



Study of Labour Social Security Law in the Context of Protecting Human Rights

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Abstract. This research is research in the field of law which tries to find a solution to the priority issue of the flagship program in the Unima Renstra, namely the issue concerning the Construction of Social Security Law. The main problem raised in this research is the philosophy of labor social security in relation to human rights. How do the regulations provide for the social security of workers in relation to the protection of human rights? and What is the ideal legal construction for the social security of workers in the framework of protecting human rights? This study aims: to find out and discover the philosophy of social security of workers in Indonesia with human rights, to find out and find regulations in regulating the social security of workers in Indonesia in relation to the protection of human rights, and to analyze and find legal constructs. Ideal for the social security of workers in Indonesia. The method used in this research is the normative legal research method, which is one of the commonly known studies in the field of legal science which aims to determine the extent to which law works in society. The approach used is the sociological juridical approach. The output targeted in this study is the improvement of labor social security law construction through the preparation of academic manuscripts and textbook writing. Additional output is the publication of reputable international journals and IPR.

Keywords: Legal construction · social security · labor · human rights

1 Introduction

National improvement in Indonesia is basically the improvement of the Indonesian human being as a entire as well as endeavors to make a fair and affluent society substantially and non-materially as expressed expressly within the preface to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) within the fourth paragraph that the objective the Indonesian state, among other things, is to ensure the complete Indonesian country and to make open welfare.

The implementation of development in Indonesia requires the support of the Indonesian people through their participation, among others, as workers in a company which directly or indirectly supports the implementation of development so that human resources are clearly one of the basic assets in national development. The role of workers in development is guaranteed in the constitution regarding their rights which must be

fulfilled and protected by the state, especially in the position of Indonesia as a state of law, democracy, and welfare state. Legal protection and human rights for workers are the fulfillment of inherent basic rights and protected by the constitution. Fulfillment and protection of labor rights is an issue that has become an international issue as part of protecting human rights. One of the rights that must be protected and fulfilled is the right of workers to obtain social security. This social security for workers cannot be disregarded for the dignity of workers. as a human being where labor has the same dignity and dignity as other humans. Labor rights are human rights that have been agreed upon to be upheld and respected for their dignity in both the private and public fields, labor is part of the historical perpetrators of human civilization or citizens of the nation that no one can deny.

Human rights enforcement in its implementation, it is not enough just to include human rights articles in the constitution as a form of guarantee for their protection. However, this guarantee must also be contained in other laws and regulations, even ratifying international human rights instruments and realizing it in law enforcement.

The Manpower Act is the parent of all laws and regulations governing labor in Indonesia and the regulation regarding social security for workers has been explicitly regulated in Article 99 of Law No. 13 of 2003 which confirms that every worker / laborer and his family has the right to obtain labor social security.

In 2011, efforts to protect the rights of workers were also regulated through the issuance of Law No. 24 of 2011 concerning Social Security Administering Bodies in which Article 5 paragraph (2) of this law stipulates that one of the scopes of the Social Security Administering Body is BPJS Ketenagakerjaan where in Article 6 it is stated that what is meant by BPJS Ketenagakerjaan includes an accident insurance program. Employment, pension, pension, and death benefits. The substance of the law that regulates the social security of workers has been formed both as part of the embodiment of international and constitutional laws, but there are still many problems that occur relating to the social security of workers.

Manpower as of January 1, 2014 until now has not fully referred to the theory and or generally accepted norms in international standards as formulated by the International Labor Organization (ILO) which from 1998 until now has been used as the main reference in the operation of the social security system in many countries. Social security as the main pillar of social welfare in its implementation needs to be supported by various requirements, including employment opportunities, the establishment of an independent labor market and other facilities to facilitate the operationalization of social security program programs by social security administering bodies [1].

The implementation of the social security system in Indonesia since the operationalization of the Jamsostek program during 1993–2013 is not in accordance with social security principles, namely the principle of togetherness for all, the principle of benefit and the principle of humanity to support the principle of mutual assistance. Empirically, the implementation of Jamsostek during 1993- 2013 was more directed towards the domination of the Social Security System (SJS) savings scheme than the income replacement scheme for lost income, among others due to chronic illness and retirement age. The SJSN implementation as of 1 January 2014 was fraught with political intervention, public pressure and non-compliance from several stakeholders. As a consequence,

the implementation of the SJSN requires continuous funding by participants and the presence of the state, because social security is a shared state program herefore, funding for the social security system involves all stakeholders including workers, workers and the government. The key to victory in actualizing a social security framework is the execution of successful law authorization. Irregularity in law requirement happens due to the restricted budget for supervision, constrained supervision. The quality of labor examiners and the restricted specialist of the social security regulating body (BPJS) [2].

Other weaknesses regarding the worker's social security arrangements are that of the five social security programs in the SJSN (health insurance, work accident insurance, old age security, pension security, and death security), only health insurance and work accident insurance have an investment value and give an economical turn back. However, there is no social security program that functions to build the quality of labor human resources such as education security for workers' families, even though such a program has a very high long-term investment value because it is a Human Resources (HR) development program [3].

The formulation of the problem is: (1). What is the philosophy of workers' social security in relation to human rights? -(2). How are the regulations in Indonesia on the social security of workers in Indonesia related to the protection of human rights?

2 Research Methods

Research with the PDUPT scheme uses empirical legal research methods. The empirical legal research method is one of the commonly known studies in the field of legal science which aims to determine the extent to which law works in society[4].

This method is another approach to researching law as the object of research. Where law is not only seen as a prescriptive and applied discipline, but also empirical or legal reality. The starting point of this research is the phenomenon of community law or social facts that exist in society.

The approach to the problem used is the statutory approach (statute approach), the conceptual approach (Conceptual Approach), and the case approach (Case Approach).

In legal research, there are two types of data, namely primary data and secondary data. Primary data is data obtained primarily from the results of empirical research, namely research carried out directly in the community, while secondary legal data is data obtained from literature or a review of various literature or library materials related to problems or research material that is often referred to as as legal material.

As for data collection techniques, primary data is carried out by means of field studies, namely through interviews, observations (observations) and questionnaires. Meanwhile, secondary data (complementary) was carried out by means of document study.

In this study, the data obtained were presented, categorized, and arranged systematically to be analyzed using descriptive analysis techniques. Descriptive analysis is an analysis that only reaches the level of description, namely analyzing and presenting facts systematically so that they are easier to understand and conclude. The conclusions given are always clear on the factual basis so that everything can always be returned directly to the data obtained. The aim is to provide an objective picture of the research subject

based on data from the variables obtained from the group of subjects under study and is not intended for hypothesis testing.

This superior applied research of higher education is carried out in several important stages, including determining research objectives, collecting theoretical foundations for research, determining research procedures, conducting testing and analyzing test results. The method used is the Waterfall method, so it can be seen the steps of the research. The stages of the research are structured so that the research can run systematically.

3 Results and Discussion

In principle, social security for labor continues to change according to the demands of the needs of the workforce. In the era of the two thousand years, the social security system for workers was known as Jamsostek and Askes along with the development of the insurance system with the BPJS (Labor Social Guarantee Agency) system of the Republic of Indonesia. Number 24 of 2011 concerning the BPJS Health Social Security Administering Body as referred to in Article 5 paragraph (2) letter a functions to organize a health insurance program. The basic ideas underlying the transformation of the implementation of social security are as follows:

1. Implementation of social security based on the constitutional rights of every person and as a form of State responsibility as mandated in the 1945 Constitution of the Republic of Indonesia Article 28 H paragraph (3) and Article 34 paragraph (2).
2. o Article 28 H paragraph (3) determines that everyone has the right to guarantee.
3. The social security program is aimed at enabling everyone to develop themselves completely as useful human beings.
4. The implementation of a social security system based on the principles of, among others, the principles of humanity related to human dignity.
5. Article 2 of Law no. 40 of 2004 stipulates that the National Social Security System is implemented based on the principle of humanity, the principle of benefit, the principle of social justice for all Indonesian people.
6. Elucidation of Article 2 of Law no. 40 of 2004 stipulates that the principle of humanity is related to respect for human dignity.
7. SJSN uses the approach of meeting the basic needs of a decent life for each participant and / or their family members.
8. o Article 3 of Law no. 40 of 2004 stipulates that the National Social Security System aims to guarantee the fulfillment of the basic needs of a decent life for every participant and / or family member.
9. o Elucidation of Article 3 of Law no. 40 of 2004 stipulates that what is meant by the basic needs of life are the essential needs of every person in order to live properly, for the realization of social welfare for all Indonesian people.
10. BPJS Ketenagakerjaan (Social Security Administering Bodies)

After experiencing progress and development, both regarding the legal basis, the form of protection and the method of administration, in 1977 an important milestone was obtained with the issuance of Government Regulation (PP) No.33 of 1977 concerning the

implementation of the workforce social insurance program (ASTEK), every employer / private entrepreneur and BUMN to take part in the ASTEK program. The issuance of PP No.34/1977 on the establishment of the ASTEK organizer, namely Perum Astek. The next important milestone was the birth of Law No.3 of 1992 concerning Workers' Social Security (JAMSOSTEK). Jamsostek as the governing body for Social Security for Workers. The Jamsostek program provides basic protection to meet the minimum needs of workers and their families, by providing assurance that the flow of family income will continue to compensate for part or all of lost income due to social risks.

Furthermore, at the end of 2004, the Government also issued Law Number 40 of 2004 concerning the National Social Security System. This law is related to the Amendment to the 1945 Constitution concerning amendments to article 34 paragraph 2, which now reads: "The state develops a social security system for all people and empowers weak and underprivileged people according to human dignity"[5]. The benefits of this protection can provide a sense of security to workers so that they can concentrate more on increasing work motivation and productivity. The work of companies that prioritize the interests and normative rights of workers in Indonesia continues. Until now, PT. Jamsostek (Persero) provides protection for 4 (four) programs, which include the Work Accident Insurance Program (JKK), Death Security (JKM), Old Age Security (JHT) and Health Care Benefits (JPK) for all workers and their families.

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In 2011, Law No. 24 of 2011 on Social Security Administering Bodies was enacted. In accordance with the mandate of the law, on January 1, 2014 PT Jamsostek will change to become a public legal entity. PT Jamsostek is still trusted to organize a workforce social security program, which includes JKK, JKM, JHT with additional pension benefits starting July 1 2015. In 2014 the government organized the National Health Insurance (JKN) program as a social security program for the community in accordance with Law no. 24 of 2011, the Government changed the name Askes which is managed by PT. Askes Indonesia (Persero) to BPJS Health and changed Jamsostek which is managed by PT. Jamsostek (Persero) to become BPJS Ketenagakerjaan.

As a public program, Jamsostek provides compulsory rights and burdens for employers and workers based on Law No.3 of 1992 regulating the types of work accident insurance programs (JKK), old age security (JHT), death benefits (JKM), and Health Care Security (JPK), while the obligation of participants is to have an orderly administration and pay contributions. In improving the Jamsostek services, constantly making breakthroughs through the online system to simplify the service system and speed of payment of old age claims (JHT). The regulation of the Jamsostek membership program is mandatory through Law No.3 of 1992 concerning Workforce Social Security.

This program provides basic protection for participants if they experience socio-economic risks with affordable financing for employers and workers. Social Security Administering Bodies (BPJS) are legal entities established by law to administer social security programs. BPJS according to UUSJSN is a transformation of a social security

administering body and it is possible to form a new administering body in accordance with the dynamics of social security development. BPJS Kesehatan and BPJS Ketenagakerjaan are public legal entities according to UUBPJS. The three criteria below are used to determine that BPJS is a public legal entity, namely: the way the legal entity is established or occurs, is carried out by means of public law construction, that is, it is established by the ruler (State) by law; its working environment, namely in carrying out its duties the legal entity generally acts with the public and acts in the same position as the public; under their authority, the legal entity is established by the authorities of the State and is given the authority to make decisions, decrees or regulations that are generally binding.

In the Preamble to the 1945 Constitution of the Republic of Indonesia seeks to improve the people's welfare, the implementation of people's welfare is manifested from the efforts made by the state to guarantee the community so that prosperity can be realized. This welfare must be delighted in in a economical, fair, and impartial way to reach all. The elements of the improvement of the Indonesian country have made challenges as well as requests for taking care of different unsolved issues. One of them is the implementation of social security for all the people as mandated in Article 28H paragraph (3) regarding the right to social security and Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and the Decree of the People's Consultative Assembly of the Republic as stated in TAP Number X / MPR / 2001, which assigned the President to establish a National Social Security System (SJSN) in order to provide comprehensive and integrated social protection.

With the enactment of Law Number 40 of 2004 concerning SJSN, the Indonesian nation actually already has a social security system for all Indonesian people. Article 5 of the Law mandates the formation of a body called the Social Security Administering Body (BPJS) which must be established by law. On 25 November 2011, Law No. 24 concerning the National Social Security System and Law No. 40 of 2011 on Social Security Administering Bodies was enacted which began to be implemented on January 1, 2014. BPJS is a legal entity with the aim of realizing the provision of security In order to fulfill the basic needs of a decent life for each participant and / or their family members, the BPJS is divided into two, namely BPJS for health and BPJS for employment [6]. With the stipulation of the BPJS, there are two peculiarities for the usage of social security in Indonesia that are opposite to the all inclusive standards of the organization of.

4 Conclusion

1. The concept and legal basis of employment is an employment social security system with a guarantee concept, so that every worker is guaranteed rights, both social and health rights if experiencing risks at work, the legal basis for the employment social improvement system is Law Number 4 of 2011 with the establishment of BPJS Employment is intended that the rights of every worker are guaranteed by law and legislation, both related to government obligations and the obligations of business actors to provide protection and social security to workers in accordance with applicable laws and regulations.

2. Efforts made by the government have been regulated in legislation wherein the workforce and the community in general are guaranteed health care in the form of treatment in designated hospitals and health centers by providing advice on hospitals, health centers and medical doctors that are evenly distributed throughout the country. Throughout Indonesia, BPJS has made efforts to protect health for workers and the general public. In its implementation there are still obstacles, both limited to hospitals, doctors, but in principle BPJS is not maximal in protecting the health of workers and the general public.

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