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CONTENTS

Volume 19, Number 1

January-June 2019

1. An Evaluation of Colour Change in Abrasion and its Correlation to Time: A Cross-Sectional Study from a Tertiary Care Centre 1
Anil Mangeshkar, P S Varghese
2. Correlation of the Age of Eruption of Teeth with the Body Mass Index among School Children 7
Karikalan T, Anil R Pandey
3. Profile of Internal Injuries to Thorax, Abdomen and Pelvis Sustained by the Victim During Fatal Road Traffic Accident in Central India 11
Manu D Sharma, Deepak L Bhagwat, B. H. Tirpude, P. N. Murkey, I L Khandekar, Sharjeel Khan, Ambedkar Ranjan
4. Profile of Cases of Fatal Road Traffic Accident with Respect to Diurnal Variation of Time, Age, Sex and Death of Victim in Central Rural India-Autopsy Based Study 15
Deepak L Bhagwat, Manu D Sharma, B. H. Tirpude, P. N. Murkey, I L Khandekar, Sharjeel Khan, Ambedkar Ranjan
5. A Two-Year Prospective Study from Punjab Region of India 20
Mittal D R, Jasbir S, Rai G, Kumar K, Sharma R K
6. A Prospective Study of Unnatural Deaths in Married Women within Seven Years of Marriage in Hapur District of Western Uttar Pradesh 26
Rizwi A, Jasbir S, Sharma R K, Abhishek S
7. Pattern and Distribution of Injuries in Victims of Fatal Road Traffic Accident Cases of Bikers in Haryana a Retrospective Study 31
Jitender Kumar Jakhar, Tarun Dagar, Naveen Yadav, Piyush Jain
8. Applicability of Three Component System of Age Estimation in Haryana Population 36
Kumaran M, Dalbir Singh, Bansal YS, Mandal SP, Murali G
9. Bite Marks: An Indispensable Tool for Forensic Odontological Evidence 42
M. K. Sunil, Upender Malik, Sourav Malhotra, Arishah Gulzar, Radhika Sharma
10. A Study on Pattern of Adolescent Deaths- A Retrospective Study 47
SantoshKumar P, Gajanan H Nayak, Mahalaxmi B Karlawad
11. A Study of Thermal Deaths in Rohtak, Haryana 52
Malik A K, Sharma D, Dhatarwal S K, Panchal K, Singla K
12. Does Knowledge and Attitude is Needed Regarding Euthanasia in Clinical Course? A Narrative Review Based on an Available Literature 56
Mohd. Arif Husain, Ishak Mohammad, Nageshwar V, K M K Sridhar

13. A Study Pattern of Poisoning among the Autopsies Conducted at Adichunchanagiri Institute of Medical Sciences	61
<i>N T Satish, M G Shivaramu, Jethin Ramadasan</i>	
14. Determination of Sex from Mastoid Dimensions among North Indians	65
<i>Rajeev Kumar Chaudhary, Anupama Mahajan, Monika Piplani, Baljeet Singh Khurana</i>	
15. Implications of Maxillofacial Injuries on Quality of Life in Trauma Victims	70
<i>Karan Giriyan, Rajesh Kamath, Brayal D'Souza, Sagarika Kamath, Sneha R Bhat</i>	
16. Maxillofacial Injuries and Its Implications on Economic Burden in Trauma Victims	76
<i>Karan Giriyan, Rajesh Kamath, Brayal D'Souza, Sagarika Kamath, Sneha R. Bhat</i>	
17. Study of the Impact of Quality of Patient Care on Discharge against Medical Advice Patients in a Tertiary Care hospital	82
<i>Aswathi Raj L, Rajesh Kamath, Somu G., Biju Soman, Brayal D'Souza, Sagarika Kamath, Sneha R. Bhat</i>	
18. Body Mass Index and Suicide	89
<i>Jayanthi Yadav, Sujeet Kumar Samadder, Rajneesh Kumar Pandey</i>	
19. A Study on the Association Between Extradural Hemorrhage and Skull Fractures in Head Injury	95
<i>Parinita, Renju Raveendran, K. Valsala</i>	
20. A Rare Case of Suicide by Multiple Gunshot Wounds to the Head	99
<i>Filippo Milano, Michele Treglia, Anna Mancuso, Stefania Urso, Gian Luca Marella</i>	
21. A Study to Estimate the Reliability of “Moritz Rule of Thumb-Method A and Method B” Method of Estimation of Time Since Death in Tropical Climate of Central India	104
<i>Jayanthi Yadav, Rajneesh Kumar Pandey, Sujeet Kumar Samadder</i>	
22. Effect of Role Play Video-An Innovate Tool on Court Room Procedures to Educate Medical Graduates	108
<i>B. Suresh Kumar Shetty, Sharada Rai, Rohit C Shet, M S Kotian, Navjot S Dhillon, Ishika Mahajan, Ciraj A M</i>	
23. Profile of Mortalities due to Alcohol and Drug Consumption in Road and Rail Traffic Accidents in Mangaluru, a Coastal City of Karnataka, India	113
<i>Subham Sarthak, B. Suresh Kumar Shetty, Jagadish Rao PP, Pavanchand Shetty H, Haniel D'Souza, Adithi S Shetty, M S Kotian</i>	
24. Psychological Well-Being as a Mediator Between Psychological Contract Breach and Organisation Citizenship Behaviour	118
<i>Veena Christy, Jayapreethi Manoharan, M. Yokesh</i>	
25. Pattern of Poisoning Cases at a Tertiary Health Care Centre—A Cross Sectional Study	124
<i>Vinay Bannur, Prasanna S. Jirli, Ravindra S. Honnungar, Vishal V. Koulapur, Somashekhar S. Pujar</i>	
26. An Analysis of Pattern of Fatal Head Injuries in Road Traffic Accidents	130
<i>Shobhana S S, RaviRaj K G, Yadav Abhishek, Lohith Kumar R</i>	
27. Antibody Detection (IgG, IgM) of both HSV-1 and VZV in Serum and Saliva of Bell's Palsy Patients Recovered by Low Level Laser Therapy	134
<i>Ali Mihsen Hussein Alyassiri, Taghreed Fadil Zaidan</i>	

28. Demographic Profile of Pattern of Railway Injuries in Warangal Municipal Limits, A. P.	138
<i>D. Vijaya Raghavendra, K. Ravimuni, K. Usha Rani</i>	
29. Retrospective Study of Autopsied Firearm Fatalities Over Period of Five Years	143
<i>Kiran Patil, Gyanendra Kumar, Ashesh Wankhede, Pawan Tekade, Shashikant Kaulaskar</i>	
30. The Development of a Web Portal for an Assisted Reproduction Center in South India and an Analysis of its Efficacy	147
<i>Rahul Munikrishna, Kavitha T. C., Venkataramanaiah, Somu G., Rajesh Kamath, Brayal D'Souza, Sagarika Kamath</i>	
31. Knowledge and Practice on Dietary Management among Patients with Gallbladder Diseases	152
<i>Sahil George Lal</i>	
32. The Prevalence of Work-Related Musculoskeletal Disorders among the Nurses in Dubai: Occupational Health Study	156
<i>Yassen Alfoteih, Zelal Kharaba, Vanessa Lobo, Salimbabu Abdulla</i>	
33. A Postmortem Study of Blunt Cardiac Injuries	161
<i>Konduru Laxman</i>	
34. A Study of Determination of Stature in Hyderabad Population from External Ear Morphometry	164
<i>Konduru Laxman</i>	
35. Comparable Study between Panic Disorder Patients (With or Without) Mitral Prolapse in Nassiria City/Iraq	169
<i>Kadum Mohan Manil, Hussain Hlail Wda'a Al-Sayyad</i>	
36. A Study to Assess the Knowledge and Compliance of Critical Care Nurses Regarding Ventilator Care Bundle in Prevention of Ventilator Associated Pneumonia	176
<i>Dipali U Dumbre</i>	
37. Determinants of Levels of Cardiac Troponin I in Post-Mortem Blood Sample in Sudden Cardiac Death—An Autopsy Based Study	179
<i>Sharifa S, Sarathkumar A, Sasikala K</i>	
38. Effect of Group Education (Simulation Model) on Information Disclosure and HIV/AIDS Transmission Prevention for HIV/AIDS Risk Groups	184
<i>Ngesti W Utami</i>	
39. Health Insurance for Indonesian Migrant Workers	188
<i>Wafda Vivid Izziyana, Harun, Absori, Kelik Wardiono, Heru Santoso Wahito Nugroho, Arief Budiono</i>	
40. An Artificial Neural Networks (ANN) Based Lung Nodule Identification and Verification Module	193
<i>S. Sandhiya, Y. Kalpana</i>	
41. Training and Communication Skills of Little Dentist Cadre	199
<i>Ristya Widi Endah Yani, Isa Ma'rufi, Yunita Puspita Sari Pakpahan</i>	

Health Insurance for Indonesian Migrant Workers

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ABSTRACT

Health insurance is one of the aspects and part of the social insurance which must be given by the state to its citizens, including migrant workers. There are millions of Indonesian migrant workers who work overseas, so health insurance is an urgent need to be fulfilled, as it is a constitutional right of the citizens. The government gives a legal protection for migrant workers according to the legislation, the destination country's law, as well as the international laws and customs. One form of protection given by the government is the right to receive health insurance. Each country has its own characteristics and procedures in giving health insurance protection to its migrant workers, which may result to problems and obstacles in its implementation, which is caused by differences in its law and its government's administration. Indonesian social insurance protection for migrant workers is managed by BPJS (*Badan Penyelenggara Jaminan Sosial/Social Security Administrator*) as written in the Mandate of 1945 Constitution (*Amanat UUD 1945*), yet in reality, health insurance protection from the state of Indonesia for Indonesian migrant workers abroad is not yet operated because the facility mechanism overseas cannot work together with BPJS Kesehatan (Health).

Keywords: Health insurance, Migrant workers, Indonesia

INTRODUCTION

Millions of Indonesian labor were forced to work as migrant workers overseas, both legally as well as illegally. This is caused by the fact that the Indonesian government cannot fulfill their need for work^[1]. Undeniably, apart from the absence of working opportunities, the comparison of wages for migrant workers is much larger than the wages they obtain for the same work in Indonesia. Averagely, Indonesian migrant workers work in sectors which may be categorized as dirty, difficult, and dangerous in sectors such as agriculture, husbandry, industry or as blue-collar workers (becoming house-cleaning assistants) which are unwanted by the local citizens of that country. A research from the Mahidol Migration Centre, Institute for Population and Social Research, Mahidol University, Thailand states that the working condition and the health

of Indonesian migrant workers in the blue-collar sector are on average apprehensive, low, and inhumane^[2].

The majority of Indonesians think that working overseas is a choice which may change the degree of lifestyle and the degree of their financial condition. Migrant workers exist in all economic sectors. They play an important role in the positive economic growth of the home state as well as the host state. But the increase of the citizens' migration is followed by the different cases of violation towards their rights^[3].

Based on the BNP2TKI (*Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia/The National Agency for Placement and Protection of Indonesian Workers*) on July 2018, there are 159.702 Indonesian migrant workers overseas. Indonesia is one of the largest sending countries of migrant workers in Southeast Asia^[4]. Because of that, social insurance for Indonesian migrant workers is urgently needed as a form of the citizens' constitutional rights protection. The government's protection towards the migrant workers overseas is regulated in the Constitution, No.18, 2017 (*Undang-Undang No.18, 2017*) on the protection of Indonesian migrant workers. This law regulates the social insurance, in which one of its elements is the health insurance during pre-hosting, hosting, and post-hosting.

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Indonesian migrant workers are often said to be foreign currency heroes, as they contribute foreign currency through remittance^[5]. The various problems connected to the Indonesian migrant workers forces the government to work harder in protecting them^[6]. According to many, the Indonesian government are still not proactive nor comprehensive enough in protecting the migrant workers, physically, financially, and especially in the form of social insurance and health insurance towards the Indonesian migrant workers overseas.

When analyzing further on the development of the different policy products of the government, we can conclude that so far, those policies don't seem to be supporting the Indonesian migrant workers. On the contrary, it seems to bring more harm and it cannot yet insure the health of the Indonesian migrant workers overseas^[7]. One of the rights of the Indonesian migrant workers overseas is the right of national social insurance as well as the right for health insurance.

The state establishes the social insurance for its citizens to support their lives^[8]. The right for health insurance and social insurance according to Anna Boucher and Terry Carney are as follows, "The definition of 'social security' is malleable and varies according to context. In this chapter, we focus primarily on social security cash transfers, public health provision and the restrictions placed upon newly arrived residents in accessing these provisions (Health care and child care benefits, these can legitimately also be viewed as forms of social security^[9]).

The Mandate of the 1945 Constitution article 28 H paragraph (3) [*Amanat UUD 1945 pasal 28 H ayat (3)*] states that each citizen has the right for social insurance which enables self-development holistically as a dignified human being. The protection for social insurance for Indonesian migrant workers is now fully managed by BPJS, every labor worker must have social insurance, if an Indonesian migrant worker does not have social insurance, he/she is not permitted to work overseas.

Each person has the right to access health services^[10]. Global Convention International Labour Organisation No. 102/1952 also states that the establishment of social insurance is the right of the citizens who are migrant workers in which it includes health necessities. Added to that, the issuing of the International Covenant on Economic, Social, and Cultural Rights and the

International Covenant on Civil and Political Rights with the approval of the UN General Assembly^[11]. The establishment for social insurance for the Indonesian migrant workers is the responsibility of the state of Indonesia and the host country of the migrant workers.

One aim of the Republic of Indonesia stated in the Preamble of the 1945 Constitution is the effort to increase the citizens' prosperity^[12]. Based on the Mandate of the 1945 Constitution article 34 paragraph (2) on the state's obligation to develop a social insurance system for all Indonesian citizens and also with the issuing of the Law No.40/2004 on the national social insurance system, social insurance programs, including the public health insurance which is integrated into a system and will be established by a body which was formed by the government (BPJS).

The Law No. 24 year 2011 also declares that the National Social Insurance (Jaminan Sosial Nasional) is established by BPJS which consists of BPJS Kesehatan (Health) and BPJS Ketenagakerjaan (Employment) which was implemented since January 1st, 2014. Parallel to that, in the Constitution article 2 No.24, 2011 on BPJS: BPJS in its service fulfills the principles of humanity, benefit, and justice^[13]. Also, parallel to the Law on the National Social Insurance (Jaminan Sosial Nasional) and the Constitution on BPJS, and there is also the Law No.18, 2017 on the Protection for Indonesian migrant workers.

The right to receive health service and insurance is also the right of the migrant workers as they are also Indonesian citizens. Indonesia does have a limitation in the sovereignty of the country's territory in the place where Indonesian migrant workers are hosted and because of that, an accurate form of negotiation is needed. According to Cruz, a number of migrant-sending and receiving countries have negotiated bilateral social security agreements to enhance the cooperation and to ensure the adequate portability of contributions. Portability in this context is understood as the migrant worker's ability to "preserve, maintain and transfer acquired social security rights to determine the migrant worker's public health care in both countries to guarantee continued health coverage for migrants"^[14].

National health insurance for Indonesian migrant workers must be done to keep the dignity of migrant workers. This opinion is articulated by Majda Al Muhtad, "Objective is simply to organize the system in a way that

treats each member of society with dignity and respect”^[15]. The status of the national government’s budget can also influence both the structure of social welfare institutions and the economic effect of social welfare policies^[16]. Based on the problem above, the research problem is, how is the health insurance for Indonesian migrant workers?

METHODS

This research uses a descriptive method, where we describe the health insurance for Indonesian migrant workers. This research is also a prescriptive study which has the aim to solve the problem of the theory examination, this research is the connector between the essence and the reality of health insurance for migrant workers.

FINDINGS

The government gives a legal protection for migrant workers according to the constitution, the law of the host country, also the international laws and customs. One form of protection given by the government is the right to receive health insurance as well as prosperity, which are part of the human rights, therefore they are the rights of the migrant workers and are agreed by all countries of the world, including Indonesia⁽¹⁾. This agreement is written in the United Nations Declaration year 1948 on the Human Rights. Article 25 paragraph 1 states that every human being and every family has the right to live a sufficient life in terms of health, prosperity, food, shelter, healthcare, social service necessary. They are also responsible for insurances when unemployed, sick, disabled, widowed, aged, or other conditions which forces them to not be able to obtain sufficient income, which are outside their power⁽¹⁸⁾. The protection of social insurance for Indonesian migrant workers is given by BPJS as written in the Mandate of the 1945 Constitution, article 28 H paragraph⁽³⁾, where all citizens have the right for social insurance which makes self-development possible holistically as a dignified human being. Indonesia develops a social insurance system for all citizens and also empowers poor and weak citizens according to the human dignity. As Indonesian citizens whose constitutional rights include social insurance, it should be that Indonesian migrant workers have the right for social insurance as obligated in the Constitution, No.40, 2004.

The Labor Ministerial Regulations (Permenaker/Peraturan Menteri Tenaga Kerja) No 7 year 2017

only obligates two programs, which are work-related insurance and death insurance, old-day insurance for migrant workers are voluntary, whereas pension and health insurances are not received by the migrant workers. Even though migrant workers are obligated to completely pay for health and work insurances, they do not receive service nor such insurances while working overseas. Employers at the host state cannot be constrained by Indonesian regulations. Also, the health insurance for migrant workers cannot yet be implemented because the health facility mechanism overseas cannot work together with the Indonesian BPJS *Kesehatan* (Health). Yet there is not yet a regulation which strongly regulates the health insurance for migrant workers overseas.

The state’s protection towards migrant workers are regulated in the Constitution No. 18 year 2017, which includes social insurance with health insurance as one of its elements, in the pre-hosting, during the hosting, and post-hosting. Social insurance for Indonesian migrant workers overseas is regulated in the Law No.18, 2017: the state of Indonesia must fix the whole protection system for Indonesian migrant workers and their families which reflects the values of humanity and dignity as a noble state from before working overseas, during the work overseas, and after working overseas. The general explanation of the constitution also gives social insurance protection for Indonesian migrant workers.

The social insurance while working overseas is the responsibility of the migrant worker and paid by him/herself without help from the state. This scheme is done by insurance companies which are members of the insurance consortium with a protection program which includes pre-hosting, during the hosting, and post-hosting protection. The role of such protection is now diverted and done by BPJS according to the Law No. 40 year 2004 on the national social insurance system and the Law No.24 year 2011 on BPJS. Yet, after such insurances are diverted to BPJS, the workers lost their health insurances which they usually had while still joining the insurances from the insurance consortium, so the health insurance from the state seems to be half-hearted.

The Labor Ministerial Regulations (Permenaker) No.7, 2017 declares that Indonesian migrant labor must participate in four insurance programs, which are health insurance, work-related accident insurance, death insurance, and old-day insurance. There is an inconsistency in the Labor Ministerial Regulations

No.7, 2017, article 16: migrant workers who experience a work-related accident during the stay do not have the right to receive such health service. Health insurance is not the right of migrant workers while working overseas. This means that the migrant workers must pay for a different health insurance without receiving the national health insurance service.

Problems of health rights and the right to receive health care which are experienced by the Indonesian migrant workers are a reflection of the inexistence of access for health insurance for migrant workers, as they are limited by the state's territory. Based on the Constitution, the state of Indonesia should give a protection in the form of health insurance for migrant workers. Apart from the constitution, international law states that the state must fulfill that right as written in article 22 of the Universal Declaration of Human Right (UDHR): "*every one as a member of society; has the right to social security and is entitled to realization, thourght national effort and international co operation and resources of each state.*"

The host country's legislation usually only limits the insurance only to its citizens. Even if they offer insurance for migrant workers, there will be administration conditions with a particular amount of premium to be paid, also with the condition of having stayed in the host country for a particular amount of time. Indonesia should have the initiative of giving ease of document issuance and also pay for the health insurance premium for Indonesian migrant workers, as it is the obligation of the state.

CONCLUSION

Health insurance protection for Indonesian migrant workers cannot yet be implemented as the health facility mechanism overseas cannot work together with BPJS Health. The insecure protection for migrant workers during the stay proves that the state cannot yet give a maximum health insurance for its citizens.

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