

Analysis of Social Security Administrators from a Constitutional Law Perspective

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Article Info	ABSTRACT
<p>Keywords: Social Security, Constitutional Law, Social Security Administering Body (BPJS), Social Welfare.</p>	<p>Health services are a human right of every Indonesian citizen as regulated in Law no. 24 of 2011 concerning the Social Security Administering Body (BPJS). The main focus of this research is to analyze the implementation of social security providers within the framework of Indonesian constitutional law. Therefore, this research aims to analyze social security providers in Indonesia which are regulated by Law Number 24 of 2011. This research uses a normative legal approach based on applicable regulations. This research highlights the importance of social security in Indonesia, which is regulated in laws such as the National Social Security System (SJSN) and the Social Security Administering Body (BPJS), as well as amendments to the 1945 Constitution of the Republic of Indonesia. The research findings show that social security is a vital instrument in fulfilling human rights and achieving social welfare for all Indonesian people. The emphasis on social protection and welfare is an integral part of state responsibility, in line with the principles of democracy, rule of law and social justice. It is hoped that through social security, especially for those who are economically vulnerable, such as the poor and underprivileged, it will provide better protection and improve the welfare of society evenly.</p>
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INTRODUCTION

Improving community welfare has been one of the main ideals formulated by the founders of the Indonesian nation. The concept of prosperity is not only an aspiration, but also a principle reflected in the values of Pancasila, the philosophical foundation of the Indonesian state (Pahlevi, 2016). According to Pancasila, a prosperous society is a society that lives in social justice, where every individual has the same right to achieve prosperity and a fair opportunity to achieve it. Welfare built based on Pancasila values emphasizes the importance of mutual cooperation and a sense of togetherness in building an inclusive and empowered society (Ibrahim, 2015). Therefore, the essence of social welfare does not only lie in material aspects, but also in the development of national character and identity which is reflected in loyalty and unity as a unified whole (Hayat, 2015).

The ideal of realizing a prosperous society, as stated in Pancasila and the 1945 Constitution which was amended in 2002, is especially manifested in Chapter XIV Articles 33 and 34 (Putra, 2017). Prior to the amendment, Chapter XIV of the 1945 Constitution

discussed social welfare, with economic programs aimed at achieving it (Article 33 of the 1945 Constitution). After the amendment, Chapter XIV was changed to Chapter XIV concerning National Economy and Social Welfare (Ruslina, 2012). However, Article 34 paragraph 2 clarifies how prosperity will be achieved. Article 34 paragraph 2 states that "The State will develop a social security system for all people and empower the weak and incapable in accordance with human dignity." This is done to fulfill the basic needs of the community, with the aim of easing their burden on life (Widiyastuti, 2019).

Social security has an important role in meeting needs and protecting society from various social risks. Every individual, regardless of social or economic status, has the potential to face risks such as illness, accident, death, or even termination of employment (Koswara, 2018). In this context, social security becomes a hope for all levels of society to get protection and assistance when experiencing unwanted situations. The presence of social security provides a sense of security and comfort for people, so that they can live a calmer and more productive life (Munthoharoh & Wibowo, 2020). Therefore, social security is not only a necessity, but also an important aspect of inclusive and sustainable social development. With an effective and equitable social security system, it is hoped that it can reduce uncertainty and improve overall welfare for society (Adillah & Anik, 2015).

In order to carry out the ideals stated in the 1945 Constitution of the Republic of Indonesia, the government has taken concrete steps by issuing Law Number 40 of 2004 concerning the National Social Security System (SJSN) and Law Number 24 of 2011 concerning National Social Security Institutions. Social Security Administrator (BPJS) (Adiyanta, 2020). Through this regulation, the government aims to provide comprehensive social security for every Indonesian citizen. The National Social Security System (SJSN) aims to ensure that every individual has equal access to social security, including protection against social risks such as illness, accidents, disability and death (Hartati, 2016). Meanwhile, with the existence of the Social Security Administering Agency (BPJS), it is hoped that social security services will become more effective and efficient, so that they are able to fulfill the basic needs of a decent life for all levels of society. The main objective of implementing this law is to bring Indonesia towards a prosperous, just and prosperous society, in accordance with the spirit of Pancasila and the 1945 Constitution (Situmorang, 2017).

Law Number 24 of 2011 became the legal basis for the establishment of two Social Security Administering Bodies (BPJS), namely BPJS Health and BPJS Employment (Shihab, 2018). BPJS Health is responsible for administering the health insurance program, which includes health services for participants who need protection from the risk of illness and accidents. Previously, this program was organized by PT. Askes Indonesia, which was later integrated into BPJS Health, expanded the coverage and accessibility of health insurance for all Indonesian people (Nurcahyo, 2021). On the other hand, BPJS Employment is tasked with organizing security programs related to employment aspects, such as work accident insurance, old age insurance, pension insurance and death insurance. Previously, these programs were organized by PT. Jamsostek, which was then integrated into BPJS Employment (Suwandi & Wardana, 2022). With the existence of BPJS Employment, it is hoped that social protection for workers and laborers in Indonesia will become broader and

more comprehensive, as well as provide better financial security guarantees at various stages of life.

The establishment of BPJS Health and BPJS Employment in Law Number 24 of 2011 is a step in accordance with the principles of Indonesian constitutional law. As part of state administration based on law, this step illustrates the principles of economic democracy mandated by the post-amendment 1945 Constitution (Salangka, 2023). In this context, the government acts as a social security organizer responsible for ensuring social protection for all Indonesian people, in accordance with the constitutional mandate (Arisandi, 2021).

Apart from that, the formation of BPJS Health and BPJS Employment also reflects the principles of a welfare state promoted by the 1945 Constitution. Through the existence of the social security administering body, the state provides guarantees to its citizens for basic needs such as health and employment protection, thereby providing life insurance appropriate for every individual (Solechan, 2019). Thus, the establishment of BPJS Health and BPJS Employment is not only an administrative step, but also a constitutional implementation in realizing fair and sustainable social welfare for all Indonesian people, in accordance with the principles of applicable constitutional law (Yuditia et al, 2023) .

This research aims to analyze the implementation of social security in accordance with the perspective of Indonesian constitutional law. By understanding the implementation of social security within a legal framework, it is hoped that this research can provide a deeper understanding of the extent of compliance with democratic principles, the supremacy of law and the protection of human rights in implementing social security. It is hoped that from this research, policy recommendations will emerge that are more effective in achieving fair and sustainable social welfare for Indonesian society.

METHOD

In this research, a normative juridical approach, especially a statutory approach, is used as the main methodology. This approach allows researchers to understand and analyze the legal issues faced by referring to the legal basis that has been established, such as related laws and regulations (Ariawan, 2013). By using this approach, researchers can develop strong and consistent arguments based on interpretation and analysis of applicable legal norms. This makes it possible to solve complex legal problems in a systematic and structured way, as well as providing a deeper understanding of the implementation of social security within the framework of constitutional law.

RESULTS AND DISCUSSION

The social security philosophy, as regulated in Law Number 40 of 2004 concerning the National Social Security System (SJSN) and Law Number 24 of 2011 concerning the Social Security Administering Body (BPJS), has roots that cut across the capitalist system. This is reflected in the view that social security is interpreted as a strategy to provide reserve funds to overcome economic risks that arise systemically in the capitalist economic cycle, especially in facing crises. The history of the formation of the social security system refers to international rules which were then adopted into national law through amendments to the

1945 Constitution, which included the word "social security" as a method that had to be developed by the state after the Indonesian economic crisis.

Article 28H paragraph (3) of the 1945 Constitution states that "Every person has the right to social security which enables his/her full development as a human being with dignity". Meanwhile, Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia confirms that "the State develops a social security system for all people and empowers weak and incapable people in accordance with human dignity". The implementation of these two articles is expected to fulfill the mandate of Article 27 paragraph (2) of the 1945 Constitution which states that "Every citizen has the right to work and a living worthy of humanity", as well as Article 34 paragraph (1) which states "The poor and abandoned children are cared for by the state." These articles emphasize that social security is a right that every individual has, not a privilege, as explained by the concept of "privilege". This indicates that social security is a universal right and is recognized by the state as part of its social responsibility towards its citizens, not a special right that is only owned by a small portion of society.

With the enactment of Law Number 40 of 2004 concerning the National Social Security System (SJSN) and Law Number 12 of 2009 concerning Social Welfare, the concept of social security which refers to human rights is increasingly being accommodated in the Indonesian legal structure. Article 14 paragraph (1) of Law Number 40 of 2004 confirms the government's obligation to gradually register recipients of contribution assistance as participants with the Social Security Administering Body. In this context, the article provides a guarantee that recipients of contribution assistance, which mainly include the poor and underprivileged, have greater access to social security protection. Article 14 paragraph (2) then makes it clear that the category of recipients of contribution assistance is intended for those who are economically vulnerable. Furthermore, Article 17 paragraph (4) confirms that the government is responsible for paying social security program contributions for the poor and underprivileged, guaranteeing that they can enjoy social security benefits without having to burden their economic conditions. Thus, through this regulation, the government is committed to expanding social security coverage to those who need it, in line with the principles of social welfare and protection of human rights.

Article 10 paragraph (1) of Law Number 11 of 2009 emphasizes the importance of social welfare insurance as a mechanism to protect citizens who cannot afford to pay premiums, so that they can maintain and maintain their level of social welfare. In this context, the government is responsible for providing contribution assistance as a form of social welfare insurance to those in need, ensuring that social protection can be enjoyed equally regardless of economic conditions. Article 5 paragraph (2) letter b of Law Number 39 of 2008 concerning State Ministries confirms that social affairs are included in government affairs whose scope is regulated in the 1945 Constitution of the Republic of Indonesia. This shows that the government has a significant responsibility. clear in carrying out social affairs, including in terms of providing social security for citizens.

However, if we investigate further, Article 17 paragraph (4) of the Law on the National Social Security System actually inspired its concept from Article 34 paragraph (3) as a result of the amendment, which added "social" and "other" (facilities) to further emphasizes the

elements that are the state's responsibility, not in Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This change is based on the need to increase constitutional guarantees that regulate the state's obligations in the field of social welfare. Thus, the existence of more complete provisions regarding social welfare after these changes is part of efforts to realize Indonesia as a welfare state, where people can live in accordance with human dignity and dignity. Through this formulation, there is a clear intention to direct the idea of a welfare state contained in the Preamble to the 1945 Constitution into a more concrete and sustainable reality.

Article 5 paragraph (2) letter b of Law Number 39 of 2008 concerning State Ministries confirms that social affairs are included in the realm of government whose scope is regulated in the 1945 Constitution of the Republic of Indonesia. This shows formal recognition that the government has a big responsibility in organizing various programs and activities related to social aspects in society.

However, when we investigate further, it appears that the thinking underlying Article 17 paragraph (4) of the Law on the National Social Security System actually comes from Article 34 paragraph (3) which has undergone amendments. This amendment adds the words "social" and "other" to further emphasize the elements that are the responsibility of the state, not in Article 34 paragraph (2) of the 1945 Constitution of the Unitary State of the Republic of Indonesia. This amendment was made to respond to the need for increased constitutional protection in regulating state obligations in the field of social welfare.

With these changes, there is a stronger emphasis on social welfare as an integral part of state responsibility. Provisions regarding social welfare that are more complete after these changes are part of efforts to realize Indonesia as a welfare state, where people can live in accordance with human dignity. Through these changes, there is a clear effort to bring the idea of a welfare state contained in the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia closer to a more real and sustainable reality. This indicates the government's commitment to strengthening social protection for all citizens in order to create a more just and prosperous society.

After the amendment to the 1945 Constitution, there were significant changes in the regulation of human rights contained in the Indonesian constitution. Although the state objectives contained in the Preamble to the 1945 Constitution remained unchanged in amendments I-IV carried out from 1999-2002, it can be seen that the emphasis on human rights became stronger and received greater attention in these changes. The concept of human rights is recognized as the main basis for administering the life of the Indonesian state and nation, in line with the principles of democracy and the supremacy of law.

During the amendment process, the articles of the 1945 Constitution regarding human rights underwent many changes and additions, which appeared striking and showed seriousness in including all universally recognized rights in the 1948 Universal Declaration of Human Rights. This reflects Indonesia's commitment to fulfill international standards in terms of human rights as well as providing broader and more comprehensive protection for all citizens. These changes are not only cosmetic, but are also substantial in improving human rights protection in Indonesia. By recognizing these rights as an inseparable part of the

constitution, Indonesia reaffirms its commitment to building a country based on the principles of democracy, supremacy of law and social justice for all its people.

In the 1945 Constitution, there is a strong emphasis on the state's responsibility in ensuring the protection, promotion, enforcement and fulfillment of human rights. This can be seen in Article 28I paragraphs (4) and (5), which emphasizes that this responsibility is the main obligation of the state, especially the government, in maintaining and protecting human rights. This article emphasizes the importance of implementing human rights within the framework of a democratic rule of law, where the protection of human rights is guaranteed, regulated and regulated clearly in statutory regulations.

Article 28I paragraphs (4) and (5) of the 1945 Constitution is the constitutional basis which emphasizes the constitutional responsibilities that must be carried out by the state, especially the government, in protecting and advancing human rights. This emphasizes that the protection of human rights is not just an optional policy, but is a non-negotiable obligation. The state must ensure that human rights are protected comprehensively, in accordance with the principles of a democratic rule of law. Thus, Article 28I paragraphs (4) and (5) of the 1945 Constitution is not only the key in seeing the state's constitutional responsibilities, but also the basis for assess the government's performance in ensuring human rights are protected and fulfilled. The implementation of this article strengthens Indonesia's commitment to upholding human rights as an integral part of the democratic system and the rule of law.

The National Social Security System (SJSN) is a state program whose main aim is to provide certainty of protection of human rights and social welfare for all people, in line with the mandate stated in Article 28H paragraph (1), paragraph (2), and paragraph (3) as well as Article 34 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In this context, SJSN is considered an important instrument in ensuring that the basic rights of every individual receive social protection and achieve an adequate level of welfare. deserves to be fulfilled. Apart from that, the Decree of the People's Consultative Assembly Number X/MPR/2001 gives the President the task of establishing a national social security system. This task is intended to create a comprehensive and integrated system in providing social protection for the community. Thus, SJSN is not only a state policy, but also a form of the government's commitment to implementing constitutional provisions that emphasize human rights and social welfare for all Indonesian people. Through SJSN, it is hoped that all levels of society can feel the benefits of social protection programs that are provided evenly and sustainably.

CONCLUSION

Social security in Indonesia, as regulated in Law Number 40 of 2004 concerning the National Social Security System (SJSN), Law Number 24 of 2011 concerning the Social Security Administering Body (BPJS), as well as amendments made to the Law The Foundation of the Republic of Indonesia in 1945 was a concrete effort to fulfill human rights and achieve social welfare for all Indonesian people. The emphasis on social protection and welfare is an integral part of state responsibility, in line with the principles of democracy, rule of law and social

justice. The National Social Security System (SJSN) is not only a state policy, but also an implementation of the government's commitment to implementing comprehensive and integrated social protection programs. With the existence of social security, especially for those who are economically vulnerable such as the poor and underprivileged, it is hoped that it can provide certainty of protection and increase the level of welfare of society evenly. In addition, the amendments made to the 1945 Constitution of the Republic of Indonesia emphasize Indonesia's commitment to meeting international standards in terms of human rights and providing broader and more comprehensive protection for all citizens. Overall, social security in Indonesia is not only a constitutional obligation of the state, but also a real implementation of the principles of democracy, rule of law and social justice in order to achieve sustainable prosperity for all Indonesian people.

REFERENCES

1. Adillah, S. U., & Anik, S. (2015). Kebijakan jaminan sosial tenaga kerja sektor informal berbasis keadilan sosial untuk meningkatkan kesejahteraan. *Yustisia*, 4(3), 558-580.
2. Adiyanta, F. S. (2020). Urgensi kebijakan jaminan kesehatan semesta (Universal Health Coverage) bagi penyelenggaraan pelayanan kesehatan masyarakat di masa pandemi Covid-19. *Administrative Law and Governance Journal*, 3(2), 272-299.
3. Ariawan, I. G. K. (2013). Metode Penelitian Hukum Normatif. *Kertha Widya*, 1(1).
4. Arisandi, M. Z. (2021). Mekanisme Pengawasan Terhadap Peserta Bpjs Ditinjau Dari Perspektif Hukum Administrasi Negara. *Journal of Law (Jurnal Ilmu Hukum)*, 7(1), 127-139.
5. Hartati, T. S. (2016). Pencegahan kecurangan (Fraud) dalam pelaksanaan program jaminan kesehatan pada Sistem Jaminan Sosial Kesehatan (SJSN)(Studi di Rumah Sakit Umum Daerah Menggala Tulang Bawang). *Fiat Justisia: Jurnal Ilmu Hukum*, 10(4), 715-732.
6. Hayat, H. (2015). Keadilan Sebagai Prinsip Negara Hukum: Tinjauan Teoritis dalam Konsep Demokrasi. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 2(2).
7. Ibrahim, H. Z. (2015). Hakekat hukum pengupahan dalam upaya mewujudkan kesejahteraan sosial pekerja. *Masalah-Masalah Hukum*, 44(4), 431-446.
8. Koswara, I. Y. (2018). Perlindungan Tenaga Kesehatan dalam Regulasi Perspektif Bidang Kesehatan Dihubungkan dengan Undang-undang Nomor 36 Tahun 2009 tentang Kesehatan dan Sistem Jaminan Sosial. *Jurnal Hukum POSITUM*, 3(1), 1-18.
9. Muthoharoh, D. A. N., & Wibowo, D. A. (2020). Return to Work sebagai Bentuk Jaminan Kecelakaan Kerja di Badan Penyelenggara Jaminan Sosial (BPJS) Ketenagakerjaan. *Jurnal Hukum Lex Generalis*, 1(2), 1-21.
10. Nurcahyo, N. (2021). Perlindungan hukum tenaga kerja berdasarkan peraturan perundang-undangan di Indonesia. *Jurnal Cakrawala Hukum*, 12(1), 69-78.
11. Pahlevi, F. S. (2016). Revitalisasi Pancasila Dalam Penegakan Hukum Yang Berkeadilan Di Indonesia. *Justicia Islamica*, 13(2), 173-198.

12. Putra, A. (2017). Urgency Kebijakan Affirmative Action Dalam Mensejahterakan Masyarakat Kawasan Perbatasan Provinsi Kalimantan Utara. *Borneo Law Review*, 1(1), 58-81.
13. Ruslina, E. (2012). Makna Pasal 33 Undang-Undang Dasar 1945 Dalam Pembangunan Hukum Ekonomi Indonesia. *Jurnal Konstitusi*, 9(1), 49-82.
14. Salangka, A. R. (2023). Pengawasan Bagi Badan Penyelenggara Jaminan Sosial (Bpjs) Kesehatan Dilihat Dari Hukum Administrasi Negara. *Lex Privatum*, 12(3).
15. Shihab, A. N. (2018). Hadirnya negara di tengah rakyatnya pasca lahirnya undang-undang nomor 24 tahun 2011 tentang badan penyelenggara jaminan sosial (The presence of the state among people after the Declaration Of Law Number 24 Year 2011 concerning social security administering agency). *Jurnal Legislasi Indonesia*, 9(2), 175-190.
16. Situmorang, C. H. (2017). Komitmen negara dalam memberikan jaminan hari tua bagi pekerja. *Sosio Informa: Kajian Permasalahan Sosial dan Usaha Kesejahteraan Sosial*, 3(3).
17. Solechan, S. (2019). Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan Sebagai Pelayanan Publik. *Administrative Law and Governance Journal*, 2(4), 686-696.
18. Suwandi, F. R., & Wardana, D. J. (2022). Aspek Hukum Keberlakuan BPJS Ketenagakerjaan Terhadap Perlindungan Dan Keamanan Kerja. *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan*, 2(1), 251-262.
19. Widiyastuti, S. (2019). Politik Hukum Badan Usaha Milik Daerah (BUMD) dalam Kegiatan Bisnis untuk Mewujudkan Kesejahteraan Sosial. *Jurnal Law and Justice*, 4(1), 12-22.
20. Yuditia, A., Hidayat, Y., & Achmad, S. (2023). Pelaksanaan Jaminan Kesehatan Nasional Oleh BPJS Berdasarkan Undang-Undang No. 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional. *Jurnal Magister Ilmu Hukum*, 6(1), 43-61.