

THE PROBLEMS AND FORTHCOMING IDEAL CONCEPTS OF EMPLOYMENT SOCIAL SECURITY: AN INDONESIA'S PERSPECTIVE AS A WELFARE STATE

Nyoman Satyayudha Dananjaya¹, Anak Agung Gede Duwira Hadi Santosa², Kadek Agus Sudiarawan³, Made Dwita Martha⁴

¹Universitas Udayana, Bali, Indonesia, [E-mail: satyayudha@unud.ac.id](mailto:satyayudha@unud.ac.id).

²Universitas Udayana, Bali, Indonesia [E-mail: agung_santosa@unud.ac.id](mailto:agung_santosa@unud.ac.id).

³Universitas Udayana, Bali, Indonesia, [E-mail: agus_sudiarawan@unud.ac.id](mailto:agus_sudiarawan@unud.ac.id).

⁴Universitas Udayana, Bali, Indonesia, E-mail: imdektamartha@gmail.com.

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Abstract

The Procedures and Requirements for Payment of Old Age Security stated that the benefits of Old Age Security at the Institution of Social Security Employment can only be taken when workers enter retirement or at the age of 56 years, which elicits opposition reactions from various parties. The focus of this research was conducted to examine and criticize whether the Old Age Security (OAS) and Job Loss Guarantee (JLG) policies for workers who have been terminated have reflected the conception of an Indonesian welfare state that is socially just for all Indonesians, as well as to find out how the future concept (Ius Constituendum) of OAS and JLG for workers reflects the welfare state for social justice. A statutory and conceptual approach are used to support the type of normative legal research in this research. The results of the study indicate that the OAS and JLG policies have not described the concept of an Indonesian welfare state with social justice. To describe the OAS and JLG policies that reflect the welfare state, future policies must still provide convenience for workers to receive OAS benefits and continue to carry out OAS benefits.

Keywords: *Indonesia; OAS; Welfare State*

1. INTRODUCTION

The Republic of Indonesia has several objectives as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) one of them is to seek and improve the welfare of society, which is then more concreted in the articles of the 1945 Constitution of the Republic of Indonesia, especially as stipulated in Chapter XIII (Education and Culture) and Chapter XIV (Economic and Social Welfare). The meaning of welfare as referred to in the Preamble of the 1945 Constitution and the formulation of Articles 33 and 34 of the 1945 Constitution should be enjoyed in a sustainable, fair and equitable manner to all peoples.¹ Bearing in mind that sustainable, just, and equitable welfare is a constitutional right of Indonesian citizens, and its fulfillment belongs to the responsibility of the state, including obtaining social security that can improve the welfare of all citizens.

¹ I Dewa Gede Palguna, *Welfare state vs globalisasi: Gagasan negara kesejahteraan di Indonesia*, (Depok: Rajawali Pers, 2019), 153.

One form of fulfilling the state's obligation to provide welfare is the existence of social security for all people. In order to fulfill those rights as a dignified human being as mandated by Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution, the government shall provide social security as regulated in Law Number 40 of 2004 concerning the National Social Security System (hereinafter referred as NSSS Law). Article 1 point 1 of the NSSS Law defines "Social Security is a form of social protection to ensure that all people can meet their basic needs for a decent life." There are several types of social security programs in the NSSS Law including but not limited to health insurance; accident insurance; pension plan; pension insurance; and death insurance.

The government has issued several social security programs that aim to assist the community in meeting their living needs, both those intended for all citizens and specifically for working citizens, one of which is Old Age Security (OAS).² Uwiyono stated that "Employment Social Security is an employee's right and an employer's obligation, which is basically intended to provide certainty of the ongoing flow of family income as a substitute for part or all of the lost income in order to prevent and overcome underdevelopment, dependence, neglect, and poverty in general."³

Especially for workers, the government issued an OAS program as one of the guarantees for the fulfillment of workers' rights to reach prosperity as well as stipulated in Article 27 and Article 28 D paragraph (2) of the 1945 Constitution, and which is further regulated in the NSSS Law. The OAS is administered nationally based on the principle of social insurance or mandatory savings aimed at ensuring that participants receive cash if they enter retirement age, experience permanent total disability, or die. Further regulations regarding the OAS are regulated in Government Regulation Number 46 of 2015 concerning the Implementation of the Old Age Security Program that has been amended through Government Regulation Number 60 of 2015 concerning Amendments to Government Regulation Number 46 of 2015 concerning the Implementation of the Old Age Security Program (hereinafter referred as Government Regulation of OAS Program) and confirmed by Minister of Manpower Regulations Number 2 of 2022 concerning Procedures and Requirements for Payment of Old Age Security Benefits (Minister of Manpower Regulations No. 2 of 2022).

The Indonesian government builds a social security program by way of funded social security, which is a social security fund that is funded by participants, including the OAS program. The OAS program is a form of social security program in the employment sector which is intended for the welfare of workers after entering retirement. This is a form of protection for workers to be able to improve their welfare so that it is expected to increase national productivity because of this guarantee while still actively working or before entering retirement.⁴

² Junaidi Abdullah, "Bentuk-Bentuk Jaminan Sosial Dan Manfaatnya Bagi Tenaga Kerja Dalam Hukum Ketenagakerjaan Indonesia," *YUDISIA : Jurnal Pemikiran Hukum dan Hukum Islam* Vol. 9, no. 1 (2018), 23-41, <http://dx.doi.org/10.21043/yudisia.v9i1.3676>.

³ Aloysius Uwiyono, *Asas-Asas Hukum Perburuhan*, (Jakarta: Rajawali Pers, 2014), 104.

⁴ Anggi Chrisye Piteradja, Masje Silija Pangkey, Joyce Jacinta Rares, "Implementasi Program Jaminan Hari Tua Di Badan Penyelenggara Jaminan Sosial Ketenagakerjaan Kota Manado," *Jurnal Administrasi*

Article 1 number 1 Government Regulation of the OAS Program defines that “OAS is a cash benefit that is given at once when the participant enters retirement age, dies, or experiences permanent total disability.” According to the provision, the OAS program has enormous benefits, namely, it supports the life of the workforce, now or in old age. The OAS program can be used for future savings when faced with socio-economic risks. Under certain conditions, the OAS fund, which is partly collected from the workforce, is necessary to support life even though it is still of productive age. The OAS benefit can be received when the participant stops working, and no longer has to wait for a minimum of 10 years of membership.⁵

After the amendment to the NSSS Law in Law No. 11 of 2021 concerning Job Creation (hereinafter referred to as the Job Creation Law), there is an additional form of social security, namely Job Loss Guarantee (JLG) which is specifically intended for workers who lose their jobs due to termination of employment by employers.⁶ In this JLG, workers who lose their jobs due to layoffs will receive benefits in the form of cash, access to labor market information, and job training. Cash benefits will be given for 6 months at 45 % of wages for the first 3 months, then 25 % in the following 3 months.

After the issuance of the Minister of Manpower Regulations No. 2 of 2022 issued, some problems are arising such as the benefits of the OAS with Institution of Social Security Employment only can be taken when the worker enters retirement or at the age of 56, which mostly refused by various parties.⁷ Rules in Minister of Manpower Regulations No. 2 of 2022 also re-adopted the amended rules, namely Article 26 of Government Regulation Number 46 of 2015 concerning the Implementation of the Old Age Security Program which was amended by Government Regulation of OAS Program.⁸

The JLG program also received an unfavorable response from workers, as quoted from CNN, “President of the Confederation of Indonesian Workers’ Unions (KSPI) Said Iqbal criticized the statement by the Coordinating Minister for the Economy, Airlangga Hartarto who said that the Job Loss Guarantee program (JLG program) was more profitable than the previous program.” The OAS program for workers who are terminated by the employees (PHK) through Minister of Manpower Regulations No. 2 of 2022, said that “the JLG program guarantees for 6 months after workers are laid off.” Moreover, the cash received is only 45 percent of wages in the first to third months. Then, 25 percent of wages in the fourth to sixth months. According to him, the funds

Publik Vol.4, no. 49, (2017): 1-8, <https://ejournal.unsrat.ac.id/index.php/JAP/article/view/18726/18268>.

⁵ Kadek Yuda Kumala T.D, Anak Agung Sagung Laksrni Dewi, and Ni Made Puspasutari Ujianti, “Mekanisme Pencarian Klaim Badan Penyelenggara Jaminan,” *Interpretasi Hukum* Vol. 2, no. 2, (2021), 315–319, <https://doi.org/10.22225/juinhum.2.2.3433.315-319>.

⁶ Kania Jennifer Wiryadi and Bayu Novendra, “Jaminan Kehilangan Pekerjaan Dampak Pandemi Covid-19: Pengaturan, Manfaat, dan Perbandingannya dengan Negara Lain (Job Loss Insurance Impact of Covid-19 Pandemic: Regulations, Benefits, and Comparisons with Other Countries),” *Jurnal Negara Hukum* Vol. 12, no. 1, (2021) 23-41, <https://doi.org/10.22212/jnh.v12i1.2112>.

⁷ Aulia Damayanti, “Menaker Beberkan Progres Revisi Aturan JHT Ke DPR, Ini Penjelasannya,” *Detik Finance*, March 21, 2022, <https://finance.detik.com/berita-ekonomi-bisnis/d-5994107/menaker-beberkan-progres-revisi-aturan-jht-ke-dpr-ini-penjelasannya>.

⁸ I Kadek Yuda Kumala T.D, Dewi, and Ujianti, 315-319.

will not be enough to support the lives of workers who have lost their jobs. Moreover, there is no guarantee that after six months the worker will get a job again.⁹

The existence of OAS and JLG programs ideally have their goals to solve problems, because this program provides basic protection to meet the minimum needs for workers and their families, although, in certain circumstances, such as workers being laid off or resigning for certain reasons, the OAS funds collected from the workforce, it is also very much needed by workers to support life even though they are still of working age (productive)¹⁰. Based on the problems that exist in the OAS and JLG policies as described which have not been able to protect all workers participating in social security, the decision making of the Minister of Manpower for OAS and JLG programs are considered to overemphasize top-down policies and marginalize the bottom-up between the government and workers, so it is considered not yet describe the concept of the welfare state.

Studies on Employment Social Security, especially the OAS, have been written by several authors or legal researchers. Related to the focus of the study of journal articles, previous publications or research shows that they analyze one of the OAS or JLG benefits, also focus more on the perspective of social security, and use different regulatory study objects such as the study written by Ilham Haqiqie “Legal Protection for Workers to Take Old Age Security whose participation is before 10 years due to termination of employment” and a study written by Kania Jennifer Wiryadi and Bayu Novendra entitled “Job loss guarantee Impact of Covid-19 Pandemic: Regulations, Benefits, and Comparison with Other Countries”. Looking to the previous studies, it is important to examine them from a different perspective, namely from the perspective of a social justice welfare state.

Because there is an issue that the OAS and JLG regulations right now yet describe the concept of a welfare state, it is important to conduct this research, in order to examine and criticize whether the OAS and JLG policies for workers who have experienced termination of employment have reflected the conception of the welfare state as adopted by the Indonesian state in order to towards social justice for all Indonesian people, as well as finding out how the future concepts (Ius Constituendum) of OAS and JLG programs for workers reflect the welfare state for social justice.

The research method used in this study is normative legal research conducted by positioning legal norms as the object of research. As normative research, the approach used in this research is the statutory approach and the conceptual approach. The technique of collecting legal materials is carried out through literature research by understanding and examining the content of the substance contained in each legal material. The legal materials used in this research consist of primary legal materials which include statutory regulations that have a binding and coercive nature such as the NSSF Law, Government Regulation of OAS Program, Government Regulation of JLG Program, and Minister of

⁹ Abi Sarwanto, 2022, “KSPIKritisi Menko Soal JKP Lebih Untung Dari JHT: Pembohongan Publik,” *CNN Indonesia*, February 15, 2022, <https://www.cnnindonesia.com/ekonomi/20220215155152-92-759475/kspi-kritisi-menko-soal-jkp-lebih-untung-dari-jht-pembohongan-publik>.

¹⁰ Piteradja, Pangkey, Rares, “Implementasi Program Jaminan Hari Tua Di Badan Penyelenggara Jaminan Sosial Ketenagakerjaan Kota Manado,” 1-8.

Manpower Regulations No. 2 of 2022, as well as secondary legal materials consisting of books, legal journals, and other relevant legal papers. The analytical techniques used in building the construction of legal arguments are comparative techniques, argumentative techniques, and prescriptive techniques.¹¹

2. ANALYSIS AND DISCUSSION

2.1. Regulation of OAS and JLG Program for Workers Who Have Been Layoff in the Perspective of Welfare State Concept in Indonesia

Before entering and assessing whether the OAS and JLG programs for workers who have experienced termination of employment have reflected the concept of a welfare state with social justice, Santosa et al stated that “in more depth, it is important to understand the type of state based on state objectives. So far, it is known that there are 3 (three) types of countries based on their objectives, namely the type of police state (*Polizei Staat*), the type of night guard state (*nachtwakerstaat*), and the type of welfare state (*Welfare staat or Social Service State*)”.¹² In this research, we will focus on discussing the matter of the welfare state concept in Indonesia, and the upcoming discussion will be determined whether the regulations regarding OAS and JLG by the Indonesian government have reflected the conception of the welfare state

Atmadja stated that “the history of the welfare state begins in 1832, considered the year the welfare state was born when the “Reform Act” was passed in England”.¹³ Palguna explained Vilhelm Aubert’s doctrine that argues “this type of welfare state focuses on the particular rights of citizens and on the ability of the state to fulfill the demands of those rights,” and Palguna explained Spicker’s doctrine that argues “the welfare state implemented by modern states today is based on patterns of social protection that were originally developed with collective social action”¹⁴.

The idea of a welfare state is a response to the weaknesses of classical liberalism and capitalism as well as a response to the teaching of “*nachtwakerstaat*” which runs with the notion of “*the best government is the least government*”.¹⁵ The concept of the welfare state is also a reaction concept against socialism which according to F. A. Hayek developed into totalitarian collectivism, which threatens the freedom of an individual.¹⁶

A welfare state of this type is considered as a revolutionary process without going through the action of power that causes state instability. This change appears as an expression of people’s aspirations about the importance of strengthening the idea that the welfare state is a noble ideal shared by every modern society that countries in the

¹¹ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*, (Jakarta: Prenada Media Group, 2016), 12.

¹² Anak Agung Gede Duwira Hadi Santosa, Kadek Agus Sudiarawan, and I Made Marta Wijaya, “The Employment Cluster of Omnibus Law: Embodiment the Concept of *Nachtwakerstaat* or *Welfare state?*”, *Fiat Justitia: Jurnal Ilmu Hukum* Vol. 15, no. 2 (2021): 93-118, <https://doi.org/10.25041/fiatjustitia.v15no2.2219>.

¹³ I Dewa Gede Atmadja, 2012, *Ilmu Negara Sejarah, Konsep Dan Kajian Kenegaraan* (Malang: Setara Press, 2012), 65.

¹⁴ Palguna, *Welfare State vs Globalisasi*, 19.

¹⁵ Palguna, *Welfare State*, 20.

¹⁶ Palguna, *Welfare State*, 21.

world, including Indonesia, want to achieve. In the opinion of expert Musttamin Daeng Matutu, “the basic principles of the modern welfare state will always be linked to aspects of the public interest and the interests of each individual according to their nature and reality.” According to Atmadja doctrine that stated, “every individual human being as God’s creation has the right to material welfare, both the need for proper food, clothing, and housing, not only that but also this type of welfare state also regulates the use of natural resources based on and managed scientifically, aimed at improving people’s living standards”. The term “welfare state” is usually intended to convey a sense of security in terms of the negative effects of modernization, equality in the exercise of individual civil, political and social rights, and justice. Atmadja stated that “in relation to the distribution of welfare, which is produced collectively, it can be said that the type of welfare state is the state and its equipment or apparatus that serve the interests, welfare, and welfare of the community, including providing social security, such as health services, and guarantees for the care of the poor and neglected children”¹⁷.

In example, the presence in the country of a state body, namely a state company, which regulates the well-being of people, for example, in the presence of a state company.

The welfare state gives the state, in this case the government, the power to regulate and control the exercise of the rights and obligations of each subject of law. In this concept, the state is seen as an instrument created to achieve common goals, prosperity, and social justice for all residents of the country. It can be said that a type of welfare state is the state and its institutions that devote themselves to the public interest to achieve prosperity and public welfare. Nur Rohanawati stated that “one example of prosperity and welfare of the community is by guaranteeing the fulfillment of the basic rights of every citizen such as the right to security, the right to be free from discrimination, freedom from slavery, and guaranteed rights to health, education, and social security.” Nur Rohanawati affirmed that “those rights must be fulfilled not only in the field of public or private law, considering that often in the realm of private law these basic rights are reduced or not fulfilled at all”¹⁸.

The conception of the welfare state in Indonesia itself, judging from the formulation of the founding fathers, has the following characteristics:

- a. Indonesia’s welfare state is based on the relationship between the state and its people as an integral extended family that is an anti-individual capitalist system,
- b. the welfare of the people is the responsibility of the state:
- c. Efforts to realize the welfare of the people are carried out by controlling the state over the earth, water, space, and natural resources contained therein.
- d. The great role and responsibility of the state do not necessarily make Indonesia a state of power: and
- e. welfare arrangements in the Indonesian constitution, making the Indonesian constitution an economic constitution.¹⁹

¹⁷ Atmadja, *Ilmu Negara Sejarah*, 66-67.

¹⁸ Ayunita Nur Rohanawati, “Jaminan Sosial Tenaga Kerja di Indonesia Sebagai Negara Kesejahteraan Ditinjau Dari Perspektif Hukum Progresif,” *Justitia et Pax* Vol.32, no. 1 (2016), 17-31.

¹⁹ Muhammad Adib Zain, Ananda Prima Yurista, and Mailinda Eka Yuniza, “Konsistensi Pengaturan Jaminan Sosial Terhadap Konsep Negara Kesejahteraan Indonesia,” *Jurnal Penelitian Hukum Gadjah*

Indonesia as a welfare state, as stated in the fourth paragraph of the Preamble to the 1945 Constitution, states that in addition to having the task of administering the government, it is also obliged to organize the general welfare. The concept of the welfare state provides justification for intervening in legal policies that regulate social security for employment while maintaining the view of general welfare within the framework of social justice. According to Ir. Soekarno's speech, "social justice can only be achieved through economic democracy and political democracy, which means equal access for all Indonesian people, as an obligation to organize public welfare, the state through authorized government agencies is justified to interfere or intervene in strategic areas of life,"²⁰ one of them is the field of employment social security.

While working, the worker not only has the right to a decent income but also has the right to benefits and social security as a social protection. Social Protection will focus on social interventions to help individuals, households, and communities better manage risk and provide support to people at risk of poverty. Law Number 13 of 2003 concerning Manpower explains that "workers have the right to obtain protection for occupational safety and health, morals and decency, and treatment in accordance with human dignity and values and religious values." Article 99 paragraph (1) of the Manpower Law further confirms that "workers and their families are entitled to social security for workers". Wijayanti and Jannah stated that "this emphasizes that social security for workers is important to protect workers from unwanted possibilities/work risks".²¹

With the enactment of the NSSS Law, the government is seeking to make the goal of the OAS program social, which is to provide large benefits to workers in old age or retirement. Prior to the implementation of the provisions of the NSSS Law, Government Regulation No. 46 of 2015 on the implementation of the old age provision program, it explains the benefits of the OAS program in the form of cash that can be paid immediately after the participant retires. aging, dying or experiencing permanent total disability. As such, the payment of OAS benefits is subject to the mandate of the NSSS Law.

The PP OAS program rules clarify that OAS benefits must be paid to participants if they have reached retirement age, suffered a permanent total disability, died, or left Indonesia permanently. OAS benefits for members over retirement age are available to members when they reach retirement age. If an employee terminates or stops working before retirement age, OAS benefits are paid when the Member reaches age 56. In the event that a Member develops a permanent total disability, the Member is eligible for OAS benefits. If a Member dies before reaching retirement age, the right to receive SLA benefits passes to the heirs.

Government Regulations of the OAS program received a strong rejection from the community due to policies that were considered burdensome to the community. Idris stated that "the role of the Association of Labor Unions is very large by threatening to hold a large demonstration if the Government does not immediately revise the

Mada Vol. 1, no. 2 (2014), 63–76.

²⁰ Santosa, Sudiarawan, Wijaya, *The Employment Cluster*, 93-118.

²¹ Putri Wijayanti and Lina Miftahul Jannah, "Implementasi Kebijakan Manfaat Jaminan Hari Tua Di Indonesia," *JPSI (Journal of Public Sector Innovations)* Vol.4, no. 1 (2019), 20-29.

Government Regulation on OAS” (Idris, 2022). The refusal occurred because OAS funds collected from labor wages were needed in certain circumstances to support their daily needs, such as when a participant resigns, is terminated, or leaves Indonesia for good, but is still of productive age. The community’s refusal was then heard by the government so the government evaluated the previous policy by issuing a PP Changes to OAS.²² Changes that occur in the Government Regulation of the OAS Program are the rules for providing OAS benefits, in this change workers who lose their jobs either because of layoffs or because of resignation are considered as entering retirement age. In this amendment to the Government Regulation of the OAS Program, the rules regarding the minimum age of 56 years are also not regulated to benefit from OAS.

However, since the latest Minister of Manpower Regulations No. 2 of 2022 has been re-adopted, the regulations as regulated in the old Government Regulation of OAS Program, the rules in question are the minimum age requirement of 56 years to benefit from old-age insurance and a minimum membership period of 10 years. The new Government Regulation of the OAS Program to OAS which later considered that layoffs were also part of retirement and eliminated the minimum membership period, which had not been revoked and is still valid until now, were not considered. Based on this, the conditions for obtaining OAS benefits return to the provisions where OAS benefits can only be felt when the participant reaches the age of 56 years, even though the participant resigns, is subject to termination of employment and as regulated in article 3, article 4 and article 5 of the Minister of Manpower Regulations No. 2 of 2022 which reads as follows:

“Article 3

OAS benefits for Participants who reach retirement age as referred to in Article 2 letter a are given to participants when they reach the age of 56 (fifty-six) years.”

“Article 4

- (1) OAS benefits for Participants who reach retirement age as referred to in Article 3 include Participants who stop working.
- (2) Participants who stop working as referred to in paragraph (1) include:
 - a. Participants withdrew;
 - b. Participants are affected by the termination of employment; and
 - c. Participants who left Indonesia for good.”

“Article 5

The OAS benefits for the Participant resigning as referred to in Article 4 paragraph (2) letter a and the Participant being terminated as referred to in Article 4 paragraph (2) letter b are provided when the Participant reaches the age of 56 (fifty-six) years.”

Based on the description of the regulation of the article in the Minister of Manpower Regulations No. 2 of 2022, it is clear that there are inconsistencies in the OAS policy itself, in addition to the arrangement that if the worker stops working, the OAS benefit

²² Lemek, Y. D, *Penerapan Klaim Jaminan Hari Tua Bpjs Ketenagakerjaan Dengan Berlakunya Peraturan Pemerintah Nomor 60 Tahun 2015 Tentang Perubahan Atas Peraturan Pemerintah Nomor 46 Tahun 2015 Tentang Penyelenggaraan Program Jaminan Hari Tua* (Doctoral Dissertation, UAJY, 2018).

is given only at the age of 56 years, even though the worker is laid off, the worker resigns, or leaves Indonesia. once and for all, this then really shows that the OAS policy has not been able to describe the concept of the welfare state.

Apart from OAS, there is social security in the field of employment, namely the Job Loss Guarantee (JLG) which is a social protection concept that was born after that regulation's enactment in Indonesia, said to be the answer to the inability to withdraw OAS before the age of 56. JLG is social security provided to workers who have been terminated. JLG is a form of social security that was born in order to help solve socio-economic problems.²³

As regulated in article 1 number Government Regulation of JLG defines JLG as a "Job Loss Guarantee, is a social security provided to Workers/Labors who experience Termination of Employment in the form of cash benefits, access to job market information, and Job Training." Contribution from JLG is 0.46 % of a month's wage which comes from contributions paid by the Central Government and JLG funding sources (recompositing of contributions for the JKK and JKM programs).

It can be seen from this definition that it is clear that the benefits received by workers who become JLG participants are in the form of cash, access to job market information, and job training. The cash benefits are regulated in Article 21 Government Regulation of JLG, while Article 21 regulates as follows:

"Article 21

- (1) Cash benefits are given every month for a maximum of 6 (six) months of Wages with the following conditions:
 - a. in the amount of 45 % (forty-five percent) of Wages for the first 3 (three) months; and
 - b. 25 % (twenty-five percent) of Wages for the next 3 (three) months.
- (2) The Wage used as the basis for payment of cash benefits is the last Wage of the Worker/Labors reported by the Employer to the Institution of Social Security Employment and does not exceed the upper limit of the Wage set.
- (3) The upper limit of Wages is set for the first time at Rp.5,000,000.00 (five million rupiahs).
- (4) In the event that the Wage exceeds the upper limit of the Wage, the Wage used as the basis for payment of cash benefits is the upper limit of the Wage."

As is well known, during the Covid-19 pandemic, many business sectors weakened, causing many companies to make efficiencies and/or close companies. This has an impact on the high number of layoffs carried out by the company. Such layoffs are permitted based on Government Regulation No. 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment (hereinafter referred to as Government Regulation No. 35 of 2021) with strict conditions. The Government Regulation No. 35 of 2021, regulated that "the reasons for layoffs are

²³ Kania Jennifer Wiryadi and Bayu Novendra, "Jaminan Kehilangan Pekerjaan Dampak Pandemi Covid 19: Pengaturan, Manfaat, dan Perbandingannya dengan Negara Lain (Job Loss Insurance Impact of Covid-19 Pandemic: Regulations, Benefits, and Comparisons with Other Countries)," *Jurnal Negara Hukum* Vol. 12, no. 1, (2021) 23-41, <https://doi.org/10.22212/jnh.v12i1.2112>.

expanded, including the company performing efficiently followed by company closure or not followed by company closure because the company suffers a loss; the company closed because the company suffered losses continuously for 2 (two) years; the company closed due to force majeure, and the company is in a state of suspension of debt payment obligations.” However, in order to guarantee the rights of workers to get a decent living, workers who are laid off will receive JLG as regulated in Government Regulation No. 37 of 2021.²⁴

In fact, in certain circumstances, workers who have left their jobs find it difficult to get a job again, as previously there were layoffs due to violations so that they did not get references, turnover (in and out of employees in a company), or too old to return to work such as in the field of ability or previous work, or because they want to start a business so that they force the worker to switch becoming an entrepreneur and also have to wait for the disbursement of OAS of up to 56 years, which will cause what is meant by the existence of employment social security which aims to guarantee the fulfillment of basic needs for a decent life for each participant and/or family members is far from being achieved.

Furthermore, there are exceptions to the JLG beneficiary, namely workers who, as regulated in Article 20 of PP JLG, terminate their employment due to resignation; permanent total disability; pension; or death, besides that there are also exceptions for workers who lose their jobs due to the expiration of the agreement of certain time work.

Pursuant to the exception above, about the JLG beneficiaries, they still have not answered the concerns that exist from the workers, where workers who are excluded from getting JLG benefits and have not reached the age to get OAS benefits which can only be felt when the participants reach the age of 56 years, will not get any benefits. although the purpose of OAS and JLG is to guarantee the fulfillment of the basic needs of a decent life for each participant and/or their family members.

Regarding the OAS policy as regulated in the Permen OAS which excludes JLG if it is related to the concept of the Indonesian welfare state, it can be seen that the OAS and JLG policies do not yet describe the concept of an Indonesian welfare state with social justice as mandated by the 1945 Constitution of the Republic of Indonesia, that social security must equitable for all people, empowering the weak and incapable in accordance with human dignity.

2.2. Forthcoming Concept of OAS and JLG Regulations that Reflecting a Welfare State for Social Justice

OAS Policy As previously described, the OAS and JLG policies have not been able to describe a social justice welfare state, because practically they have not been able to answer workers’ concerns. However, the OAS policy as stipulated in the Permenaker OAS was only implemented 3 months after the promulgation of the Permenaker OAS, therefore, until this writing was written (30 March 2022), there is still time to find OAS and JLG policies that have not been able to answer concerns and also have not been able

²⁴ Wiryadi, Novendra, *Jaminan Kehilangan Pekerjaan*, 21-41.

to describe the country. welfare, it is very important to find a future concept for OAS and JLG that describes the Indonesian welfare state with social justice.

In finding future concepts for OAS and JLG in Indonesia that describe a welfare state with social justice, many countries in the world already have Employment Social Security, both OAS and JLG, although JLG is a new thing that is regulated in Indonesia, some countries are already familiar with social security. similar to the previous JLG. Because some of them are familiar with the JLG instrument first, Indonesia can learn things those other countries use to then get a description of how OAS and JLG can describe the concept of an Indonesian welfare state that is socially just, of course with adjustments to social, economic, and social conditions. and Indonesian ideology. For example, doing a comparison of two developed countries, namely the Netherlands and Australia, which have been familiar with Social Security for a long time, such as OAS and JLG, in order to understand the general concept of OAS and JLG.

2.2.1. NETHERLANDS

a. Netherlands's Old Age Guarantee

The pension system in the Netherlands consists of three pillars, namely: the state pension system according to the *Algemene Ouderdomswet* (AOW) law, the private pension system regulated by the pension law, and individual personal pensions. When the work period has ended. A pensioner receiving old-age benefits can receive benefits only from the first pillar, a combination of the first and second pillars, a combination of the first and third schemes, or a combination of the three schemes.²⁵

Bovenberg & Meijdam explained that “the first pillar pension organized by the state, called “*Algemene Ouderdomswet*” (AOW), was established in 1957 and through the AOW, the Dutch government provides all residents older than the legal retirement age with a basic pension income, in which the state pensions provide a basic income, the rate of which is linked to the statutory minimum wage, and for married couples and cohabiting couples each receive 50 % of the minimum wage. Retirees living alone receive 70 % of the minimum wage”²⁶.

This first pillar is known as the pay-as-you-go system, which means that the cost of the state pension benefit is paid by the workforce in the form of contributions. Additional funding for the Dutch state pension comes from the fund. So directly or indirectly, everyone contributes to the increase in state pension costs, whether they work or retire. Workers who are of retirement age will get rights and facilities in accordance with applicable laws. This means that every retiree will get a basic or basic income to support the necessities of life.²⁷

The second pillar is the additional pension pillar based on the employer. Additional pensions will be provided by employers or companies, this pension scheme is managed

²⁵ Reichert S.J., *The Dutch Pension System, an overview of the key aspects*, Brussels, Belgium: the Dutch Association of Industry-wide Pension Funds and the Dutch association of Company Pension Funds. (2014), 7.

²⁶ Reichert, *The Dutch Pension System*, 7.

²⁷ Roel Beetsma et al., “The Dutch Pension System and the Financial Crisis,” CESifo DICE Report Vol.13, no. 2, (2015): 14-19.

by pension funds or by insurance companies. The organizer of a pension fund is a non-profit organization, as an independent legal entity and not part of a company. Pension funds will therefore not be directly affected if the company experiences financial difficulties.²⁸ This second pillar is regulated at the employer level and is part of the terms of employment agreed upon by the social partners (employer representatives and workers' organizations). Thus, a labor-based pension is in addition to the AOW. In addition to old-age pensions, private pension plans can also provide benefits for living relatives or benefits if you are unable to work.

This second pension pillar is available to different groups: industrial pension funds (e.g. ABP civil service pension fund, PFZW health care pension fund, or PMT metal worker pension fund PME), corporate pension fund (e.g. Shell, ING, and Unilever pension funds), and professional pension funds (pension funds for free professions, such as general practitioner pension funds, pension funds for medical specialists, and notary pension funds)²⁹.

The third scheme is formed by individual pension products. These funds can be taken when entering retirement. The third pillar pension provisions are made on a voluntary and individual basis. This type of pension consists of life insurance, individual annuities, or specially labeled savings. Banks and insurance companies are typical providers of third-pillar retirement products. The largest part of the third pillar consists of life insurance products provided by insurance companies.

The three schemes are certainly very good and provide plus facilities for retirees in the Netherlands. They don't have to worry about their life when they retire. A month before retirement, employees will be sent a mandatory form to fill out. Furthermore, the form is sent back to the Social Insurance Bank for immediate processing. Starting in 2022, AOW's retirement age will be 67 years old.

If a worker wants to retire early according to the first scheme, then he must pay for his life himself until the official Dutch retirement age, before the time to get AOW benefits then no benefits will be given. In some cases, a person can still take early retirement if the conditions are met, and you may be eligible for transition benefits. Similarly, you can also choose to delay your retirement, beyond retirement age can increase your retirement benefits and benefits.

b. Netherlands's Job Loss Guarantee in the

Job loss guarantee in the Netherlands is provided under the Unemployment Guarantee Act (WW, *Werkloosheidswet*) a worker who loses his job is entitled to unemployment benefits. Strockmeijer et al explained that "to be able to claim unemployment benefits in the Netherlands, an employee must meet 2 (two) conditions, the first condition is to lose your job and become unemployed. The second is to apply for unemployment benefits; provided they meet the requirements set out in the Unemployment Insurance Act, they can then receive benefits, and the Netherlands Unemployment Insurance Act

²⁸ Reichert, The Dutch Pension System, 10.

²⁹ Roel Beetsma et al., The Dutch Pension System, 16.

(*Werkloosheidswet*) protects employees from the financial consequences of unemployment by providing replacement income”³⁰.

Requirements for receiving WW benefits include unemployment insurance. This happens if you are working and have not reached the legal retirement age (AOW age); lost at least 5 hours of work per week and related wages (for employees working no more than 10 hours per week, the condition is the loss of at least half of the working time); Are you ready to work in the Dutch labor market? You must avoid becoming or remaining unemployed, for example by applying for a sufficient number of suitable job applications; have worked for at least 26 weeks out of the 36 weeks preceding the loss of employment (if during this period you also worked in another Member State, this period of work will be taken into account when determining your eligibility for unemployment benefits); You became unemployed through no fault of your own.

A person cannot receive guaranteed unemployment benefits in the Netherlands if he or she receives sickness or disability benefits; reached the statutory retirement age; reside or reside outside the Netherlands; not legally residing in the Netherlands; be in jail or jailbreak or jailbreak.

2.2.2. Australia

a. Australia's Old Age Guarantee

Atalay explained that “similar to the Netherlands, the pension income system in Australia is also based on three pillars, namely: retirement age, superannuation, and voluntary retirement savings, in Australia, there is no mandatory retirement age, and older people in Australia can supplement their retirement income through continuing employment.”³¹

Atalay elaborated that “Australia's first pillar program, known as the retirement age, was introduced in 1908. Its main objective was to eradicate high rates of poverty among the elderly, and since its inception, the retirement age has been a targeted program for proficiency testing based on income and assets.” Initially, the median criterion was relatively strict, with only 30 % of the older population receiving benefits. As testing facilities weakened over time, the participation rate rose, peaking above 85 % in the 1980s. As of June 2010, 69 % of the elderly population received pension benefits, which are the main source of income for most beneficiaries.³²

The second pillar program, namely superannuation, is a concept similar to the concept of OAS Indonesia. This policy regulates the right to fund pensions for workers. These benefits are obtained from the allocation of funds provided by the employer to their employees through savings, not from workers. This program is intended to improve the standard of living of individuals after passing the retirement age, which is 65 years.

³⁰ Anita Strockmeijer, Paul de Beer, and Jaco Dagevos, “Explaining Differences in Unemployment Benefit Takeup between Labour Migrants and Dutch Native Workers,” *International Social Security Review* Vol.73, no. 2 (2020): 75-99.

³¹ Atalay Kadir and Garry F. Barrett, “The Impact of Age Pension Eligibility Age On Retirement And Program Dependence: Evidence From An Australian Experiment,” *Review of Economics and Statistics* Vol. 96, no. 4 (2015): 71-87.

³² Atalay, Barrett, The Impact of Age Pension, 73.

The superannuation pension funding obtained from the company is not managed and monopolized by the state. So, workers can manage it themselves by utilizing private institutions engaged in the regulation of worker funding. There are many private services engaged in this field. Among them are Rest, ANZ Smart Choice Super, AustralianSuper, to Hesta. Later, the pension funding paid by the company will continue to increase in value from time to time. Simply put, this superannuation is like a personal long-term investment. Migrant workers in Australia can also enjoy these services³³.

In essence, superannuation guarantees cannot be disbursed before 65 years, but there are several circumstances that allow workers to withdraw their pension funds early, for example, experiencing death, terminating the work agreement at or after the age of 60 years, layoffs, temporary or permanent disability, financial difficulties that severe, Medical conditions that can lead to death, Financing for the first house, Workers whose financial problems have been disrupted due to COVID-19. Although workers in Australia want to disburse their pension funds faster, the government does not complicate it with all the complicated bureaucratic affairs. However, foreign workers who want to withdraw their superannuation funds, because they want to move to their home country, will be subject to a large tax.³⁴

b. Australia's Job Loss Guarantee

Australia has a program similar to JLG or other unemployment benefits called JobSeeker Payment. The program is given to Australian citizens who are still unemployed or do not have full-time jobs. In addition, this program is provided for citizens who are sick or injured, which makes them stop doing their work or studying as usual for a short time.³⁵

As for the eligibility requirements to get JobSeeker benefits, a worker or prospective worker must meet all of these:

- a. Between 22 and Retirement Age
- b. You meet the rules of residence
- c. You meet the income and asset tests.
- d. You must also meet the rules for one of the following situations:
- e. You meet our definition of unemployment and you are looking for a job.
- f. You are sick or injured and are unable to do your usual work or study for a short time.³⁶

In fact, the benefits of Jobseeker Payment can be felt not only by those who are not working and are looking for work but also by those who do not have permanent jobs such as part-time workers. This can include if you do a part-time or casual job.³⁷

³³ Rizqi Baiquni Pratama, "Enaknya JHT Di Australia Yang Nilainya Terus Meningkatkan Karena Berbunga," *Kumparan*, February 22, 2022, <https://kumparan.com/kumparanbisnis/enaknya-jht-di-australia-yang-nilainya-terus-meningkat-karena-berbunga-1xYQU4WJE6n/full>.

³⁴ "Withdrawing and Using Your Super," accessed March 4, 2022, <https://www.ato.gov.au/Individuals/Super/Withdrawing-and-using-your-super/>.

³⁵ "Servicesaustralia.Gov.Au/," accessed March 4, 2022, <https://www.servicesaustralia.gov.au/who-can-get-jobseeker-payment?context=51411>.

³⁶ "Servicesaustralia.Gov.Au/."

³⁷ "Servicesaustralia.Gov.Au/."

The concepts of OAS and JLG which are found in several parts of the country certainly have their own differences. The differences in these concepts are caused by the different factors behind the formation of OAS and JLG policies in each country and are adjusted to the conditions or social conditions of each country. The concept of social security in Indonesia is basically based on the provisions contained in Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which essentially mandates the state to develop a social security system for all people.

The OAS and JLG policies as employee social security have the aim of ensuring that all people can fulfill their basic needs for a decent life and also carry out the concept of an Indonesian welfare state based on the mandate of the 1945 Constitution of the Republic of Indonesia. With the aim of improving the national economy. In order to illustrate the concept of social justice in Indonesia's welfare, which can side with the vulnerable, namely workers, a policy that can be an option to be implemented in the future, namely, by imitating the Australian state, is reconsidering the length of time that workers can take advantage of the collected OAS funds. of the wages of workers is needed in certain circumstances to support their needs, which are still not protected in the JLG program such as when a participant resigns, is terminated, and is then unable to get a job again, stops working, or leaves Indonesia for good, but still in productive age, thus restoring the ease of workers in receiving benefits from OAS as regulated in the PP on OAS amendments, while still carrying out JLG benefits.

3. CONCLUSION

Indonesia as a welfare state, as stated in the fourth preambular paragraph of the 1945 Constitution of the Republic of Indonesia, states that in addition to the duty to govern the government, it also has a duty to organize the general welfare. As an obligation to organize public welfare, the state, through the authorized state body, has the right to interfere or intervene in the strategic areas of life, one of which is the area of social justice, social protection, and employment.

Regarding the OAS and JLG policies that have not been able to answer concerns and also have not been able to describe the welfare state, it is important to find a future concept for OAS and JLG that describes the Indonesian welfare state with social justice. Indonesia can learn from Australia, which in its OAS program allows workers to receive OAS benefits in certain circumstances, and the recipients of the OAS program cover all workers. As for what can be done by Indonesia, namely by reconsidering what are the concerns of workers in the OAS and JLG policies, such as regarding the period of time for workers to benefit from OAS funds collected from labor wages, which are needed in certain circumstances to support their living needs, which are still are not protected in the JLG program, such as when a participant resigns, is terminated and then cannot get a job again, stops working or leaves Indonesia for good, but is still of productive age, thus returning the rules as regulated in the PP on OAS amendments and still carry out the benefits of JLG.

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