

**LEGAL PROTECTION FOR WORKERS WHO HAVE WORK ACCIDENTS AND NOT REGISTERED IN THE BPJS PROGRAM**

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**ABSTRACT:** Writing this journal aims to determine legal protection for workers who experience work accidents and are not registered in the BPJS program. In national development the role of manpower is very important, so that protection of manpower is very much needed to guarantee the basic rights of workers/laborers and guarantee equality of opportunity and treatment without discrimination on any basis to realize the welfare of workers/laborers. Guarantee of personal protection and safety and interests during the work relationship. This writing uses a normative juridical approach. The specifications for this writing are "discritical analysis", because it will analyze the main issues under study based on statutory regulations. Workforce protection in the form of compensation in the form of money as a substitute for part of the reduced income as a result of events or circumstances experienced by workers in the form of work accidents, illness, pregnancy, old age and death. If a worker experiences a work accident, he is entitled to receive compensation in the form of money and medical expenses from the BPJS or from the employer if he has not registered as a BPJS participant. for freelance or contract daily workers if there is a work accident which results in him being unable to work, the company provides a policy of bearing hospital costs and not deducting wages on that day and the company is required to register with BPJS for health and employment in accordance with government regulations.

**Keywords:** Workforce, Work Accident, BPJS

## **INTRODUCTION**

Development in the field of manpower is part of efforts to develop human resources as an integral part of the 1945 Constitution, which aims to create a just and prosperous society. The participation of the workforce in national development is increasing accompanied by the various challenges and risks it faces, therefore it is necessary to provide protection, maintenance and improvement of welfare to the workforce so that it will be able to increase national productivity.<sup>1</sup>

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<sup>1 1</sup> Zainal, Asikin, *Dasar-Dasar Hukum Perburuhan*, PT. Raja Grafindo Persada, Jakarta, 2010, hlm. 95

Labor is one of the steps of economic development, which has a significant role in all national activities, especially the national economy in terms of increasing productivity and welfare. Abundant labor as a driver of economic life and is an abundant resource.<sup>2</sup> Therefore, jobs are needed that can accommodate all workers, but workers who have the skills and expertise according to their abilities, so that the workforce needed can increase company productivity.<sup>3</sup> Skilled workers are much needed by companies, where to ensure the health and safety of workers it is necessary to establish labor protection, because there are many risks that workers can experience in carrying out their work. If at any time the workforce experiences illness due to work, work accidents or old age, there has been an appropriate compensation for what he has done

Labor is an important factor in a company. The more technology develops in various business sectors, the greater the potential that can threaten the health and safety of the workforce. Therefore, efforts are needed to foster, direct, and provide protection for the workforce. If workers are treated according to their dignity, then the company can achieve results that are in accordance with the goals desired by the company

Occupational safety is safety related to machines, aircraft, tools to materials and their management processes, the foundation of the workplace, and their environment and ways of doing work.<sup>4</sup> So this definition leads to the interaction of workers with machines and other tools used, or the interaction of workers with their work environment. So the risk of accidents can occur at any time, for this reason, awareness about the safety and health of workers is very necessary.

Occupational accidents including occupational diseases are risks that must be faced by workers in carrying out their work. Protection against work accidents is the responsibility of employers or companies, therefore to overcome the loss of income caused by the risk of death or disability it is necessary to have work accident insurance, employers also have an obligation to pay contributions to insurance or other social security.

Manpower protection for workers is very important, in accordance with the implementation of the mandate of the 1945 Constitution (hereinafter referred to as the 1945 Constitution), in particular Article 27 (2) concerning the rights of citizens to work and a decent living for humanity. Given how important the role of employment is for state-owned and private-owned institutions/enterprises in an effort to help workers to obtain their rights, Law Number 13 of 2003 concerning Manpower was formulated.

Along with the development of the era and increasing time, from year to year the number of companies is increasing. However, the increase in companies has not been accompanied by company compliance to include workers/laborers in social security, especially work accident

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<sup>2</sup> Lalu Husni, *Pengantar Hukum Ketenagakerjaan*, (Jakarta: Raja Grafindo Persada, Inc., 2014). hal.47

<sup>3</sup> Zainal Asikin, *ibid.* hal.76

<sup>4</sup> Suma'mur, 1989, *Keselamatan Kerja dan Pencegahan Kecelakaan*, Jakarta, Haji Masagung, him.l

insurance. This non-compliance and non-discipline by the company has resulted in the work accident security program being deemed ineffective to implement because there is no awareness on the part of the company to comply with these regulations.

In practice, even though the social security program has been designed since 1992, in fact there are still workers who have not become BPJS participants, especially casual daily workers or contract workers.

From the description of the background above, a problem arises, what form of protection is provided for workers who experience work accidents that are not registered in the BPJS program?

## **METHOD**

This writing uses the Juridical-Normative approach method, which is focused on examining the application or principles or norms of positive law.<sup>5</sup>

The specification of the writing method used is analytical descriptive which aims to provide a detailed, systematic and comprehensive description of everything related to problems and evidence,

## **DISCUSSION**

In labor law, the form of legal protection provided is in the form of legal protection in the field of work security, where both in a relatively short or long time it will be safe and there is a guarantee of safety for workers. With legal protection for workers, the state obliges employers to provide work safety equipment for workers. In terms of liability to workers in the event of a work accident when carrying out their obligations at work, the employer will bear the burden that arises materially by providing reimbursement of costs incurred as a result of work accidents.<sup>6</sup>

In Government Regulation Number 44 of 2015 Work accident is defined as an accident that occurs in a work relationship including illness due to work relations, as well as work accidents that occur on the way from home to work and return from using the usual road or the road worth going through. However, not all work accidents can be categorized as work accidents. There are several types of accidents that initially could not be categorized as work accidents, but due to technological developments these types of accidents are included as work accidents. With such developments, it does not only cover workplace accidents, but also traffic accidents that occur when going to and from work. Likewise, work accidents are sometimes extended to include work-related illnesses.

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<sup>5</sup>Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, 2006, hal. 295.

<sup>6</sup>Soedarjadi, *Hukum Ketenagakerjaan di Indonesia*, Pustaka Yustisia, Yogyakarta, 2008, hal. 53

Types of work accidents, namely<sup>7</sup>:

1. The first group, which defines work accidents narrowly, namely groups that only include work accidents that occur in companies;
2. The second group, which means accidents that not only occur in companies, but also diseases that arise as a result of work relations in the company where they work;
3. The third group, which defines a work accident broadly, is the type of accident which includes the first class and the second class plus (traffic) accidents that occur when going home and going to work, by taking the usual route.

An accident is defined as an unexpected event, originally unwanted that disrupts the regulated process of an activity and can cause harm to both humans and or property, while a work accident is an unexpected and unexpected and unplanned event that results in injury. , illness, loss both to humans, goods and the environment.<sup>8</sup>

Meanwhile, according to Manulang work accidents include:

1. Occupational accidents that occur in the workplace or the workplace environment;
2. Accidents that occur on the way to and from work, as long as the journey is reasonable and is usually passed every day;
3. The accident occurred elsewhere in the course of the assignment or was directly related to the assignment and there was no element of personal interest
4. Diseases arising from work relations.

Legal protection is defined as a form of government legal action or action given to legal subjects in accordance with their rights and obligations which are carried out based on positive law in Indonesia. Legal protection arises because of a legal relationship. Legal relations are interactions between legal subjects that have legal relevance or have legal consequences.<sup>9</sup>

Legal protection can also be interpreted as all efforts made consciously by everyone as well as government and private institutions aimed at securing, controlling and fulfilling life welfare in accordance with existing human rights.<sup>10</sup>

Protection of workers' rights originates from work in Article 27 paragraph (2) of the 1945 Constitution, namely that every citizen has the right to work and a decent living for humanity. In addition, the guarantee of protection for work is also stated in the provisions of Article 28 D paragraph (1) of the 1945 Constitution, namely that everyone has the right to work and receive fair and proper compensation and treatment in work relations. these provisions show that Indonesia's right to work has an important place and is protected by the 1945 Constitution. Article 86 of the Manpower Law No. 13 of 2003 one of which is safety and health.

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<sup>7</sup> Zaeni Asyhadie, *Hukum Kerja* (Hukum Ketenagakerjaan Bidang Hubungan Kerja), PT.RajaGrafindo Persada, Jakarta, 2008 hal 131

<sup>8</sup> "Definisi dan Pengertian Kecelakaan Kerja Serta Latar Belakang Faktor Terjadinya Kecelakaan Kerja" URL: <http://www.definisi-pengertian.com/2015/07/definisi-pengertian-faktor-kecelakaan-kerja.html>(diakses tanggal 28 Oktober 2017)

<sup>9</sup> Soeroso, *Pengahantar Ilmu Hukum*, Cetakan Kedelapan, Penerbit Sinar Grafika, Jakarta, 2006, hal. 49

<sup>10</sup> Yulies Tiena Masriani, *Pengantar Ilmu Hukum*, Sinar Grafika, Jakarta, 2008 hal.7

Article 86 paragraph 1 of the Labor Law also states that every worker has the right to obtain protection for:

- a. Occupational Health and Safety
- b. Morals and decency
- c. Treatment in accordance with human dignity and values as well as religious values

Work safety basically stems from 2 (two) important things, namely security and work order. to protect worker safety in order to realize optimal work productivity, work safety and health efforts are carried out. this protection is carried out in accordance with the applicable laws and regulations to realize work safety protection, the government has made efforts to foster norms in the field of manpower.

Thus, the protection for these workers will cover<sup>11</sup>:

- a. Occupational safety norms covering work safety relating to machines, aircraft, work tools, materials and work processes, working conditions and the environment and ways of doing work
- b. Occupational health norms and company health hygiene which includes maintaining and enhancing the health status of workers, caring for sick workers
- c. Work norms which include protection for workers related to working time, pay breaks, leave, women's work, children, the decency of worship according to each religion's beliefs that are recognized by the government and work morale that guarantees work efficiency.

For workers who get accidents due to work, are entitled to compensation for treatment and rehabilitation as a result of accidents and or work-related illnesses, their heirs are entitled to compensation.

Social security is a form of government service to the community in accordance with the state's ability to provide relief for the community from an economic point of view and effective use through agencies or organizations. In line with this, the government deems it necessary to have a tool in the form of a special organization or body that handles social security. Prior to 2014, there were four BUMNs that acted as organizers of the social security program, namely PT. Jamsostek, PT. Taspen, PT. Asabri and PT. Askes.<sup>12</sup>

The BPJS Law then orders the transformation of the four Limited Liability Companies which have been engaged in social security into two BPJS. PT. Askes transformed into Health BPJS in accordance with the provisions of Article 60 paragraph (3) letter a Law on BPJS and PT. Jamsostek becomes Employment BPJS in accordance with Article 62 paragraph (1) of the BPJS Law. These two companies, which were previously Persero companies or engaged in the private sector, have turned into public bodies that prioritize the interests of participants or are non-profit.

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<sup>11</sup> Kartasapoetra, G. dan Rience Indraningsih, *pokok-pokok hukum perburuhan*, Armico, Bandung, 1982, hal.43-44

<sup>12</sup> Jamsos Indonesia, "Transformasi Badan Penyelenggara Jaminan Sosial" URL: <http://www.jamsosindonesia.com/cetak/printout/387> (diakses pada tanggal 30 Oktober 2017)

To get health insurance and social security, workers/laborers must register and pay contributions as BPJS participants which because of the cross-subsidy policy a worker/laborer is automatically included in the category of Non Recipients of Health Insurance Contribution Assistance (Non PBI), consisting of Civil Servants Civilians, members of the TNI, members of the police, state officials, government employees, non-civil servants, private employees, workers outside the employment relationship or self-employed, and including foreign nationals who work in Indonesia for a minimum of 6 (six) months.<sup>13</sup>

Establishment of the BPJS Law to implement social security programs throughout Indonesia. With this law, BPJS Ketenagakerjaan is formed, which organizes work accident security, old-age security, pension security and death security programs. Article 15 paragraph (1) of the BPJS Law, states "employers are gradually obliged to register themselves and their work as participants with the social security administering agency in accordance with the social security program that they are participating in".

Even though provisions have been issued regarding the obligation of employers to register their workers as social security participants, there are still obstacles encountered in registering casual daily workers. Freelance Daily Workers have not been registered because their working period is only three months, and it is not certain that these workers will be needed again.

There are several obstacles when casual daily workers are registered with social security:

1. Administrative factors, namely freelance daily workers do not want their monthly salary to be deducted to pay contributions to BPJS, they think it is better if the money is given to his wife;
2. The factor of casual daily workers who are only contracted for three months, and it is not certain that the contract period will be extended again;
3. The factor of workers who do not want to register themselves in the BPJS program because the contract period is only three months;
4. The factor is the lack of knowledge of workers about BPJS.

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<sup>13</sup> Jamsos Indonesia, *ibid*

In carrying out the protection of workers, efforts must be made to provide proper protection and care for all workers in carrying out their daily work, especially in the field of work safety and regarding labor protection norms.<sup>14</sup>

The purpose of protecting workers is to guarantee the continuity of a system of working relations in harmony without being accompanied by pressure from strong parties to weak parties.<sup>15</sup>

The stages for every employer and employee to enroll in the BPJS program organized by the government. In addition to obtaining social protection benefits for employers and workers, registering with the BPJS is a duty as a citizen. The efforts to deal with barriers to worker registration in the BPJS program are:

1. There is an agreement, namely the provisions regarding the 3-month period of the work contract. The agreement is made clearly regarding the rights and obligations of each party, in the agreement of course it also prioritizes forms of protection for casual daily workers;
2. Provide socialization to all workers regarding the risks of work accidents and the obligation to register for the BPJS program even though the work contract is only 3 months;
3. Provide outreach to workers who have just worked for the company about the form of social security organized by the government, namely BPJS.

Workforce protection in the form of compensation in the form of money as a substitute for part of the reduced income as a result of events or circumstances experienced by workers in the form of work accidents, illness, pregnancy, old age and death. From the provisions above, it can be seen that if a worker has a work accident, he has the right to receive compensation in the form of money and medical expenses from the BPJS or from the employer, if he has not registered as a BPJS participant, he still has the right to receive protection from work accidents. Furthermore, regarding compensation in relation to the workforce that must be provided by the company is to provide workers' rights when employees experience work accidents, then all payments issued by the victim or his family must be the responsibility of the parties involved, namely BPJS or employers. Thus workers who experience work accidents at work are entitled to what is their right as stipulated in the Labor Law and the BPJS Law, but in practice the employer as a strong party often ignores this protection in the event of a work accident, where workers those who are not registered with BPJS, the employer is not responsible for the treatment/financing incurred by the worker due to the work accident. The Manpower Act regulates employers who do not register their workers as BPJS participants, so employers are responsible for providing protection to workers who experience accidents at work so that companies or employers for casual daily workers if there is a work accident which results in them being unable to work, the company provides the policy of bearing hospital costs and not

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<sup>14</sup> Wiwiho Soedjono, *Hukum Perjanjian Kerja*, Bina Aksara, Jakarta, 2000, hal 42

<sup>15</sup> Abdul Khakim, 2007, *Pengantar Hukum Ketenagakerjaan Indonesia*, PT. Citra Aditya Bakti, Bandung, 2007, hal. 103

deducting salaries on that day and companies are required to register with BPJS for health and employment in accordance with government regulations

## CONCLUSION

Workforce protection in the form of compensation in the form of money as a substitute for part of the reduced income as a result of events or circumstances experienced by workers in the form of work accidents, illness, pregnancy, old age and death. From the provisions above, it can be seen that if a worker has a work accident, he has the right to receive compensation in the form of money and medical expenses from the BPJS or from the employer, if he has not registered as a BPJS participant, he still has the right to receive protection from work accidents. The Manpower Act regulates employers who do not register their workers as BPJS participants, so employers are responsible for providing protection for workers who experience accidents at work so that companies or employers for freelance daily workers or contract employees

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