

NEW IMPLEMENTING REGULATIONS ON INDONESIA'S PENSION AND OLD AGE SECURITY PROGRAMS

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On 30 June 2015, the Indonesian government issued Government Regulation No. 45 of 2015 on the Management of the Pension Security Program ("GR 45/2015") and Government Regulation No. 46 of 2015 on the Management of the Old Age Security Program ("GR 46/2015"). With these regulations, Indonesia's new pension security program is introduced and the old age security program has been updated. Both regulations came into effect on 1 July 2015.

Pension Security

GR 45/2015 requires all employers other than state ministries etc. to enroll all of their employees in the pension security program ("Pension Program"). Participants in the Pension Program can be (i) salary earners (ie employees) or (ii) non-salary earners. Participation in the pension program starts with the first contribution being paid into the pension program.

The contribution to the Pension Program is 3% of the monthly salary. The monthly salary is the actual pay consisting of base salary and fixed allowances which is received for the last one month. However, practically it can be calculated before tax (ie based on gross income) due to any non-fixed allowances that might be received by the employee. Specifically for salary earners, the contribution is paid jointly, 2% by the employer and 1% by the employee. The contribution will be reviewed by BPJS within at least 3 years of payment of the first contribution and the employer's contribution may be gradually increased to up to 8%. The employee's contribution to the pension program is deducted by the employer from the employee's monthly salary which for 2015 is limited to a maximum salary of Rp7,000,000,-. This salary limit for contributions may be changed every year. The entire contribution is paid to BPJS Manpower.

A delay in the payment of contributions may result in the imposition of a fine of 2% of the monthly contribution for each month of delay in payment. Employers are responsible for

paying the fine.

Initially, the pension benefit paid to the participant will be from IDR300,000 to IDR3,600,000 per month at the most. The benefit is payable until the employee passes away. The benefit can be obtained by a participant only after the participant has:

been enrolled in the program for at least 15 years or 180 months; and

reached retirement age. Currently the retirement age is 56, but starting on 1 January 2019, the retirement age will be 57 years. This retirement age will gradually increase by one more year every three years until the retirement age finally becomes 65.

If the employee has reached retirement age but has not been enrolled in the program for 15 years, the employee is entitled to the total accumulation of contributions paid plus its growth.

The type of pension benefits that will be paid could be:

an old age pension;

a disability pension;

a widow's or widower's pension;

a child's pension; or

a parents' pension.

The following Pension Program benefits may be claimed:

the old age pension once the participant has reached pension age and has paid contributions for 15 years or equivalent to 180 months. Payment of this benefit ceases upon the demise of the participant.

a disability pension if the participant suffers total permanent disability before reaching pension age. Payment of this benefit ceases upon the demise of the participant or if his/her disability is no longer defined as total and permanent.

a widow's or widower's pension will be received by the husband or wife of the participant who passes away. Payment of this benefit ceases upon the demise or remarriage of the widow or widower.

a child's pension to a child (i) if his/her parents who were participants both pass away; or (ii) if the widow or widower of the participant passes away or remarries. Payment of this benefit ceases when the child reaches the age of 23, finds work or marries.

a parents' pension to the parents of a participant who passes away leaving no wife, husband or child. Payment of this benefit ceases upon the demise of the parents.

Pension Program benefits are paid as follows:

the first payment is paid (i) upon the Pension Program benefit entitlement being calculated and receipt of all the required supporting documents by BPJS Manpower; or (ii) within 15 (fifteen) days of the Pension Program benefits becoming payable, assuming all the required supporting documents have been received by BPJS Manpower.

the next payment is paid at the latest on the first day of the following month.

If an employer does not comply with GR 45/2015, the following progressive sanctions may be imposed: written warning, a fine, and the withdrawal of certain public services under the prevailing laws.

GR 45/2015 does not mention anything about the previous pension fund under Law No. 11 of 1992 and, indeed, the two programs seem to overlap each other. However, the Pension Program under GR 45/2015 is mandatory and therefore employers must enroll all their employees in it as well as continuing with separate existing pension fund obligations. According to some observers, the new Pension Program is likely to cause stagnancy in the private pension fund industry. It remains to be seen how GR45/2015 will be implemented as we note that some provisions are unclear and will be further regulated in the ministry regulation, eg the procedures for the payment of the pension benefit.

Old Age Security

Under GR46/2015, participants in the old age security program are salary earners (eg employees) and non-salary earners (eg independent consultants). The contribution payable to BPJS Manpower depends on the type of participation.

a. Salary earner participants

The contribution is 5.7% of the employee's monthly salary, of which 3.7% is paid by the employer and 2% by the employee. The monthly salary here means the basic salary plus fixed allowance(s) (if any).

b. Non-salary earner participants

The contribution is based on certain figures from the participant's income listed in the Attachment to GR 46/2015. The participant may choose how much to contribute him/herself. For example, if the participant's income is from IDR9,200,000 up to IDR10,199,000, the basic

salary for calculating the old age security contribution is IDR9,700,000. Therefore, the contribution payable to BPJS Manpower is IDR194,000. The amount of contribution can be seen in the Attachment to GR 46/2015.

The contributions for both salary and non-salary earner participants are paid to BPJS Manpower. A delay in the payment of contributions may result in the imposition of a fine of 2% of the monthly contribution for each month of delay in payment. Specifically for salary earner participants, employers are responsible for paying the fine.

Old age security benefits are payable when the participant reaches 56, passes away, suffers a permanent disability, or leaves Indonesia permanently. The benefits are payable in a lump sum. If the participant passes away, then the benefits will be given to the legitimate heirs (ie widow/widower or child(ren)). If the participants have no legitimate heirs, then the old age security benefits will be paid to:

immediate family until the second degree;

siblings;

in-laws; and

the appointed party under the participant's testimony.

If the employee resigns or is terminated before reaching retirement age, the old age security benefits are only payable when the employee reaches 56. The benefits are calculated from the total accumulation of contributions paid plus its growth.

Participants may also claim the benefits before they satisfy any of the above requirements in order to prepare themselves for retirement before they reach retirement age. However, they must have participated in the program for at least 10 years; and the benefits can only be claimed up to a certain limit: either 10% of total benefits for preparing for retirement or 30% to buy a house.

If an employer, among others, does not enroll its employees in the old age security program, BPJS Manpower may impose the following progressive sanctions: written warning, a fine, and the withdrawal of certain public services under the prevailing laws.

The public's attention has been drawn to GR46/2015 because now participants must have participated for at least ten years to claim benefits before reaching retirement age, while previously, participants only needed to have participated for five years to claim the benefits. There have been some indications that due to the controversy caused by the changes, the government may consider amending GR 46/2015

