



Legal responsibility upon the negligence of entrepreneurs in registering their labors as the member of BPJS ketenagakerjaan

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Abstrak

Pemerintah mewajibkan pelaku usaha untuk mendaftarkan tenaga kerjanya sebagai anggota BPJS Ketenagakerjaan berdasarkan Undang-Undang Nomor 24 Tahun 2011 Tentang 'Badan Penyelenggara Jaminan Sosial' (BPJS)/ UU BPJS. Pada faktanya, masih banyak tenaga kerja yang belum terdaftar. Di Kabupaten Bekasi, 30 persen dari seluruh tenaga kerja di Kabupaten Bekasi tidak terdaftar sebagai peserta BPJS Ketenagakerjaan. Penelitian ini mengkaji mengenai akibat hukum atas kelalaian pelaku usaha di Kabupaten Bekasi dalam mendaftarkan tenaga kerjanya sebagai anggota BPJS Ketenagakerjaan. Penelitian ini juga bertujuan untuk mengkaji tanggung jawab pelaku usaha di Kabupaten Bekasi terhadap tenaga kerja yang tidak didaftarkan sebagai peserta BPJS Ketenagakerjaan. Metode penelitian ini menggunakan metode penelitian normatif-empiris. Hasil penelitian menunjukkan bahwa tanggung jawab atas kelalaian pelaku usaha di Kabupaten Bekasi dalam mendaftarkan tenaga kerjanya mengakibatkan pelaku usaha dapat dihukum dengan sanksi administratif berupa peringatan tertulis, denda, dan larangan untuk mengakses fasilitas publik tertentu. Sementara itu, tanggung jawab atas kelalaian pelaku usaha di Kabupaten Bekasi dalam mendaftarkan tenaga kerjanya sebagai anggota BPJS Ketenagakerjaan muncul dalam bentuk ganti kerugian terhadap tenaga kerja secara perdata. Dalam hal perkara diselesaikan melalui Pengadilan Hubungan Industrial, maka pelaku usaha dapat dihukum oleh pengadilan untuk mendaftarkan tenaga kerjanya sebagai anggota BPJS Ketenagakerjaan.

Abstract

Government have mandated the entrepreneurs to register their labors as the member of BPJS Ketenagakerjaan in accordance to the Law Number 24 Year 2011 regarding 'Badan Penyelenggara Jaminan Sosial' (BPJS)/ UU BPJS. In fact, Many labors are not registered. In Kabupaten Bekasi, 30 percents of the total labors are not regis-

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tered. This research tries to examine the legal consequences upon the negligence of the entrepreneurs in Kabupaten Bekasi in registering their labors as the member of BPJS Ketenagakerjaan. This research also aims to examine the legal responsibility of the entrepreneurs in Kabupaten Bekasi towards their unregistered labors. The research methodology is Normative-Empirical Legal Research. The result shows that the legal consequences of the negligence of the entrepreneurs in Kabupaten Bekasi in registering their labor to BPJS Ketenagakerjaan is that the entrepreneurs could be punished with administrative sanction such as written reprimand, fine, and or prohibition to access a certain public service. Meanwhile, legal responsibility of the entrepreneurs in Kabupaten Bekasi towards their labor appears in form of civil compensation. In case the dispute would be settled in Industrial Court, then the judges could sentenced the entrepreneurs to register their labor as the member of BPJS Ketenagakerjaan.

1. Background

Government as the regulator and supervisor in industrial relation have given proper attention regarding the social security for the labor. Through Law number 24 Year 2011 regarding 'Badan Penyelenggara Jaminan Sosial' (BPJS) or in english called 'The Implementing Agency of Social Security', hereinafter called UU BPJS, government mandate the entrepreneurs to register their labor as the member of BPJS Ketenagakerjaan (Indrawati, & Simanjuntak, (2019). This effort is to cope the fact that the jobs that the labors do are full of risk, thus, they are necessarily protected by a social security.

Even though registering the labor as the member of BPJS Ketenagakerjaan is mandatory, in fact, there are still many labors who are not registered yet. In Kabupaten Bekasi, it is reported that 30 percents of the total labors in Kabupaten Bekasi are not registered as the member of BPJS Ketenagakerjaan. The information is confirmed by The Head of BPJS Ketenagakerjaan Cikarang, Achmad Fathoni as been quoted from pikiran-rakyat.com on march 4. 2019 who claimed that the membership of labor in BPJS Ketenagakerjaan in Kabupaten Bekasi is only 70 percents.

Based on the data in December 2018, the membership of labors in BPJS Ketenagakerjaan in Cikarang is 348.679 labors from 4.416 companies.

Though it is the highest number in West Java, there are still 30 percents of the total labors who are not registered. From 4.416 companies, not all of them consistently pay the membership of the labor in BPJS Ketenagakerjaan. The level of obedience of the entrepreneur is 74,4 %, while the other 25,6 % are not submissive and be in arrears in paying the premium. The data shows that there is a negligence by the companies in following the order of the law.

The provision from UU BPJS is clear that registering the labors as the member of BPJS Ketenagakerjaan is mandatory. Thus, ruling out this provision is an action against the law. Meanwhile, the nature of law is binding and for its binding, setting it aside would bring punishment to the actor. However, practically, the punishment is not obvious and there is no real sentence for the entrepreneurs who ignore this regulation.

Principally, breaking the law would resulting a penalty. So, what would be the punishment for those who overrule the obligation to register the labors as the member of BPJS Ketenagakerjaan? That is an issue that important to be examined since there should be a firm legal sanction to enforce the protection for the labors in doing jobs.

Based on the background explained, Researcher is attracted to conduct a research regarding "Legal Responsibility Upon The Negligence of

Entrepreneurs in Kabupaten Bekasi in Registering Their Labors as The member of BPJS Ketenagakerjaan". The research will specifically examine the issue limited in Kabupaten Bekasi area. This research hopefully could contribute to the enforcement of social security for the labors.

2. Methodology

The research methodology in this research is Normative-Empirical Legal Research. According to Abdulkadir Muhamad, Normative-Empirical Legal Research is a research which the object including the legislation (in abstracto) and its implementation at the concrete situation (in concreto). The type of this research is descriptive and using statute law approach. This research tries to examine the concrete situation using the existing regulation (positive norms).

3. Discussion

3.1. The legal consequences upon the negligence of the entrepreneurs in registering their labors as the member of BPJS ketenagakerjaan

The presence of BPJS as the result of the existence of Law number 24 Year 2011 regarding 'Badan Penyelenggara Jaminan Sosial' (BPJS)/ UU BPJS that mandates the entrepreneurs to register their labors as the member of BPJS Ketenagakerjaan is the main part to understand in discussing the issue arised in this research. This regulation is a legislation issued by the House of Representative (DPR) as the representative of the society. Thus, this regulation is binding and should be applied by all stakeholders governed by the regulation.

In the perspective of law, there are two main sources of engagement: Agreement has binding power that person involved themselves into the agreement voluntarily accept the right and obli-

gation occurred by the agreement. For example, when two parties involved in agreement regarding the sales and purchase of a car, the both parties agreed and consented the consequences of the agreement. For the seller, the consequence of the agreement is that they are obliged to deliver the car to the buyer. Simultaneously, the seller deserves the payment of the car from the buyer. Meanwhile, for the buyer, the agreement engaged him to pay the price of the car and he is rightful to receive the car from the seller.

In case one of the party was failed to do their obligation or performance as has been regulated in agreement, then they are committed to an event of default. There 4 conditions to be entitled as default: Not doing the performance at all, at the example given, this situation happens when the seller does not deliver the car at all, or for the buyer, the buyer fails to pay the price at all.

Doing the performance but no as it was supposed to be. In this case, one of the party fails to do the obligation in full. For example, in the case example given, during the negotiation, the buyer agreed to buy the car if the seller reconstruct the interior design as consented by both parties. At the day of delivery, the design must have been finished. However, when the car is delivered, the interior design is not the same as it has been agreed before. In this case, the seller do his obligation to give the car but the condition of the car is different from it has been agreed. Meanwhile, from the buyer perspective, this kind of default happens when the buyer fail to pay the price of the car fully. The buyer do his obligation to pay the car but not as how it is supposed to be.

Doing the performance, but late. In this situation, the binding parties do their obligation but late from the appointed time. In the case given, the buyer is default in category of doing the performance but late if he pays the price late from the appointed time agreed with the seller. For example, both parties agreed that the price of the car must

be paid in 20th December 2019 but the buyer paid the price in 22nd December 2019. This situation causes the buyer in status of default (Juanda, 2016.). On the other hand, default in this category could be happened to the seller if the seller lately delivers the car to the buyer.

Do the things that prohibited in Agreement. For example, based on the agreement, until the car is delivered to the buyer, the seller could not modify the car (Prayogo, 2016). So, when the seller modified the car before the delivery, he is determined as default. On the other hand, buyer could be considered default based on this category if, for example, the buyer is prohibited from using the car outside the city before the last installment is accomplished, then when the buyer do so, the buyer is default.

In case that one of the party is failed to fulfill the obligation ordered by the agreement, then the one must pay some compensation as a form of remedy to the loss suffered party. In the illustration case given, should the buyer failed to pay the consented price, then the seller could take action in order to prosecute the buyer to pay the loss of the failure of payment.

The compensation could be consisted of three parts: Expenditure, is an economic loss occurs during the negotiation of the sales and purchasing of the car. For example, if the buyer stayed in Bandung and the Seller in Jakarta, and then they met in Bekasi for negotiation, then the seller must spent some money for transportation from Jakarta to Bekasi. This expenditure can be asked to be paid by the seller as the part of responsibility in the form of remedy.

Basic Loss, should the car already delivered but the price is not fully paid, the seller has gained loss in form of a car. The car is the object that delivered by the seller, thus the car is the basic loss for the seller. The buyer must return back the car like the previous condition before the delivery (Nuha, 2018). If the buyer was unable to return

the car exactly equal to the condition before the delivery, then the buyer could be required to compensate the car materially based on the equality of the economic value of the car.

Interest or potential of profit. When the deal was done, the seller might had plan to make business with the money that should be paid by the buyer (Muslimin, 2016). However, since the money is failed to be given, then the seller could not make the business he has planned. Should the business was run, then there might be potential profit the seller could gain. This kind of loss could also charge to the buyer to pay as the part of compensation caused by the vent of default.

Person are also binding to do something because of the law's order. For example, the order of undang-undang as a written law issued by the house representative (Dewan Perwakilan Rakyat) which mostly also called using terminology 'law' (Subekti, 2012). People is binding to pay the tax to the government it was not because there was agreement between the government and the people that they have to pay tax. This engagement occurs because of the order of undang-undang. Citizens of a country is binding to follow the law of the country. The government with its authority obtain rights to force people to follow the regulation issued by them. This authority is also followed by the authority to sentence any citizens that againsting the regulation (Muhammad, 2004). Thus, people and or company are binding to follow the regulation from the authorized. The other example is when a company is about to be established. A new company company must manage certain legal documents for the establishment, which is not the consequence of an agreement but consequence of the law.

The negligence done by a certain legal subject in conducting the obligation causes them in a position to undertake a legal responsibility. Legal responsibility according to Ridwan Halim is a further consequence of the conduction of role,

whether the role is in form of right and obligation or authority. According to Ridwan Halim, in general, legal responsibility must be interpreted as an obligation to do something or behave in accordance to a particular thing that is not diverged from the existing rules. This obligation is the form of responsibility upon the failure in doing the obligation based on the source of engagement, in this case, a law.

If the failure of doing obligation was based on the order of law, then the subject must also be charged for a certain punishment. Since the orders of law are various and may have different type of sanction, then to determine the sanction must be done by understanding the law itself. Mostly the punishment given by the Undang-Undang are in type of administrative sanction such as warning, and also the revocation of the license for the business entity. There could be a kind of penal sanction such as fine and prison punishment as well.

Entrepreneurs in Bekasi are part of Indonesian citizens. They are subject to the Indonesian law and because of that are engaged to compile all the governed matters regarding their business activity. The limitation regarding who are parties referred as entrepreneurs has been elaborated in Article 1 number 5 Law Number 5 Year 1999 concern on Anti Monopoly and Unfair Business Competition that mainly explains that entrepreneurs are including individuals or business entity, established and domiciled or running activities in the jurisdictional of Indonesia, both individually or cooperated based on agreement, conducting various activities in economic sector. The classification of Business entity itself according to Dijan Widijowati (2012) are divided as follows: a. Business entity without legal entity status, including sole proprietorship, firm, and limited partnership; b. Business entity with legal entity status, including limited liability company, foundation, and cooperative.

Meanwhile, a labor simply can be considered as someone who work for other party. According to article 1 Number 4 law number 13 Year 2003 concern on Manpower, labor or worker is defines as any person who works and receives wages or other forms of remuneration.

Term 'labor' has a close meaning to manpower. According to Abdul Khakim (2014), the term manpower gives boundary that manpower is every person that able to do jobs, both inside or outside working relationship in order to create services or goods to fulfill the need of the society. This limitation contain a wider scope of meaning, including state officials, civil servant or military, entrepreneurs, labors, unemployed, and etc. based on the definition provided, it is shown that the meaning of labor is so wide. We could consider, most of an adult person is a manpower.

The order of Law of BPJS is a source that is binding for all the level of entrepreneurs to complete a particular obligation. In this case, the obligation to be fulfilled is to register the labor to be the member of BPJS Ketenagakerjaan. The failure to do so, as been explained previously, is a violation upon a source of an engagement. As consequence, the one must be punished by a firm sanction.

The relationship between entrepreneurs and labor is also recognized as a working relation. According to Article 1 number 15 Manpower Law, working relations shall be relations between entrepreneurs and workers/labor on the basis of a working agreement having elements of occupation, wage, and order.

According to Abdul Khakim, the elements of working relations is consist of the parties as the subject (entrepreneurs and workers/labor), working agreement, the existence of works, wages, and order (Suhartoyo, 2019). Thus, it is confirmed that the foundation of working relations is a working agreement, whether written or oral. The alliance for the entrepreneurs in Kabupaten Bekasi to reg-

ister their labor as the member of BPJS Ketenagakerjaan is based on the provision of article 15 paragraph (1) UU BPJS as follows: (1) 'Pemberi kerja secara bertahap wajib mendaftarkan dirinya dan pekerjanya sebagai peserta kepada BPJS sesuai dengan program jaminan sosial yang diikuti.'

The provision in Article 15 paragraph (1) UU BPJS shows that registering labor as the member of BPJS Ketenagakerjaan is an obligation (Samekto, 2019). Since there is a law orders to do the obligation, the entrepreneurs is bound to do so. If any of the entrepreneurs is not following the rule, so as it has been explained previously, they will be considered failed to fulfil their obligation or performance. For the source of the failure to conduct the engagement is law, then the punishment should also be determined by the law (undang-undang) that governs the issue.

In undermining the punishment for those who do not registering their labor as the member of BPJS Ketenagakerjaan, then we must follow the terms in article 17 UU BPJS as follows (Samekto, 2019). (1) Pemberi kerja selain penyelenggara negara yang tidak melaksanakan ketentuan sebagaimana dimaksud dalam Pasal 15 Ayat (1) dan (2), dan setiap orang yang tidak melaksanakan ketentuan sebagaimana dimaksud dalam Pasal 16 dikenai sanksi administratif; (2) Sanksi administratif sebagaimana dimaksud pada Ayat (1) dapat berupa: a. Teguran tertulis; b. Denda; dan/atau; c. Tidak mendapat pelayanan public tertentu.

The mentioned provision above shows that should any of the entrepreneurs is failed to do their obligation to register their labor as the member of BPJS Ketenagakerjaan, then government could sentenced them with administrative sanction. Administrative sanction is consist of written remark, fine, and not obtain certain public service.

Based on the explanation that has been described, we could inferred that the negligence of the entrepreneurs in registering the labor as the member of BPJS Ketenagakerjaan is an infringe-

ment of law that could be punished with administrative sanction. The given administrative sanction could be in form of written remark, fine, or not obtaining a certain public service. The sanction addressed is depend on the portion of the violation conducted by the entrepreneurs.

3.2. The legal responsibility of the entrepreneurs towards their labors who are not registered as the member of BPJS ketenagakerjaan

The negligence of the entrepreneurs in registering their labor as the member of BPJS also brings disadvantages for the labors (Andryandy, 2019). This means that the entrepreneurs do not fulfill the rights of the labors as ordered by the law. Thus, this case could also be analysed based on the legal consequences of the entrepreneurs action towards the labors interest.

The working relationship between the labor and the entrepreneurs is based on a working agreement. Based on a working agreement, both parties could noticed their rights and obligation. The right of the entrepreneurs and vice versa could be easily found in the contract of working. Thus, if any of the party failed to do their obligation, then the other party deserved the rehabilitation of the harming of their right.

The negligence of the entrepreneurs in Kabupaten Bekasi in registering their labors, however is not based on a contract. At the previous discussion, we have determined that one of the binding resource is an agreement. In this case, the negligence of the entrepreneurs is not based on agreement, or even if the mandatory of registering the labors as the member to BPJS is regulated in the working agreement, still, the obligation is binding because there is an order from the law regulates it. Hence, a working agreement that contain a consensus that the entrepreneurs is not mandated to register their labors as the member of BPJS Ketenagakerjaan is null and void.

We notice that the failure is not the part of the violation of a contract since the order is existed in the law already. Thus, the negligence of the entrepreneurs in registering the labor as the member of BPJS is not proper to be approach using the event of default in agreement. Therefore, the responsibility of the entrepreneurs towards the labors must be seen from the different type of violation.

The relationship between the entrepreneurs and the labors is a private relationship. Both parties bring their own interest in the working agreement. The labor interest is the compensation such as wage and the other benefit and or facilities, while the interest of the entrepreneurs is to gain service from the labor. It is different with the relationship between the entrepreneurs and the government which is a public interest. The government has interest to make sure that every citizens including legal entity is following the governed rules in the state. In this case, the regulation about the social security. Thus, when an entrepreneur does not register his labor to BPJS, then government has interest to discipline the entrepreneurs since the it is an order of a law/Undang-Undang.

The negligence in public sector has been discussed at the previous discussion that the government could punished the entrepreneurs using administrative sanction. At the same time, the negligence is also a violation upon the labor rights, which is in the territory of private law. Hence, the consequence caused by this situation should be analyzed using the civil law approach.

Since the negligence is not based on an agreement, then the entrepreneurs could not be prosecuted upon an event of default. Thus, the negligence could be prosecuted by using the law that governs the action that bring disadvantages to other party. In legal term, this action recognized as tort. The tort theory states that an action or negligence that are contrary to the rights of others, or contrary to the actor's responsibility, ei-

ther by decency, promiscuity on another person or objects. Meanwhile, whosoever through his actions have brought loss to others, should compensate remedies.

In Indonesia, such as action is also regulated based on Article 1365 Indonesian Civil Code which states:

“Tiap perbuatan yang melanggar hukum dan membawa kerugian kepada orang lain, mewajibkan orang yang menimbulkan kerugian itu karena kesalahannya untuk menggantikan kerugian tersebut’

The provision above shows that if someone conducts action that bring disadvantage to the other party, the one must be responsible by paying remedy to the party who suffering by the action. Thus, the entrepreneurs in Kabupaten Bekasi negligence in registering the labors to BPJS is also an action that could brought disadvantages to the labor. Without becoming the BPJS member, then when the labors get some accident during the working, or get ill, or died, then they are not covered by the BPJS program that they supposed to join based on the law.

Labors deserve remedy by the negligence action of the entrepreneurs. In the tort violation, the plaintiff could asked for two kinds of compensation. First, is material compensation. This kind of compensation has been explained at the previous sub-chapter that this compensation consist of expenditure, basic loss, and interest or potential profit. In addition, in tort, the plaintiff also lawful to prosecute immaterial loss. This kind of loss is not admitted in case of event of default. However, it is recognized in tort. Immaterial loss is the loss caused by the occurrence of bad feeling, uncomfortable, and the disturbance of the peace of mind that occurs because of the action of the defendant. The amount is unlimited. The plaintiff is free to assess this immaterial loss, though in the end, if the case is brought to the trial, which in this case is the area of general court, it would be

the authority of the judges to determine the amount of the immaterial loss.

This case, referring to its unique characteristic in the sector of manpower affairs, it could be settled also through the law of manpower, especially industrial relations law. To proceed this case through industrial relations law, labors need to follow the bipartite procedure in advance, by discussing the case regarding the negligence of the entrepreneurs as the member of BPJS Ketenagakerjaan directly, face to face with the entrepreneurs.

In case that the entrepreneurs admitted their mistake and take initiative effort to register the labor as the member of BPJS Ketenagakerjaan, then the case would be settled and closed. Nevertheless, if the bipartite process is failed, then the labors could proceed the case to the tripartite process by involving the third party as the mediator to help the both parties to settle the case, and in this case, government could be asked to be the third party. If the tripartite procedure also failed, then the labors could submitted the lawsuit to the industrial court for a dispute of right, namely the right to be registered as the member of BPJS Ketenagakerjaan. In the lawsuit, labor could asked the judges to command the entrepreneurs to register the labors to be the member of BPJS Ketenagakerjaan.

In conclusion, the negligence of the entrepreneurs in Kabupaten Bekasi in registering their labor as the member of BPJS Ketenagakerjaan is a tort. As a result, the labors deserve some compensation to rehabilitate their right. The components of the compensation in tort consist of material and immaterial loss. Material loss including expenditure, basic loss, and interest. Immaterial loss is unlimited, the interested party is free to prosecute the amount of the immaterial loss.

Effort taken to fight the tort could be proposed by the labor to the general court, started in the district court. Beside, this case could also be settled in industrial court by submitting a lawsuit

of a dispute of right. The negligence event of the entrepreneurs in registering their labor as the member of BPJS Ketenagakerjaan could be perceived as a part of the dispute of right because becoming the member of BPJS Ketenagakerjaan is the right of every labor as it has been stipulated in law of BPJS/UU BPJS. Through a lawsuit upon a right dispute, the labor could asked the judges to order the entrepreneurs to register the labor as the member of BPJS Ketenagakerjaan. The judges decision that command the entrepreneurs to register their labor as the member of BPJS Ketenagakerjaan would bring a legal consequence to the entrepreneurs to as soon as possible, based on the court verdict as well as the law, to register the labor to be the member of BPJS Ketenagakerjaan.

4. Conclusion

The negligence of the entrepreneurs in Kabupaten Bekasi in registering their labors as the member of BPJS Ketenagakerjaan would brought consequence that the entrepreneurs could be punished with administrative sanction. Administrative sanction consist of written remark, fine, and prohibition to access a certain public service. The imposed sentence would be depend on the weight of the violation.

Legal responsibility of the entrepreneurs towards their labor for the negligence in registering their labor as the member of BPJS would made their action be considered as a tort. Consequently, they could be imposed to conduct an obligation in form of paying remedy to rehabilitate the right of the labors. The remedies could be in form of material and immaterial loss. Material loss consist of the expenditure, basic loss, and interest. Meanwhile, immaterial loss is unlimited, the party who is suffering the loss is free to determine the amount of the compensation. This issue could be settled in industrial court by submitting a lawsuit of the dispute of right. The negligence of the entrepreneurs in registering the labor as the mem-

ber of BPJS Ketenagakerjaan could be considered as a dispute of right because being the member of BPJS Ketenagakerjaan is the right of labors based on the order of UU BPJS.

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