

PalArch's Journal of Archaeology
of Egypt / Egyptology

BENEFITS OF EMPLOYMENT SOCIAL SECURITY AGENCY FOR
FOREIGN WORKERS IN INDONESIA

Mutia Hadini¹, Lanny Ramli²

^{1,2}Department of Administrative Law, Faculty of Law, Universitas Airlangga, Surabaya,
Indonesia

*Correspondence author: lanny.ramli@fh.unair.ac.id

Mutia Hadini, Lanny Ramli. Benefits Of Employment Social Security Agency For Foreign Workers In Indonesia-- Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(3), 1723-1730. ISSN 1567-214x

Keywords: Foreign Workers, Social Security, Manpower Social Security Organizing Agency

ABSTRACT

This study examines the legitimacy of the Employment SSA for Foreign Workers who work in Indonesia. The study uses normative juridical methods, the legal material studied in the form of Law no. 13/2003 concerning Manpower, Law No. 24/2011 concerning SSA, and Law No. 39/1999 concerning Indonesian human rights. The results showed that the implementation of Social Security Administrator (SSA) for Workers to foreign workers (FW) was not evenly distributed in Indonesia and was quite low compared to the number of FW registered to work in Indonesia. To analyze the importance of implementing Social Security under the Manpower Social Security Organizing Agency for Foreign Workers who work in Indonesia, and To analyze the legal remedies that can be carried out in relation to the impact caused by non-compliance of employers in the participation of Foreign Workers in the Manpower Social Security Organizing Agency program. From the results of the discussion and analysis it was concluded that the social security of foreign workers who work in Indonesia is far from being fulfilled. then the social security of foreign workers who work in Indonesia is far from being fulfilled. Oversight of companies that have foreign workers by the government needs to be carried out, because the social security of foreign workers is mandated by the law.

INTRODUCTION

The function of the Indonesian State based on paragraph 4 of the Preamble to the 1945 Constitution of the Republic of Indonesia is to advance public welfare. Social welfare based on article 1 number 1 of Law 11 of 2009 concerning Social Welfare

is a condition of fulfilling the material, spiritual and social needs of citizens to be able to live properly and be able to develop themselves, so that they can carry out their social functions. In this case when welfare is fulfilled a better community life will be achieved. Stability is one of the most crucial elements of social security systems (Yoshida, K, 2018). Social security is a guarantee provided by the company will provide peace and a sense of security for the workers (Gunawan et al, 2018).

Law Number 24 of 2011 concerning the Social Security Administrator or can be abbreviated as SSA is the government's implementation in the implementation of social security as referred to in the 1945 Constitution of the Republic of Indonesia. With the existence of SSA in Indonesia there are legal entities that facilitate the implementation of state social security programs aimed at providing certainty of protection and social welfare for all people in Indonesia. Through this program, every resident is expected to be able to meet the basic needs of a decent life.

The government is responsible for the community's rights in the National health insurance program under the SSA Health and the social security program under the SSA for workers. No exception for foreign nationals residing in Indonesia as worker, they also deserve the program. So that the participation of foreigners who work for a minimum of 6 (six) months in Indonesia is mandatory based on the provisions of article 14 of Law No. 24 of 2011 concerning SSA. For workers, to be a SSA participant needs to be registered by the labor provider according to the social security program that is followed. SSA participants are obliged to pay contributions, in which case the payment needs to be collected by the employer.

The efficiency of the Social Security program under the SSA against foreign workers (hereinafter referred as FW) still reaps controversy. Because, there are still many foreign workers who have not been registered by the employer or the company to become a participant in Social Security under the SSA for workers. Based on the statement of SSA Managing Director Agus Susanto, as of December 2015, a total of 69,000 workers had been employed in Indonesia. As of April 2016, FW who had participated in the SSA for workers had only 26,000 workers. In this case the FW protected by the social security program only reached 37.7% (Akr, 2017).

Due to that reason, there is a contradiction, which in one hand, Human Resources are the main aspect of the development process, while on the other hand, those resources are to cause complicated problems.² Thus, to deal with such disadvantageous conditions, especially for the foreign workers, there are several legal efforts that can be carried out to make the social security program under the SSA Employment for the foreign workers efficient (Djumadi, 1995).

Based on the provisions of article 11 letter g of Law Number 24 of 2011 concerning the Social Security Organizing Agency which states that "SSA has the authority to report employers to the competent authority regarding non-compliance in paying contributions or in fulfilling other obligations in accordance with statutory

provisions." Based on this, it has become an obligation for SSA to follow up on companies or employers who do not obey their obligations in payment of SSA contributions or other obligations relating to FW membership to become SSA for workers participants.

Legal protection for workers as well as participants can submit their complaints to the service quality control unit and the handling of complaints from participants in dispute resolution through the courts as stipulated in article 50 of Law No. 24 of 2011 concerning SSA which states that "in the case of complaints cannot be resolved by the service controlling unit and the handling of participant complaints through mediation mechanisms cannot be carried out, the settlement can be submitted to a district court in the applicant's residence area."

This study aims to analyze the importance of implementing Social Security under the Manpower Social Security Organizing Agency for Foreign Workers who work in Indonesia, and To analyze the legal remedies that can be carried out in relation to the impact caused by non-compliance of employers in the participation of Foreign Workers in the Manpower Social Security Organizing Agency program.

It is expected to be able to provide legal knowledge development in the field of manpower, especially FW, as well as the field of social security under the SSA for workers and inputs related to the systematic SSA for workers applied to FW who work in Indonesia under the Law.

RESEARCH METHODS

This research is a normative legal research. The approach taken is based on the main legal material by examining the theories, concepts, principles of law and legislation related to this research. This study is based on an approach that originates in books, laws and regulations. The legislation includes Law 24/2011 concerning the Social Security Organizing Body, Minister of Manpower Regulation 16/2015, Minister of Manpower Regulation 35/2015 concerning Procedures for the use of Foreign Workers, Law No. 13/2003 concerning Manpower, Law No. 39/1999 concerning Indonesian human rights other documents relating to law relating to this research.

FW participation in the Social Security Program

The existence of social security for workers can provide certainty of protection for the impacts caused by the work environment. Given the hazards that cannot be avoided by workers, the existence of social security aims to control the risks posed by uncertain events that are owned by workers. Possible risks borne by labor are occurred just before leaving for work, while working, or after work, and also diseases caused by work (Asyhadie, 2008). So that the existence of social security, will be guaranteed protection against risks from work, especially to protect the continuity of the income of workers / laborers who are needed to meet the needs of life and their families (Asyhadie, 2008).

Social security based on Article 1 number 2 of the Law of the Republic of Indonesia Number 24 of 2011 concerning the Social Security Organizing Agency (SSA) is a form of social protection to ensure all people can meet their decent living needs. Social security for workers is in the form of compensation in the form of money as a substitute for a portion of lost or reduced income and forms of service as a result of events or conditions experienced by workers in the form of work accidents, illness, pregnancy, childbirth, old age, and death. Thus, the labor welfare is guaranteed for the existence of social security that at least protects the family from the workforce. Social security for workers has several aspects, including providing basic protection to meet the needs of life for workers and their families, and is an award to workers who have contributed energy and thoughts to the company where they work (Ramli, 2020).

The government in carrying out the Social Security Program under SSA facilitates several programs for Workers, including the old age insurance, work accident insurance, death insurance, and pension insurance. Of the four programs, the Workers will obtain the facilities of the program if they meet the administrative requirements of the SSA for workers participants. As stipulated in article 15 paragraph (1) of Law Number 24 of 2011 concerning the Social Security Organizing Agency (SSA) which states that "The Employer must gradually register himself and his Workers as Participants to SSA in accordance with the Social Security program that is followed."

FW membership to Social Security under the SSA TK is regulated in the provisions of article 14 of Law No. 24 of 2011 concerning the Social Security Organizing Agency states that "Everyone, including foreigners who work for a minimum of 6 (six) months in Indonesia, must be a participant in the Social Security program." Based on these provisions SSA is not only intended for local workers but also foreign nationals who get entry permits to work in Indonesia for at least 6 months, are eligible to participate in the Social Security program under the SSA for workers. Equitable social security programs under the SSA for workers are based on the goal of the state which is to develop a social security system for the welfare of all people based on article 28 H paragraph (3) of the 1945 Constitution of the Republic of Indonesia. So that every member of society without discrimination as a unit in which the interests are protected by the state, the risks that may be faced will be borne jointly as well.

Basically every worker who has an accident or other risk is the responsibility of the company as the employer. However, when registered with the SSA, the company is not responsible for medical and recovery costs. But in its application, the SSA for workers program has not been evenly distributed throughout Indonesia. In this case many workers and foreign workers have not been registered by the employer or the company to become a participant in Social Security under the SSA for workers.

Based on this fact, the low number of FW participating in the Employment SSA is not in accordance with the provisions of the law especially Law Number 24 of 2011 concerning SSA. The participation of workers in the SSA program is the responsibility of the employer. Based on the provisions of article 15 of Law Number 24 Year 2011 concerning SSA, it is stated that employers must gradually register themselves and their Workers as Participants to SSA in accordance with the Social Security program that is followed. The implementation of SSA is also based on the principle of membership which is mandatory. In this case the participation of workers is equally distributed, without discrimination as a form of legal certainty provided by the government in the context of protection of social welfare. There are many allegations that cause companies not to participate in the social security program for workers are the lack of legal awareness of the company, prioritizing the interests of money (business), less attention to the fate of labor, and the assumption of labor is not the company's assets (Ramli, 2020).

Legal Protection for Foreign Workers

Based on the fact that the lack of participation of employers in registering their FW, in order to increase the number of social security participants for workers, supervision is needed for employers (SSATK, 2017). The expansion of membership, services, and development of employment social security funds is a serious concern for SSA for workers, especially the Supervisory Board. The company or employer is considered to have violated if they have not registered as a participant, arrears contributions, does not register all workers, does not report actual wages. Supervision as a form of legal protection so that the benefits of Employment Social Security which are the rights of participants can be received on an ongoing basis (SSATK, 2017).

Meanwhile, to provide legal protection for foreign workers, supervision is carried out on employers aimed at ensuring the implementation of employment in accordance with statutory provisions. This supervision is carried out by labor inspector employees who have the competence and independence to ensure the implementation of legislation as stipulated in article 176 of Law Number 13 Year 2003 concerning Manpower. On the other hand SSA for workers has the authority to conduct supervision and inspection of employer compliance. As stipulated in article 5 paragraph (2) of SSA Labor Regulation Number 01 of 2014 concerning Procedures for Supervision and Inspection of Compliance in the Implementation of the Employment Social Security Program.

This supervision is applied to increase the number of participants, especially FW as participants in the labor social security program. Manfaat for workers is that there is legal certainty regarding the implementation of social security, so that the guaranteed workforce is certain because there is law enforcement carried out by SSA for workers to employers. Besides that, the benefit for the employer is that the supervision system provides a way to get an explanation from the authorities

regarding their obligations according to the law and instructions on how to implement them (SSATK, 2017).

Based on compulsory matters which are a big responsibility for employers, the existence of law enforcement is intended to bring order to employers in the context of organizing employment and participation for FW. Control is needed based on overcoming violations that have occurred in the environment of companies that have FW. One form of violations committed by employers is marked by the number of SSA for workers participants, especially FW, which is fairly low. Based on SSA for workers data in February 2016, there were 300 SSA for workers participants from 2,131 FW working in Bali based on Bali Manpower and ESDM data (Hambali, 2017).

The government in the implementation of social security programs under the SSA for workers is based on Law No. 24 of 2011 concerning the Social Security Organizing Agency. Law Regulation No. 24 of 2011 concerning SSA is expected to be able to build SSA for workers into a more reliable public organization in the national and even international arena and committed to applying the principles of good governance (Dirdjosisworo, 1978).

In the imposition of administrative sanctions written warning in the form of warnings to the company concerned. The warning was carried out by the Social Security Organizing Agency in writing. The imposition of sanctions is due to breaches of employers against workers including FW for disobedience to the provisions of Law Number 24 of 2011 concerning SSA, PP No. 44 of 2015 concerning the Implementation of Work Accident Insurance and Death Insurance Programs, PP No 45 of 2016 concerning the Implementation of Pension Insurance Programs and PP No. 46 of 2015 jo PP No. 60 of 2015 concerning the Implementation of the Old Age Insurance program. The imposition of this sanction is the first written warning for a maximum of 10 working days by SSA for workers. If until the end of the 10-day work period the first written warning is not implemented, the SSA for workers shall impose the second written warning sanction for a period of 10 working days.

According to the Law of the Republic of Indonesia no. 39/1999 concerning the human rights of Indonesian, protection is a defense towards human rights. Because every human being has the same rights and obligations, every human being also has the same right to protection (Prakoso and Setyaningati, 2018), then FW also has the right to be given legal protection. Legal protection for the aggrieved party over the complaint and not yet resolved part of the unit can be done dispute resolution through mediation as stipulated in article 49 of Law Number 24 Year 2011 concerning SSA. Mediation, namely alternative dispute resolution based on good faith, aside from litigation resolution in the District Court. In the case of settlement both parties are assisted by one or more expert advisors and through a mediator. A mediator does not side with one party and upholds the confidentiality of each party.

In this case the mediator mediates the parties experiencing rights disputes as well as disputes of interest then negotiated to reach consensus.

In terms of regulating employers against their obligations, the competent authorities carry out law enforcement to employers because they do not heed administrative sanctions imposed on employers. Therefore, a criminal sanction imposed with a maximum imprisonment of 8 (eight) years or a maximum fine of Rp1,000,000,000.00 (one billion rupiah), against an employer committing violations of article 19 paragraphs (1) and (2).

CONCLUSION

The participation of FW in the social security program under the SSA for workers is mandatory as per the SSA principle. In this case there is no discrimination for each worker, including foreign workers who have worked for at least 6 months in Indonesia required to become SSA for workers participants. SSA is an effort of the government to provide overall welfare in Indonesia, so that employers are required to register their workforce as participants for the welfare of equal distribution in Indonesia. Legal protection for foreign workers in the context of increasing the minimum number of SSA for workers participants and overcoming employers who commit violations by not registering foreign workers as participants, which is carried out by the Supervisory Agency to ensure the implementation of manpower as stipulated in the legislation. This supervision is carried out by labor inspector employees who have the competence and independence to ensure the implementation of legislation as stipulated in article 176 of Law Number 13 Year 2003 concerning Manpower. Besides that, one of the violations is that the employer has aborted his obligation to register his FW as a participant, followed up by the SSA for workers in the form of administrative sanctions and even sanctions criminal sanctions according to the severity of the form of the offense.

REFERENCES

- Akr (2017) *Baru 37% pekerja asing ikut BPJS Ketenagakerjaan, BPJS Ketenagakerjaan*. Available at: www.bpjsketenagakerjaan.go.id.
- Asyhadie, Z. (2008) *Aspek-Aspek Hukum Jaminan Sosial Tenaga Kerja di Indonesia*. Rajawali Pers.
- Dirdjosisworo, S. (1978) 'Penegakan Hukum', *Majalah Pro Justitia Ikatan Alumni Fakultas Hukum Universitas Parahyangan*, p. 241.
- Djumadi (1995) *Hukum Perburuhan Perjanjian Kerja*. 2nd edn. Edited by Jakarta. Jakarta: Raja Grafindo Persada.
- Gunawan, H. Ilyas, Gunawan, Naninsih, N. (2018). *Effect of labor social security on job satisfaction*. *International Journal of Scientific and Technology Research*. 7(12):86-89
- Hambali (2017) *Perusahaan Tidak Mendaftarkan Pekerjaannya di BPJS Ketenagakerjaan akan Dipermalukan, BPJS Ketenagakerjaan*. Available at: www.bpjsketenagakerjaan.go.id.
- Prakoso, A. E. J. and Setyaningati, C. N. (2018) 'Law Protection for Procurement Officers: Legal Protection against the Procurement Instrument of Goods

and Services', *IOP Conference Series: Earth and Environmental Science*, 175(1), p. 2019. doi: 10.1088/1755-1315/175/1/012128.

Ramli, L. (2020) *Hukum ketenagakerjaan*. Airlangga University Press

Yoshida K. (2018) The Stability of Social Security in the United States: The Need for a Durable Institutional Design. *Journal of Social Policy*: 47(2)