

ORIGINAL ARTICLE

Integrative Social-Health Security For Indonesian Migrant Workers: Does Fully Covered And Protected?

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ABSTRACT

Introduction: This article starts from the proposition of why an integrative health social security protection scheme is needed for Indonesian migrant workers (PMI). An argumentative explanation of the need for PMI's health and social security protection that works abroad is presented under the premise of the constitutional obligation of the State to protect all nations and ensure their welfare. **Methods:** This study uses a literature review methodology by describing what has been regulated in Law no. 18 of 2017 concerning the protection of Indonesian Migrant Workers Abroad. With a normative legal approach, namely library research, document studies, or documentary law research, sources obtained through primary legal materials, namely through statutory regulations. **Results:** The results of the analysis show that the pattern of legislation in the national social security system is not meant to preserve PMI due to the extreme chaos of its norms and the less adaptive and significant design of institutionalization of national social security, which is formed with a two-lane social security organizing body, namely Employment Insurance and Health Insurance in protecting PMI's constitutional rights. **Conclusions:** By providing social security, Social Health Insurance should take the initiative to protect PMI's constitutional rights. This can be done by formulating ideas to encourage the formulation of specific technical norms for PMI because of its unique characteristics. of PMI differ from other BPJS Health participants

Keywords: Integrative, Health protection system, Indonesian migrant workers

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INTRODUCTION

Millions of Indonesian Citizens work abroad, both equipped with documents and undocumented (1). Most of them work in the informal sectors, which local residents avoid because of the danger, dirty, and difficulty (2). Such working conditions cause the health status of most migrant workers to be deficient (3). This low level of health is not matched by the ease of access to their health, considering the exclusion

of the distribution of social welfare and health for foreign nationals by the local state (4), while on the other hand, the state's territorial jurisdiction limits the state's authority to distribute social welfare and health for Indonesian migrant workers abroad (5). Previous research found various cases that illustrate and confirm the unprotected health social security for Indonesian citizens who work as workers abroad (6). This Objective reality philosophically, theoretically, juridically, and practically creates problems. Philosophically, some problems come into contact with "social justice", which is one of the values and ideals of the Indonesian nation. Ironically, a country with a base of values and ideals to realize social justice for all Indonesian people has not provided access to social health insurance protection

facilities for its citizens who work as workers who work abroad while for foreign nationals. given access to health social security protection facilities that are more certain because they are supported by regulatory, organizational, and management tools that have taken place since the effectiveness of Health Insurance (7).

Theoretically, if viewed from the spectrum of birth and the purpose of delivery, the goal of the birth of the State is to produce goodness (8). So the State is a representation of worth and even goodness itself. The value must always be present in a country, which is presented through the power inherent in him. Suppose the reality shows that there are various cases of unavailability of access to health social security protection facilities for Indonesian migrant workers abroad. In that case, this means that the State has not been "present" to give meaning to its existence to produce goodness. Even from the constitutional spectrum, this is read as neglect of constitutional obligations to its citizens.

Juridically, even though there has been an update on the health social security protection arrangements for workers, including through the Health Social Security Administering Body, the health social security protection that addresses Indonesian workers abroad is not yet available. The norm for PMI has not yet been touched on the protection of health and social security because this legal subject has unique characteristics juridically. The pattern of legislation related to social security (health), which should be interdepartmental and complementary, has not been maximally managed, approaching the ideal. This, in the end, shows not only the creation of a failed harmony and failure to synchronize, even the inability to form a more integral Regulatory pattern creates a legal, regulatory vacuum for access to health and social security protection for Indonesian workers working abroad.

As a consequence of the philosophical, theoretical, and juridical problems described above, it impacts practical issues. What is spread out in objective reality is caused by not being adequately managed by the earlier series of problems.

The sequence of the issues that are not singular as described above are elaborately extracted in the following narrative. By setting the welfare of all Indonesian people as the goal contained in the Pancasila State Basis, it is only natural that the health aspect is also an essential part of the system of implementing social welfare for all citizens, including those working abroad.

When referring to the Declarations and Conventions for the Protection of Human Rights and Law No. 36 of 2009 on Health (9), it is clear that health is a human right that must be protected (10). But unfortunately, the current health protection system is minimal to the territorial boundaries of the State, so when a citizen migrates

outside the territory of the State, the health protection of that citizen by the State seems to have stopped (11). This is the characteristic and peculiarity of PMI so that at the level of practice, the preparation of laws and regulations creates difficulties in formulating norms for the protection of health and social security.

Through Law Number 40 of 2004 concerning the National Social Security System (UU SJSN), the State seeks to regulate and ensure the community's social welfare through (12):

1. Social Security, Health
2. Social Security, Pensions and Old Age Savings,
3. Social Security, Work Accidents,
4. Social Security, Temporary Death,

through Law No. 24 of 2011 concerning the Social Security Administering Body (UU BPJS), the National social security system is divided into two sub-systems of social security (13), namely employment insurance and health insurance are organized by two bodies, Health Insurance, and Employment Insurance (14). BPJS Health operates a health insurance system (15), while Employment Insurance provides Social Security for Pensions and Old Age Savings, Social Security for Work Accidents, and Social Security for Death (16). Implementing a social security system like this normatively and conceptually does not cause problems, even though problems arise in its implementation. Weaknesses cause these problems in separating health insurance from the JAMSOSTEK system, as the institution that previously provided employment social security. The new normative and conceptual issues arose when this system was applied to implementing health insurance for PMI.

State Responsibility For Indonesian Migrant Worker

Legal protection is a full effort in fulfilling rights and providing assistance to provide a sense of security to witnesses and/or victims (17). Legal protection of crime victims as part of community protection can be realized in various forms, such as providing restitution, compensation, medical services, and assistance law (18). In other words, legal protection is the protection of the dignity and worth and the recognition of human rights possessed by legal subjects based on legal provisions (19).

The government's effort to protect PMIs abroad is the establishment of Law No. 39 of 2004 concerning the placement and protection of PMIs abroad (20). The law was made as a form of government response to providing legal protection to PMI (21). They face problems such as violence, exploitation, and treatment contrary to other violated human dignity (22). Based on law number 39 of 2004 mentioned in the preamble, work is a human right that must be upheld, respected, and guaranteed its enforcement (23). The important role of central and local governments in protecting Indonesian migrant workers abroad is that the state is obliged to protect all its citizens wherever and whatever they do (24). Article

18 of Law Number 37 of 1999, which regulates foreign relations, states that the Government of the Republic of Indonesia is obliged to protect the interests of Indonesian citizens or legal entities who face legal problems with representatives of foreign countries in Indonesia (25), while Article 19b states that Indonesian Representatives are obliged to provide shelter, protection, legal assistance, legal counseling, and consular services for Indonesian citizens and legal entities abroad (26).

The legal principle in the law on the placement and protection of PMIs abroad is the principle of state responsibility (27). This principle follows the mandate of Article 281, paragraph 4 of the 1945 Constitution of the Republic of Indonesia, which states that the responsibility of the State is for protection and promotion (28). Enforcement, and fulfillment of human rights, this statement is supported by law number 39 of 2004 article 6, which states that the Government is responsible for increasing efforts to protect PMI abroad (29). The government is also obliged to protect PMI during pre-departure and placement periods (Article 7 letter e) (29). In 2017, the DPR-RI (Indonesia Legislative Body) officially passed the Bill on the Protection of Indonesian Migrant Workers to replace Law no. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad became Law no. 18 of 2017 concerning the protection of Indonesian Migrant Workers (30). The form revision of Law no. 39 of 2004 is a form of government commitment to protecting PMI Abroad (31).

MATERIALS AND METHODS

This study uses a literature review methodology by describing what has been regulated in Law no. 18 of 2017 concerning the protection of Indonesian Migrant Workers Abroad. With a normative legal approach, namely library research, document studies, or documentary law research, sources obtained through primary legal materials, namely through statutory regulations.

ETHICAL CLEARANCE

This study was approved by Lembaga Inovasi, Pengembangan Jurnal, Penerbitan dan Hak Kekayaan Intelektual, Universitas Airlangga, and also approved by Institute of Research and Community Development, Universitas Airlangga

RESULTS

REVIEW ON INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NO. 18 YEAR 2017

Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers (hereinafter abbreviated as UU PPMI) was initiated to replace Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad (UU PPPMILN).

Tracing the process of its formation through the accompanying academic text, several prominent things encourage the PPPMILN Law to be replaced, such as its more dominant norm regulating the trading system of Indonesian workers abroad, leaving very few articles that regulate the protection aspect. From a thorough search carried out by the academic drafting team on the application of the PPPMILN Law, there was an opinion that the PPPMILN Law did not guarantee legal certainty for the protection of Indonesian workers abroad (Academic Papers on the PPMI Bill, 2017).

As stated above, the spirit that became one of the backgrounds for the change in the PPPMILN Law strongly confirms that the PPMI Law will result in Perfect Quality and a range of protection norms for Indonesian workers abroad. The norms of protection can be found in Part Five of the PPMI Law, which emphasizes, among other things, that: (a) Social Security is a form of social protection to ensure that all people can meet their basic needs for a decent life; (Undang-Undang (UU) Tentang Pelindungan Pekerja Migran Indonesia, 2017) (b) The implementation of the Social Security program for Indonesian Migrant Workers and their families is part of the National Social Security System; (Undang-Undang (UU) Tentang Pelindungan Pekerja Migran Indonesia, 2017) (c) Further provisions regarding Social Security for Indonesian Migrant Workers are regulated explicitly by a Ministerial Regulation; and (d) Social Security Administering Body is a legal entity that administers the Social Security program for Indonesian Migrant Workers (Undang-Undang (UU) Tentang Pelindungan Pekerja Migran Indonesia, 2017).

Observing the norms governing health and social security in the PPMI Law, it can be concluded that in terms of quantity, it is very minimal, even in terms of quality, it is deplorable. This conclusion is the result of an analysis of Article 29 (5) of the PPMI Law, which confirms that social security for PMI will specifically be regulated by a Ministerial Regulation, as well as Article 89 (b), which enforces laws and regulations which are the implementing regulations of the PPTKILN Law. 2004 as long as it does not conflict with the provisions of the PMI Law. The search will be continued by observing the Regulation of the Minister of Manpower Number 7 of 2017 concerning the Social Security Program for Indonesian Migrant Workers, (Undang-Undang (UU) Tentang Pelindungan Pekerja Migran Indonesia, 2017) as the implementing regulation of the PPTKILN Law, which regulates the social security of Indonesian workers abroad whose validity and binding power are still valid. Chapter II Article 2 PMK PJSMPM 2017 confirms that PMI/PMI candidates who will go to work abroad must be registered as participants in Social Security, where the types of social security programs include: (a) National Health Insurance (JKN); (b) Work Accident Insurance (JKK); (c) Old Age Security (JHT), and (d) Death Insurance (JKM). Regarding these provisions, Article 4 confirms

that BPJS Ketenagakerjaan organises the JKK, JHT and JKM programs. From here, the problem arises regarding who will administer the national health social security for PMI/PMI candidates who will work abroad.

In this stage of analysis, it was found that there was a legal vacuum in the regulation related to health social security for PMI. If we explore further the JKK, JHT, and JKM social security programs organized by BPJS Employment, we find a form of protection similar to health protection. This can be found in Article 1 number (8) of the 2017 PMK PJSPMI, which confirms that work accident insurance, abbreviated as JKK, is a benefit in the form of cash and/or health services provided when a participant experiences a work accident. Related to this, it is further emphasized in Chapter V on social security benefits, part I on JKK, Paragraph 1 on the Benefits of the JKK Program for PMI candidates before placement and PMI after placement. These health services are held in health facilities in collaboration with BPJS for employment. From the spectrum of legal substances, it can be said that the Ministry of Manpower so persistently fights for the spirit of protecting social security for PMI that from a particular simple spectrum, it seems as if "Ultra Vires" and smuggling of authority have occurred through the JKK instrument. This means that through the JKK, which is categorically included in the social security of employment organized by BPJS for employment, but in its work, it is carried out with intersecting activities and even (it seems) exceeding the limits and the commencement of the authority of BPJS for health, which is categorized as health social security. If in this section, the analysis is directed at the legal substance side by focusing on evaluating the quality and coverage of health social security protection for PMI based on the PPMI Law, it can be stated that the quality of health social security protection for PMI is minimal in pattern because the coverage of protection is still limited at the pre-preparatory stage. Placement and after placement. From this, a legal vacuum was born regarding the form of PMI's health social security protection at the placement stage and the institutions that have the authority to implement it. The legal vacuum can be described as follows:

Legal System Approach To Indonesian Migrant Worker Health Social Security Protection

Protection for PMI through law is regulated for the first time in Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad (32) The government also stipulates Presidential Instruction No. 6/2006 on Reform Policy for the Placement and Protection of Indonesian Migrant Workers (Inpres No. 6/2006) in order to optimize efforts to protect Indonesian Migrant Workers and establish the National Agency for Placement and Protection of Indonesian Migrant Workers (BNP2TKI) (33). At the level of implementing regulations, the Government issued Regulation of the Minister of Manpower and

Transmigration Number 22 of 2014 concerning the Placement and Protection of Overseas Workers (34). These policies proved to be ineffective in improving the services and protection of PMI Abroad (35). This ineffectiveness is because Law Number 39 of 2004 is more concerned with regulating the placement of PMIs abroad rather than protecting prospective PMIs who will work abroad or PMIs who are already abroad (36). Institutional weaknesses are also an influential factor in the effectiveness of legal protection for PMI (37). The regulation of the authority of institutions in Law No. 39 of 2004 is inappropriate, causing overlapping authorities of the Ministry of Manpower and Transmigration and BNP2TKI (38). This weakness is exacerbated by the absence of implementing regulations mandated by the law.

Unfortunately, the laws and regulations regarding protection for PMI above have not reached a specific instrument for protecting the ideal (objective) health social security. Still, they are limited to safeguarding procedural (subjective) migrant workers. Millions of Indonesian migrant workers do not go through official (non-procedural) procedures. Various areas that depart according to guidelines and are equipped with official documents can become undocumented migrant workers. For those who leave according to the established process, health protection is provided through an insurance mechanism required in the employment contract between the worker and the employer where the PMI works. Health insurance coverage is usually only limited to health problems caused by work, not health problems due to other causes (39).

Thus, the problem of health protection for PMI can be identified as health protection for procedural PMI and health protection for non-procedural/undocumented/illegal (40). Health protection for procedural PMI follows the health protection system in the country where they work. Even though it is well regulated, several studies show that there is a practice of irregularities, where the premiums that the employer should pay are paid by the migrant workers themselves with salary deductions. There is discrimination received by migrant workers when they receive services from local health facilities (41). While for undocumented/illegal PMI, it will be difficult to access official health facilities, even in a country like Malaysia, this is not possible with criminal threats for doctors and other health staff if proven to assist illegal migrant workers (6)

The Weaknesses are sought to be corrected through the issuance of Law no. 18 of 2017 concerning Indonesian Migrant Workers, which seeks to reach Not only procedural and documented migrant workers but also undocumented and undocumented migrant workers. However, this law still has weaknesses in protecting PMIs, especially those undocumented. In such circumstances, the State should remain present in providing health

protection for PMIs through a protection mechanism for Indonesian citizens abroad.

Associated with Friedman's idea, evaluating the legal substance of protection against PMI is carried out by analyzing the selected norms and systematizing and synchronizing the relationship between standards and values with one another in one regulatory system. Evaluation of the legal structure is carried out in order to analyze its institutionalization and organization. In contrast, the evaluation of legal culture is carried out with the direction of analysis aimed at the behavior of legal subjects (authority holders and workers) in interactions in the PMI placement activity sector.

Review On Indonesian Migrant Workers Protection Based On Law No. 18 Year 2017

Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers (hereinafter abbreviated as UU PPMI) was initiated to replace Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad (UU PPPMILN). Tracing the process of its formation through the accompanying academic text, several prominent things encourage the PPPMILN Law to be replaced, such as its more dominant norm regulating the trading system of Indonesian workers abroad, leaving very few articles that regulate the protection aspect. From a thorough search carried out by the academic drafting team on the application of the PPPMILN Law, there was an opinion that the PPPMILN Law did not guarantee legal certainty for the protection of Indonesian workers abroad (Academic Papers on the PPMI Bill, 2017).

As stated above, the spirit that became one of the backgrounds for the change in the PPPMILN Law strongly confirms that the PPMI Law will result in Perfect Quality and a range of protection norms for Indonesian workers abroad. The norms of protection can be found in Part Five of the PPMI Law, which emphasizes, among other things, that: (a) Social Security is a form of social protection to ensure that all people can meet their basic needs for a decent life;(42) (b) The implementation of the Social Security program for Indonesian Migrant Workers and their families is part of the National Social Security System; (42) (c) Further provisions regarding Social Security for Indonesian Migrant Workers are regulated explicitly by a Ministerial Regulation; and (d) Social Security Administering Body is a legal entity that administers the Social Security program for Indonesian Migrant Workers (42).

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89 (b), which enforces laws and regulations which are the implementing regulations of the PPTKILN Law. 2004 as long as it does not conflict with the provisions of the PMI Law. The search will be continued by observing the Regulation of the Minister of Manpower Number 7 of 2017 concerning the Social Security Program for Indonesian Migrant Workers, (42) as the implementing regulation of the PPTKILN Law, which regulates the social security of Indonesian workers abroad whose validity and binding power are still valid.

Chapter II Article 2 PMK PJSPMI 2017 confirms that PMI/PMI candidates who will go to work abroad must be registered as participants in Social Security, where the types of social security programs include: (a) National Health Insurance (JKN); (b) Work Accident Insurance (JKK); (c) Old Age Security (JHT), and (d) Death Insurance (JKM). Regarding these provisions, Article 4 confirms that Employment Insurance organises the JKK, JHT and JKM programs. From here, the problem arises regarding who will administer the national health social security for PMI/PMI candidates who will work abroad.

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protection at the placement stage and the institutions that have the authority to implement it. The legal vacuum can be described as follows:

¹. Article 14 PMK PJSPMI 2017 states that health services in the JKK program are provided in accordance with medical needs, including: (a) Basic and supporting examinations; (b) First-level and follow-up care; (c) Hospitalization; (d) Intensive Care; (e) Diagnostic support; (f) Treatment; (g) Special services; (h) Medical devices and implants; (i) Doctor/medical services; (j) Operations; (k) Blood transfusions; and/or (l) Medical rehabilitation.

DISCUSSION

The Elaborative Analysis Of Legal Substance In Indonesian Migrant Workers Protection Law In The Context Of Social And Security System

Related to Existing of workers, there are various terms found in formulating the concept of guaranteeing the right to health in the legislation according to the version of the 1945 Constitution of the Republic of Indonesia, the Health Law, the SJSN Law and the BPJS Law. The 1945 Constitution of the Republic of Indonesia, particularly in Article 28 H, emphasizes that everyone has the right to live in physical and spiritual prosperity, a place to live, a good and healthy environment, and the right to obtain health services. Everyone has the right to social security, allowing his full development as a dignified human being. Article 34 reaffirmed this by requiring the State to develop a social security system for all the people and empower the weak and underprivileged by following human dignity. The state is also responsible for providing adequate health care and public service facilities. Thus, in the 1945 Constitution of the Republic of Indonesia, as stated above, the concepts of "Everyone" (Article 28) and "People" (Article 34) are found.

The State's obligations in the Constitution are elaborated in the 2009 Health Law, which emphasizes that everyone has the right to health, in the sense that: (a) Everyone has the same rights in obtaining access to resources in the health sector; (b) Everyone has the right to obtain safe, quality and affordable health services; (c) Everyone has the right to independently and responsibly determine the health services needed for themselves, and (d) Everyone has the right to a healthy environment for the achievement of health status.

The 2009 Health Law consistently uses the concept of "everyone". Meanwhile, in the National Social Security System Law, the norms related to the issues being discussed are contained in the consideration given that: that everyone has the right to social security to be able to fulfill the basic needs of a decent life and increase his dignity towards the realization of a prosperous, just and prosperous Indonesian society;

Furthermore, in the provisions of Article 1 points are

set that "Participants are everyone, including foreigners who have worked for a minimum of 6 (six) months in Indonesia, who have paid dues.

Concerning the above, Article 2 of the SJSN Law further stipulates that:

The National Social Security System is implemented based on the principle of humanity, the principle of benefit, and the principle of social justice for all Indonesian people.

Furthermore, Article 3 it is stated that:

The National Social Security System aims to guarantee the fulfillment of the basic needs of a decent life for each participant and/or family member (47).

The arrangement is confirmed in chapter V which contains the participation and contribution; from article 13 to article 17, the concept of "participant" is used. Concerning the concept of participants, there is something that has caught the attention of researchers that, in the same law, the concept of "participants" is defined (slightly) differently. This is understandable because the characteristics of social security with the existing variants require the affirmation of the concept's operational and technical definition. Based on the inventory above, the concepts used are

- a. People;
- b. Each person;
- c. Somebody;
- d. Participants and/or family members;
- e. Workers; and
- f. Foreigners.

Likewise, in the BPJS Law, the norms related to the discussed matters are contained in the considerations, affirming as follows:

- a. That the national social security system is a state program that aims to provide certainty of social protection and welfare for all people;
- b. In order to realize the objectives of the national social security system, it is necessary to establish an organizing body with a legal entity based on the principles of cooperation, non-profit, openness, prudence, accountability, portability, mandatory participation, mandated funds, and the results of the management of social security funds entirely for program development and for as much as possible great interest of the participants;

As the implementing regulation of the SJSN Law, the BPJS Law regulates a concept similar to the regulation on which it was formed. Namely:

1. People;
2. each person;
3. somebody;
4. participants and/or family members;
5. worker;
6. as well as foreigners.

Observing the legal materials listed above as a search result, if grouped, then categorically based on the

science of legislation, the norms listed above are arranged according to general address norms, moving towards specifics, until the formation of sub-specific/operational technical norms. General address norms such as citizens, residents, people, and everyone. Specific address norms such as workers, participants, and Sub-specific/technical address norms, such as a person, a family member, and a stranger.

In an inductive description, it is narrated that “a person”, “family member”, and “foreigner” are part of the concept of “worker”, as a specific concept/technical term in the field of employment, as well as the concept of “participant” as a specific concept/technical term. In the social security system. In comparison, workers and participants are part of the concept of the genus of citizens, residents, people, and everyone. Schematically deductively, the things previously narrated are arranged as shown in Figure 1.

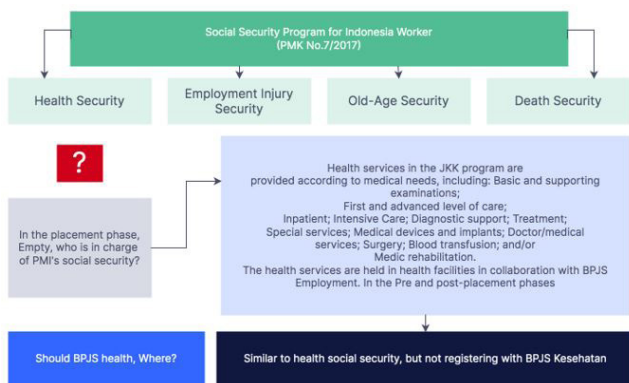


Figure 1: Scheme of the Indonesian Workers' Social Security Program according to PMK 07/2017

Administering Problems In The Social – Health Protection Of Indonesian Migrant Workers

History of social security law in Indonesia, leaving traces and keeping hidden birth defects for the basis of the development of social security protection at present, especially related to the protection of the PMI Jamsoskes (43). Historically, to serve Civil Servant participants, PT ASKES provided PT TASPEN health insurance, old age/pension insurance, and death insurance (44). PT ASABRI is the provider of social security for members of the Military/Police Officer (45). PT Jamsostek is a social security provider for workers, which covers types of health insurance services, accident insurance, and death insurance (46). In its development, when there was an institutional reform of the social security administering body, which was introduced through the SJSN Law and the BPJS Law, there was a reconstruction of the scheme of the Social Security Administering Body in Indonesia. This institutional reconstruction simplifies the number of social security administering bodies by only giving birth to two nomenclatures, namely BPJS Employment and BPJS Health. The birth of these two agencies continues to provide the type of social security services as in the

past. This institutional simplification sends a strong message that after the transition period, only two social security administering bodies are authorized to carry out this form of social security services in Indonesia (Figure 2).

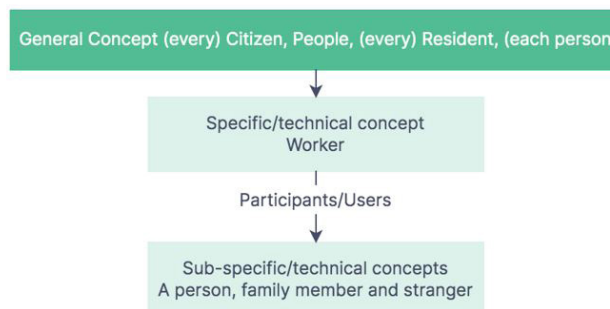


Figure 2: BPJS Membership Concept

Normatively, the historical dynamics narrated are structured and regulated in the SJSN Law and BPJS Law. The Transitional Provisions of the SJSN Law confirm that when this Law comes into force, the Company (Persero) Social Security for Workers (JAMSOSTEK), Company Company (Persero) Savings Fund and Civil Service Insurance (TASPEN), Company Company (Persero) Social Insurance The Armed Forces of the Republic of Indonesia (ASABRI), and the Indonesian Health Insurance Company (Persero) (ASKES), are declared to remain in effect as long as they have not been adjusted to this Law.

In the Transitional Provisions of the BPJS Law in more detail and operation, it is emphasized that when this Law comes into force PT Askes (Persero) is recognized for its existence and continues to carry out health insurance programs, including accepting new

² Established by Government Regulation Number 36 of 1995 concerning the Establishment of the Agency for administering the Workforce Social Security Program (State Gazette of the Republic of Indonesia of 1995 Number 59), based on Law Number 3 of 1992 concerning Labor Social Security (State Gazette of the Republic of Indonesia of 1992 number 14 , Supplement to the State Gazette Number 3468).

³ Established by Government Regulation Number 26 of 1981 concerning the Transfer of the Public Company of Savings Funds and Insurance for Civil Servants to become a Limited Liability Company (Persero) (State Gazette of the Republic of Indonesia of 1981 Number 38), based on Law Number 11 of 1969 concerning Employee Pensions and Widows Pensions /Employee widower (State Gazette Number 2906), Law Number 8 of 1974 concerning the Principles of Employment (State Gazette of the Republic of Indonesia of 1974 Number 55, Supplement to the State Gazette Number 3014) as amended by Law Number 43 of 1999 (Gazette Republic of Indonesia Year 1999 Number 169, Supplement to State Gazette Number 3890), and Government Regulation

Number 25 Year 1981 concerning Social Insurance for Civil Servants (State Gazette of the Republic of Indonesia Year 1981 Number 37, Supplement to State Gazette Number 3200).

⁴ Established by Government Regulation Number 68 of 1991 concerning the Transfer of the Form of Public Company (Perum) of the Social Insurance of the Armed Forces of the Republic of Indonesia into a limited liability company (Persero) (State Gazette of the Republic of Indonesia of 1991 Number 88).

⁵ Established by Government Regulation Number 6 of 1992 concerning the Transfer of Husada Bhakti Public Company (Perum) to become a Limited Liability Company (Persero) (State Gazette of the Republic of Indonesia of 1992 Number 1)

Participant registrations until the operation of BPJS Health. The Ministry of Health is still given the authority to carry out operational activities to implement the public health insurance program, including adding new participants, until BPJS Health PT Jamsostek (Persero) continues to carry out operational activities to implement the health care insurance program, including adding new participants until BPJS Health. PT Jamsostek also continues to implement work accident insurance, death insurance, and old-age benefits for its participants, including adding new participants until it changes to Employment Insurance. PT ASABRI continues to carry out operational activities to implement the Indonesian Armed Forces Social Insurance program and the pension payment program for its participants, including adding new participants until it is transferred to BPJS Employee. TASPEN (Persero) continues to organize old-age savings and pension payment programs for its participants, including adding new participants until they are transferred to Employment Insurance.¹

BPJS Health started operating to organize a health insurance program on January 1, 2014. Since BPJS Health, the Ministry of Health no longer held a public health insurance program, and PT Jamsostek (Persero) no longer held a health care insurance program. Since the time Health Insurance started operating as stipulated in the above provisions, PT Askes (Persero) was declared disbanded without liquidation, and all assets and liabilities, as well as legal rights and obligations of PT Askes (Persero), became assets and liabilities as well as the legal rights and obligations of Health Insurance.

The change of PT Jamsostek (Persero) to BPJS Employment on January 1, 2014 was followed by a change in the institutional structure in which PT Jamsostek (Persero) was declared disbanded without liquidation and all assets and liabilities, as well as legal rights and obligations of PT Jamsostek (Persero), became assets and liabilities and BPJS Employment legal rights and obligations. The changes are schematically described as follows (Figure 3) :

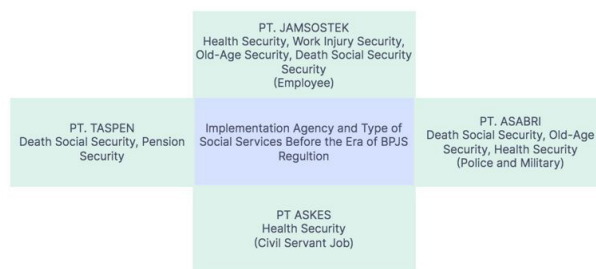


Figure 3: Consolidation of Health Insurance and Employment Insurance Providers through the BPJS Law

The dynamics of BPJS development in the era of the SJSN Law and the BPJS Law, as illustrated schematically above, in tracing the researchers' left traces of congenital disabilities. This has implications for the work of protecting the health and social security of PMI, which is being actively developed. In other words, it can be stated that the pattern of normalizing and institutionalizing BPJS health as in the SJSN Law and BPJS Law is not adaptive and not friendly to PMI. Under the auspices of the normalization of institutional schemes according to the SJSN Law and the BPJS Law, as it is today, the protection of health social security for PMI will never be realized (Figure 4).

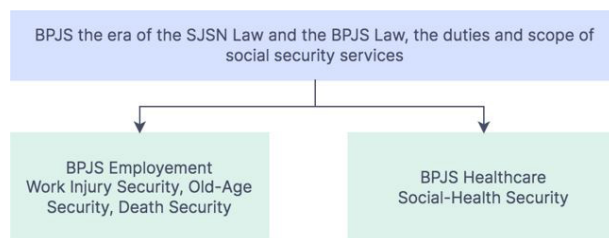


Figure 4. Division of Duties and Scope of Services for BPJS Health and BPJS Employment after the BPJS Law

Based on the analysis using Friedman's view, this kind of norming is difficult at the level of substance to implement at the practical level. Based on a search of the laws and regulations related to the protection of health social security for PMI, I obtained facts about the fact that PMI's health social security has not been broadly protected. From the spectrum of legal substance, the normalization of the existence of BPJS institutions which are patterned and categorized only on two paths as it is today must be broken so that narrow and rigid locking barriers are opened so that social security administering bodies are more adaptive in responding to the needs for the dynamics that occur.

In fact, in the body of the SJSN Law, there is a means of statutory delegation that can be used to open the locks due to the formation of BPJS, which is only in the two-track category. In the provisions of Chapter III of the SJSN Law, which contains the Social Security Administering Body, Article 5 paragraphs (1) and (4) emphasize:

(1) The Social Security Administering Body must be established by law.

(4) If a Social Security Administering Body other than as referred to in paragraph (3) is required, a new one may be established by law.

Furthermore, in the elucidation of article 5 paragraph (4), it is explained that

The establishment of the Social Security Administering Body according to this provision is intended to adapt to the dynamics of social security developments while still providing opportunities for the existing/or new Social Security Administering Bodies to develop coverage. Membership and social security programs.

By interpreting Article 5 paragraph (4), referring to the phrase "in terms of need" as the opening diction, then the word contains the following meanings:

First: regulators are given the freedom to assess the situation;

Second: the legal form is the only law, it cannot be another legal form;

Third: the formation of a new BPJS is possible and valid if the conditions for its construction are met;

Fourth: the legal requirement for the construction of BPJS is the presence of objective conditions that will threaten the fundamental rights of citizens that the state should protect.

Referring to the interpretation stated above, it means that it is very possible to form a new BPJS outside of the existing BPJS as it has been operating, releasing the rigid lock grip which is a congenital birth defect of it, which factually cannot escalate respect, protection and fulfillment of social health insurance for PMI as a human right guaranteed by international legal instruments, the 1945 Constitution of the Republic of Indonesia and a series of laws and regulations.

Referring to the interpretation stated above, it means that it is possible to form a new BPJS outside of the existing BPJS as it has been operating, releasing the grip of rigid locks which is a congenital birth defect of it, which does not can escalate the respect, protection, and fulfillment of health social security for PMI.

PMI enters a more distinctive phase in placement because PMI crosses the boundaries of state sovereign jurisdiction. PMI is legally formatted in two qualities of legal standing at once, namely, as PMI and secondly as Indonesian citizens residing abroad. With its legal status as described previously, the organic ministry, which was previously authorized to oversee PMI, namely the ministry of workforce attributively, has gradually lost its authority significantly due to locus (*unbevoehed locusi*). The ministry of foreign affairs is authorized to establish communication with the recipient country. So that institutionally safeguarding PMI's rights abroad is technically still ongoing, then in the PMI recipient country, a Manpower attache is placed.

The uniqueness of the legal subject of PMI will be more complicated when faced with the fact that it is found that its variants at the practical level can be in the form of documented and undocumented PMI, procedural and undocumented PMI. The PMI variants, as previously mentioned, from a legal perspective, essentially have different qualities of legal standing. This has implications for the rights, obligations, responsibilities, and legal relations between PMI and the authorities around him. Regarding the reality of the PMI variants mentioned earlier, in particular, undocumented PMI and/or unprocedural PMI, in general, how is the legal protection for them, especially health social security, and how is access to protection respected for them? Which BPJS protects and serves their health social security? This series of questions has a sarcastic tone because, let alone the undocumented and/or unprocedural variants of PMI, only with documented and procedural PMI, respect for and protection and fulfillment of their health social security, are still minimally patterned with an *ultra vires* nuanced appearance with legal smuggling mode. JKK program that collaborates with and is served by BPJS Employment.

BPJS Health, as a representative of the government's task accelerator, which is given attributive authority to provide national health insurance services, has not yet arrived to unravel this complexity. Following the performance of BPJS health through print and electronic media coverage, which illustrates that BPJS is losing money, it is relevant to link the rationality of BPJS health's reluctance to discuss PMI's health social security protection. That rationality is normatively structured "Just taking care of domestic health social security has become a cumbersome burden to the point of losing money, let alone having to carry out attributive authority to serve PMI." health. There must be a way out of this structural obstacle through the substance of breaking the norm.

The efforts of the Ministry of Manpower to protect PMI, especially concerning the social security program through the regulation in PMK PJSPMI 2017, should be appreciated. The spirit behind it shows the idealism of a country with a government that wants to realize the respect and protection of human dignity, as mandated by the constitution and universal values. The previous analysis stated the quality and reach of normalizing health social security protection with a minimal pattern through the JKK facility.

Through the spectrum of structuring national legislation related to the national social security system, the legal institutions that are structured in it should be intact, systemic, and mutually reinforcing. Previously, researchers have appreciated the actions of formulating the PPMI Law and its transitional Implementing Regulations, such as the 2017 PMK PJSPMI, but the regularity of conceptual institutions must be maintained.

The JKK concept must still be positioned in the employment social security cluster. Likewise, Health social security is included in the national health insurance system (JKN) family because it is seen from the registration process.

There are different paths to obtaining JKK, JHT, and JK membership.

The registration process is at the BPJS for employment. Likewise, regarding how to receive benefits, all social security programs that belong to BPJS for employment are generally carried out through a "cash benefit" scheme.

In the National Health Insurance Program, membership is registered with BPJS Health, and program benefits are obtained through the "in-kind benefit".

This description of the concept that distinguishes between Social Security for employment and Social Security for health is needed in order to emphasize that normatively, the idea of Health Social Security for PMI has never been implemented. If, in fact, and reality, it is found that a citizen who works abroad has (ever) registered their membership with BPJS Health so that one day they will benefit from their participation, this is not an indication as well as a fact that health social security protection has been practiced against PMI.

⁶ Because maybe someone working abroad is not a PMI. Because based on the provisions of Article 4 paragraph (2) of the PPMI Law, it is stated that they are not included as Indonesian Migrant Workers in this Law, namely: (a) Indonesian citizens who are sent or employed by international agencies or by countries outside their territory to carry out official duties. ; (b) students and trainees abroad; (c) Indonesian citizens are refugees or asylum seekers; (c) investors; (d) state civil servants or local employees working in the Representatives of the Republic of Indonesia; (e) Indonesian citizens who work in institutions financed by the state budget of revenues and expenditures; and (f) Indonesian citizens who have independent businesses abroad.

CONCLUSION

The pattern of legislation in the national social security system is not enough to protect PMI. From the aspect of substance, the normative address with a specific technical concept related to the existence of the protection of Indonesian migrant workers is still empty. From the aspect of the legal structure, the institutionalization of national social security manifested in the form of social security administering body with a two-track pattern, namely BPJS Employment and BPJS Health, in its implementation is not adaptive and significantly protects PMI's constitutional rights. The address of norms with a specific technical concept to protect PMI is only found in sectoral laws and regulations in the workforce, especially the Minister of Manpower Regulation No.

7 of 2017 concerning the Social Security Program for Indonesian Workers. The guarantee of protection in the Permenaker is still limited to PMI in the pre-placement and post-placement phases. In the deployment phase, there is no guarantee of protection against PMI. If examined more closely, social security protection for PMI is only limited to employment social security and does not include health social security. At this point, it is clear that PMI protection has not been integrated into the national social security system.

By providing social security, BPJS Health should take the initiative to protect PMI's constitutional rights. This can be done by formulating ideas to encourage the formulation of specific technical norms for PMI because of its unique characteristics. of PMI differ from other BPJS Health participants. To protect PMIs' constitutional rights, BPJS Health and BPJS Employment must involve the Ministry of Foreign Affairs because, in practice, protection and fulfillment of PMI rights guarantees are challenging to do against PMIs. They are not procedural undocumented and unofficial because formal protection of PMI is more accessible Conducted.

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