

## The Management of Health Insurance Rights for Indonesian Migrant Workers Abroad in the Perspective of the Constitutional Rights of Citizens

Wafda Vivid IZZIYANA<sup>1</sup>, HARUN<sup>2</sup>, ABSORI<sup>3</sup>,  
Kelik WARDIONO<sup>4</sup>, Heru Santoso Wahito NUGROHO<sup>5</sup>

<sup>1</sup>Corresponding author, Lecturer, Faculty of Law Universitas Muhammadiyah Ponorogo, Ponorogo, Indonesia;  
E-mail: wafda.vivid@gmail.com

<sup>2</sup>Professor, Faculty of Law, Universitas Muhammadiyah Surakarta, Surakarta, Indonesia; E-mail: harun.dr@gmail.com

<sup>3</sup>Professor, Faculty of Law, Universitas Muhammadiyah Surakarta, Surakarta, Indonesia; E-mail: absorisaroni@gmail.com

<sup>4</sup>Associate Professor, Faculty of Law Universitas Muhammadiyah Surakarta, Surakarta, Indonesia; E-mail: liekums@gmail.com

<sup>5</sup>Associate Professor, Department of Health Management, Health Polytechnic of Surabaya, Surabaya, Indonesia;  
E-mail: heruswn@gmail.com

### Abstract

*Indonesia is a country which protects and respects the human rights in all aspects of life. The human right is a basic right of human beings which is regulated in the constitution. The granting of health insurance is an effort to make the citizens reach prosperity. The concept of state welfare does not only include the description of the method in organizing welfares or social services, yet it is also a normative concept or a system of ideal approach which emphasizes the fact that every citizen must receive their right to social services. The protection of social insurance for Indonesian citizens is stated in the Mandate of the 1945 Constitution, article 28 H paragraph 3.*

*Apart from that, the granting of social insurance for migrant workers are regulated in the Constitution No. 18 year 2017 on the protection of Indonesian migrant workers, which regulates the existence of health insurances for the migrant workers before, during, and after having worked overseas. Since there are still undergoing problems which inhibit the management of the social insurance grants for the citizens, automatically, the social insurances for Indonesian migrant workers overseas cannot be executed optimally. Each Indonesian migrant worker abroad has the obligation to pay for the social health insurance contributions. In its implementation, the migrant workers cannot receive facilities from that health insurance, which is an element of the constitutional rights.*

**Keywords:** management; health insurance; migrant workers; constitutional rights.

### 1. Introduction

The human right is a substance of a modern country's constitution script, as well as the citizens' rights and obligations, which are some of the elements regulated in the constitution, parallel to the modern country's constitution. The human right is a set of rights which cannot be separated from the existence of every human being as a creation of God the Almighty, as well as His blessing which must be respected, which must be held high, and which is protected by the state, the law, the government, and every person, for the sake of honor and protection of the human dignity.

The human right is a basic right of human beings which are regulated in the constitution. The rights which are regulated in the constitution are barriers which must not be crossed by organizers of the state, both for the citizens who are within the country's territory, as well as those who are currently overseas. A state is an organization which has an aim. Its aim is written in the fourth paragraph of the Republic of Indonesia's 1945 Constitution Preamble, which identifies the Republic of Indonesia as a state of law, which its aim is to reach common welfare. Each activity must be oriented to the aim and must be based on the law which is applied as a regulation of stately activities, both in the government and in the society. To reach the mentioned

national aim, thus, a continuous development which is a part of a comprehensive development must be done, which is directed, integrated, and which in it includes the development of health (Sandiata, 2013).

Health is a vital aspect of the human rights. As a part of the human rights, the right for health is a right which is fixed upon an individual. It is a part of his/her right having been born as a human being, and it is neither given by an individual nor a state, therefore it cannot be withdrawn or trespassed by anyone (Sofyan, 2009). Health is an important factor of the state in terms of development, which includes healthy and educated human beings. A healthy society may act upon different things to reach a prosperity in life, whereas an unhealthy society will experience lateness in all aspects of life. Health is positioned on the first rank of human development; thus, health is accepted globally as a part of the human rights. The World Health Organization (WHO) 1948 Constitution states that it is the right of every human being to achieve the highest degree of health (Mudakir, 2011). In its essence, the aim of the Indonesian citizens' health insurance is to increase the awareness, the desire, and the ability to live healthily as an investment to develop productive human resources both economically as well as socially.

The concept of social insurance in a wider sense includes all

efforts in the aspect of social welfare, to increase the human standard of living in resolving underdevelopment, dependency, neglect, and poverty (Budiono, Absori, Ngestiningrum, & Nugroho, 2018). This concept cannot yet be optimally implemented in Indonesia, as there is a governmental limitation in the payment sector, and that there is a sectoral egoism of some parties which have certain interests in social welfare (Komariah, 2015).

The concept of social welfare is usually based on the principle of the similarity in opportunity, the equal distribution of income, and the responsibility of the state towards the citizens who do not have the ability to pay for their own minimum needs to receive worthy health services; or namely the weak groups (McLean & McMillan, 2009). Based on the discussed problem, thus the research problem in this study is, "How is the management of health insurance rights for the Indonesian migrant workers abroad in the perspective of the constitutional rights of citizens".

## 2. Research Methods

This study uses a descriptive research method, which describes the management of health insurance for migrant workers. This research is also a prescriptive study, which aims to offer solution towards the problems in the theoretical examination. This research is the connector between the essence and the reality of health insurance for migrant workers based on the citizens' constitutional rights.

## 3. Results and Discussion

The management of health insurance is a concept of social protection which is adopted from different social protection concepts, which is a public effort to face fragility and poverty, which is completed with a strategy to achieve comprehensive welfare for all citizens (Habibullah, 2017).

Basically, there are some important aspects regarding to the fulfillment of constitutional rights and law protection to achieve the program of BPJS (*Badan Penyelenggara Jaminan Sosial/ Social Security Administrator*).

First, the mandate of the constitution, which is the Republic of Indonesia's 1945 Constitution Preamble states that the state's noble vision is to ensure the welfare of its citizens. It is also reflected in Pancasila's fifth principle, which says, "Social justice for all Indonesian citizens". The body of the 1945 Constitution also contains some articles which became the basis of why BPJS is necessary, parallel with the Constitution No. 24 year 2011 on BPJS (Rahman, Pujianti, Anhar, & Sari, 2015).

Article 28 H paragraph (1) clearly states that social welfare is the right of every human being. In article 34 paragraph (1), it has again mentioned the constitutional basis on why a social security system is necessary. The next constitutional basis is the Constitution No. 4 year 2004 on the National Social Insurance System, with the aim of developing a comprehensive system and to give security in a wider sense.

Second, in the aspect of civil needs, social welfare is a necessity of the citizens. Social insurance is needed comprehensively and without fragmentation. The citizens' different levels of accessibility, which are caused by the different levels of economic strength, geographical condition, and the condition of facilities, encourages the need of the same insurance for all individuals. This insurance is needed because all individuals have the chance to be categorized as citizens with a fragile condition, who will face social risks in their lives. The health insurance protection program in Indonesia is designed for all citizens.

In line with the mandate of the Republic of Indonesia's 1945 Constitution Article 28 H paragraph (3) which states that: "Every citizen have the right of obtaining social welfare, which creates a comprehensive self-development possible as a dignified human being" and also Article 34 paragraph (2) which states that:

"The state develops a Social Security System for all civilians and empowers the weak and the unable citizens according to the human dignity."

The problems which arise are:

Problems which currently arise in the healthcare delivery system in this country are as follows:

1. Rejection of poor people in healthcare service facilities. The Governmental Regulation No. 101 year 2012 on the Receiver of Health Insurance Contribution Aid, the Presidential Decree No. 111 year 2013 on health insurance only accommodated 86.4 million poor and needy citizens as Receivers of Health Insurance Contribution Aid, whereas according to BPJS, there are 96.7 million poor and needy citizens. The execution of BPJS year 2014 is supported by governmental funds in the sum of Rp. 26 billion which was funded by the 2014 RAPBN (*Rencana Anggaran Pendapatan dan Belanja Negara/Draft State Budget and Expenditures*). These expenditures are used for *Penerima Bantuan Iuran* (PBI/ Receivers of Health Insurance Contribution Aid) in the sum of Rp. 16.07 billion for 86.4 million poor people, whereas the rest are used for civil workers, the military and the police officers. The government must quickly draft the health funds in the sum of Rp. 400 billion for homeless people, street children, inhabitants of orphanages, inhabitants of nursing homes, and prisoners (there are 1.7 million people in total). Thus, the number of the poor and the needy whose healthcare needs are covered by BPJS health must be increased to 96.7 million.

2. Street children and people with mental disorders are the responsibility of the country or the regional government, so for those who own identity cards (KTP – personal identity cards and KK – family identity cards) will be given cards which identify their status as poor and needy people. Yet, for displaced children and people with mental disorders who do not have identity cards, their data will be registered by the local authorities of the Social Service and they are responsibilities of the government through the Social Department. The technical execution is referenced on the BPJS Constitution or the regional regulations.

3. The Community Health Centers (*Pusat Kesehatan Masyarakat/Puskesmas*) or hospitals, in their execution of health services which are presently held in the field are still problematic. Patients must seek rooms from one hospital to the next as they are said to be full by the hospitals. This is not a recent nor an uncommon issue.

4. The services in the Community Health Centers or in the hospitals, the patients must wait in a long queue. They must wait in registering themselves and also in taking their medicine.

5. Not every medicine is covered by BPJS. There are complaints from the poor and needy who must bear the cost of buying expensive medicines, so they are incapable of purchasing them.

The protection of social insurance for migrant workers overseas are given by BPJS, as is stated in the mandate of the 1945 Constitution, Article 28 H paragraph 3. It is also regulated in the Constitution, No. 18 year 2017 which regulates the existence of health insurance for migrant workers before, during, and after having worked abroad. If there are still problems arising in the country which inhibit the execution of social insurance grants for the citizens, automatically, the social insurances for Indonesian migrant workers overseas can't possibly be done optimally. Each Indonesian migrant worker overseas has the obligation to pay for health and social insurance contributions, yet factually, they cannot receive facilities from their health rights, which is an element of the citizens' constitutional right.

The Ideal Fulfillment of the Citizens' Constitutional Rights in the Future on the service of BPJS health have a target in its execution. It is hoped that there will be operational sustainability by giving benefits to all those who are involved in BPJS, both within the country or overseas, the fulfillment of the participants'

medical needs, and care as well as transparency in the management of BPJS funds.

The government has the obligation to profoundly take care of the execution of the healthcare delivery system, the healthcare payment system, and the healthcare quality system. Taking note that the execution of BPJS is issued through the Constitution as the regulator, whereas the determination of implementation process is strengthened by the authorized state officials' decree, like the governmental decree or the presidential decree. There are at least 10 derived regulations which must be made to strengthen the execution of BPJS.

The experiences of both developed and developing countries show that even though the market mechanism may create economic growth and optimum work opportunities, they always fail in creating even incomes and in eradicating social issues. The poor, the needy, and citizens with social welfare issues are those who are untouched by the development strategies which are dependent on market mechanism. This vulnerable group, because of their physical disability, their culture (as isolated tribes), or their structural condition (unemployment), cannot respond to the social changes around them fast enough, thus they are marginalized by an unjust development.

The Fulfillment of Constitutional Rights for Citizens Based on Article 28H Paragraph (3), of the Republic of Indonesia's 1945 Constitution in the future is that each citizen's social security is ensured by the state without differentiating social statuses, tribes, religions, races, and groups, thus the social security is a responsibility of the government to protect their citizens from poverty, health conditions as well as disasters. This is what is called *Baldatun warofun ghofur*, which means it is parallel with the Republic of Indonesia's vision which is written in Pancasila and the Republic of Indonesia's 1945 Constitution Preamble which is Just and Prosper.

The execution of the health insurance management for Indonesian citizens need an awareness towards Legal Compliance, so there is support between one and another to succeed in executing health insurance. What should be done include repairing the health insurance management accuracy such as in keeping an updated data of participants. There needs to be a continuous monitoring to verify and to validate the data of participants, and also to synchronize data from the Ministry of Foreign Affairs, so that valid data on the Indonesian migrant

workers overseas are available. This is so that there is neither double participation nor the neglect of citizens who actually have the right to obtain contribution aids.

Regulation, the BPJS Health must undergo a revision of regulation, so that there are strict sanctions for the regional governments and the related institutions which do not support the health insurance program. Apart from that, the quality of the human resources must be increased to encourage the formation of professional human resources who will give the best health services for the Indonesian citizens. More importantly, in terms of health service funds, the government should make sure that the social security funds are according to the need, so that the execution of this program will not cause problems which can actually be predicted from the beginning. The government can also imitate the management of health service funds by the Malaysian government, who has had a higher awareness in the health sector.

## 4. Conclusion

Health is an important factor for the Republic of Indonesia, as one of the factors in the development of a country includes healthy and educated human beings. A form of the state's responsibility towards the citizens' health is the obligation of each citizen to participate in health social security through BPJS. The management of health rights insurance, which is a form of the state's protection towards its citizens, still have issues in this country. The execution and the fulfillment of health insurances in Indonesia cannot yet be done optimally, thus automatically, the state's fulfillment in granting social securities for its citizens who work overseas can neither be done well. The management of health insurances needs an awareness towards law compliances, verification and data validation of participants and the synchronization of data from the Ministry of Foreign Affairs, so there is a valid data on the Indonesian citizens who work overseas, to avoid double participation or conversely the neglect of citizens who actually have the right to receive contribution aid as a part of the citizens' constitutional right. With a good management, there needs to be both clear and strict sanctions for regional governments and the related institutions which do not support the health insurance program.

## References

- [1] Apena, W. E. (2017, Januari). Kajian Konstitusional Atas Hak Pilih Anggota Tni Dan Polri Dalam Pemilihan Umum. *Lex Crimen* 6(1), 131.
- [2] Budiono, A., Absori, Ngestiningrum, A. H., & Nugroho, H. S. (2018). Pseudo National Security System of Health in Indonesia, *Indian Journal of Public Health Research and Development*, 9(10), pp. 555-560.
- [3] Habibullah (2017, January-April). Social Protection Comprehensive in Indonesia. *Sosio Informa*, 3(1), 7.
- [4] Komariah, S. (2015). Perencanaan Komunikasi Badan Penyelenggara Jaminan Sosial (BPJS) Kota Balikpapan Dalam Mensosialisasikan Program Jaminan Kesehatan Nasional (JKN) Kepada Masyarakat Kota Balikpapan. *eJournal Ilmu Komunikasi*, Vol. 3, No. 2, 107-121.
- [5] McLean, E. I., & McMillan, A. (2009). *The Concise Oxford Dictionary of Politics*. Oxford University Press. Retrieved August 3, 2018, from Oxford Reference Online: <http://www.oxfordreference.com.offcampus.lib.washington.edu/views/ENTRY.html/subview=Main&entry=186.e1462>
- [6] Mudakir, I. (2011). *Tuntutan Pidana dan Perdata Malpraktik* (1 ed.). Jakarta: Permata Aksara.
- [7] Ragawino, B. (2007). *Hukum Tata Negara*. Bandung: Fispol UNPAD.
- [8] Rahman, F., Pujianti, N., Anhar, V. Y., & Sari, A. R. (2015, April). The implementation of BPJS health program at public health center martapura in banjar regency. *International Refereed Journal of Engineering and Science (IRJES)*, 4(4), 25.
- [9] Sandiata, S. B. (2013, April). Perlindungan Hukum Hak Mendapatkan Pelayanan Kesehatan Di Rumah Sakit Pemerintah. *Lex Administratum*. 1(2), 187-194.
- [10] Sofyan, M. L. (2009). *Mengenal Hak Konsumen dan Pasien* (1 ed.). Yogyakarta: Pustaka Yustisia.