

# LEGAL ANALYSIS OF CRIMINAL LIABILITY FOR SOCIAL SECURITY OF WORKERS PT KAWASAN DINAMIKA HARMONITAMA (CASE STUDY OF THE DECISION OF THE TANJUNG BALAI KARIMUN DISTRICT COURT, NUMBER: 270/PID.SUS/2019/PN.TBK)

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## ABSTRACT

Social security means guarantees given to workers outside of official wages, such as benefits for sickness, collective leave, accidents, maternity and so on. PT. The Harmonitama Dynamics Area is located on Jalan Pasir Panjang, Semeral, Meral District, Karimun Regency, Riau Islands Province. The principles of the National Social Security System which guide BPJS Employment in carrying out its duties in managing contributions, should be contributions from PT. Kawasan Dinamika Harmonitama (KDH) or the company's obligations are paid to BPJS Employment, therefore there is a criminal dispute between PT. Kawasan Dinamika Harmonitama (KDH) as a participant with the Social Security Administering Agency (BPJS) for Employment, Tanjung Balai Karimun branch. 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*). 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 responsibility for social security criminal acts of PT Kawasan Dinamika Harmonitama workers. The problems studied, analyzed and discussed in this research include: how is the legal regulation of Workers' Social Security, how is the social security criminal liability of PT. Harmonitama Dinamika Area and how is PT's compliance. Dinamika Harmonitama Region carries out its Social Security obligations for its workers after the court decision. The results of this research are that legal arrangements for the protection provided by the government to participants of the Employment Social Security Administering Body (BPJS) already exist, namely by providing preventive and repressive protection. Procedures for enforcing criminal sanctions for companies in arrears in employment social security contributions are still not regulated in BPJS Employment board regulations because there are no technical regulations in the BPJS Law. The implementation of supervision carried out by BPJS Employment cannot be carried out optimally due to limited authority both in terms of investigations and investigations.

**Keywords: Crime, Social Security, Employment.**

## 1. Background

Social security refers to guarantees provided to workers beyond the official wage, such as sickness benefits, shared leave, accidents, maternity, etc. By covering the above efforts, the broad definition of social security can be found in Law No. 11 of 2009 on Social Welfare, Article 1 numbers 1 and 2 as follows:

"Social welfare is a condition for meeting the material, spiritual and social needs of citizens in order to live and develop properly, so that they can fulfil their social functions. The implementation of social welfare is a directed, integrated and sustained effort by the government, local governments and the community in the form of social services to meet the basic needs of every citizen, which includes social rehabilitation, social security, social empowerment and social protection."

Based on the 1945 Constitution, Article 28H(3) states that everyone has the right to social security for survival, including workers. Workers are those who work to receive wages or rewards from the results of their labour. Based on the preamble of the 1945 Constitution, paragraph IV stipulates that one of the objectives of the Indonesian state is the realisation of social welfare for all Indonesian people. Social welfare is a form of right that must be fulfilled by both employers and workers.

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There is a company as an employer facing problems with hundreds of workers, which then the problem has an impact on the obligation of contributions to the Tanjung Balai Karimun Branch of the Employment BPJS, the company is called PT Kawasan Dinamika Harmonitama (KDH) which cannot meet its obligations in the form of payment of arrears of contributions and fines to the Tanjung Balai Karimun Branch of the Employment BPJS, Riau Islands.

PT Kawasan Dinamika Harmonitama is located at Jalan Pasir Panjang, Semeral, Meral District, Karimun Regency, Riau Islands Province, which has become a participant in the Employment Social Security Agency (BPJS) to fulfil its obligation to pay contributions, in particular with regard to social security rights directly related to the National Social Security System, which is basically a state programme and carries out the mandate of Law No. 40 of 2004 concerning the National Social Security System and the Employment Social Security Agency (BPJS) based on Law No. 24 of 2011 as a national social security institution in the implementation of the National Social Security System.

Criminal liability may be imposed for offences committed against a legal entity if the legal entity is at fault. The management and the company (corporation) are different legal subjects. It is necessary to examine the extent of responsibility of the management, namely the President Director of PT Kawasan Dinamika Harmonitama, Indra Gunawan and Director M. Yusuf with the responsibility of PT Kawasan Dinamika Harmonitama (KDH).

## **2. Theory**

### **2.1 Justice**

The term justice (justitia) comes from the word "fair", which means: not one-sided, impartial, in favour of the right, fair, not arbitrary. Justice includes all matters relating to attitudes and actions in human relations, it includes the requirement that people treat each other in accordance with their rights and duties, treatment is not arbitrary or preferential, but all people are treated equally in accordance with their rights and duties.

### **2.2 Legal Certainty**

Legal certainty is a guarantee that the law contains justice. Norms that promote justice must truly function as rules that are obeyed. Radbruch Justice and legal certainty are permanent parts of the law, where justice and legal certainty must be considered and maintained for the security and order of a country. Finally, positive law must always be obeyed. Based on the theory of legal certainty and the value to be achieved, namely the value of justice and happiness.

### **2.3 Legal Responsibility**

The theory of criminal responsibility developed by Roscou Pound, who argued that: "I...use the simple word 'responsibility' for the situation where one can legally demand and another is legally subjected to the demand". The concept he expressed was based on the philosophical view of a reciprocal legal system. Roscou Pound describes the concept of liability as an obligation to pay retribution that the offender will receive from someone who has been harmed.

### 3. Discussion

#### 3.1 Implementation and monitoring of workers' social security participation at PT. Kawasan Dinamika Harmonitama

According to the researchers' observations, the majority of workers at PT Kawasan Dinamika Harmonitama are not registered with the BPJS Employment. As a result, many workers are not covered by employment social security. The non-registration of these workers will have an impact on the fulfilment of workers' rights to protection against occupational hazards in the form of work-related accidents and fatalities. This is confirmed by the head of BPJS Ketenagakerjaan Tanjung Balai Karimun that currently the participation rate in PT Kawasan Dinamika Harmonitama is still below 80%, our task is to ensure that all workers, especially workers, get the social security protection that is their right. In fact, by protecting workers, BPJS Ketenagakerjaan also participates in the government's efforts for the welfare of the people. This is also the main task of BPJS Employment in reaching out to members throughout the region..

The efforts of BPJS Ketenagakerjaan Tanjung Balai Karimun to carry out the compliance function starts from the membership officer who always carries out coaching to all companies/business entities. BPJS Ketenagakerjaan will send a persuasive letter to the company to convey or urge that the company/business entity operated 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, then the membership officer can make a visit and take information at the company, if the results of the information do not get results in accordance with the rules, then the next stage can be carried out by the BPJS Employment Wasrik officer, by sending a summons for inspection to directly visit the company / business entity. The arrival of the BPJS Employment Wasrik Officer to conduct an inspection related to violations found by the BPJS Employment against the BPJS Employment rules themselves, the inspection will be carried out directly to the head of the company and explain directly the rules under which the company is obliged to include its workers in the social security program at BPJS Employment to the legal consequences that will be faced.

Until the final stage, the authority of the BPJS Ketenagakerjaan Tanjung Balai Karimun in terms of supervision is not optimal and difficult to implement. It is also evident that the limit of the investigating officer's ability is to delegate the files on the findings of non-compliance of companies/business entities to law enforcement authorities.

#### 3.2 Legal action taken against PT Kawasan Dinamika Harmonitama for not including its workers in the BPJS employment programme)

In general, administrative sanctions can take the form of licence revocation, dissolution, supervision, temporary suspension, administrative fines or police coercion. According to Chazali H. Situmorang, the imposition of administrative sanctions is intended to ensure that employers other than government administrators and all other persons other than employers, workers and contributors comply with their obligations so that the rights of workers as participants in social security programmes are protected.

The sanctions imposed for infringements, as referred to in Article 17(1) of Law No 24 of 2011 on the Social Security Organisation Agency, consist of 3 (three) types of sanctions, namely in the form of written warnings, fines and/or the denial of certain public services. The imposition of administrative sanctions in the form of written warnings and fines is carried out by the BPJS, while the imposition of administrative sanctions for not receiving certain public services is carried out by the Government, the Provincial Regional Government or the Regency/City Regional Government at the request of the BPJS.

Specifically, the regulation on the mechanism for imposing administrative sanctions for non-compliance by employers in registering social security programmes is contained in Government Regulation No. 86 of 2013 on the Procedure 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.

1. Employers other than state administrations who violate or fail to fulfil their obligation to register themselves and their employees as participants in the BPJS shall be subject to written warning sanctions. The written warning sanction is given 2 (two) times, the first warning letter is given for a maximum

period of 10 working days. If the first warning expires within 10 days and the employer has not complied with its obligations, BPJS will send a second warning for a maximum period of 10 working days.

2. Fines will be imposed if the employer fails to comply with his obligations after the second written warning has expired. Fines are imposed within 30 days of the end of the second written warning. The fine is 0.1% (zero point one per cent) per month of the contributions that should have been paid, calculated from the end of the second written warning. The fine will then be paid to the BPJS together with the next month's subscription payment.
3. If the sanction in the form of a fine is not paid in full, employers other than public administrations are subject to the sanction of not receiving certain public services. Sanctions for not receiving certain public services are imposed by the government, provincial regional government or regency/city regional government at the request of the BPJS.

#### 4. CONCLUSIONS

Based on the results of the research conducted on the legal analysis of the criminal liability for social security of the workers of PT Kawasan Dinamika Harmonitama (case study of the decision of the Tanjung Balai Karimun District Court Number: 270/PID.SUS/2019/PN.TBK), the following conclusions can be drawn:

1. There are already legal arrangements in the protection provided by the government to participants of the Employment Social Security Organisation (BPJS), namely through the provision of preventive and repressive protection. Preventive protection is an opportunity given to BPJS participants to express their opposition or opinion before the government's decision becomes final, with the intention of preventing disputes. Meanwhile, repressive protection is provided by the government to BPJS Employment participants to resolve disputes. This is implicitly stated in the Labour Law No. 13 of 2003, Article 86(1). Both protections are provided by the government to protect the rights of workers who are harmed by the company. However, the government should issue relevant regulations to make the enforcement of labour protection laws more effective.
2. With regard to the procedures for enforcing criminal sanctions under the BPJS Act, there are no standard rules on the types of claims that can be classified as claims indicating a criminal violation of Article 19 of the BPJS Act. The procedures for the enforcement of criminal sanctions against companies in arrears with employment social security contributions are still not regulated in the regulations of the directors of the BPJS Employment, as there are no technical rules from the BPJS Law. The BPJS Act, which is an administrative law with criminal sanctions as a criminal law outside the Penal Code, should be able to take action in enforcing criminal acts against employers/enterprises that do not pay and deposit the contributions that they are obliged to pay to the Employment Social Security Agency as stipulated in Article 55. In this case, the BPJS Ketenagakerjaan is also unable to take legal action, as the BPJS Ketenagakerjaan is neither empowered to report nor empowered to investigate evidence of violations of Article 19(1) and (2) j.o. Article 55 of the BPJS Act. Implementation of the enforcement of criminal sanctions for companies in arrears of employment social security contributions is the existence of obstacles in the application of criminal sanctions in Article 55 of the BPJS Law for violations of Article 19 of the BPJS Law, namely conflicts of interest and sectoral egos of related parties. If the application of administrative and civil sanctions is deemed unsuccessful, criminal sanctions may be applied.
3. Implementation in terms of supervision carried out by BPJS Ketenagakerjaan cannot be carried out optimally due to limited authority both in terms of investigation and investigation. The legal product issued by the inspecting officer in the form of an Inspection Findings letter can only be forwarded to law enforcement authorities to be followed up on non-compliance with labour social security. The application of sanctions for not receiving certain public services to companies/business entities that do not comply with obligations related to labour social security to date has not existed at all, including PT Kawasan Dinamika Harmonitama. The court decision that made the director a suspect did not make the company also get sanctions, so the company continues to run even though there are still violations that occur, especially against labour social security.

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