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Job Loss Social Security (JKP) under Government Regulation No. 37 of 2021 as a Form of Protection for Laid-off Workers: A Normative Analysis

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Abstract

The aim of this research is to analyze Job Loss Social Security (JKP) as regulated in Government Regulation No. 37 of 2021 and assess its effectiveness in providing protection for workers. The research adopts normative legal research methods, utilizing a statutory approach and a conceptual approach. In conclusion, JKP, as outlined in Government Regulation No. 37 of 2021, is associated with the Implementation of the Job Loss Social Security Program, managed by BPJS Employment and the Central Government. Participants in the JKP program, namely workers, are entitled to benefits in the form of cash, access to market information, and job training. Despite workers experiencing benefits when submitting claims to BPJS Employment, the research indicates that JKP, based on Government Regulation No. 37 of 2021, has not fully provided adequate protection for workers. Several obstacles have been identified in its implementation, including insufficient socialization of JKP by BPJS Employment, participant registration being handled by company administrators leading to mis-targeting, limited technological literacy among workers, undocumented layoffs, and a lack of direct connectivity between the JKP application and the "Ready to Work" application at the Manpower Service, which is not directly linked to BPJS Employment.

Keywords

Job Loss Social Security, Labor protection, Termination of Employment

1. Introduction

Industrial relations refer to the relationship among stakeholders in the goods and services industry, involving workers, entrepreneurs, and the government (Askitas et al., 2018). The aspiration for harmonious and peaceful industrial relations is shared by all parties, as it significantly contributes to enhancing work productivity and the overall success of business activities (Sawaneh & Kamara, 2019). A thriving business not only benefits entrepreneurs but also leads to improved welfare for workers. Maintaining such conditions is crucial, allowing entrepreneurs to expand their businesses and create more job opportunities (Kusi et al., 2015). However, the realization of harmonious industrial relations faces challenges. Various issues may impede its progress, particularly in the relationship between workers/employees and entrepreneurs, where conflicts of interest often arise. Workers seek higher incomes (wages), while entrepreneurs aim for maximum profits. Tensions are further heightened by the annual minimum wage policy, resulting in recurrent "tense situations" between employers and laborers/employees.

Layoffs are unforeseen legal actions affecting both parties involved (Prameswari & Handayani, 2020). For workers, layoffs represent the initial step toward losing a job, which serves as a primary source of livelihood for themselves and their families. On the other hand, entrepreneurs view the loss of workers as a significant setback, involving the forfeiture of a valuable asset crucial for the company's operations (Husni, 2022). Therefore, Article 156 of Law No. 13 of 2003 concerning Employment mandates that workers, employers, and the government collaborate to prevent layoffs. If unavoidable, the purpose of layoffs must be negotiated with the trade union/worker or directly with the worker if not affiliated with a labor union. In labor law, layoffs are considered a last resort, only pursued after exhaustive efforts and in compliance with applicable laws and regulations. This approach acknowledges the impracticality of forcing a relationship without similarity or compatibility, which would be more detrimental if coerced. Layoffs may arise from industrial relations disputes or conditions beyond the company's control, such as natural or non-natural disasters (Israhadi, 2020). The Covid-19 pandemic serves as an example of a non-natural disaster affecting Indonesia and other parts of the world.

The Covid-19 pandemic, which struck Indonesia in March 2020, has had a significant impact on various aspects of life, particularly the economic sector. In the fourth quarter of 2020, the Gross Domestic Product (GDP) experienced a decline of -2.19% (YoY), comparing the same period to the previous year (year-on-year/YoY). A tangible manifestation of the current economic impact of Covid-19 is the surge in layoffs. According to BPS, the number of unemployed individuals sharply increased by 2.67 million people in August 2020 compared to the same month in 2019. Numerous employees faced layoffs, and many companies were even at risk of bankruptcy. A total of 114,340 companies implemented layoffs, affecting 1,943,916 individuals. This comprises 77% from the formal sector and 23% from the informal sector (Wiryadi & Novendra, 2021).

The Covid-19 pandemic that struck Indonesia in March 2020 has impacted various sectors of life, including the economic sector. The Gross Domestic Product (GDP) in the fourth quarter of 2020 showed a contraction of -2.19% (YoY) compared to the same period in the previous year. The tangible manifestation of the current economic impact of Covid-19 is the rise in layoffs. BPS noted a sharp increase in the number of unemployed individuals during the August 2020 period, with 2.67 million more people compared to August 2019. Many employees faced job loss, and

numerous companies were even threatened with bankruptcy. A total of 114,340 companies implemented layoffs, affecting 1,943,916 individuals. This comprises 77% from the formal sector and 23% from the informal sector (Wiryadi & Novendra, 2021).

Law no. 11 of 2020 concerning Job Creation (Omnibus Law) introduces Job Loss Social Security (JKP) as a means of enhancing the protection and welfare of workers. The Job Creation Law brings about improvements to several provisions in Law no. 40 of 2004 concerning the National Social Security System and Law no. 24 of 2011 concerning Social Security Administering Bodies. Article 82 of Law no. 11 of 2020 concerning Job Creation refines Law no. 40 of 2004 concerning the National Social Security System by introducing a new program, namely JKP. Consequently, the overall social security program now encompasses Health Insurance (*Jaminan Kesehatan - JKN*), Work Accident Insurance (*Jaminan Kecelakaan Kerja - JKK*), Old Age Security (*Jaminan Hari Tua - JHT*), Pension Insurance (*Jaminan Pensiun - JP*), Death Insurance (*Jaminan Kematian - JKM*), and Job Loss Security (*Jaminan Kehilangan Pekerjaan - JKP*).

Furthermore, Article 83 of Law no. 11 of 2020 concerning Job Creation also amends provisions in Law no. 24 of 2011 concerning the Social Security Administering Body, stipulating that BPJS Employment administers the JKK, JHT, JP, JKM, and JKP programs. To operationalize the provisions in the Job Creation Law, the government has issued Government Regulation No. 37 of 2021 concerning the Implementation of the Job Loss Social Security Program. This regulation aims to provide protection for workers who experience layoffs or job loss. The research problem addressed in this paper is twofold: examining the implementation of JKP as per Government Regulation No. 37 of 2021 and assessing whether the regulated JKP provides adequate protection for workers.

2. Research methods

This research constitutes normative legal research, which involves examining law as an autonomous norm within statutory regulations. The research employs a statutory approach and a conceptual approach. The types and sources of law include primary legal materials (primary legal resources), which are legally binding materials such as statutory regulations in the field of employment, agreements made by the parties (e.g., collective work agreements, work agreements, and company regulations), and secondary legal materials (secondary legal resources), which provide explanations of primary legal materials.

Legal materials are collected using documentation study techniques for legal materials and interviews with informants. The analysis of legal materials is conducted normatively with a prescriptive perspective, employing deductive-inductive reasoning to generate propositions or concepts as responses to the problems or research findings.

3. Results and Discussion

3.1 Regulatory Aspects of Job Loss Social Security (JKP) Program

In Article 28H, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is mandated that every person has the right to social security, enabling their full development as dignified human beings. The government is committed to implementing this mandate with the

enactment of UU.No. 40 of 2004 concerning the National Social Security System. To realize the intended national social security system, the Government has promulgated Law no. 24 of 2011 concerning Social Security Administering Bodies.

Under Law No. 24 of 2011, two social security administering bodies have been established, namely BPJS Health and BPJS Employment. BPJS Health oversees the JKN program, while BPJS Employment administers the JKK, JHT, JP, and JKM programs. Workers can receive JKP benefits if they have become JKP participants, provided that they have been included in the social security program by their employer, have just been registered by the employer in the social security program, meet the requirements as participants, and are Indonesian citizens who have not reached the age of 54 at the time of registration. Workers in large and medium businesses are included in the JKN, JKK, JHT, JP, and JKM programs, while those in micro and small businesses are included in at least the JKN, JKK, JHT, and JKM programs.

Workers who have fulfilled the above conditions immediately become participants. Entrepreneurs who register workers in the JKP program are required to submit a registration form that has been filled in completely and correctly to BPJS Employment no later than 30 (thirty) days from the date the worker starts working. The registration form must contain at least: 1) population identification number; 2) date of birth of the worker; and 3) number and/or start and end date of the work agreement. Furthermore, BPJS Employment is obliged to provide a membership number no later than 1 (one) working day after the registration form is received completely and correctly and the first contribution is paid in full to BPJS Employment (Andrika et al., 2023). Later, entrepreneurs will be given a certificate of participation in the JKP program by BPJS Employment, while workers will be given proof of participation in the JKP program by BPJS Employment. Proof of JKP program participation for workers will be integrated into 1 (one) social security program membership card at BPJS Employment (Sari et al., 2023). If a worker has an employment relationship with more than 1 (one) employer, each employer must be included in the JKP program. After being registered as a participant, the worker must choose one of the companies as the place of employment registered in the JKP program with BPJS Employment.

JKP funding sources come from: a. government initial capital; b. recomposition of social security program contributions; and/or c. BPJS Employment operational funds. Initial capital is the initial funds sourced from the State Revenue and Expenditure Budget to fund the JKP program. These initial funds are not separate state assets and can be utilized if the program contributions received are insufficient to cover program benefits. Operational funds can be used to finance the JKP program when the program contributions received and the initial funds are inadequate to cover the JKP program benefits.

JKP program contributions must be paid monthly at a rate of 0.46% of a month's wages, sourced from contributions paid by the Central Government and JKP funding sources. The allowance paid by the Central Government is 0.22% of a month's wages. The JKP funding source is a recomposition of JKK and JKM program contributions, with the following provisions: a. JKK contributions are recomposed at 0.14% of a month's wages, resulting in JKK contributions for each risk level group as follows. The first is very low risk level of 0.10%, low risk level of 0.40%, medium risk level of 0.75%, high-risk level of 1.13%, and very high-risk level of 1.60% of a

month's wages. Secondly, JKM contributions are recomposed at 0.10% of a month's wages, making JKM contributions 0.20% of a month's wages. The wages used as the basis for calculating contributions are the last wages of workers reported by employers to BPJS Employment and do not exceed the upper wage limit.

After all obligations for employers and workers have been carried out in accordance with existing provisions, new Job Loss Social Security (JKP) benefits can be given to participants who experience termination of employment, both for employment relationships based on work agreements for an indefinite period and employment agreements for a certain period. JKP benefits can be applied for after the participant has had a contribution period of at least 12 months within 24 months and has paid contributions for at least 6 consecutive months to BPJS Employment before termination of employment or termination of the work relationship. JKP benefits for participants who experience termination of employment are excluded for reasons of termination of employment because of resign, permanent total disability, pension, or death. JKP benefits for participants whose work relationship is based on a fixed-term work agreement are provided if the employer terminates the employment relationship before the end of the fixed-term work agreement. Workers affected by termination of employment are proven by proof of receipt of the termination of employment relations by the worker and receipt of the report of termination of employment relations from the office that carries out government affairs in the district/city employment sector. The second is proven by a collective agreement that has been registered with the industrial relations court and a deed as proof of registration of the collective agreement. Lastly, it is extracts or decisions from industrial relations courts that have permanent legal force..

Employers who do not include workers as participants in the Job Loss Social Security (JKP) program include workers who have an employment relationship with more than one entrepreneur, or do not submit a registration form that has been filled in completely and correctly to BPJS Employment no later than 30 (thirty) days from the date the worker starts working, or in the event of a change in company name, office address, business scale, wage data, worker data, and changes in other data related to JKP program participation, the employer does not submit these changes to BPJS Employment no later than 7) working days after the change occurs, or in the event of termination of employment and the reported wage of the worker does not match the actual wage so that there is a shortage of payment of cash benefits, the employer does not pay the shortage of cash benefits to the worker at once, or in the event that the employer does not include the worker in the JKP program and there is termination of employment, the employer does not fulfill the worker's rights in the form of cash benefits with calculation of benefits provided as a lump sum; and job training benefits, and/or entrepreneurs who are in arrears in JKK and JKM contributions as a source of funding for the JKP program for more than 3 consecutive months and there is termination of employment, the entrepreneur does not pay the cash benefits to participants in advance, then the entrepreneur will be subject to administrative sanctions in the form of a written warning and not receiving certain public services.

The imposition of administrative sanctions, in the form of written warnings and denial of certain public services, is carried out in stages. A written warning is issued for violations committed by an entrepreneur, while the denial of certain public services is a sanction imposed by specific public service units on entrepreneurs who fail to fulfill their obligations in accordance with the provisions of statutory regulations. The imposition of administrative sanctions on

entrepreneurs is carried out by ministers, relevant ministers, governors, regents/mayors, or appointed officials in accordance with their authority to impose administrative sanctions. Sanctions are applied based on the results of inspections conducted by Labor Inspectors, originating from complaints or follow-ups to the results of labor inspections.

The follow-up to the results of the inspection conducted by the Labor Inspector is documented in the inspection note. If the inspection note is not carried out by the employer, the Labor Inspector shall submit a report of non-compliance with laws and regulations, along with the inspection note, to the director-general in charge of labor inspection at the ministry responsible for government affairs in the field of manpower, or to the Labor Inspector in the ministry handling government affairs in the field of manpower. Alternatively, the head of the service responsible for government affairs in the provincial manpower sector is notified, for Labor Inspectors in the service handling government affairs in the provincial manpower sector.

Subsequently, the director-general or head of service provides recommendations to the official with the authority to impose administrative sanctions. Then, the relevant minister, governor, regent/mayor, or appointed official notifies the implementation of the imposition of administrative sanctions to the Minister. From the description above, it can be understood that the JKP Program has been further regulated in Government Regulation No. 37 of 2021 concerning the Implementation of the Job Loss Social Security Program. JKP is social security provided to workers who experience termination of employment in the form of cash benefits, access to job market information, and job training. In Article 2 of Government Regulation No. 37 of 2021 concerning the Implementation of the Job Loss Social Security Program, it is stated that employers are obliged to include workers as participants in the JKP program, to maintain a decent standard of living when workers lose their jobs. The implementation of JKP is carried out by the Social Security Administering Agency (BPJS) for Employment and the Central Government.

The benefits that can be obtained by workers as participants in the JKP program are, first, benefits in the form of cash given every month for a maximum of 6 months of wages with the following conditions: 45% of wages for 3 months first and 25% of wages for the next 3 months. The wages used as the basis for payment of cash benefits are the last wages of the worker reported by the employer to BPJS Employment and do not exceed the specified upper wage limit. In the future, the amount of the upper wage limit must be evaluated every 2 years by the ministry that handles government affairs in the field of employment in coordination with the ministry that handles government affairs in the financial sector and the national social security council.

Second, the benefits of access to labor market information are provided in the form of services in the form of job market information and job guidance. Participants who have benefited from access to job market information and jobs that suit their interests, talents, and competencies must report their placement through the Employment Information System no later than 7 working days after being accepted for work. The third benefit is that job training benefits are provided with a competency-based training model, namely through the integration of access to labor market information and the BPJS Employment information system in the Employment Information System, which can be done both online and offline.

3.2 Protection for Laborers Against Job Loss Social Security

The fourth paragraph of the Preamble to the Constitution of the Republic of Indonesia states: “The State protects the entire nation and its spilled blood.” This means that Indonesia protects its citizens, including workers. In Article 28, letter D, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that every person has the right to recognition, social security protection, and fair legal certainty, as well as equal treatment before the law. In paragraph (2), it is stated that every person has the right to work and earn fair rewards and treatment in employment relationships. Thus, if a worker experiences termination of employment, the worker will obtain his rights as a worker. Regarding layoffs, after the 2019 Covid Pandemic, the storm of layoffs is still ongoing. Several companies have implemented layoff policies for a number of reasons. Layoffs are something that workers fear, but they are very common and frequently encountered in Indonesia. Whatever the cause, the end of the employment relationship between the company and its workers is called a layoff. Layoffs cause anxiety, especially for workers, because they will have a negative impact on the survival and future of the workers who experience them and their families.

Based on data from the Director General of Workforce Placement Development and Expansion of Job Opportunities (Binapenta and PKK) of the Ministry of Manpower (Kemenaker), until July 2023, the number of workers laid off was 31,549 people (Caroline & Pujiono, 2022). The wave of layoffs in Indonesia continues to this day. PT GoTo Gojek Tokopedia Tbk (GOTO) announced layoffs of 1,300 people or around 12 percent of its total permanent employees. Go To made this decision to face future challenges. The company is providing various supports for affected employees, including severance pay and counseling services. Go To is also offering financial support, such as an additional month's salary and compensation in lieu of the notice period (notice in lieu). The minimum severance pay is 2 times the salary for those who have not worked for one year, and the largest severance pay is 14 salaries. Job search support and counseling services are also being provided, and affected employees are entitled to receive laptops for accessing various training programs and joining various companies in the Go To Group business partner network (Binekasri, 2018). According to Izzudin Al Farras Adha from the Center for Innovation and Digital Economy, Institute for Development of Economic and Finance (Indef), the compensation given by Go To to employees affected by layoffs exceeds the applicable provisions. Thus, not only are material aspects fulfilled, but also immaterial aspects. Counseling points for career, finance, and psychology are also included in Go To's compensation (Brockner et al., 1987).

Apart from GoTo, Ruangguru also announced the dismissal of its employees, affecting hundreds of them. The dismissal process was conducted individually with the relevant managers, and those affected were provided with severance pay, gratuity pay, and compensation, particularly leave pay, in compliance with statutory regulations. Ruangguru is committed to assisting affected employees by offering career and psychological consultations, along with access to career development classes if needed (Sudarsana et al., 2020).

Shopee has also implemented layoffs, letting go of approximately 187 employees since September 2022. Shopee Indonesia assures that the layoff process adheres to statutory regulations, ensuring affected employees receive severance pay, an additional month's salary, and holiday allowances for Muslim employees in line with applicable regulations. Additionally,

affected employees continue to receive company health insurance for up to 3 (three) months after their last workday. In the context of laying off employees, employers are legally obligated to provide severance pay to those affected. This requirement is also specified in the Job Creation Law. Besides severance pay, employees who have been victims of layoffs can also withdraw JKP cash, provided for 6 months after workers affected by layoffs are verified by BPJS Employment.

During the period in 2023, as of September, in NTB Province, three individuals, all males with an average age of 40 years, submitted JKP claims. The reasons for filing claims included violations of work agreements, the company going bankrupt, and the company implementing efficiency measures. Among the three claimants, only one person has received payment (the sixth beneficiary), while two more individuals are the second and third beneficiaries. It's worth noting that in NTB Province at the beginning of 2022, there were 140 people affected by the Covid-19 pandemic. Department of Manpower is coordinating with companies to discourage indiscriminate worker layoffs. However, based on available data on layoffs, only three people filed JKP claims with BPJS Employment, NTB Provincial Branch. This is linked to the obstacles faced by BPJS Employment, NTB Provincial Branch. According to interviews with Mrs. Damayanti Arifin and Mrs. Cok Istri Widya Wipramita, the challenges encountered by the JKP program include socialization primarily conducted by management, not directly to workers, resulting in incomplete information transfer to workers. Additionally, not all workers are technologically literate, impeding their understanding and use of the JKP application. In cases of layoffs, a company must provide written notification. If a company dismisses a worker due to resignation, the worker cannot access the JKP application. The JKP application is also linked to the "Ready to Work" application at the Manpower Service, rather than being directly connected to BPJS Employment.

Thus, the benefits for workers regarding JKP, based on Government Regulation No. 37 of 2021, have been experienced by those who submit claims to BPJS Employment. However, there are still obstacles in its implementation, including issues such as the socialization of JKP conducted by BPJS Employment being targeted at company administrators rather than workers directly, resulting in a misalignment. Additionally, challenges arise due to workers' limited technological literacy, undocumented layoffs, and the connection between the JKP application and the "Ready to Work" application at the Manpower Service not being directly linked to BPJS Employment.

4. Conclusion

Job Loss Social Security (JKP), as outlined in Government Regulation No. 37 of 2021 regarding the Implementation of the Job Loss Social Security Program, is administered by the Employment Social Security Administering Agency (BPJS) and the Central Government. The benefits available to Workers, who are participants in the JKP program, include cash benefits, with the wage used as the basis being the final wage of the Worker. Additionally, access to labor market information is provided through services such as labor market information and job guidance. Furthermore, job training is offered using a competency-based training model, integrating access to labor market information and the BPJS Employment information system in the Employment Information System, which can be accessed online and offline.

However, JKP, as per Government Regulation No. 37 of 2021, has not been entirely effective in safeguarding workers who have experienced layoffs, especially due to the tightened regulations on JKP benefits outlined in Article 19 of the said regulation. Besides, there are still challenges in its implementation, including issues such as JKP socialization conducted by BPJS Employment being targeted at company administrators instead of workers directly, resulting in a misalignment. Other obstacles include workers' limited technological literacy, undocumented layoffs, and the connection between the JKP application and the "Ready to Work" application at the Manpower Service, which is not directly linked to BPJS Employment.

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