The Nature of Legal Protection for Formal Workers in the Social Security System

Isman Hardiansyah¹, Marwati Riza¹, Hamzah Halim¹, Achmad Ruslan¹

¹Doctoral Study Program in Law, Faculty of Law, Hasanuddin University, E-mail: ismanhardiansyah01@gmail.com

ABSTRACT

Since January 1, 2014, the implementation of the Social Security System in Indonesia, through BPJS Employment, has been a critical step in ensuring the welfare of formal workers. The government holds significant responsibility in guaranteeing the well-being of formal workers through social insurance, as stipulated by Pasal 34 dan Pasal 28H UUD 1945. The primary objective of this social security system is to protect workers from various socioeconomic risks and to support the welfare of both workers and their families. This research utilizes a normative and empirical approach, gathering data from legal literature and field studies conducted in several companies in Kendari. The findings show that although the number of formal workers registered in BPJS Employment continues to increase annually, challenges persist, particularly regarding company compliance and the lack of outreach in the informal sector. Another challenge is the disharmony between regulations at the central and regional government levels, leading to confusion in implementation on the ground. Informal workers, who constitute a significant portion of Indonesia's workforce, are still not fully protected within the social security system. The research emphasizes the importance of policy reforms that are more inclusive. including the simplification of registration procedures and more effective campaigns to increase participation among informal workers. In conclusion, while legal protection for formal workers has been reasonably effective, efforts to improve supervision, regulation, and expand coverage to include informal workers are necessary to create a more equitable and just social security system, in line with the principles of social justice enshrined in the constitution.

KEYWORDS: BPJS Employment; Regulatory Compliance; Legal Protection; Formal Workers; Social Security System

1. Introduction

Since January 1, 2014, the Indonesian government has implemented the National Social Security System (SJSN), fulfilling the mandate Pasal 34 UUD 1945 Constitution. BPJS Ketenagakerjaan is responsible for providing social protection to the workforce through a social insurance mechanism (Adha et al., 2020). Workers, who play a crucial role in economic development, must be guaranteed fair legal protection, a responsibility that falls on both the government and employers. This social security aims to support the welfare of workers and their families while also contributing to national productivity (Adillah, 2020). According to Pasal 28 H UUD 1945Constitution, every worker has the right to social security, enabling them to develop as dignified individuals. Workforce development involves not only the interests of workers but also those of employers, the government, and society at large (Aprianti, 2021). Therefore, comprehensive and inclusive regulations are essential to ensure fair and socially just employment practices, with the government playing a key role in policy formulation, oversight, and enforcement (Asnawi & Fajarwati, 2022).

In line with UU Nomor 3 Tahun 1992, social security protection has been predominantly focused on formal sector workers, while the informal sector, which comprises a larger portion of the workforce, has received inadequate coverage. After PT Jamsostek transitioned into BPJS Ketenagakerjaan, social security coverage was mandated to expand to include informal sector workers (Astuti, 2024). However, implementation in the informal sector continues to face challenges, such as a lack of cooperation between BPJS and informal workers, as well as suboptimal outreach. The social security system includes two types of protection: longterm protection, such as oldage and pension benefits, and shortterm protection, such as health and work accident insurance. Achieving the success of this program requires meticulous planning

with input from various stakeholders (Barid, 2019). Common obstacles, such as inaccurate funding estimations, can jeopardize program sustainability.

When a government commits to implementing a social security system, it essentially promises workers and their families a future of welfare. Failure to fulfill this promise risks the government's hardearned credibility, which is challenging to restore (Catur et al., 2020). Experiences from other countries in managing social security programs often reveal that subsequent administrations struggle to meet prior commitments due to inaccurate calculations, often from overestimating revenue and underestimating program costs (Dharmayanti et al., 2023). Thus, planning for the development of SJSN must be approached with utmost seriousness, incorporating input from all stakeholders and based on realistic expectations.

Broadly, social security can be categorized into two main types: longterm benefits, such as oldage, pension, termination, and death benefits, and shortterm benefits, like health and personal accident insurance. Social insurance funding may be mandated for all residents or employers. The mandatory contribution system, akin to tax collection, is necessary because the market mechanism (without enforcement) fails to achieve social security objectives (Ekaningsih & Karyadi, 2023). To date, the BPJS Ketenagakerjaan program is not yet fully recognized as a strategic government initiative, resulting in low awareness among the public and industry stakeholders regarding its importance. Noncompliance among employers in registering their employees poses another challenge, stemming from perceptions of additional financial burdens or a lack of understanding of their legal obligations (Hanifah, 2020).

Moreover, regulatory discord across various levels hinders the effective implementation of the social security program. Conflicting regulations, both at the central and regional levels, create confusion in its application (Hanifah, 2020). For instance, implementing regulations that contradict primary laws or inconsistencies between central and regional regulations cause uncertainty for employers and workers. This regulatory disharmony poses a serious obstacle to realizing an effective and efficient workforce social security system. Given these issues, this research is crucial for identifying and analyzing the factors impeding the optimal implementation of workforce social security in the formal sector. This study will examine aspects of legality, employer compliance, public awareness levels, and regulatory harmonization concerning BPJS Ketenagakerjaan. Through a juridical and empirical analysis approach, this research aims to offer constructive recommendations to the government and other stakeholders in enhancing worker protection and creating a workforce social security system aligned with principles of justice and social welfare.

Literature Review

The National Social Security System (SJSN) is an initiative by the Indonesian government to provide social protection and welfare to all citizens. This program aligns with constitutional mandates as outlined in Pasal 28 H ayat (2) dan Pasal 34 UUD NKRI 1945 (Hasanah, 2024). SJSN implementation is based UU No. 40 Tahun 2004 dan UU No. 24 Tahun 2011 concerning Social Security Administration Bodies (BPJS). This program has transitioned from a profitbased social security system to a nonprofit model, ensuring equal rights and responsibilities for all citizens without discrimination (Hasanah, 2024).

In practice, SJSN adopts the principle of social insurance, which requires participants to contribute premiums in exchange for protection from socioeconomic risks. Presidential Regulation No. 74 of 2014 provides further details on SJSN implementation, from enrollment processes to benefit distribution (Izziyana et al., 2020). The administration of this social security program is organized according to the principles of mutual cooperation, accountability, and portability, where all collected funds are maximized for participants' benefit. Programs include work accident insurance, death benefits, oldage benefits, and pensions (Matantu, 2021).

SJSN also addresses workforce needs through UU No. 3 Tahun 1992, aiming to provide basic protection for workers against potential socioeconomic risks, such as work accidents, illness, pregnancy, disability, and death. Under JAMSOSTEK, employers and employees are required to contribute premiums, which are then used to provide cash benefits and medical services (Noviansyah & Ibrahim, 2019). The program's

goal is to uphold worker dignity and safeguard them from income loss due to various risks. SJSN's framework is built upon three pillars recommended by the International Labour Organization (ILO). The first pillar focuses on social assistance for the underprivileged, the second involves mandatory social insurance for workers, and the third is voluntary insurance funded by participants. Through these three pillars, SJSN aims to harmonize the state's role in providing social assistance with encouraging selfsufficient citizens to participate by contributing premiums (Rondonuwu, 2019).

The legal foundation for the National Social Security System (SJSN) in Indonesia is derived from UUD 1945. Constitution, specifically 28H ayat (3) dan Pasal 34 ayat (2). Pasal 28H ayat (3) asserts that social security is a fundamental human right, obliging the state to establish a social security system for citizens (Shaliha & Ufran, 2023). Consequently, UU No. 40 Tahun 2004 was enacted to implement this constitutional mandate. Additionally, UU No. 24 Tahun 2011 was established to govern SJSN implementation and to create BPJS Health and BPJS Employment as social security providers (Shaliha & Ufran, 2023). The SJSN Law serves as a critical instrument for unifying various social security programs previously managed by separate entities. With the enactment of the SJSN Law, these programs have been consolidated to offer broader coverage and greater benefits. The BPJS Law also addresses the dissolution of previous social security institutions, such as PT Askes and PT Jamsostek, with all assets and liabilities transferred to BPJS Health and BPJS Employment (Subakdi & Nugroho, 2019).

The workforce plays a crucial role in Indonesia's production processes. UU No. 13 Tahun 2003 regulates various aspects of labor, encompassing preemployment, employment, and postemployment phases (Sudrajat, 2020). This law provides legal protection for workers, aligning closely with the constitution, which emphasizes the recognition of human rights. Indonesia guarantees workers' fundamental rights, including the right to decent work and protection in employment relationships, promoting fairness and balance between workers and employers (Sundari & Novita, 2022). Indonesia has ratified 19 ILO Conventions, demonstrating its commitment to international labor standards. Although these conventions are soft law and only enforceable when incorporated into national legislation, they serve as a safeguard for workers' rights. The Job Creation UndangUndang Cipta Kerja No. 11 Tahun 2020 aims to create employment opportunities and stimulate investment by harmonizing labor regulations (Susanti et al., 2021). However, it has faced criticism for allegedly curtailing workers' rights. This law also introduces Job Loss Insurance (JKP) to provide additional protection for workers affected by layoffs (Tantri, 2022).

2. Methods

The research method used in this study combines normative and empirical approaches. The normative approach (viewing law as norms, or das sollen) involves examining legal materials, including both written and unwritten laws, as well as primary and secondary legal sources. The empirical approach (considering law as a social and cultural reality, or das sein) involves collecting primary data from the field. The data collection for this study is planned to take place in Kendari, specifically at the Department of Manpower, BPJS Employment, and several companies. The choice of these locations aligns with the research topic, making them suitable for this dissertation (Wulandari, 2022).

This study requires clear identification of data types and sources to match the applied research methods. In the normative part, data collection includes both primary and secondary data. Primary data consists of legal materials, such as legislation, and outcomes from Focus Group Discussions (FGD) regarding government policies on minimum wage oversight. Secondary data is drawn from sources that explain primary legal materials, such as legal textbooks, legal reports, printed and electronic media, and relevant interviews (Adillah, 2020). The sources used in this study encompass primary and secondary data, collected through legal materials classified into primary and secondary sources. Primary legal materials include Indonesian laws, such as UndangUndang Republik Indonesia Nomor 11 Tahun 2020on Job Creation, UndangUndang Nomor 13 Tahun 2003 on Manpower, and UndangUndang Nomor 24 Tahun 2011 on the Social Security Administration Agency. Secondary legal materials provide supplementary explanations and are sourced from expert opinions, such as legal doctrines found in books, law journals, laws, and online sources.

Data collection in this study involves several key respondents. First, from the Southeast Sulawesi Department of Manpower, one respondent will be selected: the Head of Department and the Head of Personnel and Supervision Subdivision responsible for labor supervision (Aprianti, 2021). Second, two respondents will be chosen from the Southeast Sulawesi Industrial Relations Office, specifically those handling social security cases, as this office receives reports and manages related cases. Third, one to two respondents from the Southeast Sulawesi Workers' Alliance will be interviewed to gather direct community insights on social security issues, particularly for informal workers in the region. Fourth, given the 2,552 companies in Southeast Sulawesi, only two will be selected as samples: one small company and one large company. From each, one respondent, typically the head responsible for overall operations, and one worker will be chosen to provide firsthand accounts of field conditions.

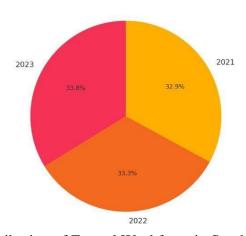
Data Analysis

Data analysis in this study employs a normative qualitative approach. The normative analysis involves reviewing existing literature, such as legislation, official documents, and legislative drafting records relevant to the main issues, supplemented by secondary data. The qualitative aspect involves systematically, logically, and clearly explaining findings in well-structured sentences, followed by discussion and conclusion. The normative qualitative processing of legal materials entails analyzing and describing legal materials based on norms, theories, and doctrines relevant to the subject matter using deductive logic, which involves drawing conclusions from general issues to address specific cases.

3. Results and Discussion

Increasing Formal Workforce in Southeast Sulawesi

Percentage Distribution of Formal Workforce in Southeast Sulawesi (2021-2023)



Picture 1. Percentage Distribution of Formal Workforce in Southeast Sulawesi (2021-2023)

The analysis of the formal workforce percentage in Southeast Sulawesi from 2021 to 2023 shows a consistent upward trend, albeit with modest annual growth:

2021: 37.19%

2022: 37.61% (an increase of 0.42% from 2021)

2023: 38.16% (an increase of 0.55% from 2022)

This steady, moderate growth suggests ongoing efforts to improve formal employment conditions. However, the relatively small increments could indicate existing challenges or limitations impacting more substantial growth. Possible factors influencing this trend could include regulatory, economic, or structural barriers that affect the expansion of formal employment opportunities. The continued increase, though moderate, remains a positive indicator, reflecting efforts toward formal workforce enhancement in the region.

Conditions of BPJS Membership Workers

The analysis of BPJS participation distribution data in Southeast Sulawesi reveals that workers in the formal sector, particularly in the General Worker (PU) category, dominate membership numbers. This phenomenon reflects the effectiveness of social security policy implementation within the more structured and regulated formal sector. From a legal theory perspective, this trend can be linked to the concept of legal compliance, which tends to be higher in the formal sector due to stricter oversight and clear regulatory sanctions for noncompliance. The legal certainty provided by formal regulations creates stronger protections for workers in the formal sector, aligning with labor law principles that emphasize the protection of workers' rights.

Discussion

Regional economic growth, employment policies, and local labor market conditions are several factors influencing the changes in the percentage of formal labor. Government programs designed to create formal employment opportunities may also contribute to this positive trend, although further analysis is needed to determine specific factors that support or hinder these developments (Asnawi & Fajarwati, 2022). Overall, Southeast Sulawesi has demonstrated a small yet consistent increase in formal employment over the past three years, potentially signaling positive employment conditions in the region.

In Indonesia, the protection of formal workers through the BPJS Employment (Badan Penyelenggara Jaminan Sosial Ketenagakerjaan) is part of the government's efforts to ensure worker welfare and provide security in the face of various employment risks (Astuti, 2024). As an agency responsible for administering social security, BPJS Employment plays a strategic role in realizing social justice as stated in Pasal 28H UUD NRI 1945Constitution of the Republic of Indonesia. However, challenges remain in its implementation, particularly related to compliance, protection coverage, and service effectiveness. If these issues are not addressed adequately, they may undermine the social justice and legal certainty that are foundational to the social security system.

Meanwhile, the low participation rate among informal workers (NonGeneral Workers, or BPU) indicates continued challenges in expanding social security coverage to all workers. According to social legal theory, the law should be inclusive and protective of all societal elements, including informal workers who are often outside the reach of formal regulations (Barid, 2019). This gap underscores the need for reforms in legal approaches and policies to integrate the informal sector into the social security system. This can be achieved through more adaptive policies, such as simplified enrollment procedures and incentives that encourage informal workers to participate.

Respectful treatment in line with workers' dignity is a fundamental principle in labor law. Indonesian labor law, particularly through UU No. 13 Tahun 2003, asserts that all workers have the right to fair treatment, without discrimination based on gender, race, religion, or physical condition (Catur et al., 2020). Additionally, protection from workplace harassment is a crucial issue that must be addressed by companies. Discriminatory and unfair practices that diminish workers' dignity often occur, either overtly or subtly, through unequal wages or unjust treatment in promotions and career development. Therefore, stricter government oversight and heightened employer awareness are needed to ensure that every worker is treated with respect and dignity.

Recognizing the importance of workers to companies, the government, and society, measures should be implemented to ensure workers can maintain their safety on the job. Additionally, efforts should be made to promote worker wellbeing and health so they can approach their work with full attention, ensuring alertness in the workplace. Such measures are part of worker protection programs, which in practice support productivity and company stability. The low participation rate in the construction services sector highlights specific challenges within this industry, which relies heavily on shortterm contract workers. From a labor law theory perspective, contract workers should be acknowledged and protected, prompting the government and policymakers to ensure that existing regulations address the neglect of workers' rights (Dharmayanti et al., 2023). Stricter law enforcement and intensive monitoring of companies in the construction sector are required to ensure that workers, regardless of contract status, receive adequate

social security protection.

In the context of the disparity between the formal and informal sectors, modern legal theory emphasizes the importance of inclusiveness and accessibility regarding fundamental rights, including social security rights. The law should balance protection between the structured formal sector and the more vulnerable informal sector (Ekaningsih & Karyadi, 2023). Innovative and flexible policies, such as accessible payment schemes for self-employed workers and awareness campaigns about the importance of social security, are relevant steps to bridge this gap. Therefore, the BPJS membership distribution data in Southeast Sulawesi reveals that although the formal sector has complied well with social security regulations, significant work remains to address social protection gaps, especially in the informal and construction sectors. This calls for a more holistic, inclusive, and socially just legal approach to ensure that all workers, without exception, receive the protection they need under the applicable legal framework.

Worker protection can be implemented through guidance and by enhancing the recognition of human rights, as well as physical, technical, social, and economic protection through applicable workplace standards. Every worker has the right and equal opportunity to secure employment and a decent livelihood without discrimination based on gender, ethnicity, race, religion, or political affiliation, in alignment with their interests and abilities (Hanifah, 2020). This includes equal treatment for workers with disabilities, for whom legal protection should be provided, and obligates all employers to uphold workers' rights without discrimination. Therefore, pasal 4 huruf c Undang-Undang Nomor 13 Tahun 2003 on Manpower clearly states that one of the goals of employment development is to protect workers in realizing their welfare. The form of labor protection in Indonesia, mandated for implementation by each employer or company that employs workers, is critical and should be prioritized in terms of maintaining and improving welfare, implemented through a general social security program that operates on a foundation of mutual cooperation, family values, and solidarity, as expressed in the spirit of Pancasila and Undang- Undang Dasar 1945.

In practice, the policy for worker protection in the formal sector still faces several challenges that impede the fulfillment of workers' rights. One of the greatest challenges is noncompliance among companies regarding their obligations related to occupational safety, fair wages, and equitable treatment of workers (Hanifah, 2020). This is especially prevalent in highrisk industries, where companies prioritize productivity over worker welfare. Moreover, government oversight remains relatively weak, allowing many violations to go unchecked. However, there is potential to improve this situation through policy innovation and technology use. Digital systems for reporting and monitoring can enhance company accountability and accelerate law enforcement for noncompliant companies. Furthermore, collaboration between the government, labor unions, and companies in creating a safe and fair work environment can strengthen protections for workers in the formal sector.

4. Conclusion

The Social Security System in Indonesia, implemented through BPJS Employment, aims to provide fair legal protection for formal workers. While there has been an annual increase in the percentage of formal workers covered, the implementation of this program still faces several challenges. Major challenges include noncompliance by companies in fulfilling social security obligations, a lack of outreach to workers particularly in the informal sectorand regulatory inconsistencies between central and regional governments. This research reveals that although the formal sector is more structured and demonstrates better regulatory compliance, informal workers remain inadequately integrated into the social security system. Addressing this issue requires a more inclusive legal approach and adaptive policies to enhance participation and protection for all workers, both formal and informal. Therefore, legal protection for formal workers within the social security system is essential for the welfare of workers and their families, yet improvements in implementation, monitoring, and coverage especially for informal workers are needed.

Recommendations for future research should focus on several key areas to strengthen the legal protection of formal workers within the social security system. Comparative studies across sectors such as

manufacturing, services, and agriculture are necessary to understand the differences in BPJS Employment compliance rates and to identify which sectors require the most attention. Indepth research into the use of digital technology for monitoring and law enforcement would be highly beneficial, especially for assessing the effectiveness of online reporting and automated audits in enhancing corporate compliance. Finally, the social and cultural factors influencing worker awareness and participation, particularly within the informal sector, should be further analyzed to develop more adaptive strategies that increase their engagement in social security programs.

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