

## THE DISBURSEMENT POLEMIC OF OLD AGE SECURITY BENEFITS: UTILITARIANISM PERSPECTIVE

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### Abstract

*This paper aims to analyze the regulations in term of disbursing the benefits of the old age security program and the perspective of utilitarianism toward the polemic of disbursing old age security benefits. The method used in writing this scientific paper is a normative legal research method paying attention to the blurring of norm from indications of inconsistencies in regulations on the disbursement of old age security benefits as well as a conceptual approach from the perspective of utilitarianism and related legal theories. The result of the writing are that the regulation on the disbursement of old age security benefits which includes rules for stopping work for reason of registration and termination of employment is not in accordance with the essence of old age security protection so there is a blurring of norm. The old age security program as one of the social guarantees that provides protection for workers as their basic rights is part of the embodiment of the concept of a welfare state which originates from the notion of utility, creating the highest possible happiness for the community is the goal of legal benefit, but if the benefit paying more attention to individual interest will harm social justice and inconsistently formed laws will harm legal certainty, so that there is a blurring of norms which certainly does not reflect good law.*

**Keywords:** Regulatory Polemic, Old Age Security, Utilitarianism

### INTRODUCTION

The substance of norms in a regulation must have clarity so that is effective in its application in the field. The ambiguity of a regulation will result in a blurring of norms which has the impact of confusing the perception of the law which has multiple interpretations. Legal certainty must be considered in every formation of legal products, including legal products in the field of industrial relations. Manpower/Labor development has many dimensions also interrelationships, not only with the interests of the workforce during the working period but also before and after the working period. so that comprehensive regulations are needed, including to increase manpower protection.<sup>1</sup>

Employment issues are largely determined by the economic system, thus influencing the direction of employment law policy which gives birth to a type of employment law, namely the corporatist type, it is carried out through the practice of legislation policy in the formation of statutory regulations as a government effort to foster national law.<sup>2</sup> As for the legislation in the field of Manpower, namely Law Number 13 of 2003 concerning employment as an answer to problems that regulate the field of employment and has lofty goals for Indonesian workers. This can be seen in Article 4 of Law Number 13 of 2003 which states as follows employment development aims to:

- a. occupation and optimal and humane use of manpower;

<sup>1</sup>Charda, S. (2015). Karakteristik Undang-Undang Ketenagakerjaan Dalam Perlindungan Hukum Terhadap Tenaga Kerja. *Jurnal Wawasan Yuridika* 32, no. 1. p.1-21, <http://dx.doi.org/10.25072/jwy.v32i1.86>

<sup>2</sup>Charda, U. (2012) Reorientasi Reformasi Model Hukum Ketenagakerjaan dalam Kebijakan Pemerintah. *Syarik Hukum: Jurnal Ilmu Hukum* 14, no. 1. p. 11-25, <https://doi.org/10.29313/sh.v14i1.1448>

- b. realizing equal distribution of employment opportunities and supply of manpower by the needs of national and regional development;
- c. protect workers in realizing prosperity; And
- d. improve the welfare of workers and their families.

One of the goals in the field of employment in terms of protecting workers is closely related to efforts to establish a system that provides social security because social security itself is also a basic right for workers as well as a form of protection. This is realized by the formation of social security regulations covering the national scope in Law Number 40 of 2004 concerning the National Social Security System (hereinafter referred to as the SJSN Law). The SJSN Law is the starting point for subsequent related regulations to reach public welfare, one of which is welfare in the field of employment.

The SJSN Law regulates the implementation of social security under different institutions according to the field of implementation. There are 2 (two) types of administering bodies namely BPJS Kesehatan and BPJS Ketenagakerjaan, especially in the field of workers, it is organized by BPJS Ketenagakerjaan which has several programs that pay attention to the welfare aspects of the employment sector. Several programs include work accident insurance, death security, old age security, pension insurance, and most recently based on the formation of a law in the form of an Omnibus Law, namely Law Number 11 of 2020 concerning Job Creation, a job loss guarantee program was created.

The social security programs organized by BPJS Ketenagakerjaan pay attention to aspects of welfare and protection in the employment sector. Legal protection is the protection of dignity, as well as the recognition of human rights owned by legal subjects based on legal provisions of arbitrariness or as a collection of rules or rules that will be able to protect one thing from another.<sup>3</sup> One of the highlights is the JHT program. Old Age Security (JHT) has specific regulations governing Government Regulation No. 46 of 2015 concerning the Implementation of Old Age Security, in Article 1 point 1 defines cash benefits paid to participants when they enter retirement age, die, or have a permanent total disability. The participants referred to in this law are workers who have worked for at least 6 (six) months including foreigners who have paid contributions. As the name implies, this guarantee has the essence of protecting in old age for participants because the possibility of being affected and trapped in economic difficulties is very vulnerable in old age.

The workers themselves consist of workers on state administrators and workers on non-state officials. Unlike the case with workers in state administrators who already have old age security with a pension fund when their working period ends, workers who do not have state administrators do not have guarantees in the form of pension funds because their work ties are with the private sector. The government has paid attention to the welfare of non-government workers by establishing regulations that protect workers from obtaining their rights. In accordance with the meaning of employment as a working relationship both

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<sup>3</sup>Louize, P.T., and Hetharie. Y. (2020). Perlindungan Hukum Terhadap Keselamatan Kerja Bagi Tenaga Kesehatan Akibat Pandemi Covid-19. *Sasi* 26, no. 2. p. 280-285, <https://doi.org/10.47268/sasi.v26i2.307>

before, during, and after the working period. JHT is here to protect relationships after working.

There were a wave of workers protests regarding the disbursement of old age security benefits which had to wait until the age of 56 (fifty-six) years because the problem was that workers as participants were also affected by the termination of employment but could not withdraw JHT funds as their rights. So that PP was formed for amendments to PP No.46 of 2015 with PP No. 60 of 2015 which provides rules for establishing Permenaker as an implementing regulation namely Permenaker No. 19 of 2015 concerning Procedures and Requirements for Payment of Old Age Guarantee Benefits which are indicated to violate the essence of retirement security, because in this Permenaker provides additional arrangements in terms of disbursing old age security benefits for reasons of resignation and termination of employment can be disbursed within a waiting about 1 (one) month after resigning or being laid off. This does not reflect the purpose of the old age security coverage.

Returning to the initial essence of holding an old-age security program, the government is taking steps in related regulations such as holding a new employment social security program that is more related to the reasons for layoffs in the Job Creation Law, namely job loss guarantees. Then in early 2022, the minister of manpower gave a statement revoking Permenaker No. 19 of 2015 was replaced by Permenaker No. 2 of 2022 which is essentially trying to restore the spirit and original purpose of holding an old age security program. This is not necessarily accepted by the public, especially JHT participants who feel prevented from disbursing JHT funds as their rights.

Based on this background, it is interesting to examine the blurring of norms in the disbursement of old age security benefits regulations. There are several reference journals to support the writing of this scientific work, including journals entitled:

1. Masalah Penetapan Manfaat Jaminan Hari Tua (JHT) Setelah Terbitnya Peraturan Menteri Ketenagakerjaan Nomor 2 Tahun 2022 which discusses the contradictions of regulations related to the disbursement of old age security benefits and emphasizes the hierarchical relation of legislation to these conflicts. By Nabilla Putri Febri and Muhammad Abiyu Arhab.<sup>4</sup>
2. *Quo Vadis* Polemik Jaminan Hari Tua (JHT) bagi Masa Depan Tenaga Kerja di Indonesia dalam Peraturan Menteri Ketenagakerjaan Nomor 2 Tahun 2022 which discusses the positive and negative impacts of the birth of Permenaker No. 2 of 2022 said. By Mila Amalia Fitri, Farina Firda Eprilia and Fajry Awwaliyah Praptiwi.<sup>5</sup>

As a state of the art of this scientific work, there is a difference in subject matter, namely the discussion in this journal is associated with the perspective of utilitarianism from the polemic of ambiguity in norms or the tendency of inconsistencies in regulatory norms for the disbursement of JHT benefits with the title "The Disbursement Polemic of Old Age Security Benefits: Utilitarianism Perspective"

<sup>4</sup>Putri, N.F., and Arhab, M.A. (2022). Masalah Penetapan Manfaat Jaminan Hari Tua (JHT) Setelah Terbitnya Peraturan Menteri Ketenagakerjaan Nomor 2 Tahun 2022. *Jurnal Hukum Lex Generalis* 3, no. 5. p.395-411, <https://doi.org/10.56370/jhlg.v3i5.263>.

<sup>5</sup>Amalia, F.M., Eprilia, F.F., and Praptiwi, F.A. (2022). Quo Vadis Polemik Jaminan Hari Tua (JHT) Bagi Masa Depan Tenaga Kerja di Indonesia dalam Peraturan Menteri Ketenagakerjaan Nomor 2 Tahun 2022. *Jurnal Hukum Lex Generalis* 3, no. 5 : 350-367, <https://doi.org/10.56370/jhlg.v3i5.262>. p. 1.7

## METHOD

Legal research has a legal object in its research process, both in the form of dogmatic rules and those relating to people's behavior in life. Legal research is carried out scientifically by using a certain systematic method of thinking by analyzing a legal phenomenon.<sup>6</sup> This paper type of research uses a type of normative legal research, with a Statute Approach and an Analytical & Conceptual Approach. From indications of inconsistency in the regulations for the disbursement of JHT benefits. The research carried out by reviewing documents and collecting data or literature. The analysis technique is descriptive by analyzing and systematically pouring out the problems in the research. The legal materials used as primary legal materials as sources that provide additional instructions to explain related issues.

## RESULTS AND DISCUSSION

### Disbursement of Old Age Security Benefits Regulation

Discussing about old age security as one of the social security programs for workers is based on the Constitution of the Republic of Indonesia as the highest law, namely Article 28H a (3) and Article 34 a (2) of the 1945 Constitution of the Republic of Indonesia, which regulates social security as a right for everyone. and the state is obliged to develop a social security system to empower the community.<sup>7</sup> Social security was developed nationally to provide comprehensive protection for the community to meet the basic necessities of life. Social security on a national basis is divided into social security in the health sector organized by BPJS Kesehatan and social security for employment organized by BPJS Ketenagakerjaan. The role and position of workers are very important for manpower development so that protection for them seeks to guarantee basic rights to achieve prosperity. there are programs organized by BPJS Ketenagakerjaan that implement the meaning of working relationship not only during work but also before and after the working period, among which it is interesting to discuss the existence of guarantees on aspects of the employment relationship after the working period, namely old age insurance.

Social security for workers was formed in 1972, to be precise since the enactment of Law no. 32 of 1992 concerning Social Security for Manpowers (hereinafter referred to as the JSTK Law) with the consideration that protection for workers through social security provides peace of mind, not only for the welfare of the working period but also for periods when work is not productive in old age. One of the guarantee programs in the JSTK Law is the old age guarantee. Social security which is based on cooperation implies that protection for workers is not only in work relations but also outside work relations, in accordance with the nature of the old age security itself as a program that considers long-term welfare based on responsibilities between workers and employers.<sup>8</sup>

<sup>6</sup>Ibrahim, J.E.J., and M. M. Se. (2018). *Metode Penelitian Hukum: Normatif dan Empiris*. Depok : Prenada Media. p.11-15

<sup>7</sup> Pramusinto, W.T.A., and Lazuardi, L. (2017). Peran badan penyelenggara jaminan sosial (bpjs) kesehatan dan implikasinya terhadap ketahanan masyarakat (studi di rsud hasanuddin damrah manna kabupaten bengkulu selatan, provinsi bengkulu). *Jurnal Ketahanan Nasional* 23, no. 2. p.199-216, <https://doi.org/10.22146/jkn.26388>.

<sup>8</sup>Michael, L.A. (2020). Tanggungjawab Badan Penyelenggara Jaminan Sosial Ketenagakerjaan Sebagai Penjaminan Sosial Tenaga Kerja di Indonesia." *Lex Administratum* 8, no. 2. p. 1-10



To carry out the constitutional mandate, Law no. 40 of 2004 concerning the National Social Security System (hereinafter referred to as the SJSN Law). The SJSN Law provides comprehensive protection for the community to meet the basic necessities of life, emphasizing that social security services and facilities reach all citizens. In the SJSN Law, several social security administering bodies used procedures that had not been regulated by the JSTK Law, which at that time used an insurance mechanism through State-Owned Enterprises.<sup>9</sup>

The Social Security Administrative Body is regulated in Law no. 24 of 2011 (hereinafter referred to as the BPJS Law), to realize the objectives of the national social security system whose management is for program development and the greatest interests of the workers/participants. This legal entity was formed based on Article 5 a (1) and Article 52 of the SJSN Law as a transformation of BUMN in the implementation of the previous social security program, to accelerate the implementation of the national social security system. BPJS consists of BPJS Kesehatan and BPJS Ketenagakerjaan, JHT is one of the social security programs provided by BPJS Ketenagakerjaan. The establishment of this law revokes the Manpower Social Security Law.

There are several social security programs, so special regulations are needed for each insurance program. Established PP No. 46 of 2015 concerning the Implementation of the Old Age Security Program, according to Article 1 point 1 of this PP explains that old age security is a cash benefit that is paid out all at once when participants enter retirement age, die, or experience permanent total disability. This PP regulates starting from Membership, Registration Procedures, Contribution Amounts, Payment Procedures, Benefits, Sanctions, and Supervision to Handling Complaints.

Considering the growing aspirations of the community and the national scope of employment conditions, PP No. 60 of 2015 concerning Amendments to PP No. 46 of 2015 concerning the Implementation of the Old Age Security Program. This happened during a demonstration by workers on September 1 2015 with a demand to revise PP No. 46 of 2015.<sup>10</sup> The amendment to the article regulated is to remove Article 26 a (3) that "JHT benefits for Participants who are subject to termination of employment or stop working before retirement age, are paid when participants reach the age of 56 (fifty six) years" which was previously regulated in PP No. 46 of 2015, thus providing the option of taking JHT benefits in cash before the age of 56 (fifty six) years which is contrary to the meaning of the JHT itself, The phrase "stop working" provides a broader interpretation of the process of disbursing JHT benefits and tends to be inconsistent with the objectives of the JHT program. Furthermore, Article 26 a (5) of this PP stipulates that "Further provisions regarding the procedures and requirements for paying JHT benefits as referred to in a (1) are regulated by a Ministerial Regulation.

Taking into account the comparison in Article 26 a (3) PP No. 46 of 2015 regarding participants who experience layoffs or stop working before retirement age to take JHT

<sup>9</sup>Ibnul, I.F., Febfauza R, and Sari, N.K.(2022). Polemik Penetapan Kebijakan Baru mengenai Jaminan Hari Tua (JHT) di Indonesia Tahun 2022, *Jurnal Administrasi Publik* 18, no. 1. p.69-96, <https://doi.org/10.52316/jap.v18i1.90>

<sup>10</sup>Kontan.co.id. (2015). *Demo 1 September, buruh diminta tetap tertib..* Retrieved from <https://nasional.kontan.co.id/news/demo-1-september-buruh-diminta-tetap-tertib> diakses 3 Januari 2023,

benefits is carried out when the participant enters retirement age, namely 56 years, this rule is more in line with the purpose of old age security itself which from the phrase is strictly intended for old age not necessarily taken at any time, even though the guarantee fund is fully the right of the participant, according to the rules it must be implemented strictly, different from the savings system in banks and other depository places, which have the right to withdraw at any time as the customer's right. However, this rule was amended through PP No. 60 of 2015 which allows taking JHT benefits because of stopping work according to PP criteria you don't have to wait until retirement age or 56 years.

Ministerial regulations formed under the provisions of PP No. 60 of 2015 namely Permenaker No. 19 of 2015 concerning Procedures and Requirements for Payment of JHT Benefits. JHT benefits are regulated in Article 3 a (2) that JHT benefits for workers/participants who reach retirement age also include participants who stop working, the category of stopping work is regulated in Article 3 a (3) including participants who resign, get laid off, and leave Indonesian territory forever.

### **Polemic on the Disbursement of Benefits of the Old Age Security Program**

JHT according to Article 1 number 1 PP No. 46 of 2015 concerning the Implementation of Old Age Security has a definition as cash benefits taken when workers/participants enter retirement age, die, or have a permanent total disability. The three reasons for the process of taking the JHT benefits are in accordance with the holding of the JHT itself which is the core of the guarantee for old age, further emphasized by the rules that when reaching the age of 56 (fifty-six) years. And for reasons of death or permanent total disability, of course, it is appropriate because it is no longer possible to work productively. Then the formation of PP No. 60 of 2015 which forms other regulations under it, interprets norms unclear in the process of disbursing JHT benefits.

The regulations relating to old age security have continued and been implemented since the establishment of the rules for the disbursement process of JHT benefits. Until there is social phenomenon the existence of Covid-19 which has changed the way of life of the people, including policies, habits, and matters related to legal regulations. Amid this phenomenon, in early 2022 a social issue arose that spread and attracted public attention from the release of information that the minister of manpower released the latest rules regarding taking old age security benefits by establishing Permenaker No. 2 of 2022 concerning Procedures for Requirements and Payment of JHT Benefits which at the same time revokes the previous regulation, namely Permenaker No. 19 of 2015 which has the core of regulations regarding taking JHT benefits that can only be taken at retirement age, namely 56 (fifty-six) years<sup>11</sup>, these regulatory changes indicate regulatory inconsistencies, on the one hand, this PP wants to return to the original regulation, namely PP No. 46 of 2015, and is back in line with the SJSN Law as the *lex generalis* legislation. Differences in the rules in Permenaker No. 19 of 2015 with Permenaker No. 2 of 2022 include:

<sup>11</sup>Kompas.com. (2022). *Menilik Permenaker No. 2 Tahun 2022 yang buat JHT tidak bisa cair sebelum 56 tahun*. Retrived from <https://nasional.kompas.com/read/2022/02/12/15320791/menilik-permenaker-no-2-tahun-2022-yang-buat-jht-tidak-bisa-cair-sebelum-56> diakses 3 Januari 2022

1. Permenaker No. 19 of 2015 concerning Procedures and Requirements for Payment of Old Age Security Benefits
  - 1.1 Article 3 a (1) JHT benefits for workers/participants of retirement age as referred to in Article 2 letter a are given to participants when they reach retirement age
  - 1.2 Article 3 letter a (2) JHT benefits for workers/participants of retirement age as referred to in paragraph 1 include workers/participants who stop working
  - 1.3 Article 3 (3) workers/participants who stop working as referred to in paragraph (2) include:
    - a. resign
    - b. work termination
    - c. leave Indonesia forever
  - 1.4 Article 5 (1) the provision of JHT benefits for workers/participants who have resigned as referred to in Article 3 (3) letter a is given in cash after passing a waiting period of 1 month since the resignation letter was issued
  - 1.5 Article 6 (1) participants are subject to the termination of employment as referred to in Article 3 (3) letter b, JHT benefits are paid in cash after passing a waiting period of 1 month since the termination of employment
2. Permenaker No. 2 of 2022 concerning Procedures for Requirements and Payment of Old Age Security Benefits
  - 2.1 Article 3 JHT benefits for workers/participants who reach retirement age as referred to in Article 2 letter a is granted to Participants after reaching the age of 56 (fifty six years).
  - 2.2 Article 4 (1) JHT benefits for workers/participants who reach retirement age as referred to in Article 3 is also included participants who stopped working.
  - 2.3 Article 4 (2) Participants who stop working as intended in paragraph (1) includes:
    - a. Participant withdraws;
    - b. Participants are subject to termination of employment; And
    - c. Participants who leave Indonesia for forever.
  - 2.4 Article 5 JHT benefits for Participants resigning as referred to in Article 4 paragraph (2) letter a and Participants subject to termination of employment as referred to in Article 4 paragraph (2) letter b is given to when Participants reach the age of 56 (fifty six) years.

Provisions in Article 3 a (1), 3 a (2), and 3 a (3) in Permenaker No. 19 of 2015 give confusion in the interpretation, that participants who stop working can withdraw JHT benefits because they are categorized as reasons for reaching retirement age. The retirement age itself is clear when it reaches the age of 56 (fifty-six) years according to the JHT regulations. This regulation provides a category for stopping work which can be caused by resigning, being laid off, or leaving the territory of Indonesia forever. Reasons for resigning and layoffs can occur at any time before even entering the age of 56 (fifty-six) years and are urgently inappropriate so it is not appropriate to include these reasons in the category of reaching retirement age.

Legislation regarding changes to regulations for the disbursement of JHT benefits does not define the phrase stop working so the clarity of adding to this rule is quite vague. When examined based on KBBI (Big Indonesian Dictionary), stopping means not continuing anymore, then working means doing a job. Stopping work means not continuing to do a job anymore. Stopping work for reasons of resignation or layoffs does not mean that the participant will no longer do work, because one day he may work again at another company and have a working relationship again or by becoming a worker who generates his income, as an ongoing program and prolonged, of course, the JHT program can still be continued without having to disburse it first because the cash disbursement system for all JHT funds before retirement age is not in accordance with the essence of JHT itself, it even seems like customer savings at the bank. So, it is felt that the reasons for resigning and layoffs are not appropriate to be included in the rules for disbursing JHT benefits.

The complicated problem of the JHT rules in PP No. 19 of 2015 creates confusion in perceptions by including rules regarding layoffs from the consideration that there is no alternative for social protection for workers for the issue of termination from their job, which is also vulnerable and detrimental, this is included in the void of norms. To provide an option to link layoff problems with old age benefits, as an alternative to the void of norms for the protection of layoff problems so that every welfare problem in the employment sector has a solution. However, the lack of wisdom in this option harms the essence or purpose of protection in old age in the JHT program.

The JHT program has a broad scope in fulfilling the basic needs of participants for a decent life including the needs of health aspect in old age. systems and practices that do not become savings for retirement. The health aspect correlates with various things, because according to Article 3 of Law no. 36 of 2009 concerning Health, a health development seeks to increase awareness, will, and ability to live healthy for everyone, to realize the highest degree of public health, which becomes an investment for the development of human resources to be socially and economically productive. This further strengthens the perception that the old age security program must remain true to its essence and original purpose to provide guarantees for participants in old age with a savings system to provide guarantees for participants in old age to fulfill their lives, including health.

Based on the reasons for layoffs hurt the meaning of protection intended for old age in the JHT program, the government started a movement to restore the spirit of protection for the JHT program, namely for old age. This can be seen in Law no. 11 of 2020 concerning Job Creation, for the social security program in the field of employment organized by BPJS Ketenagakerjaan provides an additional program, namely a job loss guarantee program. Then slowly issue regulations regarding job loss insurance programs as new programs, which are more relevant and correlated with the issue of termination of employment and other issues related to welfare for workers who have lost their jobs. With this step, the Indonesian employment system does not experience a vacuum of norms related to layoffs and has regulations for a job loss insurance program (JKP), so from this, it is also necessary to restore the essence of JHT for old age. This is when the function and role of law are examined as



formulated by Satjipto Rahardjo in Jayantiari<sup>12</sup> states that the law is formed for compliance to realize social and spiritual so that regulations regarding old age security are ensured that in substance they do not contain inconsistencies with the result of the ambiguous justice that workers desire. This is the state's responsibility for the optimal protection of its citizens.

The government's next step is to enter the realm of regulations regarding old age security itself, namely from the spread of public issues due to the statement of the minister of manpower to revoke Permenaker No. 19 of 2015 and was replaced it with Permenaker No. 2 of 2022, based on the desire to return to the initial spirit that this JHT is intended to focus on the welfare of participants in their old age because old age is very at risk of experiencing economic difficulties. Another positive impact of restoring the essence of old age security is breaking the chain of the sandwich generation because someone who is trapped in a sandwich generation is in a squeezed condition and is charged with the responsibility of supporting his parents if he does not have economic planning preparations for entering retirement age. especially if someone has other responsibilities and it is quite difficult if they must be added to the burden of bearing their parents' old age. Seeing the fact that workers other than civil servants do not have a pension fund that guarantees their old age, it is necessary to reaffirm this old age security program.

After a strong public protest against Permenaker No. 2 of 2022, inconsistencies have occurred again with the formation of Permenaker No. 4 of 2022 which revokes Permenaker No. 19 of 2015 and Permenaker No. 2 of 2022, this latest regulation returns to the initial points in Permenaker No. 19 of 2015 that the reasons for resigning and being laid off can disburse JHT benefits without waiting for 56 years of age. The steps taken by the Minister of Manpower seemed very unstable and the enthusiasm to restore the essence of the JHT program was not realized.

### **Disbursement of Benefits of the JHT Program Polemic: Perspectives of Utilitarianism**

Utilitarianism is derived from the word "*Utilis*" from Latin which means useful, beneficial, useful. This theory was presented systematically by Jeremy Betham and his student John Stuart Mill, which put the purpose of law on its usefulness, this usefulness means happiness. Assessment of good or bad or fair or not law, looking at the value of the usefulness of the law gives happiness to humans or not.<sup>13</sup> This happiness should be felt by every individual. But if it is not possible to achieve it, efforts are made so that happiness is enjoyed by as many individuals as possible in that society. Bentham argues that nature has placed humans in power, trouble, and pleasure. Because pleasure and pain give rise to ideas, all opinions, and all provisions in our lives that it influences.<sup>14</sup> The view of the utility is that an action should maximize the uses, benefits, and profitable results while also trying to minimize losses. Everyone wants happiness, but the desire is always accompanied by dissatisfaction with wanting something more. This raises the question of how to achieve happiness because true happiness lies in the feeling of fulfillment of desires.

<sup>12</sup> Jayantiari, I.G.A.M.R.(2014). Harapan Keadilan Dalam Hukum Progresif, *Jurnal Wahana*. p.10-13.

<sup>13</sup> Albani, N.M.S., and Lubis, Z.P. (2018). *Hukum dalam Pendekatan Filsafat*. Jakarta : Kencana, Jakarta. p. 160-169

<sup>14</sup>Septiansyah, Z B., and Ghalib, M. (2018). Konsepsi Utilitarianisme dalam Filsafat Hukum dan Implementasinya di Indonesia", *Ijtihad* 34, no. 1. p.27-34

This stream of utilitarianism can be linked to the flow of legal positivism. Positivism views law as an order from a sovereign who holds sovereignty to govern creatures. So, utilitarianism concludes the purpose of the law is to create social order and reach benefits for as many people as possible. Bentham put the achievement of individual happiness as the main thing, the principle of benefit for the individual must first be realized by law. On the one hand, the utilitarian formulation of the highest happiness for as many people as possible implies that an individual must give pleasure to others as he seeks pleasure for himself. Bentham does not deny that there are indications of sectoral ego in this doctrinal understanding. In addition to individual interests, the interests of society also need to be considered because they are prone to intersect, individual interests in the pursuit of maximum happiness need to be limited. The effect that will occur is *homo homini lupus* (humans become wolves for other humans). In this case, the purpose of the legislation is to maximize happiness for the public. For this reason, legislation must strive to achieve four objectives; to control excess, to supplement livelihoods, to provide protection, to maintain security, and to achieve equality.<sup>15</sup>

According to Bentham, the key to realizing the purpose of the law is to bring benefits to individuals, then legislators will produce laws that will be obeyed by all citizens, including the administrators of the state itself. With this understanding put forward, it raises a lot of criticism because of its many weaknesses, Bentham's understanding of utilitarianism is considered unwise because it is unclear to what extent individual interests are also the interests of society. If the law is used as a tool to provide benefits for the highest happiness for individuals, there will be free competition which creates chaos, including from a legal perspective, it will be contradictory to the goals of legal certainty and justice. So, it is wiser that, when an individual faces an event that is important to him morally, then a calculation is made regarding who will get it and how big the impact of happiness and suffering will be for those affected. So that efforts are made to optimize happiness and minimize suffering, in this case maximizing happiness for as many people as "The greatest Happiness of the greatest number."<sup>16</sup>

The field of manpower law leads to legal objectives that provide benefits by paying attention to aspects of manpower welfare, one of which is the existence of social security as a factor of job satisfaction according to Brown and Ghiselli.<sup>17</sup> The old-age security program as part of the social security program for industrial relations is an implementation of the statutory mandate for the development of a national social security system, which has also been outlined in regulations as a preventive legal protection effort to prevent the impact of socio-economic risks on workers in the future during non-productive times.

The flow of utilitarianism when it is associated with the problem of disbursing JHT benefits lies in the objectives of the regulations regarding the holding of the JHT program itself. That JHT as social security is one of the most important to support job satisfaction

<sup>15</sup> *Ibid.*

<sup>16</sup> Agus, P., and Saifullah, S. (2022). Tinjauan Utilitarianisme Hukum Atas Penerapan Regulasi Uang Kuliah Tunggal (UKT) di Perguruan Tinggi Keagamaan Islam Negeri. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 p. 229-240, <https://doi.org/10.37680/almanhaj.v4i2.1810>

<sup>17</sup> Djunaidi, G.M. (2016). *Metodologi penelitian pendidikan: Pendekatan kuantitatif*. Yogyakarta : Ar. Ruzz Media. p. 15-27

giving a sense of reciprocity in return for loyalty as a worker.<sup>18</sup> Social security in the field of employment aims to achieve welfare as a basic right as well as a form of protection. SJSN is a government program that aims to provide certainty over protection, and this protection aims to provide welfare, as is the concept adopted by Indonesia as a welfare state, this concept adhered by Indonesia has reflected in the opening words of the 1945 Constitution "The government protects the entire nation and all of its homeland, promotes the general welfare and educates the life of the nation". The idea of the welfare state theory was also born from Bentham's understanding of utility.<sup>19</sup> The purpose of the law, in the view of utilitarianism, is to provide the highest possible benefit to society but must pay attention to suitability in the formation of related regulations to provide clarity. PP No. 60 of 2015 which was formed because of the aspirations of the community, indeed tries to pay attention to the benefits of individual workers, but regarding legal certainty, it will be damaged because it is not by the essence of old age security. The ambiguity in a regulation reflects legal uncertainty which should be avoided.<sup>20</sup>

Regulations regarding the Disbursement of JHT Benefits since the birth of PP No. 60 of 2015 which amended PP No. 46 of 2015, began to fade the essence or purpose of protection for old age security, which is intended for old age. This PP abolishes the rules regarding taking old age security benefits if you resign or are subject to layoffs, you can only take them at the age of 56, by making rules for the category of people who have stopped working, who are allowed to take them with a waiting period of only 1 (one) month.

## CONCLUSION

Regulations regarding the Disbursement of JHT Benefits since the birth of PP No. 60 of 2015 which amended PP No. 46 of 2015, began to fade the essence or purpose of protection for old age security, which is intended for old age. This PP abolishes the rules regarding taking old age security benefits if you resign or are subject to layoffs, you can only take them at the age of 56, by making rules for the category of people who have stopped working, who are allowed to take them with a waiting period of only 1 (one) month. Inconsistency occurred with the formation of Permenaker No. 22 of 2022, which returns to the essence of holding old age security, only to receive strong resistance from participants, so that formed Permenaker No. 4 of 2022 which returns to the points of Permenaker No. 19 of 2022. With the inconsistency of regulations regarding the disbursement of old age security benefits, it can be concluded that there is a blurring of norms.

The flow of utilitarianism which views the benefit in law gave birth to the welfare state theory. Social security, one of which is old age insurance, implements the welfare state theory. Changes in regulations on the disbursement of old-age security benefits that can be

<sup>18</sup>Febriani, T.E., and Meinarni, N.P.S. (2021). Implementasi Perlindungan Hukum Terhadap Pekerja Industri Pariwisata Bali atas Pemutusan Hubungan Kerja sebagai Dampak Pandemi Covid-19." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 2. p.357-375, <https://doi.org/10.24843/JMHU.2021.v10.i02.p12>

<sup>19</sup>Oman, S. (2016). Konsep dan Desain Negara Kesejahteraan (Welfare State). *Jurnal Sospol* 2, no. 1 p.103-122, <https://doi.org/10.22219/sospol.v2i1.4759>

<sup>20</sup>Hendra, P.R., and Sihombing, E.N. (2018). Tanggung Jawab Negara Dalam Pelaksanaan Jaminan Sosial Responsibility State In The Implementation Of Sosial Security. *Jurnal Legislasi Indonesia* 9, no. 2 p.163-174, <https://doi.org/10.54629/jli.v9i2.383>

taken on the grounds of resignation and layoffs without waiting for the age of 56 try to pay attention to the happiness of workers, especially JHT participants, but undermine legal certainty regarding the old-age security program which is supposed to protect the economy of workers' old age.

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**THE DISBURSEMENT POLEMIC OF OLD AGE SECURITY  
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DOI: <https://doi.org/10.54443/sibatik.v2i11.1450>

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