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Juridical Analysis of the Legal Responsibility of Employers for Neglecting Workers' Social Security Rights in Pangkalpinang, Bangka Belitung Province.

Defri Maulana¹, Yandi².¹Pertiba University, Pangkalpinang, Indonesia, advdefrimaulana@gmail.com.²Pertiba University, Pangkalpinang, Indonesia, yandipertiba67@gmail.com.Corresponding Author: advdefrimaulana@gmail.com¹

Abstract: The Job Creation Act aims to create job opportunities, facilitate investment, and enhance Indonesia's economic competitiveness, with one of its main focuses being the regulation of labor and social security for workers. However, the implementation of this law faces several challenges, particularly in protecting workers' rights, such as employers neglecting their obligations to provide social security. In Pangkalpinang, economic factors and a lack of understanding of employers' legal obligations regarding workers' social security are the primary causes of this issue. This study employs a normative legal research method with a statutory and conceptual approach to analyze the urgency of enacting the Job Creation Act and its implications for worker protection in the region. The findings reveal that although the Job Creation Act provides a clear legal foundation, its practical application is hindered by employers' ignorance, who perceive enrolling workers in social security programs as an additional burden. Moreover, ineffective supervision exacerbates the problem. Therefore, to optimize the protection of workers' rights, more intensive education for employers, stricter supervision, and firmer law enforcement are required to ensure workers' social security rights are well-guaranteed in accordance with the applicable regulations.

Keyword: Job Creation Act, Worker Protection, Social Security.

INTRODUCTION

The primary objective of industrial development in Indonesia today is to serve as a cornerstone for improving public welfare, particularly by providing job opportunities aligned with the growth of the industrial sector. The presence of companies within the industrial domain creates highly needed employment opportunities, making it crucial to have clear and comprehensive regulations governing labor. These regulations aim to provide legal certainty for both workers and employers, fostering mutually beneficial relationships between the two parties.

In this context, the workforce plays a vital role in economic development, as they are indispensable resources for enhancing national productivity and prosperity. A substantial workforce serves as the driving force in all aspects of economic life, not only vital to the

national economy but also significantly contributing to the business world. Therefore, it is essential to create jobs that match workers' skills to boost company productivity (Mekaniwati, A., Nurendah, Y., Maulina, D., & Hanifah, N. S., 2021). Furthermore, workers' involvement in national development is increasingly significant, yet they face various risks and challenges. Thus, worker protection becomes critically important, enabling them to work safely and prosperously, ultimately contributing to improved productivity (Kanaf, Y. R., FoEh, J. E., & Manafe, H. A., 2023).

The importance of legal protection for workers is also enshrined in the Indonesian Constitution, as stipulated in Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that “every citizen has the right to work and to a life worthy of humanity,” and Article 33, paragraph (1), which mandates that the economy shall be organized as a common endeavor based on the principles of familialism. Worker protection is expected to ensure freedom and equal treatment without discrimination while considering the dynamics of the business world.

To enhance competitiveness and create a conducive investment climate, the government enacted Law No. 11 of 2020 on Job Creation, later refined as Law No. 6 of 2023. One of the primary objectives of this legislation is to provide better protection for workers, particularly through regulatory simplification and strengthening labor policies.

The Job Creation Act accommodates various provisions aimed at improving workers' welfare (Septiana, E., & Sitabuana, T. H., 2023). Several key points related to worker protection include:

1. Job Loss Insurance (Jaminan Kehilangan Pekerjaan - JKP)

The government introduced the JKP program as a new form of social protection for workers affected by termination of employment (PHK). This program includes job training, access to labor market information, and cash benefits to help workers reenter the workforce.

2. Minimum Wage Regulation

The Act regulates minimum wages to ensure worker protection by adjusting wage levels based on regional economic conditions and productivity. This measure aims to maintain workers' purchasing power while supporting business sustainability.

3. Protection of Employment Agreements

The Job Creation Act strengthens the rights of workers under fixed-term employment agreements (PKWT), including mandatory compensation provided by employers upon the expiration of employment contracts. This ensures legal certainty and fairness for contract workers.

4. Strengthening the Occupational Safety and Health (OSH) System

The Act emphasizes the importance of implementing occupational safety and health standards as an integral part of worker protection. The government encourages companies to ensure safe and proper workplaces for their employees.

The Job Creation Act is not without challenges. The Constitutional Court Decision Number 91/PUU-XVIII/2020, which declared the Act conditionally unconstitutional, prompted the government to undertake revisions and improvements. One of these efforts was the issuance of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022, now enacted as Law Number 6 of 2023. These revisions include strengthening regulations related to workers' rights, such as improving mechanisms for resolving industrial relations disputes and providing better protection for migrant workers.

Although these measures reflect the government's commitment to worker protection, the implementation of the Job Creation Act remains controversial. Various worker groups and labor unions have filed judicial reviews of the law, citing concerns about potential reductions in workers' rights. These criticisms serve as a reminder that public policies must be formulated by accommodating the aspirations of all stakeholders to achieve a balance between labor protection and business interests.

Thus, the success of the Job Creation Act in enhancing worker protection depends heavily on the effectiveness of policy implementation and strict oversight. The government, employers, and workers must continue to collaborate to foster fair, harmonious, and competitive labor relations, thereby supporting sustainable national development.

Based on these issues, this study aims to address the following research questions:

1. What is the legal responsibility of employers regarding the neglect of labor social security rights in Pangkalpinang?
2. What factors contribute to the neglect of labor social security rights by employers in Pangkalpinang?

METHOD

The method employed in this study is the normative legal research method, which focuses on the analysis of legal documents and literature. Normative legal research is used to identify and discover appropriate legal norms to resolve specific legal issues (Soekanto, S., 2007). The primary objective is to gather relevant legal materials to analyze the urgency of enacting the Job Creation Act and to understand why this Act, which is intended to provide protection and welfare for workers, has faced opposition from workers and labor unions.

This research applies two approaches: the statute approach and the conceptual approach. The statute approach involves studying all legislation related to the legal issues under investigation (Rony Hanintyo Soemitro, 1982). The facts identified are then linked to applicable laws and regulations. The primary legislation utilized in this study is Law Number 13 of 2003 on Manpower. Following the statute approach, the study also applies the conceptual approach, which emphasizes perspectives and doctrines developed in legal science.

To address the research questions, this study relies on two types of legal sources: primary legal materials and secondary legal materials. These materials are analyzed using the deductive method, which begins with general legal provisions and draws more specific conclusions based on existing regulations.

By combining normative and empirical analyses, this research aims to provide deeper insights into the application of social security law and its implications for workers and employers in Pangkalpinang.

RESULTS AND DISCUSSION

Legal Responsibility of Employers for Neglecting Workers' Social Security Rights in Pangkalpinang

Amid global economic turbulence and limited space for macroeconomic policy, strengthening the fundamentals of the domestic economy has become crucial to maintaining competitiveness. This situation necessitates a primary focus on domestic demand stability, particularly household consumption and investment, amidst rising price pressures and weakening global economic growth. Achieving this heavily relies on Indonesia's efforts to enhance competitiveness and attract investors to the domestic market. One significant step in this direction is the comprehensive structural reform embodied in the Job Creation Act.

The Job Creation Act plays a vital role in creating more employment opportunities in Indonesia, aiming to ensure that citizens can achieve decent living standards through equitable job opportunities. The legislation involves various stakeholders in formulating policies that support economic development by establishing a regulatory framework conducive to investment and business development. The primary goals include simplifying business licensing, setting investment requirements, facilitating ease of doing business, and promoting research, innovation, and land acquisition (Sukendro, B., Budiman, A., & Bhakti, T. S., 2024).

This policy reform leads to fundamental changes in various aspects of economic and social life. The Job Creation Act also adopts the omnibus law concept, focusing on reducing regulatory overlaps through regulatory simplification. Omnibus law, widely recognized in

many countries as a means to streamline regulations, consolidates various legal themes into one comprehensive, efficient, and effective regulation. This approach aims to eliminate norms that hinder business processes and ease of doing business in Indonesia.

The omnibus law introduces a new idea into Indonesia's legal system. It has earned the nickname "sweeping law" due to its ability to replace numerous legal norms with one comprehensive law (Nugroho, H., Widyanta, A. B., Wibawanto, G. R., & Fitramadhana, R., 2023). The policy also aims to eliminate outdated regulations that are no longer relevant to current developments and are detrimental to the nation's interests. This concept is expected to accelerate and optimize legal reforms to meet societal needs and the prevailing economic landscape.

In essence, the omnibus law seeks to simplify, streamline, and deregulate various existing regulations, including those related to employment, business licensing, investment arrangements, and research. The Job Creation Act, which employs this method, represents a strategic step in formulating modern legal policies responsive to contemporary demands.

As part of its implementation, in 2020, the Constitutional Court reviewed Law Number 11 of 2020 on Job Creation and found it to be inconsistent with the 1945 Constitution of the Republic of Indonesia. The Court ruled that the law must be revised within two years. This decision served as the basis for issuing a Government Regulation in Lieu of Law (Perppu) as a revision of the Job Creation Act to align with the Constitutional Court's decision and current legal needs.

The Government Regulation in Lieu of Law encompasses various aspects related to enhancing the investment ecosystem, easing business processes, protecting micro, small, and medium enterprises (MSMEs), and regulations on labor and research. All these provisions aim to support economic development acceleration and simplify administrative processes associated with this policy.

The omnibus law concept also enables the simplification and elimination of regulations that are no longer relevant to current developments. For instance, it simplifies business licensing, regulates the use of foreign labor, and addresses issues related to termination of employment (PHK). Additionally, changes to rules concerning fixed-term employment agreements (PKWT) and outsourcing aim to provide better protection for workers while maintaining a conducive investment climate.

Labor regulations in Indonesia are not solely governed by Law Number 13 of 2003 on Manpower but are also included in several other laws regulating various aspects of labor, one of which is Law Number 40 of 2004 on the National Social Security System (SJSN). This law has undergone several significant changes aimed at improving social protection for workers in Indonesia (Nola, L. F., 2023).

Key Amendments in Law Number 40 of 2004:

1. Article 18: The provisions of this article have been expanded to include job loss insurance.
2. Article 46A: This new provision stipulates that workers who experience termination of employment (PHK) are entitled to Job Loss Insurance, the technical details of which will be regulated by a Government Regulation.
3. Article 46B: This new provision establishes that the implementation of the Job Loss Insurance program shall be conducted nationally based on the principle of social insurance.
4. Article 46C: This new provision stipulates that participants in the Job Loss Insurance program are individuals whose contributions are paid by the Central Government.

Amendments to Law Number 24 of 2011 on the Social Security Administration Agency (BPJS):

1. Article 6: This article has been expanded to include a new type of social security program, namely Job Loss Insurance.
2. Article 9: This provision has also been expanded to include regulations on job loss insurance protection.

3. Article 42: This article regulates the initial capital for BPJS operations, which has been redefined.

Amendments to Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers:

1. Article 1: The definition of the Indonesian Migrant Worker Placement Company License (SIP3MI) has been amended. The authority to issue this license, previously held by the Minister, has now been transferred to the Central Government.
2. Article 51: Licensing, previously applied for through the Minister, is now issued by the Central Government following the revision.
3. Article 53: The establishment of branch offices for migrant worker placement companies must now comply with business licensing requirements at each Provincial Government level.
4. Article 57: Provisions regarding the license duration and company obligations have been repealed.
5. Article 89A: Companies that obtained licenses prior to the revision of this law are required to align with the new business licensing regulations.

Based on various changes in the labor sector, several significant substantive amendments have been introduced. First, the regulation of educational institutions, which previously only included government and private institutions, now also encompasses corporate educational institutions. Second, the provision regarding the duration of Fixed-Term Employment Agreements (Perjanjian Kerja Waktu Tertentu, PKWT), which was previously limited to a maximum of two contracts with a total duration of three years, has been abolished. Third, the status of workers in outsourcing companies can now include Fixed-Term Employment Agreements (PKWT). Fourth, wage provisions are now determined based on agreements between employers and workers, with the revised regulation emphasizing that such agreements must still comply with the applicable minimum wage standards. Fifth, there is an exemption from the minimum wage provision for micro and small business operators. Sixth, the statute of limitations for filing workers' claims has been removed. Seventh, criminal sanctions are now imposed on employers who fail to pay severance and long-service compensation to workers. Eighth, a Job Loss Insurance program has been added, with contributions to be paid by the Central Government. Ninth, company licensing for the placement of migrant workers must now be managed through the Central Government (Manan, A., 2014).

Understanding labor laws often leads to confusion because, in a broader sense, there should ideally be only one Labor Law, namely Law No. 13 of 2003. However, several other aspects related to labor are regulated under separate laws. For instance, the provisions on industrial relations disputes are governed by Law No. 2 of 2004, while the provisions on the National Social Security System (Sistem Jaminan Sosial Nasional, SJSN) are governed by Law No. 40 of 2004. Moreover, issues related to trade unions, workplace safety, supervision, as well as government and ministerial regulations, are governed by separate regulations. Ideally, labor law regulations should be comprehensive and integrated into an omnibus regulation. However, in reality, labor law provisions remain scattered across various regulations that sometimes conflict with each other.

Regarding labor regulations under the Job Creation Law (UU Cipta Kerja), several significant changes have been made, including the licensing of Private Job Training Institutions (Lembaga Pelatihan Kerja Swasta, LPKS). This provision specifically regulates the licensing of LPKS, with technical details outlined in Government Regulations. Additionally, the Job Creation Law modifies the provisions concerning the use of foreign workers, changing the requirement from obtaining a permit to obtaining formal approval. This change mandates that the use of foreign workers must receive formal approval as a legal requirement for employment in companies, with the users being legal entities rather than private individuals.

Furthermore, the clusters in the Job Creation Law regulate employment relationships, including both fixed-term (PKWT) and indefinite-term (PKWTT) contracts, as well as probationary periods. Significant changes have also been made to wage regulations. Time-based wages can now be determined on an hourly, daily, or monthly basis. Hourly wages are specifically intended for part-time workers and are calculated based on an agreed formula for hourly wages (Upah Per Jam, UPJ).

Other changes include provisions on termination of employment (PHK) as well as provisions on criminal and administrative sanctions. Overall, several provisions in the Job Creation Law still require adjustments and reconstruction, particularly those involving overlapping and inconsistent clauses that are not aligned with the prevailing laws or regulations.

Factors Causing the Neglect of Workers' Social Security Rights by Employers in Pangkalpinang

The factors leading to the neglect of workers' social security rights by employers in Pangkalpinang can be analyzed from various perspectives, including legal awareness, economic factors, and the lack of effective supervision. This neglect not only disadvantages workers but also poses legal risks for employers. Below are detailed factors contributing to this issue:

1. Lack of Awareness or Understanding of Legal Obligations

One of the primary factors contributing to the neglect of workers' social security rights is employers' lack of awareness or understanding of their legal obligations. Many companies, particularly small and medium enterprises (SMEs), are unaware that registering employees in social security programs is a legal requirement. Employers often underestimate the importance of social security programs or perceive them as unnecessary burdens. This lack of understanding may stem from insufficient legal education provided by the government or business associations.

2. Intentional Avoidance of Additional Costs

Economic considerations are often cited as a reason for employers to neglect their obligations to register employees in social security programs. Costs associated with registering employees in health insurance (BPJS Kesehatan) or employment insurance (BPJS Ketenagakerjaan) are seen as additional expenses that could reduce company profits, especially for budget-constrained businesses. Employers, particularly in small or micro-enterprises, often opt out of registering their employees in these programs to reduce operational costs.

3. Ineffective Supervision and Law Enforcement

The lack of effective supervision and consistent law enforcement is another significant factor. Local governments and related institutions, such as BPJS Ketenagakerjaan, may lack sufficient resources or mechanisms to ensure compliance by all companies. Although sanctions are stipulated in legislation, these are often not enforced consistently. Employers who believe they face no immediate consequences are more likely to ignore their obligations due to insufficient oversight.

4. Inefficient Administrative Systems

Some companies, particularly smaller ones, may lack efficient administrative systems to handle the registration of employees in social security programs. Limited human resources in administrative or human resource (HR) departments, compounded by insufficient training, can also contribute to this issue. Additionally, complex or unclear administrative processes may discourage employers from fulfilling their obligations.

5. Lower Compliance Among Small and Micro Enterprises

Small and micro-enterprises often face significant challenges in adhering to labor regulations. They may view social security registration requirements as a heavier burden compared to the perceived benefits. This neglect is also influenced by the perception that their workers may not be significantly affected by social security coverage or that informal employment arrangements exempt them from formal social protection.

6. Unhealthy Industrial Relations

Poor relationships between workers and employers can exacerbate the neglect of social security rights. In some cases, employers may see no need to comply with these obligations due to a lack of pressure or demands from workers. Conversely, workers may be unaware of their social security rights or lack adequate channels to raise concerns when their rights are violated.

7. Social and Cultural Factors

In some regions, cultural or social norms may influence how employers treat workers. In Pangkalpinang, where many workers are in the informal sector or on short-term contracts, neglecting workers' rights, including social security, may be seen as acceptable by some employers. This is often because workers without formal contracts are viewed as ineligible for social security.

8. Limited Access to Social Security Programs

Although BPJS Ketenagakerjaan and BPJS Kesehatan exist to protect workers, not all companies or workers have easy access to these programs. Workers in small companies or the informal sector often face challenges in obtaining accurate information on how to register or navigate the administrative processes. Limited outreach or unclear communication about the benefits of social security programs also contributes to low worker participation.

9. Economic Crises and Their Impact on Businesses

Economic instability also affects employers' decisions. During periods of economic difficulty, such as recessions or financial crises, companies tend to cut costs to survive, and one of the first expenses to be reduced is contributions to social security programs. Employers may prioritize the survival of their businesses over fulfilling legal obligations to their workers.

The neglect of workers' social security rights by employers in Pangkalpinang is a complex issue influenced by legal, economic, and social factors. Addressing this issue requires raising employers' legal awareness, consistent law enforcement, and broader education on the importance of social security for workers' welfare. The government and BPJS Ketenagakerjaan should enhance outreach efforts and facilitate SMEs in understanding and fulfilling their obligations under social security programs.

CONCLUSION

The legal responsibility of employers for neglecting workers' social security rights in Pangkalpinang is a complex and multidimensional issue. This negligence is primarily caused by a lack of awareness of existing legal obligations, economic factors, and insufficient effective oversight. Although the Job Creation Law and other regulations have provided a clear legal framework for the protection of workers' social security rights, field practices still reveal deviations. Many companies, particularly small and medium-sized enterprises, view enrolling workers in social security programs as an additional burden and lack a full understanding of their obligations under the law. Furthermore, this neglect is exacerbated by a lack of awareness regarding the legal consequences employers may face. Therefore, more intensive efforts are needed to raise employers' legal awareness through education, stricter oversight, and more rigorous law enforcement to ensure that workers' social security rights are adequately protected in compliance with applicable regulations.

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