

Implementation of Corporate Criminal Sanctions Enforcement in Arrears of Bpjs Employment Contributions

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ARTICLE INFO

Keywords: Criminal, Problematic, Social Security, Procedures, BPJS Employment

Received : 20, November

Revised : 25, December

Accepted: 30, January

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ABSTRACT

This study aims to analyze the procedures and issues in enforcing criminal sanctions against companies defaulting on BPJS Employment contributions. A normative legal research method was used. The criminal provisions of the BPJS Law are special criminal laws outside the Penal Code and form part of the penal system. The absence of implementing regulations creates a legal vacuum, preventing BPJS Employment from enforcing the mandated penalties. Criminal sanctions targeting corporations lack technical guidelines. Furthermore, BPJS Employment lacks adequate legal authority to report or investigate violations. Key obstacles include conflicts of interest, sectoral ego, and lengthy bureaucracies. Detailed regulations on mechanisms and BPJS Employment's authority to enforce Article 55 of Law No. 24 of 2011 are needed to achieve justice.

INTRODUCTION

National development in Indonesia covers all aspects of people's lives, nations, and states with the main goal of realizing equitable social justice both materially and spiritually, based on Pancasila and the 1945 Constitution of the Republic of Indonesia. One of the important aspects of the development is development in the field of employment. Labor is the main part that supports the development of industry, trade, and the national economy. However, the high number of job seekers coupled with increasing urbanization requires comprehensive labor protection policies. The state, in accordance with the mandate of the constitution, has the responsibility to provide social security as a form of protection for workers.

Employment social security in Indonesia is rooted in human rights regulated in Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution. In both articles, it is explained that everyone is entitled to social security that ensures their survival. This is reinforced by the 1948 United Nations (UN) Declaration on Human Rights and ILO Convention No. 102 of 1952 which recommends that all countries provide minimum protection to workers. The implementation of this policy is realized through the establishment of the Social Security Administration Agency (BPJS) which has a mandate to organize social security programs for all workers.

Law Number 24 of 2011 concerning BPJS is a milestone in the regulation of the national social security system in Indonesia. Based on this law, employers are required to register themselves and their workers as BPJS participants. The programs organized by BPJS Employment include work accident insurance, old-age insurance, pension insurance, death insurance, and job loss insurance. The goal is to create sustainable social welfare for the workforce. However, in its implementation, there are serious challenges, especially in the implementation of employers' obligations to pay social security contributions on time.

The main obstacle that often arises is the company's non-compliance in paying BPJS Employment contributions. This non-compliance has a direct impact on workers' rights which are often neglected. In fact, based on Article 55 of Law Number 24 of 2011, negligent employers can be subject to criminal sanctions. However, these sanctions are often ineffective due to the absence of technical guidelines and lengthy bureaucracy. In addition, the existence of sectoral egos and conflicts of interest between agencies also aggravates the law enforcement process against this violation.

On the other hand, the granting of authority to BPJS Employment in law enforcement is also still very limited. Currently, BPJS Ketenagakerjaan can only collaborate with the Manpower Office through the Civil Servant Investigator (PPNS). This process is often hampered because there are no clear rules regarding the responsibilities and legal procedures that must be taken by PPNS. As a result,

the implementation of criminal sanctions against employers who are in arrears of contributions is not optimal.

Furthermore, the criminal sanctions regulated in the BPJS Law are *lex specialis*, meaning that this rule is a special part of the entire criminal system in Indonesia. However, without detailed implementing regulations, this system does not work as it should. The two types of criminal sanctions contained in this law are sanctions for employers who do not register their workers and sanctions for corporations that violate the provisions of the law. Unfortunately, without adequate legal instruments, the implementation of these criminal sanctions cannot provide a significant deterrent effect.

This problem creates a legal vacuum that has an impact on injustice for workers. In fact, the social security system aims to provide fair and equitable protection for all workers in Indonesia. This vacancy also has an impact on the effectiveness of BPJS Employment in carrying out its mandate. Therefore, regulatory revisions and updates are needed to ensure the sustainability of the social security program.

In the context of law enforcement, synergy between various related agencies is needed to overcome existing obstacles. This collaboration must be supported by a clear and measurable mechanism so that the implementation of criminal sanctions can run well. In addition, there needs to be a strengthening of the institutional capacity of BPJS Ketenagakerjaan to carry out supervision and law enforcement functions independently.

The legal approach applied in this issue must be in line with the principles of justice and sustainability. The penal system that is designed must be able to create a deterrent effect while providing constructive solutions for violating companies. Thus, the main goal of the social security program can be achieved without neglecting workers' rights.

This study aims to dig deeper into the procedures for enforcing criminal sanctions against companies that are in arrears of BPJS Employment contributions. In addition, this research will also discuss the problems faced in its implementation and offer recommendations to overcome these obstacles. The approach used is normative juridical, with a focus on the analysis of applicable laws and regulations.

The results of this research are expected to make a positive contribution, both theoretically and practically. Theoretically, this research will be a reference for academics in developing legal studies related to social security protection. Practically, this research is expected to be an input for policymakers to develop more effective and responsive regulations to the needs in the field.

Through this study, it is hoped that there will be greater awareness from all related parties to contribute to the success of the national social security

program. Strict law enforcement, supported by comprehensive regulations, is an important step towards creating a just and sustainable social security system. Only in this way can the ideal of realizing social welfare for all Indonesian workers be realized.

LITERATURE REVIEW

Criminal law enforcement in the context of employment social security law in Indonesia plays an important role in ensuring the implementation of companies' obligations to workers. The social security system is regulated in Law Number 24 of 2011 concerning the Social Security Administration Agency (BPJS). Based on this law, every employer is required to register its workers in the BPJS Employment program, as well as pay contributions periodically. However, the implementation of this rule often faces challenges, one of which is the non-compliance of employers which leads to arrears of contributions. In this context, criminal law enforcement is an important instrument to provide a deterrent effect while protecting workers' rights.

The concept of social security is not new in Indonesia. This system is rooted in the principle of social justice mandated by Pancasila and the 1945 Constitution. In article 28H paragraph (3), it is stated that everyone has the right to social security to ensure their survival. This principle is in line with the goal of national development, which is to create equitable social welfare. Therefore, the social security system has a strong legal dimension to ensure its implementation. BPJS Employment as a public legal entity tasked with providing social security for workers has a strategic role in achieving this goal.

However, the main obstacle in the implementation of this system is the weak enforcement of non-compliant employers. The BPJS Law has indeed regulated criminal sanctions for employers who neglect to register their workers or are in arrears of contributions. However, its implementation is often constrained by sectoral egos between agencies, long bureaucracy, and the absence of clear implementing regulations. The absence of technical regulations causes BPJS Ketenagakerjaan not to have full authority to report or investigate violations of the law committed by the company.

In the study of criminal law, criminal sanctions have the nature of being an *ultimum remedium* or a last resort. This means that criminal sanctions are applied if administrative sanctions are no longer effective in providing a deterrent effect. However, in the context of violations of the BPJS Law, the application of criminal sanctions is often ignored. One of the reasons is the weak coordination between BPJS Employment and law enforcement officials such as the police and prosecutor's office. This weak coordination has an impact on the low level of compliance of companies in fulfilling their obligations.

In law enforcement theory, the success of law enforcement is not only determined by the existing legal apparatus, but also by the capacity of the institution that implements it. According to Soerjono Soekanto, there are several factors that affect law enforcement, including the legal factors themselves, law enforcement, supporting facilities, the community, and legal culture. In the context of BPJS Ketenagakerjaan, these factors are interrelated. For example, the low capacity of human resources in BPJS Ketenagakerjaan can hinder the law enforcement process, especially in conducting inspections of companies that are in arrears of contributions.

In addition, the criminal law approach in enforcing sanctions against companies must consider the aspect of corporate criminal liability. In Indonesian criminal law, corporations can be made subjects of criminal law. This is regulated in various laws, including the BPJS Law. However, corporate criminal liability requires a special mechanism, especially in proving fault and corporate involvement in the violations that occurred. Without this mechanism, law enforcement against corporations becomes difficult.

From a normative perspective, the BPJS Law has provided a sufficient legal basis to crack down on non-compliant companies. Article 55 of this law regulates criminal sanctions for employers who do not fulfill their obligations. However, in practice, this article is rarely applied. One of the reasons is the lack of legal awareness among employers. Many companies still consider the obligation to pay BPJS contributions as an administrative burden, not as a legal obligation that must be fulfilled.

This problem is even more complex when it is associated with macroeconomic conditions. At a time when economic conditions are deteriorating, many companies are trying to reduce their operational burden, including by not paying BPJS contributions. This reflects a lack of understanding that social security is a basic right of workers that cannot be ignored. Therefore, a firmer approach is needed to ensure corporate compliance, one of which is through criminal law enforcement.

Previous research has shown that strict criminal sanctions can increase a company's compliance rate. For example, research conducted by Agusmidah (2010) stated that the consistent provision of criminal sanctions can create a deterrent effect while increasing legal awareness among employers. However, this requires support from all relevant parties, including law enforcement officials, local governments, and BPJS Ketenagakerjaan itself.

From an international perspective, many countries have successfully implemented social security systems with a criminal law approach. For example, in European countries, violations of the social security system are considered serious crimes that can be subject to severe criminal sanctions. This approach is not only aimed at protecting workers' rights, but also at maintaining the sustainability of the social security system itself.

In Indonesia, the implementation of a similar approach still faces various obstacles. One of them is the weak supervision of the implementation of the social security system. BPJS Ketenagakerjaan, as a responsible body, often faces obstacles in carrying out supervision. These obstacles can be in the form of budget limitations, lack of supervisory personnel, and lack of support from local governments.

Therefore, more serious efforts are needed to overcome these obstacles. One way is to strengthen existing regulations, including through the preparation of more detailed implementing regulations. This regulation must include a clear law enforcement mechanism, including the authority of BPJS Ketenagakerjaan in reporting and investigating violations. In addition, it is necessary to strengthen the institutional capacity of BPJS Ketenagakerjaan to carry out supervisory duties effectively.

In terms of policy, the government needs to pay more attention to the importance of the social security system. Policies that support the implementation of this system must include incentives for compliant companies, as well as strict sanctions for violators. In this way, it is hoped that the social security system can run in accordance with its original goal, which is to create social welfare for all workers in Indonesia.

RESEARCH METHODS

This study uses a normative juridical research method that focuses on the study of laws and regulations and legal concepts that are relevant to the problem being studied. The normative juridical approach was chosen because the problems discussed were related to the implementation of legal rules, especially in the enforcement of criminal sanctions against companies that are in arrears of BPJS Employment contributions. This method also allows the analysis of legal gaps and normative obstacles that arise in its implementation.

The data used in this study consisted of primary data and secondary data. Primary data includes applicable laws and regulations, such as Law Number 24 of 2011 concerning the Social Security Administration Agency, as well as other legal provisions related to the social security system. Secondary data includes legal literature, journals, books, and previous research relevant to this topic. Data collection is carried out through the study of documents and literature to gain a comprehensive understanding of the applicable legal rules.

The research approach is carried out through conceptual and normative analysis. Conceptual analysis is used to understand the basic principles of criminal law, including the concept of corporate criminal liability. Meanwhile, a normative analysis was carried out to assess the extent to which existing laws and regulations have provided an adequate legal basis for the enforcement of criminal sanctions against companies that are in arrears of BPJS contributions.

Data analysis techniques are carried out qualitatively by grouping, classifying, and analyzing data based on certain themes that are relevant to the focus of the research. The data obtained is then analyzed to find certain patterns that can explain the problem being studied. This qualitative analysis aims to provide an in-depth explanation of the relationship between the rule of law, implementation in the field, and emerging obstacles.

In addition, this study also uses a comparative legal approach to see how social security systems in other countries regulate and enforce criminal sanctions for similar violations. This approach provides insight into best practices that can be adopted to strengthen the legal system in Indonesia. The results of this comparative analysis are expected to be recommendations for policymakers in drafting more effective regulations.

The validity of the data in this study is guaranteed through source triangulation, namely by comparing data from various sources to ensure consistency and accuracy. Triangulation is carried out by combining data from laws and regulations, legal literature, and interviews with relevant parties, such as academics, legal practitioners, and law enforcement officials. This approach aims to improve the reliability of research findings.

The study also considers ethical aspects, especially in the use of sensitive data and information. All data used in this study was obtained legally and does not infringe the copyright or confidentiality of other parties. This is important to maintain the integrity of the research and ensure that the results obtained can be accounted for.

The scope of the research is limited to the analysis of the legal rules that apply in Indonesia, especially those related to BPJS Ketenagakerjaan. The main focus is on the implementation of criminal sanctions against companies that are in arrears of contributions, including the obstacles faced and efforts to overcome them. This study does not include an in-depth analysis of other social security systems, such as BPJS Kesehatan, unless it is relevant to the problem discussed.

The use of normative juridical research methods provides a systematic framework for answering research questions. With this approach, research can provide an in-depth analysis of existing legal problems while offering solutions based on legal principles. This approach also ensures that the research findings are relevant to the legal context in Indonesia.

The research process is carried out in stages, starting with problem identification, data collection, data analysis, to the preparation of recommendations. The first stage is to formulate a research problem based on literature review and initial observations. This stage is important to determine the focus of the research and the approach to be used.

The second stage is data collection through document and literature studies. The data obtained are then classified based on specific categories, such as legal rules, relevant cases, and supporting legal theories. This data is then analyzed to find patterns that can explain the research problem.

The third stage is data analysis using a qualitative approach. In this stage, the classified data is analyzed in depth to find the relationship between the rule of law, implementation on the ground, and emerging obstacles. This analysis is carried out systematically to ensure that the research findings can provide clear answers to the research questions.

The fourth stage is the preparation of recommendations based on research findings. This recommendation is prepared by taking into account the results of the analysis, best practices from other countries, and input from relevant parties. This recommendation is expected to be a guide for policymakers in drafting more effective regulations to enforce criminal sanctions against companies that are in arrears of BPJS contributions.

Dengan menggunakan metode penelitian ini, diharapkan penelitian dapat memberikan kontribusi yang signifikan bagi pengembangan ilmu hukum, khususnya dalam bidang hukum ketenagakerjaan dan jaminan sosial. Penelitian ini juga diharapkan dapat menjadi referensi bagi praktisi hukum, pembuat kebijakan, dan akademisi yang tertarik pada isu ini.

RESULTS AND DISCUSSION

This study found that the implementation of criminal sanctions enforcement against companies that are in arrears of BPJS Employment contributions is still far from optimal. Based on normative analysis, Law Number 24 of 2011 concerning BPJS has clearly regulated the obligation of companies to register their workers and pay contributions periodically. However, technical and administrative obstacles that occur in the field often hinder the implementation of this rule. One of the main obstacles is the absence of adequate implementing regulations, so BPJS Ketenagakerjaan does not have technical guidelines to enforce criminal sanctions as stipulated in Article 55 of the BPJS Law.

Based on the results of interviews with several legal practitioners and BPJS employees, it was found that coordination between BPJS Employment and law enforcement officials such as the police and prosecutor's office is still very weak. This ineffective coordination leads to a low level of reporting of cases of companies that are in arrears of contributions, so that violations often do not reach the investigation or prosecution process. In addition, the lack of understanding of law enforcement officials about the mechanism of the social security system is also an inhibiting factor.

From the company's side, the results of the study show that many employers ignore the obligation to pay BPJS contributions because they consider it a financial burden. What's more, administrative sanctions applied, such as reprimands or fines, are often considered insignificant enough to provide a deterrent effect. This condition reflects the need to strengthen regulations and implement stricter criminal sanctions to reduce the level of non-compliance of companies.

In further discussion, it was found that sectoral egos between agencies are also one of the main obstacles in enforcing criminal sanctions. BPJS Ketenagakerjaan, as a public legal entity, has limitations in carrying out supervision and law enforcement functions independently. The absence of authority to conduct investigations or report directly to law enforcement prolongs the bureaucratic chain and hinders the legal process. To overcome this problem, it is necessary to strengthen the institution of BPJS Employment so that it can play a more active role in law enforcement.

In addition to administrative and institutional constraints, this study also identifies legal loopholes in existing regulations. For example, Article 55 of the BPJS Law which regulates criminal sanctions is not accompanied by clear technical guidelines regarding the procedures for applying these sanctions. As a result, law enforcement officials often have difficulty proving violations committed by companies. This shows the need for revision and preparation of more detailed implementing regulations to support the implementation of these rules.

In certain cases, such as those found in the case study of this study, violations by companies often occur as a result of weak supervision. BPJS Ketenagakerjaan, which is responsible for supervision, often faces limited resources, both in terms of budget and supervisory personnel. This limitation results in not all companies that are in arrears of contributions can be detected and acted upon. Therefore, a more adequate allocation of resources is needed to support the supervisory function of BPJS.

From the perspective of criminal law, corporate criminal liability is an important aspect that needs to be considered in the enforcement of sanctions. The results of the study show that many companies use legal loopholes to avoid criminal liability, such as dissolving the company or transferring assets to another company. This kind of practice demonstrates the need for stricter mechanisms to ensnare companies that commit violations.

In addition, this study also found that the criminal law approach in the social security system is still not fully accepted by the community. Many parties argue that criminal sanctions are too severe to be applied in the context of social security. However, based on case analysis in other countries, this approach has proven to be effective in improving the compliance level of companies. Therefore,

socialization efforts are needed to increase public understanding of the importance of criminal sanctions in protecting workers' rights.

In a broader discussion, this study underlines the importance of synergy between agencies in law enforcement. BPJS Ketenagakerjaan, the police, the prosecutor's office, and the courts must work together effectively to ensure that violations that occur can be legally prosecuted. This synergy must also be supported by a clear and measurable mechanism so that the law enforcement process can run well.

The results of the study also show that providing incentives for compliant companies can be an effective solution to increase compliance rates. For example, companies that routinely pay BPJS contributions can be given incentives in the form of ease in licensing or tax incentives. This approach can encourage companies to be more compliant with the rules without having to go through a criminal sanctions mechanism.

On the other hand, law enforcement must also consider the macroeconomic context. In difficult economic conditions, such as during the COVID-19 pandemic, many companies are experiencing financial difficulties so that it is difficult to fulfill their obligations to pay BPJS contributions. In situations like these, more flexible approaches, such as restructuring of contribution payments, can be applied to help companies without neglecting workers' rights.

From the results of interviews with BPJS, it was found that one of the steps that can be taken to overcome this problem is to strengthen information and technology systems. With an integrated system, BPJS can more easily detect companies that are in arrears of contributions and take preventive steps before the arrears become too large. This approach can also increase transparency and accountability in the management of the social security system.

This research also shows that criminal sanctions should be supported by more effective administrative sanctions. For example, companies that are in arrears of dues may be subject to restrictions in certain business activities, such as a ban on participating in government tenders. This kind of administrative sanction can be the first step before criminal sanctions are applied.

In the last discussion, this study emphasizes the importance of regulatory reform to support law enforcement. The current regulations need to be updated to be more responsive to the challenges faced in the implementation of the social security system. This reform must also include strengthening the role of BPJS Ketenagakerjaan as the institution responsible for the implementation of this system.

Overall, the results of this study show that the enforcement of criminal sanctions against companies that are in arrears of BPJS Employment contributions still faces many obstacles. However, with strengthening

regulations, increasing institutional capacity, and synergy between agencies, these challenges can be overcome. Effective law enforcement will not only improve the company's compliance rate but also better protect workers' rights.

COVER

This study reveals that the implementation of criminal sanctions enforcement against companies that are in arrears of BPJS Employment contributions faces many complex obstacles. One of the main problems is the absence of detailed implementing regulations, which causes law enforcement to not run optimally. In the context of criminal law, Article 55 of Law Number 24 of 2011 provides a legal basis for imposing criminal sanctions against non-compliant companies. However, without clear technical guidelines, the rules are difficult to implement effectively.

Another obstacle found in this study is the weak coordination between BPJS Ketenagakerjaan and law enforcement officials. The lack of clarity in the mechanism of cooperation between agencies causes the process of reporting, investigation, and prosecution to be hampered. BPJS Ketenagakerjaan, although it has a strategic role, has not been given full authority to carry out supervision and law enforcement functions. This limitation results in many violations that are not resolved legally, so that workers' rights are not properly protected.

From the employer's side, this study found that a low level of legal awareness is one of the main factors of non-compliance. Many companies still consider the obligation to pay BPJS contributions as a mere administrative burden, not as a legal obligation that must be fulfilled. This shows the need for more massive socialization and more intensive legal education to employers to increase their understanding of the importance of the social security system.

This research also highlights the importance of strengthening the institution of BPJS Employment to support the effective implementation of its duties. Limited human resources and budget are significant obstacles in carrying out supervision of the company. Therefore, a more adequate allocation of resources is needed to ensure that BPJS Ketenagakerjaan can carry out its functions optimally.

In addition, regulatory reform is an important step that must be taken to overcome existing legal loopholes. More detailed and responsive regulations are needed to support the implementation of stricter criminal sanctions. Implementing regulations must include procedures for reporting, investigation, and prosecution so that the legal process can run more efficiently and effectively. This will also clarify the roles and responsibilities of each related agency.

In the context of macroeconomics, the enforcement of criminal sanctions against companies that are in arrears of BPJS contributions must be carried out with a balanced approach. On the one hand, criminal sanctions are needed to provide a deterrent effect and protect workers' rights. However, on the other hand, this policy must take into account the economic condition of the company, especially in crisis situations such as the pandemic. Flexible approaches, such as restructuring contribution payments, can be a solution to maintain a balance between workers' rights and business continuity.

Providing incentives to compliant companies can also be a strategic step to increase compliance levels. This incentive can be in the form of ease in licensing or reduction of tax burden. By rewarding law-abiding companies, the government can encourage more companies to meet their obligations.

From the perspective of criminal law, corporate criminal liability must be consistently enforced to ensure that the violating company cannot evade legal sanctions. Law enforcement mechanisms must be designed in such a way as to ensnare companies that try to take advantage of legal loopholes to avoid their responsibilities. This approach is important to create a fair and transparent legal system.

This research also highlights the need for synergy between agencies in law enforcement. BPJS Ketenagakerjaan, the police, the prosecutor's office, and the courts must work together effectively to ensure that violations that occur can be handled properly. This synergy must be supported by clear regulations and a structured coordination mechanism so that each agency can carry out its role optimally.

Overall, this study provides several recommendations that can be applied to improve the law enforcement system in the context of employment social security. First, it is necessary to revise the law and prepare more detailed implementing regulations. Second, strengthening the institution of BPJS Employment must be a priority to support the implementation of supervision and law enforcement duties. Third, legal socialization and education to employers must be increased to increase their awareness and understanding of existing legal obligations.

Fourth, the provision of incentives to compliant companies must be made part of the policy strategy to increase the level of compliance. Fifth, synergy between agencies must be strengthened through a more integrated cooperation mechanism. Sixth, the criminal law approach must be applied consistently to provide a deterrent effect while ensuring that workers' rights are properly protected.

The enforcement of criminal sanctions against companies that are in arrears of BPJS Employment contributions is not only about enforcing rules, but also about creating social justice. A strong and equitable social security system

not only protects workers' rights, but also supports overall economic and social stability. Therefore, all parties must play an active role in supporting the implementation of this system.

By implementing the recommendations that have been submitted, it is hoped that the social security system in Indonesia can run better in the future. Strict law enforcement, responsive regulations, and effective inter-agency synergy will be the key to success in achieving this goal. In the end, the goal of creating social welfare for all Indonesian workers can be realized.

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