



**LAW OF THE REPUBLIC OF INDONESIA**  
**NUMBER 40 OF 2004**  
**CONCERNING**  
**THE NATIONAL SOCIAL SECURITY SYSTEM**

WITH THE MERCY OF GOD ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

- Considering :
- a. whereas each individual has the right to social security to be able to provide for their minimum basic life needs and enhance their self-esteem, towards the creation of a safe, just and prosperous Indonesian society;
  - b. whereas to provide comprehensive social security, the state shall develop a National Social Security System for all Indonesian citizens;
  - c. whereas based on the considerations as referred to in letter a and letter b, it is necessary to enact a Law concerning the National Social Security System;

In view of : Article 5 clause (1), Article 20, Article 28H clause (1), clause (2), and clause (3), and Article 34 clause (1) and clause (2) of the 1945 Constitution of the Republic of Indonesia;

With the Approval of  
THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA  
and  
THE PRESIDENT OF THE REPUBLIC OF INDONESIA  
DECREES:

To enact : LAW CONCERNING THE NATIONAL SOCIAL SECURITY SYSTEM.

**CHAPTER 1**  
**GENERAL PROVISIONS**

**Article 1**

The terms used in this Law have the following meanings:

1. Social security is a form of social protection to ensure that all citizens are able to provide for their minimum basic life needs.
2. National Social Security System is a system of administering social security programmes by several social security administering bodies.
3. Social insurance is a mechanism for collecting funds from compulsory contributions to be used to provide protection against social economic risks that befall participants and/or their family members.
4. Compulsory savings are savings that mandatory for participants of social security programmes.
5. Contribution assistance is the contributions paid by government on behalf of destitute and poor participants of national social security programmes.
6. Social Security Administering Bodies are legal entities established to administer social security programmes.
7. Social Security Fund is a trust fund belonging to all participants that constitutes accumulated contributions plus return on their growth, managed by the Social Security Administering Bodies to pay benefits to participants and the operating costs of administering the social security programmes.
8. Participants are all people, including foreign nationals who have worked for at least 6 (six) months in Indonesia, who have paid contributions.
9. Benefits are the social security benefits to which participants and /or their family members are entitled.

10. Contribution is a sum of money paid regularly by the participant, employer and / or Government.
11. Employee is anyone who works for a salary, wage or other form of remuneration.
12. Employer is an individual, entrepreneur, legal entity, or other entity that employs labour or administrator of state that employs civil servants in return for payment of a wage, salary or other form of remuneration.
13. Salary or wage is the entitlement of the employee received and realised in the form of money as remuneration from employer to employee that is determined and paid in accordance with a work contract, agreement, or statute, including allowances for employees and their families, for work and / or services done in the past or to be done in the future.
14. Work accident is work-related accident, including accidents that occur on the way from home to work and vice-versa, and illness caused by the work environment.
15. Disability is the state of debilitation of loss of body function or loss of limb that directly or indirectly causes reduction or loss of an employee's ability to do his or her job.
16. Permanent total disability is disability that results in a person being unable to work.

## **CHAPTER II**

### **PURPOSE AND PRINCIPLES OF ADMINISTRATION**

#### **Article 2**

The National Social Security System is administered on the basis of the principles of humanitarianism, benefit, and social justice for all citizens of Indonesia.

#### **Article 3**

The aim of the National Social Security System is to provide security for the fulfilment of the minimum basic life needs of each participant and / or his or her family.

#### **Article 4**

The National Social Security System is administered on the principles of:

- a. mutual assistance;
- b. not-for-profit;

- c. transparency;
- d. prudence;
- e. accountability;
- f. portability;
- g. mandatory participation;
- h. trust fund; and
- i. return on management of the Social Security Fund to be used entirely for developing programmes in the best interests of participants.

### **CHAPTER III**

#### **SOCIAL SECURITY ADMINISTERING BODIES**

##### **Article 5**

- (1) Social Security Administering Bodies must be established by a Law.
- (2) From the coming into force of this Law, the existing social security administering bodies shall be declared Social Security Administering Bodies in compliance with this Law.
- (3) Social Security Administering Bodies as referred to in clause (1) are:
  - a. *Perusahaan Perseroan (Persero) Jaminan Sosial Tenaga Kerja (JAMSOSTEK)*, the body administering the employee social security scheme;
  - b. *Perusahaan Perseroan (Persero) Dana Tabungan dan Asuransi Pegawai Negeri (TASPEN)*, the body administering the civil servant saving and insurance scheme;
  - c. *Perusahaan Perseroan (Persero) Asuransi Sosial Angkatan Bersenjata Republik Indonesia (ASABRI)*, the body administering the armed forces social security scheme;
  - d. *Perusahaan Perseroan (Persero) Asuransi Kesehatan Indonesia (ASKES)*, the body administering the health insurance scheme for civil servants, pensioners, veterans and their families.
- (4) If necessary, Social Security Administering Bodies in addition to those referred to in clause (3) may be established by a Law.

## **CHAPTER IV**

### **NATIONAL SOCIAL SECURITY BOARD**

#### **Article 6**

To implement the National Social Security System, this Law hereby establishes the National Social Security Board.

#### **Article 7**

- (1) The National Social Security Board is responsible to the President.
- (2) The function of the National Social Security Board is to draft general policy and synchronise implementation of the National Social Security System.
- (3) The National Social Security Board shall perform the following tasks:
  - a. conduct study and research related to implementation of social security;
  - b. make policy recommendations on investment of National Social Security Funds; and
  - c. make recommendations to the government on the social security budget for recipients of contribution assistance and on the availability of operational budget.
- (4) The National Social Security Board has the authority to conduct monitoring and evaluation of the implementation of the social security programme.

#### **Article 8**

- (1) The membership of the National Social Security Board consists of 15 (fifteen) persons, comprising members from the ranks of Government, figures and/or experts with an understanding of social security, members of employers organisations and members of workers organisations.
- (2) The National Social Security Board is led by a Chair who doubles as member and other members to be appointed and dismissed by the President.
- (3) The Chair as referred to in clause (2) shall come from the ranks of Government.
- (4) In performing its tasks, the National Social Security Board shall be assisted by the Board Secretariat managed by a secretary to be appointed and dismissed by the Chair of the National Social Security Board.
- (5) The term of office for a member of the National Social Security Board is 5 (five) years, and a member may be reappointed for 1 (one) successive term of office.

- (6) To be eligible for appointment as a member of the National Social Security Board, a person must fulfil the following criteria:
- a. be a Citizen of the Republic of Indonesia;
  - b. be faithful to God Almighty;
  - c. be of sound body and mind;
  - d. be of good character
  - e. be at least 40 (forty) years of age and no more than 60 (sixty) years of age at the time of appointment as a member;
  - f. hold an undergraduate degree or higher;
  - g. have expertise in the field of social security;
  - h. be concerned about the field of social security; and
  - i. have never been sentenced for an act of crime by a court ruling that has legal force.

#### **Article 9**

In performing its tasks, the National Social Security Board may request input and technical assistance as needed.

#### **Article 10**

The organisational structure and work procedure of the National Social Security Board as referred to in Article 6, Article 7, Article 8, and Article 9, shall be further governed by a Presidential Regulation.

#### **Article 11**

Other than expiration of term of office, a member of the National Social Security Board may be discharged:

- a. in the event of his or her death
- b. in the event of his or her permanent disability
- c. in the event of his or her resignation
- d. for failure to fulfil criteria as referred to in article 8 clause (6).

#### **Article 12**

- (1) In the first instance, the Chair and members of the National Social Security Board shall be appointed on the recommendation of the Minister whose portfolio includes social welfare.

- (2) Procedure for appointment, replacement and dismissal of members of the National Social Security Board shall be further governed by a Presidential Regulation.

## **CHAPTER V**

### **PARTICIPATION AND CONTRIBUTIONS**

#### **Article 13**

- (1) Employers shall be required, in phases, to register themselves and their employees as participants with the Social Security Administering Bodies administering the social security programmes in which they are participating.
- (2) Phasing in as referred to in clause (1) shall be further governed by a Presidential Regulation.

#### **Article 14**

- (1) The Government shall, in phases, register participants receiving contribution assistance with the Social Security Administering Bodies.
- (2) Recipients of contribution assistance as referred to in clause (1) are destitute and poor people.
- (3) Provisions as referred to in clause (1) and clause (2) shall be further governed by a Government Regulation.

#### **Article 15**

- (1) Social Security Administering Bodies shall be required to provide a personal identity number to each participant and his or her family members.
- (2) Social Security Administering Bodies are required to provide information about rights and responsibilities to participants to enable them to comply with prevailing rules and regulations.

#### **Article 16**

Each participant is entitled to receive benefits and information about implementation of the social security programmes in which he or she is participating.

#### **Article 17**

- (1) Each participant is required to pay contributions, the amount of which shall be determined based on a percentage of wages or a fixed nominal amount.
- (2) Each employer is required to collect contributions from its employees, add contributions for which the employer is responsible, and pay these on a regular basis to the Social Security Administering Bodies.
- (3) The amount of contributions as referred to in clause (1) and clause (2) shall be determined for each type of programme periodically in keeping with social and economic developments and growth in minimum basic needs.
- (4) Social security programme contributions for destitute and poor people shall be paid by the Government.
- (5) In the first phase, contributions as referred to in clause (4) shall be paid by the Government for the health insurance programme.
- (6) Provisions as referred to in clause (4) and clause (5) shall be further governed by a Government Regulation.

### **CHAPTER VI**

#### **SOCIAL SECURITY PROGRAMMES**

##### **Section One**

##### **Types of Social Security Programmes**

#### **Article 18**

The types of social security programmes include:

- a. health insurance;
- b. work accident insurance;
- c. old age pension;
- d. public pension; and
- e. life insurance.



**Section Two**  
**Health Insurance**

**Article 19**

- (1) The health insurance scheme shall be administered on a national scale based on the principle of social insurance and the principle of equity.
- (2) The health insurance scheme shall be administered with the aim of ensuring that participants receive the benefits of health care and protection in fulfilling basic health needs.

**Article 20**

- (1) Participants in the health insurance scheme are all people who have paid contributions or whose contributions have been paid by the Government.
- (2) Family members of participants are entitled to receive health insurance benefits.
- (3) Participants may include other family members by payment of additional contribution.

**Article 21**

- (1) Participation in the health insurance scheme shall continue to be valid for up to 6 (six) months after a participant has been made redundant.
- (2) In the event that the participant as referred to in clause (1) after 6 (six) months has not obtained employment and is unable to pay contributions, his or her contributions shall be paid by the Government.
- (3) In the event of a participant experiencing permanent total disability and is unable to pay contributions, his or her contributions shall be paid by the Government.
- (4) Provisions as referred to in clause (1), clause (2), and clause (3) shall be further governed by a Presidential Regulation.

**Article 22**

- (1) Health insurance benefits that are in the nature of individual services take the form of health services, which include health promotion, preventative and curative treatment, and rehabilitation, including medicines and medical supplies used as necessary.
- (2) For types of services that may give rise to misuse of services, participants shall be required to share costs.

- (3) Provisions concerning health services and cost sharing as referred to in clause (1) and clause (2) shall be further governed by a Presidential Regulation.

#### **Article 23**

- (1) Health insurance benefits as referred to in Article 22 shall be provided at government-owned or private health facilities that establish cooperation with the Social Security Administering Body.
- (2) In an emergency situation, services as referred to in clause (1) may be provided at health facilities that have not established cooperation with the Social Security Administering Body.
- (3) In the event that in a region there are no adequate health facilities available to meet the medical needs of a number of participants, the Social Security Administering Body is required to provide compensation.
- (4) In the event that a participant requires in-patient treatment in a hospital, the class of service provided at the hospital shall be standard health services.
- (5) Provisions as referred to in clause (3) and clause (4) shall be further governed by a Presidential Regulation.

#### **Article 24**

- (1) The amount of payment to health facilities for each region shall be determined based on agreement between the Social Security Administering Body and the association of health facilities in the region concerned.
- (2) The Social Security Administering Body is required to pay health facilities for services provided to participants within 15 (fifteen) days of receipt of a request for payment.
- (3) The Social Security Administering Body shall develop a health service system, a service quality control system, and health service payment system to improve the effectiveness and efficiency of health insurance.

#### **Article 25**

A list of names and maximum prices of medicines and medical supplies provided for by the Social Security Administering Body shall be established as prescribed by statute.

#### **Article 26**

Types of services not provided for by the Social Security Administering Body shall be further governed by a Presidential Regulation.

#### **Article 27**

- (1) The amount of health insurance contributions for participants who receive a wage is determined as a percentage of wages up to a certain limit, which, in stages, shall be the joint responsibility of the employee and employer.
- (2) The amount of health insurance contributions for participants who do not receive a wage shall be determined based on a nominal amount that will be reviewed periodically.
- (3) The amount of health insurance contributions for recipients of contribution assistance shall be determined based on a nominal amount that will be reviewed periodically.
- (4) The wage limit referred to in clause (1) shall be reviewed periodically.
- (5) Amount of contribution as referred to in clause (1), clause (2), and clause (3), and the wage limit as referred to in clause (4) shall be further governed by a Presidential Regulation.

#### **Article 28**

- (1) An employee who has more than 5 (five) family members and who wishes to include other family members is required to pay additional contribution.
- (2) Additional contribution as referred to in clause (1) shall be further governed by a Presidential Regulation.

### **Section Three**

#### **Work Accident Insurance**

#### **Article 29**

- (1) The work accident insurance scheme shall be administered on a national scale based on the principle of social insurance.
- (2) The work accident insurance scheme shall be administered with the aim of ensuring that participants receive the benefits of health services and cash compensation in the event of an employee being involved in a work accident or suffering work-related illness.

### **Article 30**

A participant in the work accident insurance scheme is a person who has paid contributions.

### **Article 31**

- (1) A participant who suffers a work accident is entitled to receive benefits in the form of health services appropriate to his or her medical needs and to receive benefits in the form of cash compensation in the event of permanent total disability or death.
- (2) Work accident insurance benefits in the form of cash compensation shall be paid at once to the heirs of an employee who loses his or her life and to an employee who suffers disability, the amount depending on the degree of disability.
- (3) For certain services and certain accidents, the employer will be required to share costs.

### **Article 32**

- (1) Work accident insurance benefits as referred to in Article 31 clause (1) shall be provided at government-owned or private health facilities that meet the criteria of and establish cooperation with the Social Security Administering Body.
- (2) In an emergency situation, services as referred to in clause (1) may be provided at health facilities that have not established cooperation with the Social Security Administering Body.
- (3) In the event of a work accident occurring in a region where there are no adequate health facilities available to meet the medical needs of the participant, the Social Security Administering Body is required to provide compensation.
- (4) In the event that a participant requires in-patient treatment in a hospital, the class of service provided at the hospital shall be standard health services.

### **Article 33**

Further provisions regarding the amount of cash benefits, the rights of heirs, compensation, and medical services as referred to in Article 31 and Article 32 shall be further governed by a Government Regulation.

#### **Article 34**

- (1) The amount of work accident insurance contributions for participants who receive a wage is determined as a percentage of wages or income, which is borne in full by the employer.
- (2) The amount of work accident insurance contributions for participants who do not receive a wage is a nominal amount that will be determined periodically by the Government.
- (3) The amount of work accident insurance contributions as referred to in clause (1) varies for each category of employee according to the risk of the work environment .
- (4) Provisions as referred to in clause (2) and clause (3) shall be further governed by a Government Regulation.

#### **Section Four**

#### **Old Age Pension**

#### **Article 35**

- (1) The old age pension scheme shall be administered on a national scale based on the principle of social insurance or mandatory savings.
- (2) The old age pension scheme shall be administered with the aim of ensuring that participants receive cash when they reach the age of retirement, suffer permanent total disability, or die.

#### **Article 36**

A participant in the old age pension scheme is a person who has paid contributions.

#### **Article 37**

- (1) Old age pension benefits in the form of cash are paid at once to participants when they reach the age of retirement, die, or suffer permanent total disability.
- (2) The amount of old age pension benefit is determined based on the total accumulated contributions made plus return on their growth.
- (3) Partial payment of old age pension benefit may be made up to a certain limit after participation of a minimum of 10 (ten) years.
- (4) In the event of the death of a participant, his or her legal heirs are entitled to receive old age pension benefits.

- (5) Provisions as referred to in clause (3) and clause (4) shall be further governed by a Government Regulation.

#### **Article 38**

- (1) The amount of old age pension contributions for participants who receive a wage is determined as a percentage of wages or income, which shall be borne jointly by the employee and employer.
- (2) The amount of old age pension contributions for participants who do not receive a wage shall be determined based on a nominal amount that will be determined periodically.
- (3) Provisions as referred to in clause (1) and clause (2) shall be further governed by a Government Regulation.

#### **Section Five**

#### **Public Pension**

#### **Article 39**

- (1) The public pension scheme shall be administered on a national scale based on the principle of social insurance or mandatory savings.
- (2) The public pension scheme is administered to ensure an adequate standard of living in the event that a participant suffers a loss or reduction in his or her income because he or she is of retirement age or has suffered permanent total disability.
- (3) The public pension scheme is administered based on fixed benefits.
- (4) Retirement age is established as prescribed by statute.

#### **Article 40**

A participant in the public pension scheme is an employee who has paid contributions.

#### **Article 41**

- (1) Public pension benefits in the form of cash shall be received each month as:
- a. Old age pension, received by participants from the age of retirement up until the time of death;
  - b. Disability pension, received by participants who are disabled as the result of an accident or as the result of illness, up until the time of death;

- c. Widow/widower pension, received by the widow/widower of a participant, up until the time of death or remarriage;
  - d. Child pension, received by the child heirs of a participant, up until the age of 23 (twenty-three) years, or until he or she starts work, or marries; or
  - e. Parent pension, received by the parent heirs of an unmarried participant, up until a certain time limit established by statute.
- (2) All participants and their heirs are entitled to receive regular monthly pension money payments after making contributions for a minimum of 15 (fifteen) years, unless otherwise established by statute.
  - (3) Public pension benefits are paid to a participant after he or she reaches the age or retirement as calculated according to the established formula.
  - (4) In the event of the death of a participant before he or she has fulfilled the minimum contribution period of 15 (fifteen) years, his or her heirs are entitled to receive public pension benefits.
  - (5) In the event a participant reaches the age of retirement before fulfilling the minimum contribution period of 15 (fifteen) years, the participant is entitled to receive the total of his or her accumulated contributions plus return on their growth.
  - (6) The entitlement of heirs to child pension benefits ends when the child marries, obtains permanent employment, or reaches the age of 23 (twenty-three) years.
  - (7) Disability pension benefits are paid to participants who suffer permanent total disability but have yet to reach the age of retirement.
  - (8) Provisions as referred to in clause (3) shall be further governed by a Presidential Regulation.

#### **Article 42**

- (1) The amount of public pension contributions for participants who receive a wage is determined as a percentage of wages or income, or as a nominal amount, which shall be borne jointly by the employee and employer.
- (2) Provisions as referred to in clause (1) shall be further governed by a Government Regulation.

**Section Six**  
**Life Insurance**

**Article 43**

- (1) The life insurance scheme shall be administered on a national scale based on the principle of social insurance.
- (2) The life insurance scheme is administered with the aim of providing compensation to a participant's heir in the event of his or her death.

**Article 44**

A participant in the life insurance scheme is an employee who has paid contributions.

**Article 45**

- (1) Life insurance benefits in the form of cash shall be paid within 3 (three) days of receipt and approval of a claim by the Social Security Administering Body.
- (2) The amount of life insurance benefits shall be determined based on a nominal value.
- (3) Provisions as referred to in clause (2) shall be further governed by a Government Regulation.

**Article 46**

- (1) Life insurance contributions are borne by the employer.
- (2) The amount of life insurance contributions for participants who receive a wage is determined based on a percentage of wages or income.
- (3) The amount of life insurance contributions for participants who do not receive a wage is determined based on a nominal amount, to be paid by the participant.
- (4) Provisions as referred to in clause (1), clause (2), and clause (3) shall be further governed by a Government Regulation.



**CHAPTER VII**  
**MANAGEMENT OF SOCIAL SECURITY FUNDS**

**Article 47**

- (1) Social Security Funds must be managed and grown by the Social Security Administering Bodies in an optimal way with regard for liquidity, solvency, prudence, security of funds, and satisfactory return.
- (2) Procedure for management and growth of Social Security Funds as referred to in clause (1) shall be further governed by a Government Regulation.

**Article 48**

The Government may take special measures to safeguard the financial soundness of the Social Security Administering Bodies.

**Article 49**

- (1) The Social Security Administering Bodies shall manage their accounting in compliance with standard accounting practice.
- (2) Cross subsidies between programmes, where benefits of one programme are paid from the funds of another programme, are not permitted.
- (3) Participants are entitled at all times to information regarding accumulated contributions and return on their growth, and regarding the benefits of the old age pension, public pension, and life insurance schemes.
- (4) The National Social Security Administering Body is required to provide information on accumulated contributions and return on their growth to each participant of the old age pension scheme at least once a year.

**Article 50**

- (1) The National Social Security Administering Bodies are required to establish technical reserves in compliance with generally accepted standard actuarial practices.
- (2) Provisions as referred to in clause (1) shall be further governed by a Government Regulation.

**Article 51**

Supervision of the financial management of the National Security Administering Bodies shall be carried out by an authorized institution as prescribed by statute.

## CHAPTER VIII

### TRANSITIONAL PROVISIONS

#### Article 52

- (1) At the time this Law comes into force:
- a. *Perusahaan Perseroan (Persero) Jaminan Sosial Tenaga Kerja (JAMSOSTEK)*, established by Government Regulation Number 36 of 1995 concerning Establishment of the Administering Body of the Employee Social Security Scheme (State Gazette of the Republic of Indonesia of 1995 Number 59), pursuant to Law Number 3 of 1992 concerning Employee Social Security (State Gazette of the Republic of Indonesia of 1992 Number 14, Supplement to the State Gazette Number 3468);
  - b. *Perusahaan Perseroan (Persero) Dana Tabungan dan Asuransi Pegawai Negeri (TASPEN)*, established by Government Regulation Number 26 of 1981 concerning Change in the Form of the Body Administering the Civil Service Saving and Insurance Scheme from a Public Company to a State-Owned Company (State Gazette of the Republic of Indonesia of 1981 Number 38), pursuant to Law Number 11 of 1969 concerning Employee Pensions and Pensions for Widow's/Widower's of Employees (State Gazette of the Republic of Indonesia of 1969 Number 42, Supplement to the State Gazette Number 2906), Law Number 8 of 1974 concerning Basic Provisions on Employment (State Gazette of the Republic of Indonesia 1974 Number 55, Supplement to the State Gazette Number 3024) as amended by Law Number 43 of 1999 (State Gazette of the Republic of Indonesia 1999 Number 169, Supplement to the State Gazette Number 3890), and Government Regulation Number 25 of 1981 concerning Social Security for Civil Servants (State Gazette of the Republic of Indonesia 1981 Number 37, Supplement to the State Gazette Number 3200);
  - c. *Perusahaan Perseroan (Persero) Asuransi Sosial Angkatan Bersenjata Republik Indonesia (ASABRI)*, established by Government Regulation Number 68 of 1991 concerning Change in the Form of the Body Administering the Armed Forces Social Security Scheme from a Public Company to a State-Owned Company (State Gazette of the Republic of Indonesia of 1991 Number 88);
  - d. *Perusahaan Perseroan (Persero) Asuransi Kesehatan Indonesia (ASKES)*, established by Government Regulation Number 6 of 1992 concerning Change in the Form of the Body Administering the Health Insurance Scheme for Civil Servants, Pensioners, Veterans and Their Families from a Public Company to a State-Owned Company (State Gazette of the Republic of Indonesia of 1992 Number 16);

shall continue to be in effect up until such time that they are brought into compliance with this Law.

- (2) All provisions governing the Social Security Administering Body as referred to in clause (1) shall be brought into compliance with this law no later than 5 (five) years from the enactment of this Law.

## **CHAPTER IX**

### **CONCLUDING PROVISIONS**

#### **Article 53**

This Law comes into effect on the date of its enactment.

For the public to be informed, it is ordered that this Law be promulgated in the State Gazette of the Republic of Indonesia.

Ratified in Jakarta,  
on 19th October 2004

PRESIDENT OF THE REPUBLIC OF  
INDONESIA,

(signed)

MEGAWATI SOEKARNOPUTRI

Enacted in Jakarta  
on 19th October 2004

SECRETARY OF STATE OF THE REPUBLIC OF  
INDONESIA,

(signed)

BAMBANG KESOWO

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2004 NUMBER 150

Authenticated copy of the original document,

Cabinet Deputy Secretary

Affairs of Law and Legislation

(signed)

Lamboek V. Nahattands

**ELUCIDATION**  
**TO**  
**LAW OF THE REPUBLIC OF INDONESIA**  
**NUMBER 40 OF 2004**  
**CONCERNING**  
**THE NATIONAL SOCIAL SECURITY SYSTEM**

**I. GENERAL**

Social economic development as an implementation of national development policy has resulted in many advances, including an improvement in people's well being. Enjoyment of this well being must be continuous, fair and equal for all.

The dynamics of the development of the Indonesian nation have given rise to challenges following demands to deal with some as yet unsolved problems. One of these is administration of social security for all, as mandated in Article 28H clause (3) concerning the right to social security and Article 34 clause (2) of the 1945 Constitution of the Republic of Indonesia. Social security is also guaranteed in the 1948 United Nations Declaration of Human Rights and confirmed in ILO Convention Number 102 of 1952, which urges all nations to provide minimum protection for all workers. In keeping with these provisions, Decree of the People's Legislative Assembly of the Republic of Indonesia Number X/MPR/2001 assigns to the President the task of establishing a National Social Security System in the context of providing comprehensive and integrated social protection.

The National Social Security System is in essence a State programme that aims to provide a guarantee of social protection and welfare for all the people of Indonesia. Through this programme, it is hoped that each citizen will be able to fulfil his or her minimum basic life needs in the event of circumstances that cause a loss or reduction in income, as a result of illness, accident, loss of employment, or reaching old age, or the age of retirement.

Over the past few decades, Indonesia has operated several social security programmes. The Law specifically governing social security for private sector employees is Law Number 3 of 1992 concerning Employee Social Security (JAMSOSTEK), which encompasses a health protection insurance, work accident insurance, old age pension, and life insurance programmes.

For civil servants, the civil servant saving and insurance scheme (TASPEN) has been established pursuant to Government Regulation Number 26 of 1981, along with the health insurance scheme (ASKES) administered pursuant to Government Regulation Number 69 of 1991, which is compulsory for civil servants, pensioners, veterans and their families.

For soldiers of the Indonesian National Army (TNI), members of the Republic of Indonesia Police (POLRI), and civil servants in the Department of Defence/Indonesian National Army/Republic of Indonesia Police and their families, the Republic of Indonesia armed forces social security scheme (ASABRI) is implemented in compliance with Government Regulation Number 67 of 1991, which is an amendment to Government Regulation Number 44 of 1971.

These programmes cover only a small portion of the population. Most people do not yet have adequate protection. In addition, implementation of these various social security programmes is unable to provide the fair and adequate protection to which participants are entitled.

In this regard, it is considered necessary to design a National Social Security System that is able to synchronise implementation of the various forms of social security implemented by various implementing bodies to ensure that they reach a broader scope of participation and provide greater benefits for each participant.

The principles of the National Social Security System are as follows:

- The principle of mutual support. This principle is realised in a mechanism of mutual support, where the better off participants help those that are less well off in the form of compulsory participation for all; low risk participants help high risk participants; healthy participants help those who are sick. Through this principle of mutual support, social security can cultivate social justice for all the people of Indonesia.
- The principle of not-for-profit. The intention of management of the trust funds is not to seek profits for the Social Security Administering Body; instead, the main aim of administering social security is to fulfil as far as possible the interests of the participants. Trust funds, return on their growth, and budget surpluses will be used in the best interests of the participants.
- The principles of transparency, prudence, accountability, efficiency and effectiveness. These management principles will be adopted and underlie all activities related to management of funds arising from participants' contributions and return on their growth.
- The principle of portability. Social security is intended to provide continuous security should a participant change employment or move residence within the Unitary State of the Republic of Indonesia.
- The principle of compulsory participation. Compulsory participation is intended to ensure that all citizens become participants and thus receive protection. Although participation is compulsory for all citizens, adoption of this principle will nonetheless be contingent on the economic capacity of the people and the Government, and on the feasibility of programme implementation. In the initial phase, participation will be

compulsory for employees in the formal sector and voluntary for workers in the informal sector, thus encompassing farmers, fishers and the self-employed, so that ultimately the National Social Security System will encompass all citizens.

- The principle of a trust fund. Funds gathered from participants' contributions are funds entrusted to the implementing agencies to be managed effectively and efficiently in the best interests of the welfare of the participants.
- The principle for returns on investment of National Social Security Funds as it applies to this Law is that returns take the form of dividends from shareholders returned in the interests of the social security of participants.

This Law governs administration of the National Social Security System, which includes health insurance, work accident insurance, public pensions, old age pensions, and life insurance for all citizens through compulsory employee contributions. These social security programmes are administered by several Social Security Administering Bodies. Social Security Administering Bodies in this Law are a transformation of existing Social Security Administering Bodies, and it is possible that new administering bodies may be established in response to the dynamics of growth in social security.

## **II. ARTICLE BY ARTICLE**

### **Article 1**

Self-explanatory

### **Article 2**

The principle of humanitarianism relates to respect for human dignity. The principle of benefit is an operational principle that relates to efficient and effective management. The principle of social justice is an ideal. These three principles are intended to guarantee the continuity of the programme and the rights of participants.

### **Article 3**

The meaning of basic life needs is a person's essential needs to achieve an adequate standard of living, for the creation of social welfare for all Indonesian people.

#### **Article 4**

The principle of mutual support in this provision is the principle of participants' sharing the burden of the cost of social security, which is realised through the compulsory payment of contributions pro rata to the participant's salary, wage or income.

The principle of not-for-profit in this provision is the principle of business management that gives priority to using returns on growth of funds to provide the greatest benefit for all participants.

The principle of transparency in this provision is the principle of facilitating access to complete, accurate and clear information for each participant.

The principle of prudence in this provision is the principle of cautious, provident, safe and systematic fund management.

The principle of accountability in this provision is the principle of accurate and accountable programme implementation and financial management.

The principle of portability in this provision is the principle of providing a guarantee of continuity even if a participant changes employment or moves residence within the Unitary State of the Republic of Indonesia.

The principle of compulsory participation in this provision is the principle that requires all citizens to be social security participants, which shall be phased in.

The principle of a trust fund in this provision is that contributions and return on their growth are funds entrusted by participants to be used in the best interests of the social security of participants.

The principle for returns on investment of National Social Security Funds in this provision is that returns take the form of dividends from shareholders returned in the interests of the social security of participants.

#### **Article 5**

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory

Clause (3)

Self-explanatory



Clause (4)

Establishment of Social Security Administering Bodies pursuant to this provision is intended to respond to the dynamics of growth in social security while still giving the opportunity to existing or new Social Security Administering Bodies, in terms of expanding the scope of social security participation and social security programmes.

**Article 6**

Self-explanatory

**Article 7**

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory

Clause (3)

letter a

Topics of study and research conducted in regard to this provision include adjustment during the transition period, operational standards and procedures for Social Security Administering Bodies, the amount of contributions and benefits, phasing in participation and programme expansion, fulfilling the rights of participants, and the responsibilities of Social Security Administering Bodies.

letter b

Investment policy as referred to in this provision is placement of funds with due regard for the principles of prudence, optimising returns, security of funds, and transparency.

letter c

Self-explanatory

Clause (4)

Authority to perform monitoring and evaluation in this provision is intended to guarantee the implementation of social security programmes, including the degree of financial soundness of the Social Security Administering Bodies.

**Article 8**

Clause (1)

The 15 (fifteen) members in this provision consist of 5 (five) persons from the ranks of government, 6 (six) figures and/or experts, 2 (two) members of employers organisations, and 2 (two) members of workers organisations.

The representatives of government in this provision come from departments responsible for finance, employment, health, social affairs, and public welfare and/or defence and security, 1 (one) person from each.

Experts in this provision include experts in the fields of insurance, finance, investment and actuary.

Clause (2)

Self-explanatory

Clause (3)

Self-explanatory

Clause (4)

Self-explanatory

Clause (5)

Self-explanatory

Clause (6)

Self-explanatory

**Article 9**

Self-explanatory

**Article 10**

Self-explanatory

**Article 11**

Self-explanatory

**Article 12**

Self-explanatory

**Article 13**

Self-explanatory

**Article 14**

Clause (1)

“In phases” in this provision aims to ensure that regard is given to the conditions of participation and programmes implemented in terms of the government’s budget capacity, beginning, for example, with the health insurance programme.

Clause (2)

Self-explanatory

Clause (3)

Self-explanatory

**Article 15**

Clause (1)

Self-explanatory

Clause (2)

Information as referred to in this provision includes information about the rights and responsibilities of participants, periodic information at least once a year about personal accounts, and information about developments in programmes participated in.

**Article 16**

Self-explanatory

**Article 17**

Clause (1)

Self-explanatory

Clause (2)

The meaning of payment of contributions on a regular basis in this provision monthly payments.

Clause (3)

Self-explanatory

Clause (4)

Destitute and poor people in this provision are as referred to in Article 34 clause (1) and clause (2) of the 1945 Constitution of the Republic of Indonesia.

Clause (5)

Self-explanatory

Clause (6)

Self-explanatory

**Article 18**

Self-explanatory

**Article 19**

Clause (1)

The principle of social insurance encompasses:

- a. mutual support between the rich and poor, the healthy and sick, the old and young, and the high risk and low risk;
- b. compulsory and inclusive participation;
- c. contributions as a percentage of wage/income;
- d. not-for-profit;

The principle of equity, that is equity in receiving services medical services appropriate to medical needs irrespective of contributions paid.

Clause (2)

Self-explanatory

**Article 20**

Clause (1)

Self-explanatory

Clause (2)

Family members are legal wife/husband, children, step-children from a legal marriage, and officially adopted children, up to a maximum of 5 (five) persons.

Clause (3)

The meaning of other family members in this provision is the fourth child and successive children, father, mother, and in-laws.

To include other family members, an employee provides the employer a power of attorney to make additional contributions to the Social Security Administering Body as established by this Law.

**Article 21**

Clause (1)

This provision allows a participant who has been made redundant and his or her family to continue to receive health insurance for up to 6 (six) months subsequently without paying contributions.

Clause (2)

Self-explanatory

Clause (3)

Self-explanatory

Clause (4)

Self-explanatory

**Article 22**

Clause (1)

The meaning of health services in this article encompasses medical services and treatment, immunisation, contraception services, out-patient services, in-patient services, emergency services and other medical procedures, including blood transfusions and heart surgery. The services provided are standard services, in terms of quality and type of service, so as to guarantee programme sustainability and participant satisfaction. The scope of health services shall be adjusted to fit the changing needs of participants and the financial capacity of the Social Security Administering Body. This is necessary in the interests of prudence.

Clause (2)

The types of services meant are services that may present a moral hazard (are significantly influenced by participants' tastes and behaviour), for

example the use of supplements, diagnostic examinations, and procedures that are not appropriate to medical needs.

Co-payment is a necessary part of control mechanisms, especially control mechanisms relating to receipt of health services. The contribution to costs may be determined as a nominal value or a certain percentage of service costs, and is paid to the health facility at the time the participant receives the health services.

Clause (3)

Self-explanatory

### **Article 23**

Clause (1)

Health facilities encompass hospitals, doctors' surgeries, clinics, laboratories, pharmacies, and other health facilities. A health facility fulfils the necessary criteria if it is recognised and holds a licence from the Government agency responsible for health affairs.

Clause (2)

Self-explanatory

Clause (3)

Compensation is disbursed to participants in the form of cash, to which participants have a right.

Clause (4)

Participants wishing to upgrade to higher class of service that that to which they are entitled (standard class), may raise their entitlement by taking out additional health insurance, or by paying the difference between the cost covered by the Social Security Administering Body and the cost incurred as a result of upgrading the class of treatment.

Clause (5)

Self-explanatory

### **Article 24**

Clause (1)

Self-explanatory

Clause (2)

The intention of this provision is that the Social Security Administering Body pays health facilities efficiently and effectively. The Social Security Administering Body may provide a budget to a hospital in a particular

area to deliver services to a specified number of participants, or pay a fixed amount per capita per month. This budget covers medical services, treatment costs, cost of supporting services, and cost of medicines used, details of which are managed by the hospital management. In this way, a hospital has more space to use the funds as effectively and efficiently as possible.

Clause (3)

In developing health services, the Social Security Administering Body adopts quality control and cost control systems, including adopting co-payment to avoid misuse of health services.

**Article 25**

Establishing a list of names and ceiling prices of medicines in this provision is intended to ensure that consideration is given to developments in the need for medical supplies, and the effectiveness and efficiency of medicines or medical supplies used.

**Article 26**

Self-explanatory

**Article 27**

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory

Clause (3)

The meaning of periodically in this provision is certain time intervals at which reviews or changes shall be made in accordance with changing needs.

Clause (4)

Self-explanatory

Clause (5)

Self-explanatory

**Article 28**

Self-explanatory

**Article 29**

Self-explanatory

**Article 30**

Self-explanatory

**Article 31**

Self-explanatory

**Article 32**

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory

Clause (3)

Compensation in this clause may be in the form of cash compensation, deployment of health workers, or provision of certain health facilities.

Clause (4)

Participants wishing to upgrade to higher class of service that that to which they are entitled (standard class), may raise their entitlement by taking out additional health insurance, or by paying the difference between the cost covered by the Social Security Administering Body and the cost incurred as a result of upgrading the class of treatment.

**Article 33**

Self-explanatory

**Article 34**

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory



Clause (3)

Varying contributions according to the level of risk of the work environment is also intended to encourage employers to reduce the level of risk of the work environment and create efficient operations.

Clause (4)

Self-explanatory

**Article 35**

Clause (1)

The principle of social insurance as it refers to old age pension is based on an insurance mechanism of co-payment of contributions between the employee and employer.

The principle of compulsory savings as to refers to old age pension is based on the consideration that old age pension benefits come from accumulated contributions and return on their growth.

Clause (2)

Old age pensions are provided to participants who have not yet reached the age of retirement in the event that as a result of permanent total disability, the participant can no longer work and his or her contributions cease.

**Article 36**

Self-explanatory

**Article 37**

Clause (1)

Self-explanatory

Clause (2)

The government guarantees investment of old age pension funds in compliance with the principle of prudence, with a minimum return equal to that of the rate of interest on a one-year time deposit at a government bank, to ensure that participants receive the greatest possible benefit.

Clause (3)

A portion of old age pension funds shall be spent to assist participants prepare themselves for retirement.

Clause (4)

Self-explanatory

Clause (5)

Self-explanatory

### **Article 38**

Clause (1)

Self-explanatory

Clause (2)

Self-explanatory

Clause (3)

The Government shall govern the percentage of contributions payable by employees and employers.

### **Article 39**

Clause (1)

In general, the public pension mechanism is based on social insurance, but this provision provides an opportunity to employees who are entering retirement age but have not fulfilled the minimum contribution period to have their contributions treated as compulsory savings, to be paid, along with the return on their growth, when the participant stops working.

Clause (2)

Adequate standard of living as referred to in this provision is the amount of public pension that can meet the basic needs of the employee and his or her family.

Clause (3)

The meaning of fixed benefits is that there is a floor and ceiling on the benefits that a participant will receive.

Clause (4)

Self-explanatory

### **Article 40**

Self-explanatory

**Article 41**

Clause (1)

Self-explanatory

letter a

Self-explanatory

letter b

Self-explanatory

letter c

Self-explanatory

letter d

Child pension benefit is regular payment of pension money to a child/children as the heir(s) of a participant, to a maximum of 2 (two) people who are not yet in employment, not married, or who are under 23 (twenty-three) years of age, who in the event of the death of the participant have no source of livelihood.

letter e

Parents pension benefit is regular payment of pension money to the parents as the heirs of an unmarried participant in the event of the death of the participant.

Clause (2)

The minimum contribution period of 15 (fifteen) years is necessary to ensure an adequate accumulation of funds to provide pension insurance for the periods of time established in this Law.

Clause (3)

The formula for determining public pension is based on the period of employment and final wage.

Clause (4)

Even if a participant has not fulfilled the minimum contribution period of 15 (fifteen years), in accordance with the principle of social insurance, his or her heirs are entitled to receive pension insurance in the amount determined by the established formula.

Clause (5)

Because the minimum contribution period has not been fulfilled, the pension insurance is treated as compulsory savings.

Clause (6)

Self-explanatory

Clause (7)

Self-explanatory

Clause (8)

Self-explanatory

**Article 42**

Self-explanatory

**Article 43**

Self-explanatory

**Article 44**

Self-explanatory

**Article 45**

Self-explanatory

**Article 46**

Self-explanatory

**Article 47**

Clause (1)

The meaning of liquidity is the financial capacity of the Social Security Administering Bodies to meet their short-term liabilities.

The meaning of solvency is the financial capacity of the Social Security Administering Bodies to meet all their short-term and long-term liabilities.

Clause (2)

Self-explanatory

**Article 48**

Self-explanatory

**Article 49**

Clause (1)

Self-explanatory

Clause (2)

An example of cross-subsidies not permitted in this provision is pension funds being used to pay for health insurance and vice-versa.

Clause (3)

Self-explanatory

Clause (4)

Self-explanatory

**Article 50**

Clause (1)

Technical reserve describes the liabilities of the Social Security Administering Bodies arising in the context of meeting future liabilities to participants.

Clause (2)

Self-explanatory

**Article 51**

Self-explanatory

**Article 52**

Self-explanatory

**Article 53**

Self-explanatory