

## LEGAL ASSISTANCE FOR INDONESIAN WORKERS WHO EXPERIENCING LABOR PROBLEMS IN NETHERLANDS

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### ABSTRACT

*The research aims to identify, describe, study and analyze in depth the factors that cause the legal protection of employment social security for informal workers. And to identify, describe, study and analyze in-depth laws and regulations that do not yet accommodate informal workers and establish regulations for the protection of labor social security laws for equitable informal workers. The results of research and analysis, concluded that: the factors causing legal protection of Labor Social Security for informal workers have not been realized, namely first of the substance, there is an unsynchronization between Presidential Regulation Number 111 of 2013 concerning Amendments to Presidential Regulation Number 12 of 2013 concerning Health Insurance Out of sync with the National Social Security System Act and the Social Security Organizing Agency Act, there are inconsistencies between Government Regulation Number 46 of 2015 concerning Old Age Security, Minister of Manpower Regulation Number 19 of 2015 concerning Procedures and Requirements for Payment of Old Age Benefits of the National Social Security System Law, Inconsistency and Violation of Government Regulation Number 70 of 2015 concerning Work Accident Insurance and Death Guarantees for Civil Servants of the State of the National Social Security System Law and the Act of the Disbursement Agency Guidelines for Social Security, and Inconsistencies Article 30, 31, 32 and 33 of Law Number 7 of 2016 concerning Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers against the National Social Security System Law and the Social Security Organizing Agency Act.*

### INTRODUCTION

Legal protection for workers is the fulfillment of the basic rights inherent and protected by the constitution as regulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads "Every citizen has the right to work and a decent life for humanity". Protection of workers is intended to guarantee workers' rights and guarantee equal opportunity and treatment without any discrimination to achieve the welfare of workers and their families. Legislation related to the protection of workers, namely Article 5 of Law Number 13 of 2003 concerning Manpower, hereinafter abbreviated as UUK, states "Every worker has the same opportunity without discrimination to get a job".

Based on Article 1 number 31 UUK states that the welfare of workers / labor is a fulfillment of physical and spiritual needs and / or needs, both inside and outside of work relations, which can directly or indirectly increase work productivity in a safe work environment. and healthy. In the 1945 Constitution, in the fourth paragraph, it is stated that social justice is intended for all Indonesian people and the social security system is stated in Article 34 of the Fourth Amendment of the Constitution of 2002. Social security protection for employment is very important for society, especially for workers, because it ensures in order to be able to meet their basic decent needs, financial disturbances and maintain the level of welfare.

According to Article 99 paragraph (1) of the UUK "Every worker / laborer and his family has the right to obtain labor social security". In this provision, workers' social security is a right not only owned by workers / laborers but also by their families. This granting of rights to workers is intended to provide guaranteed services if a worker's family member is sick or requires other medical assistance such as pregnancy and childbirth and those who have work accidents. The welfare that needs to be developed is not only for the workforce itself, but also for their families in order to improve the welfare of the community. In a broad sense, what must be maintained includes when a worker loses part or all of his / her income as a result of social risks, including work accidents, illness, death, disability and old age. In a state of complete disappearance, losing the ability to make ends meet for himself and his family. Because this risk is universal, it needs to be resolved systematically, planned, gradually and sustainably.

Manpower development as an integral part of national development based on Pancasila and the 1945 Constitution, is carried out in the framework of the development of the whole Indonesian human being and the development of the Indonesian society as a whole to increase the dignity, dignity and dignity of the workforce and to create a prosperous, just, prosperous and equitable society, both material and spiritual. From several provisions contained in the 1945 Constitution, it shows that manpower development has been regulated explicitly in our constitution. Manpower development must be regulated in such a way that basic rights and protections for workers are fulfilled while at the same time creating conditions that are conducive to the development of the business world. The 1945 Constitution affirms that every citizen has the right to social security and emphasizes the role of the state in providing universal social security.

"Social security (security act) is the right of every citizen that is protected by the constitution", as stated in Article 41 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, that "Every citizen has the right to the social security needed. for a decent life and for their full personal development," however, in reality not all citizens have access to this national social security. Social security is designed to provide meaningful benefits to the community / participants, at least to guarantee that participants and their family members can fulfill their basic basic needs. The scheme for administering the national social security is further outlined in the laws and regulations, namely Law Number 24 of 2011 concerning Social Security Administering Bodies (UU BPJS).

BPJS is an institution or legal entity established to administer social security programs in Indonesia. There are two forms of BPJS as described in Article 5 paragraph (2) of the BPJS Law that the Social Security Administering Bodies as referred to in paragraph Article 5 paragraph (1) of the BPJS Law are: a) BPJS Health; and b) BPJS Ketenagakerjaan. BPJS Kesehatan is a transformation from the insurance institution previously known as PT Askes (Persero). BPJS Kesehatan has started to provide health insurance starting January 1 2014. Meanwhile, BPJS Ketenagakerjaan is a transformation from PT JAMSOSTEK organizing social security for employment since January 1 2015. As a state institution engaged in social insurance, as a new government agency, BPJS Employment, will guarantee workers, both formal and informal sectors.

The state through BPJS Ketenagakerjaan provides insurance benefits for all workers. 4 (four) BPJS Ketenagakerjaan benefits programs, are: Work Accident Security Program (JKK), Old Age Security Program (JHT), and Pension Security Program (JP) and Death Security Program (JKm). Based on the BPJS Law, all workers in Indonesia can register themselves as BPJS Ketenagakerjaan participants, including informal workers. BPJS Ketenagakerjaan is very important to have for all workers in Indonesia because BPJS Ketenagakerjaan provides basic protection programs that guarantee a future for workers, as a solution to risks that may occur while working, such as illness, pregnancy, childbirth, having a work accident, termination of relations work, retirement, death, and others. Because this socio-economic risk can happen to anyone, anywhere and at any time, so there needs to be a safety device, so that if there is a socio-economic risk it will not drastically disrupt the welfare of both workers and their families.

Workers are said to be prosperous if they get their rights, one of which is to obtain employment social security protection, in the form of Work Accident Security (JKK), Old Age Security (JHT), Pension Security (JP), and Death Security (JKm) as contained in Government Regulation No. 44 of 2015 concerning the Implementation of JKK and JKm Programs, Government Regulation Number 45 of 2015 concerning Implementation of the Pension Security Program, Government Regulation Number 60 of 2015 concerning Amendments to Government Regulation Number 46 of 2015 concerning Implementation of the Old Age Security Program (JHT), Regulation of the Ministry of Manpower Work and Transmigration Number 19 of 2015 concerning Procedures and Requirements for Payment of Old Age Benefits and Regulation of the Ministry of Manpower and Transmigration Number 21 of 2017 concerning Amendments to Regulation of the Minister of Manpower Number 1 of 2016 concerning Procedures for Implementing Work Accident Security Programs, Old Age Security, Pension Security, and Life Insurance for Participants who do not receive Wages.

Based on worldometers data as of January 27, 2019, the total population of Indonesia in 2019 is 269,536,482 people. Indonesia is ranked 4th (fourth) as a country with the largest population in the world, namely China, as a country with the nickname Bamboo Curtain Country, the second most populous country in the world is occupied by India, third is occupied by the world's super power country America The union and the fourth are occupied by Indonesia. Indonesia is currently enjoying a demographic bonus period; that is, the population of productive age is more than the unproductive age. More than 68% of the total population are of productive age. Meanwhile, the population in the 0-14 year age group (children age) reached 66.17 million or around 24.8% of the total population. Then the population of the age group 15-64 years (productive age) was 183.36 million people or 68.7% and the age group over 65 years (unproductive age) was 17.37 million people or 6.51% of the population. total population. If these two factors, namely the population and productive age are combined, the indication is that Indonesia is a country that has a large labor force, which will develop even more in the future, then in this case emphasizes the importance of job creation in the largest and strongest economy in Indonesia. Southeast Asia.

The reality in Indonesia is that not all workers receive legal protection based on the Manpower Act, only those who work for employers. This results in informal workers not guaranteed legal protection. The fate of most of the people who work in the informal sector, the majority, has not been protected by the Social Security for Employment. Meanwhile, informal workers are very vulnerable to work accidents. The right to social security is protection and guarantees the availability of the necessities of life for the fulfillment of a decent standard of living, both preventive and rehabilitative. That is why the right to social security is a form of human rights in the economic, social and cultural fields. Data held by the Central Statistics Agency (BPS) As many as 74.08 million people (57.27 percent) work in informal activities. Over the past year (February 2018 – February 2019), informal workers fell by 0.95 percentage points.

## RESULTS AND DISCUSSION

The Dutch economy is the 17th largest in the world in 2019 (in terms of gross domestic product; GDP) according to the World Bank and the International Monetary Fund. GDP per capita is estimated to be around \$ 48,860 in the 2017/18 fiscal year making it one of the highest-income countries in the world. Between 1996-2000, the annual economic growth (GDP) of the Netherlands averaged more than 4%, far above the European average of 2.5% at that time. Growth slowed in 2001–2005 as part of the global economic slowdown. However, 2006 and 2007 showed economic growth of 3-4% per year. The Dutch economy was particularly hard hit by the 2007-2008 financial crisis and the ensuing European sovereign debt crisis.

The Netherlands has a prosperous and open economy, which is heavily dependent on foreign trade. The economy is well known for stable industrial relations, fairly low unemployment and inflation, a sizeable current account surplus (compared to a country size even more than Germany) and its important role as a European transportation hub, with Rotterdam being the largest by far. ports in Europe and Amsterdam with one of the largest airports in Europe. Industrial activities are mainly in food processing, chemicals, petroleum refining, high technology, financial services, the creative sector, and electrical machinery. The highly mechanized agricultural sector employs no more than 2% of the workforce but provides large surpluses for the food processing industry and for exports. The Netherlands, together with 11 of its EU partners, began circulating the euro currency on January 1, 2002.

Dutch social security is very comprehensive, covers the entire population of the Netherlands and is divided into national security (Volksverzekeringen) and employee insurance (Werknemersverzekeringen). Whereas the former includes all living in the Netherlands and social benefits provided, the latter provides work-related benefits. All those living in the Netherlands are required to pay into the social security system, including residents from outside the Netherlands, with a few exceptions. Volksverzekeringen is mandatory for all and covers residents with various forms of national insurance:

- (1) Long-term care under the Long-Term Care Act (Wet Langdurige Zorg / WLZ) was formerly known as the Extraordinary Medical Expenses Act (Algemeen Wet Bijzondere Ziektekosten / AWBZ).
- (2) Retirement care under the General Old Age Pension Act (Algemene Ouderdomswet / AOW).
- (3) Benefit survivors under the General Reliving Relatives Act (Algemene nabestaandenwet / ANW) (formerly known as the General Widows and Orphans Act (Algemene Weduwen-en Wezenwet / AWW).
- (4) Child support under the General Family Allowance Act (Algemene Kinderbijslagwet / AKW)

This project is overseen by the Social Insurance Bank (Sociale Verzekeringsbank / SVB) and financed through contributions related to the income of the employer and employees up to the maximum income limit. While employed persons have their contributions deducted automatically from their wages, the unemployed pay themselves. AKW is financed by the entrepreneur, while AOW is financed by the employees. AOW, in addition, is financed by a small government subsidy. Werknemersverzekeringen is a must for everyone who works in the Netherlands. This includes employee coverage in the following areas:

1. Unemployment benefits under the Unemployment Insurance Act (Werkloosheidswet / WW).
2. Sick leave under the Sickness Benefits Act (Ziektewet / ZW).
- (3) Disability benefits under the Insurance Disablement Act (Wet werk en inkomen naar arbeidsvermogen (WIA). Funding for Werknemersverzekeringen is automatically deducted from the employee's income by the employer.

Unemployment benefits in the Netherlands, as stipulated in WW, cover almost all employees, who are employees under a work contract. Exempted from WW are the following: self-employed, nationally employed, people who work less than four days a week, chief shareholders and volunteer workers who earn up to € 150 per year. To benefit from benefits, unemployed workers must submit an application to the Employee Insurance Agency (Uitvoeringsinstituut Werknemersverzekeringen / UWV) within one week of becoming unemployed and must also register as job seekers. WW only includes employees with sufficient work history, meaning that an applicant must have worked for at least 26 weeks in the past 36 weeks prior to becoming unemployed. If so, the work week requirements are met. In addition, employees are only entitled to unemployment benefits if the unemployment was not due to his / her own fault (for example, personal termination of employment).

The Dutch labor market has relatively strict regulations for employers regarding employee dismissals, although in June 2014 the DPR agreed to relax this regulation. Due to employee costs and their firing costs, a large proportion of the workforce (about 15% of the workforce) are independent one-person firms (ZZP). They are self-sufficient and paid for by delivery without the higher social costs. Another large part of the workforce is employed as temporary labor. State unemployment benefits in the form of an allowance of 70% of the last salary received by the employee for up to three years (with a maximum of about 2,500 euros per month) are available to fired employees, provided they have worked for a specified minimum period of time, usually 26 weeks. In addition, self-employed individuals (zelfstandigen zonder personeel (ZZP)) are not automatically covered by Werknemersverzekeringen, and are not required to apply for unemployment, sickness or disability insurance. Therefore, entrepreneurs are required to register with a private insurance company.

## CONCLUSION

The factors that cause legal protection for social workers for informal workers have not been realized, namely first from the substance, there is an inconsistency between Presidential Regulation No. inconsistency between Government Regulation Number 46 of 2015 concerning Old Age Security, Permenaker Number 19 of 2015 concerning Procedures and Requirements for Payment of Old Age Benefits to the SJSN Law, Inconsistencies and Violations of Government Regulation Number 70 of 2015 concerning Work Accident Benefits and Death Security for State Civil Servants against the SJSN Law and the BPJS Law, and the inconsistencies of Articles 30, 31, 32 and 33 of Law Number 7 of 2016 concerning Protection and Empowerment of Fishermen, Fish Farmers and Salt Farmers against the SJSN Law and Law Number 24 of 2011 concerning BPJS; second, from the structure, the lack of synergy and integration between the JAMSOSTEK Management Institution and BPJS Ketenagakerjaan, policies and budget allocations that support BPJS Ketenagakerjaan is still low, and BPJS Ketenagakerjaan has not maximally carried out information, socialization, education and advocacy so that the coverage of informal worker participants is still low; the third legal culture, there are many informal workers, high rates of work accidents, low level of education of informal workers, lack of awareness of the importance of being a participant in social worker, low and uncertain income, financial factors become obstacles for informal workers to be reluctant to register BPJS TK and consequently the coverage as participants is still low; Fourth, the government's legal politics towards Jamsosnaker, lack of strong will from the government, weak state commitment and no subsidies or contribution assistance recipients (PBI) for informal workers. For this reason, the legal protection regulations for employment social security for informal workers are just, for substance it is necessary to adjust the formulation of Article 1 paragraph (11) of the SJSN Law and Article 1 paragraph (8) of the BPJS Law which is inconsistent with the 1945 Constitution, revisions and adjustments to the formulation of the Presidential Regulation. Number 111 of 2013, Government Regulation Number 46 of 2015 concerning Old Age Security, Permenaker Number 19 of 2015 and Articles 30, 31, 32 and 33 of Law Number 7 of 2016 which contradict, multiple interpretations of the SJSN Law and the BPJS Law, restructuring provisions in the SJSN Law and the BPJS Law that are overlapping / redundant according to their urgency. For the structure of labor social security administering institutions, it is necessary to sit together, discussing social security issues, both regarding their regulations and their implementation in the field, so that an understanding emerges in the implementation of social security in accordance with the mandate of the BPJS Law. And for the legal culture, BPJS TK needs to provide information, socialization, education and advocacy to informal workers, to increase awareness of informal workers so that they become labor Social Security participants.

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