

JURIDICAL ANALYSIS OF THE IMPLEMENTATION OF LABOUR SOCIAL SECURITY (BPJS) FOR WORKERS IN PT KAWASAN HARMONITAMA DYNAMICS, TANJUNG BALAI KARIMUN

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ABSTRACT

BPJS Employment is a public program that provides Protection for workers to address specific socio-economic risks and its implementation uses a social insurance mechanism. Unable to carry out its obligations in the form of paying arrears contributions and fines to BPJS Employment Tanjung Balai Karimun Branch, Riau islands. This legal research is a combination of normative research and empirical research that is oriented towards positive legal norms (ius constitutum), namely: research that focuses more on the implementation of positive legal norms and principles in the form of a statutory regulation approach (statatus approach). The field observations that are relevant to the study of the problem formulation of legal issues in this legal research. This legal research seeks to identify the implementation of employment social security (BPJS). The results of this research are regarding procedures for enforcing criminal sanctions in the BPJS Law, until now there are no standard rules regarding types of receivables that can be categorized as receivables that indicate a criminal offense of violating Article 19 of the BPJS Law. The implementation of enforcement of criminal sanctions for companies in arrears in employment social security contributions is an obstacle in the implementation of criminal sanctions under Article 55 of the BPJS Law for violations of Article 19 of the BPJS Law, namely conflicts of interest and sectoral egos of the parties involved. If the application of administrative sanctions and civil sanctions is deemed unsuccessful, then criminal sanctions can be applied. The application of criminal sanctions is intended to have a deterrent effect on perpetrators of violations and at the same time set an example for others not to commit similar violations.

Keyword: *Crime, Perpetrators of Abuse, Oil and Gas*

1. Background

It is stated in Article 1 paragraph (3) of the 1945 Constitution that "Indonesia is a State of Law". The principle of the rule of law basically implies the existence of rules of the game in the implementation of government duties as a state organising apparatus, with this then State Administrative Law appears as a supervisor of the exercise of government power. The State's power is already great while the community has no power, how will the community be able to correct the State if the great power entrusted to it is misused. Based on this assumption, it appears that State Administrative Law contains two aspects, namely first, the legal rules governing how the State equipment performs its duties, second, the legal rules governing the relationship between the state administrative equipment and its citizens.

The nature of labour law is basically included in the scope of private law. Considering that the fields of legal studies are a unity and it is impossible to separate them, labour law is included in functional law, which contains other fields of law. In terms of its nature, labour law can be private/civil and can also be public. It is private because it regulates the relationship between individuals (making a labour agreement). It is public because the government intervenes in labour matters and there are criminal sanctions in labour law regulations.

Article 86 and Article 87 of Law No. 13 of 2023 on Manpower which obliges companies to guarantee occupational safety and health as described above is a form of protection for workers. Protection of labour is intended to guarantee the basic rights of workers/labourers in ensuring equality. Opportunities and treatment without discrimination on any basis to realise the welfare of workers and their families while taking into account the development of the progress of the business world.

However, in reality, workers are unable to do their jobs because of social risks, such as illness, pregnancy, old age, death or disability that can befall them at any time. Therefore, they need to get social security to finance their survival. Basically, it can be concluded that social security is protection provided by society from economic and social distress caused by the cessation of wage payments (not working), for example due to illness, accidents, childbirth, termination of employment, disability, aging, death, and others. This protection is provided to members of the community through certain programmes such as health care reimbursement, child allowances, family allowances, and others.

Based on the case, seeing how crucial the criminal offences violated in Law Number 24 of 2011 concerning the Social Security Organising Agency. Therefore, in writing this research, the case of the criminal offence will be studied so that a criminal offence can be charged to the legal subject if the legal subject is at fault. The management and the company (corporation) are different legal subjects. It is necessary to study the extent of the liability of the management, namely the President Director of PT KDH Indra Gunawan and Director M Yusuf with the corporate liability of PT Kawasan Dinamika Harmonitama (KDH).

2. Theory

2.1 Justice

Justice according to Aristotle is fairness in human action. Fairness is defined as the midpoint between the two extremes of too much and too little. Both extremes concern two people or objects. If the two people are equal in a predetermined measure, then each person will receive an unequal share, while violation of the proportion means injustice. In the field of law, this theory explains that the good and bad of the law must be measured by the good and bad consequences produced by the application of the law. A legal provision can only be considered good if the consequences resulting from its application are good, the greatest happiness and the reduction of suffering.

2.2 Accountability

Roscou Pound argues that: "I...Use the simple word "liability" for the situation whereby one may exact legally and another is legally subjected to the exaction." The concept he expressed was based on the philosophical point of view of a reciprocal legal system. Roscou Pound describes the conception of "liability" as an obligation to pay retaliation that the perpetrator will receive from someone who has been harmed. The concept of liability above explains not only about legal matters but also about moral values or common decency adopted by a society or groups in society.

2.3 Legal Certainty

According to Hans Kelsen, law is a system of norms. Norms are statements that emphasise the "should" or *das sollen* aspect, by including some rules about what should be done. Norms are products and deliberative human action. Laws that contain rules that are general in nature become guidelines for individuals to behave in society, both in relationships with fellow individuals and in relation to society. The existence of these rules and the implementation of these rules give rise to legal certainty.

Certainty is a matter (state) that is certain, a provision or determination. The law must essentially be certain and fair. It must be certain as a code of conduct and fair because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty can the law perform its function. Legal certainty is a question that can only be answered normatively, not sociologically.

Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubts (multi-interpretation) and logical. Clear in the sense that it becomes a system of norms with other norms so that it does not clash or cause norm conflicts. Legal certainty refers to clear, fixed, consistent and consequent law enforcement whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not just moral demands, but factually characterise the law. A law that is uncertain and unwilling to be fair is not just a bad law.

3. Discussion

3.1 Implementation of Social Security at PT Kawasan Dinamika Harmonitama

That PT Kawasan Dinamika Harmonitama is one of the companies engaged in Granite mining which has 156 active employees in Karimun Regency, Riau Islands Province. In its implementation, PT Kawasan Dinamika Harmonitama has become a BPJS Employment participant since March 2013 and follows 4 programs including Work Accident Insurance (JKK), Death Insurance (JKM), Old Age Insurance (JHT) and Pension Insurance (JP) which are regulated in In this case PT Kawasan Dinamika Harmonitama has registered all of its workforce to obtain social security protection in accordance with the provisions of article 15 paragraph (1) of Law No.24 of 2011 concerning the Social Security Provider Agency, among others: "The employer is gradually obliged to register himself and his workers as participants to the Employment BPJS in accordance with the social security programme that is followed".

In accordance with government regulation number 44 of 2015 concerning work accident insurance and death insurance and government regulation number 45 of 2015 concerning pension insurance and government regulation number 46 of 2015 concerning old age insurance, the amount that must be deposited by the company to BPJS Employment is work accident insurance 1.74% of the company's burden, death insurance 0.30% of the company's burden, old age insurance 3.7% of the company's burden + 2% of the workforce's burden, pension insurance 2% of the company's burden + 1% of the workforce's burden, when a total of 7.74% of the company's burden and 3% of the workforce's burden.

On the way that PT Kawasan Dinamika Harmonitama did not pay and deposit contributions that were its responsibility to BPJS Ketenagakerjaan for the period December 2018 to March 2019. Efforts that have been made by BPJS Ketenagakerjaan in collecting dues include notification via SMS / WA, providing notification letters regarding arrears and reporting to the labour inspector of the Riau Islands Province Manpower Office in the Tanjung Balai Karimun working area, however, the company has not been able to settle its obligations on the grounds that the company's condition is not carrying out activities and the company is looking for investors. That as a result of this arrears of contributions, there are losses to workers both in terms of the development of old-age insurance contributions and social risks that occur to workers.

3.2 Criminal Liability of PT Kawasan Dinamika Harmonitama

In the judgment of the Tanjung Balai Karimun District Court No. 270/Pid.Sus/2019/PN Tbk, that the defendants, namely: Defendant I INDRA GUNAWAN and Defendant II MUHAMMAD YUSUF from December 2018 to March 2019 or at least at some time in 2018 to 2019, at PT Kawasan Dinamika Harmonitama, located at Jl. Pasir Panjang, Sememal Village, Pasir Panjang Village, Meral District, Karimun Regency, or at least still within the jurisdiction of the Tanjung Balai Karimun District Court, which has the power to investigate and adjudicate the matter, the employer is obliged to collect the contributions paid by the participants from its employees and deposit them with the BPJS. who committed, ordered to commit and participated in the act of Article 55 Jo Article 19(1) of Law No. 24 of 2011 on the Social Security Provider Agency Jo Article 55(1)(1) of the Criminal Code.

That the Defendants, namely Defendant I INDRA GUNAWAN and Defendant II MUHAMMAD YUSUF from December 2018 to March 2019, or at least at some time in 2018 to 2019, at PT Kawasan Dinamika Harmonitama which is located at Jl. Pasir Panjang, Sememal Village, Pasir Panjang Village, Meral District, Karimun Regency, or at least still within the jurisdiction of the Tanjung Balai Karimun District Court, which has the power to investigate and adjudicate, the employer is obliged to pay and deposit the contributions for which he is responsible to the BPJS,

This means that the perpetrator of the crime should be the company, regardless of any actions represented by the board of directors. Among the evidence was also attached to the deed of establishment of the company PT Kawasan Dinamika Harmonitama, unfortunately in the consideration of the judge did not consider and explain who was the management of the company. Even if it is correctly considered and explained that the management of the company there are several directors, then some of these directors must be responsible for all actions that occur for and on behalf of PT Kawasan Dinamika Harmonitama.

The personal civil liability of directors does not exclude the possibility of their actions being prosecuted under criminal law, in accordance with Article 155 of Law No. 40 of 2007 on limited liability companies, which reads as follows "The provisions regarding the responsibility of the Board of Directors and/or the Board of Commissioners for their errors and negligence, regulated in this law, do not reduce the provisions regulated in the Penal Code".

If it is legally and convincingly proven that all the acts that occurred in the decision of the Batam District Court No. 270/Pid.Sus/2019/PN Tbk on behalf of the company PT Kawasan Dinamika Harmonitama, the criminal element of every person cannot be met because the company is not every person but a legal entity operated by a person or group of persons.

The criminal liability for the decision of Tanjung Balai Karimun Court No. 270/Pid.Sus/2019/PN Tbk, cannot be prosecuted against PT. Kawasan Dinamika Harmonitama with the charges of Article 55 Jo Article 19 paragraph (2) of Law No. 24 of 2011 on the Social Security Organising Agency Jo Article 55 paragraph (1) to 1 of the Criminal Code.

3.3 Implementation and Supervision of Workers' Social Security Participation at PT. Kawasan Dinamika Harmonitama

The obligation of the company to participate in the BPJS Employment is expressly regulated in Act No. 24 of 2011 on the Social Security Organising Agency, as stated in Article 15 on the obligation of the employer, who is gradually obliged to register himself and his employees as participants in the BPJS in accordance with the social security programme followed. Employers are obliged to provide the BPJS with complete and correct information about themselves, their employees and their family members.

The Workers' Social Security Programme is not specifically for formal workers, but for all workers, both formal and informal, including workers at PT Kawasan Dinamika Harmonitama. Workers at PT Kawasan Dinamika Harmonitama are exposed to a very high level of risk in the course of their work. For this reason, it is required to register its workers with BPJS Employment for social security protection.

Therefore, it can be concluded that the registration of workers as social security participants is an obligation that must be carried out by the employer, namely PT Kawasan Dinamika Harmonitama. In general, the registration of casual workers in social security programmes is done by the company. If the company refuses to register the workers it employs in the JKK and JKM programmes, it will be sanctioned in accordance with Article 59 and Article 60 of Government Regulation No. 44 of 2015 on the Implementation of the Workplace Accident and Death Guarantee Programme.

The provisions of Article 3, paragraph (3) of the Minister of Manpower Regulation No. 44/2015 instruct employers to register their workers with BPJS Ketenagakerjaan no later than 14 (fourteen) days after the issuance of the work order letter (SPK). The sooner the worker is registered, the sooner he or she will be protected by the occupational injury and death insurance. This provision is an attempt to anticipate and control the occurrence of workers' accidents or deaths at the start of project work. This is because the earlier workers are covered by social security, the more secure the social economic protection they receive as a right.

By not registering these workers, it will have implications for not fulfilling the rights of workers to get protection against the risks that occur at work in the form of work accidents and death. This is confirmed by the Head of the Tanjung Balai Karimun Employment BPJS Office that currently membership in PT Kawasan Dinamika Harmonitama is still below 50%, our job is to ensure that all workers, especially workers, get social security protection that is their right. With the protection of workers, in fact BPJS Employment also participates in the government's efforts in the welfare of its people. Besides, BPJS Employment also has membership and contribution targets. If there is a project that is not registered, it certainly hampers the target of receiving contributions.

The categories of violations committed by the company so that they need to be followed up by the BPJS Employment Wasrik Officer, include:

1. Obligatory Unregistered Companies (PWBD), namely companies that should have registered with BPJS but have not registered;
2. Partial Registration Company (PDS) of Workers, which is a company that only registers some of its workers;
3. Wage Partial List Company (PDS), where the wage reported by the company to BPJS is not the actual wage;
4. Partial Registration Companies (PDS) Programmes, which are companies that are already obliged to participate in four social security programmes but only register three social security programmes.
5. Companies that have dues receivables, namely companies that have registered but do not pay contributions on time.

The company is categorised as a Wajib Belum Daftar (PWBD) Company, BPJS Ketenagakerjaan Karimun's effort to increase company participation in registering its workforce is first through the marketing section. BPJS Ketenagakerjaan persuasively, namely by sending a letter to the company to convey or urge that the project run by the company must be registered with BPJS Ketenagakerjaan. If within 7 days the company still does not comply or there is no good faith to register, the follow-up by the BPJS Employment Wasrik Officer is to visit the company or project directly. The arrival of the BPJS Employment Wasrik Officer to meet the head of the company or project and explain directly the rules under which the company is obliged to include its workers in the social security program at BPJS Employment.

3.4 Solutions/Alternatives to the Implementation of Employment Social Security for Workers at PT Kawasan Dinamika Harmonitama

In the decision of the Tanjung Balai Karimun District Court No. 172/Pid.Sus/2020 PN Tbk, which heard a criminal case at the first instance, it was decided that the President Director of PT. Kawasan Dinamika Harmonitama (KDH) was legally and convincingly proven guilty of the criminal offence of "committing, ordering and participating in an employer's failure to comply with the obligation to collect contributions from its employees and deposit them with the BPJS as regulated and punishable under Article 55 of Law No. 24 of 2011 on the Social Security Provider Agency j.o. Article 19 paragraph (1) of Law No. 24 of 2011 on the Social Security Provider Agency j.o. Article 55 paragraph (1)".

Social Security criminal case that occurred in the District Court of Tanjung Balai Karimun Batam is the implementation of Article 55 of the BPJS Law. In this case, the defendant is the President Director based on the court's verdict that the crime is a corporate crime (*rechtspersoon*) and not a general individual crime (*person*). The verdict states that criminal responsibility can be imposed on legal entities, either natural persons or legal entities, if the criminal act is committed by a legal entity, then of course the one who must take responsibility is the management of the company, so that if there is a claim against the company, it can be made against the management and refers to the GMS and the articles of association of the company, and usually the responsible person is the president director or director. The ruling also stated that based on the Limited Liability Company Law No. 40 of 2007, Article 1 point 5 states that the board of directors is an organ of the company that is empowered and fully responsible for the management of the company for the benefit of the company in accordance with the objectives of the company and represents the company both in and out of court in accordance with the provisions of the articles of association.

4. CONCLUSIONS

Based on the results of the research conducted on the implementation of BPJS for workers at PT Kawasan Dinamika Harmonitama, Tanjung Balai Karimun who do not pay BPJS employment contributions, the following conclusions can be drawn:

1. That based on Law 24 of 2011 on the Social Security Provider Agency, the employer is obliged to register himself and his workers as participants and pay contributions to the BPJS in accordance with the social security programme followed. In this case, PT Kawasan Dinamika Harmonitama has been registered as a BPJS Employment participant since March 2013.
2. In its implementation, PT Kawasan Dinamika Harmonitama has become a participant in the Employment BPJS with 4 programs, namely Work Injury Insurance (JKK), Death Insurance (JKM), Old Age Insurance (JHT) and Pension Insurance (JP) however, the company does not deposit contributions which are the company's obligations to the Employment BPJS. BPJS Ketenagakerjaan has made coaching efforts also did not produce results so in this case BPJS Ketenagakerjaan reported PT Kawasan Dinamika Harmonitama to law enforcement agencies until finally based on the Decision of the Tanjung Balai Karimun District Court Number: 270/PID.SUS/2019/PN.Tbk Indra Gunawan as President Director and Muhammad Yusuf as Director have been proven legally and convincingly guilty of committing a criminal act "jointly not paying and not depositing contributions that are their responsibility to BPJS Ketenagakerjaan" and sentenced to imprisonment for 4 months each.
3. The lack of attention or awareness of companies to the importance of social security protection for workers and the very basic thing that the regulation and application of administrative sanctions, does not provide a deterrent effect for perpetrators of violations and at the same time also does not provide protection to workers/labourers to obtain the right to social security, in addition to also not guaranteeing the implementation of effective enforcement of labour law. Likewise, the argument that the application of criminal sanctions as an *ultimum remedium* given to employers if it causes losses and a decrease in the welfare of workers.

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