

**OPPORTUNITIES AND CHALLENGES OF MANDATORY
SOCIAL SECURITY PARTICIPATION FOR INDONESIAN
MIGRANT WORKERS: A REVIEW OF CONVENTIONAL LAW
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ABSTRACT

In developed countries, social security is a priority. So much so that social security is one of the administrative requirements that must be fulfilled by every citizen. Social security, especially for workers, should be placed on a primary scale because its function can help ensure the welfare of workers in the future. Indonesia is the country with the largest number of Muslims, but the development of social security is far behind, even though Islam has rules, including regarding social relations which are based on the concept of mutual help as contained in the zakat regulations. This situation is an opportunity, the obstacle lies in state regulations which do not yet require Indonesian Migrant Workers (PMI) to be participants in all existing programs, only requiring Accident Insurance (JKK) and Death Insurance (JKM), while Old Age Insurance/Pension Insurance (JHT) is optional. Another thing is that it is not easy for PMI who have worked in other countries to become participants, especially those who do not have a written contract, because one of the requirements is the existence of a written contract. This was complained about by PMI who worked in Malaysia through the forgiveness program from the Malaysian government. Using qualitative research methods, this research places the researcher as the key instrument. The data collection technique was carried out by combining results obtained through interviews, observation and literature study, combined with inductive data analysis.

Keywords: Social Security; Indonesian Migrant Workers; Islamic Law.

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INTRODUCTION

Referring to the politics of labor law based on the Constitution of the Republic of Indonesia, the state through its policies is obliged to protect the rights of every person to have a job and protect every worker in their work.¹ In line with that, Indonesian Migrant Workers (PMI) also have the same rights as local domestic workers, namely getting protection in their work. Furthermore, protection for PMIs is not limited to protection while working, but also includes their rights as Indonesian citizens. PMI must be treated the same as people in Indonesia, they must not be treated differently, let alone discrimination.

Based on Law no. 18 of 2017, the protection of Indonesian Migrant Workers (PMI) is categorized into 3, namely, protection before work, protection during work and protection after work.² Article 1 paragraph (6) defines protection before work as protection for all activities from registration to departure, paragraph (7) defines protection during work as protection for all activities of PMI and their families while abroad, paragraph (8) defines protection after work, namely protection for all activities of PMI and their families after returning to their area of origin, including continued services to become productive workers. Narrowly, PMI protection is specific only to workers, but broadly protection is also given to PMI families who live with them.

The Indonesian government through Law No. 18 of 2017 has regulated the rights and obligations of PMI. Based on Article 6 paragraph (1) every Prospective Indonesian Migrant Worker (CPMI) or Indonesian Migrant Worker (PMI) has the right to get a job abroad and choose a job according to his/her competence, gain access to increase personal capacity through education and job training, obtain information regarding the job market, placement procedures and working conditions abroad, obtaining professional and humane services and treatment without discrimination before work, during work and after work, practicing worship in accordance with one's religion and beliefs, obtaining wages in accordance with the prevailing wage standards in the destination country of placement and/or an agreement between the two countries and/or the Employment Agreement, obtain legal protection and assistance for actions that could degrade one's honor and dignity in accordance with the provisions of laws and regulations in Indonesia and in the destination country of placement, obtain an explanation regarding the rights and obligations as stated in the Employment Agreement, obtain access to communication, control travel documents during work, association and assembly in the destination country of placement in accordance with the provisions of the applicable laws and

¹ Agusmidah. (2020). *Paradigma Hukum Ketenagakerjaan Indonesia*. Medan: Enam Media

² Gumilang Rustamaji, RK (2023). Implementasi Perlindungan Pekerja Migran Indonesia Menurut Undang-Undang Nomor 18 Tahun 2017 Tentang Pelindungan Pekerja Migran Indonesia (Studi BP2MI Lombok Barat). *Jurnal Hukum Perdata Fakultas Hukum Universitas Mataram, Volume 3, Nomor 1*, 260-261

regulations in the destination country of placement, obtain guarantees of safety and security protection return of Indonesian Migrant Workers to their areas of origin; and/or, obtain documents and Employment Agreements for Prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers.

The Indonesian Migrant Workers Protection Agency (BP2MI) recorded a decline in August 2024 compared to August 2023 regarding Indonesian migrant workers. It seems that in August 2024, there was a decrease of 19.81% from 28,927 in August 2023 to 23,197 people in August 2024. Meanwhile, regarding complaints, there was also a decrease in August 2024. Complaints related to migrant workers decreased by 29 complaints (from 172 to 143 complaints) or about 16.37%. This indicates that Indonesian migrant workers need protection from the government in carrying out their jobs.³

PMI protection from the employment social security approach is contained in the National Social Security System (SJSN) Law, the Social Security Administration Agency (BPJS) Law, and more specifically in the Regulation of the Minister of Manpower of the Republic of Indonesia Number 4 of 2023 concerning Social Security for Indonesian Migrant Workers. Article 1 Numbers 14, 15, 16 Three social guarantees that can be obtained by PMI, namely Work Accident Insurance, Death Insurance and Old Age Security (which are cash benefits that are paid at once when the Participant reaches retirement age, dies or experiences Permanent Total Disability).

METHOD

This article is part of the research results of the research team using qualitative methods, therefore the researcher/writer's understanding and knowledge of the research object is placed as a key instrument. So the data collection technique was carried out by combining interview techniques, observation and literature study, also combined with inductive data analysis.⁴ According to Poerwandari,⁵ qualitative research produces and processes descriptive data, such as interview transcriptions and observations. Kirk and Miller (in Moleong) define qualitative research as a way of making direct observations on individuals and connecting with these people to obtain the data they extract.⁶

³ Badan Pelindungan Pekerja Migran Indonesia, "Data Penempatan Dan Pelindungan Pekerja Migran Indonesia Periode Januari-Agustus 2024," last modified 2024, <https://bp2mi.go.id/statistik-detail/data-penempatan-dan-pelindungan-pekerja-migran-indonesia-periode-januari-agustus-2024>.

⁴ Sugiyono. (2010). *Metode Penelitian Pendekatan Kuantitatif, Kualitatif, dan R&D*. Bandung: Alfabeta

⁵ Poerwandari, K. (2005). *Pendekatan Kualitatif untuk Penelitian Perilaku Manusia*. Jakarta: Fakultas Psikologi Universitas Indonesia.

⁶ Moleong, LJ (2002). *Metode Penelitian Kualitatif*. Bandung : CV. Remaja.

DISCUSSION**Indonesian Migrant Workers Social Security Rights According to Conventional Law and Islamic Law**

Social security in Islamic studies consists of two types. First, traditional social security, namely the state's responsibility to guarantee the basic needs of its people through philanthropic instruments, such as zakat, infaq, alms, waqf, and even taxes. The Koran often mentions the doctrine of social security in the form of zakat, infaq, alms and waqf instruments whose funds are used for the purpose of ensuring the fulfillment of basic needs and a minimum quality of life for the entire community, especially the poor and other poor people. Second, social security in the form of social insurance (at-takmin alta'awuniy). In the concept of social security, both in the fields of health, employment, old age and death, all people are required to pay affordable premiums.

Ahmad Zaki Yumani is the Minister of Oil and Mining Affairs of the Kingdom of Saudi Arabia. In one of his works discussing the issue of social security from an Islamic perspective, he stated that the principles of social security have been established since the time of the Prophet. Social security is formulated in three terms, namely the principle of humanity, the principle of benefit, the principle of justice.

A Muslim is not only obliged to worship, but is also obliged to socialize with others. In terms of employment, a Muslim is obliged to work to meet his and his family's needs. This is exemplified by previous Prophets such as Prophet Adam AS who was a farmer, Prophet Nuh AS who in history is known to have worked as a carpenter, Prophet Daud AS who is reported to have worked as a blacksmith, and Prophet Muhammad S.A.W who is known to have worked as a cloth trader.⁷

Humans must be able to balance the affairs of this world and the hereafter. A believer who worships continuously until he forgets his life in the world is actually not good, nor is a human being who is busy chasing the world until he forgets to worship Allah S.W.T. He has actually gone astray.⁸

The Prophet S.A.W actually did not like people who begged even though he could and was still very capable of working.⁹ Islam actually orders its people to be people who have abundant wealth, the aim is for this wealth to be used in the way of Allah S.W.T. Islam views that in every person's sustenance other people's sustenance has been included

⁷ Kamil, I. (2020). *Profesi Para Nabi*. Diperoleh dari hidayatullah.com: <https://hidayatullah.com/kajian/oase-iman/2020/06/15/186115/profesi-para-nabi.html>

⁸ Muhammad, I. (2020). *Makna Hadist 'Bekerjalah untuk Duniamu Seolah-olah Kau Hidup Selamanya'*. Diambil 2024, dari NUOnline: <https://www.nu.or.id/ilmu-hadits/makna-hadits-bekerjalah-untuk-duniamu-seolah-kauhidup-selamanya-hwmYf>

⁹ Pewangi, M. (2010). Hubungan Kerja dan Ketenagakerjaan Perspektif Islam. *Jurnal Pilar: Jurnal Kajian Islam Kontemporer, Volume 1, Nomor 2*, 80-87.

in it, for this reason Islam recommends that each of its followers become rich so that they can help other people.¹⁰

Etymologically, social security, which in Arabic is called *takaful ijtimai*, consists of two words, firstly *takaful* which means "requirement" or "obligation" and secondly *ijtimai* is an ascription to *ijtima* which means society. So when combined it becomes an obligation to society.

According to fatwa No 21/DSN-MUI/X/2001 regarding the General Guidelines for Islamic Insurance, the definition of Islamic Insurance (*Ta'min, Takaful, Tadhamun*) is the mutual effort of protection and assistance among a group of individuals/parties through investment in assets and/or voluntary contributions, which provide a pattern of returns to address specific risks, in accordance with Sharia principles.¹¹

The key principle of employment relations which is built on the principle of mutual respect and respect as fellow human beings,¹² cannot be separated from the concept of *Amar Ma'aruf Nahi Munkar* (reminding each other in work relations), then if both the worker and the employer are negligent in something, must remind each other. Islam limits the loyalty of work relations to activities that are forbidden, so if the activity is a haram activity then the worker is not obliged to obey his master's orders (loyalty is not only between superiors and subordinates, but loyalty within Islamic values).¹³

Islam guarantees the rights of every worker contained in the principles of Islamic law. As narrated by Ibn Majah "*Has told us Abu Bakr bin Abu Syaibah has told us Waki' has told us Al-A'msy from Al-Ma'rur bin Suwaid from Abu Zar he said: Rasulullah S.A.W said "Brothers- Allah has made your brothers under your hand, so give them food like what you eat, give them clothes like what you wear, and do not burden them with anything that can burden them. If you impose something on them, then help them"*.¹⁴

Referring to the history above, several conclusions can be drawn regarding the rights and obligations of workers according to Islamic law, namely:

- a. Sub subtitles 1 Every worker must be employed according to his abilities, meaning that the employer or employer must not burden his workers with work that he is unable to complete.
- b. Every worker has the right to a decent wage, this refers to the history which mentions the words "*eat what you eat, and wear the clothes you wear*", this word

¹⁰ Hanafi, M. (2013). Optimalisasi Zakat dalam Ekonomi Islam. *Adzkiya* , 16-23.

¹¹ Susanto, B. (2010). *Aspek Hukum Lembaga Keuangan Syariah*. Yogyakarta: Graha Ilmu.

¹² Pewangi, M. (2010). Hubungan Kerja dan Ketenagakerjaan Perspektif Islam. *Jurnal Pilar: Jurnal Kajian Islam Kontemporer, Volume 1, Nomor 2* , 80-87.

¹³ Yusniar. (2023). Beberapa Anteseden Loyalitas Nasabah Dalam Perspektif Islam (Studi Pada Bank Syariah Indonesia di Aceh). *Sentri: Jurnal Riset Ilmiah, Volume 2 Nomor 9* , 3425-3433.

¹⁴ Islam, I. (nd). *Kumpulan Hadits* . Diperoleh dari Ilmu Islam: <https://ilmuislam.id/hadits/13219/hadits-bukhari-nomor-4800>

if interpreted means that every worker must earn enough income, so that they can eat food like that eaten by his master. The word "like" here does not mean it has to be of the same value, but rather the level of suitability. With decent wages, workers can get decent food and clothing and this is the employer's obligation to provide decent wages for their workers.¹⁵

- c. Every worker has the right to be treated with respect, this is the basic right of every human being, Islamic law views every human being as having the same position before God,¹⁶ for this reason every human being (worker) must be treated with respect. Likewise, the employee's obligation to respect his employer.
- d. Every worker is obliged to carry out his obligations in accordance with his duties. If the work is beyond his capabilities, the employer or master is obliged to help the worker carry out his duties.¹⁷
- e. Every worker has the right to rest, this can be seen from the hadith of Bukhari "Do not do that, but fast and break your fast, pray at night and sleep, because your body has a right over you, your eyes have a right over you, your wife has a right over you and your wife has your rights," this hadith reminds us not to overdo something, it is the same as work, workers certainly have other lives besides work, there is family and other social lives, for this reason every worker is guaranteed the right to holiday or leave in Islamic law.¹⁸

a. Social Security for Indonesian Migrant Workers According to Conventional Law

Regulation of the Indonesian Migrant Worker Protection Agency (BP2MI) of the Republic of Indonesia Number 7 of 2022 concerning the Pre-Employment Process for Prospective Indonesian Migrant Workers Article 1 Number 13 reads: *Social Security is a form of social protection to guarantee that all people can fulfill their basic needs for a decent life*.

Article 22 (1) *Prospective Indonesian Migrant Workers placed by Indonesian Migrant Workers Placement Agency (P3MI) are required to take part in the employment Social Security program for protection before work, during work and after work in accordance with statutory provisions.* (2) *Participation in the employment Social Security*

¹⁵ Syufaat. (2019). Jaminan Sosial Islam. *Konferensi Internasional Masyarakat Muslim, Volume 3*, 245-258.

¹⁶ Nurfajrina, A. (2023). *detikhikmah*. Diambil dari detik.com: <https://www.detik.com/hikmah/khazanah/d-6542628/surat-al-hujurat-ayat-13-semua-manusia-setara-di-sisi-allah-swt-kecuali-ketakwaan>

¹⁷ Pewangi, M. (2010). Hubungan Kerja dan Ketenagakerjaan Perspektif Islam. *Jurnal Pilar: Jurnal Kajian Islam Kontemporer, Volume 1, Nomor 2*, 80-87

¹⁸ Islam, I. (nd). *Kumpulan Hadits*. Diperoleh dari Ilmu Islam: <https://ilmuislam.id/hadits/13219/hadits-bukhari-nomor-4800>

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program for protection before work as referred to in paragraph (1) is carried out by registration and payment of contributions after the prospective Indonesian Migrant Worker signs a Placement Agreement. (3) Participation in the employment Social Security program for protection during work and after work as intended in paragraph (1) is carried out by registration and payment of contributions after Prospective Indonesian Migrant Workers carry out the Pre-Departure Orientation (OPP). Article 23 (1) Prospective Indonesian Migrant Workers who are placed by the company for the company's own interests are required to participate in the employment Social Security program for the duration of their work in accordance with the provisions of statutory regulations. (2) The company as referred to in paragraph (1) facilitates the processing of employment Social Security for prospective Indonesian Migrant Workers that it places. Article 24 (1) Individual Indonesian Migrant Workers are required to participate in the employment Social Security program during and after work in accordance with the provisions of statutory regulations. (2) Management of Employment Social Security participation for Individual Indonesian Migrant Workers as referred to in paragraph (1) is carried out independently.

Regulation of the Minister of Manpower of the Republic of Indonesia Number 4 of 2023 concerning Social Security for Indonesian Migrant Workers Article 1 Numbers 14, 15, 16 Three social guarantees that PMI can obtain are:

- a. Work Accident Insurance, hereinafter abbreviated to JKK, is a benefit in the form of cash and/or health services provided when a Participant experiences a Work Accident or illness caused by the work environment.
- b. Death Benefit, hereinafter referred to as JKM, is a cash benefit given to the heirs when the Participant dies not as a result of a Work Accident.
- c. Old Age Security, hereinafter abbreviated as JHT, is a cash benefit that is paid at once when the Participant reaches retirement age, dies, or experiences Permanent Total Disability.

Employment social security benefits for migrant workers (PMI) through Minister of Manpower Regulation (Permenaker) No.18/2018 concerning Social Security for Indonesian Migrant Workers (PMI). The benefits that will be received by PMI who are registered in the BPJS Employment program include protection against the risk of work accidents and death that occur while undergoing preparation or training; while in the work placement country, until returning to Indonesia after the work period ends.¹⁹

Apart from Work Accident Insurance (JKK) and Death Insurance (JKM) protection, migrant workers can also choose to take part in the Old Age Security (JHT) program

¹⁹ Baik, I. (nd). *Info Grafis*. Diperoleh dari Indonesiabaik.id: <https://indonesiabaik.id/infografis/jaminan-sosial-pekerja-migran-banyak-manfaatnya-lho>

which can be used as savings for PMIs when they have completed their work period in their country of placement. Increased benefits are provided in the protection program for the risk of work accidents that occur, such as covering accidents resulting from work activities, acts of violence and rape, the coverage of which will be handled by BPJS Employment until the person concerned recovers. PMI will also receive disability compensation of up to IDR 100 million due to work risks.

Other benefits include compensation for failing to leave for the placement country worth IDR 7.5 million, layoff assistance due to work accidents ranging from IDR 2 million to IDR 5 million, scholarships for two children until they graduate or receive job training, and assistance with replacement plane tickets for PMI's return home. Due to work accidents are also regulated in this regulation. Scholarships or job training for the two participating children are considered very important to maintain a decent and prosperous level of life in the future.

Another benefit, compensation for losses due to the actions of other parties during the return trip to the area, will be reimbursed in the amount of IDR 10 million. Apart from that, if PMI is at risk of work accidents and experiences disability, BPJS Employment will also provide vocational assistance and training so that the person concerned can continue to be creative and generate income through other business fields.

b. Social Security for Indonesian Migrant Workers According to Islamic Law

The concept of social security in Islamic law is known as a simpler concept, but if it is taken further, its scope is quite broad. The concept of social security in Islamic law is known as the concept of mutual assistance. Verse of the Qur'an as contained in Q.S An-Nisa verse 36: "*Worship Allah and do not associate anything with Him. And do good to parents, close relatives, orphans, the poor, neighbors near and far, and colleagues, Ibn Sabil and your servants. Indeed, Allah does not like those who are arrogant and boast*". This verse encourages every human being to do good to each other, this has been around for a long time before the concept of social security, which actually has the same goal, namely helping each other.

Islamic law views social security (in this case discussing social security for Indonesian Migrant Workers) as the central role of the government as the holder of people's sovereignty. The government's active role in managing workers' social security is very necessary,²⁰ this is called (*Tanzim al-dunya*).²¹ In principle, protecting all workers is the government's responsibility. In Islamic law, the basic principles of social security can be seen from the history of the *Asyari* tribe, where at that time there was a drought

²⁰ Setyono, J. (2015). Good Governance dalam Perspektif Islam (Pendekatan Ushul Fikih: Teori Peningkatan Norma). *Jurnal Muqtasid, Volume 6, Nomor 1*, 25-32.

²¹ Muhamat, AA (2021). Tata Kelola Operator Takaful (Perusahaan Asuransi Syariah). *TUJISE: Jurnal Ekonomi Islam Turki*, 35-58

which caused famine, but the *Asyari* government had local wisdom, namely that all *Asyari* people gathered their food, then cooked and ate it together. The Prophet praised activities that demonstrated social security which became the forerunner of *Takrir* (the Prophet confirmed this activity) which gave birth to the concept of social security, namely *Takaful* (social mutual guarantee), which is currently being implemented as a mutual aid association.²²

Social security is a worker's need, in fact the needs of workers (humans) in Islamic law are divided into 3, namely: 1) *Daruriyat* (urgent and basic or primary), which if not met can threaten life; 2) *Hajiyat* (secondary), if not fulfilled it can make life more difficult; 3) *Taksiniyat* (tertiary) which if not fulfilled does not interfere with survival but reduces aesthetics. If seen in general, social security according to Islamic law is classified as a *Hajiyat* or secondary need, which if not met will make life more difficult.

Social security covers various basic needs of workers, such as health insurance, but in terms of carrying out work, the guarantee needed is not limited to just Health Insurance, but also guarantees for various risks that workers may face. If explained, there is work accident insurance, old age insurance, and even death insurance. All of these things are risks that every human being and worker will face, meaning that they are related to social security for workers, so the classification according to Islamic law is different, depending on the level of urgency. As a country with a majority Muslim population, managing social security in accordance with Islamic law is a must to accommodate the needs of citizens, in this case workers.²³

Social Security for Migrant Workers: Opportunities and Challenges

Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers through Article 29 paragraph (1) states: "*In an effort to protect Indonesian Migrant Workers, the Central Government provides Social Security for Indonesian Migrant Workers and their families*". The role of administering social security is assigned to the Social Security Administering Body (BPJS) based on Law Number 24 of 2011 concerning Social Security Administering Bodies.

Article 1 number 1 Law no. 24 of 2011 states "*Social Security Administering Body, hereinafter abbreviated as BPJS, is a legal entity established to administer social security programs*". The source of funds comes from contributions paid by all BPJS participants and the Government. BPJS is divided into BPJS Health and BPJS Employment. BPJS Employment is the one that organizes and manages social security for Indonesian Migrant Workers (PMI).

²² Setyono, J. (2015). Good Governance dalam Perspektif Islam (Pendekatan Ushul Fikih: Teori Peningkatan Norma). *Jurnal Muqtasid, Volume 6, Nomor 1*, 25-32.

²³ Syed Ali Raza, RA (2019). Faktor-faktor yang Berpengaruh terhadap Adopsi Asuransi Islam: Perpanjangan Teori Perilaku Terencana. *Jurnal Pemasaran Islam*, 1-19.

BPJS Employment organizes protection programs for workers which include work accident insurance, old age insurance, pension insurance and death insurance programs.²⁴ Meanwhile, according to Article 3 of Minister of Manpower Regulation No. 18/2018 PMI must be registered with the work accident insurance and death insurance programs, as well as optional old-age insurance.

BPJS, in carrying out its duties, has the authority to manage BPJS funds, including the authority to place social security funds for short-term and long-term investments by paying attention to aspects of liquidity, solvency, prudence, security of funds and adequate returns, meaning that BPJS can manage BPJS funds. beyond the objectives of social security as contained in Article 11 of Law no. 21/2011.

The BPJS funding mechanism comes from participant and government contributions. Employers are required to collect contributions that are borne by participants from their employees and deposit them with BPJS. Participants who are not workers and are not recipients of Contribution Assistance are also required to pay and deposit the Contributions that are their responsibility to BPJS. The government also pays and deposits contributions for recipients of contribution assistance to BPJS. Regarding the mechanism for claiming benefits, it is carried out in various ways, specifically for Indonesian Migrant Workers (PMI), the programs registered are Work Accident Guarantee (JKK) and Death Guarantee (JKm), until now both programs can be claimed by PMI by returning to Indonesia, come to the local BPJS Employment office, complete the required documents, show supporting evidence, for further processing by BPJS. After that, BPJS issues a certificate to be taken to the designated bank for the funds to be disbursed.²⁵ This means that if PMI experiences a work accident while in the country of placement, PMI cannot immediately make a Work Accident Insurance (JKK) claim.

The number of PMI up to 2024 was recorded at 22,346 people. In July 2024, BP2MI increased by 8.29% (BP2MI). It is predicted that this number does not include PMI who do not have an official work contract due to several reasons such as changing employers, not having a work visa, leaving through an agent or not. official, unofficial arrivals (unprocedural) finally they got work visas through a program held by the Malaysian government known as the "Amnesty Program" so that through guarantees from their employers they could get work visas, but did not have a written contract. This is the obstacle in not being able to register with BPJS TK because one of the requirements is a written contract. In fact, in terms of the large number of PMIs, they have the potential to become participants so that many workers are protected.

²⁴ Ketenagakerjaan, B. (nd). *Tentang Kami*. Diperoleh dari [bpjsketenagakerjaan.go.id: https://www.bpjsketenagakerjaan.go.id/tentang-kami.html](https://www.bpjsketenagakerjaan.go.id/tentang-kami.html)

²⁵ Ketenagakerjaan, B. (nd). *Cara Klaim Manfaat BPJAMSOSTEK*. Diperoleh dari [bpjsketenagakerjaan.go.id: https://www.bpjsketenagakerjaan.go.id/cara-klaim.html](https://www.bpjsketenagakerjaan.go.id/cara-klaim.html)

This was confirmed by interviewed PMI informants who work in Malaysia. According to him, while in the placement country, if a work accident occurs, the risk is handled through PERKESO or SOCSO, where the contribution is paid at the same time as processing the work visa. Based on their placement, there are PMIs who from the start depart through registered and legal agencies (procedural), but there are also those who are not procedural. If procedurally, they are required to register as BPJS Employment participants for two mandatory programs, namely work accident insurance and death insurance, while old age insurance is not mandatory. It is recommended to take part in this program when you are already working, meaning you are already in your country of placement.

A technical problem that cannot yet be resolved is the procedure for registering and paying contributions when PMI is in the country of placement. Apart from that, PMIs are also not educated so they have very little knowledge about the existence of the BPJSTK program which is about old age savings. This happens because there is a lack of sufficient information about this program, PMI respondents who were interviewed stated that they did not understand about old age security.

In order to overcome challenges in the form of doubts about the halalness of social security because it is feared that it contains elements of *Gharar* and *Usury*, the Indonesian Ulema Council (MUI) issued DSN-MUI Fatwa NO.21/DSNMUI/X/2001 (General Guidelines for Sharia Insurance) which stated that the BPJS financing mechanism is halal (related to contributions and obtaining benefits). However, there was another party's view which stated: "...the absence of any argument that prohibits the practice of insurance is one of the reasons for those who allow insurance" namely by adhering to the principle "the law as long as anything is permissible unless there are arguments that prohibit it".²⁶

There are still different views regarding the contribution payment system which is not in accordance with sharia, because Labour Social Security Organising Agency (BPJSTK) determines the amount of contributions like the Conventional Insurance system, where participants who register are required to pay contributions every month to be able to obtain benefits in the form of services for uncertain risks, so according to the MUI fatwa, this is haram. The solution is that the contribution system must be based on the *Takaful* Insurance system, that is, participants pay contributions on a voluntary basis, not forced.^{27, 28}

²⁶ Muhamad Nadrattuzaman Hosen, DM (2013, Desember). Mendudukan Status Hukum Asuransi Syariah dalam Tinjauan Fuqaha Kontemporer. *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, Volume 13, Nomor 2, 219-232.

²⁷ Wildan. (2015). Skema BPJS Kesehatan Perspektif Fatwa DSN-MUI No. 21/DSN-MUI/X/2001 (Pedoman Asuransi Syari'ah). *Jurnal Online Universitas Muhammadiyah Surabaya*.

²⁸ Murat Simsek, HK (2021). Model Asuransi Islam dan Takaful. *Jurnal Studi Islam dan Humaniora*, 2-16.

In order to solve conceptual problems that impact the membership level, the government can explore providing sharia social security, and people are given the freedom to choose the system they want according to their beliefs. MUI recommends that the financing mechanism be improved so that it complies with sharia principles. For example, JHT should be made through a *Khafalah* contract to avoid *Gharar Mayisyir* and *Usury*, the way to do this is by ensuring what percentage of the contribution amount is paid as well as the exact provisions regarding obtaining the benefits completely and clearly (Dahnoun, 2018), if it is not regulated completely and clearly, then It is feared that it cannot be separated from the element of usury. Then are contributions only taken from salaries, is there a role for the government in helping to finance social security, according to Islamic law it would be better if the financing were borne entirely by the government as an embodiment of *Tanzim al-dunya dunya*,^{29,30}.

MUI issued Fatwa No: 147/DSN-MUI/XII/2021 concerning Implementation of Employment Social Security Based on Sharia Principles. This fatwa was issued based on the community's need for the importance of social security for employment in accordance with sharia principles. The BPJS programs that are included in the scope of this MUI fatwa include Work Accident Insurance (JKK), Old Age Security (JHT), Pension Security (JP), Death Insurance (JKm), and Job Loss Insurance (JKP). It is officially stated through this Fatwa that the law for administering Employment Social Security at BPJS Employment is permissible provided that it follows the provisions of the Fatwa.

The scope of Employment Social Security includes the JKK, JHT Program. JP, JKM and JKP. In terms of BPJS Employment social security participation, a contract (agreement) is required between the Participant (and/or Collective Participants) and BPJS Employment as the social security implementer, the contract used is the *Wakalah bi al-ujrah* Agreement. The *Wakalah bi al-ujrah* agreement includes granting authority for administrative activities, risk portfolio management, investment/development of employment social security funds, payment of benefit money, and other activities in accordance with statutory regulations. Apart from the *Wakalah bi al-ujrah* contract, there are other types of contracts adapted to the social security program. Specifically for the JKK, JKM and JKP programs, the agreement between Participants and BPJS is the *Tabarru'* Agreement, namely a contract carried out in order to help each other (*Ta'awun*) among fellow Participants through the formation of *Tabarru'* Funds. The contract in the JP Program is the *Tanahud* Grant Agreement in the context of helping each other

²⁹ Syufaat. (2019). Jaminan Sosial Islam. *Konferensi Internasional Masyarakat Muslim, Volume 3*, 245-258.

³⁰ Hui Shan Lee, FF (2019). Faktor Efisiensi, Faktor Spesifik Perusahaan, dan Faktor Tata Kelola Perusahaan Asuransi Takaful. *Jurnal Internasional Keuangan dan Manajemen Islam dan Timur Tengah Volume 12 Nomor 3*, 368-387

(*Ta'awun*) as well as Participants through the formation of the *Tanahud* Fund. The contract in the JHT program is the *Wakalah bi al-Istitsmar* Agreement.

The agreement in this fatwa is also required between workers and employers. The contract between the Employer and the Participant (Employee) is a *Hibah* Agreement or *Hibah bi Syarth* (Grant) Agreement. BPJS also implements agreements with the Government. The agreement between the Government and BPJS Employment as representatives of Collective Participants in dealing with Employment Social Security Funds that do not meet financial health standards is the *Hibah* Agreement or *Qardh* Agreement. Here the government plays the role of supervisor of BPJS Employment as the managing agent for employment social security funds. This role is very important for the government as a policy maker.³¹ The implementation of BPJS Employment for workers including Indonesian Migrant Workers is permitted by Islamic law while complying with the conditions set out, reinforced by MUI Fatwa No: 147/DSN-MUI/XII/2021 concerning the Implementation of Employment Social Security based on Sharia Principles.

CONCLUSION

The concept of labor social security is generally intended for workers. Not only for local workers, but also for Indonesian migrant workers who choose to work abroad. Nationally, regulations related to social security for Indonesian migrant workers are regulated in the Regulation of the Minister of Manpower of the Republic of Indonesia Number 4 of 2023 concerning Social Security for Indonesian Migrant Workers. In line with the above provisions, the concept of worker social security in Islamic law has been known for a long time. The concept of mutual assistance is a basic concept that can be seen through the values of Islamic law, as a form of manifestation of which there is zakat which is obligatory for every Muslim. Meanwhile, every Muslim is required to set aside a portion of his wealth to donate to the cause of goodness which will later be distributed to people in need such as the poor, orphans, orphanages, the elderly, and helping victims of disasters and violence. Social security according to Islamic law is classified as a *Hajiyat* or secondary need, which if not met will make life more difficult. It is known that social security covers various basic needs of workers, such as health insurance, but in terms of carrying out work, the guarantee needed is not limited to just Health Insurance, but also guarantees for various risks that workers may face.

The opportunity to implement social security for PMI according to the law and Islamic law already has its foundations. The implementation of social security according to the recommendations of Islamic law should be carried out by the government as the representative of the people. The contribution system must be based on the *Takaful*

³¹ Muhamat, AA (2021). Tata Kelola Operator Takaful (Perusahaan Asuransi Syariah). *TUJISE: Jurnal Ekonomi Islam Turki*, 35-58.

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Insurance system, that is, participants pay contributions on a voluntary basis, not coerced. The government as the implementer of social security for workers needs to ensure what percentage of the contribution amount is paid as well as the exact provisions regarding the benefits obtained completely and clearly, in order to avoid the element of *Riba*. in the implementation of workers' social security

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