

Criminal Provisions Against Companies that do not Participate in BPJS Employment

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ARTICLE INFO

Keywords: BPJS Ketenagakerjaan, Criminal Provisions, Worker Protection, Legal Sanctions

Received : 20, Oktober

Revised : 25, November

Accepted: 30, December

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ABSTRACT

Companies are required to register their employees with BPJS Ketenagakerjaan to provide social protection mandated by Law Number 24 of 2011. However, many companies fail to comply, prompting the government to impose administrative and criminal sanctions to enhance compliance. This study aims to analyze criminal provisions for companies not registered with BPJS Ketenagakerjaan and their impact on worker protection. Using a normative juridical research method, this study evaluates the effectiveness of Article 55 of the BPJS Law. The findings reveal that companies may face imprisonment of up to 8 years or fines up to IDR 1 billion. However, the implementation of these sanctions is hindered by vague norms, particularly in defining violation criteria and delayed payment durations. This legal uncertainty affects the effectiveness of worker protection. Therefore, regulatory improvements are necessary to enhance legal certainty and the effectiveness of sanction enforcement.

INTRODUCTION

BPJS Ketenagakerjaan is an institution established under Law Number 24 of 2011 with the aim of providing social protection to the workforce. This program covers various guarantees such as work accident insurance, old-age benefits, pension plans, and death benefits. This protection is crucial to ensuring the welfare of the workforce, which forms the backbone of Indonesia's economy.

However, the implementation of the obligation to register workers in the BPJS Ketenagakerjaan program often encounters obstacles. Many companies, especially those in the informal sector or small-scale businesses, are still reluctant to comply with this regulation. The main reason often cited is the high operational costs they must bear when registering their workers. This situation indicates that the level of awareness and compliance among companies with the BPJS program is still low.

Article 55 of the BPJS Law stipulates criminal sanctions for employers who fail to fulfill their obligations. These sanctions include imprisonment for up to eight years or a maximum fine of Rp 1 billion. These penalties are designed to serve as a deterrent for companies that do not comply with the regulations. However, in practice, the effectiveness of these sanctions remains questionable. One of the challenges is the ambiguity of the legal norms contained in Article 55.

The ambiguity of the norms can be seen in the lack of detailed explanations regarding the criteria for violations. For example, the law does not clearly state the duration of delayed contributions that can be categorized as a criminal violation. This lack of clarity opens the door to various interpretations, both among employers and law enforcement. As a result, the application of criminal sanctions is often inconsistent.

On the other hand, non-compliance by companies with BPJS Ketenagakerjaan has significant consequences for workers. Unregistered workers lose important rights such as work accident protection and old-age benefits. This can lead to significant losses, especially for workers facing high work risks. Therefore, labor protection should be a more serious priority.

As part of the national social security system, BPJS Ketenagakerjaan is designed to provide equal protection for all workers in Indonesia. However, violations by companies indicate an imbalance in the implementation of this policy. In some cases, workers even have to take legal action to obtain their rights. This highlights the weakness in supervision and law enforcement.

Regulations related to BPJS have actually accommodated administrative sanction mechanisms, such as fines and public service restrictions for companies that violate the rules. However, these administrative sanctions are often insufficient to encourage widespread compliance. Therefore, criminal sanctions

remain an important tool to improve compliance. Unfortunately, with the existing ambiguity of norms, the effectiveness of these criminal sanctions is limited.

The importance of social protection has been recognized in various international documents, such as the Universal Declaration of Human Rights and the ILO Convention. As part of the global community, Indonesia is also bound to meet labor protection standards in line with these documents. In this context, a company's failure to register workers in BPJS Ketenagakerjaan not only violates national law but also international principles.

Given the complexity of this issue, a more holistic approach is needed to address corporate non-compliance. This approach includes revising existing regulations to eliminate the ambiguity of norms, strengthening supervision, and providing incentives to companies to improve their compliance. Only through these measures can labor protection be fully realized.

The BPJS Ketenagakerjaan program plays a strategic role in ensuring the welfare of workers. By integrating several social guarantees such as work accident protection, old-age benefits, pensions, and death benefits, BPJS Ketenagakerjaan is one of the key foundations of the labor protection system in Indonesia. However, there are still several obstacles in its implementation. One of the main challenges is the lack of awareness among companies, especially in the informal sector, regarding their obligation to register workers as BPJS participants.

Additionally, some companies exploit legal loopholes to avoid this obligation. They argue that the lack of strict oversight mechanisms allows them to operate without complying with the rules. In many cases, workers are even unaware of their rights to be registered in BPJS, making it difficult for them to claim these rights. This situation shows the need for more intensive efforts to raise education and awareness among both workers and employers.

The criminal sanctions outlined in Article 55 of the BPJS Law represent the government's effort to curb such violations. However, the effectiveness of these sanctions remains a subject of debate. Some legal experts criticize that the norms in Article 55 are too vague, making law enforcement difficult. For instance, there is no detailed explanation regarding the maximum allowable delay for payment contributions that can be considered a criminal violation. This creates opportunities for subjectivity in the application of sanctions.

LITERATURE REVIEW

Legal protection under BPJS Ketenagakerjaan is the implementation of the basic rights of workers guaranteed in the constitution and various laws and regulations. The 1945 Constitution, through Article 27, paragraph (2), affirms that every citizen has the right to work and to a decent living. This forms the basis for

the creation of a social security system aimed at providing protection against work-related risks, such as accidents, death, old age, and pensions. BPJS Ketenagakerjaan, as regulated by Law Number 24 of 2011, is the government's effort to realize these rights through the provision of social security programs for all workers. This social protection not only provides economic benefits but also creates a sense of security and stability in employment relationships. (Silaen, 2022)

However, in its implementation, BPJS Ketenagakerjaan faces major challenges, particularly related to corporate compliance levels. Despite the obligation to register workers being explicitly regulated in the law, many companies still ignore it. The reason often cited is the high operational costs that employers must bear. For small and medium-sized companies, this obligation is considered burdensome, so they prefer not to comply with the rules. This situation reflects the low level of awareness among companies about the importance of social security for workers and its impact on productivity and workforce welfare.

Article 55 of Law Number 24 of 2011 regulates criminal sanctions for companies that fail to register workers in BPJS Ketenagakerjaan. The threat of imprisonment for up to eight years or a maximum fine of Rp 1 billion is designed to serve as a deterrent. However, the effectiveness of these sanctions remains a matter of debate. One of the main obstacles is the ambiguity of the norms in the article. Vague legal norms can open the door to varying interpretations, both at the level of law enforcement and the courts. As a result, the implementation of criminal sanctions is often inconsistent and causes legal uncertainty for companies.

The ambiguity of the norms is evident in the lack of clear criteria for violations. For example, there is no detailed explanation of the duration of contribution delays that can be categorized as a criminal violation. Additionally, there are no clear guidelines for the imposition of criminal sanctions in the context of BPJS Ketenagakerjaan. This lack of clarity creates legal loopholes that companies can exploit to avoid their obligations. This indicates that, although criminal sanctions are provided for, weaknesses in the regulations can reduce their effectiveness as a law enforcement tool.

On the other hand, administrative sanctions regulated in the BPJS Law, such as written warnings, fines, and public service restrictions, are considered more practical to implement. These sanctions provide companies with an opportunity to rectify their violations without facing lengthy legal processes. However, the application of administrative sanctions also faces challenges, particularly in terms of supervision. Weak oversight mechanisms allow many companies to continue operating without fulfilling their obligations. More stringent and integrated supervision is needed to ensure that administrative sanctions can be effectively applied.

Indonesia's social security system actually has the potential to be one of the best in the world if managed properly. The experiences of advanced countries such as Germany and Japan show that the success of a social security system relies on three key factors: clear regulations, strict oversight, and high public awareness. In Germany, for example, the government not only regulates the obligation for companies to register workers but also provides incentives for compliant companies. Meanwhile, in Japan, oversight is conducted digitally to ensure compliance.

Unfortunately, in Indonesia, oversight of BPJS Ketenagakerjaan implementation is still very limited. The government, through the Ministry of Manpower, does not yet have an effective oversight system to detect violations in real time. As a result, many violations go undetected, and workers lose their rights. Additionally, education for both workers and employers remains insufficient. Many workers are unaware of their rights to social security, making it difficult for them to demand those rights.

Increasing compliance with BPJS Ketenagakerjaan can also be achieved through an incentive-based approach. The government can provide incentives to companies that comply, such as tax reductions or access to subsidized training programs. This approach not only increases compliance but also strengthens the relationship between companies and the government. By offering incentives, companies will be more motivated to comply without feeling burdened.

As part of efforts to improve the system, revising existing regulations should be a priority. Clearer regulations, particularly regarding the criteria for violations and the imposition of sanctions, can enhance legal certainty. Additionally, the integration of technology into oversight and reporting should be improved. By utilizing digital technology, the government can monitor corporate compliance more efficiently and transparently. This step will not only improve the effectiveness of oversight but also narrow the legal loopholes that violators can exploit.

By addressing the various obstacles that exist, BPJS Ketenagakerjaan can become one of the main pillars in creating a strong labor protection system in Indonesia. This protection is not only crucial to safeguarding workers' rights but also to driving productivity and national economic stability. Therefore, synergy between the government, companies, and workers is key to realizing a better and more just social security system.

RESEARCH METHOD

This study employs a normative legal research method, focusing on the analysis of applicable legal rules and their application within Indonesia's labor protection system. The normative legal method is chosen because this research aims to evaluate the effectiveness of regulations governing companies' obligations to register workers with BPJS Employment, as well as the legal

implications for non-compliant companies. This research does not only analyze the text of laws and regulations but also legal doctrines, legal principles, and related legal practices.

The data used in this study consists of primary, secondary, and tertiary legal materials. Primary legal materials include Law No. 24 of 2011 on the Social Security Organizing Agency, Government Regulation No. 86 of 2013 on Administrative Sanctions, as well as other relevant legal documents. Secondary legal materials consist of previous research findings, journal articles, books, and reports discussing labor social security. Meanwhile, tertiary legal materials are used as supplementary materials, such as legal dictionaries and encyclopedias, to clarify certain terms or concepts. (Fadhiah & Kamilah, 2024)

The approach used in this research is a statutory approach, a conceptual approach, and a case approach. The statutory approach is carried out by analyzing the content and application of legal norms contained in the BPJS Law and related regulations. The conceptual approach is used to explore the legal principles underlying the existence and implementation of social security. The case approach is undertaken by studying cases of violations of the BPJS registration obligation by companies and relevant court rulings.

Data collection is carried out through library research, which involves gathering and reviewing various legal documents, scientific journals, and related literature. The researcher identifies and categorizes data based on its relevance to the research issue. This library study allows the researcher to gain a comprehensive understanding of the applicable regulations and the challenges in their implementation. This process is conducted systematically to ensure that the data used is relevant and supports the research objectives.

Data analysis is conducted using a descriptive-qualitative method. The researcher analyzes the content of regulations to identify their strengths and weaknesses, then links them to the reality of practices in the field. This analysis aims to describe how the regulations are implemented, what challenges are faced, and what solutions can be offered to improve their effectiveness. The results of this analysis are presented systematically to provide a clear and structured overview.

This research also considers the fundamental principles of criminal and administrative law in analyzing the sanctions provisions for companies violating BPJS obligations. Principles such as the legality principle, proportionality principle, and justice principle serve as references to evaluate whether the existing criminal and administrative provisions align with legal objectives. This approach provides a strong analytical framework to assess the effectiveness of regulations.

Additionally, this research highlights a comparison of social security systems in other countries to see how best practices can be applied in Indonesia.

Countries like Germany and Japan are selected as references because they have social security systems that have successfully increased corporate compliance and provided optimal protection for workers. This comparison aims to identify strategic steps that can be adopted to improve Indonesia's BPJS Employment system. (Zebua et al., 2024)

With the methods used, this research is expected to contribute to the development of labor protection law, particularly in enhancing the effectiveness of BPJS Employment implementation. This research also provides practical recommendations for the government, companies, and workers in realizing a fair and sustainable social security system. Therefore, the results of this research are expected to serve as a reference for policymakers and academics in efforts to improve the labor social security system in Indonesia.

RESULTS AND DISCUSSION

BPJS Employment is a crucial instrument in Indonesia's social security system, aimed at providing comprehensive protection for the workforce. However, the implementation of regulations governing companies' obligations to register workers in this program still faces various obstacles. The findings of this study show that the main challenges lie in the low level of corporate compliance, weaknesses in supervision, and ambiguities in the related regulations. These issues affect the effectiveness of program implementation and workers' rights protection. (Septianingsih et al., 2023)

Companies that fail to comply with the obligation to register their workers with BPJS Employment often cite high operational costs as the main obstacle. In some cases, particularly in micro, small, and medium-sized enterprises (MSMEs), this obligation is seen as burdensome and inconsistent with their financial capacity. Conversely, large companies sometimes exploit legal loopholes and weak supervision to avoid their obligations. These reasons highlight the need for more adaptive policies and incentives for companies to increase compliance.

On the other hand, workers who are not registered lose essential rights they should receive, such as accident insurance, old-age benefits, pension plans, and death benefits. The loss of these rights not only impacts workers' welfare but also creates a greater social burden for the state. When workers are not protected, health care costs and other social burdens often fall to the government or society in general. Therefore, compliance with BPJS Employment must be a shared priority.

Regulatory analysis shows that Article 55 of Law No. 24 of 2011 imposes criminal penalties on companies that fail to fulfill their obligations. However, the threat of up to eight years in prison or a fine of up to Rp 1 billion is often difficult to enforce effectively. This is due to the ambiguity of the legal norms in the article, which does not clearly define the criteria for violations or enforcement

mechanisms. This ambiguity opens the door to different interpretations among law enforcement officials, creating legal uncertainty. (Beritno, 2022)

The ambiguity of norms in Article 55 is seen in the absence of a time limit for the late payment of contributions that could be considered a criminal offense. Additionally, there is no detailed explanation of the mechanism for imposing criminal sanctions or the responsible parties within the company. As a result, the implementation of criminal sanctions is often hindered by differences in interpretation in the courts, ultimately reducing the effectiveness of the norm in deterring violations.

Administrative sanctions such as written warnings, fines, and restrictions on public services are considered more practical in encouraging corporate compliance. However, the effectiveness of these sanctions is also limited by weaknesses in the monitoring system. The lack of an integrated digital monitoring mechanism means that many violations go undetected or are not promptly addressed. This worsens non-compliance and prolongs the negative impact on workers. (Rizky et al., 2024)

In developed countries like Germany and Japan, social security monitoring is done digitally and integrated. This system enables the government to monitor corporate compliance in real-time, allowing violations to be addressed immediately. Furthermore, these countries also offer incentives to compliant companies, such as tax reductions or access to training programs. This approach successfully increases compliance rates without relying too heavily on criminal sanctions.

This comparison shows that Indonesia needs to improve monitoring and incentive provisions. One step that could be taken is to utilize digital technology to improve transparency and efficiency in monitoring. With a more modern system, the government can directly monitor BPJS membership data and identify non-compliant companies. This step could also minimize the chances of violations and enhance public trust in the social security system.

Moreover, educating workers and employers is an essential aspect of improving compliance. Many workers are unaware of their rights to be registered with BPJS Employment, so they cannot demand that non-compliant companies fulfill their obligations. On the other hand, many employers still do not understand the benefits of this program, both from a legal compliance standpoint and its contribution to productivity. Intensive education campaigns through social media, seminars, and direct outreach can be an effective solution.

Another action that can be taken is to revise regulations to eliminate the ambiguity of norms. This revision should establish clearer criteria for violations and more detailed enforcement mechanisms. For example, the duration of delayed contribution payments can be clearly defined as one of the indicators of

a criminal violation. With clearer regulations, the law enforcement process can proceed more effectively and fairly for all parties. (Yusuf & Thohari, 2024)

An incentive-based approach can also be a long-term solution to improve compliance. Incentives such as tax reductions or access to better government services can encourage companies to comply with their obligations without feeling burdened. Moreover, these incentives can foster better relationships between the government and companies, ultimately supporting the sustainability of the social security system.

From the workers' side, raising awareness of the importance of social security is crucial. This can be done by involving trade unions, community organizations, and educational institutions in awareness campaigns. By understanding their rights, workers can become agents of change who push companies to comply with regulations.

The main obstacle in implementing BPJS Employment is the lack of supervision by the authorities. Supervision is key to ensuring that all employers fulfill their obligations. However, until now, the monitoring mechanism remains manual and limited. As a result, many violations go undetected or are delayed in being addressed. For example, companies that intentionally delay contribution payments often escape sanctions due to the lack of valid data or the difficulty of verification processes in the field. This condition underscores the importance of modernizing the monitoring system, one of which is through digital technology integration.

A technology-based monitoring system allows real-time and more transparent compliance tracking. With technologies like a centralized database integrated with other government agencies, violations can be immediately identified. Furthermore, the application of technology can minimize the possibility of corruption or data manipulation, which often hinder manual monitoring. The experience of developed countries, such as Germany, shows that digital monitoring can significantly improve the effectiveness of social security program implementation. Therefore, Indonesia should adopt similar technology to strengthen its monitoring system. (Brahmana et al., 2023)

One solution to improve compliance is by strengthening incentives for companies. These incentives could include tax reductions, access to government facilities, or employee training programs subsidized by the government. With incentives, companies will be more motivated to comply with their obligations. On the other hand, the government also needs to ensure that administrative sanctions are applied consistently. Firm enforcement of administrative sanctions can create a greater deterrent effect for companies that violate the rules.

Additionally, the findings indicate that many workers are unaware of their rights to be registered as BPJS Employment participants. This ignorance is often exploited by companies to avoid their obligations. Therefore, education for

workers becomes a very important aspect. The government and BPJS Employment need to collaborate with trade unions, community organizations, and educational institutions to raise awareness among workers about their rights. Education campaigns can be carried out through various media, including social media, seminars, and outreach at the workplace.

The educational approach should not only target workers but also employers. Many employers, especially in the MSME sector, do not understand the benefits of the BPJS Employment program. They often see the program as an additional burden without realizing its contribution to productivity and worker welfare. Therefore, campaigns highlighting the economic and social benefits of compliance with BPJS Employment can be a strategic step to raise employer awareness.

Clearer and more detailed regulations are also key to improving the effectiveness of BPJS Employment implementation. The ambiguity of norms in Article 55 of Law No. 24 of 2011 must be addressed through regulatory revisions. These revisions should include specifying criteria for violations, such as the duration of delayed contribution payments or the number of unregistered workers. Additionally, the law enforcement mechanisms need to be clarified to ensure that sanctions are applied consistently and fairly.

Furthermore, this research finds that a combination of incentive-based and sanction-based approaches can be an effective solution. Firm sanctions and appealing incentives can create a balance between compliance and rewards. For example, companies that comply with the rules can be given priority in government procurement of goods and services. This approach not only increases compliance rates but also encourages companies to view BPJS Employment as a long-term investment.

On the other hand, the judiciary also plays a critical role in enforcing the laws related to BPJS Employment. Consistent rulings and clear interpretations of regulations can create legal certainty for all parties. Therefore, training for judges and other law enforcement officials regarding BPJS Employment regulations needs to be enhanced. With a better understanding, the legal process can proceed more effectively and fairly.

The role of BPJS Employment as the implementing agency for the social security program also needs to be strengthened. BPJS must be more proactive in conducting socialization, supervision, and reporting. Additionally, BPJS needs to establish closer cooperation with other government agencies to ensure that all workers, especially in the informal sector, have equal access to social protection. Cross-sector collaboration can create a more inclusive and sustainable social security system.

Thus, the results and discussion affirm that although BPJS Employment has a strong legal foundation, its implementation still faces many challenges.

Strategic steps such as strengthening regulations, modernizing monitoring, providing incentives, and improving education are essential to improving the effectiveness of this program. With a more comprehensive approach, BPJS Employment can become the main instrument in creating a fair and sustainable labor protection system.

CONCLUSION

BPJS Employment is one of the key instruments in Indonesia's social security system aimed at protecting workers' rights and ensuring their welfare. Through programs such as work accident insurance, old age security, pension insurance, and death benefits, BPJS strives to create a sense of security for workers amid the risks inherent in their jobs. However, the implementation of this program still faces several challenges, including low compliance levels among companies, unclear legal norms, and weak oversight systems.

The results of this research show that these challenges not only affect the effectiveness of BPJS Employment's implementation but also the quality of labor protection in Indonesia. Companies that fail to fulfill their obligations cause workers to lose their rights, while the government faces difficulties in enforcing the law due to unclear regulations. This highlights the need for reform in various aspects, including regulation, oversight, and education.

Clearer and more detailed regulations are needed to eliminate the ambiguity of legal norms that hinder the enforcement of sanctions. Regulatory revisions should include specific criteria for violations, more detailed law enforcement mechanisms, and steps to ensure that administrative and criminal sanctions are applied consistently. With better regulations, legal certainty can be achieved, encouraging companies to comply with their obligations.

Strengthening the oversight system is also a priority. Digital-based monitoring allows the government to track company compliance in real-time and more transparently. By utilizing technology, violations can be immediately identified and addressed, ensuring that workers no longer lose their rights. This system can also minimize legal loopholes that companies often exploit to avoid their obligations.

In addition to a repressive approach, incentives for compliant companies should also be considered. Incentives such as tax reductions, access to training programs, or priority in government procurement can encourage companies to comply with regulations. This approach not only improves compliance but also strengthens the relationship between the government and the private sector.

Education is another strategic step to enhance the effectiveness of BPJS Employment. Workers need to have a better understanding of their rights, while employers need to realize the benefits of the program. Educational campaigns

involving social media, seminars, and workplace counseling can help create broader awareness about the importance of compliance with BPJS Employment.

The success of BPJS Employment's implementation requires synergy between the government, companies, and workers. The government is responsible for ensuring that regulations and oversight are effective, while companies must fulfill their obligations to register workers. On the other hand, workers must also be proactive in demanding their rights and ensuring they are enrolled in the BPJS program.

With comprehensive strategic steps, BPJS Employment can become a key pillar in creating a fairer and more sustainable labor protection system. This program is not only crucial for protecting workers' rights but also for promoting national social and economic stability. Well-executed reforms will ensure that BPJS Employment can achieve its main objectives: improving workers' welfare and creating a safer and more harmonious working environment.

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