

The Nation's Commitment in Old Age Insurance for Workers

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Abstract

The existence of a nation is to fulfill multiple needs and wants, that requires the people to work together in order to fulfill their needs – as they could not fulfill it has individually. Thus, based on each person's skill, each of them has their own tasks and works together to fulfill their needs. This unity is called society or nation. In a sovereign nation framework based on the 1945 Constitution, one of them is to provide social security for every citizen. Social security is also stated in the 1948 United Nations Declaration of Human Rights and further emphasized in the International Labour Organizations Convention No. 102/1952. Aligned with those regulations, the Indonesian Parliament (MPR-RI) in TAP No. X/MOR/2001 assigned the President to create the Nasional Social Security System (SJSN) to provide an integrated and comprehensive social security. Indonesia, as a part of the global world, has signed numerous world conventions and must be held accountable in improving the social welfare and protection for its citizens. In the implementation of JHT-SJSN, the findings are: (1) the nation's commitment has been relatively weak; (2) the regulations have been inconsistent; (3) the regulations have multiple interpretations; and (4) the advocacy and socialization have not been maximised. These findings are interconnected with each other. The first, second, and third findings are based on the same subject, which are Regulation No. 46, No. 60, and the Labour Minister Regulation No. 19/2015, that were cascaded from the SJSN Act. The fourth finding is subject to the efforts of BPJS Ketenagakerjaan. BPJS Ketenagakerjaan must intensify the advocacy and socialization of JHT philosophy and benefits for workers, so that they can age gracefully. BPJS Ketenagakerjaan Management has to create the necessary system and operational procedures.

Keywords:

society or nation; 1945 Constitution, Old Age Insurance (JHT); regulations

Introduction

According to Socrates, the state which has leaders or rulers carefully chosen by the people, has a duty to create laws. This thought illustrates the importance of democracy in a country. Socrates's idea was further developed by Plato, his disciple who has written many books about states. According to Plato, the state actually aims to find or reach or get to know the real idea. Countries appear or exist due to a variety of human needs and desires, in which they must work together to meet them. Each of them will not be able to meet their needs alone. Then, in accordance with each person's respective capacity, s/he has her/his own duties and must work together to meet common interests. Unity is then referred to as the society or state. Therefore,

the state must meet three requirements to exist, namely a) specific territories; b) people; and c) sovereign government.

Indonesia, as observed from the such three pillars of the state requirements, is actually very sturdy and remarkable among countries in the world. In terms of territories, Indonesia is very strategic with more than 17,000 islands, vast land, and vast and deep sea, as well as a tropical climate. Regarding the people, the population reaches more than 250 million, i.e., the world's number four. In terms of the government, Indonesia's constitution has sovereignty, and Indonesia has a democratic system that is admired by the world.

Within the framework of a sovereign state with a strong 1945 constitution, one of the provisions we have is the implementation of social security for all citizens, as mandated in Article 28H paragraph (3) on the right to social security and considering Article 34 paragraph (2). The social security is also guaranteed in the United Nations Declaration of 1948 on Human Rights and confirmed in the ILO Convention No. 102 of 1952 which urge all countries to provide minimum protection to all workers. In line with these provisions, the People's Consultative Assembly of the Republic of Indonesia in its Decree No. X/MPR/2001 assigns the President to establish a National Social Security System in order to provide a comprehensive social protection and integration.

The social security definition is highly diverse in various literatures, but it has the same essence. In the approach to social insurance, social security is defined as a technique or method of handling risks associated with a working relationship based on the law of large numbers. In terms of social assistance, social security means income support for the less fortunate for consumption purposes. Thus, the social security means (1) one of the economic factors such as consumption, savings, and subsidy/concession for the redistribution of risk; (2) an instrument of state for economic social redistribution via the means test application, i.e., tests on what has been owned by the participants in the form of savings accounts and real assets; (3) poverty alleviation programs which are followed-up by the community empowerment, and (4) a basic protection system for the partial loss of worker's income as a consequence of employment relationship risks.

A specific understanding on the social security is a protection system in the form of income support for every person who needs it through a set of means test by the competent authorities (Purwoko, 2011). The institutions authorized to conduct a means test in some countries are the UK's tax agency and the Central Point institution in Australia. The means test applications are required to ensure that the social security beneficiaries are truly the persons who have the right and need of income support.

The Social Security Law explains that the social security pillars consist of social assistance, compulsory savings, and social insurance. Social assistance is a system for reducing poverty

through the use of funds from taxes (which is included in the state budget and issued as PBI-Contribution Recipient). The compulsory savings (provident fund) is a savings scheme for the participants themselves, such as JHT. The social insurance is a mandatory program which uses funds from the participants' or other parties' contributions or is funded by the government, especially for the poor citizens. This social insurance model is considered as the most good and effective method to finance social security.

The SJSN's main foundation is that the social security is a state program which aims to provide protection guarantee and social welfare for all Indonesian citizens. With the Social Security program, it is expected that each resident may meet the basic needs of decent living when certain events happen that cause a loss or reduction in income, such as illness, accident, loss of a job, entering old age, or pension.

The social security is a component of the Social Protection in addition to the social assistance. In Indonesia, there are rules and regulations about the obligation of the government (as the state caretaker) to implement the social protection programs. The policy order for the implementation of social security programs is regulated by the Social Security Law, and Law on BPJS (National Social Security Agency). Meanwhile, other social assistance programs, such as the Raskin (Rice for the Low-Income Group) program, PKH (program for family welfare), public housing, and cash transfers, are directly organized by the government through the relevant Ministry.

The Laws on Social Security and BPJS stipulate that the state should establish two institutions as the social security providers, which are directly responsible to the President, namely BPJS Kesehatan and BPJS Ketenagakerjaan. Law No. 24 of 2011 is a "birth certificate" that includes the birth of agencies named BPJS Kesehatan and BPJS Ketenagakerjaan. These two agencies were born from two "mothers", i.e., PT. Askes and PT. Jamsostek. Both 'mothers' have been stipulated to be wound-up following the birth of two agencies on 1 January 2014.

Especially for BPJS Ketenagakerjaan, BPJS Law has arranged that per 1 January 2014, the Health Security Program is handed over to BPJS Kesehatan. BPJS Ketenagakerjaan manages JKK, JKM, and JHT by referring to Law No. 3 of 1992 on Employment Social Security until the end of June 2015. Since 1 July 2015, BPJS Ketenagakerjaan has managed the JKK (Employment Injury Security), JKM (Death Security), JHT (Old-Age Security), and JP (Pension Security) programs in accordance with that Social Security Law and BPJS Law. Meanwhile, the implementing rules for such four programs have been issued in the form of a PP (Government Regulation), one day before the enactment (1 July 2015).

Provident Fund Program

On 30 June 2015, the government has issued the Government Regulation No. 46 of 2015 on the Implementation of the Provident Fund Program as mandated in Article 37 paragraph (5) and Article 38 paragraph (3) of Law No. 40 of 2004 on National Social Security System.

In PP No. 46/2015, the General Provisions Article 1, paragraph 1 states that "the Provident Fund, hereinafter abbreviated as JHT, is a cash benefit paid at once when the participant retires, passes away, or suffers from permanent total disability". Such General Provisions are in nature described further in Chapter IV – Benefits and Payment Procedures, Section One – Provident Fund Benefits, Article 22, which is read in whole as "(1) The JHT Benefit is cash to be paid if the participant is 56 years old, died, or suffers from a permanent total disability; (2) The amount of JHT is equal to the accumulated value of all contributions already paid plus investment returns recorded in the Participants' personal accounts; (3) The JHT Benefit as referred to in paragraph (1) shall be paid in a lump sum; (4) In order to prepare for retirement, the JHT benefit payments as referred to in paragraph (3) may be given in part to a certain extent if the Participants have had a minimum membership period of 10 years; (5) The JHT benefit withdrawal to a certain extent as referred to in paragraph (4) shall be maximum 30% of total JHT, in which the allocation is aimed for home ownership or at the most 10% for other purposes in order to prepare for the retirement; (6) The JHT benefit withdrawal as referred to in paragraph (5) may only be done for one time during the active membership; (7) BPJS Ketenagakerjaan shall inform the Participants on total JHT balance and its investment returns in one year.

Furthermore, the section two—provident fund payment procedures, Article 26 states that "(1) The JHT benefits shall be paid to the participants if: a. participant reach the retirement age; b. participants suffer from a permanent total disability; c. participant died or; d. participants leave Indonesia forever; (2) The JHT benefit for participants who reach the retirement age is given to them when they enter their retirement age; (3) The JHT benefit for participants subject to the employment termination or retiring before the age of retirement, will be paid to participants when they reach 56 years old; (4) In the event the participants suffer from a total permanent disability, the right to JHT shall be given to the participants; (5) If a participant dies before s/he reaches the retirement age, the right to JHT shall be given to the inheritors as referred to in Article 23 paragraph (2); (6) In the event that the foreign workers or Indonesian citizens leave Indonesia forever, JHT shall be given to the relevant participant.

If we look at the actual mandate of the Social Security Law in relation to the JHT program, it is stated in Articles 35, 36, 37, and 38. Related to the JHT Benefit in PP No. 46/2015 (General

Provisions and Article 22), it is already referred to the Social Security Law. Except for paragraph (5) Article 22 of PP 46/2015, it is not ordered or mandated in the Social Security Law.

In a way, PP 46/2015 was rejected by the workers through various labour unions. They held a massive demonstration. The workers, who felt their JHT rights were mocked, threatened to damage the BPJS Ketenagakerjaan's Office. Agus Pambagio, a public policy analyst in the online media, Detik.com (6 July 2015), comments that "The public, workers and private companies are confused when the policies change in terms of the sudden JHT withdrawal. So far, there has never been an explanation, either from the JHT management (BPJS Ketenagakerjaan) and the Ministry of Labor. The result is a public rejection and the target is the President, as a signatory in the PP". The growing demonstration wave was considered to disturb the Palace. Therefore, about 42 days later, President Jokowi made an amendment to PP No. 46/2015 by issuing PP No. 60/2015 on Amendment to Government Regulation No. 46 of 2015 on Implementation of the Provident Fund Benefit Program, on 12 August 2015.

The amendment focus in PP No. 60/2015 shall be Article 26, which is amended and reads, "(1) The Provident Fund benefits are required to be paid to Participants if: a. Participants reach the retirement age; b. Participants suffer from permanent total disability; c. Participants pass away or; d. Participants leave Indonesia forever; (2) The Provident Fund benefits for Participants reaching the retirement age as referred to in paragraph (1) letter a shall be paid to Participants; (3) The Provident Fund benefits for Participants suffering from permanent total disability as referred to in paragraph (1) letter b shall be paid to Participants according to laws and regulations; (4) The Provident Fund benefits for Participants passed away (prior to the retirement age) as referred to in paragraph (1) letter c shall be paid to heirs as referred to in Article 23 paragraph (2); (5) Further provisions on the procedures and terms of the Provident Fund benefits payment as referred to in paragraph (1) shall be governed in a Regulation of the Minister. In PP No. 60/2015, paragraph (3) and paragraph (6) Article 26 of PP No. 46/2015 are deleted.

Within a relatively short period (7 days), the Regulation of the Minister of Manpower of the Republic of Indonesia Number 19 of 2015 on Payment Procedures and Requirements for the Provident Fund Benefits, dated 19 August 2015 was issued. The underlying consideration refers to PP No. 60 of 2015, in particular to Article 26, paragraph (5). It is considered that this Regulation of the Minister of Manpower may soothe the worker because articles are made ambiguous and they obscure the nature of the retirement age as the expiry of a person working ambiguous understanding of the Employment Termination (PHK), which is the domain of Law No. 13 of 2003 on Manpower is mixed up with the law. In Law No. 13/2003, it is clear that the layoffs are

associated with a right to severance pay for the participants, while the Social Security Law and BPJS Law require the Provident Fund (JHT) for retirement, occupational permanent total disability, and occupational death.

Indeed, the birth of PP No. 60/2015 and the Regulation of the Minister of Manpower No. 19/2015 could appease the workers' anger, and workers who were laid off together withdrew the JHT, although their working term was under 10 years and even mostly was under 5 years. The JHT funds in the BPJS Ketenagakerjaan's accounts at various branches were quickly transferred to the participants. The Director of Membership Expansion of BPJS Ketenagakerjaan E. Ilyas Lubis in the National Dialogue together with Serikat Pekerja Seluruh Indonesia (Indonesian Workers' Union), held in Jakarta on 31 March 2016 states that "The increase of the JHT fund disbursement happened after the issue of the Regulation of the Minister of Manpower No. 19/2015 and the increasing number of layoffs." TEMPO.CO says that BPJS Ketenagakerjaan disbursed the Provident Fund in an average of IDR50 billion to IDR55 billion per day within the period of January - March 2016 due to the change in the philosophy of the provision in the old days into the current social safety net.

Method

A study on the state's commitment to provide the provident fund for workers, is conducted with a descriptive approach, by portraying the state's policies in the form of state laws implemented by the government, as the state caretaker. The analysis tool applied is aimed at critically examining all legal products related to the implementation of the social security which focuses on the Provident Fund Program for Workers.

The theoretical framework on systematic regulations focuses on how to realize the state's commitment to its citizens so it may be managed and takes place on an ongoing basis. State Policies are public policies which is materialized in a decree or government regulation (as the caretaker of the State) in order to take actions, which are considered to bring good impacts to the lives of citizens. According to Bridgman and Davis, the public policy generally implies that "whatever government choose to do or not to do".

State policies in the form of a law as a legal product and its derivative regulations becomes a necessity to decide the extent of the state's commitment to building societies. The systematic theoretical framework is aimed at laws, government regulations, regulations of a minister, which are related to the implementation of the Provident Fund Program.

Results

Out of various regulatory facts which have been issued by the government as the caretaker of the state related to the JHT program performance, several following descriptions are obtains:

Weak commitment of the state: the state administrator is the government, and the Social Security Law has been mandated to immediately draft a Law on BPJS, Government Regulations and Presidential Regulations as the implementing regulations. The Law on BPJS was only drafted in (2011) or after seven years. Relevant PP and Presidential Regulations to BPJS were completed two days prior to the launch of BPJS Kesehatan and BPJS Ketenagakerjaan on 1 January 2014. Then, a PP related to the JKK, JKM, and JP Program were completed on 30 June 2015, i.e., one day before the start of such four programs in accordance with the Law on BPJS. In fact, a span of 9-10 years to prepare regulations mandated by the Social Security Law is a strong indication that the state's commitment manifested by the government as the caretaker of the state is still weak (late and injury time).

Inconsistent Regulations: the substance of PP No. 46/2015 goes beyond the mandate of the Social Security Law, in Article 22 paragraph (5), it is stated that the JHT funds can be withdrawn after 10 years, i.e., 30% for home ownership. Apparently, there is no norm in the articles related to JHT in the Social Security Law which state that the JHT funds can be used for home ownership. Public housing is already regulated separately in the Law on Housing. BPJS Ketenagakerjaan's obligation is to provide money in cash for the Provident Fund (JHT). However, the inconsistencies can be observed in PP No. 60/2015, which is followed by the Regulation of the Minister of Manpower No. 19/2015 as the derivative regulation. The inconsistency with the Social Security Law includes, among others, there is no norm in the Social Security Law which states or assigns the Minister of Manpower to issue a decree governing the payment procedures and terms of JHT. The content of the Regulation of the Minister of Manpower No. 19/2015 flips up the regulatory hierarchy and goes beyond his authorization. Such Regulation of the Minister of Manpower negates the requirements of a retirement age to obtain the JHT, and a 10-year contribution term prior to the eligibility to withdraw the JHT loan, and "layoff" or "terminated by the employer" without considering a 10- year working term. Participants are allowed to withdraw their JHT after only 5 years. The JHT's function has changed from the Old Age Security to be a social safety net. Under such inconsistent JHT Program regulations, the Minister of Manpower may be categorized as "exceeding its authority" related to the substance of the Regulation of the Minister of Manpower issued.

Ambiguous Interpretations of the Regulations: the regulations made shall not lead to multiple interpretations. Thus, the administrators are not confused in implementing the regulations. The Regulation of the Minister of Manpower No. 19/2015 shall have ambiguous articles. The substance confuses the Social Security Law and Law No. 13/2003 on Manpower. The Social Security Law is not intended to regulate an employment termination. Instead, it provides workers with a guarantee to get the social security. Article 156 of Law No. 13/2003, paragraph (1) reads "In the event of an employment termination, employers are required to pay the severance pay and/or gratuity and the right compensation should be accepted ". Efforts to transfer the employment termination responsibility associated with the JHT are very detrimental to workers, because the employers assume that a JHT is transferred to BPJS Ketenagakerjaan for the terminated workers and it means the workers will not get any severance pays. The severance pay administration will become more complicated. It will not be as easy as withdrawing the JHT from BPJS Ketenagakerjaan.

The advocacy and outreach has not been maximized: BPJS Ketenagakerjaan, during the program transition from Law No. 3/92 to the Social Security Law for the period of January 2014 to June 2015, has not performed any maximum advocacy and outreach to stakeholders (employers and workers), related to the fundamental changes of the JHT program in Law No. 3/92 from the Social Security Law, especially related to the JHT withdrawal period from 5 years to be 10 years. Furthermore, the JHT may only be disbursed when the workers reach their retirement. The outreach obligations of BPJS Ketenagakerjaan are set out in the elaboration of Article 61 of BPJS Law letter b, which reads: "The operational preparation of BPJS Ketenagakerjaan for the occupational accident, provident fund, pension, and death benefit programs shall include, among others: a. arrange a system and operational procedure necessary for the operation of BPJS Ketenagakerjaan, and b. to conduct a socialization event for all stakeholders on occupational accident, provident fund, pension, and death benefits."

Discussion

The new social realities require new perspectives. More advanced Indonesian people are characterized by an individual's capacity to scrutinize the policies and power. At the same time, the ability of social institutions which significantly made up the twentieth century to understand the situation has turned out to be weaker in recent decades. Adolp Lowe smartly expresses it as (1971, p. 563), "we are witnessing a change of the world where the social reality appears automatically into a world where the social reality is engineered. This new social reality raises a developed society as a knowledgeable society. Indonesia, as a country which is walking to be a

developed country, runs in line with the development of the world's politics, economic and culture. The Amendment of the 1945 Constitution with a social security program as a fundamental right for the Indonesian people is one adjustment example to a changing world. The state's obligation to organize a social security program has become the state's political decision. The advanced and knowledgeable Indonesian people are aware of their rights, even though the advocacy and socialization on their obligations as citizens are necessary.

Indonesia has signed various international conventions in line with efforts to improve the welfare and social protection for its citizens. As a knowledgeable society, openness, honesty, commitment, integrity, and work ethic should become collective performance benchmarks to reach the program targets. The BPJS inauguration is a new milestone for the nation and State of Indonesia in fulfilling its citizens' constitutional rights and materializing the welfare of its people. The ideal conditions aspired by this state have been stated in the Social Security Law and BPJS Law, although it is admitted that some weaknesses are still found in some substances, among others, the positions of PT. TASPEN and PT. Asabri which must submit their programs in 2029 to BPJS Ketenagakerjaan. The BPJS Law mandates both BUMNs (State-Owned Enterprise) to compile a "Roadmap" of such program delivery. Various people argue that it is not easy for both BUMNs to draw up a roadmap toward their own "grave".

The government has drawn up implementing regulations of PP and Presidential Regulation related to the implementation of BPJS Kesehatan and Ketenagakerjaan. In the JHT program, three law products have been issued, namely PP 46/2015, as amended by PP No. 60/2015 and the Regulation of the Minister of Manpower No. 19/2015. Even though we know that there is no single article in the Social Security Law and BPJS Law, which "orders" the JHT program to be regulated under a Regulation of the Minister of Manpower.

The analysis results indicate there are 4 major problems in the JHT SJSN program implementation, i.e., first, the weak state's commitment; second, the inconsistent regulations; third, the ambiguous regulations; and fourth, minimal advocacy and socialization. These four weaknesses are related to one another. The first, second, and third weaknesses come from the same subject, namely PP No. 46, PP No. 60, and Permenaker No. 19/2015, with reference to the Social Security Law. The minimal advocacy and socialization by BPJS Ketenagakerjaan are considered as a trigger of the workers' anger at the launch of PP No. 46/2015, which had actually been referring to the Social Security Law. The government's prioritizing the interests of power politics over constitutional politics made an amendment and PP No. 60/2015 and the Regulation of the Minister of Manpower No. 19/2015 were issued, which are much deviated from the mandate of the Social Security Law.

The President as the Head of State and Head of Government has not only the authority attributions but also the delegation authority to make regulations implementing the law. The authorization must be carried out with the best initiative. Therefore, the President is supported by government institutions and bureaucracies with various facilities. There is no excuse for not fulfilling their obligations in accordance with the laws and regulations.

The Social Security System was born in laws and regulations to guarantee the fulfillment of every person's rights to the social security and state's duty to develop a social security system for all citizens. The President has a duty to sufficiently implement laws and regulations and operation. Thus, the national social security system may be managed effectively. The oath of the president to carry out this law must be met.

The JHT program implementation in accordance with the National Social Security System is regulated in the Regulation of the Minister of Manpower No. 19/2015, in particular related to the Payment Procedures and Terms of the Provident Fund Benefits. The ambiguity of these regulations is very complicated and confusing. See article 3, paragraphs (2) and (3), how the article links "in a delicate way" between the retirement age and resignation of the participants, and also the terminated participants. It is obvious that paragraphs (2) and (3) do not exist in the articles of JHT in the Social Security Law. Likewise, see Article 5 and Article 6 on the retirement age requirement, which becomes blurred, and the 10-year limit is not stated and there is even a less than 5 year-period. Therefore, it can be interpreted that the JHT can be withdrawn. The multiple interpretations will cause confusion for the BPJS Ketenagakerjaan's field administrators. This Regulation of the Minister of Manpower is suspected as the government's efforts, in this case the Ministry of Manpower, to soothe the workers, and on the other hand, it gives a leeway to the employers for avoiding the severance pay, as the workers have obtained that JHT. The employers may argue that they have paid 3.7% to 5.7% of the workers' JHT contribution.

In this situation, BPJS Ketenagakerjaan should not take the Minister of Manpower's policy for granted. BPJS Ketenagakerjaan, in accordance with its powers and responsibilities under the Social Security Law and BPJS Law, should intensely communicate with the Minister of Manpower that such a policy of the Minister of Manpower causes the employers' avoidance in paying the severance. This fact contradicts with article 156 of Law No. 13/2003 and is disadvantageous for the workers in the long run. The Minister of Manpower should take into consideration that BPJS Ketenagakerjaan manages the JHT fund, in which the accumulated amount may reach IDR180 trillion, and it will be quickly reduced if it is disbursed by the ineligible workers (according to law). Meanwhile, the government needs funds to fund the development, if it is compared with the tax amnesty target, which is only IDR 165 trillion.

A short working-term workers will certainly only get money which is nothing compared to the severance pay. BPJS Ketenagakerjaan needs to provide awareness for the workers that the JHT money is saved, developed, and guaranteed by the state, which will be paid later when the worker retires. When a worker becomes physically unfit to work while the necessities of life never stop, the JHT money obtained will be meaningful for a working capital at retirement age. Meanwhile, in terms of the life necessities due to a layoff, the law requires the employers to be responsible in providing the severance pay and/or gratuity and rights compensation.

Conclusion

The conclusion which can be drawn from the analysis and discussion above is as follows: The government, in this case the Minister of Manpower, is advised to revoke the Regulation of the Minister of Manpower No. 19 of 2015 on Payment Procedures and Terms of the Provident Fund Benefits, as it is contradictory with the more superior laws and regulations.

1. PP No. 60 of 2015 should be revised by referring to Articles 35, 36, 37, and 38 of the Social Security Law. The revision is related to the transitional period mechanism for the JHT claim payment in which the contribution payment period should be under 10 years.
2. BPJS Ketenagakerjaan has to hold a massive advocacy and socialization on the philosophy and benefits of the JHT for the workers, so their old-age lives will be more secure.
3. The Management of BPJS Ketenagakerjaan constructs an operation system and procedure, which is required for the operation and management of BPJS Ketenagakerjaan.

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