

Legal Protection Efforts for Workers Through the Social Security Administrative Agency

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Abstract

Labor social security (Jamsostek) is a form of protection provided to workers and their families against various labor market risks. Various formal Jamsostek programs that have been running in Indonesia are: (i) for private sector employees, managed by PT Jamsostek; (ii) for civil servants, managed by PT Taspen and PT Askes; and (iii) for TNI and Polri members, managed by PT Asabri. The scope of this program consists of four worker protection programs, namely: (i) work accident insurance; (ii) death guarantee; (iii) old age security; and (iv) health care guarantees. Objectively it will be very difficult to make the Jamsostek program the main mechanism for the social protection system if the management remains as it is now. The monopoly system in the implementation of the Social Security program is an inhibiting factor for the development of the social security system for workers who wish to develop it. Currently, Indonesia needs an integrated national workers' social security system and its implementation is entrusted to private parties who have proven capabilities in this field. In this system, the government plays a more regulatory and supervisory role, and sets minimum standards for various components of social security that must be provided by every employer to their workers.

Keywords: Labor, Social Security, Legal Protection



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INTRODUCTION

Legal reform in Indonesia was marked by the amendment of the 1945 Constitution, up to 4 (four) amendments. After the amendment of the 1945 Constitution (Revelation & Sugeng: 2016). The Indonesian constitutional system underwent very fundamental changes. These changes also bring with them structural changes and mechanisms in state government, because changes to the constitution of a country mean a transition from the old state order to the new state order. The real implication that is clearly visible in the amendment to the constitution is related to the problem of the Social Security System. In this regard, Article 34 paragraph (2) of the 1945 Constitution and its amendments state as follows, The state develops a social security system for all people and empowers people who are weak and incapable according to human dignity (Setiawan, et al: 2014).

Social security is also guaranteed in the 1948 United Nations Declaration on Human Rights and confirmed in the ILO Convention Number 102 of 1952 which recommends all countries to provide minimum protection to every worker. In Indonesia several Social Security Programs have been implemented, namely the law that specifically regulates Social Security for private workers is Law Number 3 of 1992 Concerning Workers' Social Security (Jamsostek), for Civil Servants. (PNS), namely the Civil Servant Savings Fund and Insurance Program (TASPEN) based on Government Regulation Number 26 of 1981 and the Health Insurance Program (ASKES) which was organized based on Government Regulation Number 69 of 1991. As for the Indonesian National Armed Forces (TNI), Members of the Police Republic of Indonesia (POLRI), and civil servants of the Ministry of Defense/TNI/POLRI have implemented the Social Insurance Program for the Armed Forces of the Republic of Indonesia (ASABRI) in accordance

with Government Regulation Number 67 of 1991 which is an amendment to Government Regulation Number 44 of 1971. The social security program is well known and implemented in Indonesia, as has been held by PT Askes Indonesia, PT Taspen, PT Jamsostek and PT Asabri. However, both in terms of the number of participation, the type of program and the quality of benefits, as well as the principles of implementation and regulation, it still requires improvement. Social security program participants in Indonesia, compared to other countries, are still too few (about 20%) (Suhardjo: 2007).

Employment social security is regulated in Law Number 24 of 2011 concerning the Social Security Organizing Agency (UU No. 24 of 2011) which covers workers' rights in obtaining guarantees as compensation for employment risks (Ministry of Manpower and Transmigration: 2001). In fact, the formation of the Social Security Administering Body (BPJS) is not something new in the world of work because previously social security for workers had been regulated in Law Number 14 of 1993 concerning Workers' Social Security or commonly known as Jamsostek. In 2004, Law Number 40 of 2004 concerning the National Social Security System was issued with the aim of establishing an integrated social security system for the people of Indonesia and the social security system would be institutionalized in a body in the form of public law, giving birth to Law no. 24 of 2011, there was an institutional transformation of PT Askes, PT Jamsostek, PT TASPEN, PT ASABRI to become BPJS (Social Security: 2019).

With the transformation of the institution into BPJS, it is followed by the transfer of participants, programs, assets and viability including the rights and obligations of workers and employers. One of them is the right of workers to get protection from social risks. This must be provided by employers by registering workers as members of the BPJS in accordance with what is mandated in Article 15 paragraph (1) of Law No. 24 of 2011 which states the employer workers must gradually register themselves and their workers as BPJS participants in accordance with the Social Security Program they are participating in (Kertonegoro: 2018). However, in practice the awareness of the company in providing protection for its workforce is still lacking. Many companies do not register their workers with the BPJS on the grounds that the company already has private insurance that will be provided to their workers so they no longer need to be registered with the BPJS. Based on these reasons, an analysis is needed regarding the legal arrangements that require companies to register their workers as BPJS members (Perwira, et al: 2003).

The formulation of the problem consists of What are the Company's Obligations to Register Their Workforce as Members of the Social Security Organizing Body? What are the Legal Protection Efforts for Workers Through the Social Security Organizing Agency?

RESEARCH METHODS

The method used in this research is literature study, data collection uses literature study from books, journals, newspapers and other readings.

RESEARCH RESULTS AND DISCUSSION

The Company's Obligation to Register Its Workforce as Membership in the Social Security Administering Body

The benefits obtained by participants are still very limited. The administration system also varies, giving rise to social injustice. The various programs mentioned above only cover a small portion of the community (Perwira, et al: 2003). Most of the people have not received adequate protection. In addition, the implementation of the various Social Security Programs has not been able to provide fair and adequate protection to participants in accordance with the program benefits to which the participants are entitled. Therefore, Law Number 40 of 2004

concerning the Social Security System was drafted to synchronize the implementation of various forms of social security carried out by several administrators in order to reach wider participation and provide greater benefits for participants (Subianto: 2011).

The implementation of Social Security has basically been going on for quite a long time. However, the scope of implementation is still very low and the services are limited and not integrated. Until now, the scope of management is limited to formal workers with only partial management institutions and limited benefits. For example, health insurance coverage is still around 48 percent, with details of 18.7 percent health insurance for civil servants (PNS), TNI/POLRI for workers in the formal sector and private insurance for people who can afford it and 29.3 percent for public health insurance or jamkesmas. However, the coverage of Jamkesmas for the poor continues to increase. This program has also increased the access of the poor to health services both at the Puskesmas and hospitals, however, this program has not fully improved the health status of the poor, especially for underdeveloped, remote, border and island areas. In accordance with Law Number 40 of 2004 concerning the National Social Security System, the government is obliged to provide social security as a whole and develop the implementation of the Social Security System for the entire community (BPJS: 2014).

Every company that employs people to work for the company must be provided with protection and improvement of the welfare of the workforce in the form of employment social security, because in essence the workforce has a working relationship with the company which has the potential to increase the company's productivity and turnover. For this reason, it is only natural that they be given protection, maintenance and development of welfare. In Law No. 24 of 2011 Article 15 paragraph (1) employers are required to gradually register themselves and their workers as BPJS participants (Husni: 2008).

Registration for BPJS Employment membership is an obligation carried out by companies that employ a workforce of 10 (ten) people or more and pay wages of at least IDR 1,000,0000 (one million rupiah) in accordance with the provisions in article 2 paragraph (3) PP No. 4 of 1993 concerning the Implementation of the Social Security Program. Companies can manage BPJS membership for employees through e-Dabu. The company bears the cost of participant contributions for its employees with the provision that the contributions are regulated in Presidential Regulation Number 19 of 2016 concerning Health Insurance which is 5% of the employee's fixed salary or allowance. With Details: 4 percent is paid by the company and 1 percent is the responsibility of the employees. Article 15 paragraph (1) of IUU No. 24 of 2011 reemphasizes that the registration of Health Insurance participants for workers is mandatory by the employer, which in this case is of course the company concerned, without exception (HattaL 2012).

Even though the company already has partnerships with other private insurance companies, they still have to register their employees with BPJS Kesehatan. Because this is a mandate from a law that should be obeyed and implemented because with the promulgation of a statutory regulation into the state gazette of the Republic of Indonesia everyone is deemed to know it and must comply with it and implement all rules and norms. Companies as a legal subject must comply with applicable law, in this case Law No. 24 of 2011 as a written legal product that is binding and coercive. Based on the results of the elaboration above, every company in Indonesia is obliged and must register its workers as members of the BPJS in order to realize the provision of guarantees for the basic needs of a decent life for workers in Indonesia (Udiana: 2015).

Legal Protection Efforts for Workers Through the Social Security Administrative Agency

The purpose of social security for workers is to provide protection to workers and their families from various labor market risks, such as the risk of losing a job, decreased wages, work

accidents, illness, disability, old age, death, and others. It is hoped that social security for workers will be able to provide peace of mind at work for workers, and in return it is hoped that workers will increase their work discipline and productivity (BPJS: 2014). The workers' social security program in Indonesia has actually been initiated since the early years of independence, namely when Law (UU) No. 33 of 1947 concerning "Work Accidents" and Law No. 34 of 1947 concerning "War Accidents" were enacted. The following year, Work Law No. 12 of 1948 was launched which regulates "Worker Age, Working Hours, Workplace, Housing, and Worker Health". Protection for workers was regulated again in 1951 with the launch of Law No. 2 of 1951 concerning "Work Accidents".

In 1952, Regulation of the Minister of Labor (PMP) No. 48 of 1952 in conjunction with PMP No. 8 of 1956 was enacted concerning "Arranging Assistance for Workers' Health Organization Businesses". The provisions regarding the implementation of workers' health were then supplemented by PMP No. 15 of 1957 concerning "Establishment of Workers' Social Foundations". The regulation describes assistance to agencies that organize social security businesses. A rather complete law on manpower was issued in 1969. Law No. 14 of 1969 concerning "Principles Regarding Manpower" regulates the implementation of social insurance for workers and their families. In 1977 the Government issued Government Regulation (PP) No. 33 concerning "Implementation of the Worker's Social Insurance Program (Astek)".

The programs handled by Astek are Work Accident Insurance (AKK), Death Insurance (AK), and Old Age Savings (THT). Simultaneously, Government Regulation No. 34 of 1977 was issued concerning "Astek Public Companies (Perum) As the Astek Program Organizing Agency". Astek's status as a Perum was later changed to a Limited Liability Company (PT) through Government Regulation No. 19 of 1990. In 1992 the Government, with the approval of the People's Representative Council (DPR) issued Law No. 3 of 1992 concerning "Worker Social Security" which required every company who have employees of at least 10 people or pay for their employees' salaries of at least IDR 1 million/month to organize four Social Security programs, namely: Old Age Security (JHT); Work Accident Insurance (JKK); Death Guarantee (JK); and Health Care Guarantee (JPK). This law also assigns PT Jamsostek as the executor of the Social Security program in Indonesia (this is confirmed again by Government Regulation No. 36 of 1995 concerning "Determination of the Organizing Body for the Workers' Social Security Program") (Ministry of Health: 2012).

Obligation is something that must be done or carried out if it is not carried out then there will be sanctions or bad consequences for the offender. Sanctions are the result of an action or reaction from another party (human or social organization) for an action. In Law no. 24 of 2011 concerning BPJS, there are administrative sanctions (Zaeni: 2008). According to J.B.J.M ten Berge, administrative sanctions are the essence of administrative law enforcement. Sanctions are needed to guarantee administrative law enforcement (Wijayanti: 2014).

Administrative sanctions will be imposed if the company does not fulfill the obligation to register its workers as BPJS participants as stated in Article 17 paragraphs (1) and (2) of Law No. 24 of 2011, namely employers other than state administrators who do not implement the provisions referred to in Article 15 paragraph (1) and paragraph (2), and everyone who does not implement the provisions referred to in Article 16 is subject to administrative sanctions. The administrative sanction as referred to in paragraph (1) may be in the form of: a) written warning; b) fines; and/or; c) do not receive certain public services. Subsequent regulations regarding administrative sanctions are regulated in Government Regulation Number 86 of 2013 concerning Procedures for Imposing Administrative Sanctions on Employers Other than State Administrators and Everyone, Apart from Employers, Workers, and Contribution Assistance Recipients in the Implementation of Social Security (Wijayanti: 2014).

The mechanism for imposing administrative sanctions on companies that do not register themselves and their workers as BPJS participants is initiated by giving the first written warning if within 10 days after the first letter of warning is given the company still does not implement it, BPJS will impose a written warning sanction for the second time and within 10 days after being given the second written warning, the company still does not carry out its obligations, BPJS will impose sanctions in the form of fines deposited to BPJS, if sanctions in the form of fines are not paid in full, the company will be subject to sanctions in the form of not getting certain public services from the government at the request of BPJS (Kertonegoro: 2018). Sanctions for not receiving certain public services that are imposed on companies include: a) Business-related permits, b) Permits required to participate in project tenders, c) Permits to employ foreign workers, d) Permits for service providers, e) Permits to construct buildings. Based on this, companies that do not register their workers as members of the BPJS will be subject to sanctions in the form of administrative sanctions.

CONCLUSION

Workers' social security is a form of protection provided to workers and their families against various labor market risks. Labor social security is part of the social protection system. In developed countries, workers' social security is the most important part of the social protection system because almost all families in society are covered by workers' social security. However, in developing countries, labor social security covers only a small proportion of families in society, especially since the majority of the population works in the informal sector. In traditional societies, social protection for its citizens is mostly carried out informally by relying on the help of family, neighbors and the community.

But increasing urbanization and formalization of the economy, declining birth rates, and increasing life expectancy have created pressures that have weakened the informal social protection system. This has led to the need to create a formal social protection system that is managed in a modern way with clear and binding regulations. The workers' social security system that is developed in a country must be adapted to the economic conditions, especially the conditions of employment, in the country concerned. Workers who are paid a salary at a company have the right to be registered as members of the Social Security Administering Body, in which case it is an obligation for companies to register their workers even though the company already has private insurance because this is an order from the Law as stated in Article 15 paragraph (1)) and (2) Law No. 24 of 2011 and if the company does not register its workers, the company concerned will be subject to administrative sanctions in the form of warnings, fines and not receiving public services in accordance with Article 16 paragraphs (1) and (2) of the Law Invite No. 24 of 2011 concerning BPJS.

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