

IMPLEMENTATION OF CRIMINAL SANCTIONS AGAINST COMPANIES THAT DO NOT PAY
BPJS EMPLOYMENT DUES

(Study : Putusan Pengadilan Negeri Sumedang Number 109/Pid.Sus/2017/PN.Smd)

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<i>Info Artikel</i>	<i>Abstract</i>
<p>Masuk:01/03/2021 Revisi:18/08/2021 Diterima:28/08/2021 Terbit:30/08/2021</p> <p>Keywords: Default BPJS Contribution, Contribution Calculation, BPJS Program</p>	<p><i>This research aims to open wide to the public, especially the workforce about the implementation of laws related to employment and provide examples in relation to the implementation of labor protections whose rights have been lost, so that in the future workers who experience similar things can act to fight for their rights and for companies, this can be a reminder to always carry out their obligations. The method of writing in this study uses normative juridical, by producing findings that violations of the law related to employment often occur such as workers who cannot claim the employment social security program as labor rights as a result of the company's negligence, namely the non-payment of dues by the company to BPJS Employment, enforcement related to it has been done even though the implementation of the criminal sanctions is still relatively few but there has been progress reflected in the use of the article to ensnare one of the companies that collect but do not deposit dues in the Sumedang State Court in Decision No. 109 / Pid.Sus / 2017 / Pn.Smd, so this becomes an example that labor is very guaranteed by the state.</i></p>
<p>Kata Kunci: Lalai Iuran BPJS; Perhitungan iuran Program BPJS</p> <p>P-ISSN: 1412-310X E-ISSN: 2656-3797 DOI : 10.33061</p>	<p>Abstrak</p> <p>Penelitian ini bertujuan untuk membuka lebar kepada masyarakat terutama tenaga kerja mengenai pelaksanaan hukum yang menyangkut ketenagakerjaan serta memberikan contoh dalam kaitannya terkait pelaksanaan perlindungan tenaga kerja yang haknya sempat hilang, sehingga kedepannya tenaga kerja yang mengalami hal serupa dapat bertindak untuk memperjuangkan haknya dan bagi perusahaan, hal ini dapat sebagai pengingat untuk senantiasa melaksanakan kewajibannya. Metode penulisan dalam penelitian ini menggunakan yuridis normatif, dengan menghasilkan temuan bahwa pelanggaran hukum terkait dengan ketenagakerjaan seringkali terjadi seperti tenaga kerja yang tidak dapat klaim program jaminan sosial Ketenagakerjaan sebagai hak tenaga kerja akibat dari kelalaian perusahaan yaitu tidak dibayarkannya iuran oleh perusahaan kepada BPJS Ketenagakerjaan, penindakan terkait hal tersebut telah dilakukan walaupun implementasi akan sanksi pidana tersebut masih tergolong sedikit namun telah ada progress tercermin dari penggunaan pasal tersebut untuk menjerat salah</p>

satu perusahaan yang memungut tetapi tidak menyetorkan iuran di lingkungan Pengadilan Negeri Sumedang dalam Putusan Nomor 109/Pid.Sus/ 2017/ Pn.Smd, sehingga hal ini menjadi contoh bahwa halnya tenaga kerja sangat dijamin akan hak - haknya oleh negara.

I. INTRODUCTION

Employment is one aspect that gets a lot of attention in Indonesia both state attention and public attention, it is based on the number of workers in Indonesia with data on the working population based on data from Badan Pusat Statistik (BPS) revised version in August 2020 recorded as many as 128.45 million people.¹ One of the responsibilities of the State directly in the rights of workers and their families is through legal guarantees provided through legislation as in Law No. 13 of 2003 on Ketenagakerjaan and Law No. 24 of 2011 concerning BPJS², not only with workers with the State, but also with employers or companies. Simply put, the State as a guarantee in the form of law, the parties in the working relationship as implementers of responsibilities related to what has been guaranteed in the law. The non-fulfillment of employee rights in benefiting from the employment social security program even though there has been a regular salary cut to pay dues and precisely on the power of the company to take dues that should be paid, it has an impact on being stopped while the benefits that can be obtained from the program so that the impact does not benefit from its participation in the BPJS Ketenagakerjaan program. The regulation of criminal threats has been regulated in the Law of BPJS, namely in Pasal 19 Ayat (1) jo Pasal 55 Law No. 24 of 2011 in addition to that article, the act can also be categorized as embezzlement that can be subject to Pasal 372 KUHP because it has intentionally had something that belongs to others in its power.

RESEARCH METHODS

This type of research is normative juridical, examining the implications of sanctions in to BPJS Ketenagakerjaan, conducted by qualitative Law No. 24 of 2011 related to companies that do not deposit dues analysis using data derived from literature studies and hopefully later will produce answers in the form of proof of truth to existing theories or give rise to new theories.

DISCUSSION

1. About BPJS Ketenagakerjaan

It is a legal entity formed by the state for the public as an institution that performs the function to provide guarantees to workers in Indonesia from certain socioeconomic risks. Furthermore, the principle embraced in BPJS Ketenagakerjaan is the principle of social insurance in the concept of The Bismarck system is characterised by the following three points.

- 1). *The financing is via contributions, graduated according to income*
- 2). *The contributions to be paid are based on wages or salaries.*

¹ Keadaan Ketenagakerjaan Indonesia Agustus 2020 No.86/11/Th.XXIII,05 November 2020 <https://www.bps.go.id/pressrelease/2020/05/05/1672/februari-2020--tingkat-pengangguran-terbuka--tpt--sebesar-4-99-persen.html> Access on 17/01/2021

² Nurfatimah Mani Perlindungan Hukum Bagi Pekerja di Perusahaan yang Tidak Membayar Iuran BPJS <https://e-journal.unair.ac.id> Access on 30/06/2020

3). *The insured persons are employees or gainfully employed*

What is interesting about this insurance system is the principle of active participation. This means that it is intended for all Indonesian people and is grafted for the workforce so that it is expected to create an equal rights for all people, the concept is the same as the concept of Bismarck and the provisions in Law No. 40 of 2004. Social Security in the form of Social Insurance in the form of BPJS Ketenagakerjaan has programs including Occupational Jaminan Kecelakaan Kerja (JKK), Jaminan Hari Tua (JHT), Jaminan Pensiun (JP), dan Jaminan Kematian (JK) with dues / premiums that must be paid in the amount adjusted to the amount of labor income.

The terms of the amount of dues of each program are as follows:

1. JaminanKecelakaanKerja

Overall dues are paid by employers with a percentage of Group 0.24% of wages a month, Group II amounting to 0.54% of wages a month, Group III amounting to 0.89% of monthly wages, Group IV amounting to 1.27% of monthly wages and Group V amounting to 1.74% of monthly wages

2. Jaminan Hari Tua (JHT)

Dues paid by workers and companies amounting to 5.7% of a month's wages 3.70% by the company and 2.0 % by the workforce

3. Jaminan Pensiun (JP)

of 3% of the wages paid by workers and companies 1 percent by the company and 1 % by the workforce

4. Jaminan Kematian(JK)

with contributions of 0.30% of the monthly wages borne entirely by the company.

But in its implementation there is often negligence in the payment of dues that are the responsibility of the company, it is regulated in Pasal 19 Ayat (1) and (2) Jo Pasal 55 Law No. 24 of 2011 which regulates companies that do not carry out their obligations in paying BPJS Ketenagakerjaan dues.

Pasal 19 ayat (1) And ayat (2)

- 1) The Employer must collect the dues that become the participants of his work and deposit it with BPJS
- 2) Employers who pay and deposit those who are responsible for BPJS

Pasal 55

"Employers who violate the provisions referred to in Pasal 19 Ayat 1 or Ayat 2 shall be punished with a maximum imprisonment of 8 years or a maximum fine of Rp.1,000,000,000.00 one billion rupiah"

The sound in the above criminal provisions illustrates that the case of criminal liability collects but does not pay dues to bpjs employment in this law adheres to the criminal liability system. "The corporate manager as the maker, then the manager must be responsible".

The internal problems of companies such as companies experiencing budget division are often used by the company in its defense in the courts but, it does not necessarily eliminate the criminal because criminal removal can only be done because of two substances, namely the reason for the improvement or the existence of excuses that are presented from: Mental Disability (ontoerekeningsvatbaarheid), state of investigation (overmacht), self-defense (noodweer), office orders (ambetelijkbevel) and implement the provisions of the legislation (wettelijkvoorschrift). Provided that as long as the company has not been declared bankrupt by the court, the criminal cannot be abolished.

2. Implementation of criminal sanctions reflected in sumedang court ruling

Implementation of criminal sanctions in Pasal 55 Jo.Pasal 19 Ayat Law No. 24 of 2011 which contains the threat of criminal sanctions for employers who do not carry out their obligations to pay dues. In Putusan No 109 / Pid.Sus / 2017 / Pn.Smd the public prosecutor claimed that the corporation or more precisely the company's board of directors was charged with committing a criminal act, not violating something that is prohibited from the other because it does not carry out something that is his responsibility, namely intentionally not making the deposit of dues collected from its employees. The application of examination to settlement of BPJS Ketenagakerjaan dispute through criminal channels is a rare thing, although the charges in this ruling are not granted exactly by the judge but only in part, the difference lies in the form of sanctions imposed only. He was initially sentenced to four years in prison, but the judge's decision imposes sanctions in the form of fines, fines are not without consideration but taken by the judge because in order to restore the original existence. In the opinion of the author of the criminal article arrangement and its implementation by law enforcement is a proof of the seriousness of the law in protecting the rights of labor in this country.

The decision issued by the judge must be based on the actual facts revealed in the trial coupled with the wisdom in deciding whether the verdict is guilty or not, related to incriminating matters and mitigating matters. In the case of the problems in this ruling it is known that not necessarily the problem of pure criminal acts in the first thing we usually know, but this problem is a problem that is quite a problem to make reforms in the law, especially renewal in terms of the way of handling cases that are usually problems related to labor related to corporations are often resolved not through criminal courts, Unless it is settled in a commercial court. However, in the case contained in this ruling can be applied in the criminal court. In general, the discussion regarding the delays made by the company in paying dues is usually resolved to the extent outside the court with the help of the prosecutor's office such as data reported from online news portals that mentioned that "Cooperation between the Indonesian Prosecutor's Office and BPJS Ketenagakerjaan produced significant results for the Sulawesi and Maluku regions in the period 2016 to 2017, the Prosecutor's Office completed 765 Special Powers of Attorney with the realization of contributions worth Rp 16.80 Milyar, not only in Sulawesi and Maluku, the cooperation of the two institutions in Papua also showed encouraging results in the last two years, already 233 SKK completed by the prosecutor's office, with potential dues reaching Rp 228.21 million.

Criminal convictions committed not necessarily only to provide appropriate compensation for the actions committed by the accused who are found guilty but must be based on the legal needs that want to be created by law enforcement who will later guarantee equality in the law or equality before the law. The occurrence of a financial crisis in the company so that no dues have been paid has been through communication first with the union. The state of the company's financial division cannot be categorized as a forced act or that eliminates its criminal nature, because the court has never declared the company a bankrupt company. The provision of sanctions is different from the demands of public prosecutors with criminal penalties, considering that those who make mistakes are a legal entity or corporation with the capacity of the accused as a representative of the company in and out of court. According to the main criminal law that can be imposed on legal entities / corporations is criminal fines, based on which the author analyzes that the judge's consideration in sentencing the accused is very appropriate, by not only focusing on the deterrent effect to be achieved but wants to create certainty of the rights of workers who had been lost. The selection of fines by judges is the right step taken by the judge, it turns out that the judge is still concerned or pro to the workforce which prioritizes first about the restoration of workers' rights, this is proof that the role of labor In this country is strongly protected by the state through the protection

provided by legislation and good implementation of laws implemented by law enforcement officials.

CONCLUSION

The use of criminal articles in the BPJS Law of The Ministry of Justice in ensnaring companies that collect but do not deposit dues His responsibility shows progress as evidenced by the criminal code is used to ensnare the company but do not deposit dues then it can be said that the legal guarantee state sanctions are imposed on labor through the enforcement of sanctions It's done well. The use of criminal sanctions in the BPJS Employment Law to ensnaring companies that neglect to pay dues in court rulings Sumedang State Number 109/Pid.Sus/2017/Pn.Smd in termination The judge is very considerate of the recovery. the impact of the criminal act without reducing the nature of the law to create justice. In its implementation is still relatively slightly applied. But there has been good progress reflected in the verdict. aforementioned. Which in general his case is related to BPJS Employment it is usually resolved through an out-of-court settlement or Enter the realm of the Commercial Court.

The imposition of severe criminal sanctions by the Judge in the Verdict Number 2017/Pn.Smd is not necessarily done for no reason but This is taken as a measure to protect and ensure seriously the rights of labor, in addition to consideration Because the actions of the accused reflect no Support the government's program The enforcement of sanctions is quite severe in the form of a violation. criminal penalties that amount to almost the maximum amount can be imposed with the details of the fine will be partially used to pay arrears dues during the month in arrears as a step to restore labor rights and some of them It will be in the state treasury. This proves that the judge does not immediately prioritizing punishment and the provision of deterrent effects only do It also promotes the restoration of victims' rights.

SUGGESTION

The resolution of the case and the considerations taken by the judge in This ruling is expected to be an example of other judges (being jurisprudence) in deciding which things, It is not only expected to be oriented to what is in the rules. Legislation only, but it is also necessary to consider restoration of the rights of the victims.

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