

Legal Protection for Workers Who Are Not Registered in the BPJS Ketenagakerjaan Program

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ABSTRACT: Fulfilling the right to social security through BPJS Ketenagakerjaan is a fundamental obligation of employers; however, in practice, many workers are not registered, causing them to lose protection against work-related risks. This condition reflects weak employer compliance and inadequate state protection of workers' rights. The issues examined in this study include the forms of preventive and repressive legal protection, as well as the responsibilities and sanctions imposed on employers for violating the obligation to register workers in the BPJS Ketenagakerjaan program. This research employs a normative legal research method with a statutory approach. Data were obtained through document studies of laws, implementing regulations, and legal literature. The results show that preventive protection is carried out through supervision mechanisms, dissemination of information, transparency, employment agreements, and the integration of labor administration systems. Meanwhile, repressive protection includes the application of administrative sanctions, restoration of workers' rights, industrial dispute resolution, and even criminal penalties. Employers are also financially responsible for paying outstanding contributions and compensating for all social security benefits. Consistent law enforcement is proven to be a key factor in ensuring effective worker protection.

KEYWORDS: Legal Protection, Workers, BPJS Ketenagakerjaan.

I. INTRODUCTION

Workers are an essential asset in national development. Their presence not only supports the production process but also serves as a primary factor in the sustainability of a company. Therefore, the state has an obligation to provide adequate protection for workers' rights. Every worker must be given the opportunity to obtain employment that aligns with their abilities and skills, as well as to receive fair wages or income that ensures the welfare of both themselves and the family members who depend on them.

Numerous workers' rights are stipulated in Law Number 13 of 2003 concerning Manpower, including the right to employment social security. This social security functions as a form of protection against risks that workers may face during the employment relationship. The right to social security is regulated in Article 28H paragraph (3) of the 1945 Constitution, and its fulfillment is the responsibility of the state. This obligation is reinforced in Article 34 paragraph (2) of the 1945 Constitution (fourth amendment), which states that "The state shall develop a social security system for all the people and empower the underprivileged and incapable in accordance with human dignity."

One form of state protection is the implementation of BPJS Ketenagakerjaan, which serves as the national social security system pursuant to Law Number 24 of 2011. This program provides protection against socio-economic risks such as work-related accidents, death, old age, and job loss. Every worker has the right to obtain protection from such risks because it is part of their fundamental rights that must be fulfilled by employers.

Although the obligation to register workers in the BPJS Ketenagakerjaan program is clearly regulated, non-compliance among employers is still prevalent. Many workers remain unregistered, either partially or entirely. This results in workers losing their rights to protection, particularly when they experience work-related accidents or other events that may impair their economic capacity. The economic sector plays a crucial role in a country's development, as progress or decline is significantly influenced by economic conditions. Economic activities must align with societal values, including social structures and norms upheld by the community.

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Such non-compliance is often justified by reasons of cost efficiency, inadequate supervision, or limited employer awareness of legal consequences. Nevertheless, these reasons cannot be justified, as the obligation to register workers in BPJS Ketenagakerjaan is a mandatory legal requirement. Violations of this obligation create legal uncertainty for workers.

The failure to register workers in the BPJS Ketenagakerjaan program has serious implications. When workers experience workplace accidents, they cannot access healthcare services or compensation benefits. Consequently, the economic burden shifts to the workers and their families. This situation contradicts the principle of labor protection that should be guaranteed by the state.

Furthermore, the exclusion of workers from social security programs may create injustice within industrial relations. Workers are placed in a subordinate position and lack the bargaining power to claim their rights. Meanwhile, employers can easily disregard their obligations due to ineffective sanctions or weak law enforcement.

In labor law, protection for disadvantaged workers can be preventive or repressive. Preventive protection is aimed at preventing violations through norms, regulations, and supervisory mechanisms. Repressive protection, on the other hand, is provided after a violation occurs, through administrative sanctions, criminal penalties, or claims filed in industrial relations courts.

The significance of examining preventive legal protection lies in how the state, through regulations and labor inspectors, ensures that every worker is registered by the employer. Measures such as public dissemination, compliance audits, and field inspections are part of the government's efforts to prevent violations of registration obligations.

Meanwhile, the study of repressive legal protection is essential to determine the extent to which statutory regulations guarantee justice for workers who suffer losses. When an unregistered worker experiences harm, the recovery mechanism must be accessible and provide legal certainty. However, in practice, these processes are often hindered by administrative barriers or workers' lack of understanding of their rights.

In addition to legal protection, employer responsibility in implementing BPJS Ketenagakerjaan is a crucial issue. The law mandates employers to register their workers and pay contributions regularly. This obligation cannot be transferred to workers, as it is part of the employer's duty as the provider of employment. The obligation to register workers as participants of BPJS Ketenagakerjaan is essentially intended to enhance workers' welfare, given that workers occupy a weaker position under the control of the company.

If employers neglect or intentionally fail to fulfill this obligation, various sanctions are regulated by law. These sanctions may include warnings, fines, restrictions on public services, and even criminal penalties. However, in practice, such sanctions are often ineffective due to weak supervision or lengthy law enforcement procedures.

The inadequate implementation of sanctions allows violations to persist, leaving workers vulnerable. This raises questions regarding the effectiveness of existing regulations and how the state can strengthen workers' positions to ensure the optimal fulfillment of their rights to social security.

Therefore, research on legal protection for workers who are not registered in the BPJS Ketenagakerjaan program becomes highly relevant. This study aims to examine the concepts of preventive and repressive legal protection and to evaluate the extent to which regulations on employer responsibility and sanctions ensure the fulfillment of workers' rights.

Based on the background described above, the author establishes the title "Legal Protection for Workers Who Are Not Registered in the BPJS Ketenagakerjaan Program", with research problems consisting of: (1) The forms of preventive and repressive legal protection for workers who are not registered in BPJS Ketenagakerjaan; and (2) The responsibilities and sanctions imposed on employers for violating the obligation to register workers in BPJS Ketenagakerjaan.

II. RESEARCH METHODS

This research is a type of normative legal research, namely legal research that places law as a building system of norms consisting of principles, norms, rules and regulations, court decisions, agreements, and doctrine. The approach used in this research is the statute Approach. The data collection technique used is literature study. Data analysis is conducted descriptively. Descriptive analysis means that the author provides an explanation of the subject and object of the research based on the results obtained from the study.

III. RESULTS AND DISCUSSION

Forms of Preventive and Repressive Legal Protection for Workers Who Are Not Registered in the BPJS Ketenagakerjaan Program

According to Satjipto Rahardjo, legal protection is an effort to provide safeguards for human rights that are harmed by others, as well as to ensure that the public can enjoy all rights guaranteed by law. Legal protection for workers is essential within

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the national labor system because it is directly related to human dignity and the fulfillment of constitutional rights. In the context of employment social security, the state—through BPJS Ketenagakerjaan—is obligated to ensure that every worker receives protection against occupational risks as mandated by Law Number 24 of 2011 concerning BPJS. However, in practice, many workers are still not registered by their companies, creating significant potential losses for the workers.

The failure to register workers in BPJS Ketenagakerjaan results in the loss of access to the five social security programs, including Work Accident Insurance (JKK) and Death Benefit (JKM). This situation constitutes a violation of fundamental workers' rights and contradicts statutory regulations. Therefore, legal protection mechanisms, both preventive and repressive, are necessary to ensure the effective fulfillment of these rights. From a legal standpoint, employers' obligation to register workers in BPJS Ketenagakerjaan has a strong basis. Article 15 of the BPJS Law explicitly mandates employers to register themselves and their workers as participants in the social security program. Failure to fulfill this obligation is not only an administrative violation but also a legal breach that may affect workers' safety and welfare.

Within the framework of legal protection theory developed by Philipus M. Hadjon, legal protection can be categorized into preventive and repressive measures. Preventive legal protection aims to prevent violations, while repressive legal protection is provided after a violation occurs. This concept is highly relevant in analyzing the issue of workers not being registered in BPJS Ketenagakerjaan, as the matter requires intervention at both levels, described as follows:

1. Preventive Legal Protection

Preventive legal protection provides legal subjects the opportunity to raise objections or express opinions before a government decision becomes final. The purpose of preventive protection is to prevent problems or disputes before they arise. Preventive protection is directed at enabling workers to express objections, obtain information, and secure their rights before more serious violations occur. These preventive efforts are crucial because unregistered workers often result from their limited knowledge of their own rights. Legal protection can be described as a reflection of the function of law itself, carrying the concept that law seeks to create justice, order, certainty, benefit, and harmony.

One form of preventive protection is the obligation for companies to provide transparent information regarding workers' rights to social security. Law Number 13 of 2003 on Manpower requires employers to explain working conditions, including social security facilities. This transparency can prevent deviations early in the employment relationship. Government regulations also provide preventive protection through labor inspection mechanisms. Labor inspectors have the authority to ensure that companies comply with their obligations to register workers in BPJS, conducted through document examinations, field inspections, and inspection notices. This mechanism not only has administrative functions but also an educational role, raising awareness among companies about their legal obligations.

Another preventive measure is socialization and education for workers. BPJS Ketenagakerjaan regularly provides outreach on the benefits of social security programs and employers' obligations. Such education strengthens workers' bargaining position to assert their rights.

Preventive protection also includes the requirement for employers to include social security aspects in employment agreements. The right to BPJS Ketenagakerjaan must be clearly stated in the employment contract as a component of employment conditions. The government additionally requires companies to report their workforce data through an integrated labor system. This digital platform allows continuous monitoring of whether workers have been registered in BPJS.

Business licensing regulations also serve as preventive instruments. The government may require proof of BPJS participation as a prerequisite for business permits, preventing non-compliant companies from operating. Institutional synergy between the Department of Manpower, BPJS Ketenagakerjaan, and local government agencies forms a collective preventive mechanism to ensure ongoing monitoring. The role of labor unions is also pivotal; they can oversee internal company compliance and advocate for workers' rights through bipartite negotiations. Capacity building programs for employers such as training and workshops further support preventive protection by reducing information gaps and encouraging voluntary compliance.

2. Repressive Legal Protection

Repressive legal protection is provided after a violation has occurred, when workers are harmed due to being unregistered by their employers. This protection aims to restore workers' rights and impose sanctions on companies to deter repeated violations. Repressive protection is evident from the imposition of sanctions against companies that violate legal provisions. Law No. 13 of 2003 and Law No. 2 of 2004 form the foundation of legal arrangements in labor relations.

Administrative sanctions are one form of repressive protection. Article 17 of the BPJS Law provides that companies failing to register workers may be subject to written warnings, fines, or restrictions on public services. If companies persist in non-compliance, fines are imposed as financial penalties. In more severe cases, the government may restrict or revoke business licenses, which is an effective deterrent.

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Workers may also seek repressive protection through industrial dispute resolution mechanisms tripartite negotiations, mediation, or filing claims at the Industrial Relations Court (PHI). PHI rulings may require companies to retroactively register workers, pay outstanding contributions, or compensate workers for losses incurred during periods of non-registration.

In certain cases, the failure to register workers may lead to criminal liability. The BPJS Law allows imprisonment or fines for employers who intentionally avoid their obligations, strengthening the state's commitment to worker protection. Repressive protection may also occur through BPJS subrogation, where BPJS pays workers' benefit claims first and then charges the employer for reimbursement.

Workers can file complaints directly to labor inspectors, triggering field investigations and legally binding inspection notices. These notices may serve as the basis for imposing sanctions. If a worker suffers a work accident before being registered in BPJS, the employer is legally required to cover all medical expenses, compensation, and benefits, ensuring workers remain protected despite the employer's non-compliance.

Local governments may impose additional sanctions through regional regulations, such as revoking business licenses or reducing local incentives. At the national level, coordination between BPJS, the Financial Services Authority, and relevant ministries strengthens law enforcement. Online complaint channels provide workers with fast and confidential reporting tools, enabling prompt repressive action by authorities.

Preventive and repressive legal protection for workers who are not registered in BPJS Ketenagakerjaan are complementary approaches. Preventive measures work to prevent violations through education, transparency, monitoring, and regulatory systems, while repressive measures address violations through sanctions, dispute resolution, restoration of workers' rights, and law enforcement. The integration of both approaches is essential to establish a fair, inclusive, and effective employment social security system that safeguards all workers in Indonesia.

Responsibilities and Sanctions for Employers for Violating the Obligation to Register Workers in the BPJS Ketenagakerjaan Program

Employers have a legal obligation to register all of their workers in the BPJS Ketenagakerjaan program as a means of fulfilling the fundamental right to social security. This obligation is firmly mandated under Law Number 24 of 2011 concerning BPJS and Law Number 40 of 2004 concerning the National Social Security System. Non-compliance with this obligation constitutes a legal violation that directly affects workers' protection against the risks of occupational accidents, death, old age, and loss of income.

This registration obligation is grounded in the principle of universality in social security, meaning that every worker is entitled to protection without discrimination. Employers, as the parties hiring workers, bear an inherent responsibility to ensure that their employees are active participants in BPJS. Failure to fulfill this obligation is not merely an administrative omission but a denial of the principles of a welfare state.

BPJS Ketenagakerjaan is a public program aimed at providing protection for workers against various socio-economic risks through a social insurance based system. As a state institution in charge of social insurance, BPJS Ketenagakerjaan formerly PT Jamsostek (Persero) is responsible for implementing social security regulations for the workforce.

Employers' responsibilities concerning BPJS registration include administrative and financial obligations. Administratively, employers must register workers from the beginning of their employment, report any data changes, and ensure that workers receive benefits according to the types of programs in which they are enrolled. Financially, employers must pay contributions as determined by law, both those fully borne by employers and those shared with workers.

Non-compliance results in losses for workers, especially when accidents or other employment-related risks occur. In such situations, the employer bears full responsibility for compensating all benefits that the worker should have received through BPJS. This demonstrates that the employer's liability is substitutive in nature, meaning the employer must replace benefits lost due to their own negligence.

Beyond financial liability, employers may also be held legally accountable within the industrial relations framework. Workers may file claims through mediation, conciliation, or the Industrial Relations Court (PHI) to demand their rights to social security. The PHI has the authority to order employers to retroactively register workers and pay all outstanding contributions.

If a worker suffers a workplace accident before being enrolled in BPJS, the employer is fully responsible for covering medical treatment, rehabilitation, and disability or death compensation. This obligation derives from Government Regulation Number 44 of 2015 on Work Accident Insurance and Death Insurance. This regulation ensures that workers remain protected even when employers fail to meet their obligations. For repeated violations, the government may impose more severe administrative sanctions. These sanctions serve both educative and repressive functions to encourage compliance. Administrative sanctions are widely applied because they are quicker and more effective in dealing with employment violations.

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Under Articles 17 and 55 of the BPJS Law, administrative sanctions for employers who fail to register their workers include three types: written warnings, fines, and restrictions on public services. A written warning is the initial sanction issued after an inspection by labor inspectors or BPJS. If the warning is ignored, the next sanction is a fine, calculated as a percentage of the delayed contribution or failure to carry out the registration obligation. The aim is to exert financial pressure to ensure immediate compliance.

The most severe administrative sanction is the restriction of public services. Employers may face delayed or suspended access to public services such as business permits, operational licenses, tax services, and certain banking services. This sanction is effective because it directly impacts business operations.

In addition to administrative sanctions, the BPJS Law also provides for criminal sanctions against employers who intentionally neglect their obligations. Article 55 of the BPJS Law states that employers who do not fulfill their duties may be subject to imprisonment or fines. These criminal sanctions create a deterrent effect because they target the personal liability of the employer, not merely the business entity.

Although criminal sanctions are rarely applied, their existence is crucial as the highest form of repressive legal protection. In practice, criminal sanctions are more likely imposed when violations result in severe harm to workers, such as death without work accident protection. This reflects the state's firm stance in safeguarding fundamental workers' rights.

Employers are also responsible for retroactive payment of outstanding contributions. Thus, even if workers are registered at a later date, employers must pay contributions from the moment the workers first began working. This rule ensures that employers cannot evade financial obligations through delayed registration.

Labor inspectors play a crucial role in enforcing employer responsibilities and sanctions. Inspection notes issued by labor inspectors serve as binding official documents that allow BPJS to collect contributions or impose administrative sanctions. Thus, the supervisory function bridges the gap between regulations and enforcement.

Employers also face moral responsibility in addition to legal responsibility. Non-compliance indicates a lack of concern for workers' safety and welfare. From a business ethics perspective, such actions reflect unsustainable practices and undermine industrial relations.

The enforcement of sanctions serves a broader purpose: creating a culture of compliance within the labor ecosystem. By applying sanctions firmly, other companies are expected to comply, knowing that violations carry legal consequences. Consistent enforcement also enhances worker protection more broadly.

Despite existing regulations, many companies still fail to register their workers with BPJS Ketenagakerjaan. Common reasons include low worker productivity and the misconception that BPJS Health alone provides sufficient protection. However, Article 15 paragraph (1) of the BPJS Law explicitly requires employers to gradually register themselves and their workers in BPJS Ketenagakerjaan in accordance with applicable social security programs. This situation poses a significant challenge for the government in realizing the state goals set forth in the 1945 Constitution of the Republic of Indonesia.

In conclusion, employer responsibilities and sanctions for violating the obligation to register workers in BPJS Ketenagakerjaan are essential instruments in ensuring an effective social security system. These responsibilities include administrative, financial, and legal aspects, while the sanctions are designed to provide deterrence and guarantee worker protection. Optimal enforcement of both aspects will strengthen the implementation of employment social security and ensure justice for workers in Indonesia

IV. CONCLUSIONS

1. The forms of preventive and repressive legal protection for workers who are not registered in the BPJS Ketenagakerjaan program demonstrate that the state has provided comprehensive instruments to both prevent and address violations of social security rights in employment. Preventive protection is implemented through supervision, education, information transparency, clear employment agreements, and institutional synergy to ensure the fulfillment of workers' rights before violations occur. Meanwhile, repressive protection is provided after a violation has taken place through the imposition of administrative sanctions, the restoration of workers' rights, industrial dispute resolution mechanisms, and the possibility of criminal sanctions for negligent employers. The combination of these two protective mechanisms is essential to guarantee legal certainty, uphold workers' fundamental rights to social security, and foster a culture of employer compliance within the national labor system.
2. The responsibilities and sanctions imposed on employers for violating the obligation to register workers in BPJS Ketenagakerjaan affirm that employers hold legal, financial, and moral obligations to ensure that all their workers are protected under the social security system as mandated by statutory regulations. Employer non-compliance not only harms workers but also triggers the application of administrative sanctions, including written warnings, fines, and

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restrictions on access to public services, as well as potential criminal liability for intentional violations. Furthermore, employers remain fully responsible for all social security benefits that workers should have received, including the obligation to pay contributions retroactively and provide compensation for work-related risks that occur. Thus, the existence of sanctions and enforcement mechanisms serves as an essential instrument to ensure the protection of workers' rights while promoting compliance and justice within employment relations.

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