



## Legal Protection and Certainty for Employees of the Public Entity of Insurance and Social Security (BPJS Ketenagakerjaan)

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### **Abstract**

Indonesia has the Insurance and Social Security (BPJS Ketenagakerjaan) to protect workers. This article discusses the legal vacuum of the legal status of the public legal entity of the Insurance and Social Security. The aim is to formulate future arrangements that provide legal protection and certainty for employees of the Insurance and Social Security public legal entity. This research is normative legal research with a statutory approach and a conceptual approach. The result of this research is that it is necessary to strengthen the supervision of the supervisory board internally and externally. In addition, it is necessary to prepare special regulations regarding the regulation of public legal entities, especially Insurance and Social Security.

**Keywords:** *Legal Protection; Employees; Public Entity; Insurance; Social Security*

### **Introduction**

The formation of each public legal entity is based on different laws, whether regulated through the constitution or laws that provide different legitimacy/legal umbrellas because their formation can be influenced by issues that are partial, incidental, or as a specific answer to current problems. faced, even the formation of public legal entities in Indonesia, one of which can be formed because state institutions or other existing legal entities have not been able to provide a way out in dealing with or solving problems because demands for change and improvement are always needed in line with ongoing democracy.

This is one of the public's distrust of existing institutions in resolving the constitutional problems faced (Susanto, SNH, 2014) Public legal entities are a form of legal entity that is based on public law or regulates the relationship between the state or its apparatus and citizens related to public or public

interest. Public legal entities can be classified based on territory or territory (Ali, C., 1987) example country, province, or city. In addition, it can also be classified not based on territory, for example, the Insurance and Social Security (BPJS Ketenagakerjaan).

These different arrangements in each public legal entity contain legal consequences on the scope of regulation and the applicability of the regulated legal substance, such as one them and including regulations related to the staffing system in public legal entities. Legal legitimacy is especially related to the civil service system for public legal entities that are not bound by regulations regarding the state civil apparatus, so the regulation is bound by the regulations governing each public legal entity because there are no regulations that generally regulate employment in public law such as like the law on the state civil apparatus, which specifically regulates civil service so that there is a void of norms or unclear norms (Widiarto, A.E., 2015).

The example in Law no. 19 of 2003 concerning BUMN, which adopts the view of state finances in a broad sense, including in this case all or part of the capital sourced from state assets separated in BUMN, provides legal consequences that place BUMN as a public legal entity that allows state intervention that is on the management of BUMN, while the status of BUMN Persero is still under legal debate.

The regulation in the BUMN Law does not contain a clause that regulates BUMN employees but regulates the authority of the minister, the appointment and dismissal of the Directors and Commissioners and their members, in addition to complying and subject to laws that are specialists or specifications of the form or type of BUMN. In addition, the staffing of public legal entities is related to regulations on banking, housing, and others which are also collaborated with Law No. 13 of 2003 concerning employment, because there are no special arrangements that accommodate the employment status of public legal entities.

The impact of the non-regulation of special regulations regarding the staffing of public legal entities and the unclear norms regarding the legal status of employees of public legal entities, problems arise when there is a staffing dispute in which the entry points of the problem are:

1. the existence of regulations does not fully guarantee legal certainty for employees of public legal entities because it is clear that they will not be fully compliant with one legal regulation, for example, they must use the Employment Law but also cannot be separated from other laws to resolve legal issues on the employment of public legal entities, and will be confused about which law to apply (Putra, H. K. et.al., 2020).
2. legal protection for employees of public legal entities if there are problems related to employment (Wibowo, A. M., 2022).
3. unclear direction in which employees of public legal entities can resolve legal issues if litigation is needed.

One example that the author can describe showing that there is a lack of clarity in the norms regarding the legal status of employees of public legal entities, namely the problem of staffing the Insurance and Social Security which is a public legal entity but its staff in the Social and Security has a union, even though it is not a Persero. In employment disputes, the employee is not fully compliant with the Employment Act nor is fully compliant with the BUMN Law, for example, the problem of the Insurance and Social Security Board of Directors' decision regarding employee transfers due to marriage to one agency, which is based on Article 24 paragraph (3) letter c of Law No. 24 of 2011 concerning BPJS which stipulates that the Board of Directors is authorized to carry out the Insurance and Social Security personnel management including appointing, transferring, and dismissing the Insurance and

Social Security employees, as well as determining the income of the Insurance and Social Security employees. The authority possessed by the Board of Directors in the regulation certainly affects the existence of the employee and even the union.

The decision of the Board of Directors regarding employee transfers applied is not in line with the Constitutional Court Decision No.13/PUU-XV/2017 which grants the request for a judicial review of Article 153 paragraph (1) letter f of Law No. 13 of 2003 concerning employment, which reads "entrepreneurs are prohibited from carrying out the termination of employment because workers have blood ties and/or marital ties with other workers/ laborers in the same company unless it has been regulated in a work agreement, company regulations, or collective work agreement", which was proposed by Jhoni Boetja and his seven colleagues as DPD and PLN Workers Union Branch Representative Council.

The impact of the Constitutional Court's decision (Sianipar, M. M., et.al., 2022) is that Article 153 paragraph (1) letter f of the Employment Law does not have binding legal force as long as it is interpreted as limiting the marriage of workers in one company which must end in termination of employment, because it has violated the constitution and human rights by limiting the rights and freedoms of other people to build a household and get a job, the basic principle of freedom of contract as a condition for the validity of the agreement is not fulfilled because the worker or laborer is a party whose position is weak because they need work.

As with the considerations in the Constitutional Court's decision, employee transfers carried out based on the Directors' Decisions are things that have violated the principles of human rights and freedom of others, that the Directors' Decisions regulate matters up to a person's privacy for marriage and the work environment. The problem regarding the decision of the Board of Directors deserves to be tested, but in the implementation of the dispute resolution of personnel transfers, it is resolved in the settlement at the Industrial Relations Court because it is considered subject to the Employment Act, even though the root of the problem should be a decision of the Board of Directors which can be submitted in a state administrative court (PTUN). This is due to the lack of clarity (Sugianto, S., et al., 2021) in the handling of civil service cases for public legal entities.

This legal vacuum is also contained in the laws and regulations governing public legal entities where the definition of a public legal entity is not contained in the legislation but the term is often used even in the regulations only mentioning the term public legal entity, as well as regulations regarding the employment of legal entities. For public institutions where there are no special regulations governing the employment of public legal entities in their regulations, but there are or are part of and contained in other laws and regulations but are not clear and explicitly regulated in detail, it is still unclear regarding the legal status of agency staffing. public law, resulting in a legal vacuum. This is felt by the Insurance and Social Security, which is a public legal entity but also the only one that has a trade union so it cannot provide legal certainty regarding the protection of workers working within the Insurance and Social Security.

## ***Research Methods***

This type of research is juridical normative (normative legal research) (Desyanti, D., et.al., 2021). The approach of this research is to use a written legal rule approach (statue approach) and conceptual approach. The written legal rule approach is carried out by examining laws and regulations related to legal issues and the philosophical content of regulation and to study the consistency and suitability of the existing provisions of one law with other laws (Marzuki, P.M., 2008). The technique of analyzing legal

materials is carried out using descriptive analysis methods, namely by systematically compiling and categorizing legal materials.

## ***Research Result and Discussion***

A legal vacuum can be interpreted as "an empty condition or absence of statutory regulations (laws that regulate (certain) order in society," so that a legal vacuum in positive law can be said to be void in-laws and regulations. Factors causing a legal vacuum in regulations) legislation, namely:

1. the development of legal needs in society will always develop with the times, regimes, and policies including social changes in society (Safa'at, M. A, 2021). Development is inevitable so that laws and regulations are always left behind or backward compared to events in the development of society;
2. things or circumstances that have occurred cannot be regulated in statutory regulation, or even though they have been regulated in a statutory regulation but are unclear (fuzzy) or even incomplete;
3. the legislators, both executive and legislative, do not carry out the mandate of higher laws and regulations for orders to delegate regulations that must be further regulated into lower-level regulations or regulations that regulate more technical matters.

This legal vacuum has an impact on all legal activities, including efforts to enforce and apply the law, which is often faced with obstacles related to the development of society and is a logical consequence of the development of civilization in the world community (Sudarsono, S., et.al. 2020). In this case, the development of society which is faster than the development of laws and regulations is a problem related to matters that have not been or are not regulated in-laws and regulations, but the facts show that if statutory regulation can't regulate all human life as a whole. thus allowing the occurrence of a situation where the existing rules in a country are considered incomplete and do not guarantee legal certainty for its citizens which results in a legal vacuum in society.

This legal vacuum is also contained in the laws and regulations governing public legal entities where the definition of a public legal entity is not contained in the legislation but the term is often used even in the regulations only mentioning the term public legal entity, as well as regulations regarding the employment of legal entities. For public institutions where there are no special regulations governing the employment of public legal entities in their regulations, but there are or are part of and contained in other laws and regulations but are not clear and explicitly regulated in detail, it is still unclear regarding the legal status of agency staffing public law, resulting in a legal vacuum. This is felt by the Insurance and Social Security, which is a public legal entity but also the only one that has a trade union so it cannot provide legal certainty regarding the protection of workers working within the Insurance and Social Security (Hitaningtyas, R. D. P., 2017).

The problem regarding the legal vacuum of protection for employees of public legal entities in the Insurance and Social Security also results in uncertainty in the resolution of employment disputes. The existence of the Board of Directors' authority to regulate staffing, including making legal products in the form of *beschikking* provisions to regulate the employment of the Insurance and Social Security, because the Board of Directors and Supervisory Board are appointed and dismissed by the President and have the authority to make regulations. But because there is no regulation regarding employment disputes so that if the regulation is brought harm to the Insurance and Social Security employees, there is a dilemma in solving these legal problems. For example, there are problems related to the Decree of the Insurance and Social Security Directors which prohibits the Insurance and Social Security employees from having

marital relations with other the Insurance and Social Security employees, this, of course, interferes with the human rights of everyone to determine their life partner and get a decent living and work.

This case shows that the Board of Directors has the authority to regulate personal rights from the Insurance and Social Security even though the Constitutional Court's decision which has binding legal force states that there should be no Termination of Employment or (PHK) to workers related to the prohibition of marriage among workers. With the problems that have been submitted, there is likely a violation of the rights of employees of the Insurance and Social Security public agency in employment disputes.

The rights of workers that have been regulated in the provisions of Law Number 13 of 2003 concerning Employment, namely:

1. the right to decent work and income;
2. the right to social security;
3. the right to freedom in choosing and changing jobs according to talents and abilities;
4. the right to freedom and development of vocational skills to acquire, add to expertise and skills;
5. the right to obtain protection for safety, health, and treatment by human dignity and religious morals;
6. the right to obtain, establish and become a member of the Labor Union;
7. the right to annual rest;
8. the right to full wages during the annual rest;
9. an entitlement to an annual rest reimbursement payment; and
10. Every worker has equal opportunity without discrimination to get a job.

In addition to the rights of workers as enshrined in the Manpower Law, there are also workers' rights that have been accommodated by the Constitutional Court Decision No.13/PUU-XV/2017 which granted the petition for a judicial review of Article 153 paragraph (1) letter f of Law No. 13 of 2003. concerning manpower, which reads "entrepreneurs are prohibited from terminating employment because labor workers have blood ties and/or marital ties with other workers/ laborers in the same company unless it has been stipulated in a work agreement, company regulations, or collective work agreement".

The decision of the Constitutional Court contains the intention that Article 153 paragraph (1) letter f no longer has binding legal force as long as it is interpreted that the entrepreneur can terminate the employment relationship because the worker has blood ties and/or marriage with other workers in the same company, but with the existence of The Constitutional Court's decision shows that every worker is free to determine his life partner even though he is in the same 1 (one) company. Therefore, if an employee is terminated just because he is married to a fellow employee, it is not a violation of the employee's human rights, as happened to the Insurance and Social Security employees. Due to the absence of legal regulations regarding the employment of public legal entities the Insurance and Social Security, there is no certainty regarding the enforcement and fulfillment of the rights of the Insurance and Social Security employees themselves.

Protection, maintenance, and improvement of welfare in the form of the Employment Guarantee Program launched by the government and must be implemented by employers. The Employment Guarantee Program has a relatively weaker position. Therefore, the entrepreneur bears the main responsibility and morally the entrepreneur must improve the protection and welfare of the workforce. The legal protection that is preventive or more to the prevention of things that can be done to employees of the Insurance and Social Security public legal entity, namely:

## 1. Supervision of BPJS Employment Public Legal Entity Employees.

Employment disputes between BPJS Employment Public Legal Entities, whether disputes over rights or interests, even between employees in a workers union, to be minimized, it is necessary to have incentive supervision from BPJS Ketenagakerjaan. Supervision activities are carried out to find out immediately related to irregularities, misuse, waste, and other problems, then corrective and corrective steps are taken to these problems. In addition, overall supervision is an activity to compare the results that have been implemented with the plans that have been set. Therefore, in supervision, it is necessary to have references, standards, measuring tools related to the results to be achieved. Implementation of Supervision of Employees of BPJS Employment Public

Legal Entities Based on Article 39 paragraphs (1), (2), and (3) of Law Number 24 of 2011 concerning Social Security Administering Bodies, it stipulates that supervision of BPJS is carried out externally and internally, namely internal supervision BPJS is carried out by the BPJS supervisory organ consisting of the Supervisory Board and an internal supervisory unit, while the external supervision of BPJS is carried out by the DJSN and independent supervisory institutions. Supervision is also required of the Board of Directors in drafting regulations relating to BPJS Ketenagakerjaan. The existence of problematic disputes in BPJS Ketenagakerjaan's staffing shows the lack of control from the Supervisory Board or DJSN because the supervision is more repressive rather than preventive measures, at least providing an understanding of the Board of Directors and Worker Employees regarding their respective functions and duties.

## 2. Make regulations governing the employment of the BPJS Employment public legal entity, because the employment of the BPJS Employment public legal entity has not yet received guaranteed protection from the law in resolving employment disputes or at least involving BPJS Employment employees in making BPJS Employment regulations in the points of agreement together.

### ***Conclusion and Suggestion***

The legal implication for the legal vacuum related to the legal status of the public legal entity the Insurance and Social Security is the uncertainty of the status of employees of public legal entities. The formulation of future arrangements that provide legal protection and certainty to employees of the previous Insurance and Social Security public legal entity must be able to provide protection both in a preventive and repressive manner. The author recommends strengthening internal and external supervision in the Insurance and Social Security. In addition, it is necessary to prepare special regulations regarding the regulation of public legal entities, especially Insurance and Social Security.

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