



## Analysis of the Fulfillment of Labor Social Security as a Work of Legal Protection

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### ARTICLE INFO

### ABSTRACT

#### Keywords:

Compliance  
Labor social security  
Legal protection

#### Article history

Submitted: 2020-10-01

Accepted: 2020-10-07

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The research objective is to analyze the fulfillment of labor social security as a form of legal protection for workers in the formal and informal sectors as well as barriers and their solutions. The juridical normative research method is descriptive analysis. The statutory approach method (statue approach). By using secondary data, which is supported by primary data, in the form of interviews with informants. The analysis technique uses qualitative analysis methods. The results showed that the fulfillment of employment social security for workers in the formal sector, namely the company is obliged to register its employees. Meanwhile, workers in the informal sector must pay their dues independently, be borne by themselves, because they work independently and the guarantee program that must be followed is only the work accident insurance and death insurance programs. Obstacles for workers in the formal sector are many companies that are "mischievous" and dishonest, there is manipulation of their salary report, companies are late in paying dues, and the supervisory function is not working properly.

**How to Cite:** Adhillah, S.U., et all (2020). Analysis of the Fulfillment of Labor Social Security as A Work of Leg Protection for Workers in the Formal and Informal Sectors, 1(1): 32-37 (doi: 10.20961/jmail.1711.41087)

## 1. Introduction

In Article 28H paragraph (3) of the 1945 Constitution, it states that "Everyone has the right to social security which enables his complete development as a dignified human being". And in Article 34 of the 1945 Constitution, the fourth amendment of 2002, paragraph (1) The poor and neglected children are cared for by the state (2) The state develops a social network system for all the people and empowers weak and underprivileged people according to human dignity.(Adillah, Handayani, & Sulitiyono, 2019) (3) The state is responsible for the provision of adequate health service facilities and public service facilities. Thus, the state has an obligation to provide social protection or security for all its people (Adillah et al., 2019, p. 289).

Article 22 of the General Statement on Human Rights of 1948 states that everyone as a member of society has the right to get social security. Because the people as citizens have basic rights inherent in themselves to get maintenance of life by the State. As a consequence, the State is responsible for protecting, safeguarding and caring for its citizens without exception and especially for citizens who live in poverty (Thabrany in (Sayekti & Sudarwati, 2010)).

Article 1 point 31 of the Manpower Act states that worker welfare is a fulfillment of physical and spiritual needs and / or needs, both inside and outside of work relations, which can directly or indirectly increase work productivity in the safe and healthy work environment. According to Article 99 paragraph (1) of the Manpower Act (Adillah, 2020) "Every worker and his family have the right to

obtain labor social security".(Zubaidi, Pratama, & Al-Fatih, 2020) In this provision, social security for workers is a right not only owned by workers but also by their families. The granting of rights to workers is intended to provide guaranteed services if a worker's family member is sick or requires other medical assistance such as pregnancy and childbirth and those who have work accidents (Maimun, 2004, p. 86.)

Imam Soepomo is of the opinion that social security is the payment received by the worker in the event that the worker, apart from his mistakes, does not do his job, thus guarantees income security in the event that the worker loses his wages for reasons against his will (Soepomo, 1983, p. 136) Social security is a form of social protection to ensure that all people can fulfill their basic needs for a decent life (Article 1 paragraph (1) of the SJSN Law).

Every person who works needs social security to guarantee his life, but not all workers have social security that can guarantee his life. In general, the demographic situation of developing countries is characterized by high population growth rates, high birth rates, decreased mortality, and increased life expectancy (Kertonegoro, 1984, p. 154). These factors greatly influence the need for social protection and the operation of social security programs. One of the rights inherent in human existence and nature is the right to social security (Listyorini, 2016, p. 1).

Social security is the right of every citizen which is protected by the constitution, as stated in Article 41 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, that "Every citizen has the right to social security needed to live a decent life. and for their full personal development", however, in reality not all citizens have received this national social security.

Social security is the right of every citizen to have certainty for the protection and welfare of society in the future. The state guarantees this certainty by establishing a Social Security Administrator as a means of fulfilling the state's obligation to protect its citizens. The scheme for administering the national social security is further outlined in Law Number 24 of 2011 concerning Social Security Administering Bodies (UU BPJS). BPJS is an institution or legal entity established to administer social security programs in Indonesia (Adillah, 2020, p. 4).

BPJS is a public legal entity that is tasked with protecting all workers through 4 (four) benefit programs, namely: Work Accident Security, Old

Age Security, Pension Security and Death Security. Employment Social Security is very necessary for every worker, because socio-economic risks can occur at any time, to anyone and anywhere. Includes protection from uncertainties such as work accidents, illness, experiencing old age, retirement, death, and so on. Based on the BPJS Law, all workers in Indonesia can register themselves as BPJS participants including informal workers (BPJS Ketenagakerjaan, 2016).

A worker / laborer is any person who works and receives wages or remuneration in other forms (Article 1 paragraph (3) of Law Number 13 Year 2003 concerning Manpower). In Law No. 3/1992 on Labor Social Security, it is stated that "Labor is any person who is capable of doing work both within and outside of a work relationship, in order to produce goods or services to meet the needs of society". However, until now Law No. 3 of 1992 has only been effective for workers who work in a work relationship (formal workers), while the larger number of informal workers has not been protected.(Pratiwi, 2019a)

Data from the Central Bureau of Statistics (BPS) for 2020 shows that the total work force is 131.03 million people, 6.88 million unemployed, so that the total workforce in Indonesia is 137.91 million out of a total of 271.07 million people (Badan Pusat Statistik, 2020). Of that workforce, the majority work in the informal sector which is dominated by informal agricultural sector workers (88.27%) (Badan Pusat Statistik, 2018). Agricultural informal workers generally consist of agricultural laborers, forestry and plantation workers, fishermen laborers, and other similar workers. BPS data for February 2019 shows, the percentage of formal sector workers is 42.73 percent. The informal sector still dominates, namely 57.27 percent, even though it is lower than the 2018 period of 58.22 percent.(Putri, Handayani, & Novianto, 2019)

Formal workers are workers who work for companies as skilled workers. They get stronger legal protection, legal employment contracts, and are in an organization that is legally incorporated, as stipulated in the Manpower Act, the Labor Union Law, various Government Regulations and Ministerial Regulations related to employment.(Pratiwi, 2019b)

In contrast to informal workers, namely workers who are responsible for individuals who are not legally incorporated and only based on an agreement. The informal sector is outside the organized labor market. According to Rusli Ramli

(1985) (Lestari, 2012), the informal sector is a job that is generally labor-intensive, lacks support and recognition from the government and is not well organized. (Hanum, 2020)

According to Hendri Saparini and M. Chatib Basri, informal sector workers are workers who work in all types of work without any state protection and for these businesses are not subject to tax (Saparini & Basri, 1991).

Generally, informal workers have low educational background and wages. Farm workers, for example, are often paid based on general agreements in force in the local area or even paid what their employer likes. The informal sector is considered a life saver, which is able to provide employment and income with limited / minimal ownership of capital, expertise and skills (Effendi & C., 1995, p. 91).

The International Labor Organization (ILO) in 2010 identified informal workers as vulnerable workers. They do not get basic rights like formal workers such as work accident insurance, health insurance, unlimited working hours and other benefits. This vulnerability is increasingly visible with low productivity and much lower income. (Tutunea, 2014)

## 2. Results and Discussion

According to Article 14 of Law Number 24 of 2011 concerning Social Security Administering Bodies, basically, everyone, including foreigners who have worked for at least 6 (six) months in Indonesia, are obliged to become Participants of the Social Security program, (Intaniasari, 2020) whether they are working in the sector. formal or informal. According to the explanation of Article 1 point 1 of the General Provisions of Law Number 40 of 2004 concerning the National Social Security System, social security is a form of social protection to ensure that all people can fulfill their basic needs for a decent life. And in Law No.13 / 2003, social security is implicitly explained in Article 99, Article 100, and Article 101, which in essence, every worker / laborer and his family has the right to workforce social security, to improve welfare for workers and their families. In Article 100 paragraph (2) of Law Number 13 Year 2003 concerning Manpower, it is emphasized in terms of facilities and provision of social security by taking into account the conditions of the workers / laborers themselves, and the size of the capabilities of the company (Sukmoro, Sulistyono, & Karjoko, 2019)

To run a social security program in Indonesia, it was formed based on Law Number 24 of 2011 concerning Social Security Administering Bodies. This body that was formed was a follow-up to the issuance of Law Number 40 of 2004 concerning the National Social Security System which instructed that an administrative body be formed to carry out the function of administering social (Naully, 2019).

The social security providers in Indonesia, as mentioned in Article 5 paragraph (2) of the Law on Social Security Administering Bodies, are BPJS Kesehatan and BPJS. Each BPJS has a duty to provide social security protection for Indonesian citizens and is non-profit. BPJS Kesehatan carries out its function to ensure service delivery and protection against the risk of health problems, while BPJS specifically provides protection to all workers in Indonesia with 4 (four) employment social security programs in addition to health programs, namely work accident insurance, old age insurance programs, pension benefits, and death benefits. (Jatmiko, Hartiwiningsih, & Handayani, 2019)

Basically, Employment Social Security is similar to insurance in general. However, this insurance is not managed by a commercial private company, but by a government agency, namely the Manpower Social Security Management Agency. The principle is also the same as insurance, Employment Social Security transfers employee risk coverage to a third party, so that the company is not overshadowed by uncertainty. (Jatmiko et al., 2019)

Therefore, as a form of risk management, Labor Social Security not only protects employees and their heirs, but also eases the burden on the company. In the case of a bad risk befalling the worker, then the reimbursement of costs and payment of compensation will be borne by BPJS. All workers in Indonesia are required to participate in the BPJS. (Prasetyo, Handayani, Sulistyono, & Karjoko, 2019) Both those who work in the formal sector and in the informal sector. (Prasetyo et al., 2019)

For workers working in the formal sector, companies must register their employees in accordance with Article 13 of Law Number 40 of 2004 concerning the National Social Security System in conjunction with Article 15 paragraph (1) of Law Number 24 of 2011 concerning Social Security Administering Bodies, which states that each company (the employer) is required to gradually register itself and all of its employees as participants with the BPJS in accordance with the

Social Security program that is being followed and workers have the right to register themselves as participants in the social security program at the expense of the employer if the employer is clearly not registering workers at the BPJS. (Prasetyo et al., 2019)

Entrepreneurs who employ a workforce of 10 people or more, or pay wages of at least Rp. 1 million a month, are required to include their workforce in the labor social security program. Sanctions if companies other than state administrators fail to carry out their obligation to register their workers as Participants with the Social Security Administering Bodies are administrative sanctions. (Tobing, 2017)

The increase in population from time to time has encouraged the dominance of the role of its citizens to work in the informal sector. This condition applies in economic conditions in any country. Informal sector workers generally work in all types of work without state protection and are not taxed. Informal workers are workers who do work outside the employment relationship, or are known as self-employed workers, they consist of self-employed people who generally work in informal economy enterprises. Many parties call the informal sector the savior of the national economy because they have strong resilience in the midst of the economic crisis that hit. (Karjoko, Santosa, & Rachmi Handayani, 2019)

Informal sector workers generally work on informal economy enterprises with the following criteria: micro scale with small capital, using simple technology, producing goods and or services of relatively low quality, non-permanent place of business, very high labor mobility, business continuity unsecured, irregular working hours, relatively low and irregular levels of productivity and income. Specific examples include: pedicab drivers, public transportation drivers, farmers, fishermen, street singers, street vendors, and so on (Tengku Khaidir, 2014).

Every worker has the right to protection, as well as workers in the informal sector. As mandated by Law Number 32 Year 1992 concerning Labor Social Security, Article 3 paragraph (2) of the Law, that every worker has the right to workforce social security. Informal sector workers have the same potential as formal workers, in relation to the risk of work accidents. Informal workers also have the same right to be protected through the Employment Social Security program. They have the right to be protected from occupational risks, such as work

accidents, illness, retirement benefits and death. (Handayani, Sulistiyono, Leonard, Gunardi, & Najicha, 2018)

The meeting of various confederations of trade unions from various countries in the Asia Pacific region in Jakarta, attempted to formulate a better social security system for informal workers. The conditions in each country are clearly not the same. But in general, the most important thing right now is the implementation of the social security system. Several countries, especially in Indonesia, have not implemented social security for informal workers in a focused and sustainable manner. (Kuncoro, Handayani, Muryanto, & Karjoko, 2019)

For informal workers to become labor social security participants, they can register independently as non-wage earners. Informal workers are categorized as workers outside the work relationship (TK-LHK). Therefore, they become participants voluntarily with a maximum age limit of 55 years. Meanwhile, the legal basis for the TK LHK program refers to Ministerial Regulation No. 24 / MEN / IV / 2006 concerning Guidelines for the Implementation of the Employment Social Security Program for Workers Outside of Employment Relationships. (Adillah et al., 2019)

Informal workers, if they want to become workers in social security, must pay their dues independently, be borne by themselves, because they work independently and do not have an employer. The contribution for informal workers is Rp. 16,800 per month for 2 (two) types of programs, namely death insurance and work accident insurance. (Adillah, 2020)

In the future, the government from the central to the regional level is obliged to emphasize taking sides with the development of this business group by emphasizing the urgency of social security for informal workers. This step needs to be done by providing a stimulus program for social security protection for informal workers through: first, providing social security protection for workers in the informal sector when the worker loses part or all of his / her income as a result of risks, including accidents, work, old age and death. Second, expanding the coverage of the BPJS program (Khaidir, 2014)

### 3. Conclusion

Solutions to overcome the many obstacles in the fulfillment of employment social security as a form of legal protection for workers in the formal and informal sectors are: BPJS needs to increase its



activities in providing information, outreach, education and advocacy about employment social security programs and benefits, so that the government provides a budget allocation for informal workers, namely with contribution assistance recipients (PBI), as in health social security, the principles of kinship and mutual cooperation can be carried out, namely with a social responsibility system (CSR), the Government through BPJS, it is necessary to increase the supervisory function of companies / employers.

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