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Limitations of Regulations for Fulfilling the Rights Of Retired TNI and Families as Viewed from Developments in BPJS Health Technology

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Abstract. *This research aims, firstly, to examine and find forms of legal protection for retired TNI officers and their families in obtaining adequate social and health insurance. Second, to examine and find weaknesses in legal protection for retired TNI military personnel and their families in obtaining their rights regarding equitable health services in light of technological developments. third, to find efforts to realize legal protection for retired TNI officers and their families in fulfilling technology-based social and health security rights. This research uses sociological juridical research methods. Primary data is the main data using interviews and field observations. The research paradigm is the constructivism or post positivism paradigm, with the approach used being sociological juridical with qualitative analysis. The legal theory used as analysis is the theory of justice asgrand theory, legal system theory asmiddle theory, and legal protection theory asapply theory. The results of this research relate to regulations regarding legal protection for social and health security for retired TNI military personnel and their families which are regulated in Law Number 34 of 2004 concerning the Indonesian National Army (TNI), Law no. 24 of 2011 concerning BPJS, Minister of Defense Regulation Number 15 of 2014 concerning Health Services Outside the Dependency of the Social Security Administering Agency and Minister of Defense Regulation Number 31 of 2014 concerning Integrated Health Services within the TNI. Of the four basic regulations, it can be stated that they are not yet fair and their implementation has not been able to realize justice in providing positions to retired TNI officers and their families. The factors causing the weakness of legal protection in providing social security and health services for retired TNI military personnel and their families are the existing regulatory and technological factors that do not fully cover the fulfillment of the rights that should be obtained by retired military*

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military officers and their families. The re-construction of the applicable provisions is a form of effort to provide legal certainty based on Pancasila justice to fulfill the rights to social security and health services for retired TNI military personnel and their families.

Keywords: *Legal Guarantees For Health Services; Legal Protection For Social Security; Implementation Of Legal Justice; Rights of retired TNI officers and their families.*

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1. Introduction

Policies issued by the government, such as health regulations, constitute law within a country's territory. Law is an integral part of shared life. In society, humans are always legal subjects who bear rights and obligations. Law regulates and controls humans in living together. As a consequence, the legal system is based on respect and protection of humans. This respect and protection of humans is nothing but a reflection of one's own interests. In this respect for humans there are general requirements for the implementation of the rules of life provided for humans. So law exists in human society. In every society there is always a legal system, in every society there are laws (*where society where right*).¹

Complex problems in every aspect of life are the main source of the development of existing law, for example the development of health technology which is formed because of problems that are growing rapidly over time, therefore health law was formed in order to anticipate and deal with the occurrence of health problems. The health problems that arise resulting in the formation of a legal rule occur due to the rapid increase in the number of health disputes, be it disputes in the institutional sector, disputes in the administrative sector, disputes in the service sector or disputes in the technology sector. One of the goals that led to the formation of the Health Law was to ensure that patients do not suffer physical or immaterial losses and to protect the interests of patients so that their rights can be fulfilled in the form of optimal health services.²

The health aspect is a general aspect that everyone needs, so there is no discrimination in providing health services to both civil society and civil servants who need health services. In the military, the health aspect is a supporting factor in advancing activities in the field of state security. The military has an important role and task, namely as the front guard in guarding and defending the territory of the Unitary State of the Republic of Indonesia (NKRI). With the heavy burden it bears, the military is prepared to face rebellions and prepare for war in maintaining the security of society and the integrity of the country. Therefore, the health aspect in the military is very important as the main support so that military personnel are able to provide protection in the field of security so that optimal peace can be achieved in maintaining the sovereignty of the Republic of Indonesia.³

¹ Sudikno Martokusumo, 1996, *Mengenal Hukum (Suatu Pengantar)*, Liberty, Yogyakarta, P. 27.

² Haryani Safitri, 2004, *Sengketa Medik Alternatif Penyelesaian Perselisihan Antara Dokter Dengan Pasien*, Diadi Media, Jakarta, P. 18.

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³ Menteri Pertahanan, 2019, *Eksistensi TNI Dalam Menghadapi Ancaman Militer Multidimensional Di Era Milenial*, Biro Humas Setjen Kemhan, Jakarta, P. 31.

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There are legal problems in the health aspect that should provide health insurance that can be fulfilled and can be felt by many people. However, because there are obstacles in the health aspect, especially in health institutional disputes and technology disputes, the provision of legal protection guarantees for health has not been fully achieved. This is because the body administering social security and health services (BPJS) does not play an active role in providing welfare to its citizens, both civilians and the military.

Problem Formulation

From the background description, the problems that will be studied are:

1. What are the technology-based BPJS Health legal protection regulations for retired TNI military personnel and their families? Are the existing regulations ideal and fair?
2. What are the weak factors that arise in the BPJS health protection regulations for retired TNI soldiers and their families when linked to developments in health service technology?
3. What are the developments in regulations and technology in the legal protection of retired military personnel and their families to fulfill their rights to social security and health?

Research Objectives and Benefits

In accordance with the problem identification stated above, the objectives to be achieved in this research are:

1. To study, analyze and find forms of technology-based legal protection regulations in fulfilling the rights to social security and health services for retired TNI officers and their families.
2. To study, analyze and find obstacle factors in providing legal protection for retired TNI military personnel and their families in fulfilling their rights to social security and health services in line with technological developments in the health sector.
3. To study, analyze and find efforts to achieve legal protection regulations for social security and health based on technological developments for retired military personnel and their families so that the implementation of existing regulations can fulfill their rights.

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2. Research Methods

This research uses sociological juridical research methods. Primary data is the main data using interviews and field observations. The research paradigm is the constructivism/post positivism paradigm, with the approach used being sociological juridical with qualitative analysis. The legal theory used as analysis is the theory of justice *asgrand theory*, legal system theory *asmiddle theory*, and legal protection theory *asapply theory*.

3. Results and Discussion

BPJS is not the beginning of the Indonesian nation providing social security, starting from the Jamkesmas, Jampersal, Jamsostek, Askes, Taspen, Asabri programs, which have now changed to BPJS. As BPJS Health progresses, many problems arise from regulatory issues, disputes, services, technology to potential fraud issues. Fraud that occurs in National Health Insurance (JKN) can occur in Health Services, BPJS Health, Participants, Providers of medicines and medical devices, as well as other stakeholders. With the existence of problems in the health sector itself, new problems arise which are branches of the core problems which have consequences in the military domain, namely technology-based legal protection for retired TNI officers (TNI retirees) and their families in social security and health service

Legal regulations regarding the provision of social security and health services for retired TNI military personnel and their families have actually been regulated, but the implementation of the applicable legal regulations has not yet been fully realized in reality. In Law Number 34 of 2004 concerning the TNI which relates to the granting of TNI rights, it is contained in Part Five Welfare, Article 49. Every TNI soldier has the right to receive a decent income and is funded entirely from the state defense budget which is sourced from the State Revenue and Expenditure Budget. In article 51 of the TNI Law Number 34 of 2004, which reads "Soldiers who are honorably discharged receive post-service treatment and services, post-service treatment and services as referred to in paragraph (1), including pensions, retirement benefits, allowances or severance pay and maintenance. Health and the implementation of the provisions as intended in paragraph (1) and paragraph (2) are regulated by Government Regulations." And in article 50 paragraph (3) soldiers' families have the right to receive health care, legal aid, mental care, religious services and funeral costs for husbands, wives and children

In the health aspect in the military sector, there are other problems related to the provision of social security and health services for retired TNI military personnel and their families, namely

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the conversion of military health insurance which was originally covered by PT ASABRI (Persero) to BPJS in accordance with technological developments. This creates factors that are detrimental to fulfilling the rights of retired TNI officers and their families in social security and health services. There are various factors of loss experienced, including:

1. In terms of financing design, PT Asabri (Persero) still uses a pay as you go design, with financing using the APBN, so participants feel safer. Meanwhile, the BPJS Employment financing design which uses a full funding design for collecting pension funds is faced with market risks and is vulnerable to conditions such as pandemics and fluctuations in economic growth and there is great concern that it will become unfunded.
2. The Pension Guarantee Program organized by BPJS Employment is considered detrimental in terms of monthly pension salary, namely a maximum of 40%, while PT Asabri (Persero) provides a maximum monthly pension salary of 75%.
3. The Old Age Security Program organized by BPJS Employment is considered burdensome in terms of contribution sources, namely 5.7%, while the program contributions at PT. Asabri (Persero) only 3.25%.
4. The BPJS pension program is paid online using technology and there are delays in payment times, while PT Asabri (Persero) pensioners use cash and to date there has never been a delay in payment times and can strengthen friendship because there are direct meetings between retired TNI military officers.
5. The applicant received the 13th pension benefit, while BPJS Employment retirees currently do not have this benefit.⁴
6. The families of retired military personnel receive benefits from death or death when facing military emergencies and war situations, while BPJS Employment does not yet regulate this benefit issue.⁵

DESCRIPTION	ASABRI	BPJS OF EMPLOYMENT
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⁴ Peraturan Menteri Pertahanan Republik Indonesia Nomor 31 Tahun 2014.

⁵ Undang-Undang Nomor 11 Tahun 2011 Tentang Badan Penyelenggara Jaminan Sosial.

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Pension Funding	Pension benefits are provided on a monthly basis originating from the State Revenue and Expenditure Budget(<i>pay as you go</i>).	Pension benefits are provided on a monthly basis originating from employee and employer contributions of 3%. The maximum salary as a basis for calculation is IDR. 8,512,400,-.
Retirement Benefit Formula	<p>a. $2.5\% \times \text{Soldier Service Period} \times \text{Last Gapok}$.</p> <p>b. Maximum 75% of Last Basic Salary.</p>	$1\% \times (\text{Contribution Period divided by } 12) \times (\text{Weighted Average Annual Wage During the Contribution Period divided by } 12)$.
Amount of Benefit	The first pension is in accordance with the pension benefit formula, the increase in benefits is in accordance with the pension salary regulations set by the Government.	<p>a. The first year is according to the retirement benefit formula.</p> <p>b. Each subsequent year, the pension benefit is calculated as the previous year's pension benefit multiplied by the indexation factor.</p> <p>The maximum pension is IDR</p> <p>3,600,000 per month,adjusted annually based on the previous year's inflation rate.</p> <p>The minimum pension is IDR</p> <p>300,000 per month,customized each year based on the previous year's inflation rate.</p>

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Problems like these are the obstacles in realizing legal regulations for the protection of social security and health services for retired TNI officers and their families. Therefore, there is a need for laws regarding the provision of social security and health services for retired TNI military personnel and their families so that a competent, ideal and fair legal product can be created in line with technological developments in providing health services in order to realize the human rights of retired TNI military personnel and their families.

Renewing these regulations is important to create fair legal products because there are certain provisions which are in conflict with the 1945 Constitution of the Republic of Indonesia (UUD 1945) as the legal basis of the Republic of Indonesia. The provisions of the BPJS Law requested for review of the 1945 Constitution are contained in article 57 letter e and article 65 paragraph (1) of the BPJS Law. That based on article 57 letter e, it explains that the background to the establishment of PT ASABRI (Persero) is to provide special insurance for members of the Armed Forces of the Republic of Indonesia as intended in Article 2 of Government Regulation Number 44 of 1971 concerning Armed Forces Social Insurance (PP ASABRI) which states: "Every A.B.R.I member and Civil Servant is required to become a participant in the A.B.R.I Social Insurance starting from the date of appointment." And that article 65 paragraph (1) of the BPJS Law explains that "PT ASABRI (Persero) has completed the transfer of the Social Insurance program for the Armed Forces of the Republic of Indonesia and the pension payment program to BPJS Employment no later than 2029".

These provisions are considered to be inconsistent with the values contained in the 1945 Constitution, namely Article 28D paragraph (1), Article 28H paragraph (2) and paragraph (3), and Article 34 paragraph (2) as well as the basic values of the State of Pancasila which conditions as follows:

- a. That Article 28D paragraph (1) of the 1945 Constitution states: "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law."
- b. Whereas Article 28H paragraph (2) of the 1945 Constitution states: "Everyone has the right to receive special facilities and treatment to obtain the same opportunities and benefits in order to achieve equality and justice".
- c. That Article 28H paragraph (3) of the 1945 Constitution states: "Every person has the right to social security which enables his/her full development as a human being with dignity".

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d. That Article 34 paragraph (2) of the 1945 Constitution states: "The state develops a social security system for all people and empowers weak and incapable people in accordance with human dignity."

e. That the 5th Principle of Pancasila states: "Social Justice for All Indonesian People"

In overcoming the problem of providing social security and health services caused by conflicting legal interests, the steps that should be taken so that regulatory reforms can be implemented are by implementing justice contained in the values of

¹ GPeraturan Pemerintah Nomor 25 Tahun 1981 Tentang Asuransi Sosial Pegawai Negeri.

¹ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

¹ Pancasila, Sila ke-5 Dasar Negara Indonesia.

the 1945 Constitution and Pancasila because they are legal guidelines and sources of law for the Indonesian state. . There is an article which states that social security and health services for retired TNI military personnel and their families are a state obligation that must be provided in order to fulfill and realize their human rights. Article 2 of the National Social Security System Law (UU SJSN) states "The National Social Security System is organized based on the principle of humanity, the principle of benefit and the principle of social justice for all Indonesian people", the aim of which is "to provide guarantees for the fulfillment of the basic needs of a decent life for each participant and/or their family members."

That in order to implement legal regulations related to social security and health services for retired TNI soldiers and their families, the institutions providing health insurance between ABRI and civil society should not be combined, which should have different institutions in managing their respective insurance because civil society has different responsibilities. with ABRI. This is in accordance with the principle that the benefits of the national social security system will be realized and felt by members of the TNI, both active and retired, when it is implemented by a legal entity that has been running in casu PT ASABRI (Persero) and accommodates well the

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special character of the profession. TNI.⁶ According to Best Practice, the implementation of Social Security in various countries for the military is handled by special institutions, with various special benefits as a form of appreciation, while for civil society the institution that plays a role in the field of social and health insurance is BPJS.

The legal position of PT ASABRI (Persero) as an institution that provides social security for ABRI members and civil servants within the Ministry of National Defense of the Republic of Indonesia is based on Law Number 6 of 1966 concerning the Provision of Pensions, Retirement Benefits and Allowances to Voluntary Military. That social security is the right of everyone without exception, including TNI retirees as stipulated in Article 28H paragraph (3) of the 1945 Constitution, which reads. "Everyone has the right to social security which enables his/her full development as a human being with dignity", as well as the mandate of Article 25 of the Universal Declaration of Human Rights of 10 December 1948 which reads: "Everyone has the right to a standard of living which guarantees health and well-being for himself and his family, including food, clothing, housing and health care as well as necessary social services, and has the right to security in the event of unemployment, illness, disability, widowhood, reaching old age or experiencing other lack of means of livelihood due to circumstances beyond his control."⁷ As well as the mandate of the 5th principle of Pancasila, namely social justice for all Indonesian people, including retired TNI officers and their families.⁸

The health care provided to retired TNI officers and their families has been outlined in existing regulations, however implementation of the applicable regulations has not been fully provided to those concerned as proof of their fulfillment of human rights. Therefore, it is necessary to reform laws related to enforcement of the health service system, health providing institutions and health service technology so that they provide more optimal services. In fact, there are health rights for the families of retired military personnel that require special attention in realizing them because there are several cases where the provision of health services for families of retired military personnel is made difficult in the field of technology-based health administration which aims to provide authentic proof that they really are families of retired military officers.

There are also social disparities in health services provided by families of retired military personnel according to their rank and position, so that if there is a family of retired military

⁶ Peraturan Menteri Pertahanan Republik Indonesia Nomor 15 Tahun 2014.

⁷ Deklarasi Universal Hak Asasi Manusia (HAM) 10 Desember 1948 Pasal 25.

⁸ Pancasila, Sila ke-5 Dasar Negara Indonesia.

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personnel with low rank and position then the provision of health services is almost the same as ordinary civilians without any special services being provided, whereas if there is a family of retired military personnel with a high rank and position, service delivery will be specialized, prioritized and optimal service will be provided. BPJS regulations regarding health service technology-based complaints from families of retired TNI officers also do not have special position powers in accordance with their rights, so that the follow-up given to these complaints cannot be fully implemented by the families of retired TNI military officers.

These factors are serious obstacles that need to be improved both in the field of regulations and in the field of technology-based services. Regulatory improvements that should be made include clarifying and sharpening the provision of health services for retired military personnel so that there are no differences in the services provided regarding health care in accordance with the TNI Law, as well as technology-based service regulations that should be further optimized, such as online registration, online administration, and Online complaints made by families of retired TNI military officers can be prioritized so that in development the provision of technology-based health services provided can be fully realized in realizing the achievement of human rights for families of retired TNI military officers. The formation of new regulations, namely in the field of service and technology, is also important, namely regarding Service Operational Standards (SOP), where in providing health to service families, whether active or retired, there is the same level of priority and health services must be provided optimally and optimally so that the family retired TNI officers not only have their rights fulfilled but can also truly experience the benefits of the specialties that are stated in the governing legal regulations.

4. Conclusion

Legal arrangements for providing social security and medical services are regulated in Law Number 34 of 2004 concerning the Indonesian National Army (TNI), Law no. 24 of 2011 concerning BPJS, Minister of Defense Regulation Number 15 of 2014 concerning Health Services Outside the Dependence of the Social Security Administering Agency and Minister of Defense Regulation Number 31 of 2014 concerning Integrated Health Services within the TNI has not been fair and its implementation has not been able to fulfill the rights of giving positions to retired TNI officers and their families. Obstacle factors that become weaknesses in the regulation of legal protection for the provision of social security and medical services include weaknesses in the legal substance (*legal substantiation*), This can be seen from the applicable regulations, there are still vague norms giving rise to unclear interpretations, the latest regulations regarding the provision of social and health services are burdensome and

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unprofitable for retired TNI officers and their families as well as technology-based service mechanisms in providing legal certainty. has not fully run optimally so that the rights of retired TNI military officers and their families cannot be realized in accordance with the justice contained in the legal basis of the 1945 Constitution and the values of Pancasila. Another factor that becomes an obstacle is the legal structure (*legal structure*), factors originating from legal institutions providing health services such as BPJS which have not been maximal and optimal in carrying out their duties and functions, so that the fulfillment of the rights to health services for retired military personnel and their families cannot be fulfilled. This obstacle factor makes the implementation of the law not in accordance with the principles of justice, so that there is a need for regulatory updates in determining applicable norms as a form of effort to provide legal certainty and justice for retired military personnel and their families in fulfilling their rights related to social security and health services. Through this reform, a form of law enforcement that is fair, comprehensive, coherent, sustainable, adheres to formal and material principles will be created, this will give rise to progressive and fair law for retired TNI officers and their families in implementing the right to legal protection of social security and development-based health services. latest technology. With the reconstruction of regulations, the Human Rights (HAM) of retired TNI military personnel and their families can be fulfilled so that the regulations that are formed are truly capable of realizing legal protection related to social security and health services, and finally the existing regulations are not only in written form but only in written form. guarantee but can also be felt in real implementation of the law which takes the form of a form of legal protection provided by the state to retired military officers and their families.

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