

THE AUTHORITY OF ADMINISTRATION AND GUARANTEE OF THE ACQUISITION OF THE RIGHT TO SOCIAL SECURITY FOR CIVIL SERVANT

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ABSTRACT

The authority to administer social security for ASN (State Civil Servant) in Indonesia is an important issue that must be resolved as a form of active attitude in providing certainty of rights to social security. The emergence of regulations issued by the state through its current government has resulted in a difference in the acquisition of rights to social security for ASN and which institutions have the authority to administer it. The regulations are the ASN Law and PP 70/2015. The research aims to analyse the certainty of the authority to administer and acquire social security rights for ASN based on the laws and regulations governing the implementation of social security. This study uses a juridical-normative approach and is descriptive. Based on the research conducted, the results obtained are that the authority for administering social security for ASN in Indonesia is regulated in the SJSN Law and the BPJS Law, where two BPJS are authorised to manage social security based on SJSN, namely BPJS Health and BPJS Employment. This authority can also be seen from the legal principle of Lex Specialis Derogat Lex Generalis, where the authority to administer social security for ASN must refer to the SJSN Law and BPJS Law, not the ASN Law. The Constitutional Court Number 7/PUU-III/2005 also confirms that the implementation of ASN social security, which state-owned companies previously carried out, is contrary to the 1945 Constitution and has no binding legal force. The existence of different interpretations and practices of ASN social security protection that are not following the current SJSN creates uncertainty and the potential loss of rights to social security protection for ASN, especially JKP, which was born after the enactment of the Job Creation Law and PP 37/2021.

Keywords: Authority; Implementation; Certainty of Rights; Social Security; Civil Servant

INTRODUCTION

Indonesia is a country that adheres to the concept of a welfare state in the world. A welfare state is a concept where the state uses a democratic government system responsible for its people's welfare. It aims to reduce the suffering experienced by the community, such as poverty, unemployment, health problems, etc. Therefore, countries that adhere to a welfare state have public policies that are service, assistance, protection or prevention of social problems.¹

Explicit evidence that Indonesia adheres to the concept of the welfare state is clearly stated in the Indonesian constitution, namely in paragraph IV of the preamble to the 1945 Constitution of the Republic of Indonesia (after this referred to as the 1945 Constitution of the

¹ Miftachul huda, (2009), Social Work & Social Welfare: An Introduction, Yogyakarta: Pustaka Pelajar, p. 73.

Republic of Indonesia) which mandates the government to achieve the state's goals, namely "to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote the general welfare, educate the nation's life and participate in carry out world order based on freedom, eternal peace and social justice".² If examined further, evidence that the Indonesian state adheres to the concept of the welfare state is also contained in the body of the 1945 Constitution of the Republic of Indonesia, namely: in Article 28H, Article 33, Article 34 and their derivative laws and regulations.

The State of Indonesia in the 1945 Constitution of the Republic of Indonesia guarantees that everyone has the right to social security that allows his full development as a dignified human being.³ To fulfil the rights of citizens to social security and the mandate of the 1945 Constitution of the Republic of Indonesia, the Indonesian government has developed various social security programs, and both implemented with insurance schemes and assistance schemes.⁴ Furthermore, the Indonesian government is developing a social security system for all the people and empowering the weak and underprivileged under human dignity.⁵

Indonesia's ongoing social and economic development poses challenges and demands for handling various unresolved problems. One of them is the implementation of social security for all people as mandated in Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia concerning the right to social security and Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.⁶ Following up on this, the Indonesian government enacted Law Number 40 of 2004 concerning the National Social Security System (after this abbreviated as the SJSN Law). In line with the goals of the Indonesian state as stated in the preamble to the 1945 Constitution of the Republic of Indonesia, Paragraph 4 can also be seen in the preamble considering the SJSN Law, which contains the main ideas as the background and reasons for the Indonesian government to make the SJSN Law, which is as follows:

- a. that everyone has the right to social security to be able to fulfil the basic needs of a decent life and increase his dignity towards the realisation of a prosperous, just and prosperous Indonesian society;
- b. that to provide comprehensive social security, the state develops a National Social Security System for all Indonesian people;
- c. based on the considerations referred to in letters a and b, it is necessary to enact a Law on the National Social Security System."⁷

"The National Social Security System is basically a state program that aims to provide certainty of social protection and welfare for all Indonesian people. Through this program, every resident is expected to be able to meet the basic needs of a decent life if things happen that can result in loss or reduced income due to illness, accident, loss of job, entering old age, or retirement."⁸

² V. Hadiyono, (August 2020), "Indonesia in Answering the Welfare State Concept and its Challenges", *Journal of Political Law and Power*, Vol. 1 No. 1, p. 28

³ Indonesia, the 1945 Constitution of the Republic of Indonesia, Article 28H paragraph (3).

⁴ Ilham Haqiqie, (May 2020), "Legal Protection for Workers to Take Old Age Security whose participation is before 10 years due to termination of employment", *Jurist-Diction*, Vol. 3 No. 3, p. 1054.

⁵ Indonesia, the 1945 Constitution of the Republic of Indonesia, Art. 34 paragraph (2).

⁶ Indonesia, the Law on the National Social Security System, Law no. 40 of 2004, LN No. 150 of 2004, TLN No. 4456, General Explanation.

⁷ *Ibid.*, Considerations.

⁸ *Ibid.*, General Explanation.

The implementation of SJSN (National Social Security System) has programs including health insurance, work accident insurance, pension insurance, old-age insurance, death insurance, and job loss guarantees after the enactment of Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja). Several Social Security Administering Bodies (BPJS) organise these social security programs: a. The Company's (Persero) Workers' Social Security (JAMSOSTEK) which has been transformed into the Labor Social Security Administration Agency (BPJamsostek); b. Company Company (Persero) Civil Service Savings and Insurance Fund (TASPEN); c. Company (Persero) Social Insurance of the Armed Forces of the Republic of Indonesia (ASABRI); and D. The Indonesian Health Insurance Company (Persero) (ASKES) has also been transformed into the Health Social Security Administering Body (BPJS Kesehatan).⁹

In fact, in its implementation, it was found that the provisions of laws and regulations were considered confusing regarding the delegation of authority to administer social security for all elements of society, one of which was Law Number 5 of 2014 concerning Civil Servants (UU ASN). Article 92 paragraph (4) states that the social security protection that must be provided for Civil Servants (ASN) is regulated in a Government Regulation. Based on this article, Government Regulation Number 70 of 2015 concerning Work Accident Insurance and Death Insurance for State Civil Apparatus Employees (PP 70/2015) was born. Article 7 of PP 70/2015 stipulates that ASN are JKK and JKM participants managed by PT. Taspen. Whereas the SJSN Law has explicitly regulated the authority for administering social security to be carried out by BPJS, which was established by law.¹⁰ With the establishment of BPJS based on the SJSN Law, the implementation of social security that has been implemented by the parties mentioned in Article 5 paragraph (3) of the SJSN Law will gradually be transferred to BPJS.

Based on this description, the author raised the topic of this paper with the title "Authority for the Administration and Certainty of the Acquisition of Rights to Social Security for State Civil Apparatus" with the formulation of the problem "How is the certainty of the authority to administer and obtain social security rights for ASN based on the laws and regulations governing the administration of social security."

METHOD

This study uses a normative and descriptive legal research approach. It tends to use secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are laws and regulations relating to the implementation of employment social security, namely the 1945 Constitution of the Republic of Indonesia, Law Number 40 of 2004 concerning the National Social Security System; Law Number 24 of 2011 concerning Social Security Administering Bodies; Law Number 5 of 2014 concerning State Civil Apparatus; Law Number 11 of 2020 concerning Job Creation; and Government Regulation Number 70 of 2015 concerning Work Accident Insurance and Death Security for State Civil Apparatus Employees.

Secondary legal materials are the views of legal experts, especially in social security. Tertiary legal materials or supporting materials include materials that provide instructions and explanations for primary and secondary legal materials, such as general dictionaries, legal dictionaries of scientific journals, and materials outside the field of law that are relevant and can be used to complete the data needed in research.

⁹ *Ibid.*, Art. 5 paragraph (3).

¹⁰ *Ibid.*, Art. 5 paragraph (1).

ANALYSIS AND DISCUSSION

The implementation of social security in Indonesia refers to the social security system that has been established through the SJSN Law, which regulates the principles of implementing social security contained therein. Still, the state determines other policies through other laws and regulations regarding implementing social security in Indonesia. Which ultimately results in uncertainty of legal protection in the employment social security sector. The state determining a policy that results in uncertainty of legal protection for workers in the scope of social security shows that the state wills regardless of labour rights, resulting in differences in the objectives and benefits of social security in the existing labour sectors.

Social security held by state-owned companies based on PP 70/2015 does not conflict with the existing law above (UU ASN). Still, the regulations that underlie the implementation of social security by the company are contrary to the regulations that specifically regulate the implementation of national social security, so it is contrary to the legal principle of *Lex Specialis Derogat Lex Generalis* because what specifically regulates the implementation of social security in Indonesia is the SJSN Law, not the ASN Law. Preferably, in determining a policy outlined in in-laws and regulations, especially in this case regarding the implementation of social security for workers in Indonesia, the state must prioritise the interests and protection of the community, especially workers.

According to Fitzgerald, Salmond's theory of legal protection is that the law aims to integrate and coordinate various interests in society because, in the traffic of interests, protection of certain interests can be done by limiting various interests on the other hand.¹¹ The interest of the law is to take care of human rights and interests, so the law has the highest authority to determine human interests that need to be regulated and protected.¹²

Legal protection is always related to power, and two powers are always a concern, namely government power and economic power. Concerning government power, the issue of legal protection for the people against the government. With economic power, the problem of legal protection is protection for the weak against the strong, for example, protection for workers against employers.¹³ The scope of protection for workers according to the Manpower Act includes:

1. Protection of occupational safety and health;
2. Protection of morals and decency;
3. Treatment following human dignity and religious values.

In determining a policy that concerns the public at large, in this case, the workers in Indonesia, the state through its government should put the interests of the workers first in determining a policy. For the sake of legal certainty in the implementation of social security for workers in Indonesia, the state, through its government, should prioritise the interests of workers through the theory of legal protection. Several groups have made several legal efforts to straighten out who is actually in charge of administering social security in Indonesia by submitting a judicial review to the Supreme Court and the Constitutional Court. There have also been decisions from these legal remedies. These legal remedies include:

1. Supreme Court Decision Number 32 P/HUM/2016, in which the Petitioner considers that Article 7 PP 70/2015 contradicts higher laws and regulations, namely:
 - a. Article 1 point 6, Article 5 paragraph (1), Article 13 paragraph (1) and (2) of the SJSN Law;

¹¹ Satjipto Raharjo, 2000, *Legal Science*, Bandung: PT. Citra Aditya Bakti, p.53.

¹² *Ibid*, p. 69.

¹³ Philipus M Hadjon, 2003, *Legal Protection in the State of Pancasila Law*, Bandung: Armico, p. 42.

- b. Article 1 paragraph (1), Article 4 letter b, Article 5 paragraph (2), Article 7 paragraph (1), Article 15 paragraph (1) and (3), Article 57 letter f BPJS Law;
- c. Article 92 paragraph (2) of the ASN Law.

However, in their consideration, the judges of the Supreme Court in this Application have other considerations, including:

- a. Whereas the existence of PP 70/2015 is in the context of implementing the provisions of Article 92 paragraph (4) and Article 107 of the ASN Law, which mandates the government to protect the form of Work Accident Insurance (JKK) and Death Security (JKM) for ASN Employees;
- b. Whereas Article 2 paragraph (2) of Government Regulation Number 44 of 2015 concerning the Implementation of Work Accident Insurance and Death Security states, "The JKK and JKM programs for participants at state administrators are regulated by separate Government Regulations";
- c. Whereas the participation of ASN/PNS in JKK and JKM, including the applicants, is exempted from its implementation/management from BPJS Ketenagakerjaan;

From the description of these considerations, Article 7 PP 70/2015 is managed by PT. Taspen does not conflict with Article 1 point 6, Article 5 paragraph (1), Article 13 paragraph (1) and (2) of the SJSN Law, Article 1 point 1, Article 4 letter b, Article 5 paragraph (2), Article 7 paragraph (1), Article 15 paragraphs (1) and (3), Article 57 letter f of the BPJS Law and Article 92 paragraph (2) of the ASN Law, because the implementation of JKK and JKM for ASN is a special legal policy based on Article 92 paragraph (4) Article 107 of the ASN Law so that the petition for objections to the right of judicial review from the applicants must be rejected.

- 2. Constitutional Court Decision Number 98/PUU-XV/2017, that the constitutionality issue in question by the applicant is the delegation of regulations regarding:
 - a. Protection in the form of health insurance, work accident and death insurance;
 - b. Management of PPPK to Government Regulation (PP), with delegation to PP, the applicant assesses that his constitutional rights as guaranteed in Article 23A, Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution have been violated and/or potentially violated.

Therefore, to put an end to the constitutional loss or potential loss he has suffered, the applicant requests that the phrase "regulated in a Government Regulation" in Article 92 paragraph (4) of the quo Law be interpreted as "regulated by law", and the phrase "article 95 to Article 106 is regulated by Government Regulation" means "Article 95 to Article 106 by Law".

Responding to the petition submitted by the applicant, the panel of constitutional judges considered that it was necessary to put forward and affirm the delegation of authority to regulate from law to other types of regulations, including Government Regulations. The judges of the Constitutional Court explained that based on Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, a Government Regulation is a type of regulation that the President forms to carry out the law as it should when the Law delegates to be further regulated in a Government Regulation, formally. The matter is following what is determined by the 1945 Constitution. In this regard, the content material to be regulated or adopted in a Government Regulation is material for implementing the Act.

In addition, the delegation of certain material arrangements from laws to other laws is also not contrary to the provisions of the formation of laws as regulated in Article 22A of the 1945 Constitution. It is further regulated in Law Number 12 of 2011 concerning the Establishment of Legislation (UU 12/2011). In this law, it is regulated that the delegation

of authority from the law can be carried out to other laws as long as the content material is the content of the law.

Thus, whether to delegate the authority to regulate from a law to a law or a government regulation is not contrary to the 1945 Constitution of the Republic of Indonesia. Whatever choice is made, from the aspect of delegation of authority to regulate, there is absolutely no constitutionality issue. However, suppose the Government Regulation receiving the delegation is judged to contain content that is contrary to the Law on which the delegation is based. In that case, the Supreme Court may examine the Government Regulation.

Delegation of provisions related to the protection of health insurance, work accident insurance and death insurance in Article 92 paragraph (4) and first aid management in Articles 95 to 106 as well as Article 107 of the ASN Law to Government Regulations cannot be declared contrary to Article 23A of the 1945 Constitution with the consideration of the panel of judges of the Constitutional Court as follows:

- a. Article 92 of the ASN Law emphasises that protection in the form of health insurance, work accident insurance, and death insurance includes social security provided in the national social security program (JKSN). The social security system referred to is regulated in the SJSN Law. The implementation of the national social security system is carried out by BPJS, which is established by law (based on the BPJS Law);
- b. Whereas to implement the said national social security system, the state applies mandatory contributions paid regularly by participants, employers, and/or the government. The mandatory nature of these contributions is confirmed in Article 19 of the BPJS Law. Furthermore, the Court's obligatory contribution through the Constitutional Court Decision Number 138/PUU-XII/2014 and the Constitutional Court Decision Number 101/PUU-XIV/2016 equals taxes. The Court stated, "In principle, mandatory contributions are the same as income tax (PPh). Social insurance contributions are also known as social security taxes. The difference is, PPh is progressive where the more wages received, the greater the tax to be paid, while contributions are regressive." (vide Constitutional Court Decision Number 138/PUU-XII/2014 paragraph 3.
- c. The mandatory fees charged to BPJS Health and BPJS Employment participants are determined by law, not by government regulation. Therefore, state levies in the form of mandatory contributions for BPJS participants, including for ASN, are in no way contradictory to Article 23A of the 1945 Constitution. It is because coercive levies in the form of contributions have been regulated in a type of regulation expressly stated in Article 23A of the 1945 Constitution. , namely the law;
- d. When linked to Article 92 of the ASN Law, the quo norm stipulates the government's obligation to protect the form of pension insurance and old-age security for civil servants. The government must do a national social security program scheme to carry out these obligations. In the program scheme, there is a fee that must be paid by participants (PNS), and at the same time, it is also obligatory for the government as the state organiser that employs civil servants to collect it. The levies in fees charged to civil servants are carried out under the BPJS Law, not the ASN Law. Therefore, when the ASN Law delegates the regulation on how to protect in the form of pension insurance and civil servant retirement insurance to a Government Regulation, it cannot be declared contrary to Article 23A of the 1945 Constitution;
- e. Whereas the delegation, as referred to in Article 92 paragraph (4) of the ASN Law, is not related to the burden of the obligation to pay contributions to civil servants but is related to how protection in the form of health insurance, work accident insurance and death insurance is provided by the government to civil servants who employ civil servants. With

this delegation, the government can regulate how the protection for civil servants is given under the mandate of the ASN Law. Without the delegation of authority, the government, as one of the parties obliged to protect the people it employs, will not be able to take steps to protect civil servants following the national social security program;

- f. Likewise, with the delegation regarding the management of the first aid worker, one of which is related to the government's obligation to protect old-age insurance, health insurance, work accident insurance and death insurance for the first aid worker. All considerations as referred to in letters a to e above also apply equally to norms related to the delegation of PPPK protection arrangements as regulated in Articles 95 to 106 of the ASN Law through Article 107 of the ASN Law. Delegation of regulations from the quo Law to government regulations is not related to setting the burden of the obligation to pay contributions (because this is already regulated in a separate law). Still, it is related to the management of PPPK. Therefore, the quo norm cannot be declared to conflict with Article 23A of the 1945 Constitution.

Furthermore, the applicant questioned the delegation of authority to administer social security based on Article 92 paragraph (4) and Article 107 of the ASN Law, resulting in the birth of PP 70/2015, which stipulates that the agency provides death insurance for work accident insurance for ASN is PT. Taspen, not BPJS. The Petitioner believes that the legal entity status and institutional orientation are different between PT. Taspen and BPJS, in the implementation of the social security program, have violated the constitutional rights of the applicant as guaranteed in Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution. Against the Petitioner's argument, the panel of judges of the Constitutional Court considered the following:

- a. The problem is not related to the norms of the ASN Law, which delegates regulations related to the protection of ASN, but the substance of the norms contained in government regulations established under the ASN Law. Therefore, it is not related to statutory norms, and the Constitutional Court is not authorised to assess and decide on it;
- b. Even so, PT. Taspen is regulated as an institution providing work accident insurance and death insurance based on PP 70/2015 and the existence of PT. Taspen, as a limited liability company established by Government Regulation Number 26 of 1981, is still recognised during the transition period under the BPJS Law. In addition, following Article 65 of the BPJS Law, PT. Taspen was mandated to complete the transfer of the old-age savings program and pension program from PT. Taspen to BPJS Employment no later than 2029. In other words, it means that the BPJS Law has also regulated the existence of PT. Taspen. Regarding the process of transferring the ASN social security program from PT. Taspen to BPJS Employment,
- c. In addition, the institution entrusted with the task of administering the national social security program is fully the authority of the legislator to determine it, as long as it is carried out following the mandate or obligation of the state to provide and develop social security for all Indonesian people as mandated under the 1945 Constitution. Article 2 paragraph (2) PP 44/2015, ASN employees – including PPPK – are not included in BPJS Employment because Article 65 of the BPJS Law, PT. Taspen is only given until 2029 to administer social security for ASN. Thus, it is clear that PT. Taspen is an institution appointed by the legislation to manage social security for ASN until 2029.

Based on all of the above legal considerations, the panel of judges of the Constitutional Court believes that the Petitioner's petition regarding the unconstitutionality of the phrase "regulated in a Government Regulation" in Article 92 paragraph (4) and Article 107 of the ASN Law is groundless according to law.

After carrying out various legal efforts to clarify who is authorised to administer social security programs in Indonesia, in 2018, the issuance of PP No. 49 of 2018 concerning the management of Government Employees with Work Agreements (PP 49/2018), in which some provisions regulate the provision of social security protection for temporary workers in the government environment which is again a “participation authority dispute” between BPJS Ketenagakerjaan and PT. Taspen. In Article 99 paragraph (3) of PP 49/2018, it is stated that Non-PNS employees are given protection in the form of health insurance benefits, work accident insurance and death insurance as applicable to PPPK, as also referred to in the explanation of Article 96 paragraph (1),

However, the article does not state clearly that Non-PNS and/or Non-PPPK employees are given the same social security protection as PPPK through PT. Taspen. The article only states that Non-PNS and/or Non-PPPK employees are given protection in health insurance, work accident insurance and death insurance. Article 75 of PP 49/2018 also states that protection for work accident insurance, health insurance, death insurance and old-age insurance provided for PPPK is carried out under the National Social Security System.

When referring to the national social security system, which is based on the SJSN Law, it is clearly stated in Article 5 paragraph (4) of the SJSN Law that if a Social Security Administering Body other than the one referred to in paragraph (3) is required, namely PT. Jamsostek, PT. Taspen, PT. Asabri and PT. Askes, a new one can be formed by law. The BPJS Law is issued, which underlies the formation of the Social Security Administering Body (BPJS), namely BPJS Health, which organises the Health Insurance program and BPJS Employment which organises 4 (four) programs, namely Work Accident Insurance (JKK), Death Security (JKM), Old Age Security (JHT) and Pension Security (JP).

Suppose the provision of social security protection is carried out in accordance with the national social security system. In that case, those who have the authority to provide social security protection are BPJS Health and BPJS Employment based on the SJSN Law and BPJS Law. Although in PP 70/2015, it is stated that PT Taspen manages the provision of social security protection for PPPK, after the issuance of PP 49/2018 that the provision of social security protection for PPPK is carried out following the SJSN, if you pay attention to the Lex Posterior Derogat Lex Priori principle, the new rules governing the provision of social security protection for PPPK refer to PP 49/2018. They can be set aside PP 70/2015 regarding regulating social security protection for PPPK.

As previously explained above, the decision on legal remedies related to the delegation of authority to administer social security, especially for ASN employees in Indonesia. In its implementation, some things are considered correct, and some are still considered wrong, especially regarding who has the authority to administer social security in Indonesia.

First, when viewed regarding who is authorised to organise and provide social security protection for ASN employees, PT. Taspen has this authority based on PP 70/2015 and the ASN Law.

Second, However, when viewed based on the SJSN Law and the BPJS Law, the one who should have the authority to administer and provide social security protection for all Indonesians is BPJS, including ASN in it.

Third, Moreover, in the Final Report of Analysis and Evaluation related to Employment conducted by the Center for Analysis and Evaluation of the National Law of the National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia in 2018, it is stated that there are provisions that regulate the obligation of employers to provide social security for their workers. There are 2 (two) different institutions manage JKK and JKM for ASN. State administrators for administering JKK and JKM for ASN are registered with

PT. Taspen (Persero) is regulated in PP 70/2015 to implement the ASN Law. Meanwhile, the implementing regulations for the SJSN Law are PerPres 109/2013. Based on these provisions, ASN participants must be registered with BPJS Employment. In addition, Article 5 paragraph (2), paragraph (3), and paragraph (4) of the SJSN Law states that PT. taspen, PT. Jamsostek, PT. Asabri and PT. Askes are four companies that participate in implementing social security in Indonesia. However, the four PTs are not Social Security Administering Bodies which are part of what is regulated in the SJSN Law. The reason is that because of the form of a limited liability company. Of course, the four companies are not part of the Social Security Administering Body as referred to in the SJSN Law. It is because Article 4 of the SJSN Law states that one of the principles for implementing the social security system is the non-profit principle. Also, after the decision of the Constitutional Court Number 007/PUU-III/2005, which annulled Article 5 paragraph (2), paragraph (3) and paragraph (4) of the SJSN Law, the four PTs were not part of the Social Security Administering Body as referred to in this article. SJSN Law. Furthermore, the same report states that there are different occupational accident and death insurance rights between participants as regulated in PP 40/2015 by BPJS Employment and PP 70/2015 PT. Taspen (Persero). PP 70/2015 was issued to implement the ASN Law, PT. Taspen is not a Social Security Administering Body mandated by the SJSN Law and the BPJS Law. The SJSN Law stipulates that the Social Security Administration Agency is established by law, considering PT. Taspen was formed with PP, then PT. Taspen (Persero) cannot organise the JKK and JKM programs. The implementation of JKK and JKM based on PP 70/2015 must be returned to the SJSN Law jo. BPJS Law.

Fourth, in the Constitutional Court Decision Number 47/PUU-XIV/2016, page 38, which refers to the Constitutional Court Decision Number 101/PUU-XIV/2016 and refers to the Constitutional Court Decision Number 138/PUU-XII/2014 on page 202, which states “That Article 5 paragraph (1) and Article 52 of the SJSN Law have mandated the establishment of national-scale social security administering body with a separate law. Even though, at that time, there were 4 (four) social security administering bodies such as Persero JAMSOSTEK, Persero TASPEN, Persero ASABRI and Persero ASKES, each of which had existed following its scope of authority, Article 52 of the SJSN Law then stipulates that the four social security administering bodies still given the right as a social security provider until the formation of BPJS. Based on the formulation of the quo articles, the legislators want to change the social security system by uniting all (multi) organising bodies into one special (single) national body. According to the Court, the policy of changing the concept is in the context of developing a social security system and following the intent of Article 34 paragraph (2) of the 1945 Constitution, which requires that the developed social security system covers all people and aims to increase the empowerment of the weak and underprivileged following human dignity. Besides that, the change in the concept of implementing social security, which was originally implemented by BUMN, whose performance was measured based on profit indicators and other financial indicators, was then handed over to a special public legal entity that only organised social security programs with the principles of cooperation, non-profit, good governance. And portability has realigned the purpose of social security, a state obligation program.” Besides that,

In addition, one of the social security programs that were just formed after the enactment of the Job Creation Law was the Job Loss Guarantee (JKP) which was also specifically mandated to be held by BP Jamsostek as regulated in Government Regulation Number 37 of 2021 concerning the Implementation of the Job Loss Guarantee Program (PP. 37/2021). The next question is, do ASN get job loss guarantee protection? It has been explained previously that the implementation of social security for ASN is carried out by SOEs that are not

mandated to administer social security based on the SJSN and that SOEs are not mandated to administer the JKP program.

It compares social security for workers in the private sector with ASN because ASN does not get JKP protection. After all, the provision of social security for them is provided by BUMN, in contrast to workers in the private sector. Whereas ASN certainly has the risk of losing their job, various things can cause, for example, the provision of sanctions in the form of dismissal and so on. Therefore, the implementation of social security for ASN and Honorary Employees is currently considered to cause something discriminatory in social security protection because it is not implemented based on the SJSN.

CONCLUSION

The authority to administer social security for ASN in Indonesia has been regulated in the SJSN Law and the BPJS Law. Two BPJS are authorised to manage social security based on SJSN, namely BPJS Health and BPJS Employment. Especially after the Constitutional Court Decision Number 7/PUU-III/2005, which said that the implementation of social security previously implemented by state-owned companies was contrary to the 1945 Constitution and had no binding legal force. The authority to administer social security for ASN is also evident from the legal principle of *Lex Specialis Derogat Lex Generalis*, where the authority to administer social security for ASN must refer to the SJSN Law and BPJS Law, not the ASN Law.

However, the current problem is that the interpretation and practice of administering social security for ASN and Honorary Employees have not complied with the legal provisions. The existence of different interpretations and practices that are not following the SJSN creates uncertainty and the potential loss of rights to social security protection for ASN, especially JKP, which was born after the enactment of the Job Creation Law and PP 37/2021. The implementation of social security for ASN is currently carried out by SOEs that are not mandated to administer social security based on the SJSN. These SOEs are not mandated to administer the JKP program.

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