

JUSTICE-BASED OLD AGE GUARANTEE PAYMENT ARRANGEMENTS IN INDONESIA

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ABSTRACT

One of the objectives of establishing the Unitary State of the Republic of Indonesia as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia is to strive to improve the welfare of the people. The welfare in question must be enjoyed in a sustainable, fair, and equitable manner reaching all people. Where this is the right for every citizen to obtain social security that allows the full development of himself as a dignified human being, guaranteed by the 1945 Constitution of the Republic of Indonesia as stipulated in Article 28H paragraph (3) and Article 34 paragraph (2). Social security is also guaranteed in the United Nations Declaration on Human Rights of 1948 and affirmed in the *International Labour Organization* Convention No. 102 of 1952 which advocates all countries to provide minimum protection to every workforce. The national social security system is basically a state program that aims to provide certainty of protection and social welfare for all Indonesians. Through this program, every resident is expected to be able to meet the basic needs of a decent life in the event of things that can result in loss or decrease in income, due to illness, accidents, loss of work, entering old age, or retirement. The government has several programs in implementing social security, one of which is the Old Age Security Program. Old age insurance is a benefit in the form of cash that is paid in a lump sum after the participant retires, passes away, or experiences permanent total disability. The old-age Guarantee program is designed to provide protection when a person enters old age or retirement, when they no longer have income. Therefore, the name is old age guarantee.

Keywords: *Setup, Payment, Old Age Guarantee*

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INTRODUCTION

Indonesia as a Hukum State makes laws and regulations as a foundation to be able to protect the rights of its citizens (Ahsany et al., 2020). One of the objectives of establishing the Unitary State of the Republic of Indonesia as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia is to strive to improve the welfare of the people (Sihombing & Hamid, 2020). The welfare in question must be enjoyed in a sustainable, fair, and equitable manner reaching all people (Rosaldo, 1994). Where this is the right for every citizen to obtain social security that allows the full development of himself as a dignified human being, guaranteed by the 1945 Constitution of the Republic of Indonesia as stipulated in Article 28H paragraph (3) and Article 34 paragraph (2) (Febri & Arhab, 2022).

Furthermore, to fulfill these rights, Article 28H paragraph (3) of the 1945 NRI Constitution requires the state to provide social security to guarantee the rights of citizens as a whole as dignified human beings. Then as a follow-up in the affirmation, Law Number 40 of 2004 concerning the National Social Security System was issued as a form of state responsibility and obligation in providing socio-economic protection to the community, as well as being the legal basis for the implementation of national social security.

Social security is also guaranteed in the United Nations Declaration on Human Rights of 1948 and affirmed in the International Labour Organization Convention No. 102 of 1952 which advocates all countries to provide minimum protection to every workforce (Kanter, 2009). The

national social security system is basically a state program that aims to provide certainty of protection and social welfare for all Indonesians (Johansyah & Hoesin, 2022). Through this program, every resident is expected to be able to meet the basic needs of a decent life in the event of things that can result in loss or decrease in income, due to illness, accidents, loss of work, entering old age, or retirement. The national social security system is a system of organizing state and government programs to provide social protection, so that every resident can meet the basic needs of a decent life, towards the realization of social welfare for all Indonesians (Beveridge, 1942).

The government has several programs in implementing social security, one of which is the Old Age Security Program (Son, 2012). Old age insurance is a benefit in the form of cash that is paid in a lump sum after the participant retires, passes away, or experiences permanent total disability (Munnell & Sundén, 2005). The old-age Guarantee program is designed to provide protection when a person enters old age or retirement, when they no longer have income. Therefore, the name is old age guarantee. Old age security is the main pillar for realizing the welfare of post-unproductive labor, because every human being has the right to obtain social security as stipulated in Article 22 juncto Article 25 of the United Nations Universal Declaration of Human Rights of 1948, provides that, everyone, as a member of society has the right to social security : in case of unemployment, sick, disabled incapable of work, widowed, and old-aged.

Old age security is a social security program that provides cash benefits to participants upon reaching retirement age, permanent disability, or death (Martin & Martin, 2005). The provision of old-age security benefits is regulated in Law Number 40 of 2004 concerning the National Social Security System and Government Regulation Number 60 of 2015 concerning the Implementation of the Old Age Security Program. However, the problem arises when there is uncertainty regarding the arrangements for the payment of old-age guarantee benefits contained in the regulation. The uncertainty in question is the affirmation of the old age guarantee which is affirmed in the laws and regulations including:

1. Article 37 paragraph (3) of Law Number 40 of 2004 concerning the National Social Security System contains a provision that the payment of old-age security benefits can be given in part to a certain extent after participation reaches a minimum of 10 years.
2. Article 22 paragraph (4) of Government Regulation Number 60 of 2015 juncto Government Regulation Number 46 of 2015 concerning the Implementation of the Old Age Guarantee Program contains provisions that in order to prepare for retirement, the payment of old-age security benefits can be partially disbursed to a certain extent if the Participant has a participation period of at least 10 (ten) years.

Based on this affirmation, it will certainly raise questions for legal subjects, the question in question is for if there is a legal subject who has just entered into an employment relationship close to retirement age while the payment of the new old-age guarantee is paid after having a participation period of at least 10 years.

This problem arises because in general according to Law Number 13 of 2003 concerning Manpower does not regulate the maximum age in entering into an employment relationship, but what is regulated is only a ban on employers from employing children which as stipulated in Article 68 of Law Number 13 of 2003 concerning Manpower which contains provisions that,

employers are prohibited from employing children. In Law Number 13 of 2003 concerning Manpower, the minimum age limit for workers in Indonesia is 18 years old. This means that from this affirmation, it can be interpreted that legal subjects can enter into an employment relationship with the company after being over 18 years old as long as it is still accepted by the company.

So departing from this issue, it is important to study why the payment of old age guarantees can only be made after participation for at least 10 years. Thus the result of regulatory uncertainty regarding the payment of old-age guarantees gives rise to a blurring of norms.

METHOD

Related to the type of research used in this writing is the type of normative legal research. In research or study of normative legal science, activities to explain the law do not require the support of data or social facts, because normative legal science does not recognize data or social facts known only legal materials, so to explain the law or to find meaning and give value to the law is only used legal consent the steps taken are normative steps. This research proceeds from the existence of legal uncertainty that causes the blurring of norms regulated in Undang-Undang Sistem Jaminan Sosial Nasional and Peraturan Pemerintah Nomor 60 of 2015 (Nasution, 2008). Peraturan Pemerintah Nomor 46 of 2015, so that legal subjects do not get legal protection related to their right to obtain old-age guarantees.

The type of shortening used in this study is to use the statutory approach method. The statutory approach is an approach using legislation and regulation. Therefore, in the approach to legislation, it is not only seen the form of legislation, but also examines the content material, studies the ontological basis for the birth of legislation, the philosophical basis of the law, and the legislative ratio of statutory provisions. The statutory approach is carried out by reviewing all laws or regulations related to the problem being handled. A statutory approach is an approach using legislation and regulation. Normative research must certainly use a statutory approach because what is being studied is various legal rules that are the focus as well as the central theme of a study. In this study, the laws and regulations used were Law Number 40 of 2004 concerning the National Social Security System, Government Regulation Number 60 of 2015 concerning Amendments to Government Regulation Number 46 of 2015 concerning the Implementation of the Old Age Security Program.

To obtain legal material in this study was carried out with a literature study. From literature studies, both primary and suclender's legal materials will be collected through recording in the form of documents using a file system. File logging is organized by topic, not by author's name. This is done in order to make it easier to decipher, analyze and make conclusions from existing concepts related to the arrangement of old age guarantee payments in Indonesia. Recording in the form of a document using a file system consisting of quotations, overviews and reviews is one of the study materials that can be used as a basis for refusing to think about building concepts in this study.

RESULTS AND DISCUSSION

One of the government's programs in providing welfare guarantees to the community is the existence of social security (Conning & Kevane, 2002). The social security discussed here is the old age guarantee (Castles, 1994). The technical implementation of the old-age guarantee

program is regulated at the end of June 2015, through Government Regulation Number 46 of 2015 concerning Old Age Guarantee. Government Regulation Number 46 of 2015 was formed in order to implement the provisions of Article 37 paragraph (5) and Article 38 paragraph (3) of Law Number 40 of 2004 concerning the National Social Security System.

Old age insurance is a cash benefit that is paid in a lump sum at the time the participant enters retirement age, dies or is permanently disabled (Fairman et al., 2000). Participants in the old age guarantee are workers, including foreign workers who work in Indonesia for at least six months. Dues are paid by workers and employers to the Employment Social Security Administering Agency. Workers cover 2 percent dues and employers 3.7 percent. Participation in all programs organized by the Social Security Organizing Agency for Employment and the Implementation of Health Social Security is mandatory.

In registering, employers are required to submit a completed and correct registration form, including personal data and data of workers and family members to the Employment Social Security Organizing Agency no later than 30 working days from the receipt of the registration form. If the employer neglects not to enroll his worker in the old-age guarantee program then the worker is entitled to enroll himself in the old-age guarantee program. Once the data is verified, the Employment Social Security Administering Agency will collect contributions to employers.

For participants who are not wage earners, the amount of contributions is paid based on the income of the participants set out on the list as stipulated in the annex to the Government Regulation Number 46 of 2015. For example, a participant earns up to 1,099,000, the basic wage used for old-age security contributions is IDR 1,000,000, then the amount of the old age guarantee contribution concerned is IDR 20,000 every month.

Regarding benefits, the amount is in accordance with the accumulated value of all contributions that have been deposited, plus the development results recorded in the individual accounts of participants, as stipulated in Article 22 paragraph 2 of Government Regulation Number 46 of 2015, ". JHT benefits are in the form of cash that is paid if the participant is 56 years old, dies or has a permanent total disability,". In order to prepare to enter retirement, Article 22 paragraph (4) of Government Regulation Number 46 of 2015 concerning the Implementation of Old Age Insurance regulates the payment of old-age guarantee benefits that can be given in part until a certain time limit if the participant has a participation period of at least 10 years. Article 5 continues, the taking of JHT benefits to some extent as referred to in paragraph (4) shall be at most 30 per cent of the amount of JHT, which is allotted for homeownership or at most 10 per cent for other purposes in preparation for retirement. In the event of the participant's death, the JHT benefit is provided to the rightful heirs. For JHT payment procedures, benefits must be paid to participants if the participant reaches retirement age, has permanent total disability, dies, or leaves Indonesia for good.

Administrative sanctions, will be given to employers other than state operators who violate the provisions referred to in Article 6, 7 paragraph (1), 9 paragraph (2), 10 paragraph (2) and paragraph (3), 11 paragraph (4), 19 paragraph (1) and paragraph (2) and Article 24. Administrative sanctions can be in the form of written reprimands, fines, and/or failure to receive certain public services. Sanctions for not receiving certain public services include business-related permits, permits required to participate in project tenders, permits to hire foreign workers (IMTA), permits for companies providing worker or labor services, or building

permits (IMB). Supervision is carried out by labor supervisors at agencies responsible for manpower in the government, provincial or district/city governments.

For participants who are dissatisfied with the services of the old-age security program provided by the Employment Social Security Organizing Agency, participants can submit a complaint to the Employment Social Security Organizing Agency. In order to handle complaints, Article 36 paragraph (2) of Government Regulation Number 46 of 2015 mandates the Manpower Social Security Organizing Agency to establish a service quality control unit and handle complaints at regional offices and/or branch offices of the Manpower Social Security Organizing Agency. If the participant is still dissatisfied with the handling of the complaint made by the Employment Social Security Organizing Agency, the complaint can be submitted to the local agency that organizes government affairs in the field of labor or the National Social Security Council.

If we focus on changes to Government Regulation Number 60 of 2015, it is in Article 26, with changes namely "(1) JHT benefits must be paid to Participants if: a. the participant reaches retirement age; b. Participants have a permanent total disability; c. Participant dies or; c. Participants leave Indonesia for good; (2) JHT benefits for Participants who reach retirement age as referred to in section (1) letter a is given to the Participant; (3) JHT benefits for participants with disabilities the fixed total as referred to in paragraph (1) point b is given to the Participant in accordance with provisions of laws and regulations; (4) The JHT benefit for the deceased Participant as referred to in paragraph (1) c before reaching retirement age shall be given to the heirs as referred to in Article 23 paragraph (2); (5) Further provisions regarding the procedures and requirements for payment of JHT benefits as referred to in paragraph (1) shall be regulated by a Ministerial Regulation. Indeed, the birth of Government Regulation Number 60 of 2015, can relieve workers' anger, and make workers who experience termination take the balance of old age guarantees, even though the working period is under 10 years and even most of them are under 5 years.

Analysis of the financing mechanism for old-age guarantees is something that must be borne by workers and employers. The purpose of the contribution from the entrepreneur is that the company gives appreciation or appreciation to the workforce who have worked for many years in the company. Also, for the workforce itself is a responsibility for itself for its old age in the future. In this condition, the role of the state in maintaining the welfare of the workforce in old age has been seen with an understanding of the implementation of the old age guarantee program. The state wants to help the older generation who have entered the unproductive age to be able to meet their daily needs through saving habits through the old age guarantee program so as to reduce the burden on the State. Under the status of a State-Owned Enterprise held by the Social Security Organizing Agency, the purpose of the organization is to seek profit from labor participation. Therefore, the status of the legal entity is reviewed by the government to organize a non-profit compulsory social security program. Referring to Article 28 H paragraph (3) of the Second Amendment to the 1945 Constitution, that the need for social security is addressed to every citizen, the government needs to create a social security system in order to establish an appropriate organizing body to meet the social security needs of the entire community.

Indonesian. Thus, based on Law Number 40 of 2004 concerning the Guarantee System

National Social was formed as a social security organizing body hereinafter referred to as

with the Social Security Administering Board.

In running the social security system in Indonesia to be right on target to provide the greatest benefit to the community, BPJS prioritizes 9 (nine) principles namely:

- a. Mutuality;
- b. Nonprofit;
- c. Openness;
- d. Prudence;
- e. Accountability;
- f. Portability;
- g. Participation is mandatory;
- h. Trust funds; and
- i. The results of the management of the Social Security Fund are used entirely for the development of program and for the greatest benefit of the Participants.

In philosophy, the program Old Age Guarantee is intended to guarantee that participants receive cash if they enter retirement, have a permanent total disability, or die. Cash is paid in one lump sum to participants when entering retirement age, passing away, or experiencing permanent total disability. In this case, the state plays a role in ensuring that when the workforce at an unproductive age receives savings from contributions while the workforce is working due to loss of source of income. In order for the payment of old-age guarantees to provide the greatest positive benefits for the workforce, the management of the development of the old-age guarantee fund is in accordance with the principle of prudence at least equivalent to the interest rate on government bank deposits for a period of 1 (one) year.

In terms of workers who have a short working period, of course, the money earned is not much and is definitely greater severance pay (Standing, 1989). For workers, it needs to be explained by the Employment Social Security Agency that the old-age security deposit is stored and developed and guaranteed by the State to be given later when the worker has entered retirement age. Because at retirement age physically it is not strong to work while the necessities of life never stop, the old age security deposit obtained will be meaningful for business capital at that retirement age. To make ends meet due to termination of employment as per the Act it is the responsibility of the employer by getting severance and/or employment award money and reimbursement money should have been received.

CONCLUSION

Old age guarantee program is intended to ensure that participants receive cash in the event of retirement, have a permanent total disability, or die. Cash is paid in one lump sum to participants when entering retirement age, passing away, or experiencing permanent total disability. In Governing Law No. 60 of 2015 also needs to be legally constructed, and directly refers to Articles 35,36,37 and 38 National Social Security Act. In the revision, it is also necessary to regulate the transition period mechanism for the payment of JHT claims whose membership period is under 10 years.

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