



Implementation of Criminal Liability for Companies That Do Not Fulfill Obligations to Workers in Employment BPJS Guarantee

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Abstract: This study aims to determine and analyze the criminal liability of companies that do not fulfill their obligations to workers in the employment BPJS guarantee. The research method used is sociological juridical research, using a descriptive qualitative research approach and interactive analysis techniques. The results of this study indicate that there are still many companies that neglect to provide fulfillment of workers' obligations in the Employment BPJS guarantee as stipulated in Law No. 24 of 2011 concerning the Social Security Organizing Agency (Law No. 24 of 2011), which protects workers' rights to obtain guarantees for compensation for work accidents. The establishment of the Social Security Organizing Agency (BPJS) is not a new thing in the field of employment, because social security for workers has previously been regulated in Law No. 14 of 1993 concerning Workers' Social Security or better known as Jamsostek. Law No. 40 of 2004 on the National Social Security System was enacted in 2004 with the aim of creating an integrated social security system for all Indonesians, and the social security system was institutionalized in a public legal entity.

Keywords : Criminal Liability, Worker's Obligation, BPJS Employment Guarantee

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1. Introduction

Workers must be protected to realize worker welfare by taking into account economic development. To protect workers, the government has introduced social security policies for workers. The workers' social security program is designed to provide assurance that there is a continuous flow of income from the workers' families to replace some or all of the lost income. Workers' social security has several components, including: a) basic protection to meet minimum living needs for workers and their families; and b) appreciation for workers who have contributed their energy and thoughts to the company where they work.¹

One of the strategies to achieve social justice in the workplace is to protect workers from the unlimited power of employers or companies through applicable legal measures. Workers are protected in the fourth paragraph of the preamble to the 1945 Constitution (UUD 45), as well as in Article 27 (2), Article 28 (d) (1) and (2).² Workers can be protected by providing instructions, paying compensation or increasing the recognition of human rights, physical and socio-economic protection with appropriate standards.

¹ rights must be protected in general, including the right to work, the right to fair wages, the right to associate and assemble, the right to safety and health protection, the right to due process, the right to equal treatment, the right to privacy and the right to freedom of conscience. Among other things, the rights of employers include the right to make regulations and work contracts, the right to terminate and close the company, the right to form a company organization and become a member, and the right to subcontract some of the work to other companies.³

Social security is the right of all citizens, which until now has not found a definite structure and form, so that it has not been fully felt by the people, especially by the workers. The implementation of the social security program is one of the duties and functions of the state to provide socio-economic protection to its people. In accordance with the financial capacity of the state. Indonesia, like other developing countries, develops social insurance programs based on social insurance funds financed by program participants.⁴

Socio-economic dangers that can arise to anyone, anywhere and anytime, social security is very important for all workers in Indonesia. Socio-economic risks, such as accidents and deaths, require safety mechanisms to ensure that socio-economic risks, if they occur, do not significantly affect workers' welfare. In other words, workers need social security so that a worker does not fall into unexpected poverty after an accident *and* death. Workers are usually the backbone of the family; if a worker is injured and unable to work or earn an income, then a worker needs to find a way to

¹ Asri Wijayanti, *Hukum ketenagakerjaan pasca reformasi*, vol. 1 (Sinar Grafika, 2009).

² "See Articles 27 (2), 28 (d), (1), and (2) of the 1945 Constitution," t.t.

³ Niru Anita Sinaga, "Peranan Asas itikad baik dalam mewujudkan keadilan para pihak dalam perjanjian," *JURNAL ILMIAH M-PROGRESS* 8, no. 1 (2021).

⁴ Andika Wijaya, *Hukum Jaminan Sosial Indonesia* (Sinar Grafika, 2022).

feed their family and meet other needs. The essence or idea of social security is to provide protection so that workers can continue to meet their basic needs.⁵

security is also the right of every worker. This right is protected by the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) and the Social Security System Law (hereinafter referred to as Employment BPJS). Indeed, in human rights it is emphasized that everyone has the right to obtain employment social security. In its design, BPJS Employment relies on the contribution of the community to contribute to the financing of the Indonesian Employment BPJS, which means that BPJS Employment comes from the community, for the community, and from the community.⁶

Social security for workers is regulated in Law no. 24 of 2011 concerning the Social Security Administering Body (UU No. 24 of 2011), which protects the rights of workers to obtain guarantees for compensation for work accidents. The establishment of the Social Security Administering Body (BPJS) is nothing new in the field of employment, because social security for workers has previously been regulated in Law no. 14 of 1993 concerning Workers' Social Security or better known as Jamsostek. UU no. 40 of 2004 concerning the National Social Security System was promulgated in 2004 with the aim of creating an integrated social security system for all Indonesian people, and the social security system was institutionalized in a public legal entity .

Law No. 24 of 2011 initiated the institutional transformation of PT Askes, PT Jamsostek, PT TASPEN, and PT ASABRI into BPJS. The institutional transformation into BPJS is accompanied by the transfer of share ownership, programs, assets, and profitability, as well as the rights and obligations of participants and employers. One of them is the right of workers to obtain protection against social risks, which must be guaranteed by employers by registering their workers as BPJS participants in accordance with Article 15 paragraph (1) of Law No. 24 of 2011, which states that employers are gradually obliged to register themselves and their workers as BPJS participants in accordance with the applicable social security program.⁷

self- funding system , where in practice Employment BPJS is not financed by the state or the state budget. As a result, all service participants must make a contribution. All participants must pay the bill. The obstacle experienced was finding out how this working group could be ready and still want to participate. So social security is not only based on responsibility, but also on need. As well as benefits that are able to protect workers in the event of a disaster or preparation for retirement when workers are approaching unproductive old age.

In Law Number 24 of 2011 concerning the Organizing Body Social Security, in addition to regulating the health insurance program organized by the Organizing

⁵ Dinna Wisnu, *Politik sistem jaminan sosial* (Gramedia Pustaka Utama, 2013).

⁶ I. Made Indra dkk., "LAYANAN JAMINAN SOSIAL DI INDONESIA," *Penerbit Tahta Media*, 2023.

⁷ Edi Susilo, Pudji Purwanti, dan Mochammad Fattah, *Adaptasi Manusia: Ketahanan Pangan dan Jaminan Sosial Sumberdaya* (Universitas Brawijaya Press, 2017).

Body Health Social Security (BPJS) as well regulates employment security organized by the Agency Social Security Provider (BPJS) employment.

As for the guarantee program employment regulated in The law is Guarantee Work Accident (JKK), Guarantee Death (JK), Old Age Security (JHT) and one more addition, namely Guarantee Pension (JP). That is, BPJS This employment will carry out their duties and functions as closely administering social security relation to Workers and Employers or Corporations. This matter seen in related relationships with dues that will have to be paid by the corporation to use ensure workers get the social security program organized by BPJS employment

Article 19 Law Number 24 of 2011 concerning the Organizing Body Social Security, states that "Employers are obliged collect dues which is a burden Participants from The workers and deposit it to BPJS". While in Article 19 paragraph (2): "Employers are obliged pay and deposit it The fee that becomes responsibility to BPJS".

Violation of the provisions of Article 19 paragraph (1) and paragraph (2) mentioned above, regulated further in Article 55 of Law Number 24 of 2011 concerning Social Security Administrator, which states that:

"Employers who violate provisions as stipulated in Article 19 paragraph (1) and paragraph (2) shall be punished with a maximum imprisonment of 8 (eight) years or a maximum fine a lot of Rp. 1,000,000,000.- (one billion Rupiah)".

From the provisions of the articles mentioned above, it means that Law Number 24 of 2011 concerning the Organizing Body Social Security can request criminal liability or can imposition of criminal sanctions against corporation. That way, when system Indonesian criminal law admits the existence of the corporation as a legal subject especially in criminal law contained in legislation crime outside the law Criminal Law (KUHP) both of which form of a special criminal law as well as criminal law administration, such conditions have The legal implications are not simple on 3 (three) basic concepts in science criminal law, namely criminal acts, criminal and criminal liability or punishment .

2. Research Method

The research used in this paper is Juridical Sociological research and uses a descriptive qualitative research approach and uses interactive analysis techniques.

3. Criminal Liability Against Companies Neglecting to Register Their Employees as BPJS Ketenagakerjaan Participants

Criminal provisions as a form of legal sanction are provisions aimed at guaranteeing public compliance with laws and regulations in the field of social security, in addition to provisions regarding administrative sanctions. Ensure the fulfillment of the principles, goals and principles of the national social security system. In accordance with the power it has, the government can wisely adjust what is determined as a

criminal act with the legal feelings that live in society, where this determination can be seen as the main way to prevent prohibitions from being prohibited.⁸

Registration of workers in the Employment BPJS program is something that must be followed by employers, to include all of their workforce in this Employment BPJS program, which has been regulated in law number 24 of 2011 concerning the Social Security Administering Body. Article 15 paragraph 1 of the Law of the Republic of Indonesia Number 24 of 2011 concerning the Social Security Organizing Agency states that "Employers are gradually obliged to register themselves and their workers as participants with the BPJS in accordance with the Social Security program they are participating in".⁹

However, in relation to Article 15 paragraph 1, if the employer does not implement it, he will be subject to administrative sanctions as referred to in Article 17 paragraphs 1 and 2 stating "(1) Employers other than state officials who do not implement the provisions referred to in Article 15 paragraph (1)) and paragraph (2), and everyone who does not implement the provisions referred to in Article 16 is subject to administrative sanctions; (2) The administrative sanction as referred to in paragraph (1) may be in the form of: a. Written warning; b. Fine; and/or c. Not getting certain public services. When compared with PT. Jamsostek (Persero) previously the Law of the Republic of Indonesia Number 3 of 1992 concerning Workers' Social Security, there is an element of criminal sanctions against companies that do not register their workforce as participants in BPJS Ketenagakerjaan.¹⁰

Article 3 paragraphs 1 and 2 state (1) to provide protection for workers, a social security program for workers is organized which can be managed by an insurance mechanism; (2) Every worker has the right to social security for workers. Article 4 paragraph 1 states that the Social Security Program for workers as referred to in Article 3 must be carried out by every company for workers who work in an employment relationship in accordance with the provisions of this Law.

Article 29 paragraph 1 and paragraph 2 states (1) Whoever does not fulfill the obligations referred to in Article 4 paragraph (1); Article 10 paragraph (1), paragraph (2), and paragraph (3); Article 18 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 19 paragraph (2); article 22 paragraph (1); and article 26, punishable by imprisonment for a maximum of 6 (six) months or a maximum fine of Rp. 50,000,000.- (fifty million rupiah); (2) In the case of the repetition of the crime referred to in paragraph (1) for the second or more times, after the final decision has obtained permanent legal force, the said violation shall be subject to

⁸ S. H. Moeljatno, "Asas-asas Hukum Pidana," *Rineka Cipta, Jakarta*, 2002.

⁹ Indrawati Indrawati dan T. Simanjuntak, "Pertanggungjawaban Pidana Terhadap Perusahaan yang Lalai Mendaftarkan Pkerjanya Sebagai Peserta BPJS Ketenagakerjaan," *Jurnal Cakrawala Hukum* 10, no. 1 (2019): 50–57.

¹⁰ Ngabidin Nurcahyo, "Perlindungan hukum tenaga kerja berdasarkan peraturan perundang-undangan di Indonesia," *Jurnal Cakrawala Hukum* 12, no. 1 (2021): 69–78.

imprisonment for a maximum of 8 (eight) months.¹¹ Thus, if you look at the application of sanctions given to companies that do not register their workforce as BPJS Employment participants, it does not have a suppressive effect on companies that do not register their workforce as BPJS Employment participants. And it will result in many companies not registering all of their workforce to reduce costs to be incurred by the company, because there is no threat of criminal sanctions.

A. Criminal Sanctions that Can Be Applied to Companies that Neglect to Register Their Workers as BPJS Ketenagakerjaan Participants.

Workers' participation in the social security system is mandatory, according to the Law on the National Social Security System. (Wijaya, 2017) Article 13 paragraph (1) states that "Determines that employers are gradually obliged to register themselves and their workers as participants with the Social Security Administering Body, in accordance with the social security program that they participate in." The current Law of the Republic of Indonesia Number 24 of 2011 concerning the Social Security Organizing Agency, companies are required to register their workforce in the BPJS Ketenagakerjaan program. Article 15 paragraph 1 states that "Employers are gradually obliged to register themselves and their workers as participants with the BPJS in accordance with the Social Security program they are participating in". However, regarding article 15 paragraph 1, if the employer does not implement it, he will be subject to administrative sanctions as referred to in the Law of the Republic of Indonesia Number 24 of 2011 concerning BPJS Employment. Article 17 paragraphs 1 and 2 state (1) Employers other than state officials who do not implement the provisions referred to in Article 15 paragraphs (1) and paragraphs (2), and anyone who does not implement the provisions referred to in Article 16 are subject to administrative sanctions. (2) The administrative sanction as referred to in paragraph (1) may be in the form of: a. Written warning; b. Fine; and/or c. Not getting certain public services.¹²

1. Types of Sanctions that Can Be Imposed on Companies that Do Not Register Their Workers or Laborers as Social Security Participants

In the Indonesian dictionary, sanctions are defined as the imposition, endorsement: responsibility to force other people to keep promises.¹³ The term sanction in Dutch is called the term "sanctie", namely sanction: punishment.¹⁴ So, the sanctions in this discussion can be interpreted as punishment for companies that do not register their workers or laborers as social security participants with BPJS Employment. In accordance with this understanding, sanctions can be classified as legal consequences.

¹¹ Didik Lestariyono, Bambang Sugiri, dan Rachmad Safa'at, "Penegakan Hukum Pidana Perusahaan yang Tidak Memenuhi Kewajibannya dalam Program Badan Penyelenggara Jaminan Sosial," *Jurnal Cakrawala Hukum* 10, no. 2 (2019): 156–65.

¹² Asmaun Zuhub dan Handyka Prayogi Lesmana, "Pertanggungjawaban Pidana Korporasi Dalam Undang-Undang Badan Penyelenggaraan Jaminan Sosial (BPJS)," 2018.

¹³ Rizky Maulana dan Putri Amelia, "Kamus pintar bahasa Indonesia," *Surabaya: Lima Bintang*, 2010.

¹⁴ "Kamus hukum / Sudarsono | OPAC Perpustakaan Nasional RI.," diakses 17 April 2023, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=481462>.

According to Erwin and Firman¹⁵, legal consequences are meant to refer to the consequences given by law for a legal event. One of the consequences that can be raised by legal events is the result of actions that are contrary to law which can lead to the birth of sanctions. The legal events referred to in this discussion, namely the actions of entrepreneurs in a company that do not register their workers or laborers as social security participants.

This legal event resulted in the birth of sanctions, namely penalties for companies that do not register their workers or laborers as social security participants. The question is "What types of sanctions can be imposed on companies that do not register their workers or laborers as social security participants?". As mentioned on the previous page, companies that do not register their workers or laborers as social security participants can be subject to sanctions in accordance with applicable laws and regulations. This is because the registration of workers or laborers as social security participants is an obligation for companies. The statutory provisions that oblige companies to register their workers or laborers as social security participants are Law no. 3 of 1993. Then this matter is also regulated in the Law of the Republic of Indonesia Number 40 of 2004 concerning the National Social Security System (UU No. 40 of 2004) and the Law of the Republic of Indonesia Number 24 of 2011 concerning the Social Security Organizing Agency (UU No. 24 of 2011)¹⁶

Article 4 paragraph (1) Law no. 3 of 1992 clearly stipulates that the social security program for workers must be carried out by every company for workers who work in an employment relationship in accordance with the provisions of this law. Companies that violate these provisions may be subject to sanctions regulated in Article 29 of Law no. 3 of 1992 which reads:

- 1) Whoever does not fulfill the obligations referred to in Article 4 paragraph (1); Article 10 paragraph (1), paragraph (2), and paragraph (3); Article 18 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5); Article 19 paragraph (2); Article 22 paragraph (1); and Article 26, punishable by imprisonment for a maximum of 6 (six) months or a maximum fine of Rp. 50,000,000, - (fifty million rupiah).
- 2) In the event that the repetition of the crime referred to in paragraph (1) for the second or more times after the final decision has obtained permanent legal force, then the violation is punished with imprisonment for a maximum of 8 (eight) months.
- 3) The crime referred to in paragraph (1) is a violation.¹⁷

Then in Article 30 of Law no. 3 of 1992 stipulates that without prejudice to the criminal provisions referred to in Article 29 paragraph (1) and paragraph (2) against employers, workers and Organizing Bodies that do not comply with the provisions of this law

¹⁵ Peter Mahmud Marzuki dan M. S. Sh, *Pengantar ilmu hukum* (Prenada Media, 2021).

¹⁶ Akmal Lageranna, "Risiko Pemberi Kerja Atas Ketidakpatuhan Dalam Program Jaminan Sosial Ketenagakerjaan," " *Dharmasisya*" *Jurnal Program Magister Hukum FHUI* 1, no. 3 (2021): 3.

¹⁷ Winsy Handry Dumanauw, "Ketentuan Pidana Terhadap Perusahaan Yang Tidak Membayar Iuran BPJS," *LEX PRIVATUM* 11, no. 2 (2023).

and its implementing regulations are subject to administrative sanctions, compensation, or fines which will be further regulated by government regulations. The government regulations governing administrative sanctions are regulated in Government Regulation of the Republic of Indonesia Number 86 of 2013 concerning Procedures for Imposing Administrative Sanctions on Employers Other than State Officials and Everyone, Apart from Employers, Workers, and Contribution Assistance Recipients in the Implementation of Social Security (PP) No. 86 of 2013).

In accordance with Article 29 in conjunction with Article 30 of Law no. 3 of 1992 above, the types of sanctions that can be imposed on companies that do not register workers or laborers (labor) as participants in the social security program are criminal sanctions (imprisonment and fines), as well as administrative sanctions. Specifically for administrative sanctions that can be imposed on companies that do not register their workers or laborers as social security participants are also regulated in Law no. 24 of 2011. In the context of this law, companies can be classified as employers other than state officials. In Article 1 point 9 of Law no. 24 of 2011 clearly states that employers are individuals, entrepreneurs, legal entities or other entities that employ workers or state administrators who employ civil servants by paying salaries, wages or other forms of compensation. Regarding the company's obligation to register workers or laborers as social security participants, it is regulated in Article 4 paragraph (1) of Law no. 40 of 2004 which reads "Employers are gradually obliged to register themselves and their workers as participants with the Social Security Administering Body, in accordance with the social security program that they participate in."

The company's obligations are also emphasized in Article 15 of Law no. 24 of 2011 which reads:

- 1) Employers are required to gradually register themselves and their employees as Participants with the BPJS in accordance with the Social Security program they are participating in.
- 2) Employers, in carrying out the registration as referred to in paragraph (1), are required to provide complete and correct data about themselves and their workers and their family members to BPJS.
- 3) The stages referred to in paragraph (1) are regulated by a Presidential Regulation.

Thus it can be concluded that the registration of workers or laborers as social security participants is an obligation for companies. In registering, companies are required to provide complete and correct data about themselves and their employees and their family members to BPJS.

Registration of new workers or laborers is no later than 30 (thirty) days from the date of commencement of employment. Companies that do not register their workers or laborers as social security participants with the BPJS may be subject to administrative sanctions. 24 of 2011 which reads:

- (1) Employers other than state officials who do not implement the provisions referred to in Article 15 paragraph (1) and paragraph (2), and anyone who does not implement the provisions referred to in Article 16 are subject to administrative sanctions.
- (2) Administrative sanctions as referred to in paragraph (1) may be in the form of: a. Written warning; b. Fine; and/or c. Not receiving certain public services.
- (3) The imposition of sanctions as referred to in paragraph (2) letters a and b is carried out by BPJS.
- (4) The imposition of sanctions as referred to in paragraph (2) letter c is carried out by the Government or regional government at the request of the BPJS.
- (5) Further provisions regarding the procedures for imposing administrative sanctions shall be regulated by a Government Regulation.¹⁸

From the above description, it can be stated that companies are obliged to register workers or laborers as participants in social security. The social security programs that companies can participate in are work accident insurance, old age insurance, death insurance, health care insurance, and pension insurance. Companies that do not fulfill their obligations may be subject to sanctions in the form of imprisonment or fines and administrative sanctions in the form of written warnings, fines, and/or not receiving certain public services. Thus, the types of sanctions that can be imposed on companies that do not carry out their obligations to register their workers or laborers as social security participants are criminal sanctions and administrative sanctions. The difference between administrative and criminal sanctions can be seen from the purpose of imposing the sanction itself. Administrative sanctions are aimed at the act of violation, while criminal sanctions are aimed at the violator by giving punishment in the form of pain. Administrative sanctions are intended to stop the offense. The nature of the sanction is reparatoir, which means restoring to the original state.¹⁹

2. Imposition of Sanctions on Companies that Do Not Register Their Workers or Laborers as Social Security Participants

When talking about the imposition of sanctions, the discussion includes the question "Who has the authority to impose sanctions, when are sanctions imposed, and what is the mechanism or procedure for imposition?". Regarding this discussion, it will be divided into 2 (two) parts, namely the imposition of criminal sanctions and the imposition of administrative sanctions as described below:

1) Imposition of criminal sanctions on companies that do not register their workers or laborers as social security participants

The imposition of criminal sanctions can also be referred to as the imposition of a criminal sentence or the awarding of a penalty or punishment to companies that do not register their workers or laborers as social security participants.²⁰ According to

¹⁸ SEPTIANINGSIH IMANI, "HAK PEKERJA ATAS BPJS KETENAGAKERJAAN BERDASARKAN UNDANG-UNDANG NOMOR 24 TAHUN 2011 TENTANG BADAN PENYELENGGARA JAMINAN SOSIAL" (Universitas Mataram, 2023).

¹⁹ Philipus M. Hadjon, *Hukum Administrasi Negara* (Yogyakarta: Gadjah Mada University Press, 2005).

²⁰ Teguh Prasetyo, "Politik hukum pidana: kajian kebijakan kriminalisasi dan dekriminalisasi," 2005.

Prasetyo and Barkatullah (2012: 82), punishment can be interpreted as the stage of determining sanctions and imposing sanctions in criminal law. So, the imposition of criminal sanctions on companies that do not register their workers or laborers as participants in social security constitutes punishment in the stage of imposing sanctions in criminal law. In other words, the imposition of sanctions in this discussion is the stage of imposing sanctions in criminal law. According to Sudarto, punishment consists of giving in abstracto punishment and giving in concreto punishment. The provision of punishment in abstracto is to establish a set of criminal law sanctions that involve legislators. Meanwhile, the provision of in concreto punishment concerns various bodies, all of which support and implement the set of criminal law sanctions.²¹

If Sudarto's opinion is related to this discussion, the imposition of criminal sanctions on companies that do not register their workers or laborers as social security participants can be classified into in concreto punishment. In Law no. 3 of 1992 does not mention who has the authority to impose criminal sanctions on companies that do not register their workers or laborers as social security participants.²²

However, if you look at the practice of handling criminal cases so far, it can be seen that those authorized to impose criminal sanctions are judges of criminal cases at the District Court within the General Court environment. The judge imposes criminal sanctions if the trial process ends and the defendant is proven guilty of committing the crime charged by the public prosecutor/prosecutor. Juridically, the issue of imposing criminal sanctions by judges or in concreto punishment is regulated in the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code or commonly called the Criminal Procedure Code (KUHAP). This is strictly regulated in Article 193 of the Criminal Procedure Code which reads:

- 1) If the court is of the opinion that the defendant is guilty of committing the crime for which he was charged, the court shall impose a sentence.
- 2) a.) The court in rendering its decision, if the accused is not detained, may order that the accused be detained, if the provisions of Article 21 are fulfilled and there are sufficient reasons for this.

b). In the event that the accused is detained, the court, in rendering its decision, may determine whether the accused remains in detention or releases him, if there is sufficient reason for this.

In accordance with Article 193 of the Criminal Procedure Code above, it is clear that the authority to impose criminal sanctions on companies that do not register their workers or laborers as social security participants is a court conducted by a criminal case judge. Criminal sanctions are imposed by the court if the trial process ends and the defendant (company) is proven guilty of committing the crime charged, namely

²¹ Ayu Puspasari, "Sanksi Bagi Perusahaan Yang Tidak Mendaftarkan Pekerja atau Buruhnya Sebagai Peserta Jaminan Sosial," *Doctrinal* 1, no. 2 (2016): 321–36.

²² Syaifurrahman Syaifurrahman, "PENERAPAN SANKSI PADA PELAKSANAAN JAMINAN SOSIAL KETENAGAKERJAAN" (Universitas Wiraraja, 2020).

not registering workers or laborers as social security participants. The procedure or mechanism for imposing criminal sanctions by judges is carried out based on the provisions contained in the Criminal Procedure Code.²³

B. Imposition of Administrative Sanctions on Companies that Do Not Register Their Workers or Laborers as Social Security Participants

In the previous discussion it was explained that the administrative sanctions imposed on companies that do not register their workers or laborers as social security participants consist of: written warnings, fines, and not receiving certain public services. In this discussion, one by one will be described in relation to the institution authorized to impose administrative sanctions and when they will be imposed.

1) Written reprimand

The imposition of written warning sanctions is carried out by BPJS which is given a maximum of 2 (two) times each for a maximum period of 10 (ten) working days. (vide: Article 13 paragraph (3) Law No. 24 of 2011 jo Article 6 PP No. 86 of 2013).

2) Fines

The imposition of fine sanctions is carried out by BPJS which is given for a maximum period of 30 (thirty) days from the end of the imposition of the second written warning sanction ends. (vide: Article 13 paragraph (3) Law No. 24 of 2011 jo Article 7 PP No. 86 of 2013).

3) Deprived of certain public services

The imposition of sanctions for not receiving certain public services is carried out by the government, provincial regional governments, or regency/city regional governments at the request of BPJS. BPJS in requesting the imposition of sanctions for not receiving certain public services coordinates with the government, provincial regional government or district/city regional government. (vide: Article 13 paragraph (4) of Law No. 24 of 2011 in conjunction with Article 8 paragraph (1) and paragraph (2) of PP No. 86 of 2013).²⁴

²³ Alfrenso ER Helweldery, "Sanksi Atas Pelanggaran Terhadap Pelaksanaan Jaminan Sosial Ketenagakerjaan Menurut Undang-Undang No. 24 Tahun 2011 Tentang Badan Penyelenggara Jaminan Sosial (BPJS)," *Lex Et Societatis* 7, no. 5 (2019).

²⁴ Chietra Zivora Hasibuan, Agus Mulya Karsona, dan Holyness N. Singadimedja, "Hukum Terhadap Perusahaan Yang Tidak Mendaftarkan Pekerja Pada Program Bpjs Kesehatan Ditinjau Dari Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Dan Undang-Undang Nomor 24 Tahun 2011 Tentang Badan Penyelenggara Jaminan Sosial," *Jurnal Sains Sosio Humaniora* 6, no. 2 (2022): 294–310.

According to Article 9 paragraph (1) PP No. 86 of 2013, sanctions for not receiving certain public services imposed on Employers other than State Administrators, including companies include:

- a) Business related permits;
- b) Permits required in participating in project tenders;
- c) Permit to employ foreign workers;
- d) Worker/labour service provider company license; or
- e) Building Permit (IMB).

In connection with procedures or mechanisms for imposing administrative sanctions on employers other than state administrators, including companies that do not register their workers or laborers as social security participants, it is regulated in Article 10 PP No. 86 of 2013. In more detail, the procedure or mechanism for imposing administrative sanctions is as follows:

1. BPJS imposes written warning sanctions to companies that do not register their workers or laborers as participants in the first social security for a maximum period of 10 (ten) days. If up to the expiration of the 10 (ten) day period of the first written warning sanction, the company does not carry out its obligations, BPJS will impose a second written warning sanction for a period of 10 (ten) days.
2. Fines are imposed if after the imposition of the second written warning, the company does not carry out its obligations. A fine of 0.1% (zero point one percent) every month of the dues that should have been paid is calculated from the end of the second written warning. Then the fine is deposited to the BPJS together with the payment of the next month's dues.
3. Fines are imposed if after the imposition of the second written warning, the company does not carry out its obligations. A fine of 0.1% (zero point one percent) every month of the dues that should have been paid is calculated from the end of the second written warning. Then the fine is deposited to the BPJS together with the payment of the next month's dues.²⁵

4 . Conclusion

Thus it can be concluded that the imposition of criminal sanctions on companies that do not register their workers or laborers as social security participants is based on the provisions contained in the Criminal Procedure Code. In this case, the court that is authorized to impose criminal sanctions is held after the criminal case examination process at the trial ends and the defendant (company) is proven guilty. Then administrative sanctions are imposed on companies that do not register their workers or laborers as social security participants carried out by BPJS and the government (central and regional) at the request of BPJS. The types of sanctions in administrative

²⁵ Abdul Khakim, "Problematika Pengaturan dan Penerapan Sanksi Pidana Atas Pelanggaran Pasal 15 Undang-Undang Nomor 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial," *Audito Comparative Law Journal (ACLJ)* 2, no. 1 (2021): 43–56.

sanctions are carried out in stages or sequentially, starting with a written warning, a fine, and finally not receiving certain public services.

In connection with this, there is something to note, namely the imposition of administrative sanctions in the form of not receiving certain public services. Looking at the provisions in PP No. 86 of 2013, the sanction is imposed if the company does not pay the fine in full. If we understand the wording of the sentence in the provisions of PP No. 86 of 2013, then the imposition of fines does not apply to companies that do not pay the fines at all. Entrepreneurs can use the loopholes of this provision to avoid sanctions for not receiving certain public services. Therefore, the regulation needs to be reviewed so that companies that do not deposit the fine at all can also be subject to administrative sanctions in the form of not receiving certain public services, such as business-related licenses or business licenses.

References

Book's

- Hadjon, Philipus M. *Hukum Administrasi Negara*. Yogyakarta: Gadjah Mada University Press, 2005.
- Wijaya, Andika. *Hukum Jaminan Sosial Indonesia*. Sinar Grafika, 2022.
- Wijayanti, Asri. *Hukum ketenagakerjaan pasca reformasi*. Vol. 1. Sinar Grafika, 2009.
- Wisnu, Dinna. *Politik sistem jaminan sosial*. Gramedia Pustaka Utama, 2013.
- Moeljatno, S. H. "Asas-asas Hukum Pidana." *Rineka Cipta, Jakarta*, 2002.
- "Kamus hukum / Sudarsono | OPAC Perpustakaan Nasional RI." Diakses 17 April 2023. <https://opac.perpusnas.go.id/DetailOpac.aspx?id=481462>.
- Marzuki, Peter Mahmud, dan M. S. Sh. *Pengantar ilmu hukum*. Prenada Media, 2021.
- Maulana, Rizky, dan Putri Amelia. "Kamus pintar bahasa Indonesia." *Surabaya: Lima Bintang*, 2010.
- Prasetyo, Teguh. "Politik hukum pidana: kajian kebijakan kriminalisasi dan dekriminialisasi," 2005.
- Susilo, Edi, Pudji Purwanti, dan Mochammad Fattah. *Adaptasi Manusia: Ketahanan Pangan dan Jaminan Sosial Sumberdaya*. Universitas Brawijaya Press, 2017.

Jounarl's

- Hasibuan, Chietra Zivora, Agus Mulya Karsona, dan Holyness N. Singadimedja. "Hukum Terhadap Perusahaan Yang Tidak Mendaftarkan Pekerja Pada Program Bpjs Kesehatan Ditinjau Dari Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Dan Undang-Undang Nomor 24 Tahun 2011 Tentang Badan Penyelenggara Jaminan Sosial." *Jurnal Sains Sosio Humaniora* 6, no. 2 (2022): 294–310.
- Dumanauw, Winsy Handry. "Ketentuan Pidana Terhadap Perusahaan Yang Tidak Membayar Iuran BPJS." *LEX PRIVATUM* 11, no. 2 (2023).

- Helweldery, Alfrenso ER. "Sanksi Atas Pelanggaran Terhadap Pelaksanaan Jaminan Sosial Ketenagakerjaan Menurut Undang-Undang No. 24 Tahun 2011 Tentang Badan Penyelenggara Jaminan Sosial (BPJS)." *Lex Et Societatis* 7, no. 5 (2019).
- IMANI, SEPTIANINGSIH. "HAK PEKERJA ATAS BPJS KETENAGAKERJAAN BERDASARKAN UNDANG-UNDANG NOMOR 24 TAHUN 2011 TENTANG BADAN PENYELENGGARA JAMINAN SOSIAL." Universitas Mataram, 2023.
- Indra, I. Made, Dody AS Dalimunthe, Yohanes Jhony Kurniawan, Fanny Novika, Insri Nuryati, Holil Padli, A. Maolani Rukaesih, Muhamad Aditya Warman, Ariyanti Suliyanto, dan Heppy Julianto. "LAYANAN JAMINAN SOSIAL DI INDONESIA." *Penerbit Tahta Media*, 2023.
- Indrawati, Indrawati, dan T. Simanjuntak. "Pertanggungjawaban Pidana Terhadap Perusahaan yang Lalai Mendaftarkan Pkerjanya Sebagai Peserta BPJS Ketenagakerjaan." *Jurnal Cakrawala Hukum* 10, no. 1 (2019): 50-57.
- Khakim, Abdul. "Problematika Pengaturan dan Penerapan Sanksi Pidana Atas Pelanggaran Pasal 15 Undang-Undang Nomor 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial." *Audito Comparative Law Journal (ACLJ)* 2, no. 1 (2021): 43-56.
- Lageranna, Akmal. "Risiko Pemberi Kerja Atas Ketidakpatuhan Dalam Program Jaminan Sosial Ketenagakerjaan." " *Dharmasisya" Jurnal Program Magister Hukum FHUI* 1, no. 3 (2021): 3.
- Lestariyono, Didik, Bambang Sugiri, dan Rachmad Safa'at. "Penegakan Hukum Pidana Perusahaan yang Tidak Memenuhi Kewajibannya dalam Program Badan Penyelenggara Jaminan Sosial." *Jurnal Cakrawala Hukum* 10, no. 2 (2019): 156-65.
- Nurchahyo, Ngabidin. "Perlindungan hukum tenaga kerja berdasarkan peraturan perundang-undangan di Indonesia." *Jurnal Cakrawala Hukum* 12, no. 1 (2021): 69-78.
- Puspasari, Ayu. "Sanksi Bagi Perusahaan Yang Tidak Mendaftarkan Pekerja atau Buruhnya Sebagai Peserta Jaminan Sosial." *Doctrinal* 1, no. 2 (2016): 321-36.
- Sinaga, Niru Anita. "Peranan Asas itikad baik dalam mewujudkan keadilan para pihak dalam perjanjian." *JURNAL ILMIAH M-PROGRESS* 8, no. 1 (2021).
- Syaifurrahman, Syaifurrahman. "PENERAPAN SANKSI PADA PELAKSANAAN JAMINAN SOSIAL KETENAGAKERJAAN." Universitas Wiraraja, 2020.
- Zuhub, Asmaun, dan Handyka Prayogi Lesmana. "Pertanggungjawaban Pidana Korporasi Dalam Undang-Undang Badan Penyelenggaraan Jaminan Sosial (BPJS)," 2018.