

Deactivation of Health Security Participation as a Form of Unlawful Act (Legal Reasoning of the Judicial Decision in the Khalimah vs BPJS Case)

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ABSTRACT

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Purpose of the study: This study examines the legal reasoning behind the judicial decision in the case between Siti Khalimah and the Social Security Administrator of Health (Badan Penyelenggara Jaminan Kesehatan/BPJS) in Papua, Indonesia. This case demonstrates the need for a constructive interpretation of the Civil Code to determine if BPJS committed a law-violating action.

Methodology: As normative research, this study employed statute, case, and conceptual approaches. The statutory approach used laws and regulations as legal sources for research. The case approach was focused on the judge's ratio decidendi or the legal reasons behind their conclusion. The conceptual approach was used to refer to the fundamental principles of law. To analyze the data, the authors employed grammatical, systematic, and teleological analysis techniques.

Results: Results found that that BPJS should not be declared to have violated Article 21 clause (1) of the BPJS Law as an error in fulfilling Article 1365 of the Civil Code. The judges emphasized that the aim of the norm in Article 21 clause (1) is to protect its participants against economic risks, including the loss of income. The panel of judges prioritized justice as a value in its decision.

Applications of this study: This study provides a new point of view on law violating actions in the judges' decision at court, notably in

terms of social security administrators' legal obligations, especially BPJS.

Novelty/Originality of this study: Few articles have addressed the subject of legal violations committed by BPJS. Furthermore, in this article, the authors applied Dworkin's theory to the analysis of court decisions. This demonstrates the article's originality.

Keywords: health insurance, worker protection, legal reasoning, legal violation, BPJS.

ABSTRAK

Tujuan penelitian: Penelitian ini mengkaji alasan hukum yang melatarbelakangi putusan pengadilan dalam perkara antara Siti Khalimah dan Badan Penyelenggara Jaminan Kesehatan (BPJS) di Papua, Indonesia. Kasus ini menunjukkan perlunya penafsiran yang konstruktif terhadap Kitab Undang-Undang Hukum Perdata untuk menentukan apakah BPJS melakukan perbuatan melawan hukum.

Metodologi: Sebagai penelitian normatif, penelitian ini menggunakan pendekatan perundang-undangan, kasus, dan konseptual. Pendekatan perundang-undangan menggunakan peraturan perundang-undangan sebagai sumber hukum penelitian. Pendekatan kasus difokuskan pada ratio decidendi hakim atau alasan hukum yang melatarbelakangi putusannya. Pendekatan konseptual digunakan untuk merujuk pada asas-asas hukum yang fundamental. Untuk menganalisis data, penulis menggunakan teknik analisis gramatikal, sistematis, dan teleologis.

Hasil: Hasil penelitian menemukan bahwa BPJS tidak dapat dinyatakan melanggar Pasal 21 ayat (1) UU BPJS karena dianggap keliru dalam memenuhi Pasal 1365 KUH Perdata. Para hakim menekankan bahwa tujuan norma dalam Pasal 21 ayat (1) adalah untuk melindungi para pesertanya dari risiko ekonomi, termasuk hilangnya pendapatan. Majelis hakim mengutamakan keadilan sebagai nilai dalam putusannya.

Aplikasi penelitian ini: Penelitian ini memberikan sudut pandang baru terhadap tindakan pelanggaran hukum dalam putusan hakim di pengadilan, khususnya dalam hal kewajiban hukum penyelenggara jaminan sosial, khususnya BPJS.

Kebaruan/Keaslian penelitian ini: Hanya sedikit artikel yang membahas tentang pelanggaran hukum yang dilakukan oleh BPJS. Lebih lanjut, dalam artikel ini, penulis menerapkan teori Dworkin untuk menganalisis putusan pengadilan. Hal ini menunjukkan keaslian artikel tersebut.

Kata kunci: asuransi kesehatan, perlindungan pekerja, penalaran hukum, pelanggaran hukum, BPJS.

INTRODUCTION

Other than wages, workers obtain protection in the form of social security (Suryandono, 2014, p. 104), as stated in Article 99 of Law No. 13 of 2003 on Employment, which has been amended by Law No. 11 of 2020 on Job Creation (hereinafter referred to as the Job Creation Law). Article 99 states that all workers and their family members have the right to obtain social security. The implementation of this is adjusted to the applicable laws and regulations, namely Law No. 40 of 2004 on the National Social Security System (*Sistem Jaminan Sosial Nasional*/SJSN), hereinafter referred to as the SJSN Law and Law No. 24 of 2011 on the Social Security Administrator of Health (*Badan Penyelenggara Jaminan Kesehatan*/BPJS), hence referred to as the BPJS Law. Both the SJSN Law and the BPJS Law are in accordance with the mandate of the Republic of Indonesia's 1945 Constitution on social security (Hennigusnia, 2021, p. 103).

According to Article 5 clause (1) and Article 52 of the SJSN Law as well as Article 5 clause (2) and Article 6 of the BPJS Law, the administration of social security is carried out by two administering bodies, namely BPJS Health and BPJS Workforce. BPJS Health runs the Health Care Insurance. Meanwhile, BPJS Workforce runs Work Accident Insurance, Old Age Security, Pension Security, Death Security, and Job Loss Guarantee.

Regulations concerning social security's role as a form of worker protection are strengthened in Article 13 of the SJSN Law and Article 15 clause (1) of the BPJS Law. They stipulate that employers are gradually required to register themselves and their employees as BPJS participants under the social security program they are enrolled in. Aside from that, Constitutional Court Decision No. 70/PUU-IX/2011 establishes that workers have the right to register as participants in the social security program at the expense of their employers if the company has not registered their employees to BPJS. This means that workers have the right to obtain benefits from the social security implementation through BPJS membership, either through employer registration or self-registration if the company refuses to register the employee.

The legal construction of social security protection for workers does not end with their registration with BPJS. As an agency with the duty and authority to manage social security programs, BPJS is also required to give benefits from the revenues of employer contributions. Article 13 letter d of the BPJS Law states, "In carrying out its duties, BPJS is obliged to provide benefits to all participants following the Law on the National Social Security

System." As an institution charged with administering social security, BPJS is responsible for carrying out its mandate to establish a national social security system that offers comprehensive social protection to all Indonesians.

In carrying out its duties, BPJS is given the authority to impose a temporary suspension on participants who fail to fulfill their obligations, i.e., stopping or delaying the payment of contributions. There was a case related to the conflict of regulations regarding BPJS's duties and authorities, namely the case of Khalimah vs BPJS, which was decided through Decision No. 88/Pdt.G/2018/PN.Jkt.Pst which was changed with (*jo.*) No. 498/PDT/2019/PT.DKI *jo* No. 2650K/Pdt/2020.

Siti Khalimah was the wife of the late Irwan Dahlan, a worker at PT. Freeport Indonesia. She filed a case related to the dispute of BPJS's unlawful acts. The panel of judges in the Central Jakarta District Court won the lawsuit with Judgment No. 88/Pdt.G/2018/PN.Jkt.Pst. In this case, the plaintiff claimed that BPJS violated Article 21 of the SJSN Law in conjunction with Article 7 of Governmental Regulation No. 12/2013, which states that the membership of laid-off health insurance participants is still valid for a maximum of 6 months after the termination of their work. Meanwhile, the defendant argued that the reason for deactivating the plaintiff's husband's participation was not the termination of his employment relationship, but the discontinuation of payment of health insurance premiums to BPJS and that the deactivation complies with the defendant's legal duties.

In this decision, BPJS Health of Mimika Regency, Papua Province, Indonesia, was said to have committed a law-violating action as it deactivated the late Irwan Dahlan's participation in the health insurance program, preventing the deceased's family from receiving benefits. BPJS Health was found to have committed a law-violating action under Article 1365 of the Civil Code. This decision has been strengthened at the appeal level by Decision No. 498/PDT/2019/PT.DKI and at the cassation level by Decision No. 2650K/Pdt/2020.

The primary problem to be addressed in this paper is how judges construct the legal reasoning to support arguments so that BPJS, despite performing its duties within its authority, is still found to have committed unlawful acts based on Article 1365 of the Civil Code.

RESEARCH METHOD

This research was normative research. As normative research, this study employed three approach methods, namely the statute approach, the case approach, and the conceptual approach. This normative study adopted the statute approach as it focused on various legal standards, which served as the study's major theme (Ibrahim, 2006, p. 302). The statute approach was adopted to study various legislative regulations that govern the implementation of health insurance. The case approach aimed to study the application of legal norms or principles in legal practice, in this case, Court Decision No. 88/Pdt.G/2018/PN.Jkt.Pst (Ibrahim, 2006). Meanwhile, the conceptual approach was utilized to demonstrate the correlation between the idea of an unlawful act/*onrechtmatige daad*/tort in the Civil Code and the law violation concept in the implementation of health insurance. The authors used grammatical, systematic, and teleological interpretation methodologies in conducting the analysis.

RESULTS & DISCUSSION

Health Insurance as Workers' Normative Right

Workers are a company's most valuable and vital asset, as they determine the success and the failure of the company in promoting national growth. As a result, it is natural that workers should be provided with enough protection to guarantee their welfare, safety, and comfort at work (Asyhadie, 2008, p. 19). Workers' protection falls into three categories, namely: (1) technical protection, (2) social protection, and (3) economic protection (Asyhadie, 2008).

According to Salim and Nurbani (2014), the term *protection* can be defined as a legal endeavor or service that is provided to legal persons and protected objects. Furthermore, they believe that in each legal rule, each legal subject obtains different forms of protection. There are also different purposes for protection (Salim & Nurbani, 2014, p. 63). Statutory laws in the employment sector provide various forms of protection to workers who have a lower negotiating position compared to their employers as they are subordinates. The object of protection can include pay, occupational health and safety, working hours, and social security for workers.

Social security as legal protection for workers is accomplished due to the existence of an occupational relationship between employers and employees. This establishes the parties' rights and obligations in carrying out the occupational relationship. Aside from the need for companies to pay wages to employees, another equally important commitment is to provide them with social security. Article 99 states that: (1) Every worker/laborer and their family has the right to obtain social security for employees and (2) The social security for workers as mentioned in clause (1) is carried out under applicable laws and regulations. As a result, it can be argued that because social security is part of a worker's right, it is also an employer's responsibility.

According to Budiono (2009, p. 230), social security for workers concentrates on payments (also known as health services) that are only provided to workers in cases where they are unable to perform their duties due to their fault. As a kind of worker protection, the term "social security" refers to social security in a narrow sense, i.e., social insurance. According to Agusmidah (2010, p. 128), the provision of social security for workers is a type of basic protection to meet the needs of workers and their families. The social security program is implemented to guarantee that families may have a continued flow of income, as it replaces part or all of the income lost due to social hazards. Meanwhile, according to Khakim (2003 p. 68), social security protection is a combination of economic and social protection. This is because it provides compensation in the form of money for reduced income as well as care or treatment services when workers are exposed to specific risks.

Health insurance benefits, which are one of the social security programs in Indonesia, consist of medical and non-medical benefits. Medical benefits are provided by medical indications and service standards. Such benefits are not differentiated based on the amount of participant contributions, which is considered to embody the principle of equity. Article 19 of the SJSN Law states that health insurance is provided nationally based on the principles of social insurance and equity to ensure that participants receive health care benefits and protection while meeting their basic health needs. Meanwhile, non-medical benefits are provided based on the amount of the participant's contribution.

Based on these regulations, workers are participants who are categorized as wage recipients. Wage recipients refer to anyone who works for an employer and is paid a wage or salary. Family members of wage recipients are entitled to health insurance benefits based on SJSN Law, Article 20, clause (2). The family members in question include the legitimate wife

or husband, biological children, stepchildren from a legitimate marriage, and legally adopted children with a total of four persons. Children who continue to benefit from active wage recipients members must be: (a) unmarried or do not have their own income and (b) under the age of 21 (twenty-one) or 25 (twenty-five) if they are still pursuing formal education.

BPJS Health is the Sole Administrator of Health Insurance for Workers

Since the enactment of the SJSN Law, which was followed by the BPJS Law, social security administration has been centralized by the Social Security Administrator of Health (*Badan Penyelenggara Jaminan Kesehatan/BPJS*) which is domiciled and headquartered in the nation's capital (Article 8 clause (1) of the BPJS Law). This agency directly reports to the President (Article 7 clause (2) of the BPJS Law). BPJS Workforce runs Work Accident Insurance, Old Age Security, Pension Security, Death Security, and Job Loss Guarantee. However, BPJS Health only runs one program, namely the Health Care Insurance.

BPJS is a public legal entity founded under the BPJS Law as stipulated in Article 7 in conjunction with Article 5 of the BPJS Law. According to Putra (2019, p. 110), BPJS has met all formal and material requirements. The public legal entity attached to BPJS is an autonomous public legal entity; thus, BPJS is also given the authority to holistically carry out supervision and issue regulations. It also has the authority to protect the community from potential socioeconomic losses caused by public policies. As a public legal entity that offers public services, BPJS is governed by Law No. 25 of 2009 (Solechan, 2019, p. 686). The formation and employment opportunities of public legal entities differ from those of private legal entities. According to Kansil, as described by Tami Rusli, a public legal entity is constituted under public law or concerned with the public interest, the general public, or the state (Rusli, 2017, p. 30). Meanwhile, without defining what a public legal entity means, Marzuki (2009, p. 243) differentiates between public legal entities and private legal entities. According to Marzuki (2009), public legal entities are the state and its subdivisions, such as regions, cities, etc. Meanwhile, private legal entities are organizations that operate outside the realm of politics and state affairs, established for profit or social purposes.

Roberta (2009) defined public legal entities based on Tom Christensen's opinion. He believed that understanding public legal entities is critical, particularly due to each public legal entities' unique characteristics. That unique nature is precisely determined by the terms of the legislation that forms it, so that the duties and functions can be clearly specified. Apart

from that, in some situations, it also includes the delegation of authority to decide or act on a specific topic (Roberta, 2019, p. 341).

As a public legal entity, one of the principles that BPJS must implement is the non-profit principle (Article 4 letter b of the SJSN Law and the BPJS Law). The non-profit principle is defined as a business management principle that prioritizes the use of development funds to provide maximum benefits for all participants. In essence, this principle means that BPJS is prohibited from taking advantage of premiums paid by participants, including the proceeds from the collected fund's development. This principle is complementary to the principle of trust funds, which is also adopted in the SJSN Law and the BPJS Law. It regulates that contributions and the proceeds of their development are funds that participants have entrusted to them. Thus, these funds must maximally be used for the benefit of social security participants. According to Article 12 Letter A of the BPJS Law, in exercising its jurisdiction, BPJS has the right to receive operational funds from social security funds and/or other sources under statutory provisions to implement its programs.

According to Thabrany (2015), the principles of administering health insurance at BPJS Kesehatan differ from those of previous social security administering bodies, as explained as follows:

- a. The legal basis for BPJS is Article 34 clause (2) of the 1945 Constitution. So, BPJS is funded by statutory levies (source of funds) and contribution assistance/social support (state spending), both of which are cooperative efforts under the National Welfare System. BPJS, as a public legal organization, was established by a special law and is solely responsible for social security programs, which are state programs, under the mandate of Article 28H clauses (1), (2), and (3), as well as Article 34 clauses (1) and (2) of the 1945 Constitution. As determined by the state, working capital is not divided into shares. BPJS has the goal and purpose of providing enough basic requirements for all individuals. BPJS capital is separated from state wealth. Funds are managed with trust funds belonging to all participants, which constitute a collection of mandatory contributions by Article 23A of the 1945 Constitution.
- b. The legal basis for state-owned business enterprises is Article 33 of the 1945 Constitution. State-owned business enterprises engage in economic operations (volunteer businesses) that are part of the national economic system. As a state-owned corporate entity, its capital is divided into shares, with the state owning at least 51%. The goal of state-owned business enterprises is to contribute to the growth of the national economy in general and the state income in particular. Aside from that, other goals include obtaining profit; arranging public benefits through the provision of goods; becoming a pioneer in commercial activities that

cannot currently be implemented by the private sector and cooperatives; as well as actively participating in advising and assisting entrepreneurs from economically vulnerable groups, cooperatives, and the community. The capital of state-owned business enterprises is derived from separated state assets and state capital participation from the state budget, reserve capitalization, as well as other trading business sources and business revenue funds that are part of state-owned business enterprises (Thabrany, 2015, p. 177).

Before the enactment of the BPJS Law, the authority to administer health insurance was given to several organizing bodies, namely: a. *PT Asuransi Kesehatan* (Health Insurance Limited Company) which was established based on Government Regulation No. 6 of 1992 on the Transfer of the Bhakti Husada Public Company Form to Become a Limited Liability Company (State Gazette of the Republic of Indonesia of 1992 No. 16); b. *PT Asabri* (Indonesian Armed Forces Social Insurance Company Limited Company), which was established based on Government Regulation Number 68 of 1991 on the Transfer of Republic of Indonesia's Social Insurance of the Armed Forces Public Company Form to become a Limited Liability Company (State Gazette of the Republic of Indonesia of 1991 No. 88) and; c. *PT Jamsostek* (Workforce Social Security Limited Company) was established based on Government Regulation No. 36 of 1995 on the Determination of the Administering Body for the Social Security Program for Workers (State Gazette of the Republic of Indonesia of 1995 No. 59).

Each organizing body has distinct membership segments. Participants of the *PT Askes* health insurance scheme are non-military state administrators. *PT Asabri* participants are military personnel working for state authorities. Meanwhile, *PT Jamsostek* participants are the people who are employed in the private sector (Article 4 clause (1) of Law No. 3 of 1992 on Social Security for Workers).

According to the explanation in Article 2 clause (4) of the Governmental Regulation No. 14 of 1993 on the Implementation of Social Security Programs for Workers, if an employer has submitted a health insurance program to an organizing body that can provide better services than those provided by the appointed organizing body (*PT Jamsostek*/Employees' Social Security Limited Company), the employer is not required to participate in this company's social security program. This means that in addition to *PT Jamsostek*, other organizations can administer health insurance and give superior benefits. Different issues are addressed in Article 5 clause (1) and Article 13 of the SJSN Law as well

as Article 52 of the BPJS Law, which require existing organizing bodies to transfer their participation in the health insurance scheme to BPJS Health. These provisions are verified by increasing the membership section to include both contribution assistance recipients and general participants (Article 2 of Presidential Decree No. 82/2013). As a result, BPJS Kesehatan becomes the exclusive provider of health insurance for workers. Even so, some research findings indicate the emergence of problems associated with the obligation of institutional transformation from private legal entities to public legal entities (Yuniza & Rohanawati, 2024, p. 128).

As previously stated, as a social security administering body, BPJS is responsible for collecting contributions of independent participants and employers (who pay for their employees' premiums) (Article 10 letter b of the BPJS Law). BPJS is also responsible for paying benefits and/or financing health services following the provisions of the social security program (Article 10 letter f and Article 13 letter d of the BPJS Law). In carrying out its tasks, BPJS is granted the authority outlined in Article 11 of the BPJS Law, which includes imposing administrative fines on participants or employers who fail to meet their commitments. The authority's implementation is governed by Government Regulation No. 86 of 2013 on the imposition of administrative sanctions on employers other than state administrators, as well as every person involved in social security administration, except employers, workers, and recipients of contribution assistance. However, Governmental Regulation No. 86/2013 exclusively covers employer sanctions.

Legal Reasoning of the Judicial Decision in the Khalimah vs BPJS Case in Court Decision No. 88/Pdt.G/2018/PN.Jkt.Pst

The law-violating action terminology is derived from the words *onrechtmatige daad* (Dutch) and *tort* (English) (Agustina, 2012, p. 3). Article 1365 of the Civil Code defines a law-violating action as any conduct that breaches the law and causes loss to another person, requiring the person who caused the loss to recompense for it (Satrio, 2001, p. 140). According to these provisions, the constituents of law-violating actions are that these actions involve actions or deeds that are against the law, morality, and propriety. They lead to guilt and cause loss. Losses can be in the form of wealth or morality, as defined by Article 1247 of the Civil Code.

According to Mertokusumo (2019), Article 1365 of the Civil Code contains general concepts, specifically the principles of justice and humanity. He suggests that it is fair that whoever creates a risk must bear the consequences, as they will also enjoy the benefits of creating that risk (Mertokusumo, 2019, p. 111). In a dispute between BPJS and its participants, a violation of one of the parties' rights is a type of statutory regulation violation. It is a violation of regulations governing the administration of social security (Wijaya, 2018, p. 191)

In this case, the causality between BPJS's actions and the losses suffered by the worker participants can be demonstrated using the Schutznorm's Theory of Relativity, which states that it is insufficient for someone to be held responsible for committing a law violation under Article 1365 of the Civil Code. It only demonstrates that there is a causal relationship between the act committed and the damage incurred. However, it must be demonstrated that the breached standard or regulation was intended to protect the victim's interests. According to Fuady (2002), the benefits of using this theory include: (1) ensuring that responsibility under Article 1365 of the Civil Code is not excessively expanded; (2) avoiding giving compensation in cases where the relationship between the act and compensation is only normative and coincidental; and (3) strengthening the applicability of 'foreseeability' to proximate causation (Fuady, 2002, p. 14).

According to Prodjodikoro (2000), a legal entity is capable of operating within the law. It has rights, obligations, and legal relationships with other people or entities. Legal entities can participate in social activity and hence be held liable for illegal actions that injure others (Prodjodikoro, 2000, p. 56). However, it is difficult to prove the existence of a 'fault' element that must be present in both illegal activities and legitimate subjects. According to Prodjodikoro (2000), this challenge arises because the element of error is inextricably linked to the world of thoughts and feelings, which only humans possess. He proceeded to claim that this problem can be solved depending on the theory employed to define and interpret what a legal entity is (Prodjodikoro, 2000).

Moreover, there is an issue of whether or not BPJS as a public legal entity can be sued based on Article 1365 of the Civil Code, considering that the provisions of the article in question are intended for private legal acts. Meanwhile, in carrying out its duties and authorities, BPJS is subject to public law. In this regard, Mertokusumo (2019) provides his view that the unlawful nature of an unlawful act must be seen from the perspective of the

party whose rights and interests are violated or who feels their wealth has diminished due to the actions or conduct of the 'authority'. Therefore, if a private law subject or a public law subject commits an unlawful act, the provisions of Article 1365 of the Civil Code can be applied (Mertokusumo, 2019).

Initially, the *Hoge Raad* (the Dutch Supreme Court) held the view that authorities who acted contrary to their legal obligations in the public domain could not be held accountable. However, after 1924, the *Hoge Raad's* perspective changed. The government can be held liable if it neglects its legal obligations, regardless of whether those obligations fall under public or private law. As long as the negligence has caused harm to private individuals, the government can be sued for its unlawful acts (Salam, 2018, p. 39).

In case No. 88/Pdt.G/2018/PN.Jkt.Pst, it is known that the late Irwan Dahlan was a permanent employee of *PT Freeport Indonesia* (Freeport Indonesia Limited Company) since 1991, working as a Lead Hand Main maintenance. On May 1st, 2017, Irwan Dahlan and other workers went on strike in response to *PT Freeport's* refusal to talk with the Labor Union over the furlough (employee housing) policy. On October 30th, 2017, during the late work strike, Irwan Dahlan became unwell and was treated at Mimika Regional General Hospital. According to the examination results, the late Irwan Dahlan was diagnosed with a deficiency of white blood cells and was referred to an internal medicine specialist. Personal charges and fundraising revenues from *PT. Freeport Indonesia* Labor Union (2015-2017) was used to pay for hospital treatment. On November 5th, 2017, Irwan Dahlan asked to be taken back to Blitar, East Java Province, so that his family could care for him.

Siti Khalimah (the plaintiff), the wife of the late Irwan Dahlan, brought him to Mardi Waluyo General Hospital for treatment on November 7th, 2017. Hospital bills were paid privately because the hospital confirmed that the deceased had health insurance. Irwan Dahlan was exempted from the insurance; thus, health insurance benefits cannot be issued. On November 16th, 2017, the plaintiff was compelled to request that the deceased be taken home since the family could no longer afford the medical bills. Then, at 5 p.m., Irwan Dahlan was proclaimed dead at the hospital.

It was found that the insurance membership had been deactivated since the strike on May 1st, 2017, resulting in the severance of employment relations. This was seen on May 24th, 2017, when an employee named Ama Nurjana Houbrow was unable to use his insurance membership card to make payments following surgery for his wife's ruptured membranes.

According to hospital records, *PT. Freeport* has disabled his insurance membership access via the E-Dabu application system since June 30th, 2017.

Based on these facts, the plaintiff claims that BPJS Health violated Article 21 of the SJSN Law by committing a law-violating action. Meanwhile, BPJS claims that the deactivation of the insurance membership was carried out following applicable regulations, specifically Article 17A.1 of Presidential Regulation No. 19 of 2016 on Health Insurance (hereinafter referred to as Presidential Decree No. 19/2016). It states that BPJS has the authority to deactivate participants if they fail to pay their dues as required. BPJS argued that when the deactivation was carried out, the layoff decision was still in dispute. It did not yet have binding legal force, so the rights and obligations of the disputing parties (*PT. Freeport Indonesia* and workers, including the late Irwan Dahlan) remained intact. As a result, the company's responsibility to pay health insurance contributions to BPJS remains unchanged. However, since June 2017, BPJS has not received the previous contribution amounts.

On May 19th, 2017, BPJS received notification from *PT. Freeport* via email requested 1,611 (one thousand six hundred and eleven) BPJS Health participants, including the late Irwan Dahlan, be transferred and not included in the bill for June 2017. This was because he left and no longer worked for the company. In other words, Irwan Dahlan was laid off because he resigned. Regarding this case, the judge argued that, based on the provisions of Article 21 clause (1) of the SJSN Law, regardless of whether the layoff was still being disputed, BPJS should continue to apply Article 21 clause (1), i.e., providing a safety net and activate late participation. This law states that Irwan Dahlan and his family have the right to obtain benefits from the BPJS up to six months after the participant's employment is terminated without making any contributions. This is consistent with the principles of humanity, benefits, and social justice for all Indonesians, which are upheld in the implementation of SJSN.

It is possible to conclude that the panel of judges based the element of error that appeared in *a quo* case on BPJS's failure to carry out its legal obligations as provided in Article 21 clause (1) of the SJSN Law. The Panel of Judges did not query whether the layoff was permissible under existing rules and regulations. It seems that the judge has made a legal finding. A legal finding is the process of making concrete legal conclusions that have direct legal consequences for a particular case (Prakoso, 2016, p. 11). According to Mertokusumo (2004, p. 46), the most significant aspect of a legal finding is determining how to find or establish the law for a certain incident.

Dworkin's stages of constructive interpretation require the judge to undergo three steps before issuing a decision. According to Dworkin, constructive interpretation consists of at least three stages: (1) in the pre-interpretation stage, the interpreter determines the object and context of the interpretation. The identified and interpreted objects are legal norms, legal decisions, ideas, and moral principles that are acknowledged as a collection of social wisdom; (2) in the interpretation stage, the interpreter finds relatively adequate explanations and meanings that can be used as a reference in adjudicating the case at hand by analyzing the relevance/connection between the objects; then, (3) in the post-interpretation stage, the interpreter adjusts the meanings obtained in the previous stage with the facts of the case at hand, and then makes a well-founded decision. These three steps are known as the adjudication theory (Dimiyati, Absori, Wardiono, & Hamdani, 2017, p. 53)

The implementation of these three steps in this case can be explained below:

- 1) At the pre-interpretation stage, it can be determined that the analyzed norm is Article 21 clause (1) of the SJSN Law and the provisions of Article 17A.1 of Presidential Decree No. 19/2016;
- 2) During the interpretation stage, an analysis is performed on the applicability of Article 21 of the SJSN Law. Article 21 clause (1) of the SJSN Law states that "Health insurance participation remains valid for a maximum of 6 (six) months after a participant experiences termination of employment." It can be concluded that the legal interpretation of the application of Article 21 clause (1) is that there are circumstances in which workers are laid off. The judge must consider the facts to determine whether or not the late Irwan Dahlan was laid off. At this point, layoffs must be defined under the law. However, the SJSN Law does not define layoffs. The concept of layoffs is found in Presidential Decree No. 12/2013 on Health Insurance and its Amendments, namely Presidential Decree No. 19/2016. Article 1 number 11 of this decree defines a layoff as the termination of an employment relationship owing to specified circumstances that result in the termination of the rights and obligations between the worker and the employer under legislative regulations. The layoff regulations in the Law on Workforce specify the legal circumstances for layoffs, including formal and material requirements. If these prerequisites are not met, the layoff is deemed void and unlawful by law. Then, the employee-employer relationship is assumed to continue. As a result, the parties are still obligated to complete their objectives. Meanwhile,

Article 17A.1 of Presidential Decree No. 19/2016 goes into effect, stating that participant insurance would be temporarily discontinued if health insurance contributions are not paid on time for more than one month beginning on the 10th. As a result, it is possible to assume that this clause was enacted in response to the circumstance of late payment. It makes no difference whether the delay in payment was caused by layoffs or not.

- 3) The post-interpretation stage involves interpreting the applicability of Article 21 clause (1). It must be examined if the late Irwan Dahlan was laid off. In the *a quo* decision, the judge determined that the late Irwan Dahlan had resigned. Unfortunately, the verdict did not clarify the reasons why the judge ruled that the late Irwan Dahlan had resigned.

Regulations governing layoffs by workers, also known as resignation, do not require employer approval or the underlying reason for the worker's resignation (as opposed to provisions for layoffs at the employer's initiative). However, the intention to resign must be born in the worker. In terms of the lawsuit, it is clear that the late Irwan Dahlan never filed his resignation letter. The case began when the late Irwan Dahlan and his friends went on strike in response to company actions that were perceived to have harmed workers. As a result, the entrepreneur chose to terminate his work arrangement and stop paying the health insurance membership contribution to BPJS, which was his obligation. In such circumstances, layoffs should be considered the employer's objective. Therefore, legal formalities apply, such as obtaining approval from the PPHI (*Penyelesaian Perselisihan Hubungan Industrial*/Industrial Relationship Dispute Resolution) institution. Employer layoffs without PPHI clearance are null and void. They are deemed non-layoffs. Due to the non-existence of layoffs, Article 21, clause (1) does not apply.

The panel of judges does not systematically interpret the application of Article 21 clause (1). However, it also carried out a teleological interpretation. This means that Article 21 clause (1) is comprehensively interpreted by considering the purpose of making the norm in question. Social security is a safety net for social and economic risks that may occur. A factor that may happen was the employer's failure to pay contributions due to disputes between employers and workers. In the *quo* case decision, the judge used the term 'safety net'. This is because, in essence, the labor social security program is intended to provide certainty

in the continuity of family income streams as a substitute for part or all of the lost income (Wijayanti, 2019).

It appears that the panel of judges has carried out legal construction by paying attention to the values that must be present in every judge's decision. This is according to Dworkin's opinion that there are at least three values that must be present, namely justice, fairness, and procedural due process. In this case, the panel of judges prioritizes justice as the basis for deciding the status quo. It appears that the judge did not question whether the layoff was still in dispute or not. Because the plaintiff has based her lawsuit on Article 21 clause (1), it can be interpreted that the heirs of the late Irwan Dahlan have accepted the layoff. Therefore, the elements for the provisions of Article 21 clause (1) to be enforceable are fulfilled. Thus, BPJS has been declared to have carried out a law-violating action based on Article 1365 of the Civil Code with an error by failing to carry out its legal obligations based on the provisions of Article 21 clause (1) of the SJSN Law.

Table 1 explains the provisions related to sanctions for temporary termination of membership:

Table 1. Temporary Membership Termination Arrangements Under the SJSN Law and Health Insurance Implementing Regulations

Regulation	Post-layoff health insurance benefits	Temporary Suspension [Deactivation] of Membership	Notes
SJSN Law	Article 21 states that health insurance membership can be renewed for up to six months after a participant's employment termination.	-	Presidential Decree No. 12/2013 lacks an explanation for layoff criteria in post-layoff Health Insurance Benefits provisions.
Presidential Decree No. 12/2013	Article 7 states that individuals who are laid off will still have access to Health Insurance Benefits for up to six months without paying contributions.	-	The term 'Temporary Suspension' is used, as it can be revoked if fees are paid. In Presidential Decree No
Presidential Decree No. 111/2013	=	Article 17A.1 states that in case of a delay in health insurance	111/2013, there is no changes were made to the

The First Amendment of Presidential Decree No. 12/2013		contributions, the insurance will be temporarily suspended. The suspension ends if the participant pays outstanding monthly contributions for 12 months or pays the contribution in the month they want to end the suspension.	provisions in subsequent amendments. Meanwhile, Presidential Decree No. 64/2020 adds provisions related to the temporary termination of membership.
Presidential Decree No. 82/2018	Article 27 states that wage-recipient participants who experience layoffs can continue receiving Health Insurance Benefits for up to six months without paying contributions. Layoffs must meet specific criteria, such as an industrial relations court decision, a company merger, bankruptcy, or prolonged illness. In disputes, employers and employees must continue paying contributions until a permanent decision is made.	Article 42 states that a participant's insurance will be temporarily suspended if they fail to pay their contribution by the end of the current month. The suspension ends when the participant pays the outstanding monthly contributions for 24 months and ends the suspension.	
Presidential Decree No. 64/2020 The Second Amendment of Presidential Decree No. 82/2018		Article 42 states that in 2020, a participant's insurance suspension ends if they pay outstanding monthly contributions for six months, end the suspension in the same month and pay the remaining monthly fees in full by 2021 to maintain membership status.	

Meanwhile, regarding the compensation claim, the panel of judges only granted the claim for material losses in the form of treatment costs during treatment in the hospital. The judge believed that immaterial losses could not be estimated using life expectancy because the human age is unpredictable. Then, regarding children's education money, the judges based their argument on a sense of propriety and appropriateness. Based on these two principles, the judges decided to provide education money to the three children until they obtained their bachelor's degree. It can be seen that, in considering the compensation claim, the panel of judges did not at all consider the position of BPJS as a public legal entity. As previously known, in carrying out its operations, BPJS is bound by the non-profit principle, which excludes activities that seek profit. So, the question which arises that may be analyzed in further research is where the money paid by BPJS to the plaintiff came from.

CONCLUSION

Based on the preceding explanation, it is possible to conclude that the judge employed Dworkin's adjudication theory to decide on the *a quo* case. In doing so, they passed through three stages: pre-interpretation, interpretation, and post-interpretation. In the analysis, the judge constructed the law by interpreting the purpose of the norm in Article 21 clause (1),\.. This article states that health insurance, as one of the social security programs, serves as a safety net designed to protect participants from economic risks such as loss of income. As a result, it makes no difference which factor is causing the loss of projected income. Here, it is clear that the panel of judges prioritized justice as a value that must be present in their decision. This is because if systematically interpreted, BPJS should not be declared to have violated the provisions of Article 21 clause (1) of the BPJS Law as an element of fault in fulfilling Article 1365 of the Civil Code, as the *termination* phrase in the provision of the Article in question must be interpreted in accordance with the applicable regulations in the field of employment, which is not met in this case.

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