

Criminal Liability Mechanism for Corporations That Do Not Register Their Workers' Health Insurance After the Birth of The Job Creation Law

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ABSTRACT

Protection of workers' rights is a vital aspect of implementing social security in Indonesia. The enactment of Law Number 11 of 2020 concerning Job Creation brought significant changes to labor law, including adjustments to the mechanism of social security implementation previously governed by Law Number 24 of 2011 concerning the Social Security Administration Agency (BPJS). Using a normative juridical method with legislative, conceptual, and case approaches, this study analyzes secondary data from laws, doctrines, and court decisions. The findings show that despite the Job Creation Law reaffirming corporate obligations to register workers in social security programs, many corporations still neglect this duty due to weak supervision and limited enforcement. Administrative sanctions are strengthened, but criminal sanctions remain subsidiary and rarely applied. Obstacles to corporate criminal liability include difficulties in proving corporate intent, limited technical procedures for investigation, and weak coordination among authorities. The study recommends clearer implementing regulations to define corporate fault, representative liability, and proportional sanctions.

Keyword: Responsibility; Punishment; Corporation; Guarantee; Social

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1. INTRODUCTION

The birth of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law) has brought various significant changes in various legal sectors, including provisions related to companies' obligations in registering workers with the Social Security Administration Agency (BPJS). The Job Creation Law that will be studied is the Job Creation Law that is still in force and all its changes related to health insurance for workers who are not registered by the company. Prior to the enactment of the Job Creation Law, criminal sanctions for companies that did not fulfill this obligation were regulated in Article 55 of Law Number 24 of 2011 concerning the Social Security Administration Agency (BPJS Law), which states that employers who deliberately do not register workers in the social security program can be subject to imprisonment for a maximum of eight years or a maximum fine of one billion rupiah.

Criminal liability for corporations that do not register the company's workers' health insurance is an important issue in Indonesian criminal law. Article 91 of Law Number 24 of 2011 concerning the Social Security Administration Agency (BPJS) in substance states that everyone who does not register themselves or workers as BPJS participants can be subject to criminal sanctions (Badan Penyelenggara Jaminan Sosial [BPJS], 2020).

However, in practice, there are still many corporations that do not register the company's labor health insurance, causing losses to workers and the state. There are 54.88 million people registered for BPJS Employment membership, as of February 2023. This number consists of around 64.33 percent of the active workforce and around 35.67 percent of the inactive workforce. Compared to the number of participants in the same period in 2022, this number increased by around 7.65 percent (The Ministry of Agriculture, 2024).

This criminal liability also highlights the importance of corporate accountability in maintaining the welfare of the workforce, which in turn affects the productivity and reputation of the company itself. On the other hand, criminal liability does not only apply to corporations as a whole but can also target individuals who have a significant role in the management of the company. If it is proven that there is negligence or malicious intent in the implementation of the obligation to register health insurance, the management may be faced with criminal charges. This is in line with the goal of enforcing laws that aim to protect the interests of workers and create a culture of compliance in the business world. The application of strict sanctions is expected to encourage companies to be more responsible in fulfilling their legal obligations, as well as strengthen the confidence of the workforce in the institutions where they work.

2. RESEARCH METHOD

The research method aims to explain the entire series of activities that will be carried out in order to answer the main problem or prove the assumptions put forward. To answer the main problem and prove the assumptions must be supported by facts and research results. The type of research studied is normative law research with a statute *approach* in conducting studies, studies, explanations, and analyses of a legal regulation. The nature of the research is prescriptive analytical by analyzing a legal problem (Soerjono Soekanto, 1986).

3. RESULTS AND DISCUSSION

A. *Legal Basis of Corporate Obligations in Registering Company Employee Health Insurance*

Health insurance is one of the rights of workers/laborers and their families, and it is the company's obligation to provide it. The implementation of the health insurance program is one of the responsibilities and obligations of the state to provide socio-economic protection to the community in accordance with the financial condition of the state. Indonesia, like various other developing countries, develops social security programs based on funded social security, namely health insurance funded by participants and still limited to the working community/laborers in the formal sector (Sutedi, 2009).

Law No. 40 of 2007 concerning Limited Liability Companies (PT Law) — Although the PT Law does not explicitly mention “health insurance,” it contains the principle of Corporate Social Responsibility (CSR), which includes the protection of workers. Article 74 paragraph (1) substantially stipulates that a company conducting business activities in the field and/or related to natural resources is obliged to carry out social and environmental responsibility. Article 74 paragraph (2) regulates that this responsibility is the company's commitment to participate in sustainable economic development, including improving the quality of life and the environment, which encompasses the protection of workers' health as part of work welfare.

Law No. 13 of 2003 concerning Manpower (as amended by the Job Creation Law) — The Manpower Law explicitly contains provisions on the obligation of companies to provide social security, including health insurance, to workers. Article 99 paragraph (1) stipulates that every worker/laborer and his family has the right to obtain labor social security. Article 100 regulates that employers are obliged to register their workers/laborers in the social security program in accordance with the laws and regulations.

Law No. 24 of 2011 concerning the Social Security Administration Agency (BPJS Law) — This law is the operational basis for BPJS Kesehatan and BPJS Ketenagakerjaan, affirming the company's responsibility to provide health insurance to its workers. Article 15 paragraph (1) stipulates that employers are obliged to register themselves and their workers as BPJS participants. Article 17 paragraph (2) provides that employers who do not register their workers will be subject to administrative sanctions (reprimands, fines, termination of public services).

Law No. 40 of 2004 concerning the National Social Security System (SJSN Law) — This law regulates five social security programs, including health insurance, which must be followed by every employer. Article 5 paragraph (1) stipulates that social security is organized on the principle of social insurance. Article 19 paragraph (1) stipulates that every person, including workers, has the right to receive health maintenance guarantees. Article 19 paragraph (2) stipulates that this guarantee includes promotive, preventive, curative, and rehabilitative services.

Registration for BPJS Ketenagakerjaan membership is an obligation for companies that employ a workforce of 10 (ten) or more people and pay a minimum wage of Rp. 1,000,000 (one million rupiah), in accordance with the provisions of Article 2 paragraph (3) of Government Regulation Number 14 of 1993 concerning the Implementation of the Social Security Program, as amended by Government Regulation

Number 84 of 2013 concerning the Ninth Amendment to Government Regulation Number 14 of 1993 concerning the Implementation of the Labor Social Security Program.

Social security is a universal concept of income redistribution, making it a public program organized based on the law. The social security program is a basic protection program for workers, aiming to ensure the security and certainty of socio-economic risks. It guarantees income for workers and their families when risks occur, with affordable financing by employers and workers. Social security represents the income or benefits received by workers when they are unable to work for reasons beyond their control, such as illness, work accidents, pregnancy, old age, or death (Sri Subiandini Gultom, 2005).

Companies that do not fulfill these obligations may be subject to sanctions in the form of imprisonment or fines, as well as administrative sanctions such as written reprimands, fines, and/or restrictions on public services. Thus, companies that fail to register workers as social security participants may face both criminal and administrative sanctions. Administrative sanctions are aimed at the act of violation, while criminal sanctions are aimed at the violator by providing punishment. Administrative sanctions are intended to stop the violation, with the nature of the sanction being reparative, meaning restoring the situation to its original state (M. Philipus Hadjon et al., 2005).

Furthermore, administrative sanctions are enforced by state administrative officials without going through court procedures, while criminal sanctions can only be imposed by criminal judges through judicial processes (M. Philipus Hadjon et al., 2005).

The imposition of criminal sanctions, also known as criminal penalties, can be applied to companies that fail to register their workers as social security participants. According to Prasetyo and Barkatullah, criminalization refers to the stage of determining and imposing sanctions in criminal law. Thus, the imposition of criminal sanctions on companies that do not register their workers as social security participants is a form of punishment in the sanctioning stage of criminal law (Teguh Prasetyo & Abdul Halim Barkatullah, 2012).

Based on Article 1 point 1 of Law Number 40 of 2004 concerning the National Social Security System, social security is defined as a form of social protection to ensure that all people can meet the basic needs of a decent life. Labor, as a human resource, is one of the fundamental components of development, where one cannot be separated from another. To meet daily needs, humans must work, either independently or for others. Working for others means being dependent on the employer, who gives orders and supervision, requiring obedience and compliance (Agusmidah, 2010).

Employment, as part of human resource development, is inseparable from national development as the embodiment of Pancasila and the 1945 Constitution. Employment aims to enhance human dignity and capability to realize a prosperous society. The Social Security Administration Agency consists of BPJS Kesehatan and BPJS Ketenagakerjaan, as stipulated in Article 5 paragraph (2) of Law Number 24 of 2011 concerning the Social Security Administration Agency (Hardijan Rusli, 2011).

Furthermore, labor rights are often unfulfilled due to employers' arrears in contributions that have been collected but not deposited to BPJS. The criminal provisions in the BPJS Law are special criminal law rules outside the Criminal Code, forming a subsystem of the overall penal system. Therefore, penal systems in special laws outside the Criminal Code must remain integrated with general rules (L. H. C. Hullsman, 2002).

The legal basis for corporate obligations in registering employee health insurance is part of the state's effort to ensure the constitutional rights of every citizen to proper health services. The main legal foundation for this obligation is the 1945 Constitution of the Republic of Indonesia, particularly Article 28H paragraph (1), which states that "Everyone has the right to live a prosperous life physically and mentally, to live in a good and healthy environment, and to have access to health services."

Furthermore, Article 34 paragraph (2) of the 1945 Constitution emphasizes that "The State develops a social security system for all people and empowers the weak and underprivileged in accordance with human dignity." This provision provides a constitutional mandate for the state to require business actors or corporations to participate in the implementation of health insurance for their workers.

This obligation is further strengthened in Law Number 24 of 2011 concerning the Social Security Administration Agency (BPJS Law). Article 15 paragraph (1) requires employers other than state administrators to register themselves and their workers as participants in BPJS according to the relevant social security program. If employers fail to fulfill these obligations, Article 17 paragraph (2) provides administrative sanctions in the form of written reprimands, fines, and restrictions on certain public services.

Corporate obligations are also regulated in Law Number 40 of 2004 concerning the National Social Security System (SJSN Law). Article 13 paragraph (1) emphasizes that every worker has the right to obtain social security, while Article 14 requires employers to register their workers in social security programs,

including health insurance. This law places the responsibility on employers to contribute to health insurance as part of the company's social obligations.

Presidential Regulation Number 82 of 2018 concerning Health Insurance provides technical rules regarding employer obligations. Article 6 emphasizes that every employer must register workers and their family members in the National Health Insurance (JKN) program managed by BPJS Kesehatan. Sanctions for non-compliance are regulated in Article 17 paragraph (1), which states that employers who fail to carry out their obligations will be subject to administrative sanctions in the form of reprimands, fines, and restrictions on certain public services, such as business licensing.

With the enactment of Law Number 11 of 2020 concerning Job Creation (Job Creation Law), provisions related to social security obligations have undergone several adjustments. Through the employment cluster, the Job Creation Law amends several provisions in Law Number 13 of 2003 concerning Manpower. Article 99A, as amended, emphasizes that employers are obliged to provide social security for workers. Failure to comply may result in administrative and criminal sanctions in accordance with applicable laws and regulations.

This shows that the Job Creation Law maintains the principle of worker protection in the context of social security, even while aiming to simplify the business climate. Moreover, international legal instruments reinforce these corporate obligations, such as ILO Convention No. 102 on Minimum Standards of Social Security and ILO Convention No. 155 on Occupational Safety and Health, both ratified by Indonesia. These conventions require member states to ensure workers receive social protection, including access to health services.

Labor protection has received significant attention in labor law, as reflected in several articles of the Manpower Law (Ahmad Hunaeni Zulkarnaen & Tanti Kirana Utami, 2016):

1. One of the objectives of employment development is to provide protection to workers in realizing welfare (Article 4 letter c).
2. Every worker has an equal opportunity without discrimination to obtain employment (Article 5).
3. Every worker/laborer has the right to receive equal treatment without discrimination from the employer (Article 6).
4. Every workforce has the right to acquire, improve, and develop work competencies according to their talents, interests, and abilities through job training (Article 11).
5. Every worker/laborer has the same opportunity to participate in job training in accordance with their duties (Article 12 paragraph 3).
6. Every worker has the right to choose, obtain, or transfer jobs and earn a decent income (Article 31).
7. Every worker/laborer has the right to receive protection for occupational safety and health, morality, decency, and treatment in accordance with human dignity and religious values (Article 86 paragraph (1)).
8. Every worker/laborer has the right to earn an income that meets a decent standard of living (Article 88 paragraph (1)).
9. Every worker/laborer and their family has the right to obtain labor social security (Article 99 paragraph (1)).
10. Every worker/laborer has the right to form and join a trade/labor union (Article 104 paragraph (1)).

Thus, corporate obligations are not only national but also form part of Indonesia's international commitments. Overall, the legal basis requiring corporations to enroll their workforce in health insurance programs is robust and comprehensive—from the constitutional level to technical regulations. However, implementation in the field still faces challenges such as low corporate compliance, weak supervision, and inadequate enforcement of criminal law against violations. Therefore, efforts are needed to harmonize regulations and strengthen the government's role as a supervisor and law enforcer to ensure that workers' rights to health insurance are truly guaranteed.

B. Accountability Mechanism for Companies That Do Not Register Workers with the Social Security Administration Agency After the Birth of the Job Creation Law

After the birth of Law Number 11 of 2020 concerning Job Creation (Job Creation Law), many changes occurred in the labor law order in Indonesia, including in the aspect of social security protection for workers. The Job Creation Law, through amendments to several provisions in Law Number 13 of 2003 concerning

Manpower, emphasizes the obligation of companies to register their workforce with the Social Security Administration Agency (BPJS).

Employment relations are legal relationships established between workers and employers based on employment agreements, with elements consisting of work, wages, and command. Employment relationships can be seen from three perspectives, representing the different interests of the parties involved in an industrial relationship: workers, employers, and the government (Joko Ismono, 2018).

For the state, the role of corporations in driving and realizing national development cannot be ignored, considering that one source of development funds is obtained from corporations. The existence of corporations for a country and society is so close and important that it creates difficulties when criminal acts are committed by corporations, creating a dilemma between law enforcement and economic interests. This raises concerns about approaches to resolving corporate crimes that avoid a domino effect so that law enforcement and economic interests proceed as they should, and the legal goal of providing justice for all Indonesian people is achieved in accordance with the ideals of the Indonesian nation based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Joko Ismono, 2018).

The development of industrialization in recent times has experienced very rapid progress, marked by the proliferation of corporations in various fields controlling the Indonesian economy. Along with an instant and practical mindset and lifestyle, corporations compete to accumulate profits to meet targets and win battles amid fierce competition. Winning the competition and achieving maximum profit are the main goals of establishing a corporation. This can lead to criminal acts by corporations that harm the state and those related to the corporation, including criminal acts against workers—better known as labor crimes. Therefore, this paper aims to describe clearly and systematically the forms of criminal acts by corporations against workers and the approaches to settlement that can be taken in the event of criminal acts against workers in employment relationships so that justice is realized for victims in a manner consistent with applicable legal provisions (Joko Ismono, 2018).

The main problem faced in the implementation of BPJS Employment is the non-compliance of a number of companies in fulfilling the obligation to pay BPJS contributions on time. Reporting from the wartakota.com page, BPJS Employment Grha Jamsostek noted that until November 2023 there were 76 employers/business entities (PKBU) in arrears of BPJS Employment contributions with total arrears of IDR 9,300,000,000.00 (nine billion three hundred million rupiah) (Panji Baskhara, 2024). This non-compliance not only violates legal provisions but also has the potential to harm workers' rights, as it prevents them from obtaining proper social protection. It is important for employers to fulfill their social responsibility by paying BPJS Employment contributions (Asri Wijayanti, 2017).

The sanction if a company other than a state administrator does not carry out the obligation to register its workers as BPJS participants is an administrative sanction (Muladi Dwidja Priyatno, 2012), which can be in the form of:

- a. written reprimand;
- b. fine; and/or
- c. not receiving public services.

There is also the importance of legal development that emphasizes criminal penalties for corporations that do not register their workers with BPJS.

The development of criminal law is necessary because the approach applied by the Job Creation Law emphasizes administrative sanctions rather than criminal sanctions, thereby creating a legal loophole in providing a deterrent effect to non-compliant companies. The development of criminal law is intended to improve the paradigm of law enforcement against corporations that neglect to register their workers with BPJS.

Ideally, criminal sanctions should be maintained as the ultimate remedium for serious violations that cause great losses to workers. This approach aligns with the purpose of the Job Creation Law in creating legal certainty for business actors, but must not sacrifice fundamental workers' rights.

Improvements needed include: enhancing the criminal substance in the BPJS Law and the SJSN Law to be more responsive to corporate crimes; harmonizing administrative and criminal sanctions so that administrative sanctions do not become a "shield" to avoid crimes; affirming corporate mens rea in cases of negligence to register workers as BPJS participants (e.g., through the doctrine of vicarious liability or strict liability); and granting greater authority to BPJS Kesehatan to report alleged corporate crimes to law enforcement officials.

This development is expected to strengthen law enforcement and ensure that all workers obtain social security rights as mandated by Article 28H paragraph (1) of the 1945 Constitution and Article 34 paragraph

(2) of the 1945 Constitution. The Concept of Criminal Liability Against Corporations in Registering Employee Health Insurance

Corporate criminal liability in the context of workers' health insurance is based on the principle of corporate criminal liability, namely the legal ability to position the corporation as a perpetrator of a criminal act. This accountability has been regulated in several regulations, such as Law Number 24 of 2011 concerning BPJS, which in Article 55 mentions the threat of imprisonment of up to eight years or a fine of up to Rp1 billion for companies that do not register their workers with BPJS. However, the implementation of criminal sanctions against corporations still faces various challenges, one of which is the difficulty of proving the element of error (*mens rea*) in a legal entity, which is an abstract entity.

Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations can be a reference in determining who is responsible as a representative of the corporation before the law.

Ideally, the concept of criminal liability against corporations can be built through:

- the application of the doctrine of vicarious liability, where the actions or omissions of the company's management are considered acts of the corporation;
- the application of strict liability for administrative violations that impact workers' rights, so there is no need for proof of *mens rea*; and
- strengthening additional criminal sanctions, such as confiscation of profits, public announcement of decisions, and revocation of business licenses for serious or repeated violations.

The Job Creation Law places significant emphasis on administrative sanctions—such as termination of public services or revocation of permits—without sufficiently strengthening criminal sanctions against systematically negligent corporations. Criminal sanctions should be maintained as the ultimate remedium for serious violations, and a strict compliance audit mechanism by BPJS Kesehatan should be added. Criticism: Current technical regulations are inadequate to regulate the criminal execution of corporations. It is necessary to update Perma No. 13 of 2016 to be more relevant to the context of social security and to provide space for law enforcement officials to be more progressive.

The development of criminal law against corporations that neglect to register workers with BPJS Kesehatan after the Job Creation Law must be directed at strengthening criminal accountability mechanisms that align with the principles of protecting workers' rights. Thus, criminal law functions not only as a repressive instrument but also as a driver of corporate compliance with applicable laws and regulations.

The mechanism of criminal liability for corporations that do not register their workers' health insurance after the birth of Law Number 11 of 2020 concerning Job Creation is based on the principle that corporations, as legal subjects, can be held criminally liable for violations of employment normative obligations. In this context, corporations are obliged to register all their workers in the Employment Social Security and National Health Insurance (BPJS Ketenagakerjaan and BPJS Kesehatan) programs as stipulated in Article 15 paragraph (1) of Law Number 24 of 2011 concerning BPJS and strengthened by derivative provisions of the Job Creation Law and its implementing regulations, such as Government Regulation Number 86 of 2013.

If the corporation ignores these obligations, it can be subject to administrative and criminal sanctions in accordance with the principle of corporate criminal liability, which is criminal liability inherent in the legal entity. In this case, criminal liability can be imposed on the corporation if the act of not registering workers in the health insurance program is carried out in the context of business activities and provides benefits for the corporation, and there is an element of error (*mens rea*) that can be proven through policy or neglect by the management.

The criminal law enforcement mechanism against corporations is carried out with an approach grounded in social function and worker protection, where the state places the right to social security as a constitutional right. Based on Article 34 paragraph (2) of the 1945 Constitution and the provisions in the BPJS Law, strengthened by the Job Creation Law, every employer is obliged to ensure that its workers receive social protection. Therefore, if the corporation deliberately does not register workers, then in addition to administrative sanctions such as reprimands, fines, or freezing of business licenses, criminal sanctions can also be imposed in the form of fines against the corporation and/or imprisonment of the management who are directly responsible. Thus, after the enactment of the Job Creation Law, the criminal liability mechanism for corporations not only focuses on individual administrators but also expands responsibility to the corporate

entity itself as the perpetrator of violations. This approach reflects the principle of equality before the law in modern criminal law, where legal entities cannot hide behind their legal form to avoid social obligations to workers.

4. CONCLUSION

The obligation of corporations to register workers in the health insurance program has been expressly regulated in various laws and regulations in Indonesia, ranging from the 1945 Constitution of the Republic of Indonesia to technical regulations such as Presidential Regulation Number 82 of 2018 concerning Health Insurance. Law Number 24 of 2011 concerning BPJS and Law Number 40 of 2004 concerning SJSN affirm that every employer, including corporations, is obliged to register all their workers with BPJS Kesehatan. This provision represents a form of state protection of workers' rights to social security as part of human rights.

The mechanism of criminal liability for corporations that do not register their workers' health insurance after the enactment of Law Number 11 of 2020 concerning Job Creation is based on the principle that corporations, as legal subjects, can be held criminally liable for violations of employment normative obligations. In this context, corporations are obliged to register all their workers in the Employment Social Security and National Health Insurance (BPJS Ketenagakerjaan and BPJS Kesehatan) programs, as stipulated in Article 15 paragraph (1) of Law Number 24 of 2011 concerning BPJS and strengthened by derivative provisions of the Job Creation Law and its implementing regulations, such as Government Regulation Number 86 of 2013.

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