

## **Legal Protection for Workers Who Do Not Receive Safety and Health Guarantees at Work**

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### **Abstract**

The purpose of this writing is to find out how legal protection is for workers who do not get safety and health guarantees at work. This type of written research method is qualitative depending on the type of document. Qualitative research is a type of research whose results are not based on statistics or other calculations. The government and legal entities that employ workers must guarantee workers' rights in accordance with their dignity as workers, especially as human beings whose human rights are protected under Article 28 (D) of the 1945 Constitution of the Republic of Indonesia, and protect their interests. It establishes the right to legal protection for the welfare of workers and their health and safety. In fact, there are still many workers who have not received job security and BPJS Employment. Employment security and Employment BPJS are mandatory for workers if they work for the company or legal entity where they work. The government, especially companies and legal entities that employ workers, must consider the need to legally protect workers' rights in order to obtain workers' safety and social security.

**Keywords:** Protection, Law, BPJS, Employment, Occupational Safety



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### **INTRODUCTION**

In connection with current developments, industrial development in Indonesia is being developed with the aim of becoming one of the pillars of increasing people's welfare by providing employment opportunities that are definitely relevant in line with increasing industrial developments. This is what is expected of the workforce to reduce the existing unemployment rate. The presence of the business world certainly opens up employment opportunities for the community, so there is a need for more comprehensive labor regulations. This is of course to ensure legal certainty for both workers and employers. Furthermore, there are rights and obligations that must be carried out by both parties, in this case employers and workers, so that mutually beneficial relationships are established (Martins, 2022).

Employment is one of the stages of economic development which plays an important role in all national activities, especially the national economy, in terms of productivity growth and welfare. Abundant labor force is the driving force of economic life and rich resources. (Lalu Husni, 2014) Therefore, it is necessary to have jobs that can satisfy all workers, workers with the right skills and expertise can increase business productivity. (Zainal Asikin, 2002). Employment relationship is a relationship between worker and employer based on work contract. The employment relationship is the relationship between the entrepreneur and the worker/labourer based on a work agreement which contains elements of work, wages and orders. Thus it is clear that the employment relationship is based on a work contract between the employer and the worker/employee (Ioraa, 2022).

From this understanding it can be concluded that the employment relationship as a legal relationship arises after the existence of an employment agreement between the worker and the employer. The contents of the collective labor agreement may not contradict the existing Collective Labor Agreement (PKB) and the contents of company regulations may not conflict

with the PKB. Legal protection for workers is the fulfillment of basic rights that are inherent in and protected by the Constitution, as stipulated in Article 27(2) of the 1945 Constitution of the Republic of Indonesia. worthy of humanity”, Article 33 paragraph (1) which states that “the economy is structured as a joint business of kinship (Ejem et al., 2022).

Protection of workers is intended to guarantee workers' rights and ensure equal opportunities and treatment without discrimination of any kind in order to realize the welfare of workers and their families while taking into account developments in the progress of the business world and the interests of employers. Laws and regulations related to protection for workers, namely Law Number 13 of 2003 concerning Manpower (Law on Manpower) which has been amended/replaced into Law Number 11 of 2020 Concerning Job Creation and implementing regulations from laws and regulations in the field of manpower. (Heru, 2018) (Daniel et al., 2022)

Social security is a form of legal protection intended to provide protection to workers and their families against the risks that befall workers/labor. The current form of Workers' Social Security Protection is embodied in Law Number 40 of 2004 concerning the National Social Security System and Law Number 24 of 2011 concerning BPJS (UU BPJS), which consists of BPJS Health and BPJS Employment. What is meant by social security for workers is in the form of a protection for workers/workers in the form of providing health insurance and also compensation in the form of money as a substitute for part of lost or reduced income and services as a result of events or conditions experienced by workers/workers in the form of : work accidents, illness, pregnancy, childbirth, old age and death. (Then Husni, 2014) (Obichili et al., 2023).

In article 3 of Presidential Decree No. 109 of 2013 divides social security program participants into 2 (two), namely participants who receive wages and participants who do not receive wages. 7 Participants receiving wages are further divided into 2 (two) groups, namely workers who work for state administrators (PNS, TNI, Polri, state officials, government employees

non-civil servants) and workers who work for employers other than State officials (private workers) and participants who do not receive wages (employers, workers outside the employment relationship or self-employed workers for example motorcycle taxi drivers, lawyers/advocates, artists, and others). In its development, there are still several companies that do not include their workers in BPJS Ketenagakerjaan, citing low worker productivity and still thinking that BPJS Health has protected the rights of their workers (Nwokeocha, 2023b).

In fact, according to the mandate of Article 15 paragraph (1) of the BPJS Law, it states that employers are gradually required to register themselves and their workers as participants with BPJS Employment in accordance with the social security program they are participating in. So that this becomes a separate homework (homework) for the government in realizing the ideals of the State listed in the 1945 Constitution of the Republic of Indonesia. Another reason companies do not register their workers with BPJS Ketenagakerjaan is due to cost factors, casual workers, and small businesses. medium and apart from that there are elements to benefit the company without thinking about worker safety. Even though the Law governing Employment BPJS explains that everyone who participates in the BPJS is everyone, including foreigners who have worked for at least 6 (six) months in Indonesia, who have paid contributions. (Nwokeocha, 2023a).

Problems regarding labor have received attention from various parties, such as the government, educational institutions and the community. The government sees the problem of manpower or employment as one of the main factors of national development, because the workforce or employment is basically a development workforce that has contributed a lot to

the success of national development including development in the education sector such as teachers and lecturers. Manpower or manpower development aims to: Empower and optimize manpower, Create equal distribution of employment opportunities and supply of manpower in accordance with national development, Provide protection for manpower in realizing their welfare, and Improve the welfare of manpower and their families.

Every government or company or legal entity that employs workers or employees, in carrying out tasks or work given by the company or lawyer, must be able to maintain the welfare and safety of workers on behalf of the company or legal entity. legal protection for workers involved in the company that employs them. Development of manpower or employment aims to improve the quality and contribution to development.

## **RESEARCH METHODS**

This type of written research method is qualitative depending on the type of document. Qualitative research is a type of research whose results are not based on statistics or other calculations (Bashrowi and Nahrowi, 2008). The qualitative research tool is the researcher himself. One of the data sources used is literature review, which is using library sources to obtain research results without doing fieldwork. We use a qualitative descriptive method using literature review sources by reviewing previous research (Ioraa, 2023).

## **RESEARCH RESULTS AND DISCUSSION**

Employees or employees who work for legal entities or companies are entitled to social benefits and protection against occupational risks. Workers or any legal entity or company that employs workers must provide workers' rights to defend their workers' rights, namely Employment BPJS. Rights are the only rights that must be obtained by someone who has existed from birth before he was born. In the Indonesian dictionary, rights are determined by existing laws and regulations, so to claim the right to something or something that needs to be done means the power to do something. In other words, rights are things that need to be implemented and upheld. (Muhammad Sadi, 2016)

According to Notonagor explained "the right is the power to receive or do something that should be received or done only by a certain party and not obtained by other parties or also which in principle can be forced by him." (Muhammad Sadi, 2016) J.B. Daliyo explained the difference between rights and obligations. Meanwhile, according to Saut P. Panjaitan explains "rights and obligations, rights are roles that may not be carried out (are optional), while obligations are roles that must be carried out (imperative).

The Social Security Administrative Body (BPJS) is a program which, when referring to Law Number 24 of 2014 concerning Social Security Administering Bodies, is administered by the government with the aim of providing and guaranteeing a decent life for the community, especially in this case the workforce. Article 1 point 1 of the Law on Social Security Administering Bodies states that the Social Security Administering Body, hereinafter abbreviated as BPJS, is a legal entity established to administer the social security program. overcome certain socio-economic risks and implement them using social insurance mechanisms. The definition of social insurance itself is a mechanism for collecting funds that are mandatory from contributions to provide protection for socio-economic risks that befall participants and/or their family members.

Employment BPJS is a public legal entity that is responsible to the President where Employment BPJS provides protection to all Indonesian workers, both formal and informal sectors and foreigners who work in Indonesia for at least 6 months. The protection provided is in the form of: Work Accident Insurance (JKK); Death Guarantee (JK); Old Age Guarantee (JHT);

and Pension Guarantee (JP). The Social Security System Program through the Social Security Administering Body (BPJS) is organized to provide protection for workers to meet the minimum living needs for workers and their families, the Social Security System Program through the Social Security Administering Body (BPJS) is a tribute to workers or workers who have contribute their energy and thoughts to the company where they work.

### **The company's obligation to register workers/ laborers into BPJS membership**

This employment is none other than aiming at the welfare of workers/laborers who in this case are the weak party under company control. Based on Article 15 of Law Number 24 of 2011 concerning BPJS states that employers are required to gradually register themselves and their workers as participants with BPJS in accordance with the social security program they are participating in." Every legal entity or company that does not provide or register workers/workers for BPJS Ketenagakerjaan membership on its behalf, is subject to Regulation Number 86 of 2013 concerning Procedures for Imposing Administrative Sanctions for Employers Other Than Government Administrators. Entrepreneurs, workers and beneficiaries in administering social security. Law Number 24 of 2011 concerning BPJS provides criminal sanctions for legal entities or companies that do not offer or register workers to become BPJS Ketenagakerjaan members. Criminal sanctions for employers who actually do not collect BPJS Ketenagakerjaan contributions are 8 years in prison and a fine of IDR 1,000,000,000.00 (billion rupiah).

The form of worker/worker legal protection provided by Employment BPJS for each participant is the implementation of four programs, including: Work Accident Insurance (JKK), Old Age Security (JHT), Death Insurance (JKM), Pension Insurance (JP). Employment BPJS Employment is a program designed to protect workers from all the dire risks they may face, such as work accidents, permanent disability, and even death. At least all employers. If, for example, you employ a minimum of 10 employees or pay a wage of at least IDR 1,000,000 (million rupiah) per month, you must routinely register your employees as BPJS Ketenagakerjaan participants.

The membership of the Social Security Administering Body (BPJS) in the category of Wages does not only include permanent employees of corporations or companies, but also includes contract workers, freelancers and contract workers employed under certain Temporary Employment Agreements (PKWT). The right to receive and register to become BPJS Employment Participants. Grants for the acquisition and registration of Employment BPJS Participants for Workers are given based on the Decree of the Minister of Manpower (Kepmenaker) No. KEP-150/MEN/1999 (concerning the implementation of social security schemes for workers). Which is the condition. in between:

1. "Every entrepreneur who employs freelance workers, contract workers and PWKT is obliged to enroll their workers in the workers' social security program to the Administrative Body. (Article 2 paragraph 1);
2. Entrepreneurs who employ PKWT workers for three consecutive months or more are required to enroll them in the Work Accident Benefit, Death Benefit, Old Age Benefit, and Health Care Benefit programs. (Article 13 paragraph 1)
3. Entrepreneurs who employ PKWT workers for less than three consecutive months must enroll them in the Work Injury and Death Benefit programs. (Article 13 paragraph 2);
4. In the event that the employment relationship for PKWT workers as referred to in paragraph (2) is extended so that they work for three consecutive months or more, the employer is obliged to enroll them in the Work Accident Benefit, Death Benefit, Old Age Benefit and Health Care Benefit programs starting from the extension. PKWT. (Article 13 paragraph 3).

Based on the legal provisions above, contract workers are required to register with BPJS Ketenagakerjaan. Working less than 3 months. For example, an outsourcing company that employs PKWT employees for three months must register the employee as a participant in the Security, Health and Safety Guarantee. death and old age protection. On the other hand, even if it is less than three months, the company must be included in the occupational health and safety insurance and death insurance. Government regulations regarding legal entities or companies that require their workers to be registered with BPJS Ketenagakerjaan are mandatory regulations that must be obeyed and operated by companies

## **CONCLUSION**

Legal protection for workers who have not received Employment BPJS Looking at the facts on the ground, there are still many employers, corporations or companies that have not registered their workers as participants of Employment BPJS. The government has established proper regulations through the Manpower Law no. 13 of 2003 and Decree of the Minister of Manpower (Kepmenaker) No. KEP-.150/MEN/1999, regarding the implementation of social security programs for freelancers, wholesalers," states that employers or companies are required to register their workers as BPJS participants. In this way, the company contributes to the welfare of its employees. If employers, legal entities, or companies do not register their workers as BPJS Employment participants, they may be subject to administrative or criminal sanctions based on Law Number 24 of 2011 concerning BPJS or the list of Blue Collar Employment BPJS/Workers are subject to criminal sanctions.

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