



Law enforcement against employers who do not paying BPJS employment contributions by the Indonesian prosecutor's office

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Abstract

The Prosecutor's Office of the Republic of Indonesia basically has the authority to carry out prosecutions and carry out judge decisions in the criminal field. However, based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Indonesian Prosecutor's Office, apart from authority in the criminal field, the Prosecutor's Office has authority in the civil and state administration fields. Based on Article 30 Paragraph (2) of the Prosecutor's Law, the Authority of the Prosecutor in the civil and state administration fields, the prosecutor with special powers can act both inside and outside the court for and on behalf of the state or government. In practice, the Prosecutor's Office assists BPJS Employment in carrying out law enforcement duties or legal assistance regarding employers who commit criminal acts in the form of not paying BPJS Employment contributions. However, the Prosecutor's Office exercises its authority to assist BPJS Employment, not by prosecuting criminal cases under the BPJS Law, but by using civil instruments, namely conducting mediation, or filing civil lawsuits against employers who commit criminal acts.

Keywords: Prosecutors, law enforcement, BPJS ketenagakerjaan

Introduction

One of the institutions tasked with law enforcement in Indonesia is the Prosecutor's Office with the profession of prosecutor (prosecutor) as the implementer. Based on the Law on the Prosecutor's Office, the Republic of Indonesia has regulated the position, duties and authority of the Prosecutor's Office (Yusril Ihza Mahendra: 2012) ^[13]. In carrying out its functions, duties and authority, the Prosecutor's Office is independent of the influence of government power and the influence of other powers. This provision aims to protect the Prosecutor's profession in carrying out its professional duties, because the Prosecutor's Office, as the controller of the case process (*dominus litis*), has a central position in law enforcement.

The Prosecutor's Office is an institution embodying law enforcement in Indonesia which has the authority which is strictly regulated in Law no. 11 of 2021 concerning Amendments to Law no. 16 of 2004 concerning the Indonesian Prosecutor's Office, including in the criminal field, civil field, state administration field and in the field of public order and tranquility. The Prosecutor's Office of the Republic of Indonesia, apart from being a law enforcement agency, is required to uphold the supremacy of law, protect public interests, eradicate corruption, collusion and nepotism, and must also be able to secure and make development a success in order to create a just and prosperous society, maintain and uphold the authority of the government and state through the civil and administrative sector. state enterprise (B.D. Sri Marsita), based on the Prosecutor's Law in Article 32 it is stated that in addition to the duties and authorities stated in this Law, the prosecutor's office can be entrusted with other duties and authorities based on law.

Another authority of the Prosecutor's Office is in the field of civil and state administration, the prosecutor with special powers can act both inside and outside the court for and on behalf of the state or government. Then, in carrying out its

duties and authority in accordance with Article 33 of the Law concerning the Prosecutor's Office of the Republic of Indonesia in conjunction with Presidential Regulation Number 15 of 2024 concerning the Third Amendment to Presidential Regulation Number 38 of 2010 concerning the organization and Work Procedures of the Prosecutor's Office of the Republic of Indonesia, the prosecutor's office maintains a cooperative relationship with enforcement agencies. law and justice as well as state bodies or other agencies and the Prosecutor's Office carrying out their functions and authority in the civil sector and/or other public areas as regulated in the Law.

In practice, the Prosecutor's Office has developed working relationships and cooperation with other bodies/agencies, one of which is the Social Security Administering Agency (BPJS), both BPJS Health and BPJS Employment. BPJS Employment in carrying out its duties and functions as a social security organizer is very closely related to workers as well as employers or corporations. This can be seen in terms of legal relations relating to the contributions that employers will later pay to ensure their workers receive the social security program organized by BPJS. The legal basis for implementing BPJS is regulated in Law no. 24 of 2011 concerning BPJS. In Article 1 number 9 of the BPJS Law, it is stated that an Employer is an individual, entrepreneur, legal entity or other entity that employs workers or a state administrator who employs civil servants by paying salaries, wages or other forms of remuneration.

Research Method

This journal applies the type of normative legal research used in this research to investigate the legal norms contained in the regulations regarding the Authority of the Prosecutor's Office in enforcing the law against employers who violate the provisions of Law Number 24 of 2011 concerning Social Security Administering Bodies. and other laws. In this research, the approach used is the statutory approach. A

legislative approach is used to review and analyze all laws and regulations related to the legal issue being handled.

Discussions

In Law no. 24 of 2011 concerning the Social Security Administering Body (BPJS) Criminal Law Instruments relating to the Author's Research, namely that there is only 1 (one) article, namely criminal offenses or criminal provisions for Employers or Corporations that do not pay contributions and do not deposit contributions to BPJS listed in Article 55 of the BPJS Law, namely "Employers who violate the provisions as intended in Article 19 paragraph (1) or paragraph (2) shall be punished with a maximum imprisonment of 8 (eight) years or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)".

Article 19 paragraph (1) or paragraph (2) reads, namely (1) Employers are obliged to collect contributions that are borne by participants from their employees and deposit them to BPJS and paragraph (2) Employers are obliged to pay and deposit contributions that are their responsibility to BPJS. This means that actions by employers (including corporations) which are criminal acts and can be subject to criminal sanctions, namely fines or imprisonment, include employers who do not pay and do not deposit their workers' BPJS contributions to BPJS. However, in this case there are no implementing regulations in the BPJS Law or statutory regulations under other laws so that the implementation of law enforcement is not yet optimal.

Based on the results of the author's interviews with Jakarta BPJS Employment Supervisors and Inspectors, it was recorded that there were only 2 (two) cases that were tried and decided in violation of the criminal provisions in the BPJS Law, namely Sumedang District Court Decision Number: 109/Pid.Sus/2017/PN.Smd and Tanjung Balai Karimun District Court Decision Number: 172/Pid.Sus/2020/PN Tbk, regarding the application of criminal sanctions which are rarely carried out by Law Enforcement Officials regarding employers committing criminal acts under the BPJS Law (Junelpri Saragih: 2023).

That is related to the application of criminal sanctions which are rarely carried out by Law Enforcement Officials when employers commit criminal acts in the BPJS Law because the mechanisms and procedures as well as procedures for imposing criminal sanctions have not been regulated in the BPJS Law, for example, one of them is that there are no provisions in the BPJS Law which contains the minimum amount of arrears in the Employer's BPJS contributions which can be subject to criminal sanctions and so on so that law enforcement officials, especially the Prosecutor's Office, in order to create Justice and Legal Benefits apply the Principle of *Ultimum Remedium*, namely that if a case can be pursued through other channels such as civil law or administrative law, let it be This is done before applying criminal law (criminals are applied last). Priority is given to premium *remedium*, namely through civil law. That current law enforcement officers should use problem solving at the non-litigation stage when a problem occurs, if it is already in court (litigation) then it will be a win win solution (Fery Ichsan Karunia: 2024).

Win Win solution is to find the best way through negotiations. Meanwhile, Problem Solving seeks solutions to problems that arise. The solution to the problem is with a civil approach, because if you go directly through the criminal procedure mechanism, the process will be very

long and the State, through BPJS or the employer or worker, will not produce or get any benefits except just punishing the person.

Law enforcement against employers who do not pay BPJS Employment contributions in a civil manner first started with the existence of an MoU between the Central BPJS Employment and the Attorney General's Office No. Number: B-06/G/Gs.2/PKS/04/2022 and Cooperation Agreement between BPJS Health and the Indonesian Prosecutor's Office Number: B-10/G/Gs.2/PKS/09/2023 then followed by an MoU/cooperation agreement in regions starting from the provincial and district/city levels. For example, the MoU between BPJS Employment Banda Aceh and the Banda Aceh District Prosecutor's Office Number: PER/30/102022 B-0061L.1.10/Gs/10/2022 dated 12 October 2022.

Then, follow up on the MoU by, among other things, requesting legal assistance or Law Enforcement from BPJS Employment Banda Aceh to the Banda Aceh District Prosecutor's Office. Then the Banda Aceh Prosecutor's Office first examines the application from BPJS Employment Banda Aceh whether it falls within the scope of civil & state administration or not, using the Kajari mechanism to issue an order to make a review (SP-1) by appointing a reviewing attorney, then the reviewing prosecutor makes a review (S -5). From the results of the State Attorney's study, if it falls within the scope of Datun and legal assistance can be provided, the Banda Aceh Prosecutor's Office will notify BPJS Employment Banda Aceh as the applicant to provide a special power of attorney. Regarding the duties and authority of the State Attorney in carrying out legal assistance, the general preparations for the JPN are carried out with the following general preparations:

1. For every request for Legal Aid, the State Attorney appointed by the leadership is obliged to make a study containing a careful and complete legal analysis to:
 - a. determines whether it is included in the scope of duties and authority in the civil and state administration sector;
 - b. anticipates conflicts of interest with other fields; And
 - c. analyzing the Strengths, Weakness, Opportunities, and Threats (SWOT) of the case; in accordance with the civil and state administrative case administration forms.
2. The Strengths, Weakness, Opportunities, and Threats (SWOT) analysis as referred to in number 1) letter c) contains a technical juridical analysis of the case, from the aspects of statutory provisions, legal doctrine, and related jurisprudence or judicial decisions that can describe the possibility of success and potential weaknesses in the legal steps that can be taken, including the authority of the Prosecutor's Office to provide legal assistance.
3. Requests for Legal Aid from the State or Government can be accepted, except for Legal Aid related to criminal acts or personal acts.
4. If from the results of the study as intended in number 1) it is concluded that Legal Assistance can be provided, then the State Attorney will provide Legal Assistance in accordance with applicable procedures.
5. In the case of Legal Assistance for Civil and State Administrative Legal Issues, it is important that the head of the work unit that will carry out Legal

Assistance must report to the Deputy Attorney General for Civil and State Administration in stages.

6. The head of the work unit determines the need for exposure to the case in stages to determine the steps in the Legal Aid process.

Then, after receiving a Special Power of Attorney (SKK) from BPJS Employment, the Head of the State Prosecutor's Office makes a Substitution Special Power of Attorney to the State Attorney (JPN). Special Power of Attorney representing the State Government. State Attorneys represent the State or Government based on a Special Power of Attorney to handle legal issues in the civil and state administration fields.

The Substitution Power of Attorney is valid according to the scope and time stated in the Special Power of Attorney clause, unless otherwise determined based on statutory regulations. If necessary, the issuance of a Substitution Power of Attorney can be accompanied by an order from the work unit. The provisions regarding this authority are contained in Chapter IV of the Republic of Indonesia Prosecutor's Regulations Number 7 of 2021 concerning Guidelines for the Implementation of Law Enforcement.

State Attorneys in handling cases cannot choose to only handle cases that have a high success rate or reject cases that based on analysis are likely to be defeated. State Attorneys are obliged to make optimal efforts for the best success in each case, handling it professionally in accordance with applicable legal norms and provisions, by prioritizing professionalism.

In carrying out control and coordination of the implementation of legal aid, both non-litigation and litigation, the State Attorney after receiving a Special Power of Attorney is obliged to study and detect the presence or absence of indications of criminal acts in it and its connection with criminal cases that are currently being handled or may be handled in the future days, including:

- a. Coordinate and confirm technical fields and other related agencies.
- b. Coordination as referred to in letter a, for activities to recover state finances through litigation is carried out with the approval of the authorizer. If it is necessary to trace the assets of a potential defendant/respondent to apply for collateral confiscation (conservatoir beslag), coordination is carried out with the intelligence sector, asset recovery center (PPA), technical sector, and/or other related agencies.
- c. Coordination as intended in letters a and b is carried out within a maximum period of 30 (thirty) working days.
- d. The preparation of the lawsuit, answer, or response along with the preparation of the evidentiary plan shall be carried out no later than 14 (fourteen) working days after the period as intended in letter c.
- e. Coordinate with the authorizer to prepare a strategic plan for handling cases and the concept of appeals, resistance, information, answers or responses, the results of which are made and submitted in writing and are confidential from the head of the implementing work unit to the authorizer, with a copy to the head of the work unit at the same level above which is carried out no later than 7 (seven) working days after the period as intended in letter d.
- f. Filing a lawsuit, application or opposition where one of the legal areas of domicile of the defendant, respondent

or opponent is outside the legal area of the work unit of the District Attorney's Office and/or High Prosecutor's Office, the handling is carried out jointly by the State Attorney, State Attorney's Office and/or High Prosecutor's Office in accordance with the jurisdiction of the defendant's domicile and the State Attorney file the lawsuit, based on a Special Power of Attorney from the Head of the District Attorney's Office or the initiating High Prosecutor's Office.

In the implementation of settlement of cases outside the court (non-litigation), in principle every case in the civil sector is prioritized to be resolved outside the court. The preparation stages are carried out as follows:

- a. The State Attorney carries out duties based on the Substitution Special Power of Attorney with the administration of civil cases and state administration.
- b. The State Attorney collects data and information from the power of attorney and/or other related parties.
- c. The State Attorney must master the material which includes the case position, the required evidence, and other relevant matters.
- d. Coordinate and/or request expert opinions, invite experts or request official opinions from institutions or bodies that specifically master the technical aspects of certain problems for which Legal Assistance is requested with the approval and costs of the Attorney.

Then JPN can carry out its duties to carry out Non-litigation Legal Assistance first by inviting or summoning Business Entities that are in arrears by making an Invitation (S-3) and submitting a Receipt (S-4), and carrying out Mediation efforts to Business Entities that do not pay BPJS Employment Contributions.

The summons made by the prosecutor's team as mediators was carried out using a persuasive approach. Official summons of the entrepreneur as the employer to appear at the District Attorney's office. The content of the summons or invitation letter is to invite companies/legal entities/employers to mediate regarding the warning letter that has been given previously by BPJS Employment with the contents of the first warning for companies/legal entities that do not register the company and its staff as members of BPJS Employment. Companies that ignore and have not registered their workers as social security participants will be evaluated by the parties.

According to the author, although the State Attorney works based on a special power of attorney, he has the mental attitude of an adhyaksa who can act professionally and is not limited to what is stated in the special power of attorney. When carrying out their duties, the State Attorney looks like a lawyer so that he does not display his structural position but displays the ability to behave and act professionally in providing legal services to the authority granting the authority.

That the Attorney General first carries out Negotiation or Mediation Efforts with the Employer, if he does not want to pay the arrears or does not deposit the dues then the State Attorney Submits a summons to the Employer, if he still does not want to pay then the State Attorney Files a Lawsuit for Unlawful Actions Civil action to the District Court. When non-litigation legal assistance in the form of mediation is unsuccessful, JPN reports it to the leadership and to the applicant. Then an exposé was held between

BPJS Employment and the Head of the District Prosecutor's Office and BPJS Employment asked for a resolution of the Business Entities/Employers who did not pay this to be resolved through litigation/court with a letter of application. Then JPN filed a simple lawsuit at the Banda Aceh District Court.

This civil mechanism is implemented starting with the State Attorney communicating with the opposing party in the case both informally and formally by inviting the opposing party to carry out negotiations, if necessary, including the party giving the power of attorney. Every action of the State Attorney in carrying out negotiations must be coordinated with the power of attorney and the results reported to the leadership and submitted to the power of attorney in accordance with the administration of civil cases and state administration.

In carrying out negotiations, State Attorneys are guided by Article 1320 of the Civil Code and are obliged to understand the scope of state finances and state assets based on statutory regulations, both as separated state assets and as non-separated state assets.

The State Attorney, in this case, must understand the existence of existing or potential state financial losses resulting from a problem raised by the applicant. Avoiding legitimization through civil and/or administrative mechanisms for a criminal act of corruption. If during negotiations a peace agreement is reached, the agreement is stated in

- a. Peace agreement signed by the parties in the form of a notarial deed;
- b. Deed signed by the parties and witnesses legalized by a notary; or;
- c. An agreement signed by the parties and witnesses that is adjusted to the gravity of the case.

If the peace agreement as intended in letter d) is violated (default), the power of attorney can grant a new Special Power of Attorney to the State Attorney to realize the peace agreement that has been agreed upon. If negotiations do not reach a peace agreement, the State Attorney is obliged to make a report to the leadership and then the leadership will forward it to the person giving the power of attorney with the suggestion that the case can be resolved through Litigation.

Handling of non-litigation cases is declared complete with the parties agreeing or agreeing not to pursue settlement. The time for non-litigation resolution of cases is guided by standard operational procedures for handling civil and state administrative cases. Settlement of cases through court (Litigation), the preparatory stage carried out when the State Attorney acts as the plaintiff, namely the State Attorney carries out duties based on a Special Power of Attorney and Substitution Power of Attorney in accordance with the administration of civil cases and state administration.

State Attorneys are required to master the relevant laws and regulations and deepen the case material including preparing the necessary evidence. The prosecutor also coordinates and discusses with the power of attorney in the context of preparing the lawsuit and evidence. Coordinate and/or request expert opinions, invite experts, or request official opinions from institutions or bodies that specifically master the technical aspects of certain problems for which Legal Assistance is requested with the approval and costs of the authorizer. The lawsuit must contain at least:

- a. identity of the parties;
- b. concrete or basic arguments and reasons for the demands (*fundamentum petendi*);
- c. legal relationship between the defendant and the plaintiff; And
- d. demands or *petitum*.

The claim letter must comply with the statutory provisions regarding stamp duty. The State Attorney can conduct an exposure in front of the leadership and power of attorney to obtain input and guidance on the concept of the lawsuit. The State Attorney then registers the lawsuit with the Chief Justice through the clerk's office. When filing a lawsuit, the plaintiff registers a Special Power of Attorney and Substitution Power of Attorney and pays the lawsuit registration fee.

Activities resulting from the law enforcement activities of the State Attorney General have an important role in upholding the authority of the State or Government and legal interests which have broad public significance for law enforcement purposes, namely justice, legal certainty as well as benefit to society.

In this case, the State Attorney must have competence regarding civil and material and formal law required for handling cases. If deemed necessary, support supervision from the Deputy Attorney General for Civil Affairs and State Administration and consider the results of Law Enforcement activities that have been carried out. Attorneys must also avoid conflicts of interest and all forms of legal and ethical violations in carrying out law enforcement activities.

In practice, it is known that there are several employers who have been civilly sued by the Banda Aceh Prosecutor's Office for not paying BPJS Employment contributions in 2023, and the nominal amount of employer contribution arrears to BPJS Employment which was then civilly sued by the Banda Aceh District Attorney, namely, among others, in this table:

Table 1: There will be 5 (five) Employers/Business Entities sued civilly by the Banda Aceh Prosecutor's Office in 2023

No.	Name of Employer/Business Entity	Monthly Arrears	Amount Receivable
1	Pasha Jaya	7	Rp.97.543.495
2	Abdi Jaya Manunggal	7	Rp.68.242.321
3	Sepakat Maju Abadi	5	Rp.64.098.000
4	USMB	5	Rp.79.585.200
5	Meugah Asai Kana	4	Rp.145.407.120
Total			*Rp. 454.876.136

Sources: Indonesian Prosecutor's Office 2023

*In Indonesian Rupiah

That there are 18 (eighteen) employers who do not pay BPJS contributions (in arrears) in the year 2023 in the city of Banda Aceh, of which 5 (five) employers have civil lawsuits (litigation), while 13 (three) others were resolved using a non-litigation mechanism (mediation) and no employer was subject to criminal proceedings in accordance with article 55 of the BPJS Law.

The reason the Banda Aceh Prosecutor's Office or BPJS Ketenagakerjaan Banda Aceh is carrying out a civil lawsuit at the Banda Aceh District Court is for employers who do not pay BPJS, even though the employer, in accordance with the BPJS Law in Article 55, has committed a criminal

act, namely not paying and not depositing contributions to BPJS because as stated in It has been previously explained that the Prosecutor's Office applies the *Ultimum Remedium* principle, namely that the imposition of criminal sanctions against employers is a last resort. It would be better to apply the civil process first so that it can provide benefits to all parties, not just punishing people or corporations who then do not provide benefits. benefits for the parties.

It is known that there are also no minimum regulations for BPJS arrears for employers who can be subject to criminal sanctions. So, this is relevant if this situation becomes a reason for the State Attorney to resolve the matter in a civil manner, if it is linked to the principle of *ultimum remedium*, this action has a strong basis. Then the Civil Law instruments in the BPJS Law only take the form of complaints and dispute resolution through mediation or court from workers to BPJS regarding service quality that is deemed to be not good, and there is no technical regulation regarding how to settle civilly if the employer does not pay contributions.

In practice, the Prosecutor's Office exercises its authority to assist BPJS Employment, not prosecuting criminal cases under the BPJS Law, but rather using civil instruments, namely conducting mediation, or filing civil lawsuits against employers who commit criminal acts. This is of course done because the Prosecutor's Office applies the principle of *ultimum remedium* which makes punishment a last resort in law enforcement in the sense of prioritizing the principles of benefit and justice and filling the legal vacuum because in the BPJS Law there is no regulation regarding criminal procedural law and civil procedural law if the employer commits crimes. civil acts against the law.

Prof. Sudarto stated that the *Ultimum Remidium Principle* means determining and implementing new criminal sanctions after other sanctions have failed. In criminal law, such a function is called a secondary or subsidiary function of criminal law (secondary or subsidiary function). The *Ultimum Remidium* principle also requires that enforcement of new criminal law be necessary if other available legal mechanisms do not function optimally.

Therefore, related to law enforcement against employers who do not pay BPJS contributions, which should constitute a criminal offense, law enforcement officials must first try other legal mechanisms, one of which is the civil law mechanism. Because basically civil law aims to regulate and discipline relationships between individuals or legal entities without having to make a person or legal entity suffer (punishment). Civil settlement mechanisms must also be prioritized to overcome various actions that are detrimental to society, because by not paying BPJS contributions many parties are harmed so that the Employer paying the contributions that are his obligation to BPJS through a Civil mechanism is the best means for resolving this without having to criminalize someone or business entities that will only harm a handful of parties and civil settlements are deemed to have more benefits for many parties.

Conclusion

The Prosecutor's Office has the authority to carry out law enforcement to assist BPJS Employment regarding the actions of employers who do not pay BPJS contributions. We can see this in the respective regulations of the two institutions, namely in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the

Prosecutor's Office of the Republic of Indonesia and Law Number 24 of 2011 concerning the Social Security Administering Body allowing for foster cooperative relationships in carrying out their respective duties. In this case, there is an MoU or Cooperation Agreement between BPJS Employment and the Indonesian Prosecutor's Office Number: B-06/G/Gs.2/PKS/04/2022 concerning Handling Legal Issues in the Civil & State Administration Sector. In this case, the prosecutor's office also has authority in the field of civil and state administration, the prosecutor's office with special powers can act both inside and outside the court for and on behalf of the state or government.

Law Number 24 of 2011 concerning BPJS regulates administrative legal instruments in the form of the imposition of administrative sanctions given to employers who do not register themselves and their workers with BPJS. Then the Civil Law instruments in the BPJS Law only take the form of complaints and dispute resolution through mediation or court from workers to BPJS regarding service quality that is deemed to be not good, and there is no technical regulation regarding how to settle civilly if the employer does not pay contributions. "Furthermore, the Criminal Law instrument in the form of an employer who does not pay contributions and does not deposit contributions to BPJS is punished with a maximum imprisonment of 8 (eight) years or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)."

In practice, the Prosecutor's Office exercises its authority to assist BPJS Employment, not prosecuting criminal cases under the BPJS Law, but rather using civil instruments, namely conducting mediation, or filing civil lawsuits against employers who commit criminal acts. This is of course done because the Prosecutor's Office applies the principle of *ultimum remedium* which makes punishment a last resort in law enforcement in the sense of prioritizing the principles of benefit and justice and filling the legal vacuum because the BPJS Law does not yet regulate procedures for the imposition of criminal and civil sanctions if an employer commits crimes. unlawful acts whether civil or criminal.

Suggestions

It is recommended that BPJS propose to the Government and DPR to make changes to Law Number 24 of 2011 concerning BPJS because it is felt that its formulation still has many shortcomings and is not in accordance with legal developments in Indonesia. Second, it is hoped to create a joint training between BPJS Employment, the National Police, the Prosecutor's Office, and the Supreme Court regarding Law Enforcement for Employers who do not pay BPJS Employment contributions, and third, it is recommended to the government to create implementing regulations at the level of government regulations that regulate the implementation of imposition criminal sanctions and settlement of civil problems.

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