

## Legal Protection for Workers on Pension Plan Policy



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### ABSTRACT

**Objective:** to find out legal protection for workers over the polemic of the Minister of Manpower Regulation Number 2 of 2022 regarding the Pension Plan (*Jaminan Hari Tua – JHT*) which is considered legally flawed.

**Methodology:** research was normative research that used a statutory approach, which examined problems using legal regulations in the form of legal regulations. The analysis used a qualitative method with the discussion used library research.

**Findings:** Based on Ministerial Regulation Number 2 of 2022, JHT benefits will be paid when the participant reaches the age of 56 years. JHT benefits can still be enjoyed by participants who have been laid off, as long as the contribution period has reached 10 years. The benefits provided include 30% of JHT for homeownership or 10% for other purposes in cash. The rest of the benefits are taken at the age of 56 years. This scheme protects so that in old age workers still have funds to meet their daily needs. If all of them are taken, then the purpose of JHT protection will not be achieved, because the real objective of JHT is for protecting workers or laborers in their old age.

**Purpose:** The government needs to create comprehensive legal protection to protect the workforce.

**Novelty/Originality:** legal protection for workers in the issue of seeking JHT at the age of 56.

**KEYWORDS:** Legal Protection, Workers, Pension Plan (JHT)

### PRELIMINARY

The latest regulation from the Ministry of Manpower (Kemnaker) regarding the Pension Plan (*Jaminan Hari Tua – JHT*) can only be disbursed at the age of 56 years. The condition is that participants registered with BPJS-K who are allowed to withdraw are required to have entered retirement age, passed away, or experienced permanent total disability. The regulation is contained in the Regulation of the Minister of Manpower (Permenaker) of the Republic of Indonesia Number 2 of 2022 concerning Procedures and Requirements for Payment of JHT Benefits. It is planned that this rule will be enforced after 3 months from the date of promulgation or starting on May 4, 2022. The regulation revokes the Minister of Manpower Regulation Number 19 of 2015 concerning Procedures and Requirements for JHT Benefits.

The polemic about the disbursement of the Pension Plan which can only be done at the age of 56 has sparked various debates. The government believes that the policy is in line with its objective, namely savings for workers to use in retirement. Meanwhile, the trade union group rejected the policy because the money was the right of the workers. The problem started when the Minister of Manpower Ida Fauziyah issued the Minister of Manpower Regulation (Permenaker) Number 2 of 2022 concerning Procedures and Requirements for Payment of JHT Benefits. Then Article 3 of the Permenaker was criticized because one of the articles reads, "The benefits of JHT for Participants who reach retirement age as referred to in Article 2 letter a are given to participants when they reach the age of 56 (fifty-six) years".

Regarding the disbursement mechanism, participants can still make partial withdrawals of the JHT balance of 30 percent. This is for homeownership purposes or 10 percent for other purposes with a minimum membership requirement of 10 years. However, for full JHT balance disbursement, it can only be done when the participant reaches the age of 56 years, has a permanent total disability, or passes away. The Permenaker was then criticized by the unions or laborers. This Regulation of the Minister of Manpower was strongly rejected by KSPI and Indonesian workers because many workers after being laid off used the disbursement of JHT funds to survive. Meanwhile, they are not reaching 56 years old yet.

The rules regarding JHT are regulated in Article 35 of Law Number 40 of 2004 concerning the National Social Security System (SJSN). It is stated in the article that JHT is organized nationally based on the principle of social insurance or mandatory savings. The pension insurance is held to guarantee that participants receive cash if they enter retirement age, experience permanent total disability, or pass away, as stated in Article 35 Paragraph (2). Article 37 Paragraph (1) of the Law states that JHT funds are disbursed at once when the participant enters retirement age, passes away, or experiences permanent total disability. Then, in

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paragraph (2) it is said, the amount of JHT funds is determined based on the accumulated contributions that have been deposited by the participants plus the results of their development. Then, Paragraph (3) of the same article contains a provision that JHT funds can be partially disbursed without requiring participants to be 56 years old. JHT funds can be partially disbursed to a certain extent after membership has reached a minimum of 10 years, according to Article 37 Paragraph (3).

The rules regarding the partial disbursement of JHT funds before retirement are also contained in PP No. 46 of 2015. It is stated in Article 22 Paragraph (4) that to prepare for retirement, partial disbursement of JHT funds can be given to a certain extent if the participant has had a minimum membership period of 10 years. Taking JHT benefits up to a certain limit as referred to in paragraph (4) is at most 30% (thirty percent) of the total JHT, which is intended for homeownership or at most 10% (ten percent) for other purposes following preparation for retirement, thus Article 22 Paragraph (5). Taking JHT benefits as referred to in paragraph (5) can only be made for 1 (one) time as long as you are a Participant, continued Article 22 Paragraph (6).

Article 5 of the Minister of Manpower Regulation Number 2 of 2022 contradicts Article 37 Paragraph (3) of the SJSN Law. Article 5 of the Minister of Manpower Regulation states that JHT funds can only be disbursed when they retire or are 56 years old, even if the participant resigns or is terminated. Meanwhile, Article 37 Paragraph (3) of the SJSN Law states that JHT funds can be partially disbursed to a certain extent after membership has reached a minimum of 10 years. This means that Article 5 of the Ministerial Regulation Number 2 of 2022 is null and void. The Ministerial Regulation is a derivative rule of law. Thus, the provisions in Minister of Manpower Regulation Number 2 of 2022 should refer to the SJSN Law. Therefore, regarding the disbursement of JHT funds, it must still be guided by the SJSN Law and Government Regulation No. 46 of 2015 which states that JHT funds can be partially disbursed if BPJS Ketenagakerjaan participants have been members for at least 10 years. The applicable disbursement of JHT funds is as regulated in Minister of Manpower Regulation Number 46 of 2015 in conjunction with the SJSN Law.

The government, companies, and the community are aware of the importance of workers/labor for companies, the government, and society to provide legal protection for workers. Legal protection can be realized in the form of material (workers/labor welfare) but also in the form of preventing accidents because this is very important so that workers can maintain their health and safety in carrying out their work.<sup>1</sup>

The idea is that it is a worker protection program, which in the end can not only benefit the workers/laborers but it will also ultimately benefit the company because sustainability in production and productivity can be guaranteed. Seeing the importance of workers/laborers and the need to protect workers/laborers, this paper took the issue of legal protection for workers over the polemic of the Minister of Manpower Number 2 of 2022 concerning JHT which is considered legally flawed.

## RESEARCH METHOD

This research used a doctrinal approach which was then supported by a legal approach and a historical approach. The juridical-normative approach was chosen because this research was aimed at the extent to which legal principles are applied, synchronizing regulations vertically and horizontally based on secondary data. The approach used by the author to support the juridical-normative approach was the legal approach and the historical approach. The legal approach was carried out by reviewing all laws and regulations related to the legal issues that were being handled. A historical approach was used to examine the background and development of legal issues.<sup>2</sup>

In this study, the authors used qualitative analysis methods. This research used a qualitative research type. Qualitative research is the research that collects data and then presents it in the form of words. Qualitative research is research that intends to understand the phenomenon of what is experienced by the subject.<sup>3</sup>

## DISCUSSION

### Complete Contents of Minister of Manpower Regulation (Permenaker) Number 2 of 2022 concerning Procedures and Requirements for Payment of JHT Benefits

#### Article 1

In this Ministerial Regulation, what is meant by:

1. Pension Plan (*Jaminan Hari Tua*), hereinafter abbreviated as JHT, is a cash benefit that is paid at once when the Participant enters retirement age, passes away, or experiences permanent total disability.
2. JHT Participant hereinafter referred to as Participant, is any person, including foreigners who have worked for a minimum of 6 (six) months in Indonesia, who have paid contributions.
3. Employment Social Security Administering Body (*Badan Penyelenggara Jaminan Sosial Ketenagakerjaan*) hereinafter referred to as BPJS Ketenagakerjaan, is a public legal entity established under Law Number 24 of 2011 concerning BPJS.

<sup>1</sup> Suhartoyo. 2019. Perlindungan Hukum Bagi Buruh Dalam Sistem Hukum Ketenagakerjaan Nasional. *Administrative Law & Governance Journal*. Volume 2 Issue 2, June 2019. Hal. 326

<sup>2</sup> Suteki dan Galang Taufani, *Metodologi Penelitian Hukum*, cet. ke-3 (Depok : Rajawali Pers, 2020), hlm. hlm. 172

<sup>3</sup> Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, (Bandung: Remaja Rosdakarya Offset, 2008), hlm. 22

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- BPJS Ketenagakerjaan Participant Card is an identity as proof of BPJS Ketenagakerjaan membership which has a single identity number that is valid for all employment social security programs issued by BPJS Ketenagakerjaan following the stages of membership.

### Article 2

JHT benefits are paid to Participants if:

- Reaching retirement age;
- Have permanent total disability; or
- Passed away.

### Article 3

JHT benefits for Participants who reach retirement age as referred to in Article 2 letter a are given to participants when they reach the age of 56 (fifty-six) years.

### Article 4

- JHT benefits for Participants who reach retirement age as referred to in Article 3 include participants who stop working.
- Participants who stop working as referred to in paragraph (1) include:
  - Participants withdrew;
  - Participants are terminated; and
  - Participants who leave Indonesia for good.

### Article 5

JHT benefits for Participant withdrawing as referred to in Article 4 paragraph (2) letter a and Participant being terminated as referred to in Article 4 paragraph (2) letter b are provided when the Participant reaches the age of 56 (fifty-six) years.

### Article 6

- JHT benefits for Participants who leave Indonesia for good as referred to in Article 4 paragraph (2) letter c, are given to Participants who are foreign nationals.
- The JHT benefits as referred to in paragraph (1) are provided before or after the Participant leaves Indonesia for good.

### Article 7

- JHT benefits for Participants experiencing permanent total disability as referred to in Article 2 letter b are provided to Participants experiencing a permanent total disability before reaching retirement age.
- The rights to JHT benefits as referred to in paragraph (1) shall be calculated starting on the 1 (one) of the following month after the Participant is determined to have a permanent total disability.
- The mechanism for determining total permanent disability is carried out following the provisions of the legislation.

### Article 8

- JHT benefits for Participants who pass away as referred to in Article 2 letter c shall be given to the Participant's heirs.
- The heirs as referred to in paragraph (1) include Widow; Widower; or Child.
- If there are no widow, widower, or children as referred to in paragraph (2), the JHT benefits are given in the following order:
  - Participant's blood lineage in a straight line up and down to the second degree;
  - Siblings;
  - Parents in law; and
  - The party appointed in his will by the Participant.
- If the party designated in the Participant's will as referred to in paragraph (3) letter d does not exist, the JHT benefits will be returned to the Balai Harta Peninggalan following the provisions of the laws and regulations.

### Article 9

- Application for JHT benefits for Participants who reach retirement age as referred to in Article 2 letter a by attaching:
  - BPJS Ketenagakerjaan Participant Card; and
  - Identity card or other proof of identity.
- The requirements for submitting JHT benefits for Participants who reach retirement age as referred to in paragraph (1) shall also apply to Participants who withdraw and Participants who are terminated.
- Application for JHT benefits for Participants who leave Indonesia for good as referred to in Article 4 paragraph (2) letter c by attaching:
  - BPJS Ketenagakerjaan Participant Card;
  - Statement letter no longer working in Indonesia; and
  - Passport.

### Article 10

Application for JHT benefits for Participants experiencing permanent total disability as referred to in Article 2 letter b by attaching:

- BPJS Ketenagakerjaan Participant Card;

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- b. Certificate of examining doctor and/or advisory doctor; and
- c. Identity card or other proof of identity.

### Article 11

- 1) Submission of JHT benefits by heirs for Participants who pass away as referred to in Article 2 letter c by attaching:
  - a. BPJS Ketenagakerjaan Participant Card;
  - b. Death certificate from a doctor or authorized official;
  - c. Heir Certificate from the competent authority or letter of determination of heir from the court;
  - d. Identity card or other proof of identity from the heirs; and
  - e. Family card.
- 2) If the participant who passes away is a foreign citizen, the participant's heirs shall apply for JHT benefits by attaching:
  - a. BPJS Employment Participant Card;
  - b. Death certificate from the authorized official;
  - c. Heir Certificate from the representative office of the country where the Participant originates; and
  - d. Passport or other proof of identity of the heirs.

### Article 12

- 1) Attachments to the requirements for submitting JHT benefits as referred to in Article 9 to Article 11 can be in the form of electronic documents or photocopies.
- 2) The submission of documents as referred to in paragraph (1) is carried out online and/or offline.

### Article 13

The JHT benefits as referred to in Article 2 are paid in cash and at the same time by BPJS Ketenagakerjaan to the Participant or their heirs if the Participant passes away.

### Article 14

At the time this Ministerial Regulation comes into force, the Regulation of the Minister of Manpower Number 19 of 2015 concerning Procedures and Requirements for Payment of JHT Benefits (State Gazette of the Republic of Indonesia of 2015 Number 1230), is revoked and declared invalid.

### Article 15

This Ministerial Regulation comes into force after 3 (three) months from the date of promulgation.

## **Legal Protection for Workers over the Polemic of the Minister of Manpower Regulation Number 2 of 2022 regarding the JHT which is Considered Legally Flawed.**

With the presence of law in social life, it is useful to integrate and coordinate interests that usually conflict with one another. Therefore, the law must be able to integrate it so that conflicts of interest can be reduced to a minimum. Legal protection is an illustration of the function of law, namely the concept where the law can provide justice, order, certainty, benefit, and peace.

Legal protection does not differentiate between men and women. Indonesia as a legal state based on Pancasila must provide legal protection to its citizens because legal protection will give birth to the recognition and protection of human rights in its form as individual beings and social beings in a unitary state that upholds the spirit of kinship to achieve mutual prosperity.

The Minister of Manpower Regulation Number 2 of 2022 states that the JHT benefit in BPJS Ketenagakerjaan can only be taken when the worker enters retirement or at the age of 56, is seen by labor observers as an authoritarian policy, and should be changed. According to the perspective of the study of employment law, this is an authoritarian policy because JHT is related to the interests of workers and is not directly related to the government. But then the government implemented the policy. This caused a lot of speculation because the money was the workers' own money. There is company money, but there is no government money at all. Why then have to be detained longer, this seems to indicate there is a certain interest behind all this.

In the previous rule, participants could disburse JHT with a waiting period of 1 month after resigning/withdrawing from their place of work. An official from the Ministry of Manpower said that the latest regulation by the Minister of Manpower, which will take effect in May 2022, has been through input from various parties through a national tripartite forum and is intended to protect the life stages of workers until their old age. Through the new regulation, workers who are participants in BPJS Ketenagakerjaan contributions can still disburse their JHT a maximum of 10% for homeownership and 10% for other purposes, while the rest can only be disbursed at the age of 56 years. For workers who are laid off before entering the age of 56 years, it is said that they will receive the Job Loss Guarantee (Jaminan Kehilangan Pekerjaan – JKP) program with cash dependents for six months along with access to job market information including free training.

However, the workers admitted that they were worried about the new regulations regarding the disbursement of JHT for their future. Moreover, they also admitted that there had been no socialization about the JKP program prepared by the government. Labor activists understand this concern and view it as an accumulation of the unpleasant situation in the last two years, namely the Covid pandemic and the impact of the Cipta Kerja Law.

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Many labor observers suggest that the Minister of Manpower Regulation No. 2 of 2022 should be changed. What needs to be changed is that when a participant is not yet 56 years old but is laid off not because of passed away or because of a disability, then JHT should still be able to be taken by the participant. According to them, changing the rules will not harm the government. If there is no hidden agenda or vested interest, of course, there will be no problem at all if this regulation is changed. There is no loss at all from the government, there is no burden at all from the government when this Ministerial Regulation is changed like the previous Ministerial Regulation.

Keep in mind that JHT is essentially a worker's savings. This is very useful for workers who have been being BPJS Ketenagakerjaan participants when they were not yet 56 years old but were laid off, either because the company closed or because the worker made a mistake. People may resign from their jobs before the age of 56 but turn into entrepreneurs and what if JHT cannot be disbursed.

Based on Ministerial Regulation Number 2 of 2022, JHT benefits will be paid when the participant reaches the age of 56 years. JHT benefits can still be enjoyed by participants who have been laid off, as long as the contribution period has reached 10 years. The benefits provided include 30% of JHT for homeownership or 10% for other purposes in cash. The rest of the benefits are taken at the age of 56 years. This scheme protects so that in old age workers still have funds to meet their daily needs. If all of them are taken, then the purpose of JHT protection will not be achieved, because actually, this is for the old age of workers or laborers.

The government has prepared a JKP program for workers who have been laid off in the form of cash benefits, access to job market information, and job training. These JKP benefits can be obtained by those who have been laid off for six months and participants also get the opportunity during their productive age to get the opportunity to claim JKP benefits three times. However, the workers admitted that they still do not know anything about this JKP. There has not even been any socialization on how to implement JKP. The JKP provided by the government is of course very limited. If a worker is laid off, it will only be covered for the next six months. What is borne is not in full the usual wages received. It can be less than half, even the maximum is 40 percent. So how minimal the JKP is. The JKP, which was regulated one year ago after the Employment Creation Law was enacted, was seen as a kind of social security at that time when the government issued a policy to reduce the amount of severance pay, but now it is associated with JHT. That's not quite right.

Thomas Dye explained that public policy is about the government's decision on anything to choose to do or not to do.<sup>4</sup> The public policy regarding JHT benefits is an action taken by the government to implement the principle of mandatory savings aimed at workers who are about to enter retirement age. The implementation of JHT has existed since 1992 with the issuance of Law No. 3 of 1992 concerning social security for workers so that all workers are required to have Jamsostek.

In the SJSN era which was marked by the issuance of Law Number 40 of 2004 concerning the Social Security Law, employment social security became mandatory for workers in both the formal and informal sectors. This policy of providing social security benefits is a government action to protect workers in Indonesia. Policies that have been set are useless if they are not implemented. This is as stated by William Dunn that the policy will have no impact and cannot achieve the objectives of the policy itself if the policy is not implemented.<sup>5</sup> An important process in a policy is the implementation of the policy itself. The importance of policy implementation is reinforced by Pressman and Wildavsky explaining "policy implementation may be viewed as a process of interaction between the setting of goals and actions geared to achieve them" that policy implementation is a process of interaction between goals and actions taken to achieve these goals. The goals that have been prepared will be realized through various activities, it can be in programs to support the achievement of goals so that implementation as a process becomes important for achieving the goals of a policy.

In the JHT benefits policy, this benefit policy is regulated in the SJSN Law which confirms that JHT benefits can be given to participants who are entering retirement age, have a permanent disability, and passed away. This SJSN Law is implemented through PP 46/2015 which confirms that JHT benefits can be given to participants who are entering retirement age, permanent disability, and passed away and are given leeway to take after 10 years of participation at a rate of 10% for retirement preparation and 30% for housing ownership.

In practice, several problems are often found related to the disbursement of the JHT balance. This problem occurs because of arrears in payment of contributions by the employer so that workers cannot disburse JHT funds in the event of undesirable things, such as work accidents, termination of employment (PHK), or resignations. This is certainly not following the mandate of the SJSN Law which explains that employer companies must pay contributions that have been collected from workers regularly every month. Investment in the form of funds through the JHT program is a very risky thing because if it is not carried out following the provisions it can cause losses.<sup>6</sup>

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<sup>4</sup> Dye, Thomas R, 2013, *Understanding Public Policy*, Eleventh Edition, New. Jersey: Pearson. Prentice Hall.

<sup>5</sup> Dunn, William N. (2003). *Analisis Kebijakan Publik*. Yogyakarta: Gadjah Mada. University Press

<sup>6</sup> Emil, Prasyawati, E., & Yudianto, O. (2019). Pengaturan Sanksi Pidana terhadap Peserta BPJS yang Tidak Melaksanakan Kewajiban. *Jurnal AKRAB JUARA*, 4(5), 217-234.

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These problems show that protection for workers is very much needed, especially legal protection that is firm and binding, considering the position of workers as a weak party. Legal protection needs to be supported by legal certainty. According to Nugraha, Hamidah, and Fadli,<sup>7</sup> legal certainty can be guaranteed when the law in question uses good language, in terms of structure or terms, so that it does not cause multiple interpretations. The protection of the welfare of society is the responsibility of a state. The foundation or basis that regulates the welfare of the community is contained in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which guarantees the rights to work and a decent living for the people of Indonesia. The right to work and receive remuneration in an employment relationship is also regulated in Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The state must ensure the welfare of the community, especially workers in Indonesia, to obtain legal protection in this regard related to rights socioeconomic security.

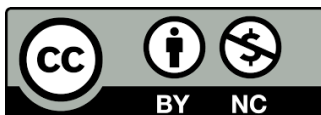
BPJS Ketenagakerjaan has made various efforts so that all companies that register their workers in the JHT program make regular monthly contributions. These efforts are carried out in the form of fines, administrative sanctions, and several innovations carried out by BPJS Ketenagakerjaan. Companies will receive sanctions if they are in arrears in payment of contributions. The sanctions applied according to Helweldery<sup>8</sup> consist of two kinds, namely criminal sanctions and administrative sanctions in the form of fines and written warnings.

## CONCLUSION

Based on Ministerial Regulation Number 2 of 2022, JHT benefits will be paid when the participant reaches the age of 56 years. JHT benefits can still be enjoyed by participants who have been laid off, as long as the contribution period has reached 10 years. The benefits provided include 30% of JHT for homeownership or 10% for other purposes in cash. The rest of the benefits are taken at the age of 56 years. This scheme protects so that in old age workers still have funds to meet their daily needs. If all of them are taken, then the purpose of JHT will not be achieved, because the real objective of JHT is for protecting the old age of workers or laborers.

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<sup>8</sup> Helweldery, A. E. R. (2019). Sanksi atas Pelanggaran terhadap Pelaksanaan Jaminan Sosial Ketenagakerjaan menurut Undang-Undang No. 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial (BPJS). *Lex Et Societatis*, 7(5), 30-37.