

# **Protection of the Rights of the Old Age Security Fund in Indonesia**

**Rahmatiah HI<sup>1</sup>, Muhammad Reski S<sup>2</sup>**

<sup>1,2</sup>Universitas Islam Negeri Alauddin Makassar

Email : [rahmatiah.rahmatiah69@gmail.com](mailto:rahmatiah.rahmatiah69@gmail.com)

## **Abstract**

The main thing that became the source of the problems when the issuance of the Minister of Manpower Regulation No. 2 of 2022, which is in article 3 which contains the payment of JHT benefits that can only be given when they reach the age of 56 years. The government seems to be less sensitive to this situation, because the reality is that for workers when they are laid off, the disbursement of JHT funds is used to survive, because it is very unfair if the government makes this regulation from the eyes of middle and upper class workers, where this old-age guarantee fund is indeed they use as capital when they have entered retirement. The research used is normative juridical research, so the approach is *astatute approach*. The results of the study illustrate that there are two forms of legal protection for participants in the old-age insurance program at BPJS Ketenagakerjaan for arrears in payment of contributions by employers, namely preventive and repressive legal protection. Preventive legal protection is based on Government Regulation Number 60 of 2015 concerning Amendments to Government Regulation Number 46 of 2015 concerning the Implementation of the Old Age Security Program. Structuring the national social security system is indeed necessary to ensure the welfare of the people from youth to old age. However, the road to an orderly system cannot be done rashly, in haste, and bypasses the protection of the majority of workers who need it most, especially in the midst of the current situation. The delay is required for several years, not just three months as currently stated in the regulation.

**Keywords: Protection, Rights, Old Age Security.**

## **INTRODUCTION**

At the beginning of 2022 the public was shocked by the government suddenly issuing Permenaker No. 2 of 2022 concerning Procedures and Terms of Payment of Old Age Security Benefits (JHT). This Permenaker replaces Permenaker No. 19 of 2015 and as a follow-up to PP No. 15 of 2015 concerning the Implementation of the JHT Program as amended in PP No. 60 of 2015. In this Ministerial Decree, it is explained that JHT and JHT can be disbursed if a worker has reached retirement age, has permanent total

disability, and dies. The polemic is related to the Disbursement of JHT Funds when reaching retirement age.<sup>1</sup>

This Permenaker stipulates that JHT funds can be disbursed at once when participants reach the age of 56. This means that someone who stops working, at any age, can only withdraw JHT funds when he reaches 56 years of age. So this is fairly unfair because in the midst of the current Covid 19 Tsunami situation, there are many workers who have been laid off and if we look at the regulations from the Minister of Manpower, the simulation is that a worker who is laid off at the age of 40 has to wait another 16 years to get the job done. can disburse 100% of the rights to JHT. In fact, the worker has stopped paying dues.<sup>2</sup>

Data from Jobstreet Indonesia shows that workers are affected by the Covid 19 pandemic. The results are very sad, namely as many as 35% of workers have been laid off. We can imagine that there are several million workers whose rights have been detained by the government because of this new regulation. In the previous Permenaker, JHT benefits can be disbursed for workers who stop working, either because of resignation or because of termination of employment, which is paid in cash and at once after passing a waiting period of 1 month from the date of resignation or the date of layoff.

According to the Head of the Ministry of Manpower's Public Relations Bureau, Chairul Fadhly Harahap, the Government has launched various types of policies and social security programs for workers to face various risks, both at work and when not working. Such as accidents, illness, death, layoffs, to situations of age that are no longer productive. The various types of social security are Work Accident Insurance (JKK), Health Insurance (JKN), and Job Loss Insurance (JKP). As for workers who have been laid off (PHK), Chairul Fadhly Harahap said they are entitled to severance pay, long service awards, compensation payments, and old-age security deposits.<sup>3</sup>

The government also launched a new program as a cushion for those affected by layoffs, namely the Job Loss Guarantee (JKP) program in the form of cash, job training and access to labor market information, so that workers are expected to survive and have great opportunities to find new jobs. After considering the number of social security programs for workers, specifically the Old Age Security (JHT) is returned to its function, namely funds that are prepared so that workers in their old age have assets as living

---

<sup>1</sup> Wijayanti, Putri, and Lina Miftahul Jannah. "Implementasi Kebijakan Manfaat Jaminan Hari Tua di Indonesia." *JPSI (Journal of Public Sector Innovations)* 4.1 (2019), hlm. 20-29.

<sup>2</sup> Haqiqie, Ilham. "Perlindungan Hukum Pekerja untuk Mengambil Jaminan Hari Tua yang Kepesertaannya Sebelum 10 Tahun Karena Terkena Pemutusan Hubungan Kerja." *Jurist-Diction* 3.3 (2020) ,hlm. 1053-1066.

<sup>3</sup> Anggi Chrisye Piteradja Masje Siliya Pangkey Joyce Jacinta Rares, "Implementasi Program Jaminan Hari Tua Di Badan Penyelenggara Jaminan Sosial Ketenagakerjaan Kota Manado" (nd), hlm.67.

expenses when they are no longer productive. Therefore, JHT funds should be received by workers at retirement age, total disability, and death.<sup>4</sup>

In contrast to Indonesian ASPEK (Association of Trade Unions) President Mirah Sumirat, she emphasized that the old age guarantee fund belongs to workers/laborers who should not be interfered with by any party, including the government through the Minister of Manpower Regulation (Permenaker) Number 2 of 2022. Mirah said based on data in ASPEK Indonesia, currently approximately 50 percent of workers who take JHT funds are affected by layoffs. He said the layoffs had started since 2015. According to him, mass layoffs occurred during the pandemic and some of the victims of these layoffs did not receive severance pay, even if there were those who received severance pay, the value was only half. The problem with JHT, he said, for workers/labor is for workers who are laid off in the middle of the road, meaning that the worker stops contributing. At that time, when the contribution has stopped, it is no longer allowed for any reason the government or anyone, including BPJS for employment, withholds the funds of the workers/laborers.<sup>5</sup>

From the description above, there is one main thing that became a source of problems when the Permenaker No. 2 of 2022, which is in article 3 which contains the payment of JHT benefits that can only be given when they reach the age of 56 years. The government seems to be less sensitive to this situation, because the reality is that for workers when they are laid off, the disbursement of JHT funds is used to survive, because it is very unfair if the government makes this regulation from the eyes of middle and upper class workers, where this old-age guarantee fund is indeed they use as capital when they have entered retirement. So based on the results of the analysis, the government should revoke this article and return it to the old regulations or review it by making a separate regulation that regulates old-age security funds for workers/laborers so that they can be immediately disbursed in full 100%. In addition, the management of the workers' funds that they invest must be transparent and the government must carry out good coordination between employers and workers as parties whose salaries are deducted for their own contributions, so that in the future if the government makes a regulation it can satisfy all parties.<sup>6</sup>

This is very, very interesting and important to study because it is related to the contribution funds given by the community to the government, it must be used properly because there are fears that there will be parties who take advantage and play games by

---

<sup>4</sup> Piteradja, Anggi Chrisye, Masje Siliya Pangkey, and Joyce Jacinta Rares. "Implementasi Program Jaminan Hari Tua Di Badan Penyelenggara Jaminan Sosial Ketenagakerjaan Kota Manado." *Jurnal Administrasi Publik* 4.49 (2018) ,hlm.45.

<sup>5</sup> Ishak, Nurfaika, Rahmad Ramadhan Hasibuan, and Tri Suhendra Arbani. "Bureaucratic and Political Collaboration Towards a Good Governance System." *Bestuur* 8.1 (2020) ,hlm. 19-26.

<sup>6</sup> Situmorang, Chazali Husni. "Komitmen Negara Dalam Memberikan Jaminan Hari Tua Bagi Pekerja." *Sosio Informa: Kajian Permasalahan Sosial dan Usaha Kesejahteraan Sosial* 3.3 (2017). ,hlm. 23.

taking advantage of the loopholes in the regulations. In addition, the government seems to turn a blind eye and is not merciful because in the midst of a pandemic situation like this where the economic conditions are very difficult, they still have time to make regulations that make it difficult for the community, especially for the workers.

## **RESEARCH METHODS**

The research method that the author uses in the process of writing this research is using a normative legal research method (juridical normative), namely this research is focused on examining discussions concerning the rules or norms in positive law. Normative legal research is also commonly called doctrinal legal research, meaning that this research is carried out or aimed only at written regulations or even applicable law. This research is called legal research because this research focuses more on secondary data in related libraries or journals. This method basically aims to make it easier for researchers or those who will read the results of this study to clearly understand the problem so that they can find out within a juridical framework, both in terms of interpretation of the relevant laws and regulations or by using existing legal theory. The research used is normative juridical research, so the approach is *astatute approach*. This approach examines the laws and regulations related to what we will examine, namely the “Polemic of the Old Age Guarantee Fund through the Minister of Manpower Regulation No. 2 of 2022”.

## **RESULT AND DISCUSSION**

### **Legal Protection for Participants in the Old Age Security Program**

Indonesia is one of the countries that is in the process of prospering all its people. Where this is the right for every citizen to obtain social security that allows his full development as a dignified human being, guaranteed by the 1945 Constitution of the Republic of Indonesia (UD NRI 1945) as stated in Article 28H paragraph (3) and Article 34 paragraph (2). In order to fulfill the rights of citizens to social security and the mandate of the 1945 Constitution of the Republic of Indonesia, the government has developed various social security programs, both organized by insurance schemes and assistance schemes.<sup>7</sup>

However, in this case, the various social security programs are implemented partially by different implementing bodies and have not been integrated into a single unit that becomes a national and prolonged social security system.<sup>8</sup>Talking about guarantees

---

<sup>7</sup> Agara, Andriawan Perdana Dista, Budi Santoso, and Dhiana Puspitawati. "Perlindungan Hukum Peserta Program Jaminan Hari Tua pada Badan Penyelenggara Jaminan Sosial Ketenagakerjaan atas Penunggakan Pembayaran Iuran oleh Pemberi Kerja." *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 6.1 (2021), hlm. 11-17.

<sup>8</sup> Andriawan Perdana Dista Agara, Budi Santoso, and Dhiana Puspitawati, “Perlindungan Hukum Peserta Program Jaminan Hari Tua Legal Protection of Participants of the Old Age Guarantee Program At the Social Security Organizing Body of Employment,” *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 6 (2021), hlm. 11–17.

provided by the government, one of the products is old age insurance. This guarantee is intended when formal workers have entered an unproductive age while currently still working. Formal workers in question are workers who do have a special attachment to a company or other that enters into an agreement. The idea of post-employment welfare is a crucial matter, considering that welfare that is arguably important is the welfare that is guaranteed when the person concerned is unable to work. Not only for workers in the business sector that provide profits, or companies, but also for civil servants, both civil and military. In this case, old-age social security becomes the main pillar to realize the welfare of post-unproductive workers.<sup>9</sup> Because every human being has the right to get social security as regulated in Article 22 jo. Article 25 of the Universal Declaration of Human Rights. The United Nations 1948 stated that: "Everyone, as a member of society, has the right to guarantees. Everyone, as a member of society, has the right to social security: in the event of unemployment, illness, disability, inability to work, widowhood, old age."<sup>10</sup>

Legal protection needs to be supported by legal certainty. Legal certainty can be guaranteed when the law in question uses good language, in the sense of a structure or term, so that it does not cause multiple interpretations. The protection of social welfare is the responsibility of a state. The basis or basis for regulating the welfare of the community is stated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which guarantees the right to work and a decent life for the people of Indonesia. The right to work and to earn remuneration in an employment relationship is also regulated in Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The state is obliged to guarantee the welfare of the community, especially workers in Indonesia to obtain legal protection in this case related to socio-economic security rights. The protection given to workers is called work protection. Work protection is grouped into three types, namely economic, social and technical protection. Economic protection is often referred to as social security, namely protection related to the income of workers which includes efforts to provide sufficient income for the living needs of workers and their families. Social protection is provided in the form of health insurance for workers. Technical protection or work safety is defined as all rules and efforts aimed at protecting workers from work risks related to the use of tools/machines, hazardous/toxic materials, type of work, location, time and workplace conditions during the working period. Protection provided to participants in the old-age insurance program

---

<sup>9</sup> Ilham Haqiqie, "Perlindungan Hukum Pekerja Untuk Mengambil Jaminan Hari Tua Yang Kepesertaannya Sebelum 10 Tahun Karena Terkena Pemutusan Hubungan Kerja," *Jurist-Diction* 3, no. 3 (2020), hlm. 1053.

<sup>10</sup> Febri, Nabilla Putri, and Muhammad Abiyu Arhab. "Masalah Penetapan Manfaat Jaminan Hari Tua (JHT) Setelah Terbitnya Peraturan Menteri Ketenagakerjaan Nomor 2 Tahun 2022." *Jurnal Hukum Lex Generalis* 3.5 (2022), hlm. 395-411.

includes economic protection or social security related to employee benefits or wages earned by workers.<sup>11</sup>

The basic essence of social security protection is formed from the SJSN Law. The law is considered an early reform of national social security in Indonesia. Fundamental changes to social security for workers include participation in obtaining social security benefits, not only for formal workers but also for informal workers. Protection of workers can be done if they are registered as participants in the JHT program organized by BPJS Ketenagakerjaan.<sup>12</sup>

Furthermore, in 2004 the government also issued Law No. 40 of 2004 concerning the National Social Security System, hereinafter referred to as Law. SJSN. The law is related to the 4th Amendment to the 1945 Constitution concerning amendments to Article 34 paragraph (2), which now reads: "The state develops a social security system for all people and empowers the weak and incapable in accordance with human dignity." So with the clause in the article that the SJSN Law has adopted and implemented the interests of the people, especially for workers with inactive status who are declared retired due to having reached the age of 57 (fifty-seven) years based on Article 15 paragraph (2) PP No. 45 of 2015 concerning Pension Guarantee Program Operators. In this case, the government makes rules regarding this guarantee through the SJSN Law to implement the legal protection principle for the community.<sup>13</sup>

Where the SJSN Law is implemented on the basis of 3 (three) principles, namely; humanity, benefits and social justice for all the people.<sup>14</sup> As explained in the previous paragraph, the implementation of the product of the national social security system is one of the old-age guarantees, where this guarantee is carried out based on Article 37 of the National Social Security Law which states:

1. Benefits of guarantees old age In the form of cash paid at once when the participant enters retirement age, dies, or experiences permanent total disability.
2. The amount of the old-age security benefit is determined based on the total accumulated contributions of the participants who have deposited plus the result of the development.

---

<sup>11</sup> Laliatu, Inca Rahel, Desie MD Warouw, and Lingkan E. Tulung. "Peranan Humas dalam Mensosialisasikan BPJS Ketenagakerjaan pada Pedagang Pasar Segar Paal2." *Acta Diurna Komunikasi* 6.3 (2017), hlm. 67.

<sup>12</sup> Prasasti Nugrahaning Gusti et al., "Perlindungan Hukum Peserta Program Jaminan Hari Tua Yang Perusahaannya Menunggak Pembayaran Iuran Di Kota Semarang (Studi Kasus PT Masscom Graphy Semarang) Prasasti Nugrahaning Gusti, Susilo Andi Darma, SH, M.Hum." (2020), hlm. 45.

<sup>13</sup> Sutrisno, Hafiz. "Pengaruh Bpjs Ketenagakerjaan Dalam Meningkatkan Kesejahteraan Tenaga Kerja." *PREPOTIF J. Kesehat. Masy* 4.1 (2020), hlm. 78-84.

<sup>14</sup> Jemikan, Jemikan. "Kajian Yuridis terhadap Pelaksanaan BPJS Ketenagakerjaan di Lingkungan Yayasan Perguruan 17 Agustus 1945 Surabaya." *DiH: Jurnal Ilmu Hukum* (2018), hlm.87.

3. Payment of old-age benefits can be interpreted after membership has reached a minimum of 10 (ten) years.
4. If the participant is declared dead, then his legal heirs are entitled to receive the old-age benefits.
5. The clauses in paragraphs (3) and (4) are further regulated in Government Regulation no. 60 of 2015 concerning Old Age Security (hereinafter referred to as PP JHT).<sup>15</sup>

In this case, it should be noted that there is a conflict between the rules in the SJSN Law and the implementation of old-age security payments to workers as stated in Article 37 paragraph (3) of the SJSN Law with implementing regulations in this case PP No. 60 of 2015 concerning Old Age Security. Although the PP has a preference principle, namely *Lex Specialis Derogat Legi Generalis*, which PP has a special nature than the SJSN Law which only regulates general matters, it is important to know that PP is actually only an implementing regulation of the Act, so the principle of *Lex Superior Derogat Legi Inferiori*, in which higher-level laws and regulations override lower-level laws and regulations, unless the substance of higher-level legislation regulates matters which are stipulated by law to be the authority of lower-level legislation. Which can be interpreted more specifically that in the explanation of Article 26 paragraph (1) Letter a PP JHT should be in line with Article 37 paragraph (3) of the SJSN Law which regulates the minimum limit for JHT participation to be paid to workers.<sup>16</sup>

So in this case the researchers found differences in the implementation of JHT payments to participants, where the SJSN Law requires a minimum of 10 years of participation, and in PP No. 60 of 2015 also synchronizes the minimum length of participation, but the problem is if you read the explanation in Article 26 paragraph (1) letter a, workers are allowed to take JHT when they stop working without setting a minimum time for participation. Therefore, based on the explanation above, the researcher is interested in studying further regarding the implementation of the time for payment of the old-age security when the worker is active or when the worker is about to enter retirement age or in the event of termination of employment. In which case the researcher is interested in studying and conducting research in the form of a thesis. With the hope of creating clarity for the parties, namely for companies that have the

---

<sup>15</sup> Kusuma, Rahmawati, et al. "Hak Peserta Badan Penyelenggara Jaminan Sosial Ketenagakerjaan." *Pakuan Law Review* 7.2 (2021), hlm. 194-205.

<sup>16</sup> Heni Hirawati2 Indah Lestari1 and Email:, "Analisis Sistem Klaim Jaminan Hari Tua (Jht) Pada Badan Penyelenggara Jaminan Sosial (Bpjs) Ketenagakerjaan Cabang Cilacap" 7, no. 2 (2020), hlm. 9–19.

responsibility to pay old-age benefits to workers. And the same goes for workers knowing the legality of in any event old-age insurance can be taken.<sup>17</sup>

There is a separation of categories or groups related to workers in obtaining their social security rights. The classification as described in Presidential Regulation Number 109 of 2013 concerning the Phases of Social Security Program Participation, namely the types of large, medium, small, and micro companies. The categories of companies with the most arrears are the types of medium, small, and micro companies. The large company category does not pay dues in arrears because it has systematic management and is supported by good financial management. Many companies in the medium to micro category are in arrears in payment of contributions, because these companies are not supported by good financial management and management.<sup>18</sup>

Legal protection is carried out to protect the dignity and worth, as well as the recognition of human rights. Legal protection in the form of a collection of rules or rules aimed at legal subjects to avoid arbitrary actions. Law is a collection of rules or rules that can protect one thing from another. Laws are made to regulate or limit human behavior in order to create order, peace, and avoid chaos that may occur in society. Legal protection is related to the role and function of law as a regulator and protector in all public interests. This is in accordance with Malinowski's opinion in his book entitled "Crime and Custom in Savage Society" that the law does not only play a role in situations full of violence and conflict, but the law also plays a role in daily activities.

Legal protection is carried out to ensure the welfare of the community in carrying out the life of the nation and state. Legal protection is divided into two types, namely preventive and repressive legal protection. Preventive legal protection is that legal subjects are given the opportunity to file objections or opinions before a government decision gets a definitive form, which aims to prevent disputes from occurring. Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia belongs to the category of repressive legal protection.<sup>19</sup>

Preventive protection for JHT program participants for arrears in payment of contributions by the company is guided by Government Regulation Number 60 of 2015

---

<sup>17</sup> Ade Pradepta Putra, "Hubungan Kualitas Pelayanan Dengan Kepuasan Konsumen Bpjs Ketenagakerjaan Pada Program Jaminan Hari Tua ( Jht ) Di Samarinda," *eJournal Psikologi*, 5, no. 19 (2017), hlm.107–114.

<sup>18</sup> Riefriani, V. A., et al. "The effect of perceived value and service quality on customer satisfaction program Jaminan Hari Tua (JHT) at BPJS Ketenagakerjaan Palembang branch office (Case study on salary recipient category participants)." *Contemporary Research on Business and Management*. CRC Press, 2020, Hlm. 293-296.

<sup>19</sup> Triana Rezky Tahir Latif, "Analisis Pengendalian Intern Atas Pengelolaan Dana Jaminan Hari Tua Dan Pengaruhnya Terhadap Laporan Keuangan Pada Bpjs Ketenagakerjaan Cab. Makassar," *UIN Maulana Malik Ibrahim*, 2014, Hlm. 64.



concerning Amendments to Government Regulation Number 46 of 2015 concerning the Implementation of the Old Age Security Program which explains that the JHT balance can be taken when the worker as a participant has entered retirement . The intended retirement age is when the participant quits or is dismissed from his job. The repressive protection for JHT program participants for arrears in payment of contributions by the company is carried out by the BPJS Employment which is guided by the internal Standard Operating Procedures (SOP) from the BPJS, because there are no laws and regulations that regulate it. The steps taken by the BPJS, in this case the supervisory and examiner division (Wasrik), are: (1) issuing a Statement of Arrears of Contributions (SPMI); (2) if within seven days there is no response regarding the SPMI that has been given, the company in arrears will be summoned; (3) if the company is not present within the stipulated time, a field inspection will be conducted on the company concerned; (4) after the field inspection, the Findings of the Examination Results (THP) are obtained which shall be carried out seven days after receiving the letter from BPJS; (5) if the field inspection step is not responded positively by the entrepreneur or the employer, the first warning will be given; (6) if the company after the first warning does not have good intentions to fulfill its obligations, it will be given a second warning; (7) if there is still no response, BPJS Employment will cooperate with the District Attorney or the KPKNL. This measure should be effective enough to overcome problems related to arrears in payment of contributions made by the company.

### **Polemics Related to Permenaker No. 2 of 2022.**

The polemic surrounding the Regulation of the Minister of Manpower Number 2 of 2022 concerning Procedures and Requirements for Payment of Old Age Security Benefits or JHT recently is the result of a decision that came out at an inopportune time, the absence of an inclusive and affordable job loss insurance program for workers when they drop out of work, as well as the snowball effect of public distrust in the government. It is undeniable that an organized social security system is needed to protect people in every phase of life, from birth to death. Therefore, at first glance, the legal and theoretical reasons for the government to return the Old Age Security (JHT) to its original function as old age savings according to its designation can be understood.<sup>20</sup>

However, the main purpose of public policy is for the welfare of society. Therefore, policies cannot be issued only by considering the accuracy of the juridical and theoretical aspects, but also taking into account the empirical and sociological conditions of society. Policies that are correct, but insensitive and irrelevant to the needs of the majority of the people today, will still not be able to achieve their original goal, namely

---

<sup>20</sup> Hidayah Yulianty Harjono, "Pengembangan Dana Jaminan Hari Tua Dalam Perspektif Hukum Islam (Studi Kasus Pada BPJS Ketenagakerjaan Di Tangerang Selatan)," *Orphanet Journal of Rare Diseases*, 2020. hlm. .45.

to create a better standard of living for the people who are the subjects of their protection.

In fact, the JHT program has been and especially now is still the hope of workers to survive when they drop out of work. Not everyone receives severance pay according to their entitlements when laid off. Moreover, under the pretext of the Covid-19 pandemic that hit business conditions and the birth of the Job Creation Act, the severance pay that workers get is now much smaller than before. In some cases, workers were even laid off without severance pay.

Not everyone also has the luxury to save, invest, and have an emergency fund, because they have to survive only from their monthly salary (*paycheck to paycheck*). Moreover, during a pandemic, most people are in a more vulnerable financial condition than usual.<sup>21</sup>

So, before rushing to close workers' access to their retirement savings, there are several things that the government must ensure. First, are there any other commensurate programs to protect workers when they lose their livelihood? It is true that there is a Job Loss Guarantee (JKP) which will be launched in the near future. However, the program is still very exclusive for permanent formal workers (Uncertain Time Work Agreement/PKWTT) who have been laid off. The program does not pay attention to the fate of workers who resign (*resign*) and contract workers (Specific Time Work Agreements / PKWT) whose contracts have expired. In fact, contract workers still dominate the formal workforce structure in Indonesia. Data from the National Labor Force Survey (Sakernas) processed by the World Bank, in 2019, contracted (temporary) workers reached 59 percent or 17,730,396 people of the total formal workers. This number will increase after the Job Creation Law which encourages a flexible job market, such as the ease of hiring contract workers and *outsourcing*.<sup>22</sup>

Workers *Resigned* also dominate the reasons for JHT claims over the last five years. BP Jamsostek data, the number of JHT claims caused by *resignation* is in the range of 70 percent. Before the pandemic, in 2019, the number was 77.65 percent. After the pandemic, in 2020, the number is 75.76 percent. For workers who are not covered by this JKP, the government offers various other social assistance programs, such as the Pre-Employment Card and UMi (capital loan assistance for micro-small business actors). However, these options oversimplify matters. This is because there is no guarantee that the worker concerned can access it. After all, not everyone *resigns* of their own accord or

---

<sup>21</sup> Supeno, Regina, Desie MD Warouw, and Herry Mulyono. "Peran Komunikasi Bpjs Kepada Pelaku Usaha Tentang Jaminan Sosial Ketenagakerjaan (Studi pada pelaku Usaha Di Wilayah Kelurahanmapanget)." *Acta Diurna Komunikasi* 5.2 (2016), hlm.12.

<sup>22</sup> Muhammad Arifin, "Tinjauan Atas Klaim Jaminan Hari Tua (JHT) Pada BPJS Ketenagakerjaan Cabang Bogor Kota.," no. January (2021), hlm.34.

to start a business. There are many factors, from *atoxic*, to being 'forced' *toresign* so the company doesn't have to pay severance pay.<sup>23</sup>

Second, is JKP accessible to eligible workers? As is known, to be registered with JKP, workers must be registered in other Social Security programs. Large and medium enterprises must include their workers in the National Health Insurance (JKN), Work Accident Insurance (JKK), JHT, Pension Insurance (JP) and Death Insurance (JKM) programs. Meanwhile, micro and small businesses are at least in the JKN, JKK, JHT, and JKM programs.<sup>24</sup>

So far, the low compliance of employers to register their workers with Jamsostek has become a classic problem that makes the social safety net for workers so fragile. There are still many cases where employers do not register their workers or only some of their workers, to avoid the obligation to pay contributions. BP Jamsostek data, until December 2021, only 10.9 million workers are registered in the JKP program. This number is still far below the 30.6 million workers who are active participants of BP Jamsostek as of December 2021, or only half of the total 20.8 million formal workers registered as wage recipients.<sup>25</sup>

Program accessible to workers *JKP*? Government Regulation Number 37 of 2021 concerning the Implementation of JKP which requires workers to submit claims for JKP benefits no later than three months after being laid off makes it difficult for workers to access JKP benefits. Because, in reality, the process of industrial relations disputes related to layoffs usually takes a long time, more than three months.<sup>26</sup>

With the three-month time limit, workers seem to be faced with the choice of accepting the company's decision in order to quickly claim JKP benefits, or firmly fight for their severance pay with the risk of losing their cash rights from JKP. If the various problems above have not been addressed, JKP can only be enjoyed by a handful of workers. This may not be a big problem if workers can still access their JHT funds. However, with Permenaker No 2/2022, people who are not protected by JHT or JKP will

---

<sup>23</sup> TD, Kadek Yuda Kumala, Anak Agung Sagung Laksmi Dewi, and Ni Made Puspasutari Ujjanti. "Mekanisme Pencairan Klaim Badan Penyelenggara Jaminan Sosial (BPJS) Ketenagakerjaan Jaminan Hari Tua di Tengah Pandemi Covid-19." *Jurnal Interpretasi Hukum* 2.2 (2021), hlm. 315-319.

<sup>24</sup> Fitri, Mila Amalia, Farina Firda Eprilia, and Fajry Awwaliyah Praptiwi. "*Quo Vadis* Polemik Jaminan Hari Tua (JHT) Bagi Masa Depan Tenaga Kerja di Indonesia dalam Peraturan Menteri Ketenagakerjaan Nomor 2 Tahun 2022." *Jurnal Hukum Lex Generalis* 3.5 (2022), hlm. 350-367.

<sup>25</sup> Suamperi. SHMH Afifah Garda Sabila, Dr. Sanidjar Pebrihariati. R SH, MH, "Prosedur Perolehan Jaminan Hari Tua Dan Jaminan Kematian Dari Bpjs Terhadap Pegawai Pt.Kai Di Kota Padang," no. 2 (1993), hlm. 6-7.

<sup>26</sup> Situmorang, Chazali Husni. "Komitmen Negara Dalam Memberikan Jaminan Hari Tua Bagi Pekerja." *Sosio Informa: Kajian Permasalahan Sosial dan Usaha Kesejahteraan Sosial* 3.3 (2017), hlm.45.

find it difficult to make a living. As a consequence, people can fall into poverty or fall into a vicious circle of moneylenders and online loans.<sup>27</sup>

The strong opposition from the workers, including from the trade unions that have been in the inner circle of the National Tripartite Cooperation Institute, is understandable. Because, this issue is as urgent as a matter of survival (*survival*). This important issue becomes even more critical when the working class's level of trust in the government is at its lowest, after the last two years faced with policies that reduce workers' rights.<sup>28</sup>

When we lock workers' access to JHT funds, what happens in many countries is the exact opposite. The study "Access to Mandatory Retirement Savings in Times of Covid-19: Public Policy Considerations" by the Inter-American Development Bank shows that the socio-economic crisis due to Covid-19 has forced various countries to relax rules for disbursing pension funds. Easing access to pension funds before old age is even made in countries that already have job loss insurance programs. Of course, these countries also face a dilemma between loosening the disbursement of pension funds and maintaining the resilience of pension savings funds. However, the study shows that there are various ways that can be taken to maintain the investment governance of pension funds without having to ignore people who are in trouble. Therefore, Permenaker No 2/2022 needs to be temporarily suspended. Structuring the national social security system is indeed necessary to ensure the welfare of the people from youth to old age. However, the road to an orderly system cannot be done rashly, in a hurry, and bypasses the protection of the majority of workers who need it most, especially in the midst of the current situation.<sup>29</sup>

The delay is required for several years, not just three months as currently stated in the regulation. At least, until the JKP is operational, the deficiencies can be corrected, and we have an inclusive and effective job loss insurance program to support workers when they drop out of work.<sup>30</sup> At that time, JHT can be returned to its khitah to ensure the welfare of the community in old age. If it is purely aimed at improving the welfare of the community and organizing the national social security system, if the condition of BP

---

<sup>27</sup> Lestari, Indah, and Heni Hirawati. "Analisis Sistem Klaim Jaminan Hari Tua (Jht) Pada Badan Penyelenggara Jaminan Sosial (Bpjs) Ketenagakerjaan Cabang Cilacap." *JAB (Jurnal Akuntansi & Bisnis)* 7.02 (2022), hlm.56.

<sup>28</sup> Arbani, Tri Suhendra. "Analisis Yuridis Cabang Pemerintahan Keempat "The Fourth Branch Of Government" dalam Struktur Ketatanegaraan di Indonesia." *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 5.2 (2018), hlm.90.

<sup>29</sup> Helweldery, Alfrenso ER. "Sanksi Atas Pelanggaran terhadap Pelaksanaan Jaminan Sosial Ketenagakerjaan Menurut Undang-Undang No. 24 tahun 2011 Tentang Badan Penyelenggara Jaminan Sosial (BPJS)." *Lex Et Societatis* 7.4 (2019), hlm. 34.

<sup>30</sup> Sihotang, Muhammad Afandi, Amelia Amelia, and Fazrina Saumi. "Penerapan Metode Kuadrat Terkecil Dalam Menentukan Saldojht (Jaminan Hari Tua) Dalam Waktu 3 Tahun Kedepan." *Jurnal Gamma-Pi* 1.1 (2019): 25-28.

Jamsostek funds is still safe as the government claims, if there is no other purpose behind this policy, the government should not hesitate and be reluctant to temporarily delay the implementation. Permenaker No. 2/2022.

## **CONCLUSION**

There are two forms of legal protection for participants in the old-age insurance program at BPJS Ketenagakerjaan for arrears in payment of contributions by employers, namely preventive and repressive legal protection. Preventive legal protection is based on Government Regulation Number 60 of 2015 concerning Amendments to Government Regulation Number 46 of 2015 concerning the Implementation of the Old Age Security Program. Repressive legal protection is guided by the internal Standard Operating Procedures (SOP) of the BPJS Ketenagakerjaan. The threat of sanctions for companies that are in arrears in payment of BPJS Employment contributions are in the form of fines and administrative sanctions. The sanction is in the form of a fine of 2% of the total dues that must be paid every month for being in arrears. Sanctions in the form of administrative sanctions in the form of a written warning or not being able to obtain certain public services such as at the central, provincial, and district/city government institutions related to the BPJS Employment request.

Structuring the national social security system is indeed necessary to ensure the welfare of the people from youth to old age. However, the road to an orderly system cannot be done rashly, in a hurry, and bypasses the protection of the majority of workers who need it most, especially in the midst of the current situation. The delay is required for several years, not just three months as currently stated in the regulation. At least, until the JKP has been implemented, and deficiencies can be corrected, and we have an inclusive and effective job loss insurance program to support workers when they drop out of work. At that time, JHT can be returned to its khitah to ensure the welfare of the community in old age. If it is purely aimed at improving the welfare of the community and organizing the national social security system, if the condition of BP Jamsostek funds is still safe as the government claims, if there is no other purpose behind this policy, the government should not hesitate and be reluctant to temporarily delay the implementation. Permenaker No. 2/2022.

## **REFERENCES**

### **Journal**

Ade Pradepta Putra, "Hubungan Kualitas Pelayanan Dengan Kepuasan Konsumen Bpjs Ketenagakerjaan Pada Program Jaminan Hari Tua ( Jht ) Di Samarinda," *eJournal Psikologi*, 5, no. 19 (2017).

Agara, Andryawan Perdana Dista, Budi Santoso, and Dhiana Puspitawati. "Perlindungan Hukum Peserta Program Jaminan Hari Tua pada Badan Penyelenggara Jaminan Sosial Ketenagakerjaan atas Penunggakan Pembayaran Iuran oleh Pemberi Kerja." *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 6.1 (2021).

Andryawan Perdana Dista Agara, Budi Santoso, and Dhiana Puspitawati, "Perlindungan Hukum Peserta Program Jaminan Hari Tua Legal Protection of Participants of the Old Age Guarantee Program At the Social Security Organizing Body of Employment," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 6 (2021).

Anggi Chrisye Piteradja Masje Siliya Pangkey Joyce Jacinta Rares, "Implementasi Program Jaminan Hari Tua Di Badan Penyelenggara Jaminan Sosial Ketenagakerjaan Kota Manado" (nd).

Arbani, Tri Suhendra. "Analisis Yuridis Cabang Pemerintahan Keempat "The Fourth Branch Of Government" dalam Struktur Ketatanegaraan di Indonesia." *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 5.2 (2018).

Febri, Nabilla Putri, and Muhammad Abiyyu Arhab. "Masalah Penetapan Manfaat Jaminan Hari Tua (JHT) Setelah Terbitnya Peraturan Menteri Ketenagakerjaan Nomor 2 Tahun 2022." *Jurnal Hukum Lex Generalis* 3.5 (2022).

Fitri, Mila Amalia, Farina Firda Eprilia, and Fajry Awwaliyah Praptiwi. "Quo Vadis Polemik Jaminan Hari Tua (JHT) Bagi Masa Depan Tenaga Kerja di Indonesia dalam Peraturan Menteri Ketenagakerjaan Nomor 2 Tahun 2022." *Jurnal Hukum Lex Generalis* 3.5 (2022).

Haqiqie, Ilham. "Perlindungan Hukum Pekerja untuk Mengambil Jaminan Hari Tua yang Kepesertaannya Sebelum 10 Tahun Karena Terkena Pemutusan Hubungan Kerja." *Jurist-Diction* 3.3 (2020).

Heni Hirawati<sup>2</sup> Indah Lestari<sup>1</sup> and Email:, "Analisis Sistem Klaim Jaminan Hari Tua (Jht) Pada Badan Penyelenggara Jaminan Sosial (Bpjs) Ketenagakerjaan Cabang Cilacap" 7, no. 2 (2020).

Helweldery, Alfrenso ER. "Sanksi Atas Pelanggaran terhadap Pelaksanaan Jaminan Sosial Ketenagakerjaan Menurut Undang-Undang No. 24 tahun 2011 Tentang Badan Penyelenggara Jaminan Sosial (BPJS)." *Lex Et Societatis* 7.4 (2019).

Hidayah Yulianty Harjono, "Pengembangan Dana Jaminan Hari Tua Dalam Perspektif Hukum Islam (Studi Kasus Pada BPJS Ketenagakerjaan Di Tangerang Selatan)," *Orphanet Journal of Rare Diseases*, 2020.

Ishak, Nurfaika, Rahmad Ramadhan Hasibuan, and Tri Suhendra Arbani. "Bureaucratic and Political Collaboration Towards a Good Governance System." *Bestuur* 8.1 (2020):

Ilham Haqiqie, "Perlindungan Hukum Pekerja Untuk Mengambil Jaminan Hari Tua Yang Kepesertaannya Sebelum 10 Tahun Karena Terkena Pemutusan Hubungan Kerja," *Jurist-Diction* 3, no. 3 (2020).

Jemikan, Jemikan. "Kajian Yuridis terhadap Pelaksanaan BPJS Ketenagakerjaan di Lingkungan Yayasan Perguruan 17 Agustus 1945 Surabaya." *DiH: Jurnal Ilmu Hukum* (2018).

Kusuma, Rahmawati, et al. "Hak Peserta Badan Penyelenggara Jaminan Sosial Ketenagakerjaan." *Pakuan Law Review* 7.2 (2021): 194-205.

Lalihatu, Inca Rahel, Desie MD Warouw, and Lingkan E. Tulung. "Peranan Humas dalam Mensosialisasikan BPJS Ketenagakerjaan pada Pedagang Pasar Segar Paal2." *Acta Diurna Komunikasi* 6.3 (2017).

Lestari, Indah, and Heni Hirawati. "Analisis Sistem Klaim Jaminan Hari Tua (Jht) Pada Badan Penyelenggara Jaminan Sosial (Bpjs) Ketenagakerjaan Cabang Cilacap." *JAB (Jurnal Akuntansi & Bisnis)* 7.02 (2022).

Piteradja, Anggi Chrisye, Masje Siliya Pangkey, and Joyce Jacinta Rares. "Implementasi Program Jaminan Hari Tua Di Badan Penyelenggara Jaminan Sosial Ketenagakerjaan Kota Manado." *Jurnal Administrasi Publik* 4.49 (2018).

Prasasti Nugrahaning Gusti et al., "Perlindungan Hukum Peserta Program Jaminan Hari Tua Yang Perusahaannya Menunggak Pembayaran Iuran Di Kota Semarang (Studi Kasus PT Masscom Graphy Semarang) Prasasti Nugrahaning Gusti, Susilo Andi Darma, SH, M.Hum." (2020).

Riefriani, V. A., et al. "The effect of perceived value and service quality on customer satisfaction program Jaminan Hari Tua (JHT) at BPJS Ketenagakerjaan Palembang branch office (Case study on salary recipient category participants)." *Contemporary Research on Business and Management*. CRC Press, 2020.

Situmorang, Chazali Husni. "Komitmen Negara Dalam Memberikan Jaminan Hari Tua Bagi Pekerja." *Sosio Informa: Kajian Permasalahan Sosial dan Usaha Kesejahteraan Sosial* 3.3 (2017).

Sutrisno, Hafiz. "Pengaruh Bpjs Ketenagakerjaan Dalam Meningkatkan Kesejahteraan Tenaga Kerja." *PREPOTIF J. Kesehat. Masy* 4.1 (2020).

Supeno, Regina, Desie MD Warouw, and Herry Mulyono. "Peran Komunikasi Bpjs Kepada Pelaku Usaha Tentang Jaminan Sosial Ketenagakerjaan (Studipadapelaku Usaha Di Wilayah Kelurahanmapanget)." *Acta Diurna Komunikasi* 5.2 (2016).

Suamperi. SHMH Afifah Garda Sabila, Dr. Sanidjar Pebrihariati.R SH, MH, "Prosedur Perolehan Jaminan Hari Tua Dan Jaminan Kematian Dari Bpjs Terhadap Pegawai Pt.Kai Di Kota Padang," no. 2 (1993).

Sihotang, Muhammad Afandi, Amelia Amelia, and Fazrina Saumi. "Penerapan Metode Kuadrat Terkecil Dalam Menentukan Saldojht (Jaminan Hari Tua) Dalam Waktu 3 Tahun Kedepan." *Jurnal Gamma-Pi* 1.1 (2019).

Situmorang, Chazali Husni. "Komitmen Negara Dalam Memberikan Jaminan Hari Tua Bagi Pekerja." *Sosio Informa: Kajian Permasalahan Sosial dan Usaha Kesejahteraan Sosial* 3.3 (2017).

Triana Rezky Tahir Latif, "Analisis Pengendalian Intern Atas Pengelolaan Dana Jaminan Hari Tua Dan Pengaruhnya Terhadap Laporan Keuangan Pada Bpjs Ketenagakerjaan Cab. Makassar," *UIN Maulana Malik Ibrahim*, 2014,<http://dx.doi.org/10.1016/j.biochi.2015.03.025><http://dx.doi.org/10.1038/nature10402><http://dx.doi.org/10.1038/nature21059><http://journal.stainkudus.ac.id/index.php/equilibrium/article/view/1268/1127><http://dx.doi.org/10.1038/nrmicro2577><http://>.

TD, Kadek Yuda Kumala, Anak Agung Sagung Laksmi Dewi, and Ni Made Puspasutari Ujianti. "Mekanisme Pencairaaan Klaim Badan Penyelenggara Jaminan Sosial (BPJS) Ketenagakerjaan Jaminan Hari Tua di Tengah Pandemi Covid-19." *Jurnal Interpretasi Hukum* 2.2 (2021).

Wijayanti, Putri, and Lina Miftahul Jannah. "Implementasi Kebijakan Manfaat Jaminan Hari Tua di Indonesia." *JPSI (Journal of Public Sector Innovations)* 4.1 (2019)