

THE ESSENCE OF SOCIAL SECURITY PROTECTION FOR WORKERS OUTSIDE EMPLOYMENT RELATIONSHIPS AS A FULFILLMENT OF FUNDAMENTAL RIGHTS FOR VULNERABLE WORKERS

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Abstract

The provision of Employment Social Security for workers outside formal employment relationships represents a tangible manifestation of the state's commitment to fulfilling the fundamental rights of its citizens, particularly for vulnerable workers. This group, comprising self-employed individuals without employers or regular wages, often faces precarious working conditions with high socio-economic risks and no protective guarantees. This article examines the essence of Jamsostek protection as a form of social justice and state responsibility, as mandated by Article 28H Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The state is obligated to deliver inclusive protection programs for these vulnerable workers, whereas for workers with employers, the responsibility lies with the employers to enroll their employees in Jamsostek programs and pay the required premiums. The study concludes that social protection for vulnerable workers is a manifestation of social justice and a state obligation to safeguard the fundamental rights of all citizens, especially those in the informal sector without employers.

Keywords: Social Security, Employment Relationships, Fundamental Rights, Vulnerable Workers.

INTRODUCTION

Essentially, protection for workers is intended to ensure that they have the opportunity to fulfill various social responsibilities and develop their potential, ultimately enhancing their quality of life and enabling them to live a dignified existence as human beings. Worker protection is a fundamental necessity that cannot be delayed or neglected. As creations of God, human beings inherently possess rights as citizens to receive protection. The first element, the recognition and protection of human rights, is a defining characteristic of a democratic state governed by the rule of law. Every individual is endowed with inherent rights stemming from their existence as creations of God Almighty, rights that must be respected and upheld by the state, government, and all individuals to honor and protect human dignity. Government operations must not diminish the meaning and significance of these human rights, making the protection and respect for human rights a cornerstone of any legal state.¹

Legal protection for workers fulfills basic rights enshrined in the constitution, specifically Article 27 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states:

"Every citizen shall have the right to work and to live a life worthy of human dignity."

Furthermore, Article 28H paragraph (3) of the 1945 Constitution states:

"Everyone has the right to social security that enables their full development as a dignified human being."

Social security is a form of legal protection aimed at safeguarding workers and their families from risks affecting their well-being. Currently, this protection is embodied in Law No. 40 of 2004 on the National Social Security System and Law No. 24 of 2011 on the Social Security Administrative Body (BPJS). These laws establish BPJS Health and BPJS Employment to implement social security programs.

In principle, the state's responsibility for worker protection extends beyond those employed within formal employment relationships to also encompass workers outside such relationships. This argument is supported by the inclusion of social security programs under the BPJS, which provide welfare protection for both types of workers.

The expansion of protection is driven by the evolution of information and communication technology in the digital economy era, which has gradually transformed traditional employment relationships. A simple definition of decent work is employment voluntarily undertaken, providing sufficient income for a dignified livelihood, and ensuring physical and psychological safety. Workers engaged in partnership arrangements are classified as workers outside employment relationships (TKLHK). However, Law No. 13 of 2003 on Employment primarily regulates minimum protection for workers within formal employment relationships (TKDHK). In reality, partnership workers also have the right to labor protection.

Sociologically, the National Social Security System (SJSN) is a state program designed to ensure social protection and welfare for all Indonesians. All residents are required to participate in health insurance, with the government covering the premiums for those categorized as poor or unable to afford it. Gradually, all workers—whether in formal employment relationships or not—must participate in employment social security programs. The SJSN aims to ensure the fulfillment of basic living needs for all participants and their families, including those outside formal employment relationships, provided coordination among stakeholders is established.

Socially, jobs classified as outside formal employment relationships include those not directly receiving wages from employers, such as online transport drivers, startup workers, fishermen, tobacco farmers, mosque caretakers, religious leaders, transmigrants, and others, who fall into the vulnerable worker category. Currently, there is a legal vacuum (normative gap) regarding social security protection for these workers. It is imperative for the government to establish regulations to provide legal guarantees and protection for vulnerable workers operating outside formal employment relationships.

METHOD

The research methodology employed in this study is a normative legal research method. The type of research is normative legal research, as it primarily examines phenomena or issues related to the authority of the Ministry of Manpower and the Social Security Administrative

Body for Employment (BPJS Ketenagakerjaan). To analyze the application of law, a specific research approach is required, involving a comprehensive study of law from a normative perspective. This research utilizes the philosophical approach, statutory approach, and conceptual approach. The legal materials used in this study are derived from primary, secondary, and tertiary legal sources.

The data collection techniques adopted in this research are as follows: (a). Library Research, This involves reviewing legislation, official documents, and academic books relevant to the research object; (b). Field Research, This technique is employed to obtain primary data on the implementation of employment social security protection for vulnerable workers within the labor law system. The data is collected through interviews with relevant stakeholders, including officials from the Ministry of Manpower, regional labor offices (Disnakertrans), and representatives of BPJS Ketenagakerjaan.

RESULTS AND DISCUSSION

1. The Essence of Social Security Protection

The implementation of social security programs is one of the state's responsibilities and obligations to provide socio-economic protection to society, in accordance with the state's financial capacity. Workers' rights and protections for occupational safety and health are outlined in Law No. 13 of 2003 concerning Employment, particularly Articles 86 and 87. Workers' safety must be prioritized, as it contributes to maximizing their productivity. Efforts to address occupational safety and health issues include accident prevention, workplace hazard management, rehabilitation and treatment, health promotion, and mitigation of occupational diseases.

The Employment Law ensures equal rights for all workers without discrimination, recognizing them as individuals assisting employers, whether individuals, entrepreneurs, or legal entities. Employment social security serves as a form of protection benefiting both workers and their families from unforeseen risks that may arise during their employment.²

In the course of their work, workers face various potential risks, including work-related illnesses, accidents, disabilities, job loss, or even death. Risk refers to the uncertainty of outcomes from an activity, whether within or outside an employment relationship. It can also be defined as the potential for loss or harm.

Risks are categorized into three types: financial, operational, and pure risks.³ Additionally, risks can be classified into two main groups: fundamental risks, which are collective and affect society as a whole (e.g., political, social, defense, and international risks), and specific risks, which are more individual in nature (e.g., risks to property, personal well-being, or business failure).⁴

To mitigate these risks, employment social security is essential and beneficial for both workers and their families. Employment social security is both a right of employees and an obligation of employers.

At its core, the Jamsostek program aims to ensure the continuity of household income streams by compensating for part or all of the income lost due to unforeseen circumstances.⁵

From the definitions above, it can be concluded that employment social security provides protection against potential risks faced by workers in the performance of their duties. This includes various benefits, such as medical care, compensation, and other forms of assistance.

Historically, the implementation of employment social security was carried out by PT Jamsostek. However, with the enactment of Law No. 24 of 2011 concerning the Social Security Administrative Body (BPJS), the responsibility has shifted to BPJS, specifically BPJS Ketenagakerjaan.

The state ensures basic protection for workers and their families against socio-economic risks. One form of protection provided by the government and employers is social security, which addresses income loss due to employment cessation or death and meets workers' and their families' medical service needs. The philosophy of employment social security is to provide job security, ensure workers' welfare and that of their families, and positively impact efforts to improve discipline and productivity.

Article 28H Paragraph (3) of the 1945 Constitution states:

"Every person has the right to social security that enables their full development as a dignified human being."

In addition, Law No. 40 of 2004 on the National Social Security System describes it as a form of social protection to guarantee that each participant can meet their basic living needs, fostering equitable social welfare for all citizens.

2. The Essence of Social Security for Vulnerable Workers

With the issuance of Presidential Instruction No. 4 of 2022 concerning the acceleration of Extreme Poverty Eradication, which highlights the implementation of extreme poverty eradication as one of the National Priority Programs, one of the main focuses is the eradication of poverty, particularly extreme poverty, through social security programs for the poor. This includes employment protection programs for vulnerable workers.

Vulnerable workers are those working outside formal employment relationships or self-employed individuals whose working conditions fall below standard values, bear high risks, earn very minimal incomes, are vulnerable to economic fluctuations, and have below-average welfare. Examples of such vulnerable workers include farmers, fishermen, motorcycle taxi drivers, construction workers, Quran teachers, mosque caretakers, street vendors, and transmigrants.

These workers belong to the self-employed category, meaning they work for themselves rather than having an employer. As such, they require basic protection when encountering significant risks, such as the possibility of work accidents or even death. Many jobs in this group, such as fishing in open waters with strong winds or driving a motorcycle taxi, inherently carry high risks of accidents.

Additionally, Quran teachers and mosque caretakers may experience long-term health issues like respiratory diseases due to the constant vocal exertion, which can potentially lead to fatal conditions. Transmigrants, often engaged in farming, especially palm oil plantations, are also at risk of accidents, such as falling from trees or injuries from tools used in the field.

Fundamentally, this protection is a basic right that must be provided to every worker. One form of protection is through the Employment Social Security program. To optimize the implementation of the Jamsostek program, it is necessary to maximize participation coverage for workers, particularly those in rural areas, in order to meet their basic living needs.

As a welfare state, the government must prioritize and address the rights of workers who have not yet received social security as part of their fundamental rights. This is in line with the Welfare State theory by Kranenburg, which argues that a welfare state is not only concerned with maintaining legal order but also actively works toward the well-being of its citizens.

In the context of fulfilling social security, this state adheres to the principles of a welfare state, which necessitates state intervention in addressing violations of workers' fundamental rights, especially for vulnerable workers.

It is recognized that social welfare programs are of primary importance to society. The state must ensure that all citizens have access to dignified living conditions. To achieve this, the government must create systems that guarantee the fulfillment of these responsibilities. One way to achieve this is by establishing a social security system for vulnerable workers outside formal employment.

It is logical that the government must fulfill the substance of employment social security in order to meet fundamental rights. The essence of Jamsostek aligns with the concept of a prosperous state. This essence can be realized when the components of Jamsostek are properly aligned and operational.

While all Indonesian citizens have access to health insurance through government programs such as Jankesmas or Jankeskin under BPJS Kesehatan, workers are not yet covered under BPJS Ketenagakerjaan (Employment Social Security). Therefore, it becomes the government's responsibility to provide protection to workers as a fundamental right.

The term Employment Relationship as defined by legislation refers to the legal relationship established since the enactment of Law No. 13 of 2003 on Manpower, hereinafter referred to as the Manpower Law. Article 1, paragraph 15 of the Manpower Law defines an Employment Relationship as follows:

"An Employment Relationship is a relationship between an employer and a worker/laborer based on an employment agreement that contains the elements of work, wages, and orders."

From this definition, the first key element of an Employment Relationship is the employment agreement, signifying that an employment relationship exists if there is an employment agreement, and vice versa. The second key elements are work, wages, and orders, all of which must be fulfilled.

As stipulated in the Manpower Law, the elements of an Employment Relationship include work, wages, and orders. However, in practice, an additional element can be considered. The time element implies that a worker performs their duties either for a specified or unspecified duration.

1. Element of Work

The definition of "work" is not explicitly provided in the Manpower Law or its implementing regulations. However, Article 1234 of the Indonesian Civil Code (KUHPperdata) states:

"Every obligation is to deliver something, to do something, or not to do something."

Thus, the element of work is interpreted as one form of obligation (performance) to do or carry out something required by the worker as a consequence of the employment agreement.

This element qualifies as the object or "specific matter" of the employment agreement, which is one of the valid conditions of a contract alongside mutual consent, capacity, and a lawful cause, as stated in Article 1320 of the Civil Code.⁷

The nature of work is flexible, as it is determined by the needs and conditions of each company, which vary from one to another. Article 1603 of the Civil Code stipulates:

"A worker is obligated to perform the agreed-upon work to the best of their ability. If the nature and scope of the work to be performed are not specified in the agreement or regulations, these shall be determined by customary practice."

It can be concluded that the nature of work, as agreed upon between the worker and employer, is individual, meaning it must be performed personally by the worker as the legal subject in the employment agreement. It cannot be delegated to another party. In return for the worker's time, effort, and expertise, they are entitled to wages. Similarly, the employer or company, as the other legal subject in the agreement, may not transfer their responsibilities to another employer or company.

2. Element of Wages

Wages are defined in Article 1, paragraph 30 of the Manpower Law as:

"Wages are the rights of workers/laborers, received and expressed in monetary terms as remuneration from the employer or company to the worker/laborer, determined and paid according to an employment agreement, collective agreement, or statutory regulation, including allowances for the worker/laborer and their family for work or services rendered."⁸

This element is also regarded as one form of performance under Article 1234 of the Civil Code, specifically the obligation to "deliver something."

Providing specific remuneration as compensation for work performed by the worker is an obligation that must be fulfilled by the employer as a consequence of the worker's performance to "do something," namely completing the agreed-upon work.

3. Element of Orders

The term "orders" is not explicitly defined in Law No. 13 of 2003 on Manpower. However, according to the *Kamus Besar Bahasa Indonesia* (KBBI), "orders" are instructions or directives intended to compel someone to perform an action.

Additionally, Abdul Rachmad Budiono⁹ refers to Article 1601 of the Civil Code, which states:

"A labor agreement is an agreement whereby one party, the worker, binds themselves to work under the authority of another party, the employer, for a specified period in return for wages."

Thus, the element of orders can be interpreted as work instructions, targets, or rules issued by the employer that the worker is obligated to follow. This element is closely linked to the element of work. As previously explained, work is the performance required of the worker to fulfill their obligations under the employment agreement, which originates from the employer's instructions.¹⁰ If an employment relationship does not fulfill these three elements, it can be categorized as being outside the scope of an employment relationship.

3. Principles of Human Rights in Fulfilling Fundamental Rights

The implementation of social security programs is one of the state's responsibilities and obligations to provide socioeconomic protection to society, particularly for workers. Based on the country's financial capacity, Indonesia appears to have developed a social security program using a funded social security model, which is financed by participants but remains limited to formal sector workers. The existing social security system in Indonesia has yet to align with universal standards.

Social security administration in Indonesia tends to be fragmented, with various government and private institutions having their own systems. Social security schemes are managed separately, such as by PT Jamsostek (Persero), PT Askes, PT Asabri, and PT Taspen.

These systems are designed for specific groups and do not yet address the informal sector. Moreover, social security is managed by profit-oriented companies. Consequently, the protection, respect, and fulfillment of the right to social security in Indonesia are not being adequately realized.

Social security programs have not reached the communities that should be prioritized, particularly marginalized groups, the poor, and other vulnerable populations. Despite having been in place for a long time, social security benefits are accessible only to those working in the formal sector, such as government employees, a small portion of corporate workers, and an even smaller percentage of factory laborers.

The state's responsibility to protect, respect, and fulfill the right to social security has largely been delegated to private entities. As a result, these programs are often profit-oriented. Ironically, the management of social security funds has become a target for financial misuse practices.

Despite being established for years, these programs predominantly benefit formal sector workers, including government employees, a limited number of corporate workers, and an even

smaller fraction of factory laborers. The state's responsibility to protect, respect, and fulfill the right to social security is often delegated to private entities, resulting in profit-driven approaches. This arrangement has ironically exposed social security systems to financial misuse and various irregularities.

Human Rights Principles:

1. Universality

Human rights being universal means that all people across the world, regardless of their religion, nationality, language, ethnicity, political identity, anthropological identity, or disability status, possess the same inherent rights as human beings.

2. Indivisibility

The indivisibility of human rights signifies that all rights are equally important. Therefore, it is impermissible to exclude certain rights or categories of rights from their entirety. The universal and indivisible nature of human rights is regarded as the two most important sacred principles. These principles became the main slogan for the 50th anniversary of the UDHR: all human rights for all.

3. Interdependence

The interdependence of human rights means that the fulfillment of one category of rights always relies on the fulfillment of another. For example, the right to work depends on the fulfillment of the right to education. Similarly, the right to choose and practice a belief depends on the right to express one's opinion publicly. Followers of a certain religion can only lead worship services if the right to freedom of expression is upheld.

4. Interrelatedness

The interrelatedness of human rights implies that all human rights are inseparable from one another. In other words, all categories of rights are a single package and a unified whole. For instance, an individual will be able to elect legislative representatives effectively if their right to education has been fulfilled. By having access to education, one can read ballots and understand the vision and mission of legislative candidates and their political parties. The affirmation of the universal, indivisible, interdependent, and interrelated nature of human rights is enshrined in Article 5 of the Vienna Declaration and Programme of Action 1993: all human rights are universal, indivisible, interdependent, and interrelated.

5. Equality

Equality is a fundamental principle of human rights. It entails equal treatment, where individuals in similar situations must be treated equally, while those in different situations should be treated differently. Equality is considered a prerequisite for a democratic state, exemplified through equality before the law, equal opportunities, equal access to education, equal access to fair justice, and equality in practicing and adhering to one's faith, among others.

6. Non-Discrimination

Discrimination occurs when individuals are treated or provided with unequal opportunities, such as inequality before the law, unequal treatment, or unequal access to education. Discrimination is defined as a situation is discriminatory or unequal if like situations are treated differently, or different situations are treated similarly.

7. Human Dignity

The primary purpose of codifying and agreeing upon human rights laws is to ensure that all individuals can live with dignity. Fundamentally, human beings must be respected, treated well, and regarded as valuable. If an individual has their rights upheld, they can live a dignified life. However, if their rights are revoked, they are not treated with dignity.

8. State Responsibility

The fulfillment, protection, and respect for human rights are the responsibilities of the state. The primary actor tasked with these responsibilities is the state through its governmental apparatus. This principle is reinforced in all international human rights conventions and domestic regulations. The state is obligated to uphold human rights in compliance with the norms and standards outlined in human rights instruments.

Karel Vasak introduced the concept of “generations” of human rights, reflecting their substance and scope at specific times. In line with the Second Generation Human Rights Theory, social rights should also be provided to ensure public welfare. All workers must have equal rights to protection, including health insurance and social security.

Second-generation rights, rooted in socialist traditions, emerged in the early 19th century in France through revolutionary struggles and welfare movements. These rights were a response to the exploitation and inequities of capitalism, addressing the need for social equality. Known as “positive rights,” they require the active role of the state to realize them. Fulfillment of these rights necessitates the state to establish and execute programs for their implementation. These rights are enshrined in Articles 22–27 of the Universal Declaration of Human Rights.

Third-generation rights, often referred to as *solidarity rights*, are a reconceptualization of the first two generations of human rights. They arose from the demands of developing nations for a fair international order. These rights aim to create conducive economic and legal systems to guarantee their fulfillment and are enshrined in Article 28 of the Universal Declaration of Human Rights.

State Obligations Concerning Human Rights

State obligations regarding human rights are categorized into three main responsibilities:¹¹

1. Respect

The state must refrain from interfering or taking actions that infringe upon or obstruct the enjoyment of rights. For example, respecting the right to life entails refraining from acts such

as extrajudicial killings. Similarly, respecting the right to religious freedom means not coercing individuals to adopt specific beliefs.

The principle of non-discrimination mandates that no individual should face discriminatory treatment, and affirmative actions may be necessary to achieve equality. Discrimination fundamentally involves unequal treatment where equality should prevail, underscoring the principle of mutual respect, especially in the treatment of workers.

2. Protect

The state is fundamentally responsible for ensuring the protection of human rights under international law. This responsibility is derived from doctrines of sovereignty and equal rights among nations. It includes obligations to act (or refrain from acting) based on international treaties or customary international law.

The legal foundation for human rights protection in Indonesia is outlined in the Preamble to the 1945 Constitution, Chapter XA (Articles 28A–28J), Law No. 39 of 1999 on Human Rights, and Law No. 26 of 2000 on Human Rights Courts. Article 28I(4) of the 1945 Constitution explicitly states that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, particularly the government.

Similarly, Article 71 of Law No. 39 of 1999 states:

"The government is obliged and responsible for respecting, protecting, enforcing, and promoting human rights as regulated in this law, other legislation, and international human rights laws ratified by the Republic of Indonesia."

Universally, the state bears the primary responsibility for advancing and protecting human rights, which cannot be undermined by political, economic, or cultural factors. However, human rights violations often occur due to abuse of power by state apparatus, both civilian and military.

3. Fulfill

The state is obligated to take legislative, administrative, judicial, and other measures necessary to ensure the maximum implementation and accessibility of rights for all individuals. For example, detainees have the right to legal representation, medical care, and consular assistance immediately upon detention. Any delay in these rights could lead to unlawful acts, such as torture or disappearance.

As the primary authority, the state must ensure a robust domestic legal framework and provide adequate legal guarantees. The imbalance of power between the state and society often necessitates advocacy to defend human rights, positioning the state as the key actor responsible for respecting, protecting, and fulfilling these rights.

Therefore, the state holds the obligation to ensure its citizens' rights to protection, including health insurance and labor social security.

CONCLUSION

The essence of protecting social security for vulnerable workers is a manifestation of justice provided by the government to self-employed workers who do not receive wages and do not have employers. The government or the state must play a proactive role in delivering services to society, particularly regarding the fundamental rights of citizens.

For workers who have employers, social security for labor becomes the employer's obligation to enroll their employees in the Jamsostek program and pay the monthly premium contributions. However, for self-employed workers who are not wage earners and operate outside of formal employment relationships, classified as vulnerable workers, this responsibility falls to the state, as mandated by Article 28H(3) of the 1945 Constitution.

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