



**JURNAL
POROS HUKUM
PADJADJARAN**

P-ISSN: 2715-7202
E-ISSN: 2715-9418

Volume 5, Number 2, May 2024

Submission:
7 August 2023

Published:
30 May 2023

DOI:
<https://doi.org/10.23920/jphp.v5i2.1443>

Link Publications:
<http://jurnal.fh.unpad.ac.id/index.php/JPHP/issue/archive>

Publisher:
Magister of Laws
Universitas Padjadjaran

LEGAL PROTECTION FOR EMPLOYEES DUE TO NON-PAYMENT OF HEALTH SOCIAL SECURITY CONTRIBUTIONS BY THE COMPANY

Lukman Hakim Ardan^a; Wahyu Prawesthi^b; Siti Marwiyah^c; Bachrul Amiq^d

ABSTRACT

National Social Security will be administered by the BPJS, which consists of the Health BPJS and the Employment BPJS. The obligations of companies are to register as BPJS participants and pay BPJS membership dues. This research aims to understand and analyze the legal provisions if the company does not pay BPJS Health contributions even though it has deducted employee salaries. Apart from that, this research also aims to understand and analyze legal protection for employees who are not paid BPJS Health by the company. The type of method applied in this research is normative legal research. Companies are required to register themselves and their workers as Participants in BPJS. The sanction for those who do not register are administrative sanctions and criminal sanctions are imposed if the company is proven to have committed a crime of embezzlement by not paying salary deductions. The dispute resolution mechanism for BPJS Health participants who do not receive health services is mediation or negotiation before taking the litigation route or trial process in court.

Keywords: legal protection; BPJS; company.

INTRODUCTION

A human right is an adequate standard of living for the health and well-being of individuals and families, including the right to healthy food, clothing, housing health services, and necessary social services. Social security, a globally approved scheme, aims to empower people economically which always improves their quality of life, as well as other reasons and benefits. Everyone is also entitled to social security if he or she is unemployed, suffers from illness, or disability, becomes a widow or widower, reaches old age, or any other condition resulting in a lack of support that is beyond his or her control¹. The objects of social security are people, their legitimate interests and needs, communities and

^a Universitas Dr. Soetomo, Jl. Semolowaru No. 84 Surabaya, Indonesia, email: ardanlukmanhakim@gmail.com.

^{bcd} Universitas Dr. Soetomo, Jl. Semolowaru No. 84 Surabaya, Indonesia.

¹ Sistiaperdani, R., Zubaedah, C., Wardani, R., Hayati, A., & Carolina, N. (2020). The Relationship between Social Security Administrator (BPJS) Regulations and the Value of Benefits Obtained by Social Security Administrator for Employment (BPJS Ketenagakerjaan) Participants. *Padjadjaran Journal of Dentistry* 32(2): PP. 149-159.

relationships, socialization systems, and human life support. There are various types of social security schemes. These include pension funds, savings funds, unemployment benefits, family benefits, and others.² One social security that will be discussed is social security for health.

The government's responsibility to provide public health insurance through the National Health Insurance (JKN) for individuals is to fulfill international commitments. As stated in the Law of the Republic of Indonesia Number 36 of 2009 concerning Health everyone has the same right to access health sector resources and obtain safe, quality, and affordable health services. In addition, everyone is obliged to register in this national health care system.

Law of the Republic of Indonesia Number 40 of 2004 on the National Social Security System mandates that "mandatory social security for the entire population includes National Health Insurance (JKN) through a Social Security Organizing Agency (BPJS)". Law of the Republic of Indonesia Number 24 Year 2011 on Social Security Organizing Agency also stipulates, "National Social Security will be organized by BPJS, which consists of BPJS Health and BPJS Employment". Employment insurance is regulated by the Employment Social Security Agency (BPJS) in addition to the health insurance program organized by the Health Social Security Agency (BPJS).

BPJS is a legal entity that organizes social security programs to ensure all people can meet the basic needs of a decent life. BPJS is organized based on the principles of humanity, benefits, and social justice for all Indonesian people to realize the fulfillment of the basic needs of a decent life for every Indonesian person who has basic human rights. On January 1, 2014, BPJS Kesehatan will take a special role in the implementation of the National Health Insurance (JKN).

BPJS Kesehatan has the right to collect and take legal action against the company if it does not pay the required contributions. Following "Article 2 of the Regulation of the Minister of Manpower of the Republic of Indonesia Number 4 of 2018 concerning Procedures for Imposition and Release of Administrative Sanctions for Not Receiving Certain Public Services for Employers Other than State Organizers", BPJS Kesehatan will go through the stages of imposing sanctions before being sanctioned. Administrative consequences are in the form of written warnings, fines, and/or refusal to provide certain public services to the offending employer or company. After BPJS Kesehatan implements sanctions, the Company is also subject to criminal sanctions following Article 55 of Law of the Republic of Indonesia Number 24 of 2011 concerning BPJS where "companies that violate the provisions referred to in Article 19 paragraph (1) or

² Odedokun, E. A. (2020). Social Security Initiatives and Economic Empowerment on Value of Life in Nigeria. *KIU Journal of Humanities* 5(4): pp. 21-31.

paragraph (2) shall be punished with a maximum imprisonment of 8 (eight) years or a maximum fine of Rp 1,000,000,000.00 (one billion rupiah)".

The government must intervene to ensure that the rights and obligations of the parties involved in industrial relations are implemented through the establishment of laws and regulations governing labor and employment relations³.

It is known that around the beginning of August 2017, the complainant's wife had come to "Krisna 2 Clinic Treatment Center located at Jl. Safir No. 2-3 Perumahan Pondok Permata Suci Gresik to examine eye complaints experienced by the complainant's wife". While the reporting spouse's Healthy Indonesia Card (BPJS Health Card) was accepted after the initial registration, the clinic then received a rejection reply when the card was used for the next appointment. The rejection was based on the arrears of membership fees associated with the BPJS Health card. At that time, the husband was still working at PT Philtera, which is currently located at Ruko Waterplace Tower A-22 Surabaya, and the payment of BPJS Health contributions was deducted every month. Whereas the one who should make deposits to BPJS Health is PT. Philtera is an employer, but PT. Philtera did not deposit its employees' BPJS contributions to BPJS Health in July, August, and September 2017, so PT. Philtera is suspected of violating "article 55 of the Law of the Republic of Indonesia Number 24 of 2014 concerning the Social Security Organizing Agency".

Investigations carried out by the police can find a suspect who is the President and Director of PT Philtera along with supporting evidence. The Prosecutor then processed to the court where the court decided to declare the indictment of the Public Prosecutor on June 21, 2018, unacceptable, then the Public Prosecutor immediately filed an appeal to the Supreme Court, resulting in a decision of the Supreme Court which is legally binding that the appeal cannot be accepted from the Cassation Petitioner/Public Prosecutor.

The problem raised in this research is that victory can remain in favor of the Company even though the Company is negligent in carrying out its obligations to pay Employment BPJS contributions. Employees cannot enjoy the facilities of the Employment BPJS even though their salary has been deducted for payment of Employment BPJS contributions. This will certainly affect the welfare of the employee.

Based on the above problems, it is necessary to research to understand and analyze the legal provisions if the Company does not pay BPJS Health contributions even though it has deducted employee salaries. This aims to minimize the occurrence of similar incidents that will harm employees of a company. In addition, this research was also

³ Husni, L. (2010). *Hukum Ketenagakerjaan Indonesia*. Jakarta: Rajawali Press.

conducted to develop solutions for the legal protection of employees whose rights are not fulfilled, especially the right to health and social security by the company.

RESEARCH METHODS

The research method used by the author in this research is a normative legal research methodology used to provide solutions to the problems raised in this work. According to Peter Mahmud Marzuki, " Legal research is a process to find legal certainty, legal principles, and legal doctrines to address the legal issues at issue".⁴ The study of precedents and secondary sources is known as normative legal research.⁵

Normative or doctrinal legal research is conducted with methods based on the nature of legal science which is unique and different from social science or natural science.⁶ Doctrinal research is research that provides a systematic explanation of the provisions governing certain areas of law, analyzes the relationship between these provisions, explains the problem, and possibly predicts its development.^{7,8} The approach to analyzing legal materials uses qualitative analysis, in the form of discussing the legal data collected within the framework of the applicable theory.⁹ The data is then summarized in descriptive terms to create a picture that can be easily understood and guided toward solutions to the research questions.

DISCUSSION

It is known that around the beginning of August 2017, the complainant's wife came to "Krisna 2 Clinic Treatment Center located at Jl. Safir No. 2-3 Housing Pondok Permata Suci Gresik to conduct an examination of eye complaints experienced". However, when registering using the Healthy Indonesia Card (BPJS Health card), she received a rejection response from the Clinic. The reason for the rejection is that the BPJS Health card cannot be used because the contribution payment has not been made. At that time, the husband was still working at PT Philtera which is currently located at Ruko Waterplace Tower A-22 Surabaya and the payment of BPJS Health contributions was deducted every month.

⁴ Nugraha, X., & Katherina, A. M. F. (2019). Tanggungjawab Promotor Perseroan Terbatas terhadap Kontrak Pra Inkorporasi di Indonesia. *Media Iuris* 2: pp. 127-155.

⁵ Soekanto, S., & Mamudji, S. (2003). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.

⁶ Mohajan, H. (2019). The First Industrial Revolution: Creation of a New Global Human Era. *Journal of Social Sciences and Humanities* 5(4): pp. 77-87.

⁷ Muwahid. (2017). Metode Penemuan Hukum (Rechtsvinding) Oleh Hakim dalam Upaya Mewujudkan Hukum yang Responsif. *Al-Hukama* 7(1): pp. 25-48.

⁸ Elvira, F. G., Damayanti, S. S., Theodora, G., & Nadina, O. (2020). Analysis of Electric Bicycles as a Vehicle Inindonesia: A Normative Legal Review. *Jurnal Hukum dan Pemikiran* 20(1): pp. 89-103.

⁹ Fajar, M., & Achmad, Y. (2010). *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar.

Meanwhile, the one who should make deposits to BPJS Health is PT. Philtera is an employer, but PT. Philtera did not deposit its employees' BPJS contributions to BPJS Health in July, August, and September 2017 so PT. Philtera is suspected of violating Article 55 of the Law of the Republic of Indonesia Number 24 of 2014 concerning the Social Security Organizing Agency.

In the Supreme Court judge's decision Number 301 K/Pid.Sus/2022, it was stated that the appeal of the Public Prosecutor could not be accepted, which means that the decision of the District Court judge who heard the case is an *Inkracht* (legally binding) decision. In his decision, the district court judge stated that the charges of the public prosecutor were unacceptable so that the defendant was not proven to have violated Article 55 of Law Number 24 of 2014 concerning the Social Security Organizing Agency even though the defendant as the head of the company did not pay contributions that had been deducted from employees' salaries to BPJS Kesehatan.

Criminal Liability of Companies that Fail to Pay BPJS Health Contributions.

Soekanto (2008) identifies five factors --- law itself, law enforcement officials, physical infrastructure, social context, and cultural norms --- that guide how the law is applied in society. Legally, the corporation will fulfill its commitment as stated in Article 19 Paragraphs 1 and 2 of Law Number 24 Year 2011 of the Republic of Indonesia concerning BPJS. If the employer does not fulfill its responsibilities as outlined in this article, then the maker will be held criminally liable following Article 55 of the BPJS law under study.

Violations of Article 19 paragraph (1) and paragraph (2) vary depending on how long the corporation takes to fulfill its commitments. The categories include;

1. "Currently, the company is 1-3 months late;
2. Sub-standard, the company is late within 4-6 months;
3. Doubtful, the company is 7-12 months overdue; and
4. Bad debt, where the company is >12 months late."

In order for companies to fulfill the obligations of the BPJS program legally, the author examines the legal elements that form the basis for its implementation. Paragraphs (1) and (2) of Article 19 lay the foundation for corporate responsibility in the BPJS program. Article 55 of the Law of the Republic of Indonesia Number 24 Year 2011 on BPJS contains criminal sanctions for business entities that do not fulfill their duties. The problem is that it looks like a corpse on paper.

Companies that are participants in the BPJS program and therefore have to collect, deposit, and pay BPJS payments on behalf of their employees will not see the compliance effects of this requirement. As stated in the articles that regulate the duties of companies

in the BPJS scheme. The laws and regulations do not provide a clear concept of when the bill is due or what happens if the corporation is late in fulfilling its duties. If you look at the language of Article 19 paragraphs (1) and (2), then business actors who are late in submitting BPJS reports even if they are one day late are at risk of criminal sanctions based on Article 55 of the Indonesian Law. Indonesia was Number 24 the Year 2011. Because it has fulfilled its contractual requirements, including but not limited to not collecting, depositing, and paying contributions.

Article 19 paragraphs (1) and (2) of Law of the Republic of Indonesia Number 24 of 2011 concerning BPJS needs to be revised or additional explanations regarding the obligations that must be carried out by the company because in practice there are many companies and various fulfillments of their obligations (delays). The Department of Labor and the Police can then impose the necessary criminal penalties, as is the case with BPJS Kesehatan and BPJS Ketenagakerjaan. Companies should not despair of being late in fulfilling their commitments as BPJS participants as there are no indicators of their tardiness. Indeed, workers and other beneficiaries (workers' families) should always rely on workers' rights in the form of health and social security.

Article 55, which regulates the imposition of punishment on corporations that commit wrongdoing, must be used with due regard to the mindset of law enforcement officers in carrying out their duties. As far as the author knows, no one has filed an official complaint or question about someone failing to fulfill their obligations as a participant. Of course, this uses forced efforts through the criminal justice system, where criminal sanctions are the last resort or (*ultimum remedium*) that can be applied if administrative sanctions do not produce results.

In addition to harming employees who cannot get health services, company actions that result in the cessation of health services due to unpaid contributions and health service claims that must be paid by BPJS hurt state finances. Given that Article 55 is a Formal Offense, BPJS Kesehatan's attitude towards company witnesses is understandable: as a public service institution, BPJS believes that its mission to serve the Indonesian people through the provision of health services is more important than efforts to realize justice through disclosure of mistakes on the part of the company.

However, there are companies subject to Article 55 of Law No. 24 Year 2011 based on reports from workers. In this case, BPJS Kesehatan is a party that can be called to testify in court. Furthermore, the author assumes "in addition to companies that have registered their workers as BPJS Health participants, and collect dues that are the burden of participants (workers), then do not pay any deposit to BPJS, it can also happen that if the company has deducted workers' wages as BPJS dues, but does not deposit to BPJS Health, the company can also be charged with the Article of embezzlement in

employment relations which is regulated in the Criminal Code Article 374" where namely:

"Embezzlement committed by a person who holds the goods in connection with his employment or position or for which he is remunerated; shall be punished by imprisonment for a term not exceeding five years."

The author suggests contacting the company for more information or contacting BPJS directly to address this issue. Please report the current status of BPJS if the company meets the requirements but there is evidence of intent to implicate employees; this allows the company to face administrative sanctions, and if there is evidence of embezzlement or non-payment and deposit of BPJS contributions, the police will investigate.

Legal Protection of BPJS Participants in Health Services that are Refused Due to Unpaid BPJS Dues

Everyone has the responsibility and right to pursue perfect health. That's why maintaining a healthy lifestyle requires a relentless commitment to improving health. Everyone has the right to physical and mental well-being and the right to obtain health services, as guaranteed in Article 28H of the Second Amendment to the Constitution of the Republic of Indonesia passed in 1945.

As public services affect both non-profit and for-profit organizations, they face various challenges. Because they cover such a wide range of topics, describing how people feel about public services can be challenging. Disagreements in opinions are to be expected due to the diversity of human experience, yet they need not be harsh. What we call "perception" is just a person's interpretation of the world around them¹⁰.

"Social protection organized by the state in guaranteeing its citizens to fulfill health insurance is regulated in Article 25 paragraph (1) of the 1948 UN Declaration of Human Rights and the 2005 World Health Assembly (WHA) Resolution". The declaration states that "every country needs to develop a Universal Health Coverage (UHC) scheme through a social health insurance mechanism to ensure sustainable health financing". Furthermore, the implementation of social security needs to be accommodated in "Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution)".

Article 10 of Law of the Republic of Indonesia Number 24 of 2011 concerning BPJS regulates the responsibilities of BPJS, affirming that "the authority possessed by BPJS in organizing health insurance programs is carried out in carrying out the functions referred to in Article 9 so that the implementation of health insurance programs can run

¹⁰ Shofie, Y. (2009). *Perlindungan Konsumen dan Instrumen-instrumen Hukumnya*. Bandung: Citra Aditya Bakti.

smoothly by the objectives of the establishment of BPJS which is confirmed in Article 11 of Law Number 24".

Following the Article 10 of Law of the Republic of Indonesia Number 24 of 2011 concerning BPJS, BPJS is responsible for:

1. "Conducting and or receiving participant registration.
2. Collecting and collecting contributions from participants and employers.
3. Receive contribution assistance from the government.
4. Manage the Social Security Fund for the benefit of participants.
5. Collecting and managing data on Social Security program participants.
6. Paying benefits and or financing health services by the provisions of the Social Security program.
7. Providing information regarding the implementation of the Social Security program to participants and the public.
8. Cooperate with other parties in the context of implementing the Social Security program."

According to Dr. CST Kansil, legal protection is an effort made by law enforcement officials on behalf of a legal subject to ensure that the subject is safe from all dangers or obstacles. According to Satjipto Rahardjo, human rights should be protected by law. Citizens can exercise the legal rights to which they are entitled based on this shield.

Meanwhile, Philipus M. Hadjon believes that society can only be legally protected through preventive and repressive actions, namely the government.

When people or objects are given legal protection, it means that they are protected from harm by the force of law or regulations that apply to them.

In terms of the law itself, there are two types of legal protection:

1. Preventive Legal Protection

The purpose of preventive legal protection is to avoid legal conflicts in the first place, and this is achieved by giving people the opportunity to voice their concerns before the decision is finalized.

The purpose of this type of legal protection is to prevent potential legal battles by allowing interested parties to voice their concerns regarding a proposed government action before the action is finalized. Encouraging the government to exercise caution when making discretionary decisions is made easier with preventive legal protections, making it an important factor for government action based on freedom of action. Legal protection is a preventive or anticipatory step taken by the government in the event of a violation, not a reactive response after a violation has occurred.

For this reason, when individuals or families register as BPJS Kesehatan participants, they are given legal protection known as anticipatory or preventive legal protection. BPJS Kesehatan participants are briefed on their rights and obligations as program participants, in addition to knowing the benefits of being part of the program. The benefits of the BPJS Kesehatan card and the actions that must be taken if they have difficulty using it are socialized to the public through social media, print media, and online media as another preventive measure.

2. Repressive Legal Protection

Forced legal protection efforts to end an argument. Legal protection in Indonesia is administered by both the District Court and the State Administrative Court. Since Western history reveals that the conception of concepts related to "the recognition and protection of human rights is directed at limiting and laying down the obligations of society and government, the principle of legal protection against government action is based on and derived from this".

The principle of the rule of law is the second principle of constitutional protection against arbitrary state action. There is a clear hierarchy of interests between the objectives of the rule of law and the recognition and protection of human rights, with the latter taking precedence.

When disputes arise or violations are committed, the last line of defense is repressive legal protection in the form of sanctions including fines, imprisonment, and additional penalties. Therefore, this restrictive legal protection is the last resort in resolving a problem. When BPJS Kesehatan members experience difficulties with the quality of service they receive at both primary and tertiary care clinics, they will be fully protected by law. Participants are allowed to take corrective action by filing a complaint with BPJS Kesehatan and receiving a response. To recover financial losses related to medical treatment, BPJS Kesehatan members can file one of two legal actions:

a. Mediation (Non-Litigation)

Article 29 of Law of the Republic of Indonesia Number 36 of 2009 concerning Health stipulates that in the event of a violation by health workers in providing health services to patients, the first step is for both parties to mediate to reach an agreement.

b. Litigation

The last step if after mediation no agreement is found, and the patient wants to exercise his right to sue the health facility for violations that harm the patient either civilly or criminally. If the health facility is proven to be negligent of its responsibilities in health services to the detriment of the

patient or acts not in accordance with the provisions of the law and the cooperation agreement, the first stage is the provision of light sanctions in the form of a letter of reprimand, the limit of letters of reprimand is three times. If the action is proven to be fatal, for example taking the patient's life due to the length of handling or malpractice, then severe sanctions in the form of termination of cooperation, reporting to the Health Office, PERSI, and reporting to the police.

CONCLUSION

The conclusions that the author can give in ending this research are: Understand and Analyze the Legal Provisions If the Company Does Not Pay BPJS Health Contributions Despite Deducting Employee Salaries. "Every person including foreigners who work for a minimum of 6 (six) months in Indonesia, Company/Employer, and Every person, other than Employers, Workers, and recipients of Contribution Assistance, who meet the requirements for participation in the Social Security program must register themselves and their workers as Participants to the BPJS following the Social Security program followed (Article 14, Article 15, Article 16 of Law 24/2011 concerning BPJS)".

Sanctions for those who do not register themselves as BPJS participants are Ps. 17 of Law 24/2011 Ps. 5, Ps. 6, Ps. 7, and Ps. 8 of PP 86/2013, and Art. 55 OF LAW 24/2011. The first sanction given is administrative sanctions (written warning, fines and not receiving certain public services) and criminal sanctions are applied if the company is proven to have committed a criminal act of embezzlement in violation of Article 374 of the Criminal Code by not paying salary deductions that are automatically deducted for BPJS but not paid to BPJS.

Understanding and Analyzing the Legal Protection of Employees Who Are Not Paid BPJS Health by the Company Legal protection against BPJS Health participants who cannot use health facilities even though BPJS fees have been deducted from salaries, but the company does not pay to BPJS Health is with Preventive legal protection and Repressive Legal Protection (Non-Litigation/Mediation and Litigation/Court Process).

The suggestions for this research are: The government needs to emphasize Art. 55 of Law 24/2011 because there are many "employers who have fulfilled the elements in Article 55 of Law 24 2011 in conjunction with Article 19 paragraph 1 and paragraph 2 of Law 24 of 2011" but the settlement of the case is not in accordance with Article 55 of Law 24/2011. 55 of Law 24/2011, the settlement of cases pursued by mediation or the application of administrative sanctions.

BPJS Health participants who do not get health services because BPJS contributions are not paid by the company even though their salaries are automatically deducted for BPJS Health contributions take dispute resolution in accordance with the mechanism offered by Law 24/2011 concerning BPJS, namely through mediation first, then after mediation fails to reach an agreement, BPJS Health participants take the Litigation route with the court process.

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