

## Social Security Protection Policy: in a Legal Approach

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**Abstract:** Paradigam base in frame support effort For create good system Social security lies in the commitment of the state within effort follow as well as For create system social security for society , so that you can protected from fundamental problems such as health and social protection of employment . An interesting fact , the existence and position of Indonesia as a developing country , of course need balanced internal state capabilities frame create protection social security for citizen . Law no. Constitution Republic of Indonesia Number 24 of 2011 concerning Organizing Bodies Social Security is a basic instrument in effort protection social in in the field of health and employment . Scope in guarantee social the in essence become hope in frame create system guarantee good social in accordance with mandate the country's constitution concrete instruct to the country for responsible in frame protection limited every citizen . In study This aim For analyze policy protection guarantee social state with legislative regulatory approach .

**Keywords:** Protection Social, Legal Approaches, System Social Security

### INTRODUCTION

In opening The 1945 Constitution of the Republic of Indonesia is mandated that the goal of the country is For increase well-being people . In Change Fourth The 1945 Constitution of the Republic of Indonesia , objectives the the more emphasized that is with develop system guarantee social for well-being all over people . System guarantee social national is a state program with a goal give certainty protection and welfare social for all over people as mandated in Article 28H paragraph (1), paragraph (2), and paragraph (3) and Article 34 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia . that , deep Decree Assembly People's Consultation Number X/MPR/2001, President assigned For form system guarantee social national in frame give protection social for more society comprehensive and integrated .

Social Security is intervention institutions designed by the government nor sector private For protect public from various risks that arise from himself ( accident , illness , death ), or from environment ( layoffs, disasters social ).<sup>87</sup> Understanding Social Security includes aspect law , aspect politics and aspects economy . Aspect law Social Security is related with not quite enough the state is responsible for carry out mandate Article 5 paragraph (2), Article 20, Article 28 H paragraphs (1), (2), (3) and Article 34 paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia , namely system protection base for public to various risk social economy . Aspect political guarantee social is effort the establishment of a welfare state which is desire political from government . Aspect economy guarantee social related with retribution income through mechanism participation mandatory and implementation of

requirements tests For justice System guarantee social required For national resilience at the same time enhancement Power buy society to be realized Power buy public in period long .<sup>1</sup>

With he determined Constitution Number 40 of 2004 concerning System National Social Security , the Indonesian nation has own system Social Security for all over people of Indonesia. For realize objective system guarantee social national need an organizing body is formed in the form of a legal entity public based on principle mutual cooperation , non-profit , openness , prudence , accountability , portability , participation nature mandatory , trust fund , and proceeds management of the Social Security Fund is used entirely For program development and for as big as possible interest Participant . Formation Constitution regarding the Organizing Body This Social Security is implementation Constitution Number 40 of 2004 concerning System National Social Security , after Decision Court Constitution to case Number 007/PUU-III/2005, use give certainty law for establishment of BPJS for implementing the Social Security program throughout Indonesia. Constitution This is implementation from Article 5 paragraph (1) and Article 52 of the Law Number 40 of 2004 concerning System Mandated National Social Security formation of the Organizing Body Social Security and transformation institutions PT Askes (Persero), PT Jamsostek (Persero), PT TASPEN (Persero), and PT ASABRI (Persero) became the Organizing Body Social Security . Transformation the followed exists diversion participants , programs, assets and liabilities , employees , and rights and obligations . With Constitution This 2 ( two ) BPJS were formed , namely BPJS Health and BPJS Employment . BPJS Health organizes a guarantee program health and BPJS Employment organize a guarantee program accident work , guarantee day old , guaranteed pensions , and security death . With formation both BPJS range guarantee program participation social will expanded in a way gradually .

## **RESULTS AND DISCUSSION**

### **Legal Policy Against Social Protection**

Guarantee social can interpreted as possible business carried out by the community and/ or government . the effort can grouped into the four activity business main , i.e as following :<sup>2</sup>

1. Businesses in the form of prevention and development , ie businesses in the field health , religion , family planning , education , assistance law , etc grouped in service social (social service).

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<sup>1</sup> Hedy Sumadi , *Principles Social Security Viewed from a Legal Perspective* , Law Enforcement: Journal Legal Science Vol.8 No. 1, April 2017, p . 42-43.

<sup>2</sup> Nidya Sane Sayekti and Yuni Sudarwati , Analysis Against the Organizing Body Social Security ( Bpjs ): Transformation in SOEs Organizer Social Security , Journal of Economics & Public Policy , Vol. 1 No. 1, June 2010, p . 4.

2. Businesses in the form of recovery and healing , as in help For disaster nature , continued age , orphan orphan , sufferer defects and various possible benefits called as help social (social assistance).
3. Businesses in the form of coaching , in form repair nutrition , housing , transmigration , cooperatives , and others that can be done categorized as as means social (social infrastructure).
4. Businesses in the field protection special employment indicated For public power work is the essence of energy development and always face risks social economical , classified in insurance social (social insurance).

Fulfillment of the welfare state has grow challenge so that appear demands various problems that haven't happened yet solved . One of them is maintenance system guarantee social for all over Indonesian people as mandated in Article 28H paragraph (3) " Everyone has the right on guarantee social possibilities development himself in a way intact as dignified human being ” and Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads “The State develops system guarantee social for all over people and empower public weak and not capable in accordance dignity dignity humanity :” System National Social Security basically is a state program with a goal give protection need basics and welfare social for all over people of Indonesia. Through policy this , every resident expected can fulfil need base a decent life if happen things that can result problem well-being like fall sick , experiencing accident , loss work , entering age continue , or pension .<sup>3</sup>

In frame operate system guarantee social national , based on to Article 4, that BPJS organizes system guarantee social national based on principle :

1. Mutual cooperation ;
2. Non-Profit ;
3. Openness ;
4. Caution ;
5. Accountability ;
6. Portability ;
7. Membership nature must ;
8. Trust funds ; And
9. Results of guarantee fund management social used entirely For program development and for big interest participant .

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<sup>3</sup>Muhammad Ikhsan , et. al. Maintenance System National Social Security by the Organizing Body Social Security , Sol Justicia, Vol.4 No.2, December 2021, p . 143.

Thinking underlying fundamentals preparation of SJSN for maintenance guarantee social For all over citizens are as following :<sup>4</sup>

1. The implementation of SJSN is based on to right basic people and rights constitutional each person:

1945 Constitution of the Republic of Indonesia Article 28H paragraph ( 3) stipulates , " Everyone has the right on guarantee social possibilities development himself in a way intact as useful human being . "

2. The implementation of SJSN is form not quite enough answered the State within development economy national and welfare social :

1945 Constitution of the Republic of Indonesia Article 34 paragraph ( 2) stipulates , "The State develops system guarantee social for all over people and empower weak society and not capable in accordance with dignity humanity ."

3. Guarantee program social addressed For possible everyone is capable develop himself in a way intact as useful human .

Listed In the 1945 Republic of Indonesia Constitution, Article 28H paragraph ( 3), " Everyone has the right on guarantee social possibilities development himself in a way intact as useful human being . "

4. The implementation of SJSN is based on principle humanity and related with award to dignity man .

UU no. 40 of 2004 Article 2 stipulates , " System National Social Security is implemented based on principle humanity , principles benefits , principles justice social for all over people of Indonesia."

Explanation Article 2 Law no. 40 of 2004 explains that principle humanity related with award to dignity man . SJSN aims For fulfillment need base a decent life for every participants and/ or member his family .

UU no. 40 of 2004 Article 3 stipulates , " System National Social Security aims For give guarantee fulfillment need base a decent life for every participants and/ or member his family ." By juridical right people For get service proper health arranged in Article 28 H, and Article 34 of the 1945 Constitution of the Republic of Indonesia . Number 40 of 2004 concerning System National Social Security and Law Number 24 of 2011 concerning Establishment of an Organizing Body Social Security (BPJS) and regulations President Number 12 of 2013 Juncto Regulation President Number 111 of 2013 concerning National

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<sup>4</sup> Asih Eka Putri, Book Series Pocket - 1: Understand the SJSN System National Social Security , Published by Friedrich-Ebert-Stiftung Indonesian Representative Office in Cooperation with the National Social Security Council (DJSN), CV Community Pejaten Mediatama , 2014, p . 9-10.

Health Insurance is form commitment government in give welfare (welfare state) in the form of guarantee protection health for all over people of Indonesia.<sup>5</sup>

### **Legal Approach to Social Protection**

Need about regulation Harmonious and integrated legislation is very necessary For realize order , guarantee exists certainty and protection law . In Indonesia, often very found exists disharmonization between regulation legislation even between equivalent regulations . One of them arrived moment This happen is contradiction in maintenance System Regulated National Social Security through Constitution Number 40 of 2004 (SJSN Law). The conflict that occurred start from the organizing party until market segmentation becomes problems that have not yet been resolved until second This .<sup>6</sup>

One of example case that occurred is exists lawsuit filed two Civil Servants to Supreme Court (MA) and Court Constitution (MK) regarding Article 92 Paragraph 4 and Article 107 of the Law Number 5 of 2014 was made base he took it out Regulation Government Number 70 of 2015 is managed by the appropriate party No authorized For operate System National Social Security , and p This considered contradictory with 1945 Constitution .<sup>7</sup>

Decision Supreme Court number 32P/HUM/2016, Regulation Government Number 70 of 2015 no contradictory Constitution Number 24 of 2011 concerning Organizing Bodies Social Security (BPJS Law) and SJSN Law because Regulation Government Number 70 of 2015 is based on Article 92 paragraph 4 and Article 107 of the Law Number 5 of 2014 concerning Apparatus State Civil Service (UU ASN) which is policy legal nature specifically , which, p This join in agreed by the MK who rejected it request for material review on This Supreme Court decision .<sup>8</sup>

Implementation of SJSN requires umbrella strong and harmonious law . In framework development , strengthening , effectiveness and efficiency program implementation , harmonization and synchronization regulation related legislation with implementation guarantee social become one of the main strategies in the 2023-2024 period . As for the regulations necessary legislation get attention For reviewed and reviewed is as following :<sup>9</sup>

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<sup>5</sup> Justriany Koni , et.al, Syst National Social Security in the Health Sector in the Era of Regional Autonomy , Notarius , Volume 13 Number 2 (2020), p . 962

<sup>6</sup>Prima Anindya Kartika, Disharmonious Organizing System National Social Security Share Apparatus State Civil Service in Indonesia, Dharmasisya Journal of the Master of Law Program, Faculty of Law, University of Indonesia Volume 2 Number 3 (September 2022), p . 1423.

<sup>7</sup>Prima Anindya Kartika, Ibid., p . p . 1423-1424.

<sup>8</sup>Prima Anindya Kartika, Ibid., p . p . 1424.

<sup>9</sup> Regulation President Republic of Indonesia Number 36 of 2023 Concerning Social Security Roadmap 2023-2024

1. Regulation legislation related with connection between SJSN institutions , management guarantee fund assets social and governance of SJSN Health;
2. Regulation legislation related with Guarantee Accident Employment and Security Death ;
3. Regulation legislation related with Guarantee Pension ;
4. Regulation legislation related with Guarantee Pension time ;
5. Regulation legislation related with Guarantee Lost Work ;
6. Regulation legislation related with the Guarantee Board National Social ;
7. Regulation legislation related with transformation programs and institutions ;
8. Regulation legislation related with application penalty ;
9. Regulation legislation related with Worker No Recipient Wages ;
10. Regulation legislation related with Worker Migrant Indonesia; And
11. Regulation legislation related with Employee Government Non-ASN.

For that , deep effort SJSN implementation and expansion its coverage For all over population and coverage Social Security Sector Employment For all over worker need arranged map road ( *road map* ). Through map road This expected Government can finish a number of issue strategic in period 2023-2024. Strategy and policy in map road arranged aligned with Regulation President Number 18 of 2020 concerning Term Development Plan National Intermediate Year 2020-2024 and Goals Sustainable Development Goals or *Sustainable Development Goals* (SDGs ) 2030. Implementation map road This expected can increase coordination which is cross sector . Roadmap This have also aligned with Decision Court Constitution Number 72/PUU-XVII/2019 and Number 6/PUU-XVIII/2020 concerning Pengujian Article 57 letters e and f as well as Article 65 of Constitution Number 24 of 2011 concerning Organizing Bodies Guarantee Social stating provision about transfer of programs being held by the Company (Persero) PT Dana Savings and Insurance Employee State and Company (Persero) PT Armed Forces Social Insurance Republic of Indonesia to BPJS Employment contradictory with Constitution of the Republic of Indonesia Indonesia in 1945 and not own strength law tie .<sup>10</sup>

## CONCLUSION

System guarantee social to public is not quite enough answer state social towards its people For given protection as citizen . Protection model to public must have clear legal

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<sup>10</sup> ibid

instruments through the Law on system guarantee social national and regulatory technical regulations in a way clear direction from exists map road to system guarantee social services provided to Indonesian society . existence , Regulation President Republic of Indonesia Number 36 of 2023 Concerning The Social Security Roadmap for 2023-2024 , is map designed road in frame fulfillment policy in a way technical to system guarantee social issues in Indonesia.

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