working hours, and also illnesses caused while carrying out work. Then, if an accident occurs while driving from home to work or vice versa, it is also categorized as a work accident. On the other hand, JKK also has benefits in the form of unlimited recovery costs, salary donations for workers who do not work, and donations for deaths due to work accidents. Compulsory support is required in the amount of 0.24% percent to 1.74% percent of the total salary attached by the company<sup>13</sup>.

3. Death Insurance Program (JKM)

This program aims as a form of death donation which will be handed over to the heirs of the deceased member. However, it must be ensured again that the member's death was not due to a work accident. Compulsory compensation is 0.3% percent of the total wages for salaried workers. Meanwhile, the contribution is IDR 6,800 for workers who do not receive a salary.

4. Pension Guarantee Program (JP)

This program is intended to protect members' lives due to decreased income due to retirement or total disability. The benefits provided are a number of cash funds for a pensioner which he will receive every month until his death. However, previously members were required to pay support for fifteen (15) years or one hundred and eighty (180) months. Contributions that must be deposited are three percent (3%) of the total wages attached. The breakdown is that two percent are charged to the company and one percent is charged to workers<sup>14</sup>.

Below are explained the advantages of BPJS Employment:

1. Cheap

With the BPJS participant contribution method, it is reduced because the cost of the fee is not due once. Therefore, BPJS is relatively cheap.

2. Guarantee Program Offered Clearly

As described above, various kinds of programs provide significant benefits for participants, it reduces anxiety for the participant's family as well as for participants receiving BPJS Employment.

3. Lifetime Guarantee

BPJS provides convenience for its participants which can be valid for a lifetime. It can also be seen about the discussion related to the programs offered to workers, namely the work accident insurance program and the pension insurance program which aims to maintain the viability of the participants.

However, BPJS also has drawbacks, which include:

1. Tiered Method

In BPJS there is a tiered method when making a claim. If they do not experience an emergency situation, members are required to check with health facility 1 first. Health facility 1 in question is a health center or clinic. Furthermore, if the patient's complaints continue, the patient can be referred to a BPJS partner hospital.

2. Service Discrimination

The service discrimination in question is the inequality of service from the hospital to BPJS members. One example is the attitude when providing services to patients and the slowness of the doctor's examination from a predetermined time.

3. Limitation of Service Quota

<sup>13</sup> Bappenas, 'Menuju Suatu Sistem Jaminan Sosial Yang Dapat Diimplementasikan', in *Lokakarya Internasional* (Jakarta, 2004).

<sup>14</sup> Suharto, 'Konsep dan Strategi Jaminan Sosial', in *Jakarta Initiative* (Jakarta, 2003), pp. 307–8.

The BPJS Employment Old Age Security claim service system (JHT) continues to practice limiting the claim service quota which is small and not in accordance with all workers affected by Termination of Employment (PHK).

In the implementation of national development, employment is a very important aspect, playing a development role by increasing production and achieving the goal of developing work productivity. The workforce is the driving force behind the company in increasing productivity, so that in line with the position of the workforce, manpower management is needed to ensure the basic rights of workers in order to realize the welfare of workers with the method of each employer providing protection to their employees so that workers can feel more secure in carrying out their work at the same time. social hazards such as work accidents, old age or death at work<sup>15</sup>.

There are 2 employment bpjs services, namely manually and online.

1. The service process using a manual system is carried out by the filling method

Online services can directly use the application or web that has been provided by the BPJS Employment, namely the Online Participant Reporting Information System application or SIPP Online. The service is no longer by submitting data files or labor forms. The benefit of online services is that it makes it easy for companies to no longer need to come and submit files to the BPJS Employment office. Effectiveness is a measurement for the achievement of goals or tasks that have been set, scheduled in advance by the company, because effectiveness is the essence of organizational success. The effectiveness of manual reporting is to link the two parties between companies that want to report their employees to the Relationship Officer or Marketing Officer of BPJS Workers. So that it can reduce the risk of violations such as partially registered companies (PDS), reporting improper wages, and paying dues that are not on time.

2. The effectiveness of online reporting is that it can be accessed via a computer or an application provided by BPJS Employment, namely the Participant Online Reporting Information System or SIPP Online. So that the online reporting process goes faster, the company also makes it easier for employees to submit claims, such as insurance against work accidents, death insurance and old-age insurance. However, the process of implementing online reporting does not always go well, if there is a system failure, reporting will be transferred to manual reporting.

## CONCLUSION

In 2011, in accordance with the mandate of the law, Law No. 24 of 2011 concerning the Social Security Administering Body was enacted., on January 1, 2014, PT Jamsostek will be transformed into a Public Legal Entity. Starting July 1, 2015, PT Jamsostek has changed to BPJS Employment, but is still entrusted with administering social security programs for workers, including Work Accident Insurance, Death Security, Old Age Security with the addition of Pension Security.

BPJS Workers has 4 (four) basic programs that have their respective roles and benefits, namely the Old Age Security Program (JHT), Work Accident Insurance Program (JKK), Death Insurance Program (JKM), Pension Security Program (JP).

The advantages of BPJS Employment are as follows:

1. Cheap
2. Guarantee Program Offered Clearly
3. Lifetime Guarantee

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<sup>15</sup> Tb Ace Hasan Syadzily., 'Jaminan Sosial Untuk Semua', *Opini Harian Republika*, 13 May 2011.

The disadvantages of BPJS Employment are as follows:

1. Tiered Method
2. Service Discrimination
3. Limitation of Service Quota

Effectiveness is a measurement for the achievement of goals or tasks that have been set, scheduled in advance by the company, because effectiveness is the essence of organizational success.

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