

Research Article

Social Security As A Protection For Outsourced Workers In Industrial Era 4.0

Suria Ningsih¹, Agusmidah², Erna Herlinda³

ABSTRACT

Indonesia is currently in the state of revolutionary era where technology and information and also digitalization are vastly developed that affecting various living aspects. The most affected aspect is laboring, either the outsourced workers or jobholder. Outsourcing part of the work to another company is permitted by Laws No.13 Year 2013 concerning Employment as regulated in Article 64 to Article 66. Outsourcing workers having legal norms but their rights as workers are often ignored or not given entirely by the company. Article 15 paragraph 1 of Laws No. 24 Years 2011 about The Social Insurance Administration Organization/BPJS states that labor provider is obliged to gradually register itself and its employees as participants in accordance with the preference program. The purpose of the study was to see and analyze the implementation of the social security in companies in Medan, North Sumatera, Indonesia. The type of research is empirical juridical conducted with 2 stages; the study of normative law through literature studies and the study of the implementation of regulations through questionnaires, interviews and FGDs. The results of the study showed that the for outsourced workers in Medan City about outsourcing went well. This can be seen from the employment agreement recorded at the Manpower Office. Large companies in the city of Medan have all participated in the social security program, although the implementation is not yet fully in accordance with the law, due to the existence of Partial List Companies (PDS), namely labor PDS, wage PDS and PDS programs.

Keywords : *Social Security, Outsourced Workers, Industry 4.0*

JEL Code : H55, J83

^{1,2,3} Business Law Study, Universitas Sumatera Utara, Indonesia

¹ Corresponding Author : suria.ningsih@usu.ac.id

I. Introduction

Workers/laborers are people who work for wages or other forms of remuneration (Law No.13 Year 2013 concerning Employment). Protection for workers is basic rights and protected by the constitution. Protection of labor is guarantee the basic rights of workers and ensure equality and treatment without discrimination to realize the welfare and their families while taking into account developments in the progress of the business world and the interests of employers (Fitriani et al., 2020 and Mustiqah et al., 2020). The workers the right to obtain protection regulated in Article 86 paragraph (1) of Law No.13 Year 2013 concerning Employment which includes the protection of

(1) the occupational safety/health, (2) moral/decency, and (3) treatment in human dignity and values/religious values.

To protect worker safety in order to achieve optimal work productivity, work safety and health efforts (Bruckner & Hungerford, 2021 and Jerg et al., 2021). One of the efforts taken by entrepreneurs in order to make efficiency is to recruit outsourced workers as regulated in article 64 of Law No.13 of 2013 concerning Employment and Article 27 paragraph (1) of the Minister of Manpower No. 19 of 2012 about Conditions for Submission of Partial Work. In simple terms, outsourcing can be illustrated by the existence of a worker service provider company that recruits prospective workers to be placed in user companies but workers have a working relationship only with workers' service companies. The legal relationship between worker company and user is based on an mutual deal. Worker provider company binds itself to place the worker in the user company and the user company binds itself to use the worker. Based on the employment placement agreement, the employer service provider company will get a sum of money from the user. (Khairani, 2014, Ningsih et al., 2020 and Fatorachian & Kazemi, 2021).

The pattern of work agreements in the form of outsourcing in general is that there are some jobs from one company and then handed over to another company that has a legal entity, where one company does not deal directly with workers who work, but only to companies that recruit or recruit workers. So in the outsourcing pattern there are 3 (elements) legal subjects namely companies, outsourcing service providers and outsourcing workers (Kunarti, 2009, Dutta & Fischer, 2021 and Rennuy, 2021). In Indonesia, related to protection, especially for outsourced workers, there are still many deviations and violations of work norms, occupational safety and health (K3) norms that tend to be carried out by employers in conducting business of outsourcing workers or outsourcing. (Royen, 2009). Deviations or violations can be in the form of:

1. The company does not main work and supporting of the company (noncore) which is the basis of outsourcing or outsourcing so that in reality what type of the company's work. In addition, results in workers or laborers being employed for main types of work or jobs that are directly related to the production process rather than supporting activities as required by law.
2. Companies that submit work (principal) submit of their work to other companies that accept jobs (vendors) that are not incorporated.
3. Work protection for outsourced workers is very minimal when compared to workers or other workers who work directly at the principal company.

Circumstances that often occur to outsourced workers include but are not included in the social security program stipulated in Law No.13 of 2013 which states that every laborer and his family are entitled to obtain security.

2. Literature Review

2.1. The Social Security System National

In the National Social Security System there are five types of social security program (1) Work Accident Insurance, (2) Old Age Guarantee, (3) Pension Insurance, and (4) Death Guarantee (Law No. 24 Year 2011 Article 6 paragraphs 1 and 2)

According to the Law of Article 28 H Paragraph 3 that every person has the right to guarantees that enable his full development as a useful human being. The social security program is a basic protection program for workers that aims to ensure security and certainty against socio-economic risks and is a means of guaranteeing the flow of income for workers and their families as a result of the occurrence of social risks with affordable funding by employers and workers (Agusmidah, 2010). Workers' social security (Jamsostek) a result of events or conditions experienced by workers in the form of work accidents, illness, maternity, retired, and passed away. Workers or laborers are the backbone of the company. This sentence seems ordinary as it is not meaningful, but if it is studied further it will show its meaning.

The worker is said to be the backbone because he has an important role. Without workers in a company, the company is not running, like a plane without an engine or body without spirit. This is said because workers are parties who have a role in moving the wheels of life or business continuity

of the company (Ningsih, 2011). Social security for workers is needed to increase productivity. Therefore companies are not permitted if workers who work in these companies are not provided with social security/welfare (Surjaatmadja et al., 2019). If this situation occurs, the company can be categorized as a company that employs forced or forced labor. Outsourced workers should be treated no different from ordinary workers who also have the same rights and obligations. Therefore, outsourced workers must also receive protection and be able to maintain their safety in carrying out their work. The implementation of work protection is very important to maintain and increase the productivity and stability of the company where the outsourced worker works.

3. Method

This type of research is empirical juridical conducted with 2 stages, namely the study of normative law through literature studies and the study of the implementation of regulations through questionnaires, interviews and Focus Group Discussion (FGDs). The collected data is then processed through the stages of data selection, data classification and data systematization. Data analysis was carried out qualitatively and continued with drawing conclusions inductively.

4. Result and Discussion

4.1. The Result

4.1.1. Social Security Protection for Outsourced Workers According to Legislation

Before the development of the labor social security system, all risks arising that could endanger the health or safety of workers are entirely the responsibility that must be borne by the workers themselves. There are 2 (two) laws which form the basis on Law No.40 Years 2004 concerning the National Social Security System and Law No.24 Year 2011 about Social Security Bodies. Social security, especially health, is implemented through Presidential Regulation No.12 of 2013 concerning Health Insurance. Article 1 paragraph (2) states that health insurance is in the form of health protection so that participants receive health care benefits and protection in meetings given to everyone paid contributions about health or whose contributions have been paid by the government.

According The Law No. 12 Years 2013 definition health insurance participants are divided into 2 (two), namely (1) PBI (Contribution Aid Recipients) health insurance and (2) Not a health insurance PBI (Beneficiary Beneficiary). Workers are part of non-beneficiaries of health insurance contribution assistance so employers are required to register their workers and family members to become BPJS Health participants. If the employer does not implement it, he will be subject to sanctions with Law No.24 Years 2011 concerning Health Insurance Management Agency. For workers who receive wages, the health insurance contribution they have to pay is 5% with details of 3% paid by the employer and 2% paid by the worker. Workers affected by workplace accidents are entitled to receive work accident insurance. To overcome this Law No.44 of 2015 about Work Accident Insurance and Death Insurance Programs. Article 1 paragraph (1) states that work accident insurance is a benefit in the form of cash and/or health services provided when a participant experiences work injury or illness caused by the work. Article 5 paragraphs (2) and (3) state that the Work Accident Insurance program participants consist of wage recipients who work for employers other than state administrators and non-wage participants. The amount of contributions to be paid in accordance with the level of work environment risk (Article 16 paragraph 1).

Work accidents are accidents that occur in work relationships, including accidents that occur on the way from home to work or vice versa and diseases caused by the work environment (Nguyen et al., 2021). If workers who are affected by work accidents are still unable to work, then the employer still pays the wages of the workers concerned until the determination due to the work accident is received by all parties or determined by the minister. Then, the Organizing Body replaces the compensation given by employers to workers who are still unable to work. If the compensation paid by the Organizing Body is greater than the compensation paid by the employer to the workforce, the difference is directly given to the workforce (Yulisfan et al., 2021). But if the compensation given by the organizer is less than the wage paid to the worker, the difference is not given to the worker

(Budiono, 1995, Bassier, 2021, Hirsch-Kreinsen, 2021 and Lin et al., 2021). In addition to regulating work accident insurance PP No.44 of 2015, it also regulates death insurance, namely cash benefits given to heirs when a participant die not due to an occupational accident. Death insurance program participants are the same as work accident insurance program participants. Employers must register their workers in the JKM program as regulated in Article 35 (1). If you cannot be subjected to administrative sanctions. The amount of contribution paid by the employer is 0.30% of the monthly wage.

Pension Insurance is social security that aims to maintain a decent degree of life for participants and/or their heirs by providing income after participants retire, suffer permanent total disability or die. Pension regulations implementing regulations are regulated in PP No. 45 of 2015 concerning the Implementation of the Pension Guarantee Program. Pursuant to Article 2 paragraph (1), participants of pension guarantees are workers who work for state-run employers and other than state administrators. The amount of contribution to be paid is 3% of the monthly wage where the contribution is jointly borne by the employer and the worker with details of 2% of the wage borne by the employer and 1% of the wage borne by the worker. age savings are cash benefits paid at the same time the participant enters retirement age. The rules of implementation are in Government Regulation Number 46 of 2015 concerning the Implementation of the Old Age Insurance Program. Participants in this program are wage earners who work for employers other than state administrators and not wage earners. For participants receiving wages the contribution rate is 5.7% of the monthly wage provided that 2% is borne by the worker and 3.7% is borne by the employer.

4.1.2. Implementation of Social Security for Outsourcing Workers in Medan City

Based on The Law No.24 Year 2011 concerning Health Insurance Management Agency states that employers must gradually register themselves and their workers as participants to BPJS in accordance with the social security program that is followed. This means that all companies are required to register their workers in the BPJS program, both BPJS Health and BPJS Employment. If the company violates this provision, administrative sanctions will be imposed. Registration of participants is not only intended for workers who work directly in the principal company but also for outsourced workers. The outsourced workers should be treated no different from workers in general, so they must also receive protection and be able to maintain safety in carrying out their work. In reality, based on the informant's explanation, there are still many service provider companies that do not register their workers with BPJS Health and Employment. This is due to lack of strict sanctions in the law against employers who do not protect the rights of workers. For this reason, the Medan City Employment Office through the Terms of Work Section makes a policy requiring that every work agreement registered with the Employment Office must attach proof of participation in the BPJS and proof of payment of 3 months contribution. The obligation to register this agreement as regulated in Article 20 paragraph (1) of the Minister of Labor RI No.11 of 2019 concerning the Second Amendment to Law No. 19 of 2012 about the Conditions of Submission of Partial Work Implementation to Other Companies, "Provision Agreement Worker/Labor Services must be registered by the Employer/Labor Service Provider Company at the agency responsible for the district / city employment where the work is carried out".

Based on the company data report Field Work Requirements Medan City Manpower Office, for January 2018 to July 2019 there were 59 companies providing labor services. According Ningsih et al (2020) state that about social security for outsourced workers. This can be seen from the work agreement reported by the parties to the Manpower Office. In accordance with Article 19 of the Minister of Manpower Regulation above, the Agreement for providing workers' services provides at least:

- a. Type of work to be carried out by workers/laborers from the Employer/Labor Service Provider Company
- b. Confirmation that the Worker Company to accept from the Worker Company prior to the type of work that continues to exist in the Employer Provider Company in the event of a change of Worker Service Provider Company.

c. Obligation to fulfill the rights of workers/laborers with the provisions of the legislation.

If deviations are found, the agreement is not recorded and can be reported directly to the police. According to Khairani (2012), the Labor Inspector of the Province of North Sumatra, large companies in the city of Medan have all participated in the social security program, although it is not fully in accordance with the law because there are still partial list companies (PDS). Workers' rights to participate in all insurance programs are only given in part. There are three types of PDS status that often occur namely labor PDS, wage PDS and PDS Program. Labor PDS is a category of companies that only register a part of their employees. Wages PDS, the company registers all workers but the reported wage data is lower than it should be. While the PDS Program category is registering all workers and accordingly provides data on employee wages, but only certain programs are followed, although companies may only register for 2 (two) programs such as contractors whose service period is only 3 years only registering for work accident insurance and death, not for old age pensions and pensions.

4.2. Discussion

The finding of companies, especially small companies, not registering their employees on social security is due to several factors, i.e:

1. The company wants to reduce costs and get huge profits (the company's ability)

Employers who have the principle of minimizing production costs to the minimum possible profit will certainly make every effort to avoid paying for the fulfillment of workers' rights, such as paying wages as stipulated, paying social security contributions, providing work facilities in accordance with K3 standards and others (Gechert et al., 2021). Not to mention those related to a number of business licenses which all require time and funds of course. (Kholek, 2007)

2. Lack of knowledge of workers and high demand for work.

On the part of outsourced workers, the reason that makes workers stay with their jobs is because they still need work to keep getting income to meet the needs of the family (Muñoz-Menjivar et al., 2021). In addition, while working, workers are expected in order to be able to extend contracts with the company where they work so they can be appointed as permanent workers. The high level of job seekers and the number of vacancies that are increasingly narrow makes there is no stepping stone to find a better job. (Khairani, 2012)

3. Weak labor inspection by the Government

Supervision is one important element in the implementation of government. Labor inspection needs to be carried out to determine whether the rights of outsourced workers have been given fully or not. The main purpose of labor inspection is to ensure compliance with labor regulations that are operationally carried out by supervisory staff in the labor department (Wasi et al., 2021). The classic issue regarding weak supervision is still around the lack of numbers and capabilities of HR supervisors and lack of budget. Yet if the supervisory function runs well it will avoid working practices that lead to milking (exploitation). To overcome the lack of supervisors, a red, yellow and green employment vulnerability map must be made. For companies with a high level of vulnerability (red), it is necessary to carry out continuous supervision, whereas companies that are already good (green) do not need to be monitored frequently. In the case of non-compliance of employers to register their workers with BPJS, it is necessary to apply law enforcement. The absence of criminal sanctions is not the reason because if we carry out these administrative sanctions consequently it will cause a deterrent effect. But until now in Medan there has not been a single company that has been frozen.

5. CONCLUSION

The implementation of social security is regulated about the Social Security Organizing Agency (BPJS). BPJS consists of BPJS Health which organizes health insurance and organizes work accident, death, retirement and old age insurance programs. Article in Law No.24 Years 2011 concerning BPJS states that employers must gradually register themselves and their workers as participants to BPJS in accordance with the social security program that is followed. The applied

of social security for outsourced workers in Medan has been going well because large companies in Medan have all participated in the social security program even though its implementation is not fully in accordance with the law. This is due to the existence of Partial List Companies (PDS) namely labor PDS, wage PDS and PDS Program.

ACKNOWLEDGEMENTS

We gratefully thank University of Sumatera Utara for financial support in accordance with TALENTA Grant Research Contract Year of Fiscal 2019 No. 4167/UN5.1.R/PPM/2019.

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