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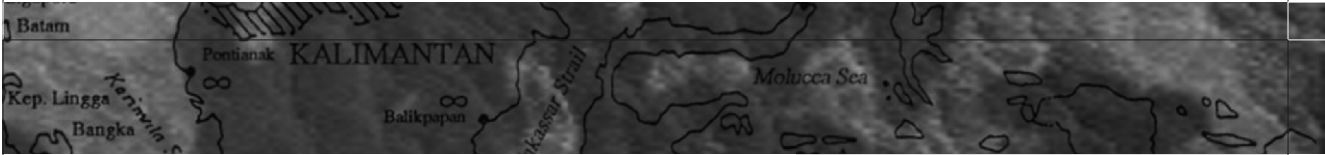
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German Technical Cooperation

Social Security System Reform in Indonesia

[Law No. 40 Year 2004 Concerning
National Social Security System
Following the Ruling of Constitutional Court]





Supervisor

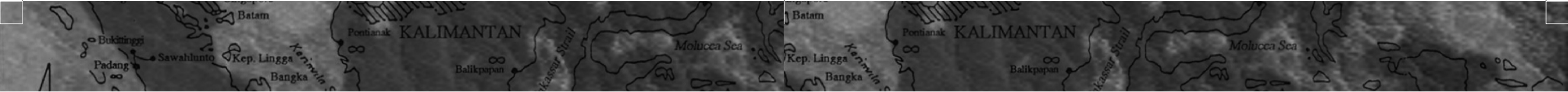
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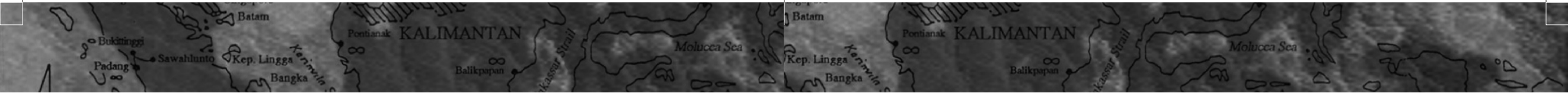
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Foreword



Law No. 40 year 2004 concerning National Social Security System (NSSS) is historically a starting point to a holistic reform on the social security system of Indonesia. The fact that there are so many partially and overlapping regulations, limited benefit of such programs, and limited beneficiaries' coverage have put social security reform as one of the top priorities in the country. In the light of Indonesian human development, the Government of Indonesia is committing itself to gradually improve the life and the social security to all people of Indonesia. This is the 1945 Constitution article 34 clause 2: *“The state develops Social Security System for the people and empower poor communities.”*

The implementation of National Social Security System Law needs comprehensive rules and regulations that govern the spirit of the program, its' establishments, as well as its' implementation mechanisms. Therefore, it is needed to set-up a proper scheme that is covering regulation development, improvement of the scope of participation, improvement the benefits of the program, and the integration of the system with various development elements. With all those aspects settled, it is believed that then the reform of social security system will bring its' people to social just and social welfare.

The reform of social security system encourages all parties, whether it is the government, the private sector, and the communities to collaborate on a basis of correct understanding on the national social security system and its' reform as well as its' detail mission. The results of the test of the National Social Security System Law by the Constitution Tribunal that was read on August 31 , 2005 shall be taken into account by all stakeholders.



The test supports the idea that a holistic understanding cannot be put aside and the active involvement of all stakeholders among the people in developing the law is a must.

I wish this guidebook can be understood well and can be used as a common basis for all regarding National Social Security System of Indonesia. In the end, this understanding will move all stakeholders to work together developing social security system for the establishment of social just and social welfare in Indonesia.

I do appreciate and grateful to the writers, consultants, and other team members who already worked hard developing this guidebook. I also have a high regard for the Government of Federal Republic of Germany for its' technical support to the Coordination Department of People's Welfare through GTZ Social Health Insurance Project in developing the Social Security System in Indonesia.

Jakarta, September 2006
Coordination Minister for People's Welfare,


Aburizal Bakrie

Background

In Indonesia, social security programmes have long been administered by the Social Security Administering Bodies is PT Jamsostek, PT Askes, PT Taspen, PT Asabri, and the Social Health Insurance (PHI) administering body, as well as various micro social security programmes. But their coverage is partial and limited to those employed in the formal sector. These administering bodies operate partially based on laws and regulations that are fragmented, overlapping, inconsistent, and not strictly enforced. The benefits the participants receive are limited too; so they do not receive optimal protection. Their organizational management lacks transparency and their managers, professionalism.

Realising these shortcomings, the government felt the need for law of national scope that would revise the existing laws and regulations governing the substance, institutions and mechanisms of the administration of social security. Based on a proven and integral concept of national social security, this law provides direction in terms of implementation of social security.

On this basis, on October 19, 2004, the government passed Law No. 40 year 2004 concerning the National Social Security System. Reform of the social security system in Indonesia began with the passing of this law, which will synchronise the current administration of social security, thus providing a better guarantee of social justice.



Chronology of the Drafting of Law No. 40 year 2004

Social security is a form of social protection administered by the state to provide its citizens a guarantee of security of life as established in the 1948 UN Declaration of Human Rights and ILO Convention No. 102 year 1952.

In Indonesia, social security is mandated by Article 5 clause (1), Article 20, Article 28H clause (1), clause (2) and clause (3), and Article 34 clause (1) and clause (2) of the 1945 Constitution and its 2002 Amendment. Decree of the People's Legislative Assembly of the Republic of Indonesia Number X/MPR/2001 assigns to the President the task of establishing a National Social Security System.

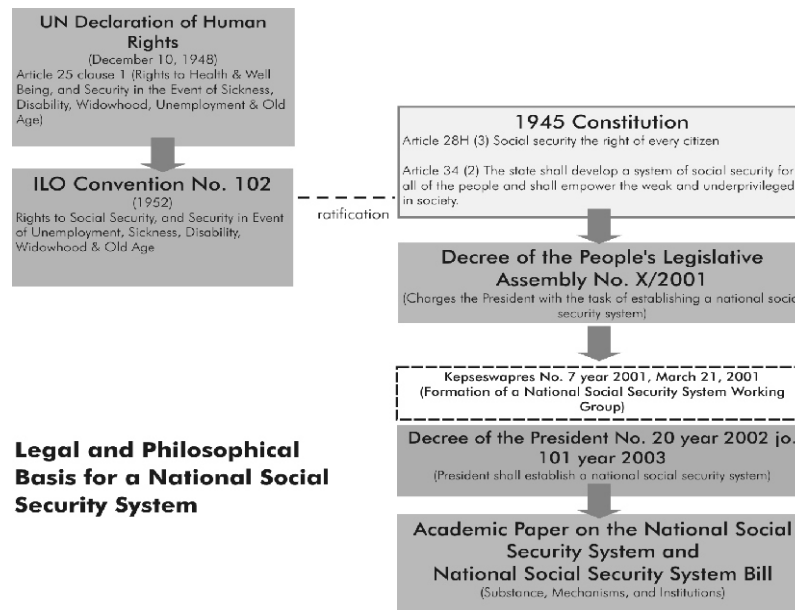
This mandate was realised with the formation of the Working Group on the National Social Security System in 2001 by the Vice President of the Republic of Indonesia (Decree of the Secretariat of the Vice President, No. 7 year 2001, dated March 21, 2001). The main task of this working group was to prepare an academic paper on the National Social Security System and develop the concept of the bill on the National Social Security System. This Decree of the Secretariat of the Vice President was revised by Decree of the President No. 20 year 2002, dated April 10, 2002, on formation of the National Social Security Team, which delegated it the same authority.

Preparation of the academic paper on the National Social Security System was the first step in the drafting of the National Social Security System. This academic paper was the output of research on and knowledge of social security, complemented by comparative studies, workshops, information discussions with national parliament, socialisation, and input from other quarters. The academic paper underwent 8 (eight) revisions, culminating in the final version produced on January 26, 2004.

“...over the course of time, the national social security bill underwent 56 (fifty-six) revisions and amendments.”

The complete academic paper was published separately before being incorporated into the concept of the National Social Security System bill. Between discussion of the preliminary concept of the National Social Security System bill of February 9, 2003, which consisted of 11 (eleven) chapters and 42 (forty-two) articles, and the final concept of January 14, 2004, consisting of 12 chapters and 74 (seventy-four) articles, submitted by the National Social Security System team to the Government, 52 (fifty-two) revisions and amendments were made. The government then put before parliament a national social security bill consisting of 12 (twelve) chapters and 80 (eighty) articles on January 26, 2004.

During discussions between government and the parliamentary committee on the National Social Security System bill, the bill underwent three revisions. So, over the course of time, before being passed as law, the concept of the National Social Security System bill underwent a total of 56 (fifty-six) revisions and amendments. Officially ratified as Law No. 40 year 2004 on October 19, 2004, this law consisted of 9 chapters and 53 (fifty-three) articles.



The Law on the National Social Security System is established in the context of fulfilling the mandate of the 1945 Constitution to guarantee ALL PEOPLE fulfilment of their BASIC LIFE NEEDS.

The National Social Security System programme began with the employee social security scheme Jamsostek, which was governed by the Employee Social Security Law (Law No. 3 year 1992). But his law, which is in force nationally, has undergone a fundamental change with the establishment of Law on the National Social Security System, which develops 5 (five) NATIONAL programmes.

Why? Because the 1945 Constitution requires that ALL people, be they civil servants, private sector employees, or self employed farmers, fisher, traders and so on, enjoy equal social security: Health Insurance, Work Accident Insurance, Old Age Pension, Public Pension, and Life Insurance. Public pensions are not covered by the Employee Social Security Law.

Although it has been emphasised that the National Social Security System Law is not a revision of the Employee Social Security Law; in truth, it is. Therefore, there is no reason for a separate revision of the Employee Social Security Law. As of 2009, this law will automatically no longer be in effect, as established by article 52 of the National Social Security System Law, which requires that PT Jamsostek bring itself into compliance with that law. Not that the Employee Social Security Law be brought into compliance; because the National Social Security System Law has in effect done that. What it means is that PT Jamsostek must become a social security administering body and administer one or more of the social security programmes governed by the National Social Security System Law.

.....the essence of national unity, this must be implemented nationally..... ...



Judicial Review of the National Social Security Law and the Ruling of the Constitutional Court of the Republic of Indonesia of August 31, 2005

Within four months of being passed, on February 21, 2005, the National Social Security System Law had been presented for judicial review, the ruling on which was read by the Constitutional Court on August 31, 2005. This judicial review was proposed by representatives of local parliaments (Jawa Timur Provincial Parliament, the management of the Jawa Timur Province Public Health Insurance Administering Body, the management of the Rembang District Public Health Insurance Administering Body, and the management of the Jakarta Public Health Insurance Administering Body) who were of the opinion that their constitutional rights and responsibilities were undermined by the coming into force of the National Social Security Law.¹

The plaintiff claimed that the National Social Security System Law was in contravention of the 1945 Constitution² and Law No. 32 year 2004 concerning Regional Governments³, and also claimed that central government (the Ministry of Health) had interpreted the National Social Security System Law unilaterally through the issue of Decree of the Minister of Health No. 1241 year 2005 concerning the Appointment of PT Askes as Manager of the Health Insurance Programme for Poor People.⁴

These issues were brought before the Constitutional Court, which, pursuant to Article 10 clause (1) of Law No. 24 year 2004 concerning the Constitutional Court, has the jurisdiction to hear cases in the first and final instance and whose ruling is final. This includes the jurisdiction to test the constitutionality of legislation against the 1945 Constitution. Such tests include formal

The plaintiff claimed that the National Social Security System Law was in contravention of the 1945 Constitution and Law No. 32 year 2004 on Regional Governments, and also claimed that central government (the Ministry of Health) had interpreted the National Social Security System Law unilaterally through the issue of Decree of the Minister of Health No. 1241 year 2005

¹Ruling No. 007/PUU-III/2005 of the Constitutional Court of the Republic of Indonesia on the Test of Constitutionality of Law No. 40 year 2004 concerning the National Social Security System Against the 1945 Constitution, p. 4

²Ruling No. 007/PUU-III/2005 of the Constitutional Court of the Republic of Indonesia on the Test of Constitutionality of Law No. 40 year 2004 concerning the National Social Security System Against the 1945 Constitution, p. 6, 7

³Ruling No. 007/PUU-III/2005 of the Constitutional Court of the Republic of Indonesia on the Test of Constitutionality of Law No. 40 year 2004 concerning the National Social Security System Against the 1945 Constitution, p. 8, 9, 10

⁴Ruling No. 007/PUU-III/2005 of the Constitutional Court of the Republic of Indonesia on the Test of Constitutionality of Law No. 40 year 2004 concerning the National Social Security System Against the 1945 Constitution, p. 20

On August 31, 2005 at a plenary session open to the public, the Constitutional Court read its ruling on case number 007/PUU-III/2005, that is, on the test of constitutionality of Law No. 40 year 2004 concerning the National Social Security System, specifically Article 5 clause (1), clause (3) and clause (4) and Article 52, against the 1945 Constitution of the Republic of Indonesia.

The Ruling of the Constitutional Court

1. States that Article 5 clauses (2), (3) and (4) of Law No. 40 year 2004 concerning the National Social Security System (State Gazette of the Republic of Indonesia Number 150 year 2004, Supplement to the State Gazette of the Republic of Indonesia Number 4456) are in contravention of the 1945 Constitution of the Republic of Indonesia;
2. States that Article 5 clauses (2), (3) and (4) of Law No. 40 year 2004 concerning the National Social Security System (State Gazette of the Republic of Indonesia Number 150 year 2004, Supplement to the State Gazette of the Republic of Indonesia Number 4456) are not legally binding;
3. Rejects the Plaintiff's petition against Article 5 clause (1) and Article 52;
4. Orders that this ruling be promulgated as required in the State Gazette;
5. A ruling of the Constitutional Court on a petition pursuant to Article 57 clause (3) of Law No. 24 year 2004, must be incorporated within a period no more than 30 days from the date of the ruling.

Upholds the petition of the plaintiff as to:

1. Article 5 clause (3) on the legal grounds that preserving Article 5 clause (3) would lead to multi interpretations and legal uncertainty, since the material of this clause was included in Article 52.
2. Article 5 clause (2), although not included in the petition, is inseparable from clause (3), and as such if retained would also lead to multi interpretations and legal uncertainty as would Article 5 clause (3). Article 5 clause (2) and clause (3) of Law No. 40 year 2004 are wide open to multi interpretation because they contain formulations that contradict other clauses that would give rise to legal uncertainty and as such are in contravention of Article 28D clause (1) of the 1945 Constitution.
3. Article 5 clause (4) on the legal grounds that Article 5 clause (4) precludes the possibility of Regional Governments forming and developing social security administering bodies at the regional level in the framework of the National Social Security System.

In another section of its judicial review, the Constitutional Court states that the authority to administer the National Social Security System as part of the state's social service function lies not only with central government, but also with regional governments. Therefore, the National Social Security System Law may not prevent regional governments from developing social security systems as sub systems of the National Social Security System, pursuant to the authority derived from the provisions contained in Article 18 clauses (2) and (5) of the 1945 Constitution.

Norms, standards and procedures for regional social security administering bodies must be established in the legislation that will form the guidelines for regional governments on drafting regional regulations.

The ruling of the Constitutional Court states that formation of Social Security Administering Bodies at the regional level may be established by Regional Regulation on fulfilment of criteria concerning the National Social Security System as governed by the National Social Security System Law, namely that it is administered based on the philosophy, aims and principles as established in Article 2, Article 3 and Article 4 of the National Social Security System Law. Norms, standards and procedures for regional social security administering bodies must be established in the legislation that will form the guidelines for regional governments on drafting regional regulations.

Rejects the petition of the plaintiff as to, Article 5 clause (1) on the grounds that this article is sufficient to meet the needs for establishment of national social security administering bodies at the national level and that it is not unconstitutional. Testing of article 52 was also rejected on the grounds that it fills a legal vacuum and guarantees legal certainty.

The ruling of the Constitutional Court has no significant implications for implementation of the National Social Security System Law. The National Social Security System Law is in keeping with Article 34 clause (2) of the 1945 Constitution because the system chosen covers all people with the aim of empowering the weak and underprivileged in society in accordance with human dignity. Moreover, it is emphasised that in itself the National Social Security System Law is a confirmation of the state's responsibility to provide social security as a human right, as referred to in Article 28H clause (3) of the 1945 Constitution.

Substance of the National Social Security System Law

Definition

The National Social Security System is a system for the administration of social security programmes by several administering bodies. The National Social Security System is in essence a State programme that aims to provide a guarantee of social protection and welfare for all the people of Indonesia. Through this programme, it is hoped that each citizen will be able to fulfil his or her minimum basic life needs in the event of circumstances that cause a loss or reduction in income, as a result of illness, accident, loss of employment, or reaching old age or pensionable age.

The National Social Security System is in essence a State programme that aims to provide a guarantee of social protection and welfare for all the people of Indonesia.

Social security is a form of social protection to ensure that all citizens are able to provide for their minimum basic life needs. The meaning of basic life needs as defined by the National Social Security System Law is a person's essential needs to achieve an adequate standard of living, for the creation of social welfare for all Indonesian people.

...to ensure that all citizens are able to provide for their minimum basic life needs.

Social security is administered through a mechanism of social insurance, that is, a mechanism for collecting funds from compulsory contributions to be used to provide protection against social economic risks that befall participants and/or their family members.

Purpose and Principles of Administration

The National Social Security System is administered on the basis of the principles of humanitarianism, benefit, and social justice for all citizens of Indonesia

..., towards creating optimal, fair and beneficial protection for participants and/or their family members.

The principle of humanitarianism relates to respect for human dignity. The principle of benefit is an operational principle that relates to efficient and effective management. The principle of social justice is an ideal. These three principles are intended to guarantee the continuity of the programme and the rights of participants.

The National Social Security System aims to implement the mandate of Article 28H clause 3 and Article 34 clause 2 of the 1945 Constitution as amended, expressed in the National Social Security System Law, which governs participation, contributions and benefits, the mechanism for administering social security, and social security institutions at the national level, towards creating optimal, fair and beneficial protection for participants and/or their family members.

Social security system is designed to be able to synchronise implementation of the various forms of social security implemented by various implementing bodies to ensure provide greater benefits for each participant. Social security programmes are administered through mechanisms of social insurance, social assistance, and / or compulsory contributions with the aim of providing social security for all citizens, thus fulfilling their basic life needs.

9 Principles of the National Social Security System

1. **The principle of mutual support**
This principle is realised in a mechanism of mutual support, where the better off participants help those that are less well off in the form of compulsory participation for all; low risk participants help high risk participants; healthy participants help those who are sick. Through this principle of mutual support, social security can cultivate social justice for all the people of Indonesia.

2. **The principle of not-for-profit**
The purpose of management of the trust funds is not to seek profits for the Social Security Administering Body; instead, the main aim of administering social security is to fulfil as far as possible the interests of the participants. Trust funds, return on their growth, and budget surpluses will be used in the best interests of the participants.
3. **The principle of transparency**
A must in social insurance because the funds managed belong to the participants and as such access to complete, accurate and clear information for each participant must be facilitated.
4. **The principle of prudence**
Cautious, provident, safe and systematic management of funds
5. **The principle of accountability**
Accurate and accountable programme implementation and financial management
6. **The principle of portability**
Social security is intended to provide continuous security should a participant change employment or move residence within the Unitary State of the Republic of Indonesia.
7. **The principle of compulsory participation**
Compulsory participation is intended to ensure that all citizens become participants and thus receive protection. Although participation is compulsory for all citizens, adoption of this principle will nonetheless be contingent on the economic capacity of the people and the Government, and on the feasibility of programme implementation. In the initial phase, participation will be compulsory for employees in the formal sector and voluntary for workers in the informal sector, thus encompassing farmers, fishers and the self-employed, so that ultimately the National Social Security System will encompass all citizens.

8. **The principle of trust funds**

Funds gathered from participant's contributions are funds entrusted to the implementing agencies to be managed effectively and efficiently in the best interests of the welfare of the participants.

9. **The principle for returns on investment of National Social Security Funds**

Returns take the form of dividends from shareholders returned in the interests of the social security of participants.

(Law No. 40 year 2004 Article 4)

National Social Security Institutions

Supervisory Board

To implement the National Social Security System, a National Social Security Council shall be formed. The National Social Security Council (NSSC) is directly responsible to the President. The function of the National Social Security Council is to draft general policy and synchronise implementation of the National Social Security System. Formation of the National Social Security Council shall be established by a Presidential Regulation. The membership of the National Social Security Council consists of 15 (fifteen) persons, comprising members from the ranks of Government, figures and/or experts with an understanding of social security, members of employers organisations and members of workers organisations.

The National Social Security Council (NSSC) is directly responsible to the President.

Social Security Administering Bodies

A question of a more micro nature following the ruling of the Constitutional Court, which states that Article 5 clause (2), clause (3) and clause (4) of the National Social Security System Law are not legal binding, is whether PT Jamsostek, PT Taspen, PT Asabri, and PT Askes can continue to provide social services in their respective fields. The answer is: Of course! Pursuant to Article 52 clause (1) of the National Social Security System Law, these four companies shall continue to be in effect until such time they are brought into compliance with this Law. The legal considerations of the ruling of the Constitutional Court (per page 268) state, among others, that: *"If it was the intention of the law makers to say that in so far as the Social Security Administering Bodies as referred to in clause (1) had not been formed, the bodies referred to in clause (3) would be entitled to operate as social security administering bodies, then it is sufficient to establish this in the Transitional Provisions in Article 52 of the National Social Security System Law."*

... from now, systematic, directed and integrated measures to draft Law pursuant to the provisions in article 5 of the National Social Security System Law must formulated immediately

However, it is necessary to consider clause (2) of this Article, which states that All provisions governing the Social Security Administering Body as referred to in clause (1) shall be brought into compliance with this law no later than 5 (five) years from the enactment of this Law. This means that provisions governing the four Social Security Administering Bodies referred to in Article 52 clause (1) must be brought into compliance with this Law **no later than October 18, 2009**. The sooner, the better; for the sake of legal certainty. Which means that from now, systematic, directed and integrated measures to draft Law pursuant to the provisions in article 5 of the National Social Security System Law must formulated immediately to provide a legal basis for the social security administering bodies. If no Law is established before the end of the transition period, the four limited liability companies designated as social security administering bodies will lose the legal basis for their existence.

Implementing regulations for the National Social Security System Law are also urgently needed to ensure that this Law can be applied effectively.

Administering Bodies at the Regional Level

Norms, standards and procedures for regional Social Security Administering Bodies must be established in the legislation that will form the guidelines for regional governments on drafting regional regulations.

Formation of Social Security Administering Bodies at the regional level following the ruling of the Constitutional Court may be established by regional regulation, but must be within the framework of the National Social Security System, which is administered based on the purpose and principles established in Article 2, Article 3 and Article 4 of the National Social Security System Law. Norms, standards and procedures for regional Social Security Administering Bodies must be established in the legislation that will form the guidelines for regional governments on drafting regional regulations. Also, they must also provide legal certainty and guarantee that the standard of services provided is sufficient to fulfil a standard of basic life needs comparable across regions, as stated on page 266 of the ruling of the Constitutional Court .

Relationship between Law No. 32 year 2004 on Regional Governments and Law No. 40 year 2004 Following the Ruling of the Constitutional Court

In its ruling, the Constitutional Court is also of the opinion that administration of social security systems is not the exclusive authority of central government, since this would contradict the definition of the State as comprising central government and regional governments. Yet neither is it the exclusive authority of regional governments; for it were, the situation may well arise where only some regions were able to administer social security systems. And that would not guarantee that the social security administered meets a standard of basic life needs comparable across regions. If, for whatever reason, a person has to move from one region to another, he or she would have no guarantee that, having moved, he or she would continue to enjoy the right to social security.

Provisions concerning the respective tasks and responsibilities of the Social Security System at the national level and regional level shall be further governed in a government regulation to ensure efficiency of administration and to prevent overlapping. Thus, in the context of implementing Law No. 40 year 2004 Following the Ruling of the Constitutional Court, there are several agendas that need to be finalised, including the agendas on regulation, institutions, and coverage.

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Mechanisms for Administering the National Social Security System

Participation and Contributions

- a. Participation in Social Security is compulsory for all citizens (civil servants, members of the military / police, government officials, private sector employees, informal sector workers, and poor people).
- b. For all programmes, the benefits received are to fulfil basic life needs (mitigate the economic risk of sickness, work accident, old age, pension, or death).
- c. Contributions are paid jointly by employees, employers, and government. The funds belong to the participants. Poor / destitute people are entitled to assistance to pay insurance contributions/premiums, and the accumulated contributions / premiums shall no longer belong to the individual but be common funds. This means the person concerned has no claim to these funds in any event.

5 National Social Security Programmes

1. **Health Insurance (HI)**

A Social Security programme that aims to provide comprehensive health insurance for all participants / Indonesian citizens to enable them to live healthy, productive and prosperous lives. It is provided in the form of health services appropriate to medical needs.

2. **Work Accident Insurance (WAI)**

A Social Security Programme that aims to provide a guarantee of services and compensation in the event that a worker is involved in an accident on the way to work, while at work, or after finishing work, or suffers a work-related illness.

3. **Old Age Pension (OAP)**

An insurance scheme administered with the aim of ensuring that participants receive benefits when they reach the age of retirement. However, in the event that participant suffers permanent disability that prevents him or her from working or dies before reaching pensionable age, the participant or his/her heirs are entitled to a lump sum payment of the old age pension.

4. **Pension Insurance (PI)**

A social security scheme administered based on a system of insurance and savings to ensure an adequate standard of living when a participant approaches pensionable age or suffers permanent total disability that precludes the participant from regular paid employment.

5. **Life Insurance (LI)**

A life insurance scheme based on a mechanism of social insurance, with compensation paid to the participant's heir in the event of his or her death.

Details of management of social security funds, law enforcement, and period of transition shall be clarified in the implementing regulations for the National Social Security System Law.

Constitutional Basis for Implementation of a National Social Security System

- 1945 Constitution as amended by the 4th amendment of 2002, Article 28H clause (1): “Every person has the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and the right to health services”
- 1945 Constitution as amended by the 4th amendment of 2002, Article 28H clause (3): “Every person has the right to social security in order to develop his or her self as a dignified human being”
- 1945 Constitution as amended by the 4th amendment of 2002, Article 34 clause (1): “Destitute people and neglected children shall be taken care of by the State”
- 1945 Constitution as amended by the 4th amendment of 2002, Article 34 clause (2): “The state shall develop a system of social security for all of the people and shall empower the inadequate and underprivileged in society in accordance with human dignity”
- Law No. 40 year 2004 concerning the National Social Security System is a revision of the substance, institutions and mechanisms for administering social security previously in force.
- Law No. 32 year 2004 Article 22 letter h: “In implementing autonomy, regions have the jurisdiction to develop social security systems”.



Follow Up Agendas for Implementation of the National Social Security Law

Implementation of the National Social Security System Law still requires the completion of a number of agendas, including a regulation agenda and organisational agenda, agenda for development of stakeholders' roles and agenda for expansion of the coverage and benefits of the social security programmes.

Agendas for Implementation of the National Social Security System Law Following the Ruling of the

- *Regulation agenda*
- *Agenda for organisation of the National Social Security System*
- *Agenda for development of stakeholders' roles*
- *Agenda for expansion of the coverage and benefits of social security programmes*

Regulation Agenda

At a national working meeting on the national social security held on the 15th and 16th of March, 2006, it was agreed that Law No. 40 year 2004 concerning the National Social Security System following the ruling of the Constitutional Court is an umbrella law for the National Social Security System, and that as such, implementation of this law requires more detailed, clear and comprehensive legislation in the form of government regulations and presidential regulations. These regulations must define the tasks, authority, rights and responsibilities of each of the stakeholders and how these will be implemented.

The task of completing the regulation agenda and organisational agenda is led by the Coordinating Ministry for People's Welfare. The Coordinating Minister for People's Welfare formed a team and a working group to draft the regulations needed to implement Law No. 40 year 2004 pursuant to Decree of the Coordinating Minister for People's Welfare No. 14A/Kep/Menko/Kesra/VI/2006. The team is chaired directly by the Coordinating Minister for People's Welfare, assisted by three deputies: the Minister for Social Affairs, the Minister of Health, and the Minister of Manpower and Transmigration. Members of the working group the Coordinating Minister for Social Affairs, State Minister for State Enterprises, and members from Ministry of Finance, Ministry of Home Affairs, Ministry of Manpower and Transmigration, Ministry of Health, Ministry of Defense, Ministry of Justice and Human Rights, Ministry of State Administrative Reform, Ministry of Social Affairs, National Civil Service Board, Secretariat of the Vice President, Cabinet Secretariat, Secretariat of State, the four social security administering bodies, and candidates for membership of the National Social Security Council. Implementing regulations for the National Social Security System Law must be drafted, ratified and implemented no later than 18th October 2009.

Completion of the Regulation Agenda involves:

1. *Accelerating the drafting of implementing regulations for Law No. 40 year 2004 following the Ruling of the Constitutional Court;*
2. *Mapping and harmonising all legislation related to implementation of the National Social Security System Law No. 40 year 2004 following the Ruling of the Constitutional Court;*
3. *Clear and comprehensive establishment the authority of central and regional governments with regard to developing a National Social Security System in implementing regulations for Law No. 40 year 2004 concerning the National Social Security System and Law No. 32 year 2004 concerning Regional Governments;*
4. *Accelerating the process of drafting a bill on the National Social Security System Administering Bodies that accommodates regional aspirations.*

1. Drafting of implementing regulations for Law No. 40 year 2004 concerning the National Social Security System following the Ruling of the Constitutional Court

The National Social Security System working group has identified the need for implementing regulations for Law No. 40 year 2004 on 1 - 2 June 2006, and mandated that two (2) government regulations and two (2) presidential regulations be drafted.

As mandated, the two (2) government regulations and two (2) presidential regulations are as follows:

1. *Government Regulation elucidating Law 40 year 2004, Chapter V, article 14-17 and Chapter VI, articles 33, 34, 37, 38, 42, 45, and 46.*
2. *Government Regulation elucidating Chapter VII article 47 and 50.*
3. *Presidential Regulation for detailed regulation of Chapter V article 13, and Chapter VI articles 21, 22, 23, 26, 27, and 28.*
4. *Presidential Regulation for detailed regulation of Chapter IV article 10.*

1. Government Regulation elucidating Chapter V and Chapter VI will regulate:

- (i) The Ministry of Social Affairs as the institution formulating the criteria for destitute and poor people.
- (ii) The Central Bureau of Statistics as the institution that calculates aggregate data on poor citizens at the national, provincial and district/municipal levels.
- (iii) Regional government as the institution that identifies the names and addresses of poor and destitute people to be registered as recipients of government contribution assistance for social security; which in the initial stage shall be paid for the health insurance programme.
- (iv) Sources of public funds for paying the contributions of poor and destitute people, with due regard for fiscal balance between central government and the regional governments.
- (v) Norms for means-tested calculation of social insurance contributions for poor people, beginning with the health insurance programme.
- (vi) Establishment of the benefits of the work accident insurance programme, old age pension programme, and life insurance programme.
- (vii) Establishment of the contributions for work accident insurance, old age pension, pension insurance and life insurance programmes.
- (viii) The sharing of contribution payments between employers and employees. In view of the fact that the sharing of contribution payments between employers and employees is a universal principle of social security, the Government Regulation will indicate the phased and gradual increase of employee contributions, so that in say, 20 years, employees and employers pay fifty-fifty.

2. Government Regulation elucidating Chapter VII will regulate the following:

- (i) Funds managed by Social Security Administering Bodies are trust funds that are managed not-for-profit and professionally. Returns are ploughed back to enhance the benefits for social security participants.
- (ii) The obligation of administering bodies to set up a technical reserve based on actuarial calculations, provisions on directed and safe investment, and on the principles of prudent, transparent and accountable management.
- (iii) The imminent introduction of the Law on Not-for-Profit Legal Entities initiated by the Office of the Minister for Administrative Reform will allow for the transition of the four SOEs to be achieved by amending their deeds of establishment and articles of association and managing them as not-for-profit entities that manage trust funds, whenever they administer social security programmes that have mandatory participation.

3. Presidential Regulation on the National Social Security Board:

- (i) In the first instance, members of the National Social Security Council shall appointed by the President on the recommendation of the related Ministers coordinated by the Coordinating Minister for People's Welfare.
- (ii) Further regulations are needed for the subsequent selection of members National Social Security Council based on a fit and proper test.

4. Presidential Regulation on Chapter V and Chapter VI:

- (i) Registration of participants of all social security programmes.
- (ii) Health insurance and pension insurance benefits.
- (iii) Health insurance contributions, and contributions for families with more than five members.
- (iv) Health insurance services: benefits package and application of cost control and quality control in health services.
- (v) Types of health services not insured.
- (vi) Compensation for health facilities, and in-patient care in hospitals.

2. Harmonisation and Mapping of Legislation

Besides Law No. 40 year 2004, there are many other overlapping regulations and statutes that could give rise to new problems in the implementation of Law No. 40 year 2004 following the Ruling of the Constitutional Court. To avoid these issues, these other regulations and statutes need to be mapped and harmonised to ensure the effective implementation of Law No. 40 year 2004 following the Ruling of the Constitutional Court. The aim of harmonising and mapping is to improve administration of the existing social security system, to provide real benefits for citizens and ultimately build a system that can contribute to increasing productivity and raising the competitiveness of human resources, and impact on economic development and poverty reduction.

Basis for Harmonisation of Implementing Regulations

- a. Law No.10 year 2004 concerning Legal Drafting
- b. Presidential Regulation No.61 year 2005 concerning Procedure for Formulation & Management of the National Legislation Programme.
- c. Presidential Regulation No.68 year 2005 concerning Procedure for Drafting Bills, Draft Government Regulations in Lieu of Laws, Draft Government Regulations & Draft Presidential Regulations.

The Coordinating Ministry for People's Welfare is the initiator of the harmonisation of legislation and substance coordinator. The Ministry of Justice and Human Rights is the party responsible for harmonisation of legislation. Steps to harmonise legislation related to the National Social Security System Law will begin with building cross-sector coordination, which will be followed by the drafting of cross-department programmes for harmonisation of legislation related to the National Social Security System Law. The Coordinating Minister for People's Welfare will coordinate budgeting with sectors, regional governments, and independent sources of funds.

3. Clear and Comprehensive Establishment The Authority of Central And Regional Governments With Regard to Developing A National Social Security System in Implementing Regulations for Law No. 40 year 2004 and Law No. 32 year 2004 ;

4. Accelerating The Process of Drafting A Bill on The National Social Security System Administering Bodies That Accommodates Regional Aspirations.

Agenda for Organisation of the National Social Security System

- | | |
|-----|---|
| No. | <ul style="list-style-type: none"> (i) Accelerating formation of the National Social Security Council, Law 40 year 2004, Article 6; (ii) Providing the legal basis for formation of Social Security Administering Bodies. (iii) Preparing for the conversion of PT Askes, PT Jamsostek, PT Asabri, and PT Aspen to Social Security Administering Bodies. |
|-----|---|

Agenda for Development of Stakeholders' Roles

- (i) Design extension modules and implement training for national social security extension workers;
- (ii) Accelerate implementation of socialisation and dissemination of the law on the National Social Security System to stakeholders (central/provincial/district/municipal government, employers, employees/workers, the mass media and the general public);
- (iii) Accommodate regional aspirations;
- (iv) Build social security information and management systems;
- (v) Develop human resources with an understanding of and concern for the social security system;
- (vi) Shape public opinion that is conducive to development of the National Social Security System.

Agenda for Expansion of the Coverage and Benefits of Social Security Programmes

- (i) Formulate design, strategy and plan for expansion of the coverage and benefits of short-term, medium-term and long-term social security programmes.
- (ii) Increase regional government participation to achieve universal coverage for social security programmes;
- (iii) Prepare the supporting infrastructure and facilities for implementing National Social Security programmes;
- (iv) Identify regions for accelerated implementation of the National Social Security System, including measures to expand coverage that take a regional approach; Promote partnership and harmonisation among all stakeholders, including international organisations.
- (v) The Coordinating Ministry for People's welfare formulate budgeting and coordination agendas.

Appendix 1

Social Security: Definition, Programmes and Implementation Mechanism

What is Social Security?

The definition of social security has legal, political and economic aspects.

Legal aspect: social security has to do with the state's responsibility to implement the mandate of Article 5 (2), Article (20), Article 28H (1), (2), (3), and Article 34 (1) and (2) of the 1945 Constitution, namely to provide a basic system of protection against social economic risks. **Political aspect:** social security is an effort towards the formation of a welfare state, which is the political will of government.

Economic aspect: social security is concerned with the redistribution of income through a means-tested mechanism of compulsory participation. A National Social Security System is required for state security and to increase people's purchasing power, thus creating long-term economic security.

The definition of social security has legal, political and economic aspects.



ILO Definition of Social Security (1998)

....."Social security is the protection a society provides individuals through a set of public policies against social economic pressures that would otherwise cause loss of income as a result of sickness, maternity, work accident, temporary invalidity, disability, old age and premature death, and medical treatment, including the provision of subsidies for family members as needed."

This ILO definition of social security is universal, and a variety of approaches are taken to its implementation, depending on the country concerned.

Purwoko's Definition of Social Security (1999)

There are many definitions of social security. From the social insurance perspective, social security is a technique or method for addressing the risk of industrial relations based on the law of large numbers. From a social assistance point of view, social security means income support for the less well-off for their daily needs.

Therefore, social security is:

- (a) an economic factor such as consumption, savings and subsidies or concessions for the redistribution of income;
- (b) a state instrument for means-tested redistribution of social-economic risks;
- (c) a poverty reduction programme, followed up by community empowerment;
- (d) a system of basic protection against the partial loss of income as a consequence of the risks of industrial relations.

What is the Function of Social Security?

Social security has three pillars:

1. **Social assistance/service.** This system is funded from taxes by the state or from contributions from those who are better off.
2. **Compulsory savings.** Everyone is required to pay into a provident fund such as they do for the Jamsostek Old Age Pension and some of the Taspen Pensions.
3. **Social insurance.** Everyone makes contributions or pays premiums, which are compulsory. Premiums may be paid by another party or by the government, in the case of poor people. This system of social insurance is the best, sufficient funds are collected, and it is the most commonly used system in the world.

As a system of basic protection for workers, including members of the general public hit by disaster or misfortune such as poverty as a result of industrial relations or otherwise, social security benefits include:

- (a) *cash compensation to support the income of the main breadwinner;*
- (b) *financial compensation in the event of work accident or premature death;*
- (c) *health services and aids.*

Initially, social security functions to minimise economic insecurity, before moving towards achieving economic security.

Economic insecurity is the employment condition marked by uncertainty about job opportunities coupled with low wages, and eventually to the loss of income resulting from misfortune that is not offset by a comprehensive social security system and to costly health services, which frequently force people to outlay additional expenditure that cuts their spending money.

Initially, social security functions to minimise economic insecurity, before moving towards achieving economic security.

8 causes of economic insecurity

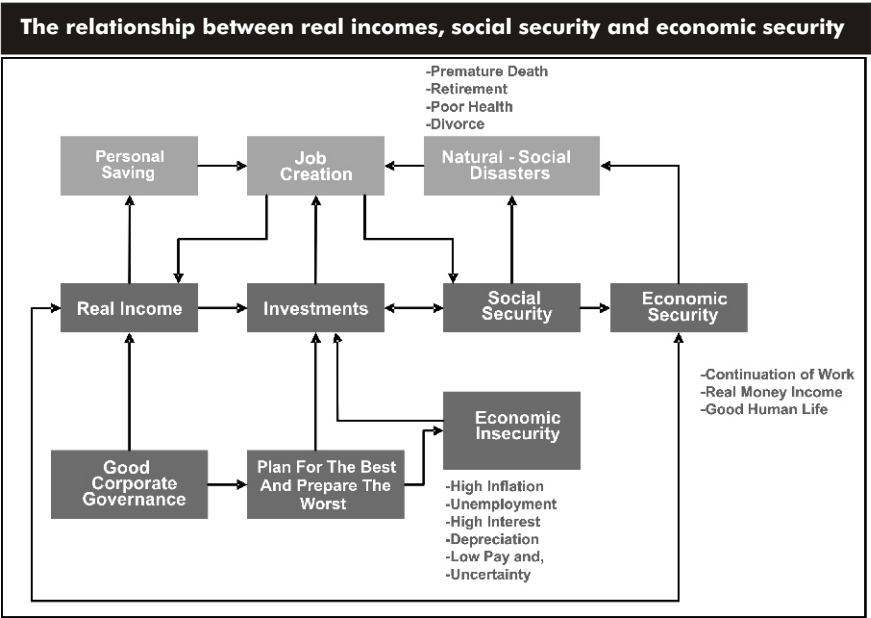
- ✓ *Death of a breadwinner before pensionable age*
- ✓ *Being a pensioner*
- ✓ *Health problems*
- ✓ *Being laid off*
- ✓ *Earning less than the minimum wage*
- ✓ *Inflation*
- ✓ *Natural disasters*
- ✓ *Personal problems such as divorce.*

Conversely, **economic security** is a condition in which people have the purchasing power to buy and save and are able to pay social security premiums in preparation for times of emergency, because their real incomes are sufficient to properly support their families.

Characteristics of economic security:

- ✓ Income security
- ✓ People receive real (money) incomes
- ✓ People earn above the minimum wage
- ✓ Families are self-supporting

How Does Social Security Work to Build Economic Security?



The diagram above shows the relationship between the need to create real incomes, the need for a social security system, economic insecurity and the goal of economic security.

Real incomes for people is the main condition for growing investment in and contributions to the Social Security System. Establishment of a minimum wage reduces, and even interferes with, people's ability to contribute. Companies that adopt good corporate management do not apply minimum wage policy and they have integral planning that includes programmes that provide for the worst for their employees. A comprehensive business plan will support the sustainability of the business, guaranteeing work for workers and thus their social security thanks to continuity of participation. So, economic security can be achieved with employment security for workers, which enables social security to function.

Real incomes for people is the main condition for growing investment in and contributions to the Social Security System.

Because people earn sufficient real income, they can use personal savings to manage their own businesses, thus creating jobs in the home industry sector. These new job opportunities will absorb new workers, who will ultimately be the target for expansion of the coverage of the Social Security System.

Government play's a crucial role in ensuring the continuity of an employee social security system by keeping inflation as low as possible, setting low interest rates, and creating exchange stability so that investment can be directed towards long term goals. Long term investment aims to minimise speculation that cause fluctuations, because the majority of social security funds, especially pension funds, are long term funds that are not used to finance liquidity.

Once these conditions are achieved, the criteria for successful implementation of social security will be achieved, namely increased coverage and improved benefits.

...the criteria for successful implementation of social security... namely increased coverage and improved benefits.

Social security programmes are meant for participants and their families...

What are Social Security Programmes?

Social security programmes are meant for participants and their families in the event of sickness, maternity, work accident, unemployment, old age, and premature death, especially of the main breadwinner. Social security programmes, therefore, require substantial funding because they provide protection for people aged 0-14 years (pre-productive age), 15-64 years (productive age), and 65 years and above (post productive age).

5 Themes of Social Security Programmes

- 1. Programmes to do with provision of financial compensation
- 2. Programmes to do with rehabilitation and provision of aids
- 3. Programmes to do with compulsory saving
- 4. Programmes to do with income support
- 5. Programmes to do with public/health services

- 1. **Programmes to do with provision of financial compensation**, usually apply to work accident insurance, which includes:
 - Compensation for death resulting from a work accident,
 - Compensation for total or partial disability,
 - Compensation for life for total disability
 - Allowance for temporary invalidity,
 - Reimbursement of ambulance costs, etc
- 2. **Programmes to do with rehabilitation and provision of aids**, including:
 - Provision of wheelchairs for people suffering total disability,
 - Fitting of prosthetic limbs (legs and arms)
 - Fitting of dentures required as the result of work accident
 - Provision of hearing aids, etc.
- 3. **Programmes to do with compulsory savings**:
 - Usually applies to compulsory saving and pension programmes. These two programmes can be administered separately or as a part of a social insurance system.
- 4. **Programmes that have to do with income support**, including:
 - Provision of subsistence cash payments for workers that are laid off and for job seekers
 - Provision of subsidies and concessions for poor and destitute people
 - Provision of cash payments for destitute single parents
 - Family allowances for child protection.
- 5. **Programmes to do with public / health services**, including:
 - Health checks
 - Outpatient treatment
 - Inpatient treatment
 - Dental care
 - Maternity care and birthing services

What is the Mechanism for Administration of the Social Security System?

The characteristics and features of social security

Social security is in the domain of the Constitution for the formation of a “welfare state” as mandated by the 1945 Constitution and the UN Declaration of Human Rights. The aim of a welfare state is to build economic security with the support of comprehensive social insurance to ensure equity and justice.

The dimensions of social security

1. A state instrument for the prevention of poverty, empowerment of destitute people, and eradication of poverty;
2. Income support for participants suffering from disaster, because social security premiums, in principle, aim to redistribute risk and redistribute income;
3. An economic factor for the redistribution of income, such as government contribution assistance for poor people for health programs;
4. Monitoring tool to control the money supply by locking up public funds for the purposes of monetary stability;
5. Binding factor of the establishment of the unitary state of the Republic of Indonesia

Administration of social security is based on the law of large numbers and will be effective only if carried out by a command unit a central government command. In administering universal social security, central government is responsible for ensuring the creation of a mechanism for collecting premiums that redistributes income on a national scale.

Social security adheres to the principle of social solidarity, so the purpose of having centralised administration is to enable the implementation of cross subsidies. Cross subsidies work two-ways: horizontally and vertically.

Horizontal cross subsidy refers to the application of cross-subsidies across generations. In other words, contributions from the younger generation will be used in part to finance the needs of the older generation with the aim of redistributing income. For budget control purposes, means tests will apply to ensure that recipients of benefits are genuine.

Vertical cross subsidy refers to the application of cross subsidies across income levels for equity, because a high income earner seldom faces the employment risks that low income earners frequently do. Therefore, contributions will be levied against high income earners earning above a certain threshold to allow participants who earn high incomes the opportunity to make personal investments. Cross-subsidies between abundant and poor regions apply to health service programmes, such as dispatching flying doctors to deprived areas to provide medical services.

In view of these characteristics and features of social security, administration of the social security system is the responsibility of central government, with regional governments playing a helping and facilitating role in its administration, allowing for the creation of social solidarity and the monitoring of operations and taking of legal action against any infringements in the expansion of coverage in the regions.

Administration of social security systems is universally the sole responsibility of central government on the grounds of one administration for one state, because social security is a supra system that binds a state together, either a federal state or a united state. So, if regional governments were to administer social security systems individually, this would be like having states within a state, not a single united state. This said, health service administering bodies may be the responsibility of regional governments.

Administration of social security in essence involves designing programmes and benefits; administration of participation, which includes printing standardized participation cards; implementation of programmes, and taking legal action and monitoring administering bodies.

...regional governments playing a helping and facilitating role in its administration, allowing for the creation of social solidarity and the monitoring of operations and taking of legal action ...

..social security is a supra system that binds a state together...

Who are the stakeholders in the National Social Security System, and what are their roles?

...Each stakeholder is of equal importance...

Responsibility for the consequences of the administration of social security differs depending on the status and qualifications of the stakeholder

The stakeholders in social security are parties involved in administration of the Social Security System. Pursuant to Article 28H and article 34 of the 1945 Constitution and Law No.40 year 2004 , social security is for everyone; one for all. This means that the stakeholders in the Social Security System are many and varied, ranging from poor people through to government. Each stakeholder is of equal importance, particularly with regard to the right to social security as mandated by the 1945 Constitution. Responsibility for the consequences of the administration of social security differs depending on the status and qualifications of the stakeholder.

12 Stakeholders in the National Social Security System

- Workers and employees and their families,
- Employers / legal corporate entities,
- Self-employed professionals, such as doctors and lawyers
- Day workers, including workers in the informal sector
- Workers' organisations
- Employers' / business organisations
- Parliament (parliamentary commissions)
- Central government and regional governments
- The Administration of the Social Security System
- Financial auditors of social security administering bodies
- The press
- Poor people, including the elderly and disadvantaged children

A. The role of workers and workers' organisations

The meaning of 'worker' in this context is any recipient of work, including corporate executives and personnel, self-employed professionals, people working in the informal sector and day workers. Workers are the largest contributor of funds to social security programmes. Contributions are deducted from their salaries and wages. As such, workers that are social security participants make up the largest stakeholder in social security, whose role is as owner of social security funds and who has the right to exercise control over management of funds by the administering bodies.

...social security participants make up the largest stakeholder in social security, whose role is as owner of social security funds and who has the right to exercise control...

B. Employers and business/employers' organisations

The role of employers, company owners or directors is also that of the largest contributor because they are responsible for ensuring that their workers participate in the Social Security System. Regardless of the fact that their contributions, by law, are larger than those of workers, social security contributions are owned not by the employer they are owned by the workers. This is not really a problem because employers, in paying social security contributions, are acting on behalf of the workers, who are entitled to social security for themselves and their families as citizens. Therefore, the role of employers through their associations is the same as that of workers: to exercise control over the management of funds belonging to the participants.

C. The role of Social Security Administering Bodies

Social Security Administering Bodies receive deposits of funds from participants, which means that they must manage the funds or assets for future use by the participants who own these deposits. Social Security Administering Bodies, then, as legal entities specifically for managing the assets of many or managing assets / funds deposited by participants, may not maximise profits from interest on the growth of these funds, but may receive a fee agreed with the fund owners. Therefore, the legal status of a Social Security Administering Body is that of non-profit organisation, and as such receives certain concessions, such as relief from income tax and tax on deposits of collective investment funds, and or from paying dividends to shareholders.

D. The role of financial auditors

Financial auditing of the administration of social security is conducted through the State Auditor (SA), Financial and Development Audit Bodies (FDAB) and public accountants. The State Auditor is an independent, external auditor of government or state institutions, and the Financial and Development Audit Bodies are the internal financial auditors of government or state institutions. The function of public accountants is as external financial auditor of administering bodies, if required. The role of these three financial auditors is as control of financial systems to ensure that in social security operations cash flows keep within reasonable limits. If cash flows are found to exceed reasonable limits, indicating cash flow discrepancies that cause detriment to participants, legal action may be taken.

E. The role of central and regional government

The role of central government is that of implementer through government organs; the role of regional government is more that of facilitator and monitor of the progress of social security in the region. Regional governments also play an active role in the taking of legal action. There is no dichotomy between central government and regional governments in the administration of the Social Security System; they are one government regulating and implementing on the National Social Security System Law through a set of statutes.

F. The role of parliament

Parliament is the legislative body responsible for formulating and passing Social Security Law and conveying it to central government for operationalisation. Operationalisation of social security law requires a set of statutes regulating the management of its administration, the functions & tasks of the audit committee, and funds investment. Therefore, the role of parliament is that of monitor of policies related to management, the audit committee, and funds investment.

G. The role of the press, the print and electronic media

The social control function of the press is an integral part of the administration of the Social Security System.

Social control is necessary to offset social security policies and operational activities that participants find unsatisfactory. Social control may take the form of criticism or input on the administration of the Social Security System in the public eye owing to misperceptions that the administering body must address to avoid such misperceptions spreading.

H. Poor People as the Object of Social Security

Poor people are the main object of social protection as mandated by the 1945 Constitution. The responsibility of the state to protect the elderly and disadvantaged children as part of must be maintained and followed up on with empowerment programmes.

The function, authority and role of the administering bodies

The role of Social Security Administering Bodies is more that of administrator, since their main functions are to manage the administration of participation, take legal action, develop programmes, and manage data in the interests of the participants as the major stakeholder. Social Security Administering Bodies, in keeping with their main functions and routine tasks, are similar to tax institutions in that they, among others, deducts social security contributions from workers' wages and company revenues. Therefore, establishment of Social Security Administering Bodies is based on Law.

...their main functions...in the interests of the participants as the major stakeholder...

Funds collected from contributions deducted from workers' salaries and wages and aggregated are jointly owned by the participants. These fund owners then deposit the funds at an administering body to be managed optimally. For deposit of these funds, the administering body receives only a fee in remuneration of services rendered, in accordance with prevailing regulations. Therefore, all returns on the investment of these funds, after the deduction of the administering body's operating costs, must be returned to the participants. Administering bodies must provide transparent information to participants as the largest stakeholder.

10 Tasks and Activities of Administering Bodies

1. Expansion of coverage of individuals, self-employed and workers;
2. Deducting contributions from workers' wages and corporate revenues;
3. Taking legal action against breaches of participation
4. Paying benefits on time to participants and or their heirs;
5. Managing data and information on the administration of social security;
6. Delivering health services to participants and their families;
7. Developing a programme to guarantee the portability of social security benefits;
8. Improving benefits through index-linking;
9. Growing funds in safe investment instruments;
10. Internal monitoring of the administration of social security

Supervisory bodies of Social Security Administering Bodies include:

1. Parliamentary commissions responsible for policy and regulation supervision;
2. The National Social Security Council, which supervises operations;
3. Tripartite body comprising representatives of government, workers and employers, which audits and supervises operations;
4. Financial and Development Audit Bodies and the Audit Commission as internal auditors responsible for performing financial and operational audits;
5. The State Auditor as the external auditor responsible for performing financial and operational audits;
6. NGOs and the press, whose function is to exercise social control

Performance evaluation of administering bodies

- a. A Social Security Administering Bodies is not a business entity with equity capital or a business entity that trade goods and services; rather it is an institution or body and / or national agency that performs the functions of administrating social security participation and taking legal action against breaches of participation.
- b. A Social Security Administering Body is a (semi) autonomous organisation that receives deposits from participants, and as such, assets deposited must be re-deposited in fixed term securities or certificates. The administering body sets a fee for its depository services. Therefore, evaluation of the performance of an administering body is not based on return on investment (ROI) but on expansion of coverage and benefits.

A Social Security Administering Bodies is not a business entity with equity capital or a business entity that trade goods and services

...evaluation of the performance of an administering body is not based on return on investment (ROI) but on expansion of coverage and benefits.

Performance benchmarks for administering bodies:

Has there been an increase in the number of participants in response to policy to expand coverage?

Are compensation payments and benefits index linked to inflation?

Are there universal, risk-free benefits for participants?

Appendix 2

Social Health Insurance: Definition, Programmes and Implementing Mechanism

Definition of Health Insurance

The Indonesian “jaminan kesehatan” can mean several things because the word 'jaminan' comes from the word for guarantee or warranty and can be translated in English as 'insurance' or 'assurance'. Thus 'jaminan kesehatan' is not a guarantee or warranty, but insurance in the sense that a sick person can obtain health services regardless of whether he has any money. To use the technical term it is public insurance. A popular definition, then, is:

Health insurance is a system that frees a person from the burden of paying for costly treatment that would interfere with his or her ability to fulfil other life needs (food, schooling, work, socialising).

Why is Insurance Necessary?

Health is not everything; but without a healthy body and mind nothing has meaning. A nation of sickly people will never become a smart and productive nation. And our bodies cannot grow properly if they are not healthy, especially if they are undernourished as well. So, a physically strong and healthy nation is the basic foundation for that nation to be productive, smart, and competitive. This means that a nation must guarantee all its inhabitants a healthy and productive life. The international community has long recognised that health is a basic human right for everyone.

...a nation must guarantee all its inhabitants a healthy and productive life...



We, Indonesia is way behind the rest of the world. The right to health services only appeared in an amendment to the 1945 Constitution made in year 2000.

This amendment involved the addition of article 28H(1), which reads: “...Every citizen has the right to health services...”

This basic right was then elucidated in more detail in the fourth amendment to the 1945 Constitution in year 2002, in which article 34 (2) and (3) reads (clause 2): *The State shall develop a social security system for all citizens.*” and (clause 3): *“The State is responsible for the provision of proper health services and public services.”*

With this amendment, the government and parliament worked as quickly as possible to realise the mandate of the 1945 Constitution, in realisation of the wishes of all the people and as the main foundation for creating a healthy and productive people. The efforts of government and parliament have been formulated in National Social Security System Law.

A health insurance system is a must for any nation because health services for sick people have four unique basic characteristics. These characteristics are:

(1) Sicknes is a disaster

Falling sick and needing health services as a result of accident, infection or other cause is never planned (uncertain). No one can be sure when a person will fall sick and need health services; and sometimes families become poverty-stricken as a result. We never know how much our treatment will cost.

And it is not just poor people; even people who have enough to live on can become poverty stricken if they suffer a major illness. Take for example, a family member with kidney failure who requires haemodialysis; the cost of will be at least 1 million Rupiahs a week. This treatment typically costs more than 6 million Rupiahs a month. If your monthly salary or wage is less than 6 million Rupiahs, the family is bound to become poverty stricken if it has to pay for this treatment. And sickness and a need for health services may occur anywhere: at your place of work, on a trip out of town or even overseas. Will you always have enough money to pay for treatment? Almost no one can guarantee that they will be able to pay for proper treatment when an unexpected disaster befalls them or their family. That is why all countries in the world have developed health insurance systems, either insurance schemes or other forms of mutual assistance, such as those offered by the state financed by taxes.

(2) Sick people need protection

A person who is sick, for whatever reason, has no idea of what should be done or how much it will cost. A patient also has no idea of how much he should pay or even how necessary the health services offered to him by the health service provider. This means that a third party representing the patient is needed in the purchase of health services. Insurance bodies, such as Social Security Administering Bodies, are invaluable, not only in terms of financing services but also in assessing the need for health services.

(3) It is not fair for individuals to bear the cost

Each individual has the potential to contract disease and it is extremely difficult to predict from where or who it is contracted. A person who contracts a disease has no legal recourse, because no legal evidence can be presented as proof. But, it is not fair if an individual who contracts a disease has alone to bear the cost of treatment.

Thus, a social health insurance system based on the principal of mutual assistance in the funding of health services is essential for reasons of fairness.

(4) It is in keeping with all religious teachings

Helping people out in times of trouble is a religious duty. All religions advocate helping people who are sick or in trouble, so they are able to regain their health and productivity. Charitable funds are, in many cases, meant not only for health care and are seldom sufficient to cover the cost of health services. Thus, there is a need for a more organized system and mechanism to manage the funding of health services. To optimise the use of charitable funds, congregations are given the opportunity to contribute their funds towards improving the health of the congregation by paying health insurance contributions for poor people. In this way, all components of society, regardless of economic status, will join together and collectively pay for health services and contribute towards development of the health sector.

The Concept of Health Insurance

In Indonesia, the words 'asuransi' and 'jaminan' are often used interchangeably to describe one insurance system. But actually the word 'asuransi' has a more specific meaning than 'jaminan'. 'Jaminan' is a word used in the trade of goods to mean guarantee or warranty. A one-year, two-year, et cetera, guarantee or warranty. Clearly, 'jaminan' in the sense of 'warranty' does not mean the same as 'asuransi' or insurance.

The concept of 'jaminan', which a translation of the word 'insurance' or 'security', in terms of 'jaminan sosial' (social security) is the concept of redistributing risk and collection of funds for the common good.

(1) Insurance is an organised form of mutual assistance

Beneficiaries are limited to those who make contributions. In a social security system, those who pay premiums or contributions are known as 'participants', and the government pays contributions on behalf of poor people.

So, social security participants consist of participants who pay their own contributions and participants who receive government assistance. The concept of the organised mutual assistance of an insurance system works when each participant pays regular, usually monthly, contributions of an affordable amount, for example 5% of income.

By paying contributions, the participants will have peace of mind should they fall ill. That's why, in English, 'jaminan sosial' is called social security, because those who have paid their social security contributions will have peace of mind should they ever fall sick. Social security guarantees peace of mind against natural phenomenon, such as sickness and old age.

Here is a simple example of the city of Sehat Wal Afiat (SWA).

Out of a population of 500,000, 1,000 people in SWA receive treatment each year. If the average cost of treatment is 20 million Rupiahs per treatment, SWA spends 1,000 x 20 million Rupiahs = 20 billion Rupiahs per month on health care.

If the cost of this treatment were borne individually by those who fall ill, the majority of people in SWA would be poverty stricken. But if the cost were borne collectively by all inhabitants, the cost would be 20 billion Rupiahs divided by 500,000 people = 40,000 Rupiahs per inhabitant per year, or just 40,000 Rupiahs/12 = 3,400 Rupiahs per person per month.

Clearly, if each person makes a monthly contribution of 3,400 Rupiahs which is a negligible amount no families in SWA would end up in poverty when a family member fell sick and required treatment. So, the city's inhabitants all have peace of mind should they fall sick.

Isn't that a wonderful kind of mutual assistance? One that ensures that all of us can study and work in peace? Why don't we do it right now? All industrialised countries have had social security systems for decades.

Beneficiaries are limited to those who make contributions

*You
cannot say,
"I didn't
use it,
where's my
money?"*

(2) Accumulated contributions are pooled

The contributions or premiums collected are pooled, which means that they no longer belong to individuals but to all insurance participants. In keeping with the terms of the contract or regulations, the funds are used only to finance insurance benefits. In health insurance, these funds can be used only to pay for the cost of the treatment or care of the participants. Even if a participant does not fall sick for years and years, he cannot reclaim his contributions because these funds have already been used by others who have fallen sick.

You cannot say, "I didn't use it, where's my money?" Your money has been used to help other participants who have fallen sick. You have helped others, but at the same time you have felt secure. Herein lies the difference between insurance contributions and savings. Accumulated savings belong to the individual depositor, and will always do so. Depositors may even earn returns on their investment.

(3) Commercial health insurance vs social health insurance

There are two main types of insurance: commercial insurance and social insurance. The basic differences between these two categories of health insurance are participation, the formula for calculating participants' contributions, adoption of the principle of mutual assistance, and the use of returns.

In the case of social insurance, the amount of the premium or contribution is not normally associated with different levels of insurance but by levels of wages.

Commercial health insurance. Voluntary, sale-purchase transaction.

Participation in commercial health insurance is voluntary and consumers can choose which company they buy from and which product to buy. Insurance products are often given names that reflect the type of service and the price of the product (such as standard, gold, diamond, dual-purpose, multi-purpose package, and so on).

In commercial insurance, the amount of money paid by each participant is called a premium and is normally set by the company or agency selling the insurance at a rupiah rate that differs according to the type of insurance product. Incorporated into this price are marketing costs, an agent's commission of up to 15%, a profit margin for the company, and the cost of treatment. So, of course, it is more expensive than social insurance.

Although commercial insurance does have an aspect of mutual assistance, it is very limited. Since poor people or people on low incomes cannot usually afford to purchase commercial insurance, the mutual assistance aspect is limited to those who are not poor. Mutual assistance between the healthy and the sick is limited to the purchasers of a particular health insurance product. Those who purchase the less expensive products are usually only covered for certain treatments. So the mutual assistance or social solidarity aspect is very limited indeed.

An individual or entity that sells commercial insurance does so primarily to make profits for itself and its shareholders and not solely to give the purchasers a sense of security or to meet their basic needs. Returns received by the seller of commercial health insurance are treated as corporate profits and are used in the interests of the owners and shareholders of the company. In social health insurance, returns are given back to the participants in the form of improved benefits.

Social insurance. Compulsory, not a sale-purchase transaction, solidarity.

Unlike commercial insurance, social insurance is compulsory and must be regulated by law. Participants have no options and the insurance is designed to cover basic needs. Social health insurance programmes are the responsibility of the state, and in Indonesia this task is a mandate of the 1945 Constitution. Funds accumulated belong to the participants and are used for the welfare of the participants, which means that all residuals, including financial returns, are ploughed back into the system to improve the insurance benefits for the participants.

Characteristics of social health insurance:

- *It is part of a social security programme;*
- *The insurance is for medical care needed to maintain the continuity of healthy and productive lives, especially for costly services that cost of which cannot be borne by individuals;*
- *Contributions are proportional to the wages of each individual, both low and high income earners, who is able to make contributions. For example, a 5% deduction is made from everyone's wages/income each month. To be fair, some countries set minimum and maximum contributions.*
- *It is national in scope, and as such builds social justice for **all**.*

In counties that have already developed social health insurance systems, mechanisms and formulas for the redistribution of income between categories of people, between health status categories, and between regions have been designed to guarantee social justice and the inclusion of all their citizens in one system. What about Indonesia? Support the National Social Security System for the sake of “national unity” and “social justice for all”.

Cross subsidies between rich and poor, between surplus and deficit regions, between the health and the sick:

Social security contributions or premiums are calculated as a percentage of wages. If you earn 1 million Rupiahs a month and your friend earns 10 million Rupiahs a month and the contribution is set by law at 5%, you will pay 50,000 Rupiahs a month (for a family) and our friend will pay 500,000 Rupiahs a month. So, in social security, low income earners pay lower contributions. But should you need to have an operation for cancer and your friend also has cancer, both of you will be guarantee the same service and treatment.

Social Security Mechanisms and Stakeholders

Implementation of a social security system is built on the basis of social insurance and supported by subsidies or contribution assistance for poor people. Mechanisms for implementing national health insurance are the same in almost all countries. The rationale for national implementation is as follows:

1. **Social health insurance on a national scale**, so insurance funds are collectively owned; owned by everyone who pays contributions. Contributions are paid jointly by employers or government and workers. For poor people, contributions are usually paid in full or part by government.
2. **Accumulated contributions form a mutual fund** which must be managed in a special way in accordance with laws or government regulations, and they are not owned by shareholders. These funds are managed separately from a country's national budget, even though they are managed by government (usually the Ministry of Health or Ministry of Manpower or Ministry of Finance). It is becoming more usual for quasi government agencies to manage these funds as a non-profit entity, established by law, which is owned by the participants. Indonesia adopts this quasi government model by establishing Social Security Administering Bodies that are not government institutions.
3. **The managers of the administering bodies are professionals who must be paid a proper wage**. Because the Social Security Administering Bodies are not government organs, their managers (personnel) are not civil servants bound by bureaucratic rules, but rather are bound to standards of performance, effectiveness and efficiency.

4. To prevent misuse of funds, there is a supervisory/policy making body (commonly known as a Board of Trustees, and in the Indonesian National Social Security system is known as the National Social Security Council). This board is made up of representatives of participants, employers, and government. Because the Social Security Administering Bodies are collectively rather than government owned, and the funds collected and managed by the Social Security Administering Bodies are also collectively owned, the use of these funds is not for a board of directors to control, but must be collectively controlled.

**The National Social Security System Law:
Fulfilling Civil Rights**

- For too long now, we have contravened people's rights, with the result that thousands, even millions of people have died since Independence because they had no money to pay for treatment and had no health insurance. That is very sad.
- Yet most of us do not see this as a contravention of civil rights, but as a consequence of falling ill. If a disease is incurable, of course you'll die from it. But many of these people could not be treated in an intensive care unit or have an operation because they couldn't afford to pay the deposit or the cost of treatment. If they had had the money or had health insurance, perhaps many of them would have survived.
- The National Social Security System Law No.40 year 2004 concerning the National Social Security System paves the way for health insurance for all. This 100% coverage is called universal coverage. The 240 million inhabitants of Indonesia will, in stages, be guaranteed health services.

Management of Health Insurance in Indonesia's Health Service System

Indonesia has, in fact, partial universal public health insurance, provided in the form of primary health centre services. Primary health centre services are provided at low cost because primary health centres are funded by central and regional government. This is a form of health insurance, too. But, because this system has many weaknesses, the introduction of the system of social health insurance regulated by the National Social Security System Law will effect changes to the way administration and finances are managed. Health services for National Social Security System participants are individual services, such as immunisation, examinations by doctors, medicines, operations, care, and rehabilitation. Public health services, such as spraying mosquitoes that transmit dengue fever and promotion of health lifestyles, are the responsibility of government through the Ministry of Health, local health services and primary health centres.

The main players in this system are the participants of the National Social Security System, government-owned and private health service facilities, the Social Security Administering Bodies, and the government.

Participants pay regular contributions to the Social Security Administering Bodies, which then, on behalf of the participants, pays the cost of health services to health service facilities that work in cooperation with the Social Security Administering Bodies. Health service facilities that may work in cooperation with Social Security Administering Bodies are government are government-owned and private facilities that meet certain criteria. The National Social Security System Law establishes that these criteria will be regulated in more detail in a presidential regulation.

Services provided by government-owned or private health facilities are contracted at an agreed price. The National Social Security System Law says that the paid to health facilities for each region shall be determined based on agreement between the Social Security Administering Bodies and the association of health facilities in the region concerned.

This differs from the current Askes system of health insurance for civil servants which, in general, guarantees individual health services at government-owned health facilities at tariffs applicable nationally that are set jointly by the Minister for Health and the Minister of Home Affairs (as the representative of local governments that own public health facilities).

Private health facilities will provide services to National Social Security System participants at the same jointly agreed tariffs, and payment will be made by region. This will stimulate competition in quality of services between health facilities in a region, which are paid the same amount for each medical procedure. Unlike the present situation, where each health facility set its own tariffs, the quality and cost of services will be uniform.

With this kind of mechanism, the quality of health services will improve and the security and safety of patients will be safeguarded. Patients who are in a weak position can be protected. The Social Security Administering Bodies will examine each bill for health services. If there is evidence that a service is substandard or genuinely not needed by the patient, the Social Security Administering Bodies will withhold payment for that service. Therefore, the health insurance in National Social Security System will play a multiple role: guaranteeing tariffs and guaranteeing the quality of health services for its participants.

The government is responsible for formulating implementing regulations for the Social Security System. To ensure that the system is administered fairly, the government is obliged to make health facilities available to participants. The government's role is to register and help pay contributions for poor people. The authority and responsibilities of central and regional governments in administering social health insurance as governed by the National Social Security System Law must be further regulated by statute.

**The National Health Insurance Scheme
as governed by the National Social Security System Law**

- Administered on a national scale with the aim of providing a guarantee of health insurance for all the people of Indonesia, to enable them to live healthy, productive and prosperous lives
- Administered through a mechanism of social insurance and universal compulsory participation, which will be achieved in stages, and participation shall continue to be valid for up to 6 months after a participant has been made redundant;
- Participants are all people who have paid contributions or whose contributions have been paid by government and family members of participants entitled to benefits;
- The amount of health insurance contributions for participants who receive a fixed wage is determined as a percentage of wages. For participants who do not receive a fixed wage, contributions shall be means tested. The government pays contributions for poor people. For families of more than five members, participants may include additional family members by payment of additional contributions;
- Benefits are provided in the form of individual and comprehensive health services in accordance with medical requirements, and cost control and quality control mechanisms shall be adopted;
- Health services are provided by health service facilities that meet the required standards and are bound to work in cooperation with the Social Security Administering Bodies, except in cases of emergency;
- The amount paid to health facilities for each region shall be determined based on agreement between the Social Security Administering Bodies and the association of health facilities in the region concerned.

List of Terms

Bapel	Badan Penyelenggara/ Administering Body
BPJS	Badan Penyelenggara Jaminan Sosial / Social Security Administering Body
DPR	Dewan Perwakilan Rakyat/ Parliament
DJSN	Dewan Jaminan Sosial Nasional/ National Social Security Council
ILO	Internasional Labour Organization
JHT	Jaminan Hari Tua/ Old Age Pension
JK	Jaminan Kesehatan/ Health Insurance
JKK	Jaminan Kecelakaan Kerja/ Work Accident Insurance
JKM	Jaminan Kematian/ Life Insurance
JPKM	Jaminan Pemeliharaan Kesehatan Masyarakat/ Social Health Insurance
JP	Jaminan Pensiun/ Pension Insurance
Kepeswapres	Keputusan Sekretariat Wakil Presiden/ Decree of the Secretariat of the Vice President
Keppres	Keputusan Presiden/ Decree of the Secretariat of the President
MK	Mahkamah Konstitusi/ Constitutional Court
NA	Naskah Akademik/ Academic paper
Pansus	Panitia Khusus/ Special Committee
PBB	Perserikatan Bangsa-Bangsa/ United Nations
Perpres	Peraturan Presiden/ Presidential Regulation
PNS	Pegawai Negeri Sipil/ Civil servant
PP	Peraturan Pemerintah/ Government Regulation
RUU	Rancangan Undang-Undang/ Bill
Satpel	Satuan Pelaksana/ Task Force
SJSN	Sistem Jaminan Sosial Nasional/ National Social Security System (NSSS)

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