



Protection for Work Accident's and Occupational Diseases During the Covid-19 Pandemic

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Abstract

Employment sosial security is a basic right of workers/laborers whose fulfillment must be guaranteed by the state in order to realize the welfare of workers/laborers and their family members. In addition, sosial security as a sosial protection system not only reduces poverty but also protects people from falling into poverty (Haiyani, 2022). Indonesia already has Law Number 40 of 2004 concerning the National Sosial Security System (UU 40/2004) and Law Number 24 of 2011 concerning Sosial Security Administering Bodies (UU 24/2011). One of the rights of workers is to get work accident insurance if they have an accident related to their work. However, what if the worker is exposed to COVID-19 at work? what if when you are hospitalized due to a work accident, you are exposed to COVID-19?. This paper is intended to analyze the need and different arrangements for the Obligations and Rights of workers in the event of having a work accident during the COVID-19 pandemic, which has not been regulated in Law Number 24 of 2011 concerning the Sosial Security Administering Body (Law No.24/2011), which is a public legal entity that has the authority as well as the obligation to implement employment social security. This research uses normative juridical research methods.

Keyword: Employment sosial security, COVID-19 pandemic, work accident.

1. Introduction

The COVID-19 pandemic has positioned this event as an unexpected event and has hit all people in the world. In the context of employment, if workers are exposed to COVID there is a legal vacuum and there is no certainty of protection of social security rights for workers, especially related to work accident insurance (JKK). For this reason, a solution must be made to overcome these problems. Even though the Government of Indonesia was late in making regulations, because the regulations were only issued in May 2021. Then, what if there is a case of workers being exposed to COVID-19 before the regulation is issued?

In the Circular Letter of the Minister of Manpower No. M/8/HK.04/V/2020 concerning Protection of Workers/Labourers in the Occupational Accident Insurance Program in Cases of Occupational Diseases due to Corona Virus Disease 2019 (COVID-19), that the category of workers who are protected from occupational diseases because COVID-19 only has three groups, namely: (a) medical personnel/health workers; (b) health support personnel; and (c) a team of volunteers. According to SE Menaker No. M/8/HK.04/V/2020, if the three groups of worker experience PAK due to COVID-19, they will receive JKK benefit rights in accordance with the provisions of the applicable laws and regulations.

Meanwhile, during the COVID-19 pandemic, the risk of exposure is not limited to the three groups of workers, but can occur for all workers, either at work or during work accidents and hospital admissions that provide care/treatment for patients infected with COVID-19. In fact, according to Sholikin and Herawati (2020) this risk does not only occur in health care facilities that are referrals for handling COVID-19, but also in health care facilities that are not referrals for COVID-19 treatment (Riguzzi & Gashi, 2021; Riguzzi, et al., 2021; Glaeser, 2022).

Starting from these conditions, workers other than the three groups of workers above when experiencing PAK due to COVID-19 should also receive the same treatment, namely they are entitled to JKK benefits.

1.1. Problem Formulation and Limitations

Based on the description above, the problem is formulated as follows:

1. How does the National Social Security regulation in Indonesia respond to the impact of the COVID-19 pandemic on workers who are exposed at work or because of their work?
2. What are the impacts of delays in regulating COVID-19 on workers' rights to social security before the regulation was made by the technical ministry and BPJS?
3. Why are there regulatory restrictions where only the third category of workers is protected from occupational diseases due to COVID-19?

Given the broad scope of the social security system in Indonesia and the complexity of the problems, the limitations of the problem in this study only discuss social security rights for workers who experience PAK due to COVID-19.

2. Research methods

This research is a type of empirical juridical research that examines the implementation of positive legal provisions (legislation) by using a statutory approach (statute approach) and conceptual approach (conceptual approach) as well as descriptive discussion. Sources of data were obtained from primary legal materials and secondary legal materials using qualitative material analysis techniques.

3. Research Results and Discussion

Whereas the national social security system is a state program that aims to provide assurance of social protection and welfare for all Indonesian people. Through this program, every resident is expected to be able to meet the basic needs of a decent life if things happen that can result in loss or reduction of income, due to illness, experiencing a work accident, losing a job, entering old age, or world retirement. General Explanation of Law 40/2004).

Furthermore, the implementation of the national social security system is based on the principles of humanity, the principle of benefits, and the principle of social justice for all Indonesian people (Article 2 of Law 40/2004) and based on the principles of: (a) mutual cooperation; (b) non-profit; (c) openness; (d) prudence; (e) accountability; (f) portability; (g) compulsory membership; (h) trust funds; and (i) the proceeds from the management of the funds are used entirely for program development and for the maximum benefit of the participants (Article 4 Law 40/2004).

Based on the provisions of Article 18 Law 40/2004 (Article 82 point 1 Law 11/2020) stipulates that the types of social security programs include: (a) health insurance; (b) occupational health insurance; (c) old age security; (d) pension guarantees; (e) death guarantees; and (f) job loss insurance. The distribution of social security administration is regulated in Article 6 and Article 9 of Law 24/2011 (Article 83 numbers 1 and 2 of Law 11/2020) as follows:

1. BPJS Health, organizes a health insurance program.
2. Employment BPJS, organize programs: (a) health insurance; (b) occupational health insurance; (c) old age security; (d) pension guarantees; (e) death guarantees; and (f) job loss insurance.

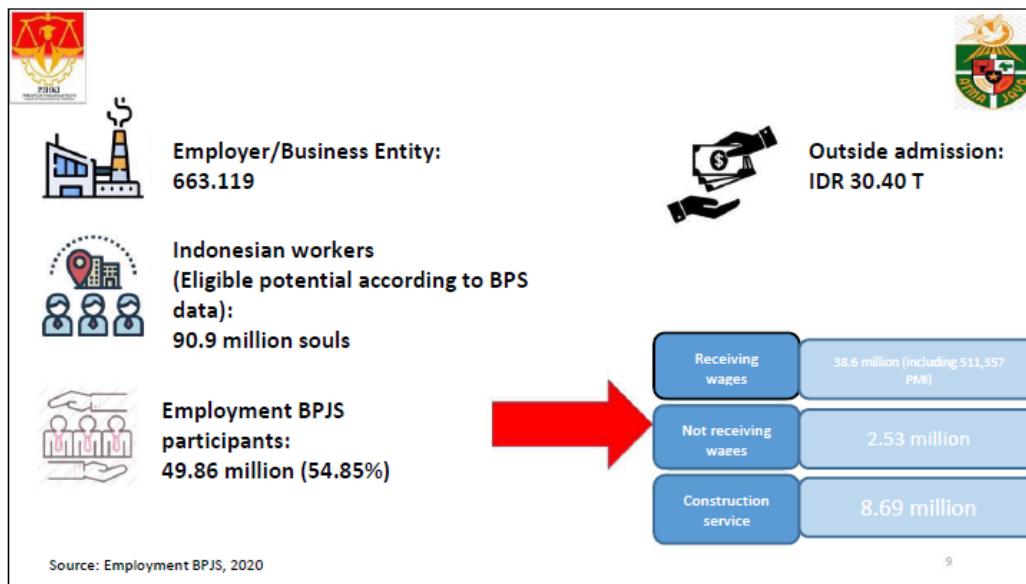


Figure 1: Employment BPJS Membership Data (2020)

Based on BPJS Ketenagakerjaan data (2020) there are 663,119 employer/business entities, with BPJS Ketenagakerjaan participants of 49,860 million (54.85%) and contribution receipts of IDR 30.40 trillion. The details of the participants: (a) Recipients of wages - 38.6 million; (b) Not wage earners – 2.53 million; and (c) Construction services – 8.69 million.

One of the workers' rights to social security that intersects with the COVID-19 pandemic is work accident insurance (JKK). The JKK rights for these workers are related to the regulation and status of the COVID-19 pandemic, does it include occupational diseases (PAK) or not?.

COVID-19 is an infectious disease caused by a newly discovered coronavirus. On December 31, 2019, the World Health Organization (WHO) reported a case of pneumonia of unknown etiology in Wuhan City, Hubei Province, China. Furthermore, on January 2, 2020 China identified the case as a type of coronavirus (novel coronavirus, 2019-nCoV) (Li, et al., 2020; Ung, 2020).

Corona Virus (COVID-19) is a large family of viruses that cause illness ranging from mild to severe symptoms. Common signs and symptoms of COVID-19 infection include symptoms of acute respiratory distress such as fever, cough and shortness of breath. Severe cases of COVID-19 can cause pneumonia, acute respiratory syndrome, kidney failure and even death (Wang, et al., 2020).

COVID-19, which was first discovered in Wuhan, quickly spread to other countries. The first case outside of China was found in Thailand. On 13 January 2020, Thailand reported its first confirmed case of COVID-19. On January 16, 2020, Japan reported a case of a Chinese citizen positive for COVID-19 while being treated at the hospital. Thailand reported its second positive case of COVID-19 on January 17, 2020. This case occurred in a 74-year-old woman who landed in Bangkok after coming from Wuhan. Furthermore, on January 20, 2020, South Korea reported one positive confirmed case of COVID-19. After that, it continued to spread to various countries in the world and finally on March 11, 2020, WHO declared COVID-19 a pandemic.

The first case in Indonesia was announced on 2 March 2020 by President Joko Widodo. Until now positive cases of COVID-19 in Indonesia have continued to increase. Data on the Ministry of Health's website as of June 13 2020 showed that there were 37,420 positive cases, 13,776 positive cases who recovered and 2,091 died (Ahmad, et al., 2020; Sofiana & Rizky, 2021). Meanwhile, positive cases of COVID-19 in the world have reached 36,406, with 1,901,079 recovered and 328,227 died. COVID-19 has spread in 216 countries. this number is increasing.

Several regulations related to the COVID-19 pandemic in Indonesia include:

1. Law No. 4 of 1984 concerning Outbreaks of Infectious Diseases.
2. Presidential Decree No. 12 of 2020 concerning Stipulation of Non-Natural Disasters by the Spread of Coronavirus Disease 2019 (COVID-19) as a National Disaster.
3. Decree of the Minister of Health No. HK.01.07/MENKES/104/2020 concerning Determination of Novel Coronavirus Infection (2019-nCov Infection) as a Disease that Can Cause Outbreaks and Efforts to Mitigate It (including health care costs).

The question is, are workers who are exposed to COVID-19 at work or at the time of a work accident and are admitted to a hospital that provides care/treatment for patients infected with COVID-19 as an occupational disease? The problem is, COVID-19 has not been mentioned in the Presidential Decree 07/2019. COVID-19 as an Occupational Disease (PAK) is only regulated and stipulated by Minister of Health Decree No. HK.01.07/MENKES/327/2020 concerning Determination of Occupational COVID-19 as a Specific Occupational Disease in Certain Occupations. Then, who is this particular worker? namely Health Workers and Non-Health Workers in handling COVID-19.

In the provisions of Article 1 number 1 Presidential Regulation No. 7 of 2019 concerning Occupational Diseases (Perpres 7/2019), the definition of Occupational Disease (PAK) is a disease caused by work and/or work environment.

According to Efendi and Makhfudli (2009) that the risk factors for among others: physical, chemical, biological or psychosocial class in the workplace. These factors in the work environment are the main cause and determine the occurrence of occupational diseases. Other factors such as individual susceptibility also play a role in disease development among exposed workers.

3.1. Risk factors that can cause PAK are as follows:

1. Physical class:
 - a) Noise can cause hearing loss up to non-induced hearing loss.
 - b) Radiation (radioactive rays) can cause blood and skin disorders.
 - c) High air temperatures can cause heat stroke, heat cramps, or hyperpyrexia. Meanwhile, low air temperatures can cause frost-bite, trenchfoot or hypothermia.
 - d) High air pressure can cause caison disease.
 - e) Insufficient lighting can cause eyestrain. High lighting can cause accidents.
2. Chemical group:
 - a) Dust can cause pneumoconiosis.
 - b) Vapors can cause metal fume fever, dermatitis and poisoning.
 - c) The gas can cause CO and H2S poisoning.
 - d) Solutions can cause dermatitis.
 - e) Insecticides can cause poisoning.
3. Class of infection:
 - a) anthrax.
 - b) Brucell.

- c) HIV/AIDS
- 4. Physiological group

It can be caused by construction errors, machinery, poor posture, wrong way of doing a job which can lead to physical fatigue and can eventually cause physical changes in the worker's body.
- 5. Mental class

Can be caused by a bad working relationship or monotonous work conditions that cause boredom (Cates, et al., 2006; Gochfeld, 2005).

Based on the provisions of Article 2 paragraph (3) of Presidential Decree 7/2019 that Occupational Diseases include the following types of diseases:

- a) caused by exposure to factors arising from work activities;
- b) based on the target organ system;
- c) occupational cancer; and
- d) other specifics.

Then the types of diseases above are further detailed in the attachment to the Presidential Decree 7/2019. However, if there are types of PAK that have not been included in the attachment to Perpres 7/2019, they are still open with the provisions in Article 4 of Perpres 7/2019 as follows:

- 1) In the event that there are types of Occupational Diseases that have not been listed in the Appendix as referred to in Article 2 paragraph (4), the disease must have a direct relationship with the exposure experienced by workers.
- 2) The disease as meant in paragraph (1) must be proven scientifically by using the right method.
- 3) Verification as referred to in paragraph (2) is carried out by doctors or specialists who are competent in the field of occupational health.
- 4) Types of Occupational Diseases as referred to in paragraph (1) shall be stipulated by Presidential Decree.

Of course this is a challenge for doctors who handle PAK cases, therefore they must have competence in making a diagnosis of PAK through the health care system in a professional manner.

According to Ratnawati & Kholis, (2020) that the small number of PAK can be caused by the undiagnosed cases of PAK, which is partly due to the uneven competence of doctors in diagnosing occupational diseases in the health service system in Indonesia. From the reports on the types of diseases in BPJS Kesehatan, there are several types of diseases that may be PAK. Legislation states that if the diagnosis of PAK has been established, the financing switches to BPJS Ketenagakerjaan. Of course, workers must also get their rights if they suffer from a disease that is "possibly PAK or suspected PAK".

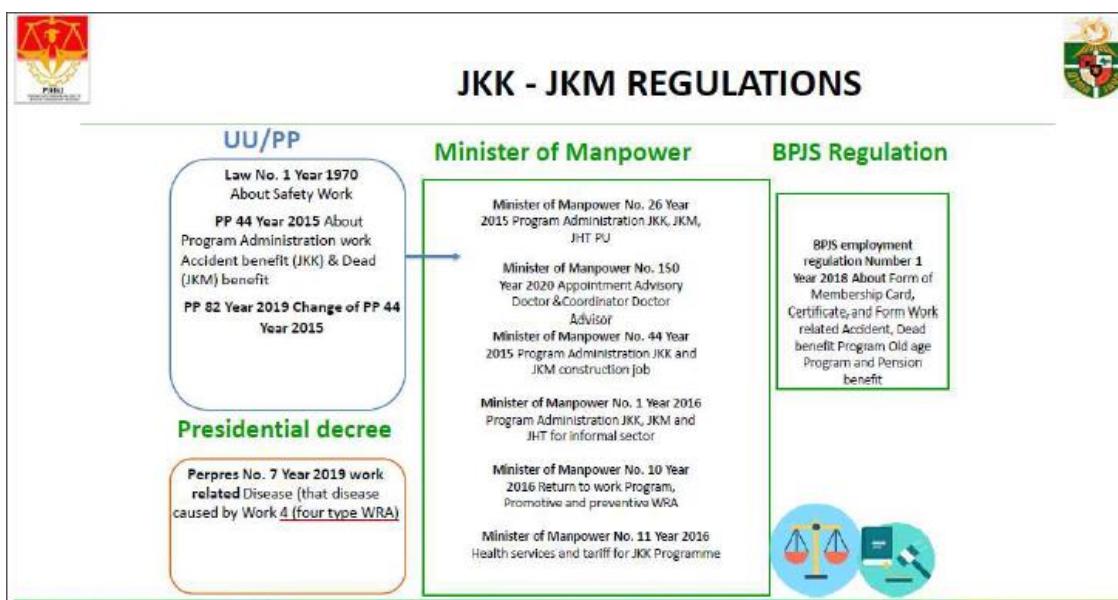


Figure 2: Work Accident Insurance (JKK) and Death Insurance (JKM) Regulations

By regulation the implementation of the JKK and JKM programs has been regulated in several statutory regulations as follows:

1. Law no. 1 of 1970 concerning Work Safety.
2. Government Regulation no. 44 of 2015 concerning Implementation of Work Accident and Death Benefit Programs.
3. Government Regulation no. 82 of 2019 concerning Amendments to Government Regulation No. 44 of 2015 concerning Implementation of Work Accident and Death Benefit Programs.

4. Presidential Regulation No. 7 of 2019 concerning Occupational Diseases.
5. Regulation of the Minister of Manpower No. 26 of 2015 concerning Implementation of the JKK, JKM, and Wage Recipient JHT Programs.
6. Regulation of the Minister of Manpower No. 44 of 2015 concerning Implementation of the JKK and JKM Programs in the Construction Services Business Sector.
7. Regulation of the Minister of Manpower No. 1 of 2016 concerning the Implementation of the JKM, JKM and JHT Programs for BPU Participants.
8. Regulation of the Minister of Manpower No. 10 of 2016 concerning Procedures for Providing Return to Work Programs and Promotional Activities and Preventive Activities for Occupational Accidents and Occupational Diseases.
9. Regulation of the Minister of Manpower No. 11 of 2016 concerning Health Services and the Amount of Tariffs in the Implementation of the JKK Program.
10. Regulation of the Minister of Manpower No. 150 of 2020 concerning Appointment of Advisory Physicians and Advisory Physician Coordinators.
11. Employment BPJS Regulation Number 1 of 2018 concerning Forms of Participant Cards, Membership Certificates, and Forms for Work Accident Security Programs, Death Insurance Programs, Old Age Security Programs, and BPJS Employment Pension Security Programs.

It has been described previously, that based on the SE of the Minister of Manpower No. M/8/ HK.04/V/2020, there are only three categories of workers who are protected from occupational diseases due to COVID-19, namely: (a) medical personnel/health workers; (b) health support personnel; and (c) a team of volunteers, as shown in Figure 3 below.

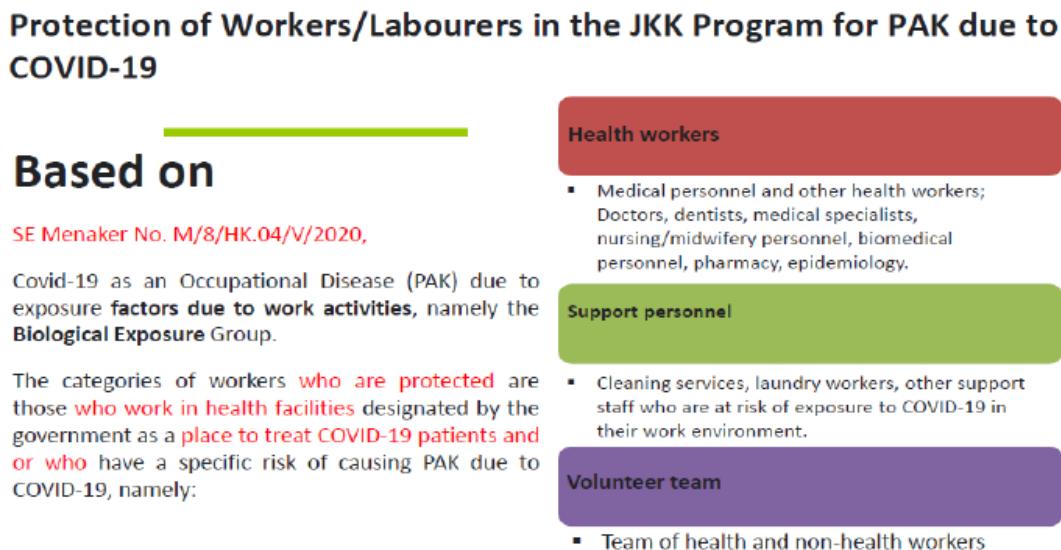


Figure 3: Protection of Workers/Labourers in the JKK Program for PAK due to COVID-19

The arrangement that limits only the three groups of workers above considers that only officers or workers in places who are caring for COVID-19 patients are at risk of exposure to COVID-19. Even though patients or other workers who need health services at that location (hospital) also have the same risk, namely exposure to COVID-19. This is an additional problem in addition to several other crucial problems in the implementation of social security programs (Yin & Yin, 2010; Conning & Kevane, 2002; Canagarajah & Sethuraman, 2001).

For this reason, it is necessary to have responsive regulatory policies to provide certainty of protection for other workers who experience PAK due to COVID-19 and obtain JKK benefit rights in accordance with the provisions of the applicable laws and regulations.

3.2. Technical Instructions During the Time of COVID-19

Furthermore, the BPJS Employment Service Directorate has also issued 6 (six) letters related to Worker Protection During the COVID-19 Period as technical guidelines for JKK and JKM services, namely:

1. Letter of the Director of Services Number: B/2853/032020, dated 20 March 2020, regarding: Scope of Protection for the JKK and JKM Programs in Facing the Novel Coronavirus Infection Outbreak and Work from Home Period.
2. Letter of the Director of Services Number: B/3269/042020, dated 7 April 2020, regarding: Technical Instructions for Claim Service Procedures for the Total Work from Home (WFH) Scheme.

3. Letter of the Service Director Number: B/5877/052020, dated 6 May 2020, concerning: Technical Instructions for JKK/JKM Claim Service Procedures for Advanced Full/Total Work from Home (WFH) Schemes.
4. Letter of the Director of Services Number: B/3842/042020 dated 30 April 2020 concerning Protection of the JKK and JKM Programs for CPMI/PMI During the COVID-19 Period (related to the existence of the Minister of Manpower Decree Number: 151 of 2020 concerning Temporary Suspension of Placements PMI).
5. Letter of the Service Director Number: B/3448/042020, April 17, 2020, regarding: Technical Instructions for Providing JKK and JKM Program Services during the COVID-19 Outbreak.
6. Letter of the Director of Services Number: B/6132/052020, dated 15 May 2020, concerning: Guarantee for Medical Personal Protective Equipment (PPE) Financing, COVID-19 Screening, Co-occurrences and Procedures for Checking Cases for the JKK/JKM Program During an Outbreak COVID-19.

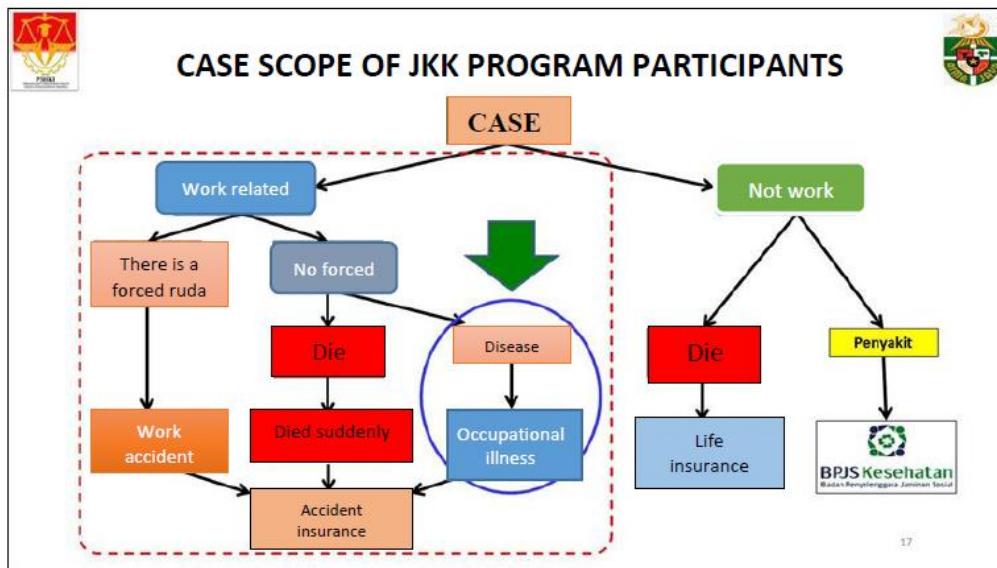


Figure 4: Case Scope for Work Accident Benefit Program (JKK) Participants

In order to find out the scope of accident cases against workers, in Figure 4 above it shows that cases of accidents experienced by workers are caused by two things, namely:

1. Related to work, either because of forced detention or not.
 - a) If due to forced ruda, the result is that the worker concerned is classified as a work accident.
 - b) If because there is no coercion, it can result in death or sudden death and cause illness, which is eventually classified as an occupational disease (PAK).
- 2) **Not related to work**, which results in death, the worker concerned is entitled to death benefits from BPJS Ketenagakerjaan. Meanwhile, if the accident causes illness, then the worker concerned is entitled to health insurance from BPJS Kesehatan.

The problem is, specifically related to workers who experience PAK due to COVID-19 there are regulatory restrictions, because the Government through Circular Letter of the Minister of Manpower No. M/8/HK.04/V/2020 only stipulates three groups of workers namely: health workers, support workers, and volunteer teams. Even though the possible risk of exposure is not limited to only the three groups of workers, but can occur for all workers both at work or during work accidents and admission to hospitals that provide care/treatment for patients infected with COVID-19. With these restrictions, as a result, other workers who experience PAK due to COVID-19 do not receive JKK benefit rights as the three groups of workers are prioritized by the Government.

He admitted that there were indeed many things that were unclear during the COVID-19 pandemic, but what is certain is that occupational safety and health (K3) protection guarantees are very important, including social security for workers. Protection for workers during the COVID-19 pandemic is of course not limited to the workplace, but also places such as hospitals that provide care/treatment services for patients infected with COVID-19.

4. Conclusions and Recommendations

4.1. Conclusion:

1. Laws/regulations of the National Social Security System (SJSN) need to be responsive to occupational risks that may occur due to the COVID-19 pandemic, either those exposed at work or due to work, including in hospitals where workers are treated for work accidents.
2. The impact of delays in the regulation of COVID-19 has led to ambiguity and loss of workers' rights to social security, especially work accident benefits due to work-related diseases (PAK).
3. Even though it was published late, according to Minister of Health Decree No. HK.01.07/MENKES/327/2020 and Circular of the Minister of Manpower No. M/8/HK.04/V/2020 which is technically stipulated in the BPJS regulations exposed to COVID-19 at work is categorized as an occupational disease (PAK).
4. The category of workers exposed to COVID-19 are only those who work in health facilities designated by the government as a place to treat COVID-19 patients including: health workers, support workers, and volunteer teams. According to SE Menaker No. M/8/HK.04/V/2020, if these three groups of workers experience PAK due to COVID-19, they will receive JKK benefit rights in accordance with the provisions of the applicable laws and regulations.

It is understandable that during the COVID-19 pandemic, the condition of the hospital and its staff faced a high risk of work-related accidents or occupational diseases due to exposure to COVID-19. The three groups of workers are the last gate in tackling the spread of COVID-19, who in carrying out their duties must make direct contact with COVID-19 patients. However, the Government also cannot ignore the possibility of other workers having accidents or PAK due to COVID-19 so that they obtain the same rights to occupational safety and health protection (K3) and the same JKK benefit rights.

4.2. Recommendation:

If workers who work in other than the special COVID-19 health facilities have implemented the health protocol provisions in an orderly manner but are exposed to COVID-19, they should still receive Employment Social Security protection. Therefore, the Government needs to stipulate rules that provide certainty of protection for other workers who experience PAK due to COVID-19 and obtain JKK benefit rights in accordance with the provisions of the applicable laws and regulations.

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