

The Role of Local Government in Implementing Social Employment Security for the Community Based on Justice Values

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Abstract. *This study aims to find out and analyze the legal position of local governments in implementing social security for workers in Indonesia. Both through the form of legal protection and how the legal protection measures can provide values of justice for the workers in their area. This study was conducted using a sociological juridical approach, namely research consisting of how the law applies in society concerning the effectiveness of the law and the impact of the law on people's lives, and based on the study it was concluded that local governments, especially provincial governments, have the authority to carry out direct supervision of employment affairs based on Law Number 23 of 2014, one of which is related to how social security for workers is implemented, if there are findings of inconsistencies between regulations and practices in the field, the provincial government through the labor office can take firm action in the form of labor action by making a report on the results of the examination to be continued to the next stage.*

Keywords: *Community; Employment; Government; Local, Security.*

1. Introduction

By granting some authority by the central government to the regions, it is hoped that government affairs can be carried out optimally, because it can be imagined that the territory of Indonesia is so large that if it relies only on the central government, then government affairs will definitely experience obstacles, especially if we consider the expanse of the territory of Indonesia which is an archipelagic country.

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Since Law Number 23 of 2014 concerning Regional Government was enacted, employment affairs as referred to in Article 12 paragraph (2) letter a of Law Number 23 of 2014 concerning Regional Government have become one of the concurrent government affairs that fall into the category of mandatory regional government affairs. What is meant by concurrent government affairs are government affairs that are divided between the central government and the provincial and district/city regional governments.³

In the regional government law, especially in the employment supervision sector, there have been significant changes where the district/city regional government no longer has this authority, but it has been given to the provincial regional government.⁴ because the role of local government in overseeing the implementation of social security for workers is basically in terms of supervision.

In the Employment Social Security Program, there are several legal subjects involved, namely BPJS Employment, as a legal entity formed to organize the social security program, the Company as an employer who is obliged to register its workers/laborers as BPJS Employment participants, Workers/Laborers as BPJS Employment participants, and the Government, as the party tasked with supervising the implementation/application of the implementation of the BPJS Employment program.⁵

The improvement of the supervision system for employment is a strategy in handling national development problems that currently exist. Disputes often occur due to the failure to fulfill the rights of each party in the employment agreement or the failure to implement the employment agreement that has been agreed upon by all parties.⁶

As explained above, often the problem in the implementation of social security for employment is due to non-compliance with related regulations in the field of social security and employment systems. Not only that, it often happens that the

³Article 9 paragraph (3) Law Number 23 of 2014 concerning Regional Government

⁴Sheren Murni Utami, Budiman Ginting and Agusmidah, "Repositioning of Labor Supervisors for Enforcement of Law No. 13 of 2003 Concerning Manpower in North Sumatra Province", *Law Journal*, Volume 1 No 2 (2021), url:https://jurnal.dharmawangsa.ac.id/index.php/law_jurnal/article/view/1128, accessed Tuesday, September 10, 2024 at 14.40 WITA

⁵Resa Rosita, "Implementation of BPJS Employment for Workers/Laborers (Study in Mataram City)", *Scientific Journal of the Faculty of Law, University of Mataram*, 2019, url: <https://fh.unram.ac.id/wp-content/uploads/2019/09/RESA-ROSITA-D1A115241.pdf>, accessed on Tuesday, September 10, 2024 at 14.41 WITA

⁶Sonhaji, Legal Review of Changes in Manpower Supervision Authority from Regency/City Government to Central Java Provincial Government, *Administrative Law & Governance Journal*, Volume 2 Issue 2, 2019

parties often do not comply and carry out properly what is the clause in an employment agreement.

Social security for workers is a protection and will provide benefits for the workers themselves and their families from unexpected things due to all risks arising in carrying out their work activities. Workers in carrying out their work will certainly face risks that may occur to workers, both the risk of illness caused by their work, the risk of work accidents, which result in disability, loss of work and even death.⁷

With these problems, the author believes it is important to conduct research related to regional issues, especially how local governments use their authority to supervise the enforcement of regulations in the field of social security for workers. What is the form of legal protection and what is the role of local governments in providing legal protection for workers in their areas based on the value of justice.

This study aims to determine the role of local governments in carrying out government affairs that are within their authority in implementing social security for workers in their regions by providing values of justice.

2. Research Methods

The approach method used in this writing is Juridical-Sociological with descriptive analytical research specifications, data collection methods in the form of interviews with sources and conducting library studies with related literature and analyzed with an inductive mindset/logic to draw conclusions from real individual cases into general conclusions.

3. Results And Discussion

3.1. Legal Regulations on the Position of Regional Governments in Implementing Social Security for Employment in Indonesia

According to Wirazilmustaan, the regulation of regional authority in implementing broad autonomy since the reform era, the estuary of the provisions of the regional government law is the same, namely to bring the government closer to the people so that the government is more aware that it exists because its people need it and it is part of the people.⁸

In addition to protecting the community and absorbing community aspirations, regional governments must also be able to manage the various authorities given and entrusted to them by the central government. In managing these broad

⁷Reski Seno Adireja, "Legal Review of the Implementation of Social Security for Online Drivers (Grab) in Semarang", Unissula Student Scientific Conference (KIMU), Sultan Agung Islamic University, Semarang, October 19, 2019

⁸Wirazilmustaan et al., The Concept of the Authority Relationship between the Central Government and Regional Governments in the Framework of a Unitary State with a Broad Autonomy Pattern, *Progressive Law Journal* Volume XII/Number 2/December 2018, p. 213

authorities, they are still limited by important guidelines within the framework of the Unitary State of the Republic of Indonesia.

The authority given to the Regional Government in order to implement regional autonomy in addition to the five authorities of the Central Government that cannot be delegated, one of which is matters in the field of employment. This aspect of employment is very broad, also covering aspects of supervision of regulations in the field of employment that have been determined by the Central Government such as regulations in the field of Employment Social Security, the implementation of which is currently carried out by an agency called the Employment Social Security Administering Agency (BPJS Ketenagakerjaan).

Previously, when Law Number 32 of 2004 concerning Regional Government was enacted, the authority of regional governments in employment affairs was strictly regulated, whereby service matters in the employment sector became the mandatory responsibility of district/city regional governments.⁹This means that the authority of the regional government is obtained directly through law (attribution).

Since Law Number 23 of 2014 concerning Regional Government was enacted, employment affairs as referred to in Article 12 paragraph (2) letter a of Law Number 23 of 2014 concerning Regional Government have become one of the concurrent government affairs that fall into the category of mandatory regional government affairs. What is meant by concurrent government affairs are government affairs that are divided between the central government and the provincial and district/city regional governments.¹⁰

In the regional government law, especially in the employment supervision sector, there have been significant changes where the district/city regional government no longer has this authority, but it has been given to the provincial regional government.¹¹because the role of local government in overseeing the implementation of social security for workers is basically in terms of supervision.

Due to the implications of the enactment of Law Number 23 of 2014, the authority of the regional government that was previously granted by Law Number 32 of 2004 in the field of employment was taken over by the Provincial Government as the representative of the Central Government in the Region, which in its implementation was carried out by the Provincial Manpower Office.

In line with that, based on the results of the author's interview with the North Sulawesi Provincial Manpower Office (Disnaker SULUT) represented by Felix Theo

⁹ Article 14 paragraph (1) letter h of Law Number 32 of 2004 concerning Regional Government

¹⁰ Article 9 paragraph (3) Law Number 23 of 2014 concerning Regional Government

¹¹ Sheren Murni Utami, Budiman Ginting and Agusmidah, Repositioning of Labor Supervisors for Enforcement of Law No. 13 of 2003 Concerning Labor in North Sumatra Province, Loc.Cit

as the Head of Binwasnaker and K3, he said that the authority of the Provincial Manpower Office began in 2016 or precisely after Law Number 23 of 2014. Felix Theo further explained that in the past, the district/city government had that authority (supervision), but currently that authority has been taken by the Provincial Government which is technically implemented by the Provincial Disnaker.¹²

The existence of a policy to place provinces as autonomous regions as well as administrative areas is carried out with the consideration of maintaining harmonious relations between the center and regions in the concept of the Unitary State of the Republic of Indonesia. In addition, to organize regional autonomy that is cross-district/city, and to implement regional autonomy authorities that have not been implemented by the district and/or city Regional Government. Also to carry out certain government tasks that are delegated in the framework of implementing the principle of deconcentration.

In accordance with the theory of authority in government administration actions, Authority is always carried out with legal limitations, considering that authority is only granted by legislation and government authority comes from applicable laws and regulations. Therefore, the legitimacy of government administration is the authority granted by law (authority norm), and the substance of the principle of legality (*legaliteit beginselen*) in government administration is authority.

If we look at what is the basis for regional government action in accordance with the legal provisions referred to in Law Number 23 of 2014, then the authority to act is a binding authority. This authority must be in accordance with the basic rules that determine the time and circumstances under which the authority can be exercised, including the basic formulation of the content and decisions that must be taken. Here there are basic rules that regulate in detail the conditions for using authority. These conditions are binding on government organs when they will exercise their authority and require them to comply with the basic rules in question when the authority is exercised.

This means that the special authority or power obtained by the provincial government in supervising employment is obtained from the Law (principle of legality) in this case Law Number 23 of 2014, in accordance with the principle of a state of law that places the Law as a source of power. A government agency without a general regulatory basis does not have the authority to carry out legal acts.

3.2. Forms of Legal Protection Provided by Regional Governments for Workers in Their Regions

¹² Felix Theo, Head of Binwasnaker and K3, North Sulawesi Provincial Manpower Office, Interview (Manado, August 28, 2024 at 13.05 WITA)

The position and role of regional heads in the government system are so strategic that a regional head must implement a dynamic, active and communicative activity pattern, implement an appropriate power pattern and leadership behavior pattern that is in accordance with the demands of needs influenced by the individual background of each regional head.¹³

In carrying out government affairs in the regions, the government must determine and maintain or maintain minimum standards in providing services to the community by the regional government. Thus, the quality of a quality of service will remain well maintained. Likewise, minimum administrative standards must be determined so that uniformity and continuity can be guaranteed.

One form of manifestation of the spirit of good governance and accountability of governance is the increasing pressure for local governments to also participate in developing social protection. Since the fall of the New Order, the wave of reform has changed the political format and government system in Indonesia.¹⁴

The authority of government that was previously very centralized in Jakarta is now increasingly distributed to governments in the regions through the process of decentralization. Likewise, in terms of the division of authority, government affairs can now be shared between the central government and provincial governments (deconcentration), one of which is in the field of employment and protection of citizens participating in social security for employment.

Social protection is an important element of public policy strategy in combating poverty and reducing the multidimensional suffering experienced by weak and disadvantaged groups. As a public policy, social protection is a type of social policy that refers to various forms of services, provisions or programs developed by the government to protect its citizens, especially vulnerable and disadvantaged groups, from various economic, social and political risks that will always hit their lives.

Legal protection for community members participating in the employment social security (BPJS Ketenagakerjaan) is one of the tasks of the regional government in the social sector in carrying out its government affairs in the region. This legal protection is carried out on the basis of authority as mandated in Law Number 23 of 2014 concerning Regional Government.

In essence, BPJS is a social security provided by the state to the community. This means that every Indonesian citizen automatically receives social security, whether they work or not, wherever they are. However, recently this social

¹³ J. Kaloh, *Leadership of Regional Heads (Patterns of Activities, Power and Behavior of Regional Heads in the Implementation of Regional Autonomy)*, Sinar Grafika, Jakarta, 2010, page 13

¹⁴ *Ibid* page 185

security has become an obligation for all members of the community to participate because of the risk of not getting services, especially in the health sector.

One form of government legal protection in providing legal protection for workers in their area, especially related to social security for employment, is to provide socialization to the community, especially to employers, because basically the position of job seekers is weaker. Likewise, for people who have not worked, the socialization of the social security program for employment is expected to be able to provide education for community members about their rights to obtain social security facilities for employment in an employment relationship.

On the other hand, the form of legal protection of the regional government can also be a direct initiative from the Provincial Government through the relevant agencies to conduct supervision. The Provincial Manpower Agency will usually issue a Supervision SPT related to the Jamsostek aspect routinely. If based on the results of the supervision, violations are found, the Provincial Manpower Agency will issue an Inspection Note.¹⁵

The issued inspection note will be submitted up to 2 (two) times. If it is still not followed up by the Company, an Incident Report (LK) will be made to then be continued to the investigation stage by the Civil Servant Investigator (PPNS). Regarding this, in practice, there is often a request for integrated supervision from the BPJS Ketenagakerjaan, so the Provincial Manpower Office and BPJS Ketenagakerjaan carry out supervision together.¹⁶

In order to avoid violations of labor laws or regulations that specifically regulate social security for workers, coaching is needed. Coaching should be carried out continuously and sustainably so that workers/laborers and employers are aware of their respective strengths and weaknesses in order to prevent criminal acts in the future.

What is meant by employment development is a series of activities carried out by employment supervisors to improve the skills and understanding of workers/laborers, employers, administrators, or members of employment institutions regarding laws and regulations in the employment sector.¹⁷

In addition to coaching, what needs to be done by the regional government in providing legal protection to the working community in its area is to carry out supervision. People who carry out supervision are called supervisors. Supervisors in the field of employment are labor supervisors.

¹⁵ Felix Theo, Head of Binwasnaker and K3, North Sulawesi Provincial Manpower Office, Interview (Manado, August 28, 2024 at 13.05 WITA)

¹⁶ *Ibid*

¹⁷ Article 1 paragraph (14) of the Regulation of the Minister of Manpower of the Republic of Indonesia Number 33 of 2016 concerning Procedures for Supervision of Manpower

What is meant by Supervision according to Article I paragraph (8) of the Republic of Indonesia Government Regulation Number 43 of 2012 concerning Procedures for the Implementation of Coordination, Supervision and Technical Guidance for Special Police, Civil Servant Investigators and Forms of Self-Security, states that Supervision is the process of observing the implementation of limited police functions carried out by the Special Police, PPNS and Self-Security Guard by the Republic of Indonesia National Police together with the agencies that oversee the Special Police, PPNS and Self-Security Guard.¹⁸

What is meant by Employment Supervision according to Article 1 paragraph (9) of the Regulation of the Minister of Manpower of the Republic of Indonesia Number 33 of 2016 concerning Procedures for Employment Supervision states that Employment Supervision is the activity of supervising and enforcing the implementation of laws and regulations in the field of employment.

What is meant by a Labor Supervisory Officer according to Article I paragraph (10) of the Regulation of the Minister of Manpower of the Republic of Indonesia Number 33 of 2016 concerning Procedures for Labor Supervision, is that a Labor Supervisory Officer, hereinafter referred to as a Labor Supervisor, is a Civil Servant who is appointed and assigned to the functional position of Labor Supervisor to supervise and enforce the implementation of laws and regulations in the field of labor.

Labor inspectors are located at all levels, both nationally and regionally. Supervisors at the central level are located in Jakarta under the auspices of the Minister of Manpower, while provincial supervisors are located in the Manpower Office under the auspices of the Governor. Because supervision based on Law Number 23 of 2014 is no longer in the district/city area, regional supervision is carried out by the provincial government.

In line with Hans Kelsen's theory of legal effectiveness which focuses on subjects and sanctions. The subjects who implement it, namely people or legal entities. These people must implement the law in accordance with the sound of legal norms. For people who are subject to legal sanctions, legal sanctions are truly implemented.

Therefore, violations of regulations in the field of social security for employment must receive strict sanctions from the government (local government) so that the law is truly effective. On the one hand, the imposition of this sanction will be a lesson for others so that in the future similar violations will not occur again, or at least can minimize the number of violations in the field of social security for employment.

¹⁸ Sahala Aritonang, *Criminal Acts in the Field of Employment*, Permata Aksara, Bekasi, 2020, p. 142

3.3. The Role of Regional Government in the Implementation of Social Security for Employment for the Community Based on Justice Values

Currently, the government is forming a legal policy to be used in determining patterns and updating it with a binding legislative process as a norm that will be enforced in creating jobs. The first Omnibus law was announced in the form of a job creation law, then changed to a draft job creation law.¹⁹

Since its announcement, its substance has caused controversy in the community because it is considered to have a negative impact, especially among workers. The presence of this job creation law is considered not to favor workers as the main factor in building the national economy. Therefore, it is not surprising that since it was enacted, this law was immediately challenged at the Constitutional Court.

The welfare paradigm contained in the opening of the Constitution is described in every constitution that has ever been in effect in Indonesia, namely the 1945 Constitution before the amendment, the RIS Constitution and the UUDS. This shows that since the beginning of Indonesian independence, the founders of the nation had the intention to position the Indonesian state as a welfare state.

The ideals of the Indonesian state that were realized by the founders of the state were a unitary state that protects all of Indonesia's territory. The unitary state is in principle closer to togetherness to achieve national goals while still paying attention to the distinctive differences between regions in Indonesia.

As a form of regional government administration, regions that have autonomy (autonomous regions) must have financial resources that are managed separately from central government finances to support and implement policies in their regions, especially for routine tasks and development tasks in order to improve community welfare.

Thus, the authority delegated by the central government to the regions can be enlarged or reduced or can also be withdrawn/revoked altogether. The addition of the weight or magnitude of authority by the central government to the regional government will not result in the emergence of a state or state within a state.

The birth of Law Number 40 of 2004 concerning the National Social Security System is a necessity for the implementation of Social Security which is currently considered not comprehensive in providing the constitutional rights of the community related to social security. The issuance of the SJSN Law is basically a

¹⁹ Khadik Triyanto, *Ideal Format of Basic Rights of Workers and Obligations of Employers in the Employment Law*, Rich in Useful Knowledge, Bogor, 2023, p. 188

state program implemented by the Government, which aims to provide certainty of social protection and welfare for all Indonesian people.²⁰

Through this program, it is expected that every resident can meet the basic needs of a decent life, especially if there are things that can result in loss or reduction of income due to illness, accidents, loss of employment (PHK), entering retirement or entering old age. The principle of benefits so that the quality of guarantees can be improved so that it can meet the target of "basic needs of a decent life" for all levels of society. Social justice can be implemented in the implementation of National Social Security in Indonesia, which is organized not for profit so that the role of the Central Government and Regional Governments is needed.²¹

The implementation of social security for workers by the local government must be carried out with the principles of justice. Because without justice, problems in the field of social security for workers will continue to occur. The local government must be able to balance the inequality that has occurred between workers and the Company.

Aristotle distinguishes between distributive justice and corrective justice. The former applies to public law, the latter to civil and criminal law. Distributive and corrective justice are both susceptible to the problem of equality and can only be understood within its framework. In the realm of distributive justice, what is important is that equal rewards are given for equal achievements. In the latter, what is important is that inequalities caused by, for example, breaches of agreements, are corrected and eliminated.²²

Aristotle has given the meaning of justice that "justice est constans et perpetua voluntas ius cuique tribuendi". Justice is nothing other than a steady and permanent will to give each part. Thus justice should not be seen as the same as equality, because justice does not mean that each person gets the same amount. Aristotle's opinion also gives rise to two types of justice, namely distributive justice and commutative justice.²³

Distributive justice is justice that gives each person a share according to their services. He does not demand that each person get the same share, not equality but proportionality. Commutative justice is justice that gives each person the same amount without considering individual merits.

Giving to each part is indeed on the one hand giving to each the same rights which if not taking into account the various differences in reality. Giving each part the

²⁰ Bayu Dwi Anggono et al., *BPJS Employment: Political, Legal, Institutional, Asset and Participation Aspects*, Raja Grafindo Perada, Depok, 2022, p. 34

²¹ *Ibid*

²² Muhammad Taufiq, *Substantial Justice Cuts the Chain of Legal Bureaucracy*, Pustaka Pelajar, Yogyakarta, 2014, p. 15

²³ *Ibid* p. 16

same must be interpreted as giving to each the same with awareness and by taking into account the differences that exist in reality. In relation to Aristotle's statement, according to the author, if it is connected to the dissertation entitled "Model of Civil Case Settlement with Substantial Justice", then substantial justice is very appropriate to answer the need for real justice. Substantial justice does not recognize equal feelings as the theory of justice conveyed by Aristotle. Substantial justice prioritizes balance between the parties. This balance is what is expected to be formed between the parties to restore social conditions as before the crime occurred. In substantial justice, there is no equal feeling, what exists is balance.

The value of justice that must be fought for through the role of the regional government should be aimed at the greatest number of people and the benefits obtained are as wide as possible. Because the name of a person's rights cannot be reduced, the regional government must dare to provide justice for the regional community in the implementation of social security for employment in the region.

In line with that, Pancasila as the philosophy of life of the Indonesian nation must also be used as a guideline in implementing this social security for workers by the regional government. In the context of Pancasila as a guide to social justice law (as the 5th principle), there is a demand for the state that the laws made in Indonesia are always aimed at creating social justice, namely laws aimed at narrowing the gap between the strong and the weak in their socio-economic life.

Legal acts by the government can be in the form of regulations or arrangements, namely a one-sided or unilateral public legal act of the government (*eenzijdige publiekrechtelijke handling*) which is binding or generally applicable in accordance with the laws and regulations which form the basis for the arrangement.²⁴

The authority to regulate or regulate is related to the power or authority that must be obeyed by the regulated party. This regulation is different from the creation of laws to regulate social behavior that is carried out specifically by a representative body or representative.

So, the issue of authority is inseparable from its relationship with Constitutional Law or State Administrative Law (Governance Law), because both areas of law regulate authority. Administrative law contains government legal norms that serve as parameters for the use of authority by government agencies.

With the authority derived from the law, the regional government actually does not need to hesitate in taking firm action in the aspect of labor supervision, especially after Law Number 23 of 2014 concerning Regional Government and Regulation of the Minister of Manpower of the Republic of Indonesia Number 33 of 2016 concerning Procedures for Labor Supervision were enacted, then the legal

²⁴ Murhaini, Op.Cit, p. 123

basis for the authority of the provincial government to act in the aspect of labor becomes very clear.

In line with that, what was conveyed by Wicklif Kawinda as Expert Staff of the North Sulawesi Provincial Government Office who is a member of the integrated supervisory team with the North Sulawesi BPJS Employment is that the authority of the provincial government in carrying out supervision has begun to be taken over from the district/city since the enactment of Law Number 23 of 2014, because previously the authority was in the district/city government based on Law Number 32 of 2004, but currently in the district/city area it is only sufficient to form a Regional Technical Implementation Unit Office (UPTD).²⁵

So if that happens, the implementation of social security for workers based on the values of justice will be difficult to realize. Sometimes we have to think that to strive for justice, there is coercion that must be done, where of course the coercion must come from the authority holder such as the government and be carried out in a measured manner and in line with the provisions of applicable laws and regulations.

4. Conclusion

The legal regulation of local governments in implementing social security for employment began since Law Number 32 of 2004 was enacted. District/city governments are given the authority to manage mandatory affairs, one of which is in the field of employment. However, since Law Number 23 of 2014 was enacted, the authority that was previously held by the district/city government has now been taken over by the provincial government. Its authority is technically implemented by the provincial labor office. Legal protection carried out by local governments in implementing social security for employment is usually carried out through socialization steps, because many violations occur usually due to ignorance of information, especially since regulations in the field of social security for employment often change. Local governments can also take the form of direct initiatives from the Provincial Government through related agencies to carry out supervision. The Provincial Manpower Office will usually issue a Supervision SPT related to aspects of social security routinely. In implementing social security based on justice, the government must also prioritize fair solutions. Because without justice, problems in the field of social security for employment will continue to occur. The local government must be able to balance the inequality that has occurred between workers and the company.

²⁵ Wicklif Kawinda, Expert Staff of the North Sulawesi Provincial Government Office, Interview (Manado, August 29, 2024 at 09.00 WITA)

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