

Problems with the Institutional Form of the Implementing Agency of Social Security in Indonesia

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Abstract. The administration of social security in Indonesia is entrusted to two newly formed institutions as mandated by Law Number 40 of 2004 concerning National Social Security System, namely BPJS for Health and BPJS for Employment. The basis for the operation of these two institutions is Law Number 24 of 2011 concerning the Implementing Agency of Social Security. These two bodies are public legal entities that were formed from the transition to the previous form of a limited liability company, namely PT Jamsostek (persero) and PT Askes (persero). The new form of the social security implementing agency as mentioned creates problems that need to find solutions to various problems that occur. Therefore, the purpose of this research is to find out what are the problems with the institutional forms of the Implementing Agency of Social Security in Indonesia. The method used in this research is to use juridical, namely by examining the legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials used. The approach used is a statutory approach and a comparative approach. The research results show that there are problems that arise in the institutions administering social security in Indonesia. These problems are related to the governance of the agency, from the formation process, changes in characteristics from a limited liability company to a public legal entity, the failure to merge social security administering bodies as contained in Law Number 24 of 2011 concerning Social Security Administering Bodies and related to employment aspects in the social security administration body.

Keywords: Agency of Social Security; Institutional Form; National Social Security System.

Abstrak. Penyelenggaraan jaminan sosial di Indonesia dipercayakan kepada dua lembaga yang baru dibentuk sebagaimana diamanatkan Undang-Undang Nomor 40 Tahun 2004 tentang Sistem Jaminan Sosial Nasional, yaitu BPJS Kesehatan dan BPJS Ketenagakerjaan. Landasan implementasi kedua lembaga tersebut yakni Undang-Undang Nomor 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial. Keduanya merupakan badan hukum publik yang terbentuk dari peralihan bentuk perseroan terbatas sebelumnya yaitu PT Jamsostek (persero) dan PT Askes (persero). Bentuk baru lembaga penyelenggara jaminan sosial sebagaimana disebutkan di atas menimbulkan permasalahan yang perlu dicari solusinya terhadap berbagai permasalahan yang terjadi. Oleh karena itu, penelitian ini bertujuan untuk mengetahui permasalahan yang terdapat pada bentuk kelembagaan Badan Pelaksana Jaminan Sosial di Indonesia. Metode yang digunakan dalam penelitian ini adalah metode yuridis, yaitu dengan meneliti bahan-bahan hukum, baik bahan hukum primer, bahan hukum sekunder, maupun bahan hukum tersier yang digunakan. Pendekatan yang digunakan adalah pendekatan perundang-undangan dan pendekatan komparatif. Hasil penelitian menunjukkan bahwa terdapat permasalahan yang muncul pada lembaga penyelenggara jaminan sosial di Indonesia. Permasalahan tersebut terkait dengan tata kelola lembaga, mulai dari proses pembentukan, perubahan ciri dari perseroan terbatas menjadi badan hukum publik, tidak adanya penggabungan badan penyelenggara jaminan sosial sebagaimana tertuang dalam Undang-Undang Nomor 24 Tahun 2011 tentang Badan Penyelenggaraan Jaminan Sosial dan terkait aspek ketenagakerjaan pada badan penyelenggara jaminan sosial.

Kata Kunci: Badan Jaminan Sosial; Bentuk Kelembagaan; Sistem Jaminan Sosial Nasional.

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INTRODUCTION

The history of social security in the world began in 1883, during the reign of Chancellor Bismarck in Germany. This was preceded by providing certain social security for workers, which was by the needs of industrialization at that time.¹ Social security in Germany was later referred to as the Bismarckian social security model, where this social security model was adopted by Indonesia and implemented in Indonesia. The most basic basis for the implementation of social security is the 1945 Constitution of the Republic of Indonesia.

Social security is a citizen's right regulated in Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads "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". This means that the implementation of social security is the government's responsibility as the state's organizer.

Departing from the history of social security in Indonesia, in 1949 the implementation of social security in Indonesia began to be intensified, especially for civil servants and their families.² At that time, the Minister of Health of the Republic of Indonesia, GA Siwabessy made an idea related to the implementation of a universal health insurance program which was widely implemented in developed and rapidly developing countries.³ Membership, which at that time was still limited, later expanded with the issuance of Minister of Health Regulation Number 1 of 1968 by forming the Health Administration and Maintenance Agency (BDPPK). The participants in this social security are state employees and pensioners and their families.⁴

¹ Ahmad Nizar Shihab, "Hadirnya Negara di Tengah Rakyatnya Pasca Lahirnya Undang-Undang Nomor 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial," *Jurnal Legislasi Indonesia* 9, no. 2 (2012): 175–90, <https://e-jurnal.peraturan.go.id/index.php/jli/article/download/384/264>.

² BPJS Kesehatan, "Sejarah Perjalanan Jaminan Sosial di Indonesia," n.d., <https://www.bpjs-kesehatan.go.id/bpjs/pages/detail/2013/4>.

³ *Ibid.*

⁴ *Ibid.*

Previously, in 1947 the government also issued regulations related to work accidents. This rule is Law Number 33 of 1947 which regulates the Payment of Compensation to workers who get Accidents Related to Work Relations. Rules related to social security protection for workers experienced dynamics until regulations related to the Workers' Social Security Administering Body were issued based on Law Number 24 of 2011.⁵ As a manifestation of the implementation of social security in Indonesia, it is necessary to establish an implementing agency that implements the task of implementing social security in Indonesia. The establishment of this organizing body can later be accounted for related to the estuary of responsibility for the implementation of the social security program and then related to financial management which is the content of the social security implementation activities as intended.

The administration of social security in Indonesia is entrusted to two newly formed institutions as stated in Law Number 40 of 2004 concerning the National Social Security System, namely BPJS for Health and BPJS for Employment. The basis for the operation of these two institutions is Law Number 24 of 2011 concerning the Social Security Administering Body. These two bodies are new bodies that were formed from the transition to the previous form of a limited liability company, namely PT Jamsostek and PT Askes.⁶ Apart from these two bodies, PT Taspen and PT Asabri are still administering social security related to pension funds for Civil Servants (PNS) and Indonesian National Armed Forces and Indonesian National Police (TNI POLRI). This was motivated by the failure of the merger of the two companies in the BPJS based on Constitutional Court Decision Number 72/PUU-XVII/2019 concerning the Cancellation of the Application of Article 57 letter f and Article 65 paragraph (2) of Law Number 24 of 2011 concerning the Implementing Agency of Social Security and Constitutional Court Decision Number 6/PUU-XVIII/2020 concerning the Cancellation of the Application of Article 57 letter e

⁵ BPJS Ketenagakerjaan, "Sejarah, Susunan Direksi & Dewan, Visi Misi Perusahaan, dan Penghargaan," n.d., <https://www.bpjsketenagakerjaan.go.id/tentang-kami.html>.

⁶ Widya Hartati, "Kajian Yuridis Perubahan PT. Askes (Persero) Menjadi Badan Penyelenggara Jaminan Sosial (BPJS) Kesehatan," *IUS Kajian Hukum dan Keadilan Universitas Mataram* III (2015): 482–96.

and Article 65 paragraph (1) of Law Number 24 of 2011 concerning the Implementing Agency of Social Security.

The decision of the Constitutional Court as mentioned above reveals the reality that the move to merge social security administering bodies from those originally in the form of a corporation to a legal entity carries enormous risks. The risk is referred to both for social security participants and internal institutions. This is as stated in the Constitutional Court Decision Number 72/PUU-XVII/2019. The risk as mentioned has the potential to occur due to differences in character between one social security administering institution and another. The Constitutional Court in its legal considerations stated that the management of social security in Indonesia does not need to be forced to be integrated because of the various considerations mentioned above.

The focus of integration also needs to pay attention to legal certainty related to membership from the previous social security administering institution and related to the benefits obtained. It is also related to the management of employment within the Social Security Administrative Body which is not subject to Law Number 13 of 2003 concerning Manpower but instead has internal regulations based on the Regulation of the Board of Directors of Employment BPJS Number: Perdir/05/102014 concerning Employee Management of BPJS Employment and Regulation of the Board of Directors of BPJS Health Number 65 of 2020 concerning Governance of the Health Social Security Administering Body.

Based on the background of the problems mentioned above, the formulation of the problem that can be taken is related to the evaluation of the Social Security Administering Body's institutional form in Indonesia.

METHODOLOGY

The method used in this research is doctrinal, namely using the library research method to obtain data. The data obtained is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The approach used in this

research is the statutory approach and the comparative approach. In a comparative approach, 9 countries compare the existing social security conditions in Indonesia, there are, United States, Germany, United Kingdom, Netherlands, Canada, Japan, Australia, South Korea, and Thailand. The reason for using these countries is because they have the same public agency status, but with various executing models. It can be used to make a comparison with social security in Indonesia using public agency status and has its own executing models.

The primary legal material as mentioned consists of laws and regulations related to research conducted, including Law Number 13 of 2003 concerning Manpower, Law Number 19 of 2003 concerning State-Owned Enterprises (SOEs), Law Number 40 of 2004 concerning the National Social Security System, and Law Number 24 of 2011 concerning the Implementing Agency of Social Security, as well as several other laws related to social security, legal entities, and state finances. The secondary legal materials used are legal materials consisting of books, journals, and various articles related to the research title raised. Meanwhile, the tertiary legal material used in this research is the Big Indonesian Dictionary to understand in depth the meaning of some of the vocabulary contained in this research.

RESULT AND DISCUSSION

Social Security Condition in Indonesia

Social security is a form of the social protection system. Social protection as it is formed is understood as an integrated intervention by various parties to protect individuals, families, communities from various risks of daily life that may occur. Or it can be said as an effort to overcome the various impacts of economic shocks or to provide support for vulnerable groups in society.⁷ In language, social security is social protection organized by the state to ensure the fulfillment of basic decent living needs for its citizens.⁸

⁷ Shihab, "Hadirnya Negara di Tengah Rakyatnya Pasca Lahirnya Undang-Undang Nomor 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial."

⁸ Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, IV (Jakarta: Gramedia, 2012).

Social security according to Bram Mellink in his book entitled *Politici zonder partij* is as follows:⁹

Socialezekerheid werd door hen tot fundament van democratische vrijheid verklaard. Dit ideal was daarmee echter nog bepaald niet onomstreden. Historici hebben vaak verondersteld dat de verzorgingsstaat het min of meer vanzelfsprekende antwoord werd op een lange period van crisis en oorlog.

(They declared social security to be the foundation of democratic freedom. However, this ideal was by no means uncontroversial. Historians have often assumed that the welfare state became the more or less self-evident answer to a long period of crisis and war.)

The above discussion is about the characteristic of the welfare state that has a social security system. This social security system is the basis of the democratic freedom in a country. In the crisis and war conditions, the country needs certainty about the welfare of the citizens. So, it makes historians assume that the welfare state is the answer to a long period of crisis and war.

In Article 25 paragraphs (1) and (2) of the Universal Declaration of Human Rights, it is stated:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

In the article as mentioned above, everyone has the right to an adequate standard of living including those related to the health and welfare of oneself and their families about the right to food, clothing, housing, health care, and necessary social services. It is continued in the next paragraph that the mother and child have the right to special care and assistance. All children have the same social protection without exception.

Regarding the international regulation above, the history of the formation of social security in Indonesia refers to the system of forming international social security through

⁹ Bram Mellink, "Politici Zonder Partij," *BMGN - Low Countries Historical Review* 132, no. 4 (2017): 25–52, <https://doi.org/10.18352/bmgn-lchr.10220>.

amendments to the 1945 Constitution of the Republic of Indonesia. This is with the aim that social security must be developed by the state after the economic crisis that occurred in Indonesia. This is as seen in the 1945 Constitution of the Republic of Indonesia, namely in Article 28 H paragraph (3) which states that “Every person shall have the right to social security in order to develop oneself fully as a dignified human being”. This is also regulated in Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads, “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”.

The government further regulates social welfare in Law Number 11 of 2009 concerning Social Welfare. These arrangements show that the Government is working to realize Indonesia as a welfare state in order to achieve the goal of the people being able to live in accordance with human dignity.¹⁰ Article 1 point 11 of the Law on Social Welfare states that social security is an institutionalized scheme to ensure that all people can fulfill their basic needs for a decent life. The definition of social security as contained in Law Number 24 of 2011 concerning the Social Security Administering Body is a form of social protection to ensure that all people can fulfill their basic needs for a decent life. This is as contained in Article 1 point 2.

Social security in Indonesia has a long history. Starting from being held by state owned enterprises, namely PT Askes and PT Jamsostek, now it is organized by a special body formed under a law in a special form, a general body. Social security administering bodies in Indonesia are divided into 2 (two) bodies, namely the Implementing Agency of Social Security (BPJS) for health and BPJS for manpower.¹¹ The two social security administering bodies as mentioned have the duties and functions of each BPJS for health to administer health social security for all Indonesian people without exception. Meanwhile, BPJS for manpower organizes an employment social security program

¹⁰ Rudy Hendra Pakpahan and Eka N. A. M Sihombing, “Tanggung Jawab Negara dalam Pelaksanaan Jaminan Sosial,” *Jurnal Legislasi Indonesia* 9, no. 2 (2012): 163–74.

¹¹ Rahmawati Kusuma et al., “Hak Peserta Badan Penyelenggara Jaminan Sosial Ketenagakerjaan,” *PALAR (Pakuan Law Review)* 7, no. 2 (August 30, 2021): 194–205, <https://doi.org/10.33751/PALAR.V7I2.3242>.

which has a different program from BPJS for health, including work accident security, death security, old age security, and pension insurance programs aimed at workers in Indonesia.¹²

Before the existence of these 2 (two) organizing bodies, based on data owned by the International Labor Organization (ILO) in 2015, the percentage of social security implementation in Indonesia is lower than in China. In 2010, Indonesia used 2.63% of its *Gross Domestic Product (GDP)* to be allocated as its social security fund. Meanwhile, China uses 6.83% of its GDP for its social protection program. Then for Japan as a developing country, it allocates 23.56% of its GDP to social protection funds.¹³ Then related to the estimated number of Indonesia's health coverage in 2010 only covered 59.0%, where this figure is still very far from Japan and Malaysia which are at the percentage of 100% coverage.¹⁴

Public Legal Entities as Social Security Administering Body in Indonesia

This change in social security providers in Indonesia affects the pattern of funding management and human resource management contained within the social security administering bodies as mentioned. As stated in Article 7 paragraph (1) of Law Number 24 of 2011 concerning the Implementing Agency of Social Security, the BPJS is in the form of a public legal entity that is responsible to the President. In Indonesia, there are no clear rules or regulations regarding the distinction between public legal entities and private legal entities. This term is only found in the 2003 Constitutional Court Law. In this regulation, no explanation about public legal entities. In Article 51, public legal entities as one of the petitioners that claim his/her constitutional rights and/or competency have been impaired by the entry into force of law.

In *the rechtsstaat* it is stated that the position of government and society is unequal, as Ten Berge said, "*De rol van de overheid in het kader van de gezagsuitoefening en ... het*

¹² Kusuma et al.

¹³ Djoni Rolindrawan, "The Impact of BPJS Health Implementation for the Poor and Near Poor on the Use of Health Facility," *Procedia - Social and Behavioral Sciences* 211 (November 25, 2015): 550–59, <https://doi.org/10.1016/J.SBSPRO.2015.11.073>.

¹⁴ Rolindrawan.

geweldsmonopolie maakt haar tot een machtige actor in de samenleving" (The role of the government in the context of the exercise of authority and ... the monopoly on violence makes it a powerful actor in society). Then according to Willem Konijnenbelt stated about the government and society position in administrative law is "*het recht dat aan de overheid die zich actief bemoeit met de samenleving, het daarvoor nodige, juridische instrumentarium biedt en tegelijkertijd het recht dat de leden van de samenleving involved open en bescherming tegen deze zich met hen en hun omgeving bemoeiende overheid moet geven*" (the right that offers the government that actively interferes with society the necessary legal instruments and at the same time the right that must give the members of society involved openness and protection against this government that interferes with them and their environment).¹⁵

Legal relations carried out by the Government it is related to the division of public law and private law as stated by Ulpianus, "*Publicum ius est, quod ad statum rei romanae spectat, privatum quod ad singulorum utilitatem*". That is, public law is the law relating to the welfare of the Roman state, while private law is the law that regulates family relations. This has had a huge influence to date, one of which is that this division is inevitable, including in studying and understanding the existence of the government in conducting legal associations (*rechtsverkeer*).¹⁶

A legal entity does not have a standard definition, it's just that the word "legal entity" already exists in several laws and regulations such as Law Number 16 of 2001 concerning Foundations and its amendments, Law Number 24 of 2003 concerning the Constitutional Court, and Law Number 40 of 2007 concerning Limited Liability Companies. The three regulations in their arrangements discuss legal entities, however, they do not mention in detail the definition of legal entities. So it makes an effect about the implementation of the legal entity in Indonesia without any legal certainty. It makes any different implementation of the legal entity in Indonesia.

¹⁵ Jimmy Bastian and Syofyan Hadi, "Badan Hukum Publik sebagai Justitiabelen dalam Peradilan Tata Usaha Negara," *DiH: Jurnal Ilmu Hukum* 17, no. 2 (July 7, 2021): 141–51, <https://doi.org/10.30996/DIH.V17I2.5095>.

¹⁶ Ridwan HR, *Hukum Administrasi Negara*, XIV (Depok: Rajawali Pers, 2018).

Soedikno Mertokusumo said that a legal entity is a legal subject other than a person, namely an organization or group of people who have a specific purpose that can carry rights and obligations. Examples of these legal entities are state and limited liability companies. The legal entity referred to acts as a unit in legal traffic like a person.¹⁷ On the other hand, SF Marbun argues, a public body is an agency or institution which includes the executive, legislative and judiciary as well as other bodies whose main functions and duties are related to the administration of the state, in which part or all of the funds owned are sourced from the State Revenue and Expenditure Budget (APBN) and/or Regional Revenue and Revenue Budget. Public bodies can also be referred to as non-governmental organizations as long as the part or all of them originate from the State Revenue and Expenditure Budget (APBN) and/or Regional Revenue and Revenue Budget, community, and/or foreign contributions.¹⁸

According to experts, legal entities have several criteria, as stated by Philipus M. Hadjon, legal entities are entities that are public law in nature, such as the state, municipalities, and irrigation areas that are legal entities based on public law (public legal entities).¹⁹ Meanwhile, according to E. Utrecht, a legal entity is any soulless supporter of rights who is not human. A legal entity as a social phenomenon is a real phenomenon in the association of law even though it is not in the form of a human being or an object made of iron, stone, and so on. The important thing that needs to be underlined from this legal entity is that this legal entity has assets that are completely separate from the assets of its members.²⁰ Jimly Asshiddiqie stated that a legal entity is a person who is created by law and can carry out legal actions and has wealth.²¹ Legal entities are also known as *rechtpersons*, legal entities, juristic persons, or artificial persons.²²

¹⁷ Soedikno Mertokusumo, *Mengenal Hukum, Suatu Pengantar* (Yogyakarta: Cahya Atma Pustaka, 2010).

¹⁸ Marbun S.F., *Hukum Administrasi Negara II, I* (Yogyakarta: FH UII Press, 2013).

¹⁹ Philipus M. Hadjon et al., *Pengantar Hukum Administrasi Indonesia*, XI (Yogyakarta: Gadjah Mada University Press, 2011).

²⁰ A.A. Gede D. H. Santosa, "Perbedaan Badan Hukum Publik dan Badan Hukum Privat," *Jurnal Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha* 5, no. 2 (2019): 152–66.

²¹ Dyah Hapsari Prananingrum, "Telaah terhadap Esensi Subjek Hukum: Manusia dan Badan Hukum," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 1 (April 8, 2014): 73–92, <https://doi.org/10.24246/jrh.2014.v8.i1.p73-92>.

²² Hendry Julian Noor, *Memahami Kerugian BUMN (Persero), Diskursus Kerugian Keuangan Negara dan Tipikor*, 1st ed. (Yogyakarta: Genta Publishing, 2022).

In Indonesia, there are State-Owned Enterprises (BUMN/ SOEs), which are public legal entities. The perspective used to see this is the conception of state finance in Indonesia. The definition of BUMN according to Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law) is a business entity whose capital is wholly or partly owned by the state through direct participation originating from separated state assets. Based on the view of state finances in a broad sense, the state assets that are separated into SOEs place SOEs as a public legal entity that allows state intervention in the management of SOEs. This is evidenced by the existence of a financial audit conducted by the Audit Board of the Republic of Indonesia (BPK RI) on SOEs.²³

Ridwan Khairandy in Muhammad Sadi Is stated that SOEs, especially Persero, are basically a corporation, namely a business entity that is a legal entity with the aim of making a profit. The legal entity referred to is an entity that can have the rights to carry out an act as a human being, has its own assets, and can be sued and sued in court.²⁴ In Indonesia, legal entities can be divided into 2 (two), namely public legal entities and private legal entities. Chidir Ali said that there were 3 (three) criteria that could be used as benchmarks in this determination. The 3 (three) criteria are related to the way of establishment or occurrence, work environment, and authority.²⁵

Departing from the method of establishment, it needs to identify whether a legal entity is formed based on public law or not. A mechanism is called using public law if it is established by the authorities based on statutory regulations. Then secondly, related to work environment criteria, namely related to the actions carried out by the legal entity. Are the actions carried out in the civil law environment with the same status as other legal subjects, if so, then they can be classified as private legal entities? But if not, then it is categorized as a public legal entity. The last criterion is related to authority, this criterion identifies related legal entities that are established and given the authority to

²³ Yoyo Arifardhani, "Kemandirian Badan Usaha Milik Negara: Pesinggungan antara Hukum Privat dan Hukum Publik," *Otentik's: Jurnal Hukum Kenotariatan* 1, no. 1 (2019): 54–72.

²⁴ Muhammad Sadi Is, *Hukum Perusabaan di Indonesia*, 1st ed. (Jakarta: Kencana, 2016).

²⁵ Detania Sukarja, Mahmul Siregar, and Tri Lubis, "Telaah Kritis Status Badan Hukum dan Konsep Dasar Badan Usaha Milik Desa," *Arena Hukum* 13, no. 3 (2020): 568–88, <https://doi.org/10.21776/ub.arenahukum.2020.01303.9>.

make decisions, decrees, or regulations that are generally binding. If a legal entity is given the authority as intended, it can be classified as a public legal entity.²⁶

According to Rudhi Prasetya, a legal entity has certain criteria. These criteria are as follows:²⁷

1. Limited liability;
2. Have separate assets;
3. Have their own rights and obligations;
4. Can perform legal actions.

In order to be able to say that a legal entity is included as a public or private legal entity, one must recognize the difference between public law and private law. Public law regulates the relationship between the state and its citizens. Meanwhile, private law regulates individual relations. Public legal norms are formed by the state. Meanwhile, norms in private law are formed in accordance with the will/desires of society. Public legal entities have the authority to issue public policies, both those that are binding on the public and those that are not binding on the public. The state as a public legal entity represented by the government as a public authority can carry out its authority. In this case, the state can establish a public legal entity (regional) or civil legal entity. While private legal entities have differences from public legal entities, namely they do not have the authority to issue public policies that can bind the general public. These private legal entities do not have the authority to form public legal entities or issue public policies that are binding on the public.²⁸ Examples of these private legal entities are companies, *commanditaire vennootschaap*, foundations, cooperatives, associations, and so on.

According to Tom Christensen, a legal entity has a unique characteristic, namely, in its formation, it must be specifically formed based on statutory regulations. Through the laws and regulations as referred to, it is also necessary to state explicitly related to the duties and functions. To understand public legal entities empirically, one can study each

²⁶ Sukarja, Siregar, and Lubis.

²⁷ Rudhi Prasetya, *Yayasan, dalam Teori dan Praktik*, 1st ed. (Jakarta: Sinar Grafika, 2012).

²⁸ Rahayu Hartini, *BUMN Persero, Konsep Keuangan Negara dan Hukum Kepailitan di Indonesia*, 1st ed. (Malang: Setara Press, 2017).

public legal entity which due to its uniqueness differs from one another based on the respective laws and regulations.²⁹

Problems with the Institutional Form of the Implementing Agency of Social Security

The 1948 United Nations (UN) Declaration on Human Rights and the International Labor Organization (ILO) Convention were part of the triggers for discussions related to the social security system. Both raised issues of decent work opportunities increased social protection and strengthened related to dialogue in dealing with various problems in the world of work.³⁰

Indonesia has Law Number 40 of 2004 concerning the National Social Security System (SJSN Law) which regulates the pattern of administering social security in Indonesia. The elucidation of the SJSN Law states that the State of Indonesia needs to establish a national social security system in order to provide assurance of social protection and welfare for all Indonesian people. Departing from the SJSN Law, it is necessary to form a special agency for administering social security in Indonesia. The background is related to the absence of social security for all Indonesian people. With the promulgation of Law Number 24 of 2011 (BPJS Law), it is hoped that the implementation of social security can embrace all Indonesian people without exception.

The consequence of the promulgation of the BPJS Law was a change in management from PT Askes (Persero) and PT Jamsostek (Persero) to BPJS for Health and BPJS for Manpower. The change or transformation referred to means a change in the characteristics of the social security administering body. The transformation referred to is related to the form of the administrative body from a company to a public legal entity.

Apart from the social security provided by PT Askes and PT Jamsostek, other social security services are provided by PT Taspen and PT Asabri. Both of them have different types of program implementation, PT Taspen organizes pension and old-age fund programs for Civil Servants (PNS). Meanwhile, PT Asabri organizes social security

²⁹ Roberia, *Hukum Jaminan Kesehatan*, 1st ed. (Bekasi: Gramata Publishing, 2019).

³⁰ Suzanalisa Suzanalisa, "Implikasi Perubahan PT. Jamsostek (Persero) menjadi Badan Penyelenggara Jaminan Sosial (BPJS) terhadap Jaminan Sosial Ketenagakerjaan di Indonesia," *Jurnal Ilmiah Universitas Batanghari Jambi* 15, no. 3 (February 17, 2017): 188–97, <https://doi.org/10.33087/JIUBJ.V15I3.166>.

programs for the Indonesian Armed Forces (TNI) and the Indonesian National Police (POLRI). Based on the BPJS Law, PT Askes, PT Jamsostek, PT Taspen, and PT Asabri are integrated into 2 (two) social security administering bodies. It is stated in the BPJS Law that PT Askes and PT Jamsostek were merged at the beginning to become BPJS for Health and BPJS for Manpower which would later be followed by PT Taspen and PT Asabri. The merger referred to is to facilitate the processing of insurance claims for participants and to simplify the bureaucracy within the scope of social security administering institutions in Indonesia.³¹ The two companies were given until 2029 to be able to join the Social Security Administration.

In the merger process as stipulated in the BPJS Law, PT Taspen and PT Asabri are given until 2029 to be able to join BPJS for Manpower. This could not be realized due to the existence of a judicial review application to the Constitutional Court related to Article 57 letter f and Article 65 paragraph (2) of Law Number 24 of 2011 concerning the Implementing Agency of Social Security which was considered to be contrary to Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia and can cause constitutional harm in the form of future uncertainty related to constitutional rights in the form of obtaining social security.

The submission for a judicial review was granted by the Judge of the Constitutional Court with the decision of Decision Number 72/PUU-XVII/2019 which in the ruling stated that (1) granted the applicant's request in its entirety; (2) states that Article 57 letter f and Article 65 paragraph (2) Law Number 24 of 2011 concerning the Social Security Organizing Agency (State Gazette of the Republic of Indonesia of 2011 Number 116, Supplement to the State Gazette of the Republic of Indonesia Number 5256) is contrary to the Law The 1945 Constitution of the Republic of Indonesia and does not have binding legal force; (3) Order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.

³¹ Angger Sigit Pramukti; Andre Budiman Panjaitan, *Pokok-Pokok Hukum Asuransi* (Yogyakarta: Pustaka Yustisia, 2014).

Apart from the filing made in relation to PT Taspen as mentioned above, a filing for *judicial review* was also made in relation to PT Asabri. The filing stated that the BPJS Law violated the provisions of Article 28D paragraph (1), Article 28H paragraph (2), Article 28H paragraph (3), and Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In its decision, the court stated that Constitutional Court Decision No. 72/PUU-XVII/2019 *mutatis mutandis* is a legal consideration. In its consideration, the court stated that the institutional design that was formed due to the transformation from PT Asabri to BPJS for Manpower contains uncertainties either due to the inconsistency of the institutional design choices taken or because there is no certainty related to the fate of the participants in it, especially related to the scheme which should reflect the existence of guarantees and the potential for the reduced value of benefits for its participants.

In its ruling, the court stated that (1) it granted the petition of the applicants in its entirety; (2) states that Article 57 letter e and Article 65 paragraph (1) Law Number 24 of 2011 concerning the Implementing Agency of Social Security (State Institution of the Republic of Indonesia of 20211 Number 116). Supplement to the State Gazette of the Republic of Indonesia Number 5256 is contrary to the Law The 1945 Constitution of the Republic of Indonesia and does not have binding legal force; (3) Order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.

Polemics related to the form of implementing bodies should not be the main focus of solving social security problems in Indonesia. If linked to the Bismarckian Model, namely the social security system in Germany developed by Chancellor Bismarck, a social security model can be implemented by providing separate programs for different risks. This is for example in terms of employment, retirement, and health care which are held partially.³² Therefore, in this case, problems related to the form of the organizing body need to be resolved in order to guarantee the implementation of social security programs in Indonesia.

³² Abdul Khakim; Ahmad Ansyori; Agusmidah, *Seluk Beluk Jaminan Sosial di Indonesia: Pasca Berlakunya UU Cipta Kerja*, 1st ed. (Medan: USU Press, 2021).

Problems related to the change in the form of a social security administering institution from a corporation to a public legal entity contain quite high polemics in its implementation. In the event that the implementing agency has the status of a public legal entity, it has a high potential for state interference in management.³³ As contained in Law Number 24 of 2011 concerning the Implementing Agency of Social Security, that BPJS is directly responsible to the President.

The management related to human resources within the BPJS is not subject to regulations related to staffing regulations governing the State Civil Apparatus (ASN) or regulations related to employment. Management related to human resources at BPJS is managed independently with BPJS for Manpower Regulation Number: Perdir/05/102014 concerning Employment BPJS for Manpower Management and BPJS for Health Directors Regulation Number 65 of 2020 concerning Governance of Health Social Security Administering Bodies. It's just that in the regulations of the agency it is stated that if a dispute occurs in the context of human resources within the BPJS body, then it submits itself to Law Number 2 of 2004 concerning Industrial Relations Disputes Settlement.

This is contradictory to the position of BPJS which regulates independently without subjecting itself to labor regulations. The dispute resolution process as stipulated in Law Number 2 of 2004 contains systematics relating to matters regulated in labor regulations in Indonesia. For example, related to the initial process that must be passed in the industrial relations dispute resolution mechanism, namely the bipartite mechanism. Bipartite involves both disputing parties, all matters related to the ongoing bipartite process must be recorded in the bipartite minutes and recorded at the local Manpower Office in order to continue the dispute process whether followed by an agreement between the two parties, namely by making a joint agreement, or a tripartite process if an agreement was not reached between the two disputing parties by appointing a third party which was held at the local Manpower Office.

In the process mentioned above, the data owned by the Manpower Office can be synchronized with the problems recorded by the disputing parties. The recording

³³ Arifardhani, "Kemandirian Badan Usaha Milik Negara: Pesinggungan antara Hukum Privat dan Hukum Publik."

process carried out by the Employment Service will be constrained because BPJS does not comply with labor regulations so it does not register workers' work agreements with the local Employment Service, which results in not having data from the Employment Office related to human resources from this BPJS.

Another problem that arises is related to the policies taken by the director in the form of social security administering body regulations that apply to the public. This can be seen from the concluding provision which states that 'so that everyone knows, orders the promulgation of this agency regulation by placing it in the State Gazette of the Republic of Indonesia'. The rules of this agency are signed by the main director of the social security administering agency. Regulations with this type of agency regulation need further study related to external implementation, whether they are in accordance with the legislation regarding the mechanism for forming statutory regulations.

If a comparison is made in relation to the implementation of social security in other countries to see the model and the administering body, then the following comparison is made.³⁴

No.	Country Name	Executing Model	Agency	Agency Status
1.	United States	Residual	Social Security Administration (SSA) under the Ministry of Social Services	Public
2.	Germany	Institutionalized and broadly	General local health insurance funds (AOK)	Public
3.	United Kingdom	Residual	Government	Public
4.	Netherlands	Universal Welfare State	<i>Alegemene Wet Bijsondere Ziektelkosten (AWBZ)</i>	Public

³⁴ Agusmidah, *Seluk Beluk Jaminan Sosial di Indonesia: Pasca Berlakunya UU Cipta Kerja*.

5.	Canada	Residual	Government	Public
6.	Japan	Universal Coverage	Local Government	Public
7.	Australia	Residual	Federal Government under the coordination of the Minister of Finance and Administration and the Department of Veterans Affairs; Investment in social security funds (non-health) by private institutions managing funds under the supervision of the Ministry of Finance; Medicare is administered by an independent and single national-scale institution under the supervision of the Health Insurance Commissioner (HIC) under the coordination of the Department of Health and Parental Services.	Public
8.	South Korea	Minimum model	National Agency i.e. Health Insurance Corporation of Korea (corporate legal entity exempt from private law by one law; also known as autonomous/independent public body for-profit)	Public

9.	Thailand	Social Security System (Universal health coverage)	The social security agency under the Thai Ministry of Manpower; National Health Security Office.	Public
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Each country has its own characteristics in the implementation of social security. Differences related to the implementation of social security in each of these countries is the state's right to determine the institutional form of the social security administering body. From the table mentioned above, it can be seen that the implementation of social security in most countries is under the control of the government and is public in nature. Indonesia merged social security providers with the aim of achieving institutional efficiency. Institutional efficiency referred to is appropriate for countries with a social security system adopted by the Beveridge Model. Meanwhile, for countries with a Bismarckian social security system, the institutional efficiency model is aimed at not combining the implementing agencies into one.³⁵

The efficiency referred to, if applied in Indonesia, must be accounted for by the rapid adjustment of the administration under the auspices of the Persero to a public legal entity. In Indonesia, with the formation of BPJS by implementing a national social security system subject to public law, in its implementation, it is necessary to adjust to the public law as intended. From the establishment of the institution, its accountability, the management of human resources within it, the scope of policies made, financing, and other aspects that need adjustments related to the transformation from a corporation to a public legal entity.

³⁵ Nurfaqih Irfani, "Organisasi Jaminan Sosial di Negara Federal Republik Jerman: Suatu Perbandingan (Social Security Organization in Federal of Germany: A Comparative Study)," *Jurnal Legislasi Indonesia* 9, no. 2 (2018): 275–98.

CONCLUSION

The problem with the form of social security administering bodies in Indonesia is related, among other things, to the change in form from what was originally a Persero to a public legal entity. These changes have an impact on what policies can be taken by public legal entities that are different from the previous position in Persero. Then problems spread to the field of internal human resource management of social security administering bodies after the enactment of Law Number 24 of 2011 concerning The Implementing Agency of Social Security, namely management that is not under the umbrella of regulations related to the state civil apparatus or labor regulations that apply in Indonesia. Independently, the agency submits itself only to the rules of the board of directors. This has an impact on protection for workers in social security administering bodies as referred to. The next problem is related to the management of social security in a spirit of mutual cooperation based on Law Number 40 of 2004 concerning the National Social Security System, that there are aspirations to integrate it into BPJS for Health and BPJS for Manpower as an effort to increase institutional efficiency. It is just that after the Decision of the Constitutional Court Number 72/PUU-XVII/2019 and Decision Number 6/PUU-XVIII/2020 were decided, the implementation of social security was not integrated into two, but remained in its original form, namely there were 4 (four) consisting of BPJS for Health, BPJS for Manpower, PT Taspen, and PT Asabri. The merger step as an effort to increase institutional efficiency in administering social security requires an evaluation process related to the urgency of this efficiency.

COMPETING INTEREST

There is no conflict of interest in the publication of this article.

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