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Human Rights Enforcement: Providing Social Security as a Standard for Labor Equity in Pekalongan Regency

Syarifa Khasna¹ Aries Aufan Fauzi²

syarifa.khasna@uingusdur.ac.id

Universitas Islam Sultan Agung¹

Universitas Islam Negeri K.H. Abdurrahman Wahid Pekalongan²

ABSTRACT

The constitutional rights of workers' social security are basic rights obtained by workers in a company, these rights must be accepted by workers as regulated in the Law. This research aims to analyze the fulfillment of the constitutional social security rights of workers in Pekalongan Regency. This research is empirical juridical research with a statutory approach. Collection techniques are carried out through observation, interviews and documentation. The type of approach used is qualitative. The results show the fact that the government has not been optimal in carrying out or providing sanctions against companies that do not register their employees as BPJS social security participants. The Pekalongan Regency government's efforts to fulfill the constitutional rights of social security for workers include steps such as visiting existing companies to carry out outreach and participate in monitoring with BPJS Employment regarding BPJS Employment participation, but in its implementation the Government has not implemented it.

Keywords: Constitutional Rights; BPJS; Social Security

ABSTRAK

Hak konstitusional jaminan sosial pekerja merupakan hak dasar yang didapat oleh para pekerja yang ada disebuah perusahaan, hak – hak tersebut harus diterima oleh pekerja sebagaimana yang telah diatur dalam Undang – Undang. Penelitian ini bertujuan untuk menganalisis pemenuhan hak konstitusional jaminan sosial para pekerja yang ada di Kabupaten Pekalongan. Penelitian ini merupakan penelitian yuridis empiris dengan pendekatan perundang-undangan. Teknik pengumpulan dilakukan melalui observasi, wawancara, dan dokumentasi. Jenis pendekatan yang digunakan adalah kualitatif. Hasil menunjukkan fakta pemerintah belum maksimal

dalam melakukan atau memberikan sanksi terhadap perusahaan yang tidak mendaftarkan karyawannya sebagai peserta jaminan sosial BPJS. Upaya pemerintah Kabupaten Pekalongan dalam pemenuhan hak konstitusional jaminan sosial bagi pekerja mempunyai langkah-langkah sebagai dengan mendatangi perusahaan-perusahaan yang ada untuk melakukan sosialisasi dan turut serta memonitoring bersama BPJS Ketenagakerjaan mengenai kepesertaan BPJS Ketenagakerjaan, namun dalam pelaksanaannya pihak Pemerintah belum melaksanakannya.

Kata Kunci: Hak Konstitusional; BPJS; Jaminan Sosial

Introduction

In the context of Indonesia's rapidly developing economy, the industrial sector has become one of the main pillars of the country's economy. Significant industrial growth has led to an increase in business activities in various sectors, including the textile industry in Pekalongan Regency. As an industrial area, Pekalongan Regency has a large number of textile companies operating, covering the majority of industrial activities in the region.

In an effort to meet the need for workers to carry out their business activities, companies in Pekalongan Regency recruit many workers. However, behind this rapid industrial development, workers' rights as citizens guaranteed by the Indonesian Constitution, especially the 1945 Constitution, are often neglected. Article 28D paragraph 1 of the 1945 Constitution expressly guarantees the right to recognition, guarantees, protection, fair legal certainty and equal treatment before the law for every citizen. Likewise, Article 28H paragraph (3) confirms everyone's right to social security which enables their full development as a dignified human being. However, in practice, the implementation of these rights is still hampered, especially regarding social security for workers.

The Social Security Administration Agency (BPJS) was formed by the government to manage the social security program, in accordance with the 1945 Constitution and applicable regulations. The main aim of this program is to provide certainty of family income, basic protection, and appreciation to workers who

have contributed their energy and thoughts to the company where they work. However, in reality there are still many companies in Pekalongan Regency that do not fulfill their obligations to register workers as participants in the social security program. This creates uncertainty for employees, because they do not get the protection they should get according to the rules set by the government.

Pekalongan Regency is one of the industrial areas in Indonesia, where the largest industry is the textile industry, numbering 88 textile companies.⁴ The large number of textile industries means that they have many workers and these workers are also obliged to receive social security. However, in practice, social security for workers provided by the government is still lacking for many workers, because there are still many companies that do not comply with the regulations made by the government. For example, PT Kabana Tekstil Industries, a company operating in the textile industry, has 396 employees registered for social security or 33% of the total employees, 1208 employees⁶, and PT. Delta Dunia Tekstil and PT. Textile clothing that does not provide social security for workers who have worked for more than 6 (six) months.

Based on this data, it shows that PT Kabana Tekstil Industries, PT. Delta Dunia Tekstil and PT. Clothing Textiles does not register workers as social security participants who have worked for more than 6 (six) months. This condition raises serious problems related to fulfilling the constitutional rights of social security for workers in Pekalongan Regency. Therefore, further research is needed to understand the root of this problem and find the right solution to ensure that the constitutional rights of workers in Pekalongan Regency can be fulfilled properly.

Research Method

This research is empirical juridical research with a statutory approach. Collection techniques are carried out through observation, interviews and documentation. The type of approach used is qualitative. through books,

documents, or literature relevant to the research topic. Analysis of research data will use the interactive model from Miles and Huberman. The qualitative data analysis process will be carried out interactively and continuously until it reaches saturation point, so that the resulting data will be guaranteed to be complete and accurate.

Result and Discussion

Analysis of the Fulfillment of Constitutional Social Security Rights for Workers in Pekalongan Regency

Constitutional rights are the rights of every citizen guaranteed by the constitution. The guarantee of the constitutional rights of female workers within the framework of a welfare state law means that the state guarantees the rights of every citizen through the state constitution, which in this case is the 1945 Constitution of the Republic of Indonesia. This guarantee of state constitutional rights must be realized by the state through the government as the holder general power. In this case, the state must intervene in various social and economic problems to ensure the creation of collective prosperity in people's lives.

The welfare state requires the government to intervene in people's lives to build and improve people's welfare, including building infrastructure and providing educational facilities. One form of social security is social insurance where the State is present to provide social security. In social insurance, the funds used come from premiums or contributions and/or through social assistance originating from the state budget. Apart from that, the state also provides guarantees for social and economic rights, the role of the state in meeting social, economic and cultural needs, as well as an emphasis on social responsibility.

The term welfare actually refers to well being or is often interpreted as a good life which is related to order, happiness, comfort, prosperity, health, security and confidence in living life. With the start of the industrial revolution, there were many factories, so that only capital owners could get prosperity, while ordinary people working as laborers did not get protection from the capital owners. Therefore, state intervention is needed to overcome the social problems faced by these workers. The way this is done is by providing social security, both in the form of insurance and social assistance originating from taxes. The provision of social security in Indonesia is social insurance where participants are obliged to pay a premium, for people who cannot afford it, the premium is paid by the government.

Fulfillment of the constitutional rights of social security for workers in Pekalongan if linked to the theory of human rights. Human rights or human rights are rights that are universally recognized as inherent rights because they are owned by anyone and have been given rights since birth by God. This right has been given and has been glorified by Allah SWT, making every human being entitled to proper behavior, free from persecution, oppression and deprivation of rights.

According to Rhona KM Smith, other principles are Legality (The Principle of Legality), non-discrimination and State Responsibility. A simple explanation of some of these principles is:

1. Legality (*The Principle of Legality*)

All government actions must be based on valid and written laws and regulations. These laws and regulations must exist and apply first or precede the action being carried out. Thus, every administrative action must be based on internally applicable rules or *rules and procedures* in

order to carry out the duties imposed by valid regulations. Rules regarding Social Security, including:

- a. The implementation of Social Security for Workers in Indonesia is regulated in Law Number 24 of 2011 concerning BPJS

According to Law Number 24 of 2011 concerning Social Security Administering Bodies, social security is a form of social protection to guarantee that all people can fulfill their basic needs for a decent life. Forms of social security programs for workers according to Law Number 24 of 2011 article 6 paragraph (2) that BPJS Employment has the right to provide Work Accident Insurance (JKK), Old Age Security (JHT), Pension Security (JP) and Death Security (JKM). It is also explained in Law Number 24 of 2011 article 14 that every person, including foreigners who work for at least 6 months in Indonesia, is obliged to become a participant in the Social Security program. seen from Law Number 24 of 2011 articles 6 and 14 explain the obligation of companies to register workers who have worked for 6 months as Social Security participants, but in reality companies in Pekalongan Regency have not carried out their obligations to register their workers as social security participants for the following reasons. almost the same, namely the company's inability to pay contributions every month and prioritizing each company's policies.

- b. Decree of the People's Consultative Assembly Number X/MPR/2001

The President is tasked with establishing a national social security system in order to provide social protection for society that is more comprehensive and integrated. In accordance with the Decree of the People's Consultative Assembly Number employment social security program.

- c. Government Regulation Number 84 of 2013 concerning the Ninth Amendment to Government Regulation Number 14 of 1993

concerning the Implementation of the Worker Social Security Program

In Article 2 paragraph (3) which reads "Entrepreneurs who employ a workforce of ten (10) people or more, or pay wages of at least IDR 1,000,000, a month are obliged to include their workforce in the Worker Social Security program as intended in paragraph (1).

In the implementation of social security in Pekalongan Regency, legality is fulfilled, where every implementation is in accordance with existing regulations in accordance with government regulations. However, the practice in the field is not yet appropriate because there are still many workers who do not get their rights. In PT. Kabana Tekstile Industries Social Security for workers, PT Kabana Tekstil, some workers have been registered as social security participants and only workers who have become permanent employees are participants. Likewise with PT Personnel. Delta Dunia Textile social security at PT. Delta Dunia Tekstile only workers who worked at the start of the company were registered for social security, after that the company had its own policy regarding replacement of social security for workers, this was because the company was financially constrained as well as at PT. Main Clothing Textiles social security in our company only some workers have registered as social security participants. This shows that the implementation of the employment social security program in Pekalongan Regency is not all in accordance with the principle of legality where in the regulations of the Social Security Administering Body Law Number 24 of 2011 Article 99 states that workers' rights in terms of welfare are that every worker/laborer and their family have the right to obtain labor social security. work in accordance with applicable laws and regulations.

2. Non Discrimination

The principle of non-discrimination holds that people cannot be treated differently based on the criteria of race, skin color, ethnicity, gender, age, language, disability, sexual orientation, religion, political or other opinion, social or geographical origin, ownership, birth or other status. Like the principle of legal equality, the principle of non-discrimination must also become a commitment and paradigm in the formulation of rules in laws and regulations and their enforcement. In Article 5 of Law Number 13 of 2003, it provides protection that every worker has the right and has the same opportunity to obtain work and a decent living without distinguishing between gender, ethnicity, race, religion and political beliefs according to their interests and interests. the abilities of the workforce concerned, including equal treatment towards people with disabilities, whereas in the provisions of Article 6 of Law Number 13 of 2003 it is also regulated regarding the obligations of employers to provide the rights and obligations of workers or laborers without distinction between gender, ethnicity, race, religion and political beliefs.

Fulfilling workers' constitutional rights in obtaining social security has the meaning of realizing guarantees for workers' rights and providing protection for workers from various influences that are not conducive to the continuity of their work. All workers in Pekalongan district are registered as social security participants in accordance with the mandate of the law. The company's obligation to register workers/laborers for BPJS Employment membership is nothing other than the aim of improving the welfare of workers/laborers, who in this case are weak parties under the company's power. Based on Article 15 of Law Number 24 of 2011 concerning BPJS, it is stated that employers are gradually obliged to register themselves and their workers as

participants in BPJS in accordance with the social security program they are participating in. In accordance with Law Number 24 of 2011 Article 14, the requirements for workers who have worked for at least 6 months can be registered as BPJS members. The requirements that workers must complete to be registered with BPJS are a photocopy of their family card and a photocopy of their KTP. Regarding the payment of BPJS contributions for workers, companies in Pekalongan Regency cover a portion of their workers' BPJS contributions.

Based on facts on the ground, companies in Pekalongan Regency still have violations committed by companies. Article 15 of Law Number 24 of 2011 concerning BPJS states that workers who have worked for at least 6 months can be registered as BPJS members. However, in practice there are still several companies that have not registered their employees as Employment Social Security participants even though the employees have worked at the company for more than 6 months since joining the company. If this is related to the principle of non-discrimination in Human Rights, the implementation of the fulfillment of social security rights in Pekalongan Regency has not implemented the principle of non-discrimination because there are still several companies that do not register their employees as participants in employment social security as regulated in the law concerning Social Security Agency.

3. *State Responsibility*

As a form of state responsibility in fulfilling workers' constitutional rights, the government formed a state-owned company which operates in the field of health insurance for the entire community, this program is the Social Security Administering Body, abbreviated as BPJS. The government has formed this agency to have duties in

accordance with Law Number 40 of 2004 and Number 24 of 2011 where the task is to administer Indonesian social security and BPJS is a non-profit legal entity. Law Number 24 of 2011 article 1 paragraph (1) which reads "Social Security Administering Body, hereinafter abbreviated to BPJS, is a legal entity established to administer social security programs". BPJS Employment is a government program within the National Employment Guarantee (JKN) which was inaugurated on 31 December 2013. BPJS Employment began operating on 1 July 2014.

The BPJS employment program is the responsibility of the state/government to provide socio-economic protection to the community. In accordance with the condition of the financial capacity of the Indonesian state, like various other developing countries, it is developing a social security program based on *found social security*, namely social security funded by participants and still limited to working people in the formal sector. The state has established a social security program, namely, the Workers' Social Security program which specifically regulates social security for private workers, including work accident insurance, death insurance, old age insurance. In Pekalongan Regency, there is BPJS Employment which regulates social security for workers in Pekalongan Regency, although in reality not all workers are registered as social security participants, this is because the company does not want to register its workers in BPJS Employment on the grounds that the worker is a contract worker (not yet). still), the workers object to the payment of Old Age Security and Pension Security contributions being deducted from their salaries. Workers do not yet know the extent of the benefits of the programs in BPJS Employment, which will later return the benefits to the workers themselves. This reason is because there is no socialization from BPJS to companies and workers, the government should not only create a social guarantee

institution for workers but also carry out outreach so that workers and companies can know the positive impact of having social security for workers.

Government Efforts to Fulfill the Constitutional Rights of Social Security for Workers in Pekalongan Regency

1. Legality (*The Principle of Legality*)

The government's efforts to fulfill the constitutional rights of social security for workers in Pekalongan Regency provide regulations for companies that do not comply with regulations related to their obligation to register their workers as BPJS Employment participants. They will be subject to sanctions ranging from minor ones, such as administrative sanctions to criminal sanctions.

a. Imposing Administrative Sanctions

1) Written Warning

Written warning issued by BPJS Employment, which is regulated in Article 6 of Government Regulation Number 86 of 2013 concerning Procedures for Imposing Administrative Sanctions on Employers Other than State Officials and Every Person, Apart from Employers, Workers and Recipients of Contribution Assistance in Implementation. However, in reality, BPJS Employment has never given administrative sanctions in the form of a written warning where the company has not implemented Law Number 24 of 2011. This is in accordance with the results of an interview with Mrs. Herni Hartati that BPJS Employment has never issued a written warning letter to the company. BPJS Employment should give a warning to the company

so that the company can carry out its obligation to register its workers as social security participants.

Fines imposed by BPJS Employment, which are regulated in Article 7 of Government Regulation Number 86 of 2013 concerning Procedures for Imposing Administrative Sanctions on Employers Other than State Administrators and Every Person, Apart from Employers, Workers and Recipients of Contribution Assistance in the Administration of Social Security. However, in reality, BPJS Employment has never given administrative sanctions in the form of fines where companies have not implemented Law Number 24 of 2011. This causes companies to not comply with government regulations for registering their work as social security participants. BPJS Employment should provide fines to companies so that companies can carry out their obligations to register their workers as social security participants.

2) Not Receiving Certain Public Services

Not receiving certain public services provided by the Government or Regional Government at the request of BPJS Employment. Sanctions for not receiving certain public services are imposed on employers other than state administrators as intended in Article 5 paragraph (2) Government Regulation Number 86 of 2013 concerning Procedures for Imposing Administrative Sanctions on Employers other than State Administrators and Every Person, Apart from Employers, Workers , and Recipients of Contribution Assistance in the Administration of Social Security. In reality, companies do not comply with Law Number 24 of 2011 to register their workers as social security participants, even though BPJS Employment can provide administrative sanctions in the form of not receiving certain public

services, namely business-related permits, permits required to participate in project tenders, permits to employ foreign workers, Permits for companies providing worker/labor services, building construction permits (IMB), criminal sanctions, which should be sanctions for not receiving public services, are applied to companies that do not comply with Law number 24 of 2011 so that companies comply.

3) Imposing Criminal Sanctions

As explained in Article 55 of Law Number 24 of 2011 concerning Social Security Administering Bodies "Employers who violate the provisions as intended in Article 19 paragraph (1) or (2) sentenced to a maximum imprisonment of 8 years or a maximum fine of IDR 1,000,000,000.00 (One Billion Rupiah). In its implementation, BPJS Employment Pekalongan has never imposed criminal sanctions on companies that have not implemented Law Number 24 of 2011.

2. Non Discrimination

The government's efforts to fulfill the constitutional rights of social security for workers in Pekalongan Regency with the principles and principles of Non-Discrimination based on Article 5 of Law Number 13 of 2003 concerning Employment, namely providing protection that every worker has the right and has the same opportunity to obtain work and a living appropriate services without distinction of gender, ethnicity, race, religion and political beliefs in accordance with the interests and abilities of the workforce concerned, including equal treatment for people with disabilities, whereas in the provisions of Article 6 of Law Number 13 of 2003 it is also regulated regarding The obligation of employers to provide the

rights and obligations of workers or laborers without distinction between gender, ethnicity, race, religion and political beliefs.

In its implementation, the Government, through BPJS Employment, has not made any efforts. It can be seen that in companies in Pekalongan district there is still a lot of overlap between old and new workers, only old and new workers are registered as Social Security participants and new ones have not been registered even though they have worked for more than 6 months, this is because The company feels burdened regarding the costs or monthly contributions if all its workers are registered as social security participants.

3. State Responsibility (*State Responsibility*)

The Pekalongan district government's efforts to fulfill the constitutional rights of social security for workers include the following steps :

- a. By visiting existing companies to carry out outreach. This socialization was carried out in collaboration with the local BPJS Employment regarding the importance of participating in the government program, namely BPJS Employment, to guarantee and protect the rights of workers. However, the government has not implemented it in practice.
- b. Participate in monitoring with BPJS Employment regarding BPJS Employment participation in companies in Pekalongan Regency. However, in its implementation, the government has not monitored companies in Pekalongan Regency.

Conclusion

Fulfillment of the constitutional rights of social security for workers in Pekalongan Regency has not been fulfilled. This is based on the results of research using human rights principles which include: (1) Principle of Legality: In the implementation of social security in Pekalongan Regency, legality has been met, where every implementation is in accordance with existing regulations in accordance with government regulations. However, the practice in the field is not yet appropriate because there are still many workers who do not get their rights. In PT. Kabana Tekstile Industries Social Security for workers, PT Kabana Tekstil, some of the workers have been registered as social security participants and only workers who have become permanent employees are participants. Likewise with PT Personnel. Delta Dunia Textile social security at PT. Delta Dunia Tekstile only workers who worked at the start of the company were registered for social security, after that the company had its own policy regarding replacement of social security for workers, this was because the company was financially constrained as well as at PT. Main Clothing Textiles social security in our company only some workers have registered as social security participants. (2) Non- discrimination principle: Based on facts in the field, companies in Pekalongan Regency still have violations committed by companies. In Article 15 of Law Number 24 of 2011 concerning BPJS. If this is related to the principle of non-discrimination in Human Rights, the implementation of the fulfillment of social security rights in Pekalongan Regency has not implemented the principle of non-discrimination and (3) the principle of state responsibility: In Pekalongan Regency there is already BPJS Employment which regulates social security for workers in Pekalongan district, although in reality not all workers are registered as social security participants, this is because the company does not want to register their workers for the reason that there is no government outreach.

Government efforts to fulfill the constitutional rights of social security for workers in Pekalongan Regency. This is based on the results of research using human rights principles which include: (1) Pekalongan district government provides

administrative sanctions in the form of written warnings and fines, does not provide public services to companies and provides criminal sanctions in accordance with Article 55 of Law Number 24 of 2011 concerning the Social Security Administering Agency. However, in fact the government has never done this for companies that do not register their employees as BPJS social security participants. (2) The government's efforts to fulfill the constitutional rights of social security for workers in Pekalongan Regency based on Article 5 of Law Number 13 of 2003 concerning Employment, namely providing protection that every worker has the right and has the same opportunity to obtain work and a decent living without distinguish between gender, ethnicity, race, religion and political beliefs according to the interests and abilities of the workforce concerned. (3) The efforts of the Pekalongan district government to fulfill the constitutional rights of social security for workers include steps such as visiting existing companies to carry out outreach and participate in monitoring with BPJS Employment regarding BPJS Employment participation, however in implementation the Government has not implemented this.

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