

## Legal Analysis of Legal Protection for Workers Against Companies That Do Not Register Their Workforce as Participants in the Employment Social Security Administrator Agency (Bpjs)

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**Abstract.** *This study aims to identify, examine, and analyze legal protection for workers against companies that fail to register their employees as participants in the Social Security Administering Body for Employment (BPJS Ketenagakerjaan) and to identify, examine, and determine the legal sanctions that can be imposed on companies violating this obligation. The research employs a normative legal approach with a descriptive-analytical research type, while the problem approach used is the normative juridical approach. The data used in this study consists of both primary and secondary data. The findings and discussion indicate that legal protection for against workers companies that do not register their employees in BPJS Ketenagakerjaan is explicitly regulated in Law Number 40 of 2004, Law Number 24 of 2011, Law Number 11 of 2020, Government Regulation Number 85 of 2013, and Government Regulation Number 86 of 2013. of 2013 concerning the implementation of Employment Social Security. These findings demonstrate that workers are legally protected under existing laws, ensuring adequate legal safeguards if a company fails to register them with BPJS Employment. This legal protection includes various administrative sanctions that may be imposed on companies, such as warning letters, fines, and license revocation through the enforcement of Certain Public Service Restrictions (TMP2T). This study emphasizes the importance of corporate compliance in registering employees with BPJS Employment to guarantee workers' rights and create a work environment that aligns with legal regulations.*

**Keywords:** Administering; Companies; Employment; Legal; Protection.

## 1. Introduction

In the era of reform, information and globalization as it is today, there have been many kinds of companies operating in various fields, types of businesses and industries. So that competition between companies becomes very tight. Entrepreneurs in responding to this, they do several things that can support in producing better and quality products, so that the company's goals are achieved. One of the things that is implemented to achieve these goals is that entrepreneurs optimize their workers/laborers in increasing work productivity.<sup>1</sup>

Legal protection is protection given to legal subjects in the form of instruments, both preventive and repressive, both verbally and in writing. In other words, legal protection can be said to be a separate description of the function of law itself, which has a legal concept in providing justice, certainty, benefits, and peace.<sup>2</sup>

Since January 1, 2014, the government has realized the mandate of Article 34 of the 1945 Constitution of the Republic of Indonesia, namely by implementing the National Social Security System (SJSN). The Social Security Administering Agency (BPJS) for Employment provides protection for workers to overcome certain risks and its implementation uses a social insurance mechanism. As a State-Owned Enterprise engaged in social insurance, BPJS Employment, formerly known as PT Jamsostek (Persero), is the implementer of the Employment Social Security Law. In accordance with Law Number 40 of 2004 concerning the National Social Security System (SJSN) and Law Number 24 of 2011 concerning the Social Security Administering Agency (BPJS), BPJS Employment is a non-profit legal entity. Becoming a BPJS Employment participant is not only mandatory for workers in the formal sector, but also informal workers.<sup>3</sup>

Article 28 H paragraph (3) of the 1945 Constitution, emphasizes that "Everyone has the right to social security that allows for the development of oneself as a dignified human being". Social security is a form of social protection to ensure that all people can meet their basic needs for a decent life. (Article 1 paragraph (1) of the National Social Security System Law).<sup>4</sup>

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<sup>1</sup>Suhartoyo, 2019, "Legal Protection for Workers in the National Employment Law System", Journal of Legal Administration and Government. Published by the Faculty of Law, Diponegoro University, Semarang, p. 326-327.

<sup>2</sup>Rizky Rioneldi and Siti Mahmudah, 2023, Analysis of Wages and Social Security Not Given to Workers from the Perspective of Employment Law, Journal of Law, Published by the Faculty of Law, Sultan Agung University, Semarang, Semarang, p. 1.

<sup>3</sup>Siti Umu Adillah and Sri Anik, 2015, "Social Security Policy for Informal Sector Workers Based on Social Justice to Improve Welfare", Law Journal. Published by the Faculty of Law, Sultan Agung University Semarang, Semarang, p. 558.

<sup>4</sup>Siti Ummu Adillah, Amin Purnawan and Siti Rodhiyah Dwi Istina, 2015, "Legal Counseling and Assistance for Informal Sector Workers' Social Security Participation in the "Sumber Rejo" Farmer

Labor is one of the sources of economic development, which has a significant role in all national activities, especially the national economy in terms of increasing productivity and welfare. Abundant labor as a driver of economic life and is a resource in abundant quantities.<sup>5</sup>Therefore, there is a need for employment opportunities that can accommodate all workers, workers who have the appropriate skills and expertise can increase company productivity.<sup>6</sup>

Legal protection for workers is the fulfillment of basic rights that are inherent and protected by the constitution as regulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "every citizen has the right to work and a decent living for humanity", Article 33 paragraph (1) which states that "the economy is structured as a joint effort based on family". Protection for workers is intended to guarantee workers' rights and guarantee equal opportunities and treatment without discrimination of any kind to realize the welfare of workers and their families while still paying attention to developments in the progress of the business world and the interests of employers. The laws and regulations related to protection for workers are Law Number 13 of 2003 concerning Manpower (Manpower Law) which has been amended/replaced into Law Number 11 of 2020 concerning Job Creation and implementing regulations of legislation in the field of manpower.<sup>7</sup>

The development is that there are still several companies that do not include their workers in BPJS Ketenagakerjaan, on the grounds of low worker productivity and still consider BPJS Kesehatan to have protected the rights of its workers. In fact, according to the mandate of Law Number 24 of 2011 concerning the Social Security Administering Body Article 15 paragraph (1) states that employers are gradually required to register themselves and their workers as participants with BPJS Ketenagakerjaan in accordance with the social security program they follow. So this is a separate PR (homework) for the government in realizing the ideals of the State as stated in the 1945 Constitution of the Republic of Indonesia.<sup>8</sup>

This study aims to determine, review and analyze legal protection for workers against companies that do not register their workforce as participants of the Social Security Administering Body (BPJS) Employment and legal sanctions for

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Group, Tuwang Village, Karanganyar District, Demak Regency", *Journal of Community Service*. Published by the Faculty of Law, Sultan Agung University, Semarang, Semarang, p. 2.

<sup>5</sup>Lalu Husni, 2014, *Introduction to Employment Law*, Revised Edition, Raja Grafindo Persada, Jakarta, p. 47.

<sup>6</sup>Zainal Asikin, et al., 2002, *Basics of Labor Law*, 4th printing, Raja Grafindo Persada, Jakarta, p. 76.

<sup>7</sup>Heru Suryanto, 2018 "Legal Protection of Outsourcing Workers' Rights Based on the Principle of Justice", *Journal of Law*. Published by the Faculty of Law, Veteran Development University, Jakarta, p. 2.

<sup>8</sup>Law Number 24 of 2011 concerning Social Security Administering Body

companies that do not register their workforce as participants of BPJS Employment.

## **2. Research Methods**

The method used is normative legal research with descriptive analysis research type, while the problem approach applied is normative legal approach. The data used in this study consists of primary and secondary data. The data obtained is analyzed qualitatively to then be presented through the interpretation process.

## **3. Results and Discussion**

### **3.1. Legal Protection for Workers Against Companies That Do Not Register Their Workforce as BPJS Employment Participants**

#### **A. Law Number 40 of 2004 concerning the National Social Security System**

Law Number 40 of 2004 concerning the National Social Security System (UU SJSN) is the legal basis for implementing social security programs in Indonesia. This law aims to provide social protection to all Indonesian people, including workers, through various programs managed by BPJS Ketenagakerjaan. Workers have rights guaranteed by law to obtain protection against various risks that may occur during or after their employment. The following is an explanation of the principles and legal regulations regulated in the SJSN Law regarding the protection of workers' rights as BPJS Ketenagakerjaan participants. This law emphasizes workers' rights such as:

#### **1) The right to receive Social Security;**

The SJSN Law emphasizes that social security is the right of every citizen, including workers, to ensure that basic needs for a decent life are met:

a. Article 1 Paragraph (3): Social security is defined as a form of social protection to ensure that every individual can fulfill their decent living needs.

b. Article 3: The National Social Security System aims to provide guarantees for the basic needs of a decent life for each participant, including their family members.

Thus, workers have the right to become participants in the social security program managed by BPJS Ketenagakerjaan, which includes various social protection benefits according to their needs.

#### **2) Employer's Obligations in Registering Workers;**

The SJSN Law mandates employers to register all their workers with BPJS Employment:

a) Article 13 Paragraph (1): Every employer is obliged to register their workers as participants in the social security program managed by BPJS.

b) Article 14 Paragraph (1): Social security contributions are borne jointly by employers and workers in accordance with applicable provisions.

This provision aims to ensure that all workers have access to adequate social protection, both in terms of health, work accidents, old age, and the risk of death.

### 3) BPJS Employment Programs and Benefits;

As BPJS Ketenagakerjaan participants, workers have the right to various protection programs that are organized. These programs include:

a) Work Accident Insurance (JKK): Provides protection against the risk of work accidents, including treatment costs, compensation, and rehabilitation for workers who experience work accidents.

b) Death Benefit (JKM): Provides compensation to the heirs of workers who die.

c) Old Age Security (JHT): Provides benefits in the form of accumulated funds that can be withdrawn by workers upon retirement or upon termination of employment.

Pension Guarantee (JP): Provides monthly benefits for workers who reach retirement age, suffer permanent total disability, or are heirs of deceased workers.

### 4) Sanctions for Employers Who Do Not Comply with Obligations;

The SJSN Law regulates sanctions for employers who are negligent or intentionally do not register their workers with BPJS Employment:

a) Article 17 Paragraph (3): Employers who violate the provisions may be subject to administrative sanctions in the form of written warnings, fines, or restrictions on certain public services, such as processing business permits.

This sanction aims to provide a deterrent effect while ensuring employer compliance in carrying out its obligations to protect workers' rights.

### 5) Obligations of the Organizing Body in Providing Quality Services;

The SJSN Law also stipulates the responsibility of the social security administering body (BPJS) to provide quality services to participants:

a) Article 19 Paragraph (2): BPJS is obliged to provide transparent, accountable, efficient and quality services to all participants.

b) Article 20: In the event of a dispute between a participant and BPJS, the settlement shall be carried out through a dispute resolution mechanism in accordance with statutory regulations.

6) Participation and Supervision by Participants.

Participants have the right to participate in monitoring the implementation of social security programs:

a) Article 21: Participants may provide input, criticism, or supervision of the implementation of the program to ensure the accountability and transparency of the organizing body.

B. Law Number 24 of 2011 concerning Social Security Administration Agency

Law Number 24 of 2011 concerning the Social Security Administering Body (BPJS) is an important legal basis in the social security system in Indonesia. This law aims to ensure that every worker has adequate social protection through BPJS programs, especially BPJS Employment. In the context of protecting workers' rights, this law regulates the obligations of employers, workers' rights, the role of the government, and sanctions for parties who violate the provisions. This law emphasizes workers' rights such as:

- 1) Employer's Obligations to Protect Workers;
- 2) Workers' Rights as BPJS Employment Participants;
- 3) Sanctions for Employers Who Violate the Rules;
- 4) The Role of Government in Supervision;
- 5) Legal Protection for Workers.

C. Law Number 11 of 2020 concerning Job Creation

Law Number 11 of 2020 concerning Job Creation regulates a number of important changes in various sectors, including employment. One of the main objectives of this law is to improve the social protection system for workers, by prioritizing the sustainability and expansion of social security, especially through the BPJS Ketenagakerjaan program. BPJS Ketenagakerjaan provides several types of protection for workers, including work accident insurance (JKK), death insurance (JKM), old age insurance (JHT), and pension insurance (JP). In this case, the Job Creation Law provides a clearer and more structured legal basis for the protection of workers, both those working in formal employment relationships and those working on a casual basis. This law emphasizes workers' rights such as:

- 1) Employer Obligations in the BPJS Employment Program;

One of the main rules in the Job Creation Law regarding worker protection is the obligation of employers to register all their workers in the BPJS Ketenagakerjaan social security program. This is regulated in Article 99 which states that every worker who is bound by an employment relationship with an employer must be protected by a social security program. Registered workers are entitled to benefit from several social security programs managed by BPJS Ketenagakerjaan, including:

- a) Work Accident Insurance (JKK): Provides protection for workers who experience accidents while carrying out work duties.
- b) Death Benefit (JKM): Provides compensation to the heirs of workers who die due to work accidents or other causes.
- c) Old Age Security (JHT): Provides benefits for workers who reach retirement age or stop working.
- d) Pension Guarantee (JP): Provides pension benefits to workers who meet certain requirements.

With this obligation, the Job Creation Law ensures that all workers in Indonesia, both those working in the formal and informal sectors, receive adequate social protection.

## 2) Improving Social Protection for Workers;

The Job Creation Law also emphasizes the importance of protecting workers in facing various social and economic risks. Article 80 stipulates that the government, together with BPJS Ketenagakerjaan, is responsible for ensuring adequate protection for workers at all levels of society. This aims to create welfare for workers through various forms of social security, which are expected to provide a sense of security and financial stability, both while working and after retirement or an incident that disrupts the worker's survival.

## 3) BPJS Employment Contribution Payment Arrangements;

In Article 77, the Job Creation Law stipulates that employers are obliged to pay social security contributions for workers. Payment of these contributions is the responsibility of the employer, although some contributions can be charged to workers through salary deductions. The amount and mechanism for payment of these contributions will be further regulated in government regulations, and are expected to provide fairness for workers and sustainability in financing BPJS Employment.

## 4) Protection for Workers Affected by Termination of Employment (PHK);

The Job Creation Law also provides special attention to workers affected by Termination of Employment (PHK). In Article 61 and Article 62, workers who are laid off are still entitled to receive benefits from social security programs, especially JHT (Old Age Security), which provides financial security for workers who lose their jobs or who enter retirement age. This provides vital social protection to ensure the survival of workers after they are laid off from their jobs.

#### 5) Old Age Security and Pension;

As part of the existing social security system, JHT and JP are two main programs that protect workers in terms of retirement and financial future after work. In Article 77 and Article 79, it is stipulated that workers who participate in BPJS Ketenagakerjaan are entitled to benefits in the form of retirement savings that can be disbursed after reaching retirement age or in other conditions, such as layoffs or stopping work. In addition, the Pension Guarantee (JP) program also provides monthly pensions to workers who have met certain requirements, giving them financial peace of mind in old age.

#### 6) Sanctions for Employers Who Do Not Comply with Obligations.

To ensure that worker protection is implemented effectively, the Job Creation Law also regulates sanctions for employers who do not comply with the obligation to register their workers in the BPJS Employment program. Article 99 emphasizes that employers who do not fulfill their obligations will be subject to administrative sanctions. These sanctions aim to encourage compliance and ensure that every worker is well protected.

### D. Government Regulation Number 85 of 2013 Concerning Procedures for Inter-Institutional Relations of Social Security Administering Bodies

Government Regulation Number 85 of 2013 concerning Procedures for Inter-Institutional Relations of Social Security Administering Bodies has a very important role in regulating the procedures for relations between social security administering bodies, including BPJS Ketenagakerjaan, with employers and workers. This regulation specifically focuses on protecting the rights of workers who are BPJS Ketenagakerjaan participants. This regulation regulates various aspects that support the achievement of the objectives of social security protection for workers, including employer obligations, participant administration management, and supervision of the implementation of these obligations. This law emphasizes workers' rights such as:

#### 1) Employer's Obligations in Registering Workers;

One of the main points in PP No. 85 of 2013 is the obligation of employers to register workers and their family members in the BPJS Ketenagakerjaan program. Employers, whether large or small, are required to include workers they employ



in this program without exception. This applies to both workers with permanent and non-permanent employment status. This provision aims to ensure that all workers receive social protection that covers various risks that may occur, such as work accidents, death, or loss of income during retirement. This obligation also applies to freelance workers who are bound by short-term work contracts, although in some cases there may be special provisions according to the type of work.

## 2) Participant Data Management and Administration;

BPJS Ketenagakerjaan is responsible for managing participant data accurately and precisely. Every BPJS Ketenagakerjaan participant, both workers and employers, must ensure that the data provided and received in BPJS administration is always valid and up to date. Employers are required to submit worker data to BPJS completely and correctly, including information related to employment status, salary, and required personal data. Good administration management is very important so that social security benefits can be received by participants on time and in accordance with applicable provisions.

## 3) Relationship between BPJS Employment and Employers;

The relationship between BPJS Ketenagakerjaan and employers is regulated in this regulation with the aim that the social security program can run effectively and efficiently. BPJS Ketenagakerjaan acts as an institution that organizes a social security program for workers and their families, while employers are obliged to ensure that their workers are registered and pay the contributions that are their obligations. In this relationship, both parties must coordinate well to ensure that the rights of workers as BPJS Ketenagakerjaan participants are protected. In addition, this relationship also includes the employer's obligation to provide information needed for the social security benefit claim process.

## 4) Payment of Program Contributions and Benefits;

Government Regulation Number 85 of 2013 also regulates the mechanism for payment of contributions for various programs organized by BPJS Ketenagakerjaan. These contributions are paid by employers and workers in certain divisions, depending on the type of program followed. For example, for work accident insurance, death insurance, old age insurance, and pension insurance programs, both employers and workers are obliged to pay contributions regularly. These contributions are the basis for BPJS Ketenagakerjaan to provide benefits to workers in the event of a work accident, death, or other conditions that require protection. Determining the amount of contributions that are fair and in accordance with the capabilities of workers and employers is very important to ensure the sustainability of the social security program.

## 5) Supervision and Law Enforcement.

The government through authorized ministries, such as the Ministry of Manpower, has the authority to supervise the implementation of employers' obligations to register workers in the BPJS Ketenagakerjaan program. This supervision aims to ensure that all employers carry out their obligations in accordance with applicable provisions. If there are violations, such as non-compliance by employers in registering workers or paying contributions, administrative or legal sanctions can be imposed. The sanctions applied can be in the form of fines or other legal actions aimed at enforcing compliance with existing regulations. Thus, strict supervision is needed to ensure that the protection of workers' rights remains guaranteed.

### E. Government Regulation Number 86 of 2013 Concerning Procedures for Imposing Administrative Sanctions on Employers Other Than State Administrators and Any Person Other Than Employers, Workers, and Recipients of Contribution Assistance in the Implementation of Social Security

Government Regulation Number 86 of 2013 concerning Procedures for Imposing Administrative Sanctions on Employers other than State Administrators and Every Person, other than Employers, Workers, and Recipients of Contribution Assistance in the Implementation of Social Security provides a legal basis related to the implementation of administrative sanctions for violations that occur in the implementation of social security, especially related to BPJS Employment. This Law emphasizes workers' rights such as:

#### 1) Objectives and Scope;

This regulation aims to provide guidance in terms of imposing administrative sanctions on parties who do not comply with the obligations in organizing the employment social security program, both from the employer and individuals other than workers, employers, and recipients of contribution assistance. This regulation regulates the mechanism and procedures for imposing administrative sanctions on employers who do not fulfill their obligations in registering workers with BPJS Ketenagakerjaan and providing appropriate contributions.

#### 2) Employers and Employee Registration Obligations;

Employers, whether companies or other business entities, are required to register their workers in the BPJS Ketenagakerjaan program, in accordance with applicable provisions. Registered workers are entitled to receive social security protection in the form of work accident insurance, death insurance, old age insurance, and pension insurance.

#### 3) Administrative Sanctions;

If the employer does not register the worker or is late in paying contributions to BPJS Ketenagakerjaan, then administrative sanctions can be applied. The sanctions imposed include administrative fines, the amount of which is adjusted to the provisions in the regulation. This fine can be imposed based on delays or non-compliance in worker registration or payment of contributions, which can gradually increase.

#### 4) Examination and Determination of Sanctions;

The process of imposing administrative sanctions begins with an examination of the employer who is suspected of not fulfilling his/her obligations. The examination is carried out by the authorized agency in accordance with applicable legal provisions. After the examination, if there is a violation, administrative sanctions will be determined based on the violation committed. The employer is given the opportunity to correct the violation within a specified period.

#### 5) Other Obligations Relating to Employees;

In addition to the employer's obligations, this Government Regulation also regulates the rights of workers as BPJS Ketenagakerjaan participants. Workers have the right to receive adequate social security protection in accordance with applicable regulations. If these workers' rights are not fulfilled by the employer, workers can file a complaint with the authorized institution to resolve problems related to their rights.

#### 6) The Importance of Employer Compliance;

Employer compliance in registering workers and paying BPJS Ketenagakerjaan contributions is not only a legal obligation, but also a form of social responsibility to protect workers from possible social risks. With the provision of administrative sanctions in this Government Regulation, it is hoped that a more transparent and accountable system will be created in the implementation of social security programs.

#### 7) Dispute Resolution.

In the event of a dispute between workers and employers regarding the rights of BPJS Ketenagakerjaan participants, this regulation also provides instructions on how to resolve the dispute, including through court mechanisms or out-of-court settlements. This settlement process aims to protect workers' rights and ensure that employers fulfill their obligations.

### **3.2. Legal Sanctions for Companies That Do Not Register Their Workforce as BPJS Employment Participants**

#### Article 1 - Definitions

This article provides definitions of the terms used in this Government Regulation. The most relevant definitions are:

- 1) Employer: Any person or business entity that employs workers to perform work under their orders or supervision.
- 2) Worker: A person who works for wages or other compensation, whether with a legal entity or a non-legal entity employer.
- 3) Administrative Sanctions: The penalties imposed are in the form of administrative actions such as fines or other sanctions due to violations of the provisions stipulated in these regulations.

#### Article 2 - Scope of Imposition of Sanctions

This article explains that administrative sanctions are imposed on employers who do not fulfill their obligations related to the Employment Social Security program, namely related to:

- 1) Registration of workers in the BPJS Employment program.
- 2) Payment of BPJS Employment contributions in accordance with applicable regulations.
- 3) Committing a violation of other administrative obligations related to the implementation of the program.

#### Article 3 - Employer's Obligations

This article regulates the employer's obligations to:

- 1) Registering workers with BPJS Employment: Every employer is required to register their workers with the BPJS Employment program within a certain time after the worker starts working.
- 2) Paying BPJS Employment contributions: Employers must ensure that BPJS Employment contributions for workers are paid on time in accordance with applicable provisions.

#### Article 4 - Violation of Employer's Obligations

This article explains the violations that can be subject to administrative sanctions, including:

- 1) The employer does not register the worker with BPJS Employment in accordance with the provisions.
- 2) The employer does not pay BPJS Employment contributions on time or does not pay at all.

3) The employer makes inappropriate changes to the data or ignores reporting obligations to BPJS Ketenagakerjaan.

#### Article 5 - Types of Administrative Sanctions

This article regulates the types of administrative sanctions that can be imposed on employers who violate their obligations. These administrative sanctions include:

- 1) Administrative fine: A fine imposed based on the amount of late payment of contributions or violations in worker registration. The amount of the fine can be adjusted according to the duration of the delay and the number of workers who have not been registered.
- 2) Freezing of facilities: Temporary freezing of facilities provided by BPJS Ketenagakerjaan for employers who do not fulfill their obligations.
- 3) Other actions: Other administrative actions in accordance with applicable legal provisions, such as written warnings or revocation of certain rights.

Government Regulation Number 86 of 2013 provides a clear legal basis to protect workers' rights in the BPJS Ketenagakerjaan program, especially regarding the employer's obligation to register workers and pay contributions. Through the administrative sanction mechanism, it is expected to ensure that employers fulfill their obligations and workers benefit from the social security program. This protection creates a balance between workers' rights and employers' obligations, and supports the sustainability of the social security system in Indonesia.

#### **4. Conclusion**

Legal protection for workers against companies that do not register their workforce as BPJS Ketenagakerjaan participants and legal sanctions for companies that do not register their workforce as BPJS Ketenagakerjaan participants are very clearly regulated in the Law and Government Regulations. In reality, there are still many companies that have not registered their workforce as BPJS Ketenagakerjaan participants. Some of the reasons that are often put forward include cost factors, lack of awareness or understanding, practices of avoiding obligations, unclear worker status and lack of supervision and law enforcement. As a result of this condition, the rights of workers to receive social protection are neglected, even though the law has clearly regulated these obligations.

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