



## The Legal Problems on Occupational Accidents Insurance Policy for State Civil Apparatus

Ariel Gerson Oktavian<sup>1</sup>, Kadek Cahya Susila Wibawa<sup>2</sup>, Sonhaji<sup>3</sup>

<sup>1</sup>Faculty of Law Diponegoro University, E-mail: [arielgersonoktavian@students.undip.ac.id](mailto:arielgersonoktavian@students.undip.ac.id)

<sup>2</sup>Faculty of Law Diponegoro University, E-mail: [kadekwibawa@lecturer.undip.ac.id](mailto:kadekwibawa@lecturer.undip.ac.id)

<sup>3</sup>Faculty of Law Diponegoro University, E-mail: [sonhaji@lecturer.undip.ac.id](mailto:sonhaji@lecturer.undip.ac.id)

### Article Info

Received: 02<sup>nd</sup> April 2022

Accepted: 10<sup>th</sup> July 2022

Published: 20<sup>th</sup> July 2022

#### Keywords:

Occupational Accident Insurance, Death Insurance, State Civil Apparatus, National Social Security System

#### Corresponding Author:

Kadek Cahya Susila Wibawa, e-mail :

[kadekwibawa@lecturer.undip.ac.id](mailto:kadekwibawa@lecturer.undip.ac.id)

#### DOI:

10.24843/JMHU.2022.v11.i02.p01.

### Abstract

Initially, Employment and social protection was based on National Social Security System Law and it is applied for public, including State Civil Apparatus. According to the law, all employment social security should be implemented by Social Security Administration of Employment. Legal problems then emerged as a result of the stipulation of occupational accident insurance rules for State Civil Apparatus that were managed by PT Taspen as mandated by Government Regulation No. 70/2015. This research aimed to describe and analyze the legal construction of Occupational Accident Security and Death Security regulations for State Civil Apparatus. This research uses doctrinal legal research as part of qualitative research with conceptual and statute approach. The analysis was carried out descriptively by processing primary legal materials, secondary legal materials, and tertiary legal materials. The results of the research showed that legal problems were in the form of disharmony and regulatory inefficiency in the Occupational Accident Security and Death Security policies. A clash occurred between the State Civil Apparatus Law, the Social Security Administration Law and Government Regulation No. 70/2015. The problems occurred were related to the authority of PT Taspen as the organizer of Occupational Accident Security and Death Security for State Civil Apparatus as well as violations of the National Social Security System principles in the management of Occupational Accident Security and Death Security for ASN based on Government Regulation No. 70/2015.

## 1. Introduction

After reformation 1998, Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) was one of the articles that was undergoing amendments. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly states that: "Indonesia is a state law". One of the consequences of a rule of law is that the main objective of the state is to achieve social welfare.

Based on the principle of a rule of law adhered to by Indonesia, Maria Farida Indrati Soeprapto argue that Indonesia adheres to the concept of a "management law state" (*verzorgingstaat*).<sup>1</sup> The meaning contained in *verzorgingstaat* is a welfare law state or the concept of welfarestate or commonly referred to as a material law state. The meaning contained in *verzorgingstaat* is a welfare law state or the concept of welfare state or commonly referred to as a material law state.<sup>2</sup>

The establishment of Indonesia as a welfare state by the founders of the nation has real consequences as set out in paragraph 4 of the Preamble of the 1945 Constitution of the Republic of Indonesia: "To protect the entire Indonesian nation and all the blood of Indonesia and to advance public welfare, educate the nation's life, and participate in implementing world order. one based on freedom, lasting peace and social justice. "This is reaffirmed in Article 33 (1) respectively; Article 33 paragraphs (2) and (3) ;, and Article 34 of the UUD NRI 1945. Amendments to the UUD NRI 1945 in 2002, Chapter XIV underwent changes. Chapter XIV becomes Chapter of the National Economy and Social Welfare.<sup>3</sup> The amendment to the 1945 Constitution of the Republic of Indonesia places the economic program and the welfare program in the same position, yet The position of the Welfare Program in the 1945 Constitution of the Republic of Indonesia is emphasized in Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, stated "The state develops a social security system for all people and empowers people who are weak and incapable in accordance with human dignity."

Based on the amendments in the 1945 Constitution of the Republic of Indonesia, the government established many state companies with different functions and objectives in social security, Taspen for civil servants through Government Regulation Number 15 of 1963 which later became PT Taspen through Government Regulation Number 26 of 1991 that is still valid. Taspen (social insurance for civil servant) will provide coverage for each State Civil Apparatus in accordance with the policy agreement, be it for pension insurance, health insurance, and other guarantees.

Until now, Asabri (Indonesian Armed Forces Social Insurance) has been established for the Indonesian National Army (TNI) or Indonesian Republic Police (Polri) through Government Regulation Number 45 of 1971 and changed its form of business through Government Regulation Number 68 of 1991 to PT Asabri which is still in effect today, PT Jamsostek for private employees and PT Askes for public health care insurance. Through Government Regulation Number 6 of 1992 which was transformed in the SJSN (National Social Security System) Law into BPJS (Social Security Administration). As time goes by, it is still felt that there is social injustice in the regulation in its implementation due to problems related to private employees and civil servants, where most of the civil servants' social security is borne by the state budget, while most private employees become the burden of the employer even many employers do not have pension guarantee program.

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<sup>1</sup> Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan: Dasar-Dasar Dan Pembentukannya* (Yogyakarta: Kanisius, 1988).

<sup>2</sup> Husni Thamrin, *Hukum Pelayanan Publik Di Indonesia*. Yogyakarta (Yogyakarta: Aswaja Pressindo, 2013).

<sup>3</sup> Sulastomo, *Sistem Jaminan Nasional Mewujudkan Amanah Konstitusi* (Jakarta: Kompas Media Nusantara, 2011).

Furthermore, Government took the initiative to renew the legislation which then obtained the approval of the DPR, Law Number 40 of 2004 concerning the National Social Security System (SJSN) Law was as a form of social protection that ensures that each participant can meet the basic needs of a minimum decent life towards the realization of social welfare which is just for all Indonesian people.<sup>4</sup> SJSN Law states that there are 5 types of social security; health social security; pension social security; pension plan; social and occupational accidents security; and social security for death.

The social security mentioned above is administered by an agency, such as the Social Security Administration, hereinafter referred to as BPJS which is regulated in Law Number 24 of 2011 concerning the Social Security Administering Body (BPJS Law) which is mandated by the SJSN Law. There are two groups of BPJS participants in the implementation of social security, there are labor participants in employment relationships and labor participants outside employment relation. In accordance with the type, BPJS and labor participants in an employment relationship consist of formal sector workers and non-independent workers (joined in companies).<sup>5</sup>

The State Civil Apparatus (ASN) is a "profession" for Civil Servants (PNS) and Government Employees with a Work Agreement (PPPK) who work for government agencies in order to conduct government duties.<sup>6</sup> Civil servants are Indonesian citizens who meet certain requirements, are appointed as permanent ASN employees by staffing officers to occupy government positions. PPPK is an Indonesian citizen who meets certain requirements, who is appointed based on a work agreement for a certain period of time in order to carry out government duties. Interpretation of the definition of a profession is a job conducted by a person as a means of earning a living as well as a means of serving other people or people, which must also be followed by expertise, skills, professionalism, and responsibility in doing the job.<sup>7</sup> ASN also plays a role as a planner, implementer and supervisor of the implementation of general government tasks and national development through the implementation of professional public policies and services, free from political intervention, and free from corruption, collusion and nepotism.<sup>8</sup> For ASN, in Law Number 5 of 2014 concerning State Civil Apparatus (ASN Law), it is stipulated that ASN is a profession that includes civil servants and other government employees who work in government agencies (vide Article 1 paragraph (1) of the ASN Law). Thus, ASN is included in the employees, without exception, it must be protected by employment social security.

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<sup>4</sup> Ibid. p.4

<sup>5</sup> Taufik Taufik, Azhari Yahya, and Mahdi Syabandir, "Perlindungan Hukum Terhadap Jaminan Kecelakaan Kerja Dan Kematian Tenaga Kontrak Pada Sekretariat Daerah Aceh," *Syiah Kuala Law Journal* 3, no. 2 (2019): 167-83.

<sup>6</sup> Abdul Azis Sangkala, Florence Daicy Lengkong, and Gustaaf Budi Tampi, "Profesionalisme Aparatur Sipil Negara Dalam Penyelenggaraan Pelayanan Publik Di Kantor Kecamatan Singkil Kota Manado," *Jurnal Administrasi Publik* 4, no. 64 (2018).

<sup>7</sup> Dean Cakra Buana ; I Gusti Ayu Putri Kartika Ginting, "Perlindungan Kesejahteraan Pegawai Negeri Sipil (PNS) Melalui Pemberian Jaminan Sosial. , 1(9), p. 3," *Kertha Semaya* 1, no. 9 (2013): 1-12.

<sup>8</sup> Endang Komara, "Kompetensi Profesional Pegawai ASN (Aparatur Sipil Negara) Di Indonesia," *Mimbar Pendidikan Jurnal Indonesia Untuk Kajian Pendidikan* 3, no. 1 (2019): 74.

Regulations related to occupational accident insurance/security protection for ASNs began with the issuance of the SJSN Law in 2004, that the Law mandated the Social Security Administering Body (BPJS) through Law Number 24 of 2011 concerning the Social Security Administration (BPJS Law) based on the mandate of Article 5 paragraph (1) of the SJSN Law. In particular, based on Article 6 paragraph (2) of the BPJS Law, BPJS employment provides work accident insurance, old age, pension and death securities benefits. Then in the BPJS Law, it requires state administrators to register their workers as participants in the BPJS, this is contained in Article 15 paragraph (1) and the explanation of employers in Article 1 letter 9 of the BPJS Law and is confirmed by Presidential Regulation Number 109 of 2013 concerning Program Participation Stages. Social Security. Therefore, State Administrators must register State Civil Service Employees in the Occupational Accident Security (JKK) and Death Security (JKM) programs to BPJS Employment no later than 1 July 2015.

In the SJSN Law, it is explained in Article 1 paragraph (12), "Employers are individuals, entrepreneurs, legal entities, or other bodies that employ workers or State Administrators who employ civil servants by paying salaries, wages, or other forms of remuneration." And Article 13 paragraph (1) of the SJSN Law states "employers are required to gradually register themselves and their workers as participants to the Social Security Administering Body, in accordance with the social security program that is being followed" then Article 13 paragraph (2). further regulated by a Presidential Regulation." Through the SJSN, state administrators are required to register ASN employees as BPJS participants because ASN is included in the elements of the workforce and the government as an employer.

In Article 92 paragraph (1) of the ASN Law, it is stated that the Government is obliged to provide protection to the State Civil Apparatus (ASN) in the form of: health insurance; accident insurance; death insurance; and legal assistance. Furthermore, in Article 92 paragraph (2) of the ASN Law, it is stated that protection in the form of health insurance, occupational accident insurance, and death security as referred to in paragraph (1) Letter a, Letter b, and Letter c covers social security provided in the insurance program of national social. Health insurance, JKK, and JKM for ASN do not stand alone but must refer to the SJSN which in this case has been regulated in the SJSN Law and the BPJS Law, however as a result of the issuance of the ASN Law, there was a gap that later on September 16, 2015 established a Government Regulation Number 70 of 2015 concerning Work Accident Benefits and Death Benefits for Civil Servants of the State which took effect from 1 July 2015.<sup>9</sup> Government Regulation Number 70 Year 2015 (PP 70/2015) is an implementing rule of the ASN Law, that the Law requires the government to include ASN in the social security program.

In Article 4 of PP 70/2015, it is explained that the participants in this Government Regulation are Candidates for PNS, PNS, and PPPK. Furthermore, it is also stated that "Participants as referred to in Article 4 are JKK and JKM Participants managed by PT Dana Tabungan and Asuransi Negeri Pegawai Negeri (Persero)". Thus, the executor of JKK and JKM specifically for ASN is now managed by PT Taspen.

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<sup>9</sup> Ibid. p.76

Legal problems also occur related to the inconsistencies of various related laws and regulations. One of them is related to Article 5 paragraph (1) of the SJSN Law stating that BPJS is the organizer of the national security program (health insurance, work accident insurance, old age insurance, pension insurance and death insurance) for all Indonesian residents including ASN. Furthermore, this provision intersects with PT Taspen as the institution or body appointed to carry out a social security program for ASN in the form of State-Owned Enterprises (BUMN). Thus, based on Article 2 paragraph (10 letter b of Law Number 19 of 2003 concerning Business Entities State Owned (BUMN Law), the establishment of maxuda and the purpose of establishing PT Taspen was to pursue profit. This contradicts the principles in the SJSN Law: non-profit.<sup>10</sup>

The second legal issue is reflected in Article 13 paragraph (1) of the SJSN Law and Article 15 paragraph (1) of the BPJS Law stating that "Employers are required to gradually register themselves and their workers as participants with the BPJS in accordance with the social security program being followed". No exception, state administrators are required to register their employees, who include candidates for civil servants, civil servants, members of the TNI (Indonesian national army), members, POLRI (Indonesian National Police), state officials, non-civil servants government employees, TNI student soldiers and POLRI students in the occupational accident insurance program, old age security program, insurance program. pension, and a death security program in stages for BPJS Employment. The phasing of registration for workers who work for state administrators is conducted for the work accident and death insurance program no later than 1 July 2015, however for ASN, a regulation has appeared, namely PP 70/2015 which contradicts the SJSN Law and the BPJS Law. This construction causes a shift in the position of the state considered as an employer and is obliged to register its workers with the BPJS.

In addition, in Article 57 letter f of the BPJS Law, it is stated that "the Limited Liability Company (Persero) PT. Dana Tabungan dan Asuransi Pegawai Negeri or abbreviated as PT Taspen (Persero) continues to carry out operational activities in organizing the old age savings program and pension payment program for its participants, including the addition of new participants. Until transferred to BPJS Employment". Therefore, Article 57 letter f of the BPJS Law clearly states that PT Taspen (Persero) is only allowed to add new participants not to add new social security programs. The addition of new participants is only presented in programs that have been run by PT Taspen (Persero), such as the old age savings program and pension payment programs for participants until they are transferred to BPJS Employment, instead of adding new programs like the one in PP 70/2015.

The fourth legal issue intersects with the Supreme Court Decree Number 32 P/HUM/2016 that examines the material of Article 7 PP 70/2015. The judge argued that the work accident insurance and death insurance policies for ASN are excluded because they are the implementation of work accident insurance and death insurance for ASN is a special legal policy based on Article 92 paragraph (4) and Article 107 of the ASN Law. Thus,

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<sup>10</sup> Article 4 of the SJSN Law explains nine principles for implementing social security program. There are the principles of mutual cooperation, non-profit, openness, prudence, accountability, portability, mandatory membership, the principle of trust funds, the principle of mutual interest.

Government Regulation 70/2015 is implemented based on the ASN Law, so that there is disharmony of regulations where the government has regulated the SJSN including the implementing Law but there are deviations with the issuance of social security outside of the SJSN. This causes juridically that the regulation of PP 70/2015 regarding JKK and JKM for ASN is outside the SJSN Law and also eliminates the constitutional rights provided by the state through the SJSN Law, because the breath of the SJSN Law is in line with Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 NRI Constitution while PP 70/2015 is not the breath of the SJSN Law.

As the research about occupational accident insurance policy had been conducted before, such as: Heri Nugraha and Linda Yulia in 2019, this research focused on occupational accident in PT Kereta Api Indonesia<sup>11</sup>; Taufik, Azhari Yahya, et.al in 2019, this research focused on law protection of security work accident and the death of contracting workers at Aceh regional secretariat.<sup>12</sup> In 2013, Dean Cakra Buana Ginting and I Gusti Ayu Putri Kartika had finished their research and focused on the protection of welfare for Civil Servants by means of providing Social Guarantee for the Civil Servant.<sup>13</sup>

Based on previous research, there are differences in the research focuses that researchers will conduct. Although both of them take the theme of occupational accident, the authors emphasize the formation of the regulation development (legal construction) of occupational accident security policy for state civil servants in Indonesia; and implications of substance differences in the occupational accident security program between the laws and regulations related to the national social security system and Government Regulation Number 70 Year 2015. Hafidh Arighi in 2020, this research focused on non-conformity of social security provisions in Law Number 24 Year 2011 and Government Regulation Number 70 Year 2015.<sup>14</sup> Thus, this discussion is always essential and actual for further research.

Based on these legal problems, this research will describe and discuss the regulations related to occupational accident insurance in the National Social Security System (SJSN) in effect in Indonesia and the implications of substance differences in the work accident insurance program between the laws and regulations related to SJSN and Government Regulation 70/2015.

## **2. Research Method**

This research is a doctrinal legal research as part of qualitative research. Qualitative research is research used to investigate, describe, explain, discover the quality or

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<sup>11</sup> Heri Nugraha, "Analisis Pelaksanaan Program Keselamatan Dan Kesehatan Kerja Dalam Upaya Meminimalkan Kecelakaan Kerja Pada Pegawai Pt. Kereta Api Indonesia (Persero)," *Coopetition : Jurnal Ilmiah Manajemen* 10, no. 2 (2019): 93–102, <https://doi.org/10.32670/coopetition.v10i2.43>.

<sup>12</sup> Ibid.

<sup>13</sup> Ginting, "Perlindungan Kesejahteraan Pegawai Negeri Sipil (PNS) Melalui Pemberian Jaminan Sosial.," 1(9), p. 3."

<sup>14</sup> Ibid.

features of social influence that can't be explained, measured or illustrated through a quantitative approach.<sup>1516</sup>

This doctrinal law research uses a statute approach and a comparative approach. The research specification used was descriptive-analytical.

Doctrinal law research was carried out by searching and analyzing legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials.<sup>17</sup> The data /material analysis method used was descriptive qualitative analysis. The method of presenting the data analysis in an informal manner and the method of drawing conclusions used deductive logic.

### 3. Result and Discussion

#### 3.1. The Legal Construction of Occupational Accident Security Policy for State Civil Servants in Indonesia

In principle, the government presents three main tasks. There are organizing government, implementing development, and carrying out public services. The state must be present to serve every citizen and population to fulfill the basic rights and needs of the community within the framework of public services, as mandated by the 1945 Constitution of the Republic of Indonesia.<sup>18</sup> The provision of social security by the government through the BPJS is one way of overcoming this economic risk and also as one of the efforts to realize Indonesia as a welfare state. The existence of social security is expected that the community can live properly and get their dignity as a human..

These rights are regulated in the constitution of the Indonesian state in Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia stating that: "Everyone has the right to social security that enables his complete development as a dignified human being". Furthermore, according to Article 34 paragraph 2 of the 1945 Constitution of the Republic of Indonesia, it explains that: "The state develops a social security system for all people and empowers people who are weak and incapable in accordance with human dignity". Other provisions that also pertain to welfare and social security include: Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia that explains "every citizen has the right to a decent work and life", and Article 34 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. which states that: "The state takes care of the poor and neglected children".<sup>19</sup> This provision is

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<sup>15</sup> Yoannes Romando Sipayung, Kadek Cahya, and Susila Wibawa, "The Role of Information Technology toward the Development of Online Learning Process in Covid-19 Pandemic Period in Indonesia," *PalArch's Journal of Archaeology of Egypt / Egyptology* 17, no. 4 (2020): 948-58.

<sup>16</sup> Kadek Cahya Susila Wibawa and Sri Nurhari Susanto, "Establishing a Special Autonomy Model in Bali as a Means of Preserving Hindu Balinese Culture and Space," *International Journal of Scientific and Technology Research* 9, no. 4 (2020): 1609-14.

<sup>17</sup> Ibid.

<sup>18</sup> Kadek Cahya Susila Wibawa, "Urgensi Keterbukaan Informasi Dalam Pelayanan Publik Sebagai Upaya Mewujudkan Tata Kelola Pemerintahan Yang Baik," *Administrative Law & Governance Journal* 2, no. 2 (2019): 218-34.

<sup>19</sup> Rudy Hendra; Eka N. A. M. Sihombing Pakpahan, "Tanggung Jawab Negara Dalam Pelaksanaan Jaminan Sosial," *Jurnal Legislasi Indonesia* 9, no. 2 (2012): 169.

basically a legal reason for the aspect of social security, which emphasizes that social protection is a "right" (right) not as a "privilege." (privilege).<sup>20</sup>

Social security arrangements in the constitution emphasize that Indonesia is a welfare state. Thus, the state has policies in regulating policies, to improve the quality of the implementation of social security. This social security construction generates the SJSN model, where there is a change in social status. The change is in terms of the concept of patients as citizens who have obtained rights or as members of cooperatives guaranteed to receive selected services or goods. It means that the peace of the country has increased from an insecure group to a safe group in health services.<sup>21</sup>

Prior to the enactment of PP 70/2015, the regulation regarding work accident insurance for ASN was subject to Article 18 of the SJSN Law. This law then gives the mandate to BPJS Ketenagakerjaan to organize a national social security program, one of which is work accident insurance through the BPJS Law.

Government Regulation 70/2015 that was stipulated on 16 September 2015 is the legal basis for work accident insurance and death insurance for ASN. Government Regulation 70/2015 is stipulated to implement the provisions of Article 92 paragraph (4) and Article 107 of the ASN Law which in essence need to establish government regulations related to work accident insurance and death insurance for ASN. This protection aims to provide protection for participants in carrying out their duties and functions in carrying out general government and public services.

Government Regulation 70/2015 that was stipulated on 16 September 2015 is the legal basis for work accident insurance and death insurance for ASN. Government Regulation 70/2015 is stipulated to implement the provisions of Article 92 paragraph (4) and Article 107 of the ASN Law which in essence need to establish government regulations related to work accident insurance and death insurance for ASN. This protection aims to provide protection for participants in carrying out their duties and functions in carrying out general government and public services (PPPK).

JKK and JKM arrangements are also intended to provide a legal basis in the amount of contribution payments and benefits to be obtained, as well as parties entitled to receive these guarantees that have not been regulated in detail in previous laws and regulations. Article 22 of Government Regulation 70/2015 stipulates that the JKK contribution is borne by the employer and the JKK contribution is equal to 0.24% (zero point twenty four percent) of the participant's monthly salary. Meanwhile, Article 30 of Government Regulation 70/2015 stipulates that the JKM contribution is borne by the employer with the amount of the JKM contribution of 0.30% (zero point thirty percent) of the participant's monthly salary. In addition, PP 70/2015 also stipulates that PT Dana Tabungan dan Asuransi Pegawai Negeri (Persero) or PT Taspen (Persero) as the program manager is intended so that JKK and JKM can be implemented more effectively and efficiently and provide more adequate benefits for participants, by continue to pay

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<sup>20</sup> Henry Campbell Black, *Black Law Dictionary with Pronunciations*, 4th ed. (Los Angeles: West Publishing, 2019).

<sup>21</sup> Iwan Gardono Sujatmiko, "Privatisasi, Kapitalisme Dan Negara Dalam Pelayanan Kesehatan (Suatu Studi Perubahan Sosial Dalam Industri Kesehatan)," *Jurnal Masyarakat Dan Budaya* 12, no. 3 (2010): 61.



attention to optimal fund management and consider aspects of liquidity, solvency, prudence, security of funds, and adequate results for the benefit of the Participants themselves.

### **3.2. Implications of Substance Differences in the Occupational Accident Security Program in Various Regulations**

Substantial differences in the occupational accident insurance program generate legal issues. The problem occurred when there was a legal vacuum between the year the SJSN Law that was passed and the presence of BPJS Ketenagakerjaan, at which time there was no specific regulation regarding the institution that was authorized to implement the work accident insurance program for ASN. This is because at the time BPJS Employment was determined to be in the form of a company under the name PT Jamsostek (Persero). This implies that the work accident insurance is still held by PT Jamsostek, but there is no explanation regarding the agency/institution obliged to participate in work accident insurance for ASN because the basic regulations of PT Jamsostek are established based on Law Number 3 of 1992 concerning Social Security for Workers/Employment (Jamsostek Law).

Article 1 point 9 of the BPJS Law causes the expansion of the objects of social security, not only companies but legal entities and even civil servants. Juridically, it creates a legal vacuum on who is the organizer of work accident insurance for ASN. PT Taspen as the organizer of JKK for ASN according to the laws and regulations also did not have the authority to hold JKK for ASN at that time. In practice, there is no JKK for ASN which is legally regulated in the statutory regulations on ASN. The enactment of the BPJS Law actually becomes an opportunity for BPJS Ketenagakerjaan to carry out JKK and JKM, including for ASN, but as a result of the absence of implementing regulations, this implies that BPJS employment haven't had a definite legal basis regarding the implementation of JKK and JKM for ASN.

The stipulation of Government Regulation 70/2015 is intended as an adequate legal basis for State Civil Apparatus in obtaining their protection rights and the benefits to be obtained from JKK and JKM. Legal problems appeared when the enacted Government Regulation 70/2015 turned out to be disharmony and ineffectual to statutory regulations.

Supreme Court Decree Number 32/P/HUM/2016 decides that JKM and JKK from PT Taspen are not included in the scope of SJSN. This has implications for the loss of the constitutional rights of ASN to obtain occupational safety insurance and death insurance. Government Regulation 70/2015 is the implementer of the ASN Law. Thus, there is disharmony in the regulations where the government has regulated the SJSN, including the implementing law. However, there are deviations with the issuance of social security outside of the SJSN. This causes juridically that Government Regulation 70/2015 regarding JKK and JKM for ASN is outside of the SJSN Law. Inefficiency in

statutory regulations occurs because all social security including JKK for ASN should be implemented based on the SJSN Law and the BPJS Law.

Furthermore, the provisions in Article 7 Government Regulation 70/2015 that authorizes PT Taspen (Persero) to manage work accident and death benefits for ASN are contrary to Article 5 paragraph (2) of the BPJS Law. The management of JKK to a non-profit company causes a conflict with the SJSN principles in Article 4 letter b states that SJSN includes JKK, uses non-profit principles.

Another legal problem related to the legalization of Government Regulation 70/2015 is when it intersects with Article 57 letter f of the BPJS Law which regulates that PT Taspen (Persero) continues to carry out operational activities in organizing the old age savings program and pension payment program for its participants, including the addition of new participants, up to transferred to BPJS Employment. The elucidation of Article 57 also describes the old age savings program that only contains endowment insurance and death insurance. Based on the provisions of Article 57 letter f, PT Taspen is only allowed to add new participants to the programs that have been implemented by PT Taspen, such as the old age savings program and the pension payment program. The stipulation of PP 70/2015 is a legal conflict between PP 70/2015 and the BPJS Law, because PP 70/2015 causes PT Taspen to have the authority to add new programs, such as JKK and JKM for ASN even though the BPJS Law regulates that BPJS is not allowed to add new programs.

The roadmap as mandated by Article 66 of the BPJS Law, that is expected to solve legal problems in the JKK ASN policy, has not been prepared by the government. The roadmap is a grand plan that must be made by the government immediately. It contains a management unit that meets the principles of social security management and the determination of the institution to be appointed or authorized to coordinate this program.

#### **4. Conclusion**

Occupational accident insurance and death insurance policies for ASN in Indonesia are new policies that still need to be reviewed and revised. Ratification of Government Regulation 70/2015 that gives authority to PT Taspen to administer JKK and JKM, creating legal conflicts between one regulation and another, including the SJSN Law and the BPJS Law.

Government Regulation 70/2015 is not part of the SJSN because basically, the formation of these government regulations is not part of the SJSN. This is because Government Regulation 70/2015 is an implementing rule of the ASN Law. This means that there are regulations outside the SJSN laws and regulations governing social security. The stipulation of Government Regulation 70/2015 creates disharmony from the SJSN principles. The issue of employer terminology is also a problem in itself. With this

terminology, the state or government is equated with a company or entrepreneur as an employer.

The social security management roadmap is a solution to solve legal problems related to occupational accident insurance and death insurance programs for ASN. The roadmap is a major plan that must be prepared by the government immediately containing a management unit that meets the principles of social security management as mandated by the SJSN Law.

## Acknowledgment

I would like to express my deep gratitude for the opportunity to complete our research at the Bachelor of Law Program, Faculty of Law, Universitas Diponegoro.

## References

- Abdul Aziz Sangkala.. et al. "Profesionalisme Aparatur Sipil Negara Dalam Penyelenggaraan Pelayanan Publik Di Kantor Kecamatan Singkil Kota Manado." *Jurnal Administrasi Publik* 4, no. 64 (2108): 15.
- Black, Henry Champbell. *Black Law Dictionary with Pronunciations*. 4th ed. Los Angeles: West Publishing, 2019.
- Ginting, Dean Cakra Buana ; I Gusti Ayu Putri Kartika. "Perlindungan Kesejahteraan Pegawai Negeri Sipil (PNS) Melalui Pemberian Jaminan Sosial. , 1(9), p. 3." *Kertha Semaya* 1, no. 9 (2013): 1-12.
- Komara, Endang. "Kompetensi Profesional Pegawai ASN (Aparatur Sipil Negara) Di Indonesia." *Mimbar Pendidikan Jurnal Indonesia Untuk Kajian Pendidikan* 3, no. 1 (2019): 74.
- Nugraha, Heri. "Analisis Pelaksanaan Program Keselamatan Dan Kesehatan Kerja Dalam Upaya Meminimalkan Kecelakaan Kerja Pada Pegawai Pt. Kereta Api Indonesia (Persero)." *Coopetition : Jurnal Ilmiah Manajemen* 10, no. 2 (2019): 93-102. <https://doi.org/10.32670/coopetition.v10i2.43>.
- Pakpahan, Rudy Hendra ; Eka N. A. M. Sihombing. "Tanggung Jawab Negara Dalam Pelaksanaan Jaminan Sosial." *Jurnal Legislasi Indonesia* 9, no. 2 (2012): 169.
- Sangkala, Abdul Azis, Florence Daicy Lengkong, and Gustaaf Budi Tampi. "Profesionalisme Aparatur Sipil Negara Dalam Penyelenggaraan Pelayanan Publik Di Kantor Kecamatan Singkil Kota Manado." *Jurnal Administrasi Publik* 4, no. 64 (2018).
- Sipayung, Yoannes Romando, Kadek Cahya, and Susila Wibawa. "The Role of Information Technology toward the Development of Online Learning Process in Covid-19 Pandemic Period in Indonesia." *PalArch's Journal of Archaeology of Egypt / Egyptology* 17, no. 4 (2020): 948-58.
- Soeprapto, Maria Farida Indrati. *Ilmu Perundang-Undangan: Dasar-Dasar Dan Pembentukannya*. Yogyakarta: Kanisius, 1988.
- Sujatmiko, Iwan Gardono. "Privatisasi, Kapitalisme Dan Negara Dalam Pelayanan Kesehatan (Suatu Studi Perubahan Sosial Dalam Industri Kesehatan)." *Jurnal*

*Masyarakat Dan Budaya* 12, no. 3 (2010): 61.

Sulastomo. *Sistem Jaminan Nasional Mewujudkan Amanah Konstitusi*. Jakarta: Kompas Media Nusantara, 2011.

Susila Wibawa, Kadek Cahya. "Urgensi Keterbukaan Informasi Dalam Pelayanan Publik Sebagai Upaya Mewujudkan Tata Kelola Pemerintahan Yang Baik." *Administrative Law & Governance Journal* 2, no. 2 (2019): 218-34.

Taufik, Taufik, Azhari Yahya, and Mahdi Syabandir. "Perlindungan Hukum Terhadap Jaminan Kecelakaan Kerja Dan Kematian Tenaga Kontrak Pada Sekretariat Daerah Aceh." *Syiah Kuala Law Journal* 3, no. 2 (2019): 167-83.

Thamrin, Husni. *Hukum Pelayanan Publik Di Indonesia*. Yogyakarta. Yogyakarta: Aswaja Pressindo, 2013.

Wibawa, Kadek Cahya Susila, and Sri Nurhari Susanto. "Establishing a Special Autonomy Model in Bali as a Means of Preserving Hindu Balinese Culture and Space." *International Journal of Scientific and Technology Research* 9, no. 4 (2020): 1609-14.

## **Law and Regulations**

The 1945 Constitution of the Republic of Indonesia.

Law Number 5 of 2014 concerning State Civil Apparatus (The State Gazette of the Republic of Indonesia, Number 6 of 2014).

Law Number 24 of 2011 concerning the Social Security Administering Body (The State Gazette of the Republic of Indonesia, Number 116 of 2011).

Law Number 40 of 2004 concerning the National Social Security System (The State Gazette of the Republic of Indonesia, Number 150 of 2004).

Law Number 19 of 2003 concerning Business Entities State Owned (The State Gazette of the Republic of Indonesia, Number 70 of 2003).

Government Regulation Number 70 of 2015 concerning Work Accident Benefits and Death Benefits for Civil Servants of the State (The State Gazette of the Republic of Indonesia, Number 212 of 2015).

Presidential Regulation Number 109 of 2013 concerning Program Participation Stages. Social Security (The State Gazette of the Republic of Indonesia, Number 253 of 2013).

Constitutional Court Decision Number 101/PUU-XIV/2016.

Supreme Court Decision Number 32 P/HUM/2016.

Constitutional Court Decision Number 138/PUU-XII/2014.