

JKP Concept in Minister of Labor Regulations Number 4 of 2022 in ILO Perspective and Justice in Law

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ABSTRACT

Keywords:
*JKP, Labor,
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The Minister of Manpower recently conducted a public opinion test of Regulation No. 2 of 2022 concerning Procedures and Provisions for Payment of Old Age Security Benefits. However, in the public opinion test of the regulation, many questioned the rules for disbursing Old Age Security (JHT) at the age of 56. Many argue that the regulation is to cover BPJS Ketenagakerjaan's unprofessionalism in managing customer funds. So that the Minister of Manpower revised the regulation into Permenaker Number 4 of 2022 concerning Procedures and Provisions for Payment of Old Age Security Benefits by including the JKP program in the regulation, the Minister of Manpower views developments in the field of social protection, namely the birth of the JKP program as a special Social Security to provide protection on the risk of workers being laid off. This study aims to obtain answers from the JKP concept in Permenaker Number 4 of 2022 concerning Procedures and Requirements for Payment of Old Age Security Benefits. To achieve this goal, the research was carried out using a normative juridical method, an approach based on the main legal material by examining theories, concepts, principles of law and legislation related to this research. The JKP program is a form of the Job Loss Guarantee Program and provides opportunities for workers who have been laid off or who have resigned from their jobs to get other jobs through a job training development program so that in this case they can get better and more decent jobs.

ABSTRAK

Kata Kunci:
JKP, Tenaga

Menteri Tenaga Kerja baru-baru ini melakukan uji opini publik terhadap Peraturan Nomor 2 Tahun 2022 tentang Tata Cara dan Ketentuan

Kerja, Keadilan *Pembayaran Manfaat Jaminan Hari Tua. Namun, dalam uji opini publik terhadap aturan tersebut, banyak yang mempertanyakan aturan pencairan Jaminan Hari Tua (JHT) pada usia 56 tahun. Banyak yang berpendapat aturan itu untuk menutupi ketidakprofesionalan BPJS Ketenagakerjaan dalam mengelola dana nasabah. Sehingga Menteri Tenaga Kerja merevisi peraturan tersebut menjadi Permenaker Nomor 4 Tahun 2022 tentang Tata Cara dan Ketentuan Pembayaran Manfaat Jaminan Hari Tua dengan memasukkan program JKP ke dalam aturan tersebut, Permenaker memandang perkembangan di bidang perlindungan sosial, yakni lahirnya program JKP sebagai Jamsostek khusus untuk memberikan perlindungan atas risiko pekerja yang terkena PHK. Penelitian ini bertujuan untuk mendapatkan jawaban dari Konsep JKP dalam Permenaker Nomor 4 Tahun 2022 tentang Tata Cara dan Persyaratan Pembayaran Manfaat Jaminan Hari Tua untuk mencapai tujuan tersebut penelitian dilakukan dengan metode yuridis normative adalah pendekatan yang dilakukan berdasarkan bahan hukum utama dengan cara menelelah teori-teori, konsep-konsep, asas-asas hukum serta peraturan perundang-undangan yang berhubungan dengan penelitian ini. Program JKP ini sebagai bentuk Program Jaminan kehilangan pekerjaan dan memberikan peluang untuk tenaga buruh yang terkena PHK ataupun yang mengundurkan diri dari pekerjaan untuk mendapatkan pekerjaan yang lain melalui program pengembangan pelatihan kerja sehingga mereka dalam hal ini bisa mendapatkan pekerjaan lagi yang lebih bagus dan layak.*

1. INTRODUCTION

The Minister of Manpower has recently conducted a public opinion Test against Regulation Nomor 2 of 2022 on the Procedure and Terms of Payment of Old-Age Security Benefits. However, in a test of public opinion on the regulation, many questioned the rules for disbursement of old age insurance (JHT) at the age of 56 years (Falah et al., 2022). Many argue that the rule is to cover the unprofessionalism of BPJS Ketenagakerjaan in managing customer funds. So that the Minister of manpower revised the regulation into Minister of Labor Regulations (Permenaker) Number 4 of 2022 on the Procedure and Terms of payment of Old-Age Security Benefits. However, the government in carrying out the revision included job loss guarantee (JKP) rules in Articles 5 and 6 of the regulation. The inclusion of the JKP rules received many protests from workers who felt the JKP program was not clear about the procedure. There is some analysis about into Permenaker Number 4 of 2022 on the Procedure and Terms of payment of Old-Age Security Benefits, including:

- 1) Including JKP in these rules is in accordance with the convention of the International Labour Organization (ILO) Number 102 of 1952 Minimum Standards of Social Security, although there has been no clear socialization related to technical and transparent to the public.
- 2) The basis for the inclusion of the JKP program is to provide a sense of justice and fulfillment of Social Security for workers.

In rulemaking, there are legal or *rechtsidee* ideas such as freedom, justice, certainty, and so on placed in positive law and the partial or total implementation, of that legal idea is the goal of the political process and the law is at the same time a tool of politics (Mia Kusuma Fitriana, 2015). Politics uses positive law (*legislation*) to achieve its goals in the sense of realizing these legal ideas. Politics can direct and shape society towards the goal of solving social problems where politics is a dynamic aspect and law is a static aspect. From this explanation, the government should make and pass laws and regulations must be done in depth in planning, preparation, discussion, ratification or determination, and promulgation so that these regulations can provide benefits to workers in terms of getting justice.

A written rule issued by the government in the form of law or PP and so on, should be able to provide comfort and benefits to the community. But in practice, often the process and dynamics of law formation experience the same thing, namely the conception and political power that prevails in society that largely determines the formation of a legal product. In the stage of formation of the law itself starts from the stage of planning, preparation, discussion, ratification or determination, and promulgation. The formation of laws and regulations, especially laws, should be carried out carefully and carefully because it concerns the interests of the state and the people.

2. RESEARCH METHODS

This study is included in legal research to find answers to the rules of JKP is in accordance with the convention of the International Labour Organization (ILO) Number 102 of 1952 minimum standards of Social Security, the basis for the inclusion of JKP program in order to provide a sense of justice and fulfillment of Social Security for workers. This research uses normative juridical method with case statute approach and conceptual approach (Soekanto, 2012). The purpose of this study is to get an answer from the concept of JKP in into Minister of Labor Regulations (Permenaker) Number 4 of 2022 on the

Procedure and Terms of payment of Old-Age Security Benefits. The source of research data is in the form of primary legal materials related to the discussion, secondary legal materials are all publications on law that are not official documents and tertiary legal materials are non-legal materials derived from dictionaries, exopedia and magazines.

3. RESULTS AND DISCUSSION

3.1 JKP Rules are in Accordance Convention of the International Labour Organization (ILO) Number 102 of 1952 Minimum Standards of Social Security.

Legislation is a part or subsystem of the legal system. Therefore, discussing the politics of legislation is essentially inseparable from discussing the politics of law. The term political law or political legislation is based on the principle that the law and / or legislation is part of a political product because the legislation is basically a design or design of political institutions (*political body*), Mahfud MD argued that political law includes: *First*, legal development which is the essence of making and renewing legal materials in order to be in accordance with the needs. *Second*, the implementation of existing legal provisions including the affirmation of the functions of the institution and the coaching of law enforcers (Saifulloh, 2022).

As a state based on the law (*rechtstaat*) and not on the basis of power (*machstaat*) Indonesia poured the ideals or goals of the state through the law as a means in other words the law is a means used in achieving the goals of the state that has been in the ideals. From the explanation above, basically when the government revises or even applies the law on the provision of Old Age Security (JHT) and JKP (*Job Loss Guarantee*) has fulfilled the concept of legal development which is the essence of making and updating legal materials to be in accordance with needs.

The ratio legis the birth of the policy that will be enacted in May 2022 is by considering the previous Permenaker, namely Permenaker Number 19 of 2015 on the Procedures and Terms of Payment of Old Age Security Benefits, where the condition at that time the government did not have an alternative social protection scheme for workers who lost their jobs or were laid off, so there is a regulatory vacuum (*loophole*) that regulates workers who lose their jobs. That way, after the Indonesian labor system has regulations related to the job loss guarantee program in Government Regulations (PP) Number 37 of 2021

Regarding the Implementation of Job Loss Guarantees, it is also necessary to restore the nature of JHT as an old-age social security.

So that directly the minister of manpower revised Permenaker Number 2 of 2022 into Permenaker Number 4 of 2022 on the Procedure and Terms of Payment of Old-Age Security Benefits. By including the JKP program into these rules, Permenaker considers the development in the field of social protection, namely the birth of the JKP program as a special Social Security to provide cover for the risk of workers affected by layoffs. As in Article 5 and Article 6 Permenaker Number 4 of 2022 on the Procedure and Terms of Payment of Old-Age Security Benefits, include:

Article 5

- (1) *Participants who reach retirement age as referred to in Article 4 letter a include participants who stop working;*
- (2) *Participants who stop working as meant in Paragraph (1) include:*
 - a. *The person who resigned;*
 - b. *Persons affected by termination of employment; and*
 - c. *Participants who left Indonesia for ever.*

Then Article 6

- (1) *JHT benefits for participants who reach retirement age as referred to in Article 4 letter a are paid in cash and at the same time to participants when:*
 - a. *reaching retirement age as stipulated in the employment agreement, Company regulations or collective bargaining agreement; or*
 - b. *reached the age of 56 (fifty-six) years.;*
- (2) *in addition to the provisions as meant in Paragraph (1), JHT benefits may be paid to:*
 - a. *Due to the expiration of the term in the employment agreement; or*
 - b. *Participants are not wage earners for stopping work.*

Of course, if viewed from the point of view of the ILO organization, the JKP program is a program that is in accordance with the purpose of the ILO organization, namely to provide a sense of justice for workers. ILO itself is the International Labor Organization or ILO is an agency of the United Nations (UN) that continuously strives to encourage the creation of opportunities for women and men to obtain decent and productive work in a free, fair, safe and dignified. The main objectives of the ILO are to promote rights in the workplace, encourage the creation of decent work opportunities, improve social protection and strengthen dialogue to address issues related to the world of work.

Member of the United Nations and the International Labour Organization (ILO) including is Indonesia respects, upholds, and seeks to implement the decisions of these international institutions. Therefore, one of the main priorities of employment today is the provision and empowerment of trade union leaders, so that they really have the idealism to fight for the interests of workers, understand the laws and regulations in the field of Labor, and implement the provisions based on ILO convention, the following is the content of the convention:

Article 19

“Each member state applying this part of the convention shall ensure the provision of benefits for unemployment to those protected in accordance with the articles of this part.”

Article 20

“The contingencies provided shall include the suspension of wages, as provided by national law or regulation, due to the inability to obtain suitable employment if those protected are able and willing to work.”

The government in entering the job loss guarantee program into Permenaker Number 4 of 2022 on Procedures and Terms of payment of Old-Age Security Benefits is the right step taken in order to provide justice to workers due to the exclusion of problems from the job creation law and the number of workers affected by layoffs during the Covid-19 disaster in Indonesia. So the government made policy steps by entering the JKP program into Permenaker Number 4 of 2022 on the procedure and Terms of payment of Old-Age Security benefits. But unfortunately the government in implementing regulations is sometimes not in accordance with Law Number 15 of 2019 concerning amendments to Law Number 12 of 2011 concerning the Establishment of Legislation ([Japian, 2021](#)).

In Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, there are 15 (five) twelve articles of amendment, as for some of the subject matter of the changes regulated, among others, as follows: *First*, monitoring and review, namely activities to observe, and assess the implementation of applicable laws so that it is known the achievement of the planned results, the impact caused, and the benefits for the Unitary State of the Republic of Indonesia. *Second*, the preparation of National Legislation Program (Prolegnas) within the

government is coordinated by the minister or the head of the institution that organizes government affairs in the field of forming laws and Regulations. *Third*, in certain circumstances, the DPR or the president may submit a draft law (RUU) outside Prolegnas, which ensures the existence of national urgency on the bill that can be approved jointly by DPR organs that specifically handle the field of legislation and ministers or heads of institutions that conduct government affairs in the field of forming laws and Regulations (Sopiani & Mubaroq, 2020).

In essence about JKP included in Permenaker Number 4 of 2022 on Procedures and Terms of Payment of Old-Age Security Benefits is the right policy to provide justice for workers. And in the face of article Article 8 JHT benefits for participants who resign as referred to in Article 5 Paragraph (2) letter a can be paid in cash and at once after passing the waiting period of 1 (one) month starting from the issuance of a statement of resignation from the employer. And Article 9 submission of JHT benefit payment for participants who resign as referred to in Article 8 submitted by participants to BPJS employment, by attaching: (a) BPJS employment participant Card; (b) Identity card or other proof of identity; and (c) Description of resignation from the employer where the participant worked.

Article 10 JHT benefits for participants affected by termination of employment as referred to in Article 5 Paragraph (2) letter b can be paid in cash and at once after passing the waiting period of 1 (one) month starting from the date of termination of employment. Then Article 11 submission of JHT benefit payment for participants affected by termination of employment as referred to in Article 10 submitted by participants to BPJS employment, by attaching: (a) BPJS ketenagakerjaan participant card; (b) Identity card or other proof of identity; and (c) Receipt of termination report from the agency that organizes government affairs in the field of employment, or termination report letter from the employer to the agency that organizes government affairs in the field of employment, or notice of termination of employment from the employer and a statement not rejecting layoffs from workers, or a collective agreement signed by employers and workers/ laborers, or excerpts or decisions of the industrial Relations Court. In this article, the government also revised the rules, which previously could only be taken at the age of 56. But now for the disbursement, it is only a matter of 1 month since registering as a JKP program in the regulation.

As is known, Permenaker Number 4 of 2022 is a public policy product that includes government actions/statements that are intended for the general public and are solely intended for the general welfare. That way, it is fitting that the policy is issued by taking into account the general principles of good governance (AUPB) as mandated in Article 10 of Law Number 30 of 2014 concerning Government Administration, namely legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, public interest and good service.

3.2 The Basis for the Inclusion of the JKP Program is to Provide a Sense of Justice and Fulfillment of Social Security for Workers.

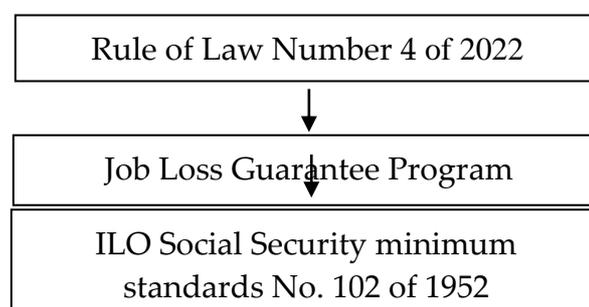
Labor is one of the resources that is very important in encouraging the growth and economic progress of a country. However, increasing labor is often an economic problem that is difficult for the government to solve. For example, in Indonesia today, the Covid-19 wave has resulted in the labor market still not being able to fully recover and there are still many who have stopped its development, especially job opportunities for the younger generation and women who are declining (Fitri et al., 2022). As mentioned as of August 2020, there were 1.15 million formal workers who were laid off, 387 thousand workers who were laid off and 663 thousand informal workers who were affected by Covid-19. This is supported by conditions where many people are experiencing an economic crisis in the business world accompanied by various health threats. Also managed to bring various consequences, including various small companies and workers lost their jobs through layoffs (Ragiliawan & Gunawan, 2021). Because, this layoff action has become a path used by companies or entrepreneurs to avoid significant losses. Young people who have faced high unemployment, older workers and more vulnerable to health problems, as well as the problems of unprotected workers such as independent and seasonal labor (Anggraeni & Santoso, 2022). The basis of employment protection itself has been regulated in Article 27 paragraph (2) and Article 28D paragraph (2) of the Constitution of the Republic of Indonesia of 1945 in guaranteeing the right to work and a decent livelihood by obtaining the right to socio-economic security (Syahril, 2020).

As we know that the rules of the job creation law that has been passed by the government, has created a very big problem for workers related to severance pay layoffs. Then followed by the covid 19 disaster which made

many workers in Indonesia lose their jobs. And plus the latest rules regarding the disbursement of old age guarantees contained in Law Number 2 of 2022 which are increasingly burdensome for workers in obtaining justice for the right to work and a decent livelihood as contained in Article 28D paragraph (2) of the 1945 Constitution. As a conceptual protection of the government to its people, in this issue, of course, it is the responsibility of the government to create justice for workers in getting decent jobs and livelihoods.

In Law Number 4 of 2022 concerning Job Loss Guarantees, the concept is to provide justice to workers who were laid off during the pandemic yesterday by providing guarantees for the disbursement of money directly within a waiting period of 1 month to workers who were laid off or workers who resigned from work. So that in the disbursement of money can be used for own business capital. In addition, the job loss guarantee program in the above law also provides opportunities for workers who are laid off or who resign from work to get another job through job training development programs so that they can get a better and decent job.

To realize the above, the government tried to revise Law Number 2 of 2022 on the basis of an order from President Joko Widodo. From the revision, the minister of manpower tried to include the job loss Guarantee scheme into law Number 4 of 2022 which is the result of the revision of Law Number 2 of 2022. The purpose of the minister of manpower to enter the JKP program is none other than to fulfill the *ius Constituendum* of the mandate of Article 28D paragraph (2) of the 1945 Constitution. This is in accordance with the principle of Justice, which is a basis that must be realized in living together with the state to realize the goals of the state, namely realizing the welfare of all its citizens and all regions, educating all citizens. Similarly, the values of justice as the basis in the association between countries among nations in the world and the principles of wanting to create order to live together in a relationship between nations in the world based on a principle of independence for every nation, lasting peace, and justice in living together (*social justice*).





Labor Rights Justice

Law is very closely related to justice, there is even an opinion that law must be combined with justice, so that it really means law, because the purpose of law is the achievement of a sense of justice in society. A system of law and justice can not be formed just like that without regard to justice, because fair includes the essential understanding of a system of law and Justice, therefore must be guided by certain general principles. The principles that concerns the interests of a nation and state, namely beliefs that live in society about a just life, because the purpose of the state and law is to achieve the greatest happiness for everyone (Santoso, 2014).

4. CONCLUSION

Permenaker Number 4 of 2022 on the Procedure And Terms of Payment of Old-Age Security Benefits. By including the JKP program into these rules, Permenaker considers the development in the field of social protection, namely the birth of the JKP program as a special Social Security to provide cover for the risk of workers affected by layoffs. As in Article 5, Article 6, Article 8, Article 9, Article 10 is in accordance with the rules of the convention of the International Labour Organization (ILO) Number 102 of 1952 minimum standards of Social Security in Article 19 and Article 20. However, in this case the government is not so good in socializing and openness of these regulations, so that the public, especially the workers think that the JKP rules are not in their favor. In this case, it is expected that the government in applying the rules must be in accordance with the general principles of good governance (AUPB) as mandated in Article 10 of Law Number 30 of 2014 concerning Government Administration, namely legal certainty, expediency, impartiality, accuracy, not abusing authority, openness, public interest and good service. And also in Law Number 4 of 2022 regarding job loss guarantees, it has a concept to provide justice to workers who were laid off during the pandemic yesterday by providing guarantees for the money disbursement program directly within a 1-month waiting period for workers who were laid off or workers who resigned from work. So that in the disbursement of money can be used for own business capital. In addition, the job loss Guarantee program in the above law also provides opportunities for workers who are laid off or who resign from work to

get another job through job training development programs so that they can get a better and decent job. Of course, this is in accordance with the concept of justice in law, especially in protecting the Justice of the right to work and a decent livelihood and fulfilling the *ius Constituendum* of the mandate of Article 28D paragraph (2) of the 1945 Constitution. However, in the explanation related to the training program to workers who are laid off or who resign from work must be explained in detail related to the procedure and if possible BPJS which has this program helps find other jobs for workers who are laid off or who resign from work. So that this program is really in accordance with the elements of benefits, certainty and justice in the law.

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