



Analysis juridical implementation of occupational health and safety and social security/BPJS employment for workers in notary offices

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ABSTRACT

This research uses normative juridical research methods which are used to analyze the effectiveness of Law of the Republic of Indonesia Number 2 of 2014 concerning the Position of Notary Public, Law Number 40 of 2004 concerning the National Social Security System and Law Number 24 of 2011 concerning the Social Security Organizing Body for Notary Workers play a crucial role in aiding Notary performance in serving deed making services, such as assisting in preparing for making, registering, and validating private letters and deeds and serving as a witness at the inauguration of a deed (Instrumentair Witness). Workers are a crucial component of a Notary's duties and responsibilities, as they hold a strategic position in the process of creating a document; without workers, the Notary's design cannot be carried out as intended. Therefore, the existence of Notary employees must be taken into account so that they can carry out the Notary's instructions effectively.

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1. INTRODUCTION

The Law of the Republic of Indonesia Number 40 of 2004 (hereinafter abbreviated as Law 40/2004) on the National Social Security System (abbreviated as the SJSN Law) refers to the Social Security Administrative Body (abbreviated BPJS). According to Article 1 point 6 of the SJSN Law, the Social Security Administering Body (abbreviated as BPJS) is a legal entity established to administer social security programs. (Suwandi and Wardana 2022) The National Social Security System is essentially a government program that seeks to ensure the social protection and welfare of all Indonesians. Through this program, every resident is expected to be able to meet their fundamental requirements in the event of a loss or reduction in income due to illness, accident, unemployment, old age, or retirement. (Mani 2019)

The legal basis for establishing the SJSN Law, which is the foundation of the social security system, is further explained in a general explanation, which is an authentic interpretation and a historical record of the formation of the Social Security Law, in which it is stated: the dynamics of the development of the Indonesian nation have given rise to challenges and demands for addressing various unresolved problems. This is one of the social functions that a Notary must perform; a Notary is no longer just a deed maker but also plays a significant role in providing legal advice or legal advisement to appearers or prospective appearers regarding the deed that will be made or is being made. In order to carry out their authority and duties, notaries require the assistance of employees, in this case workers. Notary employees play an essential role in facilitating the performance of

Notaries in providing deed-making services, such as assisting with the preparation, registration, and legalization of privately-made letters or deeds and serving as a witness during the formalization of a deed (Instrumentair Witness). (Tantimin and Sinukaban 2021a) Workers are a crucial component of a Notary's duties and responsibilities, as they hold a strategic position in the process of creating a document; without workers, the Notary's design cannot be carried out as intended. Therefore, the existence of Notary employees must be taken into account so that they can carry out the Notary's instructions effectively. (Danurdara 2018).

Considering the significance of employees, it is necessary to provide them with welfare guarantees so that they can perform their duties with dedication, as stipulated in Article 27 paragraph 2 of the 1945 Constitution, which states: "the right to work and a decent living for humanity" and in Article 28 H paragraph (3) says "the right to social security that enables his full development as a dignified human being"

Then, in Article 34, paragraph 3, it states, "provision of proper public service facilities"; this indicates that every citizen in this case, namely Notary employees, are entitled to social security and have the right to employment and health care.

Moreover, in Article 1 number 9 (UU 24/2011) regarding the Social Security Administrative Body, an employer is defined as a person, an entrepreneur, a legal entity, or another entity that employs employees by paying them salaries, wages, or other forms of recompense. (Diandra and Putrawan 2013) Article 1 point 12 (UU 40/2004) of the National Social Security System and Article 1 point 9 (UU 24/2011) of the Social Security Administrative Body define an employer as an individual, entrepreneur, or other entity that employs workers or state administrators who employ civil servants by paying salaries, wages, or other forms of compensation. A worker is any individual who performs labor in exchange for a salary, wages, or other remuneration. Sociologically speaking, employees are weaker than employers. Due to the fact that in a system of employment relations, the employer has provided the workers with rules or restrictions that they must abide by, workers are not free to determine their own will toward their employer. (Iswaningsih and others 2021)

Participants' rights and duties cannot be isolated from the implementation of national social security. In principle, the most fundamental rights possessed by national social security participants are alluded to in letter an of the SJSN Law's balance (considerations) section, which states: (Bareta and Ispriyarso 2018a) *social security to be able to meet the basic needs of a decent life and increase its dignity towards the realization of a prosperous, just and prosperous Indonesian society*"

Article 2 of the SJSN Law states that the rights and obligations deriving from the implementation of the national social security program are carried out in accordance with the principles of humanism, the principle of benefits, and the principles of social justice for all Indonesians. (Prihatin 2007) Article 16 of the SJSN Law guarantees all registered users access to all benefits and information related to the operation of the social security program in which they are registered. Social security, work accident insurance, death security, pension security, and old age security are all covered under these provisions, and each participant has the right to receive all benefits and as much information as possible about the programs' administration. (Judge 2012)

Workplace comfort is a vital component of worker protection efforts. The convenience of the workforce is intended to ensure the safety of the workforce, which is a source for making deeds and a component of the efficient process of making a deed for a Notary. (Kaufmann 2007)

Employment and health social security have been regulated in (UU 24/2011) regarding the Social Security Administrative Body, which administers health insurance programs, old-age security programs, pension security programs, death security programs, and work accident insurance for all Indonesians, including foreigners who have worked in Indonesia for at least 6 (six) months. Based on these provisions, BPJS-organized social security benefits should be provided to Notary office employees. (Putri 2017)

The registration of social security by a notary is essential for protecting and facilitating the work of employees. It cannot be denied that workers face occupational hazards in the course of their employment, such as traffic accidents on the way to and from work or during working hours, which can result in illness or even mortality. (Julianti 2015) This social security is intended to aid employees in the event of occupational hazards. In actuality, there are still a number of issues where employees are not registered as social security participants, resulting in financial difficulties in the event of a

workplace accident or illness, whether endured by the worker or his family. (Parinduri 2019) This demonstrates that the Notary, as a public official, cannot offer employment security to his employees. Therefore, notaries play a significant role in protecting and fostering harmonious working conditions with their employees, allowing workers to feel at ease while performing their duties. (Costa 2004)

In accordance with Article 15 paragraph 1 of Law 24/2011 on Social Security Administration Bodies Employers who compensate their employees with salaries, compensation, or other forms of remuneration must register themselves and their employees as BPJS participants in accordance with the social security system. (Mantouvalou 2012) As employers, Notaries are progressively required to enroll their employees in BPJS Health and Employment by providing BPJS with complete and accurate information on employees and their families. This phase is governed by Presidential Regulation Number 109 of 2013 of the Republic of Indonesia concerning Phases of Social Security Program Participation. (Tantimin and Sinukaban 2021b)

Liability is a contractually based obligation. These rights and responsibilities arise when a contract or agreement establishes a legal relationship between the parties. As a result, as long as the legal relationship resulting from the agreement has not terminated, one of the parties is bound by a contractual obligation and is obligated to fulfill it. (Nurchahyo 2021)

On the other hand, responsibility is a burden of morality. Since the advent of an obligation, a responsibility has essentially been born as well. Accountability, according to Sidhartha, is the act of providing an explanation that can be justified morally or legally. Notaries can perform their duties and positions and are required to be responsible for themselves, their clients, and God Almighty; this responsibility can be interpreted as a fundamental willingness to fulfill their obligations. (Asyhadie 2007)

Article 17 of Law 24/2011 concerning Social Security Administering Bodies states that employers who fail to implement Article 15 of Law 24/2011 concerning BPJS are subject to administrative sanctions in the form of written warnings, fines, and/or denial of certain public services. Article 19 of Law Number 4 of 2011 pertaining to the Social Security Administration Agency requires employers to collect employee contributions and deposit them with the BPJS.

Article 15 of Law No. 24 of 2011 pertaining to BPJS has not been completely implemented. There are three forms of administrative sanctions for violations of Article 17 paragraph 1 of the BPJS Law: written warnings, fines, and/or denial of certain public services.

Administrative sanctions consisting of written warnings and penalties are administered by BPJS, while administrative sanctions consisting of the denial of certain public services are administered by the government or regional governments at BPJS's request. Administrative sanctions are imposed sequentially; if a written warning is ineffective, a fine is imposed, etc.

2. RESEARCH METHOD

This is a normative juridical study that uses legal principles, legislation, and doctrine as the primary legal materials. The primary legal materials are analyzed and interpreted against secondary legal materials in the form of literature or library materials in order to arrive at research results based on the issues raised.

3. RESULTS AND DISCUSSIONS

Legal remedies that can be taken by notary workers who are not registered as BPJS participants

Relationships between Notaries and Notary Employees

In the legal field, the development of legal relationships in society necessitates reliable evidence of legal actions and legal events. In the field of civil law, written evidence is recognized as admissible evidence and has the highest evidentiary weight compared to other types of evidence. Genuine written deed evidence has the strongest evidentiary weight and is admissible.

Increasingly, business, land, banking, and other social relationships necessitate an authentic deed as evidence to determine the rights and obligations of the parties, thereby increasing the need for a notary public. (Telaumbanua 2019)

On the other hand, the increase in notaries has led to a rise in the number of notary offices and notary employees. In accordance with the provisions of Article 7 paragraph (1) of the National Guarantee Law, within thirty (30) days of taking the oath/pledge of office as a Notary, the individual is required to do the following: (Hanifah 2020) Carry out his duties in a practical manner; Providing minutes, Notary organizations, and regional supervisory bodies with minutes of Notary oaths and pledges; Delivering the office address by providing a sample signature and initials and a red Notary seal/seal to the minister and other officials responsible for agrarian and land affairs, Notary organizations, heads of district courts, regional supervisory councils, and regents or mayors where the Notary is appointed. (Bareta and Ispriyarso 2018b)

According to the preceding article excerpt, every Notary is required to have his or her own office and employees. Article 2 of the Labor Law defines "worker/laborer" as "any person who works and receives wages or other forms of compensation." Therefore, a notary's office employee can be considered a worker/laborer. (Kahfi 2016)

The above provisions make it possible to classify a Notary as an employer (article 1 point 9 of Law 24/2011 concerning the Social Security Agency) because a Notary's office is an office that provides services in the field of services, in this case the service of making authentic deeds. (Putra and Yahya 2022)

If the Notary is classified as an employer and the Notary's office is a legal entity engaged in the service sector as described in the article, then the Notary's office is subject to all provisions of the BPJS Law pertaining to companies. (Muin 2015)

Attention and consideration for the comfort of employees can be demonstrated through the provision of adequate compensation or salaries and enrollment in the BPJS Employment and Health social security program. By planning, implementing, and supervising the comfort of the workforce, a Notary can reduce the number of workplace accidents and increase his or her chances of achieving success. (Sianturi and others 2021)

Workers are highly susceptible to occupational illness and accidents when assisting Notaries with deed making services, such as registering and validating privately drafted letters and deeds. Employment and health social security are governed by the BPJS Law, (Kurniawan 2022) which coordinates health insurance, old age security, pension security, funeral security, and work accident insurance programs for all Indonesians, including foreigners who work in Indonesia for at least six (6) months. On the basis of these provisions, those who labor in a Notary's office are BPJS-eligible employees. (YULIANTI [n.d.]

The registration of social security by a notary for employees is essential in order to protect and enable workers to carry out their duties with ease. Unquestionably, employees face occupational hazards in the course of their employment, such as traffic accidents on the way to or from work or during working hours, which can result in illness or even mortality. (Clarissa and Michael 2022) This social security is intended to aid employees in the event of occupational hazards.

Notaries play a crucial role in protecting and fostering a harmonious working relationship with their employees, allowing them to carry out their duties and responsibilities with ease. In accordance with Article 15 paragraph 1 of Law No. 24 of 2011 pertaining to BPJS, employers who pay their employees salaries, remuneration, or other forms of compensation are required to register themselves and their work as BPJS participants in accordance with the applicable social security system.

The Notary will eventually be required to register his business as a participant in the Employment and Health BPJS by giving the BPJS with comprehensive and accurate information on his employees as family members. The Presidential Regulation of the Republic of Indonesia Number 109 of 2013 (Perpres 109/2013) governs this phase of social security program membership phasing.

These rights and responsibilities might be triggered by the existence of a contractual or agreement-based legal relationship between the parties. Therefore, as long as the legal relationship spawned by the agreement has not terminated, one of the parties has a contractual obligation or responsibility to fulfill. In contrast, what we refer to as responsibility is a moral burden. Since the advent of an obligation, a responsibility has essentially been born as well. (Marzuki 2001)

The legal relationship between employees and employers in the context of the national social security system, which is governed by Article 13 paragraph (1) of the Social Security Law and Article

15 paragraph (1), which states: "obliged to register himself and his workers as participants with the social security administering body, in accordance with the social security program he is participating in, and workers have the right to register as participants in the social security program at the responsibility of the employer, if the employer has clearly not registered his workers with the insurance administering body social"

The legal basis for the Social Security Administrative Body's coverage of independent contractors. Several legal foundations can be used as guidelines for implementing employment social security programs for workers who work outside of work relations, including Law 24/2011 concerning Guarantee Agency and Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: PER24/MENVI / 2006 concerning guidelines for the Social Security program for workers who work outside of work relations.(Apeldoorn 1958)

In efforts to mobilize and utilize manpower, there are three (three) essential elements, each with its own scope of comprehension. The definition of the first element, deployment, is any action taken to employ employees. Utilization, the second element, refers to all actions taken to manage, utilize, and develop the workforce optimally, effectively, and efficiently. The final component of labor is described as follows: "any person, whether male or female, who is in and/or will undertake work, either inside or outside the employment relationship to produce goods or services, to meet his own needs and for society"

Based on the preceding description, it is evident that the definition of labor is broader than the concept of laborers. The workforce consists of everyone currently employed and those who will perform the task in the future. Even for those who are employed, work can be performed both within and outside of the employment relationship. On the other hand, the definition of worker is restricted to those who perform labor, particularly in the context of work relations. Thus, the definition of labor includes laborers.

Form of Employment Agreement between Notary Public and Notary Employee

A contract is an agreement in which the participants vow to perform specific actions. Frequently, the term agreement is also referred to as contract (contract). A contract and an agreement are synonymous because the point is that the parties reach an agreement regarding the things agreed upon and are obligated to obey and implement them, thereby creating a legal relationship known as an agreement. Thus, contracts and agreements can give rise to rights and obligations for the contracting parties, as the contract itself is considered a formal source of law.

There are two types of hypotheses regarding the interpretation of the agreement: the old theory and the new theory. Article 1313 of the Civil Code defines a contract as "an act by which one or more parties bind themselves to one or more individuals."

Sanctions for failure to register BPJS

Employers, non-Employers (as defined in Article 16 paragraph (1) of the BPJS Law), Workers, and Contribution Assistance Recipients (as defined in Article 16 paragraph (1) of the BPJS Law) are all required to register as members of BPJS. There are aspects of punishment against violators of the terms of Article 15 paragraph 91), Article 15 paragraph (2), and Article 16 paragraph (1) BPJS Law, which guarantee and ensure that individuals who carry this responsibility register for the social security program d BPJS. Article 17 paragraph 1 of the BPJS Law affirms: "*Employers other than state administrators who do not implement the provisions referred to in Article 155 paragraph (1) and paragraph (2), and any person who does not implement the provisions referred to in Article 16 shall be subject to administrative sanctions*"

There are three types of administrative sanctions imposed for violations of Article 17 paragraph (1) of the BPJS Law: written warnings, fines, and/or denial of certain public services. The denial of certain public services is imposed by the government or local government at the request of the BPJS. Administrative sanctions are imposed sequentially; if a written warning is ineffective, a fine is imposed, etc.

Specifically, the Republic of Indonesia Government Regulation Number 86 of 2013 (PP 86/2013) contains provisions regarding the mechanism for imposing administrative sanctions for failure to register for social security programs., workers, and recipients of contribution assistance in the administration of social security.

Labor Protection

Legal protection is the protection of dignity as well as the recognition of human rights owned by legal subjects on the basis of legal provisions of arbitrariness or as a set of rules or regulations that can protect one object from another. In Indonesia, legal protection is always based on Pancasila as an ideal foundation, despite the fact that its formulation is influenced by a diversity of western ideas whose conceptual emphasis is on the protection of human rights. Thus, in basic terms, the concept of legal protection for workers in Indonesia continues to be based on preserving workers' dignity. Individually and as a "worker", the following are human rights.

According to Article 5 of Law 13/2003 concerning labor, worker protection is rigorously regulated. The article emphasizes that every worker has the right and equal opportunity to obtain a decent job and a means of subsistence, irrespective of gender, ethnicity/race, religion, and certain political beliefs, in accordance with the interests and abilities of the workforce in question, including receiving equal treatment of people with disabilities. In addition, Article 6 mandates that employers grant rights and responsibilities to workers/laborers without regard to gender, ethnicity/race, religion, skin color, or political beliefs. ('DPR Dan Pemerintah Tegaskan UU Cipta Kerja Justru Menyerap Tenaga Kerja Indonesia | Mahkamah Konstitusi Republik Indonesia' [n.d.]

The guarantee of work safety protection will create an organized and tranquil working environment for employees, allowing them to concentrate on their work as much as possible without fear of being injured on the job.

For business owners, the presence of work safety measures in their enterprises can reduce the number of accidents that require them to provide social security. With the existence of and conformance with work safety regulations, the government's plans for the welfare of society will be realized by increasing the company's output in terms of both quantity and quality.

To ensure citizens' economic and social security, it is the state's duty to manage the social security system. Similar to the rights of other developing countries, Indonesia creates a social security program based on Funded social security, which is social security funded by participants and is still restricted to working people in the formal sector, in light of the country's financial capacity.

Protection of workers seeks to guarantee the fundamental rights of workers, as well as equality and treatment without any form of discrimination, in order to promote the well-being of workers and their families, taking into account the evolution of the business world and the interests of employers.

Sanctions for notaries who do not include their workers in the bpjs program

Types of Legal Sanctions and Social Security Laws

In addition to punishment, sanctions are a means of coercion to ensure compliance with the terms of regulations or agreements. If they do not comply with the agreement, sanctions are also interpreted as coercive proof as law. Sanctions are an integral element of the law's conclusion. In addition, every applicable rule of law in Indonesia includes penalties at the conclusion of the rule. In Indonesia, sanctions can be imposed not only through laws, but also through other regulations, such as ministerial decrees or other forms under laws. The inclusion of sanctions in various legal regulations is analogous to a requirement that must be included in every legal regulation. It is as if the law in question is ineffective, cannot be enforced, or will not be followed if the final section does not contain penalties.

Notaries, as ordinary individuals, can commit errors or infractions in the performance of their duties. Notaries who are found to have violated the obligations and prohibitions outlined in articles 16 and 17 UUN may be subject to sanctions in the form of civil sanctions, administrative sanctions, ethical sanctions, and even criminal sanctions. Civil sanctions are typically imposed for violations of private law, i.e., the body of laws that regulates interpersonal relationships and the pursuit of all interests.

Administrative sanctions are sanctions resulting from the government's (through authorized institutions) relationship with its citizens. Without the mediation of a magistrate, the government can impose the sanction directly. A notary who violates the notary's code of ethics may be subject to disciplinary action. The penalty was handed down by the notary court of honor. As for criminal

sanctions, because they are not rigorously outlined in the UUJN, criminal sanctions will be imposed if a notary in the course of performing his duties has committed an offense in accordance with the Criminal Code (KUHP).

UUJN clarifies four categories of administrative sanctions that are imposed for violations of several limitedly stated articles, namely written warnings, provisional discharges, honorable discharges, and dishonorable discharges. Administrative sanctions are imposed only if a violation of Article 7 paragraph (1), Article 16 paragraph (1) letters a to l, Article 16 paragraph (13), Article 17 paragraph (1), Article 19 paragraph (2), article 32 paragraph (1,2, and 3), article 37 paragraph (1), and article 54 paragraph 91) UUJN has been established.

Imposing Sanctions on Notaries

The primary agency with the authority to impose sanctions on a notary is the notary supervisory board, which was established by the supervisory board with certain powers that remain under its control. Therefore, the examining board should only have the authority to receive reports from the public and fellow notaries, conduct open examinations and trials, and if it is determined that the notary in question has committed a violation in carrying out his or her duties as a notary, then the panel of examiners reports it to the panel of supervisors along with a recommendation to impound the notary's commission.

In addition, the supervisory body will determine the sanctions imposed on the involved notary. The notary has the opportunity to submit objections to the supervisory authority that has imposed sanctions against him. If you are unsatisfied, you can appeal to a higher supervisory majlis institution and file a petition with the state administrative court if the supervisory board's decision does not satisfy the notary in question.

Criminal sanctions against a notary must be viewed in the context of the notary's official duties, indicating that the creation of a deed or the procedure for doing so must adhere to UUJN. Criminal sanctions against a notary are governed by the general criminal provisions of the Criminal Code if all the procedures for creating a deed have been adhered to. It is not possible for a notary to intentionally collaborate with or assist a person in creating a deed with the intent to commit a crime. UUJN does not regulate specific criminal acts for notaries; however, the accumulation of sanctions against notaries in the rules of law and regulations in the field of administrative law frequently contain more than one type of sanction; sometimes a provision of statutory regulations threatens their violation with both criminal and administrative sanctions.

In accordance with the provisions of the UUJN sanctions, a violation of the Notary's code of ethics can be equated to a violation of the law, allowing sanctions to be imposed based on the law. As the code of ethics is part of positive law, law enforcement norms apply to its enforcement.

According to the alternatives described previously, each law is expected to specify the penalties that are threatened against its consumers. Although criminal sanction provisions in the UUJN cannot be amended, the Criminal Code can be applied to a Notary who commits a crime if it can be proven that the Notary, along with the parties or appearers, made a deed with the intent to benefit only certain parties or appearers or to harm others. If this is proven, the Notary must be punished, and the Criminal Code can be applied to Notaries who commit violations in accordance with the principle of *Lex Specialis derogate legi generali*, which is interpreted a *contrario* (in opposition to the concrete meanings encountered and the events regulated in the law), that is, so long as there is no specific provision for criminal sanctions in the UUJN, the provisions for g.(Sumardi and Mubarak 2019)

On the contrary. If the issue can be resolved in a different, more effective manner without resorting to criminal law, it may not be necessary (*ultimatum remedium*). Jan remmelink maintains. "We must recognize that the degree of perpetrator conduct, the nature of the behavior that is harmful or harmful, including the circumstances surrounding the act compel us to draw the conclusion that other sanctions systems for purely technical reasons are less useful for tackling or preventing the commission of criminal acts, but nevertheless crime must always be viewed as the *ultimate remedium*"

The aforementioned opinion of Remmelink can be interpreted to mean that criminal sanctions are still required, but with due observance of the *ultimatum remedium* principle. However, incarceration can be avoided if the penalty is a suspended sentence or a fine, or if it is imposed on

a Notary. If you are compelled to impose a prison sentence, it must be proportionate to the defendant's errors, both minor and major, in order to provide future lessons and benefits for the defendant and the larger community.

4. CONCLUSION

Workers who are not listed as members of the Social Security Administering Body by a Notary can take legal action by filing a report with the regional supervision board where the Notary's office is located. This is stated in article 70 letter g of the UUJN, which says that the Regional Supervisory Board has the power to accept reports of potential breaches of the code of ethics or the law, even if they are not listed as BPJS members. The report is also sent to the Regional Supervisory Council by the Regional Supervisory Board.

The Central Supervisory Board of the Notary Organization makes choices about how to punish notaries who do not sign up their employees for the BPJS program. This is in line with articles 76 and 77 of the UUJN, which say what the Central Supervisory Council can do. In this case, the Notary could be punished for breaking the professional code of ethics because they broke the BPJS Law by not registering their workers in the social security program. This could come in the form of administrative sanctions, which include punitive sanctions and regressive sanctions (as a response to disobedience).

Suggestions for future research, then can provide a further study of the study written by the author in terms of how the right to distribute commissions to notary office workers on staff who work in cases where he also has more contribution therein, how to grant rights as workers related to leave rights, overtime rights as stipulated in labor laws.

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