

Unemployment Insurance Program and The Future of Workers' Social Protection in Indonesia

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Abstract

COVID-19 pandemic is causing immense disruption to the world of work in the unprecedented way. Due to this pandemic, Statistics Indonesia (BPS) shows that the open unemployment rate has surged to its highest level since 2011, and caused around 2,67 million people to lose their jobs. During the pandemic, the Indonesian government has provided emergency protection to mitigate the employment crisis through various social protection program, such as wage subsidies program to protect the workers income, and Pre-employment Card program to protect those who are out of the labour market. But, are these policies sufficient?

When people are unemployed, there are at least two items they need. The first is a substitute for their lost income because they and their families have to continue their life. The second need is to find a new job which matches with their skills and qualifications. To achieve these needs, ILO through Convention No 168 on Employment Promotion and Protection against Unemployment recommends partial and temporary income replacement through unemployment insurance schemes and promotion of productive employment through vocational training and job placement.

Previously, Indonesian social policy protection program does not recognize an unemployment insurance scheme. But after the COVID pandemic, the Indonesian government introduces a new social protection program called Jaminan Kehilangan Pekerjaan (JKP) or Unemployment Insurance. This program then regulated further on the Law Number 11 of 2020 on Job Creation, as well as Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program.

Unemployment Insurance Program is a social security granted to the workers who have just experienced a termination of employment relationship. The benefit of this program is in the form of cash, access to job market information, and job training. JKP will be administer through Social Security Agency for Labour (*Badan Penyelenggara Jaminan Sosial*

Ketenagakerjaan/BPJS Ketenagakerjaan), and the implementation is aimed at maintaining a decent living standard when workers lose their job, so that it will motivate the workers to start finding new job.

The birth of Indonesia's first unemployment insurance program is applauded and provides hope for many workers in Indonesia. But how exactly is this program working out? Is this JKP program a robust and reliable system that can protect workers against risks of unemployment? What is the impact of this unemployment insurance program towards the future of social protection for workers in Indonesia? This paper will analyze the implementation of unemployment insurance program and foresee the future of social protection program for workers in Indonesia after the enactment of the Government Regulation Number 37 of 2021 on The Organization of the Unemployment Insurance Program.

Keywords: COVID-19, Indonesia, Social Protection, Unemployment Insurance.

A. Introduction

More than a year after the first Corona Virus Disease 2019 (COVID-19) case hit Indonesia and the rest of the world, it is becoming clear that this pandemic is causing immense disruption to the world of work. International Labour Organization (ILO) shows that the labour market disruption caused by COVID-19 pandemic is massive and unprecedented, with data estimates that in 2020, the pandemic brought working hours down by 8,8 percent, which is equivalent to 255 million full-time jobs lost globally.¹ This scale of loss was four times greater than during the global financial crisis in 2009.²

In Indonesia, the open unemployment rate has surged to its highest level since 2011, and caused around 2,67 million people to lose their jobs.³ Furthermore, Statistics Indonesia (BPS) data shows that some 29,12 million people or 14,2 percent of the Indonesia's workforce have been affected by the pandemic. The affect includes working shorter hours, furloughed, laid off, and no longer considered as part of the workforce. The pandemic also triggered a rise in informal workers and fall in formal workers.⁴

On November 2020, the Indonesian government officially announced that the country has entered its first recession since the 1998 Asian financial crisis.⁵ With the economic growth of minus 5,3% in the second quarter of 2020 and the rise of unemployment, The World Bank

¹ International Labour Organization, 2020, "ILO Monitor: COVID-19 and the World of Work. Second Edition. Updated Estimates and Analysis." *International Labour Organization*, no. April: 1–11. https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_740877.pdf.

² Johnstone, Stewart, George Saridakis, and Adrian Wilkinson. 2019. "The Global Financial Crisis, Work and Employment: Ten Years On." *Economic and Industrial Democracy* 40 (3): 455–68. <https://doi.org/10.1177/0143831X19866532>.

³ Adrian Wail Akhlah. 2020. "Unemployment Surges to Decade High as COVID-19 Causes Millions to Lose Jobs - Business - The Jakarta Post," 2020. <https://www.thejakartapost.com/news/2020/11/05/unemployment-surges-to-decade-high-as-covid-19-causes-millions-to-lose-jobs.html>.

⁴ Pitoyo, Agus Joko, Bagas Aditya, and Ikhwan Amri. 2020. "The Impacts of COVID-19 Pandemic to Informal Economic Sector in Indonesia: Theoretical and Empirical Comparison." *E3S Web of Conferences* 200 (October). <https://doi.org/10.1051/e3sconf/202020003014>.

⁵ Adrian Wail Akhlah. 2020. "Breaking: Indonesia Enters First Recession since 1998 on 3.49% Q3 Contraction." *The Jakarta Post*.

predicted that the recovery would take quite a long time.⁶ Meanwhile, many studies show that the long-term unemployment is not just affecting the individuals, but also society and national economy.⁷

To mitigate the impact of this pandemic, especially for the world of work, the Indonesian government has provided emergency protection through various policies. There is Pre-employment card program, where workers who recently lost their job because of COVID-19 pandemic can apply to become a cardholder, and if they were selected, are entitled to receive training and allowance. There is also wage subsidies program, which give incentive for workers in formal sector who earn less than 5 million rupiah (US\$ 342) per month and are an active member of *BPJS Ketenagakerjaan* (Social Security Administration Body for Employment). With this program, eligible employees will receive a total of 2.4 million rupiah (US\$164), disbursed over four months, divided by payments of 1.2 million rupiah (US\$82) every two months.

However, are these policies sufficient? When people are unemployed, there are at least two items they need. The first is a substitute for their lost income because they and their families must continue their life. The second need is to find a new job which matches with their skills and qualifications.⁸ To achieve these needs, ILO through Convention No 168 on Employment Promotion and Protection against Unemployment recommends partial and temporary income replacement through unemployment insurance schemes and promotion of productive employment through vocational training and job placement.

Previously, Indonesian social policy protection program does not recognize this kind of unemployment insurance scheme. But since the enactment of Law Number 11 of 2020 on Job Creation, the Indonesian government introduces new social protection program called *Jaminan Kehilangan Pekerjaan* (JKP) or Unemployment Insurance. This program then regulated further on the Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program.

Unemployment Insurance Program is a social security granted to the workers who have just experienced a termination of employment relationship. JKP will be administer through Social Security Agency for Labour (*Badan Penyelenggara Jaminan Sosial Ketenagakerjaan/BPJS Ketenagakerjaan*). Based on the elucidation of the Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program, the implementation of JKP is aimed at maintaining a decent living standard when workers lose their job, so that it will motivate the workers to start finding new job.

According to Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program, the benefit of JKP program is in the form of cash, access to job market information, and job training. Though it must be noted that not all workers can

⁶ World Bank. 2021. *Global Economic Prospects, January 2021. Global Economic Prospects.* <https://openknowledge.worldbank.org/bitstream/handle/10986/34710/9781464816123.pdf?sequence=15&isAllowed=y%0Ahttp://elibrary.worldbank.org/doi/book/10.1596/978-1-4648-1612-3>.

⁷ Nichols, Austin, Josh Mitchell, and Stephan Lindner. 2013. "Consequences of Long-Term Unemployment." *Urban Institute.* <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412887-Consequences-of-Long-Term-Unemployment.PDF>.

⁸ Chatani, Kazutoshi. 2020. "Building Comprehensive Protection against Unemployment."

become members of this program. There are plenty of requirements to be considered as members of JKP, one of which is that it must have an “employment relationship with Entrepreneurs”. This means that only workers who are under “standard employment relationship” can be part of JKP. Hence, other types of workers, such as informal workers, or workers without employment relationship cannot be protected by JKP.

The limitation that are prescribed in the regulation of JKP causing plenty of questions and criticisms towards this program. On one hand, the birth of Indonesia’s first unemployment insurance program is applauded and provides hope for many workers in Indonesia. But on the other hand, to what extent the protection given by JKP program sufficient to protect workers against the risk of unemployment, especially now, during the turbulence of Covid-19 pandemic that caused more layoff than ever? This paper will analyse and try to answer the questions surrounding the unemployment insurance program, based on the juridical review of the Government Regulation Number 37 of 2021 on The Organization of the Unemployment Insurance Program.

There has been plenty of research that talk about the social protection programs in Indonesia, and the need of Indonesia to have its own unemployment insurance program. SMERU Research Institute Working Paper in 2019, wrote about the importance of developing an unemployment insurance scheme in Indonesia.⁹ ILO has been recommending the feasibility of introducing an unemployment benefit in Indonesia (ILO 2003). Though, there has been no studies that specifically examine the Indonesia’s unemployment insurance after the enactment of Government Regulation Number 37 of 2021 on The Organization of the Unemployment Insurance Program. Therefore, this paper will try to fill that research gap.

This paper will discuss whether the newly introduced regulation on unemployment insurance in Indonesia is reliable enough to protect workers against risks of unemployment, how this program may impact the future of social protection programs for workers in Indonesia.

B. The characteristic and current development of Indonesian labour market

Before analysing the unemployment insurance program in Indonesia, it is important to first lay out some data regarding the current Indonesian labour market. According to Statistic Indonesia 2021, there are 139,81 million people on the labour force, with 131,03 million people working, and 6,88 million people unemployed. Per February 2021, the open unemployment rate in Indonesia is in 6.26 percent. The majority of Indonesian are working in an informal sector, with the number soaring as high as 59,62 percent (78,14 million people), compare to the formal sector which employed around 40,38 percent (52,92 million people).¹⁰ The figure

⁹ Rosfadhila, Meuthia. 2019. "Developing an Unemployment Insurance Scheme for Indonesia" SMERU Working Paper. The *SMERU Research Institute*.

¹⁰ Statistic Indonesia, 2021, “Berita Resmi Statistik: Keadaan Ketenagakerjaan Indonesia Februari 2021”, No.37/05/Th. XXIV, 05 Mei 2021

tends to increase, especially during the COVID-19 pandemic, when the number of workers in formal sectors have tendency to decrease.¹¹

Statistic Indonesia also estimates that due to COVID-19 pandemic, there are 19,10 million Indonesian who are affected by it in many level. This consist of unemployment (1,62 million people), temporarily out of work (1,11 million people), and reduced hours of work (15,72 million people).

Based on these number, it is makes sense that the Indonesian government are eager to create more job. One of very recent efforts to do this is by making new laws, called as Law Number 11 of 2020 on Job Creation (hereinafter called as Job Creation Law), which have the spirit of improving the ease of doing business in Indonesia and boosting the national investment climate. According to the elucidation part of Job Creation Law, this bill is part of the government effort to create and expand employment opportunities in the framework of reducing the number of unemployment and accommodating new workers, as well as encouraging the development of Micro, Small, and Medium Scale Business. This bill intention is to improve national economy which will be able to improve public welfare.¹²

Interestingly, the law that promised to be the way to provides more job to people are not received well by the workers and civil society in Indonesia at large. From the beginning, the new legislation has met with protest from workers and trade unions. The Indonesian trade union, workers, students, and civil society, walk hand in hand on to criticize and object the law through demonstration and judicial review. There are even global unions call on the Indonesian government to repeal Omnibus Law on Job Creation.¹³

The reason for this rejection is because there are plenty of provisions in the Job Creation law that reduces the existing labour rights, previously regulated by Law Number 13 of 2003 on Manpower. A lot of changes in the Job Creation Law is boosting the labour market flexibility in Indonesia, for example, by making it easier for the companies to hire worker under outsourcing system, or legalize longer fixed-term contract, and making it harder for workers to switch into the permanent working agreement.

However, the changes brought by the Job Creation Law is not all bad. One of the very example is the introduction of new unemployment insurance scheme. Under the previous regulation, the workers' social insurance schemes in Indonesia have covered workplace accident, workers' death insurance, the old age benefit, and pension insurance. In many research, it is said that the Indonesia's social insurance schemes have generally not been well-equipped to manage the unemployment caused by the COVID-19 pandemic.¹⁴ The Job Creation Law lays down the foundation for the development and the new unemployment insurance scheme, which will be later discuss in the different sub-chapter.

¹¹ Agus Joko Pitoyo, et all, The impacts of COVID-19 pandemic to informal economic sector in Indonesia: Theoretical and empirical comparison, The 1st Geosciences and Environmental Sciences Symposium, ICST 2020.

¹² See: Elucidation of Law Number 11 of 2020 on Job Creation.

¹³ Tempo.co, <https://en.tempo.co/read/1414647/kspi-warns-jokowi-international-labor-unions-highlight-job-creation-law>, 15 December 2020.

¹⁴ Robert Sparrow, Teguh Dartanto and Renate Hartwig, 2020. 'Indonesia under the New Normal: Challenges and the Way Ahead', Bulletin of Indonesian Economic Studies 56(3): 269-299, p. 289.

C. Labour protection for the unemployed and social protection measures

Prior to the enactment of Job Creation Law, Indonesia does not have an unemployment insurance scheme. Even so, there are other effort to protect the laid off workers, one of which is severance pay system. As part of the standards of labour in security rights, the legislation on severance pay has been promulgated long before the 1998 Asian economic crisis. The first regulation on severance pay was enacted in 1986 and the rates has changed a couple of times until the last Manpower Law No. 13/2003, which still in effect until now with some changes after being reviewed by the constitutional court.¹⁵

In comparison with neighbouring countries in Asia, Indonesia is one of the most generous countries in giving severance pay. According to a study by GIAT-UNPAD (2004), a laid-off worker with 4-years' experience in Indonesia gets more than fourfold of severance pay in number of monthly wages in comparison with India, Malaysia, and the Philippines. In addition to that Indonesia also has a higher severance pay in comparison with Singapore and Thailand.¹⁶

According to the Man Law 2003, each employee is entitled to 3 kinds of benefits upon the termination of employment, namely severance pay (*uang pesangon*), reward for service time (*uang penghargaan masa kerja*), and compensation fee (*uang penggantian hak*). The benefits are paid based on the circumstances of their termination, the number of working years and the status of the employee whether they are employed as permanent workers or under temporary employment agreement. The reason of the termination of the job affects the liability of employers and the calculation payment as there are formulas for different circumstances in ending the work contract.

Other compensations, just like mentioned in the Article 156 point 4 of the Manpower Law 2003, includes the compensation for annual leave, which is not taken by the employee; the travel expenses for workers and their families to return to the original location where they were accepted to work for the companies; housing allowance and medical costs, which is 15% of the total amount of severance and service payment; and other compensation which were stipulated under the employment agreement, company regulation or collective labour agreement.¹⁷ The temporary workers who were terminated before the contract period expires are not entitled to those 3 termination payment. In addition to that the Manpower Law 2003 also provides separation pay (*uang pisah*) and the amount is set under employment contract, company regulation and collective labour agreement. The separation pay is only provided to employees who their duties and functions are not related to employers' interest directly such as non-management workers and only to specific circumstances.

Although the law has regulated the severance pay system, however, the compliance by firm is low as the enforcement of the regulation is low too. Sanctions are given to the employer only if the employee enforce their right through the legal process, whereas some of them are

¹⁵ Rosfadhila, Meuthia. 2019. "Developing an Unemployment Insurance Scheme for Indonesia" SMERU Working Paper. The *SMERU Research Institute*.

¹⁶ Manning, C. 2010. *Employment Policy and Labour Market in Indonesia*. ILO Workshop on Trade and Employment. Jakarta: ILO .

¹⁷ Article 156 Law Number 13 of 2003 of Manpower.

not aware of their right to severance pay. Furthermore, penalties are imposed only to employers who avoid paying severance pay but not for those who delay the payment. In order to avoid paying severance, most likely employers prefer to employ short-time contract or outsourced workers as they are not covered in the law.

According to the Labour Force Survey data in 2008, around two-thirds of all eligible employees who separated from their job did not receive severance pay and only less than one-tenth that received full entitlement.¹⁸ The lack of compliance of the severance payment then led to the idea to reduce the severance payment, because the current is not effective.¹⁹ This idea finally succeeded through the Job Creation Law.

Under the new law, the basic calculations of severance payments (*uang pesangon*) and additional award money (*uang penghargaan*) remain the same with Manpower Law 2003. That is, there is a scale of severance payments determined based on term of service, starting with less than one year of service requiring a severance payment of one month's wages, and finally service of up to eight years or more attracting a payment equal to nine months of wages.

The key change in the Job Creation Law is in deleting and amalgamating articles 161-169 of the Manpower Law 2003, the amendments have cut the previous link between the reason for redundancy and severance payment calculations.²⁰ Previously, redundancy for the sake of 'efficiency' where the company had not experienced two years of losses, required twice the normal severance payment to be made.²¹ Similarly, where the dismissal occurred due to merger or acquisition and the employer did not want to keep the worker in the new company, twice the normal severance payment was required.²² Severance paid due to the death of a worker was also required to be twice the normal amount, as was retirement where the worker had not been enrolled in a pension scheme.²³ Now, the reason for redundancy does not matter and there is only one base set of calculations. Besides that, there is also an additional change in relation with severance pay and award money, which is that under the Job Creation Law, there is now a criminal sanctions for non-payment of these entitlements, with sanctions set between one to four years imprisonment and/or a fine of between IDR 100 million and 400 million.²⁴

Another way to protect the laid off workers is through the old age benefit. As mentioned previously, workers' social insurance schemes in Indonesia covered workplace accident, workers' death insurance, the old age benefit, and pension insurance. The workers' social insurance program is mandatory for all employees working in formal sector and voluntary for the informal sector workers and it has been managed by *Jamsostek*, which was transformed to

¹⁸ World Bank. 2010. 'Indonesia Jobs Report Towards Better Jobs and Security for All'. Report, World Bank, Washington DC

¹⁹ Kompas.com, <https://money.kompas.com/read/2020/02/21/080600226/banyak-perusahaan-tak-bayar-kompensasi-sesuai-aturan-ini-kata-menaker>, 21 February 2020.

²⁰ Petra Mehy. 2021. Indonesia's Omnibus Law on Job Creation: Reducing labour Protection in a Time of Covid-19, Working Paper No. 23, Labour, Equality and Human Rights (LEAH) Research Group, Monash University.

²¹ Article 164, Law Number 13 of 2003 on Manpower.

²² Article 163, Law Number 13 of 2003 on Manpower.

²³ Article 172, Law Number 13 of 2003 on Manpower.

²⁴ Article 185 (1), Law Number 11 of 2021 on Job Creation jo. Law Number 13 of 2003 on Manpower.

BPJS Ketenagakerjaan (Employment Social Security Agency) when the institution was established in 2014.²⁵

For the old age benefit, the main objective of the program is for retirement savings but members also have the right to withdraw the total amount in the accounts due to death, permanent disability and unemployed. According to government regulation No. 46/2015, starting on 1 July 2015, the benefit of the old age can only be withdrawn if a member has reached the retirement age of 56 years, or died or has permanent disability. If a member's age has not reached 56 years, they should have already been a member for at least 10 years in order for they be able to withdraw 30% of the fund for housing or 10% for preparation before retirement age. However, this regulation had created protest as previously under Jamsostek a member can withdraw the benefit if they had been the contributors to the fund for five years or more and had become unemployed.²⁶

In response to the protest, the regulation was then changed into Government Regulation No. 60/2015, which reinstates the initial requirements, even more flexible as there is not any requirement for minimum years of membership to withdraw fund. According to the new regulation, a member can withdraw the fund when she/he dismissed from job plus additional waiting period of 1 month.

In addition to worker's social insurance program, Indonesia also have National Health Insurance program which is managed by *BPJS Kesehatan* (Health Social Security Agency). All Indonesians are obliged to participate in the national program by paying the contribution, except the poor people, whose premiums are paid by the government. In relation with unemployment protection, the national health insurance policy is that it is still accessible for at least six months for a person who becomes unemployed. After that, if he/she still cannot get a job and pay the contribution, then his/her contribution to the national health insurance will be paid by the government, including his/her family member.

D. Unemployment insurance program as new force of labour protection in Indonesia

The 1945 Constitution of the Republic of Indonesia mandated that every person has the right to social security which enables his/her complete development as a dignified human being.²⁷ This mandate then implemented with the promulgation of Law Number 40 of 2004 on the National Social Security System. The national social security system is basically a state program which aims to provide certainty of social protection and welfare for all Indonesian people. Through the national social security system, every resident is expected to be able to fulfill the basic decent living needs in the event of things that may result in loss or reduction of income, due to illness, accident, unemployment, entering elderly age, retiring, or passing away.

²⁵ Rosfadhila, Meuthia. 2019. "Developing an Unemployment Insurance Scheme for Indonesia" SMERU Working Paper. The *SMERU Research Institute*.

²⁶ *Ibid.*

²⁷ See: Art 28H Paragraph (3) 1945 Constitution of the Republic of Indonesia.

To realize the national social security system, the Government has enacted Law Number 24 of 2011 on the Social Security Agency. Under said Law Number 24 of 2011, two social security agencies have been stipulated, namely *BPJS Kesehatan* and *BPJS Ketenagakerjaan*. *BPJS Kesehatan* organizes the *Jaminan Kesehatan Nasional* (JKN) or national health insurance program, while *BPJS Ketenagakerjaan* implements the workplace accident insurance, workers' death insurance, the old age benefit, and pension insurance.

The enactment of Law Number 11 of 2020 on Job Creation amended several provision under the Law Number 40 of 2004 on the National Social Security System. One of the amended provision is Article 18, which added unemployment insurance as the new types of social security program. Based on Job Creation Law, workers who experience termination of employment relationship are entitled to obtain unemployment insurance. This unemployment insurance shall be organized by the social security agency for manpower and the Central Government.²⁸

Unemployment insurance shall be organized nationally based on social insurance principles with the goal to maintain a decent living when workers lost their job.²⁹ The premium for unemployment insurance shall be paid by the Central Government³⁰, and the benefit of unemployment insurance shall be in the form of cash, access to job information, and work training.³¹

The implementation of unemployment insurance program regulated further under the Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program (Regulation on Unemployment Insurance Program), which enacted on 2 February 2021. Based on this regulation, Unemployment Insurance Program defined as a social security granted to the Workers/Laborers who have to experience a Termination of Employment Relationship in the form of cash benefit, access to job market information, and Job Training (hereinafter refer to *Jaminan Kehilangan Pekerjaan* or JKP).³²

Article 4 of Regulation on Unemployment Insurance Program stated that the members of JKP consist of: a) workers who have been included by Entrepreneurs in the social security program; and b) workers who have just been registered by Entrepreneurs in the social security program. There is also some requirement to fulfil to become a member, which are: a) an Indonesian citizen; b) have not reached the age of 54 years upon registration; and c) have an employment relationship with Entrepreneurs.³³

In addition to the requirements above, to become a member of JKP, workers who work for large and medium scale business must already been included in the national health insurance program, workplace accident insurance, workers' death insurance, the old age benefit, and pension insurance. For workers who work in micro and small-scale business, they must be

²⁸ Article 46A, Law Number 11 of 2021 on Job Creation

²⁹ Article 46B, Law Number 11 of 2021 on Job Creation

³⁰ Article 46C, Law Number 11 of 2021 on Job Creation

³¹ Article 46D, Law Number 11 of 2021 on Job Creation

³² Article 1, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

³³ Article 4, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

already included at least in the national health insurance program, workplace accident insurance, workers' death insurance, and the old age benefit.³⁴ Workers must also be considered as "workers who received Wages" in business entities in their national health insurance program.³⁵

If the workers have been included by the Entrepreneurs in all the social security programs required in the previous paragraph prior to the enactment of the Regulation of Unemployment Insurance Program, those workers will be automatically become members of JKP. The workers will then be provided with a membership certificate in the JKP program by *BPJS Ketenagakerjaan*³⁶. However, if prior to the enactment of the Regulation of Unemployment Insurance Program, the workers have not been included in those said program, the Entrepreneurs then have obligation to register the workers to be included in the JKP.³⁷

The members of JKP are entitled to receive JKP benefit just in case they experience termination of employment relationship, both for employment relationship based on a permanent employment agreement and temporary employment agreement.³⁸ The JKP benefit itself is in the form of cash, access to job market information, and job training.³⁹

Cash benefit will be given every month for a maximum of 6 months of wages, in the amount of 45 percent of the wage for the first three months; and in the amount of 25 percent of wage for the next three months.⁴⁰ The wage which is used as basis for the payment of cash benefit is the last wage of the worker which is reported by Entrepreneurs to the *BPJS Ketenagakerjaan* and does not exceed the established upper limit of wage. The upper limit of wages is currently set at IDR 5.000.000,- (five million rupiah).⁴¹ That is to say in the event that, at the wage exceed the upper limit of wage, the wage that is used as basis for the payment of cash benefit shall be the same as the upper limit of wage.

The next JKP benefit is in the form of access to job market information. This benefit will be provided in the form of: a) job market information (provided in the form of providing data on job vacancies); and/or b) job guidance (provided in the form of self-assessment or career counselling). These services will be carried out by job assistant and/or inter-worker officers through the Manpower Information System.⁴²

³⁴ Article 4 (3), Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

³⁵ Article 4 (4), Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

³⁶ Article 5, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

³⁷ Article 6, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

³⁸ Article 19, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

³⁹ Article 18, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

⁴⁰ Article 21 (1), Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

⁴¹ Article 21 (3), Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

⁴² Art 26 and 27, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

The last types of JKP benefit is job training benefit. The benefit of job training will provided in the form of competency-based training, and will be carried out through the integration of access to job market information and the *BPJS Ketenagakerjaan* information system in the Manpower Information System. This benefit can be organized both online or offline.⁴³

The Regulation of Unemployment Insurance Program has not been provided a specific procedure on how to submit an application for JKP benefit claim. However, the Article 40 of this regulation stated that the right to JKP benefit is lost if the workers: a) do not submit an application for JKP benefit claims for three months after the termination of employment relationship; b) have found a job; or c) passed away. In other words, workers need to submit the application for JKP benefit claims to the *BPJS Ketenagakerjaan* no more than three months after their termination of employment, in order to receive the JKP benefit.

By looking at the Regulation of Unemployment Insurance, it is clear the JKP program is an improvement for the workers' social security program in Indonesia. This is in line with the International Labour Organization Convention Number 102 of 1952, which obliged the government to provide complete social security protection for its citizen. In the elucidation Regulation of Unemployment Insurance Program, it is said that the rationale for the birth of the JKP program resulted from the absence of social security for works who experience termination of employment relationship.⁴⁴ The government is aware that many laid off workers are using the old age saving benefit to fulfil their daily need, while in essence, the old age saving benefit is a social protection for workers that are unable to work due to entering into elderly age or have permanent total disability.

The government also aware that in a situation where workers experience an unemployment, it will certainly have an impact on the degree of their social status, especially the environment in which they live and the community in general. Therefore, the implementation of JKP is aimed at maintain a decent living standard when workers lose their job so that it will motivate workers to have willing to work again or try to start an independent business.

It is not clear whether a COVID-19 pandemic is the underlying reason of JKP Program, since the draft of Job Creation Law that contained the proposed idea of JKP itself has been around long before the COVID-19 pandemic. But it must be admitted that the timing of this program is perfect. With the increase of unemployment because of COVID-19 pandemic, this JKP program can be a ray of hope that provide safety net for workers that losing its job.

E. Challenges for Unemployment Insurance Program

Since the JKP program is still very new, it is still difficult to examine the implementation of this said program. However, it is possible to analyse the possibility of challenges of this

⁴³ Article 30, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

⁴⁴ See: General Elucidation of Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program.

program based on its current regulation. There have been some criticism addressed on the Regulation of Unemployment Insurance Program. The first issue is related on the membership requirements and eligibility.

As mention previously, to become a member of JKP, workers must already been included in the national health insurance program (*BPJS Kesehatan*), and all of others *BPJS Ketenagakerjaan* program, consist of: workplace accident insurance, workers' death insurance, the old age benefit, and pension insurance. The problem is, based on the *BPJS Ketenagakerjaan* data in 2019, there are only around 55 million workers (from the total workforce of 137 million people) that has been registered as members in *BPJS Ketenagakerjaan*. From that number, only around 34 million workers who are actively paying the premium.⁴⁵ Another data provided by the National Team for the Acceleration of Poverty Reduction (TNP2K) stated that as of September 2020, there were only 12,5 million participant in the pension benefit program; 15,7 million in the old age benefit program; and 30,1 million participation in the workplace accident insurance and death insurance.

This low participation issue is exacerbated by the fact that there are more informal workers in Indonesia, in comparison with workers in the informal sector. Per February 2021, there are 78,14 million people working in the informal sector⁴⁶, but only less that 3 millions of them that has been registered with *BPJS Ketenagakerjaan*. This data means that only small percentage of workers who can benefit from this program. Especially because the JKP program is exclude workers in the informal sector, due to the provision in Regulation of Unemployment Insurance Program which stated that only workers who have and employment relationship with Entrepreneurs and received wages in business entities can be a member of JKP.⁴⁷

Whereas, the JKP benefit is very important for workers, especially in the informal sector, considering that this group is the most affected during crisis. In the Covid-19 pandemic as of today, Statistic Indonesia noted that this group of workers are most affected by the pandemic. Ranging from event workers to tourism sector workers, these informal sector workers experience a drastic decrease in income, even lost their job.⁴⁸

The exclusion of JKP benefit for some workers can also be related with the reason they are laid off. For example, Article 20 of Regulation of Unemployment Insurance program stated that JKP benefit for member who experience termination of employment relationship shall be exempted for the following reasons: a) resigned; b) permanent total disability; c) retirement; or d) passed away. Furthermore, JKP benefit for members whose employment relationship is based on a temporary employment agreement shall be provided only if the termination of

⁴⁵ Trade Union Rights Center. 2021. 'Jaminan Kehilangan Pekerjaan: Baik, tapi Perlu Perbaikan', <https://tirto.id/jaminan-kehilangan-pekerjaan-baik-tapi-perlu-perbaikan-gcit>, April 13th, 2021.

⁴⁶ Statistic Indonesia, 2021, "Berita Resmi Statistik: Keadaan Ketenagakerjaan Indonesia Februari 2021", No.37/05/Th. XXIV, 05 Mei 2021.

⁴⁷ Article 4, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

⁴⁸ Joanna Octavia. 2020. 'Building Back Better: COVID-19 and Informal Workers in Indonesia', <https://blogs.lse.ac.uk/seac/2020/12/15/building-back-better-covid-19-and-informal-workers-in-indonesia/>, December 15th, 2020.

employment relationship is undertaken before the expiration of the temporary employment agreement.

In other words, workers in the temporary employment agreement whose laid off because the contract is expired cannot get the JKP benefit. The question is, why? If we looking at the core idea of JKP program is to provide safety net for workers who just been laid off so they can maintain a decent living standard while looking for a new job. Workers that losing its job because the temporary contract is expired, is in the exact same position with workers who just laid off from its permanent contract due to other reason. So why the regulation is exempted the workers from expired employment contract to received the JKP benefit?

The second challenges is related with contribution and funding issue. Based on the Regulation of Unemployment Insurance Benefit, the sources of JKP funding derived from: a) intial government capital; b) recomposition of social security program contributions; and/or c) *BPJS Ketenagakerjaan* operational funds.

When it comes to contribution, this must be paid monthly and amounted 0,46 percent of month's wage. The contribution paid by the Central Government is 0,22 percent of a month's wage, and the rest of the contribution is a recomposition of the workplace accident insurance and workers' death insurance.⁴⁹ The wage which is used as the basis for the calculation of contribution is the latest workers' wage that are reported by entrepreneurs to *BPJS Ketenagakerjaan* and does not exceed the upper limit of wages. The upper limit of wages is currently set at IDR 5,000,000,- (five million rupiah). That is to say, in the event that the workers' wage exceed the upper limit of wages, then the wage which is used as basis for calculation of contribution shall be the same as the upper limit of wages.

BPJS Watch (2020) criticize the recomposition for JKP program because of the risk it holds. First, the risk of contribution recomposition affects the durability of the program (which contributions are transferred to JKP) in paying benefits to participants in the long term. This is because the amount of contributions set for each program has actually gone through actuarial calculations.⁵⁰ Second, it is predicted that the percentage of contributions transferred to JKP will not be able to support the program to fulfill its benefit.⁵¹ Whereas, Article 16 of Regulation of Unemployment Insurance Program mentioned in the event that the Government shall not pay the contribution.

Another challenge on this program is related with compliance and enforcement. As an example, Article 19 of Regulation of Unemployment Insurance Program stated that in order to receive the benefit of JKP, JKP beneficiaries must be willing to work again⁵² and may be submitted after the members have a contribution period of at least 12 months in 24 months and

⁴⁹ Article 11, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

⁵⁰ Ulfa Arieza, 2020, 'JKP, Program Baru BPJS di Omnibus Law dari Buruh untuk Buruh, <https://www.cnnindonesia.com/ekonomi/20201014065133-532-558133/jkp-program-baru-bpjs-di-omnibus-law-dari-buruh-untuk-buruh>, October 14th, 2020.

⁵¹ Prisma Ardianto, 2021, 'Iuran Program JKP 0,46%', <https://investor.id/finance/iuran-program-jkp-046>, February 8th, 2021.

⁵² Article 19 (1), Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

have paid the contribution for at least six consecutive months to *BPJS Ketenagakerjaan* prior to the termination of employment relationship.⁵³ On the other hand, data from the Indonesian Trade Union Confederation shows that there are many cases of companies that are not disciplined in paying the BPJS contribution.⁵⁴ This will impacted workers, because it will lead to the erasure of their JKP benefit.

Regulation of Unemployment Benefit Article 38 did mentioned that in the event of Entrepreneurs does not include workers in the JKP program and a termination of employment relationship occurs, Entrepreneurs must fulfill the workers' rights in the form of cash benefit provided in lump sum, and benefit of Job Training.⁵⁵ It is also mentioned that Entrepreneurs that are not doing the mandated regulation of unemployment insurance program might get an administrative sanction in the form of written reprimand and not receiving certain public services.⁵⁶ However, looking at the labour law enforcement problem in Indonesia, such as the limited number of labour inspection who can oversee the enforcement of workers' right, there are big possibility that the implementation of these provision will be challenging.

Lastly, other issue that must be address is regarding the data and administrative challenges. As previously mention, the JKP program is only eligible for workers who already administered in both *BPJS Ketenagakerjaan* for all its program, and *BPJS Kesehatan*, as the administer of national health insurance. Therefore, there is the need to integrate the *BPJS Kesehatan* and *BPJS Ketenagakerjaan* membership data in order to run the JKP program smoothly.

The data integration is crucial because it will affect everything, for example Article 15 of the Regulation stated that the contribution of JKP program shall be paid to *BPJS Ketenagakerjaan* based on the membership data that has been integrated with *BPJS Kesehatan*. It is mandated in the closing provision of Unemployment Insurance Program Regulation that the data integration shall be carried out within a maximum of six month. This is not a simple challenge, due to the big data problem in Indonesia.⁵⁷

F. Conclusion

Unemployment Insurance Program that just been introduced through Job Creation Law 2020 and Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program can be a turning point for Indonesia to improve its workers' social protection program. The JKP Program is an opportunity for Indonesia to have a more robust and reliable systems that protect workers against risk of unemployment. This program is a direct implementation of 1945 Constitution of the Republic of Indonesia that clearly stated

⁵³ Article 19 (3), Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program

⁵⁴ Trade Union Rights Center. 2021. 'Jaminan Kehilangan Pekerjaan: Baik, tapi Perlu Perbaikan', <https://tirto.id/jaminan-kehilangan-pekerjaan-baik-tapi-perlu-perbaikan-gcit>, April 13th, 2021.

⁵⁵ Article 38, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program.

⁵⁶ Article 46, Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program.

⁵⁷ Fanly Tanto, Fajar Muharandy, 2021, 'Why Indonesia needs good data now more than ever', <https://govinsider.asia/data/indonesia-good-data-fanly-tanto-fajar-muharandy/>, April 6th 2021.

that every person has the right to social security which enables his/her complete development as a dignified human being.

The JKP program itself is promising, by designing three types of benefit for its members, consist of: cash benefit, access to job market information, and job training. JKP program is aimed at maintain a decent living standard when workers lose their job so that it will motivate workers to have willing to work again or try to start an independent business.

It is still too early to judge the implementation of this program. However, there are some concern on the Regulation of Unemployment Insurance Program itself. From the membership requirements and eligibility issue, which exclude workers in the informal sector; contribution and funding issue; compliance and enforcement; as well as data and administrative challenges; there are still many things that need more serious consideration from the government and *BPJS Ketenagakerjaan* which administer this program, so that the unemployment insurance program can run smoothly.

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