

Health Insurance for Indonesian Migrant Workers

Wafda Vivid Izziyana¹, Harun², Absori², Kelik Wardiono², Heru Santoso Wahito Nugroho³, Arief Budiono¹

¹Faculty of Law, Muhammadiyah University of Ponorogo; ²Faculty of Law, Muhammadiyah University of Surakarta; ³Health Polytechnic of Surabaya

ABSTRACT

Health insurance is one of the aspects and part of the social insurance which must be given by the state to its citizens, including migrant workers. There are millions of Indonesian migrant workers who work overseas, so health insurance is an urgent need to be fulfilled, as it is a constitutional right of the citizens. The government gives a legal protection for migrant workers according to the legislation, the destination country's law, as well as the international laws and customs. One form of protection given by the government is the right to receive health insurance. Each country has its own characteristics and procedures in giving health insurance protection to its migrant workers, which may result to problems and obstacles in its implementation, which is caused by differences in its law and its government's administration. Indonesian social insurance protection for migrant workers is managed by BPJS (*Badan Penyelenggara Jaminan Sosial*/Social Security Administrator) as written in the Mandate of 1945 Constitution (*Amanat UUD 1945*), yet in reality, health insurance protection from the state of Indonesia for Indonesian migrant workers abroad is not yet operated because the facility mechanism overseas cannot work together with BPJS Kesehatan (Health).

Keywords: Health insurance, Migrant workers, Indonesia

INTRODUCTION

Millions of Indonesian labor were forced to work as migrant workers overseas, both legally as well as illegally. This is caused by the fact that the Indonesian government cannot fulfill their need for work^[1]. Undeniably, apart from the absence of working opportunities, the comparison of wages for migrant workers is much larger than the wages they obtain for the same work in Indonesia. Averagely, Indonesian migrant workers work in sectors which may be categorized as dirty, difficult, and dangerous in sectors such as agriculture, husbandry, industry or as blue-collar workers (becoming house-cleaning assistants) which are unwanted by the local citizens of that country. A research from the Mahidol Migration Centre, Institute for Population and Social Research, Mahidol University, Thailand states that the working condition and the health

of Indonesian migrant workers in the blue-collar sector are on average apprehensive, low, and inhumane^[2].

The majority of Indonesians think that working overseas is a choice which may change the degree of lifestyle and the degree of their financial condition. Migrant workers exist in all economic sectors. They play an important role in the positive economic growth of the home state as well as the host state. But the increase of the citizens' migration is followed by the different cases of violation towards their rights^[3].

Based on the BNP2TKI (*Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia*/The National Agency for Placement and Protection of Indonesian Workers) on July 2018, there are 159.702 Indonesian migrant workers overseas. Indonesia is one of the largest sending countries of migrant workers in Southeast Asia^[4]. Because of that, social insurance for Indonesian migrant workers is urgently needed as a form of the citizens' constitutional rights protection. The government's protection towards the migrant workers overseas is regulated in the Constitution, No.18, 2017 (*Undang-Undang No.18, 2017*) on the protection of Indonesian migrant workers. This law regulates the social insurance, in which one of its elements is the health insurance during pre-hosting, hosting, and post-hosting.

Corresponding Author:

Heru Santoso Wahito Nugroho
Pucang Jajar Tengah Street 56
Surabaya, Indonesia
Email: heruswn@gmail.com

Indonesian migrant workers are often said to be foreign currency heroes, as they contribute foreign currency through remittance^[5]. The various problems connected to the Indonesian migrant workers forces the government to work harder in protecting them^[6]. According to many, the Indonesian government are still not proactive nor comprehensive enough in protecting the migrant workers, physically, financially, and especially in the form of social insurance and health insurance towards the Indonesian migrant workers overseas.

When analyzing further on the development of the different policy products of the government, we can conclude that so far, those policies don't seem to be supporting the Indonesian migrant workers. On the contrary, it seems to bring more harm and it cannot yet insure the health of the Indonesian migrant workers overseas^[7]. One of the rights of the Indonesian migrant workers overseas is the right of national social insurance as well as the right for health insurance.

The state establishes the social insurance for its citizens to support their lives^[8]. The right for health insurance and social insurance according to Anna Boucher and Terry Carney are as follows, "The definition of 'social security' is malleable and varies according to context. In this chapter, we focus primarily on social security cash transfers, public health provision and the restrictions placed upon newly arrived residents in accessing these provisions (Health care and child care benefits, these can legitimately also be viewed as forms of social security^[9]).

The Mandate of the 1945 Constitution article 28 H paragraph (3) [*Amanat UUD 1945 pasal 28 H ayat (3)*] states that each citizen has the right for social insurance which enables self-development holistically as a dignified human being. The protection for social insurance for Indonesian migrant workers is now fully managed by BPJS, every labor worker must have social insurance, if an Indonesian migrant worker does not have social insurance, he/she is not permitted to work overseas.

Each person has the right to access health services^[10]. Global Convention International Labour Organisation No. 102/1952 also states that the establishment of social insurance is the right of the citizens who are migrant workers in which it includes health necessities. Added to that, the issuing of the International Covenant on Economic, Social, and Cultural Rights and the

International Covenant on Civil and Political Rights with the approval of the UN General Assembly^[11]. The establishment for social insurance for the Indonesian migrant workers is the responsibility of the state of Indonesia and the host country of the migrant workers.

One aim of the Republic of Indonesia stated in the Preamble of the 1945 Constitution is the effort to increase the citizens' prosperity^[12]. Based on the Mandate of the 1945 Constitution article 34 paragraph (2) on the state's obligation to develop a social insurance system for all Indonesian citizens and also with the issuing of the Law No.40/2004 on the national social insurance system, social insurance programs, including the public health insurance which is integrated into a system and will be established by a body which was formed by the government (BPJS).

The Law No. 24 year 2011 also declares that the National Social Insurance (Jaminan Sosial Nasional) is established by BPJS which consists of BPJS Kesehatan (Health) and BPJS Ketenagakerjaan (Employment) which was implemented since January 1st, 2014. Parallel to that, in the Constitution article 2 No.24, 2011 on BPJS: BPJS in its service fulfills the principles of humanity, benefit, and justice^[13]. Also, parallel to the Law on the National Social Insurance (Jaminan Sosial Nasional) and the Constitution on BPJS, and there is also the Law No.18, 2017 on the Protection for Indonesian migrant workers.

The right to receive health service and insurance is also the right of the migrant workers as they are also Indonesian citizens. Indonesia does have a limitation in the sovereignty of the country's territory in the place where Indonesian migrant workers are hosted and because of that, an accurate form of negotiation is needed. According to Cruz, a number of migrant-sending and receiving countries have negotiated bilateral social security agreements to enhance the cooperation and to ensure the adequate portability of contributions. Portability in this context is understood as the migrant worker's ability to "preserve, maintain and transfer acquired social security rights to determine the migrant worker's public health care in both countries to guarantee continued health coverage for migrants"^[14].

National health insurance for Indonesian migrant workers must be done to keep the dignity of migrant workers. This opinion is articulated by Majda Al Muhtad, "Objective is simply to organize the system in a way that

treats each member of society with dignity and respect”^[15]. The status of the national government’s budget can also influence both the structure of social welfare institutions and the economic effect of social welfare policies^[16]. Based on the problem above, the research problem is, how is the health insurance for Indonesian migrant workers?

METHODS

This research uses a descriptive method, where we describe the health insurance for Indonesian migrant workers. This research is also a prescriptive study which has the aim to solve the problem of the theory examination, this research is the connector between the essence and the reality of health insurance for migrant workers.

FINDINGS

The government gives a legal protection for migrant workers according to the constitution, the law of the host country, also the international laws and customs. One form of protection given by the government is the right to receive health insurance as well as prosperity, which are part of the human rights, therefore they are the rights of the migrant workers and are agreed by all countries of the world, including Indonesia⁽¹⁾. This agreement is written in the United Nations Declaration year 1948 on the Human Rights. Article 25 paragraph 1 states that every human being and every family has the right to live a sufficient life in terms of health, prosperity, food, shelter, healthcare, social service necessary. They are also responsible for insurances when unemployed, sick, disabled, widowed, aged, or other conditions which forces them to not be able to obtain sufficient income, which are outside their power⁽¹⁸⁾. The protection of social insurance for Indonesian migrant workers is given by BPJS as written in the Mandate of the 1945 Constitution, article 28 H paragraph⁽³⁾, where all citizens have the right for social insurance which makes self-development possible holistically as a dignified human being. Indonesia develops a social insurance system for all citizens and also empowers poor and weak citizens according to the human dignity. As Indonesian citizens whose constitutional rights include social insurance, it should be that Indonesian migrant workers have the right for social insurance as obligated in the Constitution, No.40, 2004.

The Labor Ministerial Regulations (Permenaker/Peraturan Menteri Tenaga Kerja) No 7 year 2017

only obligates two programs, which are work-related insurance and death insurance, old-day insurance for migrant workers are voluntary, whereas pension and health insurances are not received by the migrant workers. Even though migrant workers are obligated to completely pay for health and work insurances, they do not receive service nor such insurances while working overseas. Employers at the host state cannot be constrained by Indonesian regulations. Also, the health insurance for migrant workers cannot yet be implemented because the health facility mechanism overseas cannot work together with the Indonesian BPJS Kesehatan (Health). Yet there is not yet a regulation which strongly regulates the health insurance for migrant workers overseas.

The state’s protection towards migrant workers are regulated in the Constitution No. 18 year 2017, which includes social insurance with health insurance as one of its elements, in the pre-hosting, during the hosting, and post-hosting. Social insurance for Indonesian migrant workers overseas is regulated in the Law No.18, 2017: the state of Indonesia must fix the whole protection system for Indonesian migrant workers and their families which reflects the values of humanity and dignity as a noble state from before working overseas, during the work overseas, and after working overseas. The general explanation of the constitution also gives social insurance protection for Indonesian migrant workers.

The social insurance while working overseas is the responsibility of the migrant worker and paid by him/herself without help from the state. This scheme is done by insurance companies which are members of the insurance consortium with a protection program which includes pre-hosting, during the hosting, and post-hosting protection. The role of such protection is now diverted and done by BPJS according to the Law No. 40 year 2004 on the national social insurance system and the Law No.24 year 2011 on BPJS. Yet, after such insurances are diverted to BPJS, the workers lost their health insurances which they usually had while still joining the insurances from the insurance consortium, so the health insurance from the state seems to be half-hearted.

The Labor Ministerial Regulations (Permenaker) No.7, 2017 declares that Indonesian migrant labor must participate in four insurance programs, which are health insurance, work-related accident insurance, death insurance, and old-day insurance. There is an inconsistency in the Labor Ministerial Regulations

No.7, 2017, article 16: migrant workers who experience a work-related accident during the stay do not have the right to receive such health service. Health insurance is not the right of migrant workers while working overseas. This means that the migrant workers must pay for a different health insurance without receiving the national health insurance service.

Problems of health rights and the right to receive health care which are experienced by the Indonesian migrant workers are a reflection of the inexistence of access for health insurance for migrant workers, as they are limited by the state's territory. Based on the Constitution, the state of Indonesia should give a protection in the form of health insurance for migrant workers. Apart from the constitution, international law states that the state must fulfill that right as written in article 22 of the Universal Declaration of Human Right (UDHR): "*every one as a member of society; has the right to social security and is entitled to realization, thourght national effort and international co operation and resources of each state.*"

The host country's legislation usually only limits the insurance only to its citizens. Even if they offer insurance for migrant workers, there will be administration conditions with a particular amount of premium to be paid, also with the condition of having stayed in the host country for a particular amount of time. Indonesia should have the initiative of giving ease of document issuance and also pay for the health insurance premium for Indonesian migrant workers, as it is the obligation of the state.

CONCLUSION

Health insurance protection for Indonesian migrant workers cannot yet be implemented as the health facility mechanism overseas cannot work together with BPJS Health. The insecure protection for migrant workers during the stay proves that the state cannot yet give a maximum health insurance for its citizens.

Ethical Clearance: taken from Ethical Committee of STIKes Maluku Husada, Indonesia

Source of Funding: Authors

Conflict of Interest: No

REFERENCES

1. Tjitrawati AT. Protection of Rights and Fulfillment of Access to Health for Indonesian Workers in Malaysia. 2017;29(1):1-2.
2. Andi Hall EA. Migrant Workers Right to Social Protection in ASEAN: Case Studies of Indonesia, Philipines, Singapore and Thailand. Thailand: Migrant Forum in Asia and Friedrich-Ebert-Stiftung, Mahidol University; 2011.
3. Anggraini R. Legal Protection for Indonesian Irregular Migrant Workers in the Southeast Asia Region [In the Perspective of International Human Rights Law]. 2017;32(2):313.
4. Naovalita T. Social Protection of Women Migrant Workers. Jakarta; 2006.
5. Basri F. TKI is the Biggest Foreign Exchange Contributor [Internet]. kompasiana.com. 2013 [cited 2018 Jul 12]. Available from: <http://ekonomi.kompasiana.com/moneter/2013/08/26/tki-penyumbang-devisa-terbesar-587267.html>.
6. Suryani A. Regulation of Legal Protection for Women Workers and Their Families Based on Law No. 6 of 2012 concerning Ratification of the International Convention for the Protection of Migrant Workers and Their Families. 2016;26(2):256-277.
7. Probosiwi R. Analysis of the Protection of Indonesian Workers Abroad. 2015;2(2):200-201.
8. Uwiyono A. Principles of Labor Law. Jakarta: PT Raja Grafindo Persada; 2014.
9. Carney ABAT, Social Security For Migrant Workers And Their Families In Australia. Den Haag: Kluwer International BV; 2014.
10. Sekararum S. Analysis of the Level of Service Quality of Outpatient Patients Using BPJS and Non BPJS Cards at Yogyakarta Fatimah Hospital. Thesis. Purwokerto: FEB Universitas Muhammadiyah Purwokerto; 2017.
11. Shihab AN. The Presence of the State in the Middle of Its People After the Birth of Law Number 24 of 2011 concerning the Social Security Organizing Agency. 2012;9(2):181.
12. Guntur Sugiyarto DRM. A Freer Flow of Skill Labour within ASEAN: Aspiration, Oportunities, and Challeges in 2015 and Beyond. 2014.

13. Suharto E. Indonesian Poverty and Social Protection: Initiating the Universal Health Social Security Model. Bandung: Alfabeta; 2010.
14. Cruz AT. Portability of Benefit Rights in Response to External and Internal Labor Mobility: The Philippine Experience. International Social Security Association (ISSA); 2004.
15. Muhtaj MA. Dimensions of Human Rights: Breaking down Economic, Social and Cultural Rights. Jakarta; 2008.
16. Office UGA. Social Security: Analisis of A Proposal to Privatize Trust Fund Reserves. Washington DC; 1991.
17. Sholihah NA. Implementation of Humanitarian Principles in the services of the Social Security Organizing Agency [BPJS] in BPJS Participant Services Overview of Law Number 24 Year 2011 concerning BPJS and Masalah Mursalah [Study at Ketawang Health Center, Gondanglegi, Malang]. Thesis. Malang: Fakultas Syariah UIN Malang; 2016.
18. Aryadi F, Legal Protection Against BPJS Health Participants in Obtaining Health Services at Ade Muhammad Djoen Sintang Hospital. 2015;4(4):4.