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Legal Reconstruction in Indonesia Based on Human Rights

Imam As Syafei Building

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM.4 Semarang, Indonesia

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The 5th PROCEEDING

“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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“Legal Reconstruction in Indonesia Based on Human Right”

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

PROCEEDINGS

The 5th International Conference and Call for Paper Faculty of Law 2019 Legal Reconstruction in Indonesia Based on Human Right

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Legal Analysis Of Social Security Transformation And The Reality Of Its Implementation In The Community In Indonesia

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ABSTRACT

Social security is the right of every person whose fulfillment is guaranteed by the constitution and legislation in force. The implementation is mainly related to government efforts in poverty alleviation, which are carried out in stages in accordance with the ability of the state, private sector and the community in its financing. In Indonesia social security undergoes a transformation process after the promulgation of Law Number 24 of 2011 concerning BPJS (BPJS Law). This transformation process will affect the continuity of the implementation of social security programs in the future.

This article uses the normative juridical method, namely legal research on library materials by searching the laws and regulations and literature relating to the history of social security in Indonesia, the transformation process and the reality of its implementation. Research is analytical descriptive, that is, describing laws and regulations, scientific studies relating to the realization of social security in Indonesian society and the transformation of the social security system. The approach used is the statutory approach (statue approach). Secondary data collection methods through the study of library materials, which include: primary legal materials, secondary legal materials and tertiary legal materials.

The results of the study are the reality of the implementation of social security in the community in Indonesia, is still a word that is still considered taboo in society. This is reflected in several facts that can be seen in responding to or assessing social security provided by the state. In communities where the place of residence is still in the rural sphere is often less touched by the importance of a social security to them.

Transformations that occur in the social security system in Indonesia, towards the Social Security Organizing Agency (BPJS), namely: PT. ASKES (Persero) changed to BPJS Health, PT (Persero) JAMSOSTEK changed to BPJS Employment, PT (Persero) ASABRI completed the transfer of the ASABRI program and pension payment program to BPJS Employment, PT TASPEN (Persero) will complete the transfer of the Old Age Insurance program and the Program pension payments to BPJS Manpower.

The next process is the dissolution of PT ASKES (Persero) and PT (Persero) JAMSOSTEK without liquidation. While PT (Persero) ASABRI and PT TASPEN (Persero) are not explicitly determined in the BPJS Law.

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Keywords: Transformation, Social Security, Reality of Implementation.

A. PRELIMINARY

Everyone needs social security. This is very reasonable because with the fact that there are people who live in carrying out daily activities vulnerable to things that are not desirable for the occurrence of a disaster. For example si-X leaves for work in good health, but in carrying out his job si-X experiences an accident at work, or si-Y this morning is healthy, in the afternoon si-Y faints due to an illness, or suddenly falls due to high tension and result in a stroke, all of which require substantial funds or costs for treatment, both due to workplace accidents and illness. From this condition, it is needed the benefit of social security or social security to help alleviate or solve problems that are sudden and unexpected.

Every person has the right to social security to be able to meet the basic needs of a decent life and increase their dignity towards the realization of a prosperous, just and prosperous Indonesian society. To provide comprehensive social security, the state developed a National Social Security System for all Indonesians.

Article 28H Paragraph (3) of the 1945 Constitution states that “Every person has the right to social security that enables his / her full development as a dignified human being” and Article 34 Paragraph (2) “Every person has the right to have private property rights and such property rights are not may be taken arbitrarily by anyone “. Thus the state has an obligation to provide protection or social security for all Indonesian people. Likewise in the General Declaration of Human Rights (Universal Declaration of Human Rights) in 1948 article 22 stated that everyone as a member of the community is entitled to social

security. (Everyone, as a member of society, has the right to social security). Therefore the people as citizens have the basic right inherent in themselves to get life maintenance by the State. As a consequence, the state must be responsible for protecting, protecting and caring for its citizens without exception and in particular citizens who live in poverty.

Social security is the right of every person whose fulfillment is guaranteed by the constitution and legislation in force. The implementation is mainly related to government efforts in poverty alleviation, which are carried out in stages in accordance with the ability of the state, private sector and the community in its financing. One method of social security financing is to involve the participants themselves, through the obligation to pay contributions called social insurance.

The constitution mandates the State to develop a social security system for all people. That is, all Indonesian people without exception, men and women, rich and poor, young and old, healthy or sick, must be included in the social security system developed by the State. The social security system is the foundation for all Indonesian people to fulfill their basic needs for a decent life and improve their dignity, towards the realization of a prosperous, just and prosperous Indonesian society.

Social security is important to bear the risk if things happen that result in reduced or even loss of community income due to illness, work accident, loss of work, entering old age or retirement. The social security program is designed to bear the various risks that may be encountered in the course of life, especially when entering old age later, when experiencing illness, so that people can still live properly.

In Indonesia social security underwent a transformation process after the promulgation of Law Number 24 of 2011 concerning the Social Security Organizing Agency (hereinafter: BPJS Law). The transformation process will affect the continuity of the implementation of the Social Security program in the future. The government as a regulator, prepared various regulations for the implementation of the BPJS Law to support the operation of the Health BPJS and the change of PT Jamsostek (Persero) to BPJS Employment on 1 January 2014.

The National Social Security Council (DJSN) as a body formed by the Law for the implementation of the National Social Security System (Hereinafter: SJSN), besides strengthening its institutional capacity to be more able to carry out its functions, duties and authorities, also prepares policies and synchronizes the implementation of the National Social Security System. Meanwhile, PT Askes (Persero) and PT Jamsostek (Persero) as providers of social security programs that will transform into BPJS focus on transferring all assets and liabilities, legal rights and obligations and employees to BPJS.

Other stakeholders such as employers, workers in the formal and informal sectors, recipients of contribution assistance, and other related parties closely monitor the transformation process and also provide input so that the transformation process runs in accordance with the politics of social security law as stipulated in the National Social Security System Law and the Social Security Administering Bodies Law .

Three in one transformation of the implementation of social security programs as the implementation of the BPJS Law is a large and complex program because it deals with the goal of fulfilling everyone's constitutional rights to social security. The transformation involves three very fundamental aspects, namely: First, the change in the form of organizers from SOEs to BPJS in the form of public legal entities. Second, the transforma-

tion of the implementation of the Health Insurance program by the Health BPJS, which was immediately followed by the transformation of the organization of the Work Accident Insurance, Old Age Insurance, Pension and Death Insurance programs organized by the BPJS Employment. Third, external supervision of the BPJS is carried out by the DJSN and an independent supervisor namely the Financial Services Authority and the Supreme Audit Agency. The three aspects are carried out simultaneously, because it is not an exaggeration to say as a three in one Social Security transformation related to three aspects at once.

The change in the form of implementation from BUMN to BPJS in the form of a public legal entity brought structural, managerial and cultural changes that had to be prepared comprehensively and professionally at the same time. Organizations, governance and human resources must be developed and formed to support the public service mission carried out by the BPJS. A change in work culture from a business entity to a public legal entity requires time, preparation and serious determination from management and all employees to innovate to maximize the achievement of objectives.

The BPJS established under the Law aims to realize the provision of guarantees to meet the basic needs of a decent life for each participant and / or family member. The performance of the BPJS in organizing social security programs affects people's trust in the State which is constitutionally responsible for developing a social security system for all people. The transformation of the implementation of the Health Insurance program, which was originally carried out by several providers with different names and benefits, starting from 1 January 2014 was transferred to the Health BPJS. The transformation of the Health Insurance program is not easy to do, because it is related to the demographic structure, the level of health, the level of education and welfare of the population, as well as the availability of adequate health fa-

cilities. Equally important is the connection with the fundamental changes in national health policy undertaken by the Government.

From the description above, the problem formulation in this paper is:

1. What is the reality of the implementation of social security to the people in Indonesia?

2. What has happened in the transformations in the social security system in Indonesia?

B. RESEARCH METHODOLOGY

In this article the juridical normative approach used is legal research carried out by examining library materials as a basic material to be investigated by conducting a search of the laws and regulations and the literature relating to the history of social security in Indonesia, the process of transformation social security system and the reality of its implementation in Indonesia. Research is analytical descriptive, that is, describing laws and regulations, scientific studies related to the object of research with the realization of social security in Indonesian society. This approach is primarily intended to see the implementation of positive law that has been written with the statutory approach (statue approach) and its implementation in the community.

Secondary data collection methods through the study of library materials. Secondary data used include: primary legal materials, secondary legal materials and tertiary legal materials.

Data analysis techniques, using qualitative analysis methods, namely efforts made by collecting data, organizing data, sorting it into manageable units, synthesizing it, searching and finding what is important and what is learned, and deciding what can be told to other people.

C. RESULTS

1. Theoretical Analysis

ILO Convention No. 102 defines social security as: Protection provided by the community to the community through a set of public policies against economic and social pressures caused by the loss of part or all of the income due to various risks resulting from illness, pregnancy, childbirth, work accident, disability, unemployment, retirement, old age, premature death are the main earners of income, medical care includes the provision of compensation to family members including children.

Understanding social security (social security) is broader than social insurance (social insurance). Social security includes social insurance and other social insurance that does not apply insurance methods in its implementation. Thus, social insurance is one method of organizing social security. The amount of compensation determined by laws and regulations according to community decisions (social adequacy). It is clear that social insurance requires contributions from contributors by paying unnecessary contributions to other social security (non-contributory). The last example is the Direct Cash Assistance (BLT) and Rice for the Poor (Raskin) program.

Therefore, there are at least two ways of organizing social security. First, through financing from taxes as part of the state / regional budget (universal social security); and second, through participant contributions by paying contributions (capitalization social security).

Social insurance is different from social security, in social insurance there is an emphasis on the participation of prospective beneficiary participants in the implementation of social security rather than the prominence of the state's responsibility to administer it. The social security approach through social insurance is also called the welfare state model or the Bismarck Model, while the public funding approach is called the social state model.

Although in practice there is a combination of the two models as a particular country choice.

Finally in Article 1 number 1 of the Law on the National Social Security System (SJSN Law) it is stipulated that social insurance is “a form of negotiation to guarantee all people to be able to fulfill their basic needs for a decent living. Whereas Article 1 paragraph (3) stipulates the definition of social insurance, which is “a mechanism for collecting funds that is mandatory from contributions to provide protection against socio-economic risks that befall participants and / or family members.

Article 28 H paragraph (3) of the 1945 Constitution stipulates that every person has the right to social security that enables his or her full development as a dignified human being.

The provisions of Article 28 H paragraph (3) of the 1945 Constitution are mainly related to the protection of human rights. Social security is a human right. Constitutionally and human rights social security is related to state (central) responsibility.

Social security can be interpreted as a business that can be done by the community and / or government. These businesses can be grouped into four main business activities, as follows:

- a) Efforts in the form of prevention and development, namely businesses in the fields of health, religion, family planning, education, legal assistance, and others that can be grouped into social services.
- b) Efforts in the form of recovery and healing, such as assistance for natural disasters, the elderly, orphans, people with disabilities and various disabilities that can be referred to as social assistance (social assistance).
- c) Businesses in the form of guidance, in the form of improving nutrition, housing, transmigration, cooperatives, and others can be categorized as social infrastructure (social infra structure).

- d) Businesses in the field of labor protection specifically aimed at the workforce community which is the core of development workforce and always face socio-economic risks, are classified in social insurance.

The four main business activities are then applied in various social security systems to overcome economic risks in the form of:

- a. Prevention and prevention;
- b. Services and benefits;
- c. Social assistance and social insurance;
- d. Commercial insurance and social insurance;
- e. Budgeting and funding;

The objectives of social security in principle are:

- a. As a means of providing basic protection for workers / laborers to overcome economic / social risks or certain events, such as:
 - 1) The need for medical services
 - 2) Delay, loss or decrease in part of income due to:
 - a) Sick;
 - b) Pregnant;
 - c) work accidents and occupational diseases;
 - d) Old age;
 - e) Defects;
 - f) Death of a breadwinner.
- 3) Responsibility for families and children.
 - b. As a means to achieve social goals by providing work peace for workers / laborers who have a large role for the executor of development.

2. The Reality of the Implementation of Social Security in Communities in Indonesia

Social security was introduced in the 19th century in European countries and this became the forerunner of the United Nations declared social security as a human right in the Declaration on Human Rights. This is what makes the birth of social security in the world.

In Indonesia, social security has actually been introduced since the Dutch colonial period. In reference that during the Dutch colonial period workers were included in two types of social security including pension insurance since 1926 and health insurance starting in 1934.

In its development, social security in Indonesia develops along with changes in society. Because basically humans are very open to change and this also makes transformations in the social security system in Indonesia. Social changes in the body of society have an effect on the social or human needs of social security.

Social security at the beginning of independence or the old order only had three main programs regarding social security, including work accident insurance, health insurance and old age insurance programs. The third social security was certainly motivated by the needs of the community at that time. The three programs can be said to be a derivative of social security referred to from ILO Convention No. 102 of 1952 which states that social security is largely intended for the three things, namely the risk of workplace accidents, the risk of vulnerable illnesses (such as maternal and child health) and the risk of poverty in old age.

Social security in the old order was poured into several laws to make it more clear in its interpretation. For example, in social security regarding old age savings poured into progressive tax collection for civil servants every month and many others.

Furthermore, during the new order, social security was further enhanced by improving and adding to social security programs that existed in the old order. During the New Order era, the social security system adopted a system from the community, by the community and for the community through the redistribution of taxes paid by the community in the form of social security. It also builds social security institutions. Although there are some problems, such as setting up a number of social security agencies as a company, causing several polemics, besides that, in fact social security programs under the New Order underpinned better social security programs in the period that followed.

During the period of time the social security program also shifted or transformed its philosophical values. The purpose of the transformation is that the philosophy of organizing social security programs has changed from an industrial relationship between workers and employers to a constitutional relationship between the state and citizens.

This can be reflected in the social security system in the post-reform period which is generally managed by the state contained in a National Social Security System.

In reality in Indonesia, that social security is a word that is still considered taboo in society. This is reflected in several facts that can be seen in responding to or assessing social security provided by the state. In communities where the place of residence is still in the rural sphere is often less touched by the importance of a social security to them. This resulted in many poor people in rural areas lacking equitable services such as being refused treatment at hospitals due to their inability to finance or other reasons because they did not participate in social security provided by the state.

Supposedly, social security is a right and obligation. This means that social security is the right of every citizen to get access to it and is an obligation for the state to make it

happen. But this does not happen in Indonesia, this can be seen from data from the Social Security Organizing Agency in 2014 which states that of the total population of Indonesia (257.5 million people), only the number of people registered as BPJS Health participants is 124,553. 040 inhabitants in the June 2014 period. And in the August 2014 period things increased but were not very significant, totaling 126,487,166 people. With the government's target in 2019 that all Indonesian people must be registered and follow the BPJS with 75% satisfaction, the country must work hard to raise awareness of the importance of social security to the entire community at large.

3. Transformations that Happen to the Social Security System in Indonesia

a. Understanding of Transformation

Transformation is a transformation that includes form, nature, and function. Transformation changes accurately and dramatically form, appearance, and character. To imagine transformation easily, one can look at biological transformations that turn caterpillars into butterflies. After going through a series of processes of change in the cocoon, no caterpillar looks on the butterfly. The appearance and character of the caterpillar changes dramatically. Caterpillars are transformed into beautiful winged insects. He no longer crept and ate foliage, but flew with his wings and alighted on flower petals and smoked nectar, honey extract.

Likewise, the transformation of Indonesia's social security institutions. The transformation of the four state-owned PT (Persero) companies into BPJS is very basic. These changes include the philosophy, legal entity, organization, governance, and organizational culture, as follows:

a) the philosophy of administering social

security is redefined as an effort to realize the citizens' constitutional rights to social security,

- b) the form of a legal entity is changed to a public legal entity with public and private authority, and includes State institutions that are directly under the President,
- c) the organs of the organizing body are converted into organs consisting of a Board of Trustees and Directors with an open recruitment process,
- d) restructuring program governance characterized by social insurance principles, management segmentation into two program groups (health insurance programs and non-health insurance programs), separation of BPJS assets from Social Security Fund assets, and Government fund participation,
- e) organizational culture reflects efforts to realize public objectives to provide certainty of protection and social welfare for all Indonesian people.

The order for the institutional transformation of the social security organizing body is regulated in Law Number 40 of 2004 concerning the National Social Security System (SJSN Law). Furthermore, the formation of the BPJS and the transformation of the governing body are regulated in detail in Law No. 24 of 2011 concerning the Social Security Organizing Body (UU BPJS).

Transformasi presents a new identity in the implementation of social security programs in Indonesia. General Explanation of the tenth paragraph of the SJSN Law explains that, the Social Security Organizing Agency (BPJS) formed by the SJSN Law is a transformation of the ongoing social security administering body and it is possible to form a new governing body.

General Explanation of the BPJS Law the fourth paragraph states that the

BPJS Law is the implementation of Article 5 paragraph (1) and Article 52 of the SJSN Law after the Constitutional Court Decision. These two articles mandate the establishment of the BPJS and the institutional transformation of PT Askes (Persero), PT ASABRI (Persero), PT Jamsostek (Persero) and PT TASPEN (Persero) to become BPJS to accelerate the implementation of the National Social Security System for all people. The institutional transformation of the four Persero was followed by the transfer of participants, programs, assets and liabilities, as well as rights, obligations and employees.

With the BPJS Law, two BPJSs were formed, namely the Health BPJS and the Employment BPJS. BPJS Health runs a health insurance program and BPJS Employment operates a work accident insurance program, old age insurance, pension insurance, and death insurance.

With the establishment of these two BPJS, the range of membership of the social security program will be gradually expanded. Article 67 of Law Number 24 Year 2011 regulates the institutional transformation of PT Askes (Persero) and PT Jamsostek (Persero) into BPJS characterized as follows:

- a) Dissolution without liquidation, so the provisions of Article 142 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies that govern the liquidation of a Limited Liability Company to be dissolved must not be followed.
- b) Dissolution is carried out by order of the BPJS Law, so it does not apply the provisions of Article 64 paragraph (1) of Law Number 19 of 2003 concerning State-Owned Enterprises that determine the dissolution of SOEs with Government Regulation.

The BPJS Law only regulates the transfer of old age savings programs and pension guarantees managed by PT Taspen and

PT Asabri to BPJS Employment no later than 2029. The BPJS Law does not stipulate whether PT Taspen and PT Asabri are dissolved. The procedures for the transfer of the two programs have not been regulated in the BPJS Law, but the Government must regulate them further in Government Regulations (Article 65 and Article 66 of Law Number 24 Year 2011).

b. BPJS Transformation

1) PT. ASKES (Persero)

- Changed to BPJS Health and began operating the health insurance program on 1 January 2014 (Article 60 paragraph (1) of the BPJS Law)

2) PT (Persero) JAMSOSTEK

- Changed to BPJS Employment on January 1, 2014 (Article 62 paragraph (1) of the BPJS Law)
- BPJS Labor at the latest start operating on July 1, 2015, including accepting new participants (Article 62 paragraph (2) letter d of the BPJS Law)

3) PT (Persero) ASABRI

- Complete the transfer of the ASABRI program and the pension payment program to the BPJS Employment no later than 2029 (Article 65 paragraph (1) of the BPJS Law)

4) PT TASPEN (Persero)

- Complete the transfer of the ENT program and pension payment program to the Employment BPJS no later than 2009 (Article 65 paragraph (1) of the BPJS Law)

The next process is the dissolution of PT ASKES (Persero) and PT (Persero) JAMSOSTEK without liquidation. While PT (Persero) ASABRI and PT TASPEN (Persero) are

not explicitly determined in the BPJS Law.

D. CONCLUSION

The reality of the implementation of social security to the people in Indonesia, that social security is still considered taboo in society. This is reflected in several facts that can be seen in responding to or assessing social security provided by the state. In communities where the place of residence is still in the rural sphere is often less touched by the importance of a social security to them. This has resulted in many poor people in rural areas lacking equitable services such as being refused treatment at hospitals due to their inability to finance, or another reason is because they do not participate in social security provided by the state. While the government still allocates a small portion of the budget to provide social security to the community.

Transformations that occur in the social security system in Indonesia, towards the Social Security Organizing Agency (BPJS), namely: PT. ASKES (Persero), changed to BPJS Health and began operating the health insurance program on 1 January 2014 (Article 60 paragraph (1) of the BPJS Law); PT (Persero) JAMSOSTEK, changed to BPJS Employment on January 1, 2014 (Article 62 paragraph (1) of the BPJS Law); PT (Persero) ASABRI, completing the transfer of the ASABRI program and pension payment program to the Employment BPJS no later than 2029 (Article 65 paragraph (1) of the BPJS Law), PT TASPEN (Persero) completes the transfer of the Old Age Insurance program and the pension payment program to the Employment BPJS no later than 2009 (Article 65 paragraph (1) of the BPJS Law). The next process is the dissolution of PT ASKES (Persero) and PT (Persero) JAMSOSTEK without liquidation. While PT (Persero) ASABRI and PT TASPEN (Persero) are not explicitly determined in the BPJS Law.

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