

Analysis of the Implementation of Criminal Sanctions for Employer Non-Compliance in Paying Contributions BPJS Health

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ABSTRACT

Health insurance is implemented with the aim of ensuring that participants receive health care benefits and protection to meet their basic health needs. However, many companies still violate Article 19 (1) or (2) of the BPJS Law, which states that companies have not complied with collecting, paying, and depositing premiums that are the responsibility of employees from their company to the Social Security Agency for Health (BPJS Kesehatan), resulting in many companies defaulting on BPJS Kesehatan insurance premiums and directly harming their employees who cannot utilize health insurance when they need health services. This study aims to analyze the application of criminal sanctions for companies non-compliance with BPJS Kesehatan insurance premium payments. The research method used is socio-legal empirical research. Employees who have not registered as BPJS participants and have never paid premiums cannot be categorized as participants. There are three conditions that lead to the imposition of criminal sanctions under Article 55 of the BPJS Law: (1) the company does not collect premiums that should be covered by the employees themselves; (2) the company have collected premiums that should be covered by employees, but the company didn't deposit them to BPJS; (3) company do not pay and deposit premiums that are their responsibility to BPJS.

Keywords:

Social security;
BPJS Health
Insurance
Premiums;
Criminal
Sanctions.

INTRODUCTION

Indonesia is a country of law, all residents living in Indonesia must follow the applicable rules that have been set by the government. The purpose of law is to divide rights and obligations between individuals in society, to divide power and determine how legal problems should be resolved with the aim of providing legal certainty. Sunaryati Hartono argues that law is needed to protect those who are weak and unable socially, economically and politically to obtain social justice. Phillipus M. Hadjon argues that legal protection for the community is one of the government's preventive and repressive actions (Muammar Dzachwani et al., 2022).

One of the national goals of the Indonesian nation as stated in the Preamble to the 1945 Constitution is to advance public welfare. This shows that since independence, the Unitary State of the Republic of Indonesia has firmly established the concept of a Welfare State. The Welfare State is the responsibility and obligation of the State in providing welfare to its people which includes fulfilling the basic needs of citizens, social services and market economic interventions (Nofriyenti et al., 2019).

One of the most important factors in the development of a country is its public health index, for that every country must have a health sector implementation regulation system to achieve the goal of creating a healthy society (Ritonga et al., 2024). This regulatory system is manifested in the form of laws and regulations which can later be used as legal guidelines in the provision of health services to citizens (Arifa, 2018).

The implementation of the social security program is a form of state responsibility and obligation in providing socio-economic protection to the community according to

the state's financial condition, this is of course in accordance with Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia that the state develops a social security system for all people and empowers the weak and disadvantaged in accordance with human dignity. Based on Article 19 paragraph (1) of Law Number 40 of 2004 concerning the National Social Security System, health insurance is organized nationally based on the principles of social insurance and the principle of equity (Hasan, 2019). Health insurance is organized with the aim of ensuring that participants receive health care benefits and protection to meet basic health needs (Fajarwati et al., 2024) Legislation regulates the presence and implementation of health services through the National Health Insurance (JKN) program in Indonesia.

The implementation of the JKN program can thus be stated as a basic protection effort provided by the state to fulfill the minimum needs of all Indonesian people. Based on the provisions of Article 15 paragraph (1) of Law Number 24 of 2011 concerning the Social Security Administering Body, employers are required to register themselves and their employees as participants with BPJS in accordance with the social security program they follow, based on these provisions, Article 13 paragraph (1) of Presidential Regulation Number 82 of 2018 concerning Health Insurance emphasizes Article 15 paragraph (1) of the BPJS Law, that employers are required to register themselves and their employees as health insurance participants with BPJS Kesehatan by paying contributions. In accordance with Article 17 of the BPJS Law, employers other than state administrators who do not implement these provisions may be subject to administrative sanctions in the form of written warnings, fines and/or not receiving certain public services (Nurpaliza Nurpaliza et al., 2023).

Presidential Regulation Number 75 of 2019 concerning Amendments to Presidential Regulation Number 82 of 2018 concerning Health Insurance regulates the provisions that must be complied with by employers in deducting their employees' BPJS Health contributions. Article 30 paragraph (1) and paragraph (2) of Presidential Regulation Number 75 of 2019 regulates the contribution for Wage Receiving Workers (PPU) participants, which is 5% of the salary or wages per month. The contribution as referred to is paid with the provision that 4% is paid by the employer and 1% is paid by the participant. Regarding this matter, in accordance with Article 32 paragraph (2) of Presidential Regulation Number 75 of 2019, the lowest limit of the monthly salary or wages used as the basis for calculating the amount of contributions for PPU participants is the district/city minimum wage (Novitasari & Aminah, 2023).

The amount of wages or salaries received by workers will of course be in line with the amount of contributions that must be paid by employers and workers (participants), not a small amount of contributions that must be paid will result in non-compliance by employers in paying BPJS Health contributions, non-compliance with payment of contributions can be caused by many factors, both company financial problems, deliberate factors, negligence factors, company financial efficiency factors, problems regarding BPJS Health insurance services that are considered inappropriate, causing participant disappointment and other problems (Naim, 2021). The impact of employer non-compliance in paying JKN contributions is not only on workers, but will also have an impact on employers, health facilities and BPJS Health (Sufriyana et al., 2020).

Employers who have become BPJS participants, in addition to having the obligation to register themselves and their employees, based on the provisions of the BPJS Law, employers have other obligations in paying contributions, namely:

Article 19 paragraph (1): Employers are required to collect contributions that are the responsibility of the Participants from their Employees and pay them to BPJS. Article 19 paragraph (2): Employers are obliged to pay and deposit contributions for which they are responsible to BPJS. Article 55: Employers who violate the provisions as referred to in Article 19 paragraph (1) or paragraph (2) shall be punished with imprisonment for a maximum of 8 (eight) years or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

The obligation is regulated in the BPJS Law as an effort to provide protection and provide legal certainty for BPJS participants, so that employers implement the provisions of Article 19 paragraph (1) and paragraph (2) which are their obligations after becoming BPJS participants. However, there are still many employers who violate Article 19 paragraph (1) or paragraph (2), namely employers have not complied in collecting, paying and depositing contributions that are the burden of participants from their workers and which are the responsibility of employers to BPJS, so that not a few employers are in arrears with BPJS Health contributions and have a direct impact on losses, namely to participants because they cannot take advantage of health insurance when they need health services. (Mentari, 2024). Based on the description above, the legal issue in writing this journal is "Analysis of the Implementation of Criminal Sanctions for Employer Non-Compliance in Paying BPJS Health Contributions".

METHOD

This study uses a juridical-empirical research method, using a socio-legal approach method (Rahmah, 2022). Data in the form of primary data, secondary data and tertiary data obtained through literature studies and field studies were analyzed descriptively qualitatively (Saputro & KEBUDAYAAN, 2022).

RESULTS AND DISCUSSION

Law Number 24 of 2011 concerning the Social Security Administering Body is an administrative law with criminal sanctions as a criminal law regulation outside the Criminal Code, has regulated 3 (three) basic concepts in criminal law, namely criminal acts, criminal liability and criminal or criminal penalties, especially against employers who do not collect, pay and deposit contributions that are the burden of participants from their workers and which are the responsibility of the employer to BPJS as regulated in Article 19 paragraph (1) and paragraph (2) in conjunction with Article 55 of the BPJS Law. The JKN program aims to provide health protection for all Indonesian citizens with the principle of mutual cooperation, where participants pay contributions that are used to finance health services (INDRAWATI, 2024).

The imposition of criminal sanctions under Article 55 of the BPJS Law for violations of Article 19 paragraph (1) or paragraph (2) of the BPJS Law, of course, as a legal basis and form of legal protection and legal certainty from the government for BPJS participants. Regarding the application of criminal sanctions for violations of Article 19 paragraph (1) or paragraph (2) in conjunction with Article 55 of the BPJS Law, in carrying out its duties, BPJS is given the authority regulated in Article 11 letter g of the BPJS Law, that BPJS has the authority to report employers to the authorized

agency regarding their non-compliance in paying contributions or in fulfilling other obligations in accordance with the provisions of laws and regulations. Article 11 letter g of the BPJS Law can be intended as follows:

1. Report non-compliance to the relevant authorities

BPJS has the responsibility to ensure that every employer registered in the social security program fulfills its obligations in paying contributions for its employees or other obligations. If an employer is found to not comply with its obligations in paying contributions or not fulfilling other provisions stipulated in the laws and regulations, BPJS is authorized to report the problem to the authorized agency, such as the agency in the field of employment, the agency in the field of licensing and Law Enforcement Officers (APH).

2. Purpose of law enforcement and compliance

The purpose of this authority is to ensure that employers are responsible for carrying out their workers' contribution payment obligations, which are their right to receive social security protection. It is hoped that BPJS can ensure that further action is taken against non-compliant employers, so that the rights of social security participants remain protected (Putri & Koto, 2024)

3. Encourage employer compliance

With this authority, BPJS does not only act as a social security organizer, but also as a supervisor who ensures that employers fulfill their obligations. This step is expected to create a better climate of compliance from employers towards their obligations in the social security program.

The imposition of criminal sanctions in the BPJS Law is expected to ensure that employers comply with the provisions of laws and regulations on social security, however, if the criminal sanctions applied are not implemented properly, this will not have a deterrent effect on employers, resulting in the failure to fulfill legal certainty and protection for workers.

Criminal sanctions consist of two words, namely sanctions and criminal. Sanctions are threats, sanctions are intended as criminal threats (*strafbedreiging*) and have a function for norms that have been set in law and laws can be obeyed as a legal impact on a violation of norms. GP Hoefnagels argues that sanctions in criminal law are a form of legal acts that are violated based on the law, starting from the detention of suspects and prosecution of defendants to the judge's decision. Criminal law and its sanctions are seen as suffering or misery imposed on the perpetrator due to committing a violation that is contrary to the law, although it is not included in an end goal, but criminal sanctions are the closest goal (Erviani, 2022).

Based on several studies that have the theme of discussion regarding criminal sanctions for non-compliance with payment of contributions in the BPJS Law, there are obstacles in the enforcement, application and implementation of the imposition of criminal sanctions in Article 55 of the BPJS Law, both legal and non-legal obstacles. Some of the legal obstacles include the first is the absence of implementing regulations regarding the application of Article 55 of the BPJS Law. Second, the difficulty of collecting evidence (Putri & Koto, 2024). Third, there are no reports from BPJS and workers. Fourth, the provisions stipulated in the laws and regulations are considered unclear and less supportive in efforts to accelerate the process of proving BPJS criminal acts. Fifth, Article 55 of the BPJS Law is difficult to implement and has never been implemented.

The diversity of interpretations of the imposition of criminal sanctions in Article 55 of the BPJS Law is one of the obstacles to the application of this article to employers who do not comply with JKN contribution payments, there is an assumption that the imposition of this criminal sanction must involve the collection of contributions that are then not deposited by the employer to BPJS, there are those who assume that the imposition of sanctions in Article 55 must fulfill Article 19 paragraph (1) and paragraph (2). There is an opinion that the imposition of Article 55 is difficult to prove the crime, in addition there are those who interpret whether Article 55 of the BPJS Law is a complaint offense or an ordinary crime. If Article 55 of the BPJS Law is interpreted as a complaint offense, it is certainly true that the application of this article is certainly not easy, where violations of Article 19 paragraph (1) or paragraph (2) in conjunction with Article 55 of the BPJS Law, the party who is directly harmed is the participant, so that the participant who feels harmed can file a complaint with law enforcement officers. Participants in this case are workers, it is considered very difficult for workers to report to law enforcement officers regarding violations committed by employers, the meaning of difficult in this case is because on the one hand if workers report or dispute their rights to social security, the worker can be dismissed by their employer, in terms of the position of workers who remain disadvantaged whether they report the violation or not, they feel disadvantaged because they do not receive the social security rights that they should receive and can use. Based on the problems that have been described, the application of Article 55 of the BPJS Law certainly makes criminal sanctions in the law only limited to firm sanctions in writing, but in its application it feels very difficult (Suprayitno & Wardhana, 2024).

In this regard, it is necessary to pay attention to conducting an analysis and study on how the legal formulation of Article 19 paragraph (1) and paragraph (2) in conjunction with Article 55 of Law Number 24 of 2011 concerning the Social Security Administering Body can be interpreted in the implementation of the National Health Insurance program, so that it can be implemented properly because the imposition of this criminal sanction aims to prevent the unlawful act from being repeated. The following is an analysis of Article 19 paragraph (1) and paragraph (2) in conjunction with Article 55 of Law Number 24 of 2011 concerning the Social Security Administering Body:

1. Employer

Based on Article 1 number 9 of the BPJS Law: Employers are individuals, entrepreneurs, legal entities, or other bodies that employ workers or state administrators who employ civil servants by paying salaries, wages, or other forms of compensation.

2. Workers

Based on Article 1 number 8 of the BPJS Law: A worker is any person who works and receives a salary, wages or other form of compensation.

3. Participants

Based on Article 1 number 4 of the BPJS Law: Participants are every person, including foreigners who have worked for at least 6 (six) months in Indonesia, who have paid contributions. Based on this understanding, in the case of workers who have not been registered as BPJS participants and have never paid contributions, it means that the worker cannot be categorized as a participant.

4. Contributions

Based on Article 1 number 6 of the BPJS Law: Contributions are an amount of money paid regularly by Participants, employers, and/or the Government. In BPJS Health membership based on Article 39 Paragraph (1) of Presidential Regulation Number 82 of 2018 concerning Health Insurance, employers are required to collect contributions from their employees, pay contributions that are their responsibility, and deposit the contributions to BPJS Health no later than the 10th of each month. Based on Article 42 paragraph (1) of Presidential Regulation Number 82 of 2018 concerning Health Insurance, if participants and/or employers do not pay contributions by the end of the current month, the participant's guarantee will be temporarily suspended from the 1st of the following month. This means that participants and/or employers have outstanding BPJS Health contributions (Prasja et al., 2023).

5. BPJS

Based on Article 1 number 1 of the BPJS Law: The Social Security Administering Body, hereinafter abbreviated as BPJS, is a legal entity formed to organize a social security program. BPJS is divided into 2 (two), namely BPJS Kesehatan which organizes the Health insurance program and BPJS Ketenagakerjaan which organizes work accident insurance, old age insurance, pension insurance and death insurance (Salangka, 2023).

6. Use of the phrase "or"

According to the Big Indonesian Dictionary (KBBI) "or" is a conjunction to mark a choice between several options. The phrase "or" means to tell to choose (one of them). The use of "or" in the phrase "Employers who violate the provisions as referred to in Article 19 paragraph (1) or paragraph (2)", this can be interpreted that employers who violate Article 19 paragraph (1) or paragraph (2) can be punished according to Article 55 of the BPJS Law, meaning that the violation does not need to accumulate that the employer violates Article 19 paragraph (1) and paragraph (2) to be punished. For this reason, there will be 3 (three) conditions that can be subject to criminal sanctions under Article 55 of the BPJS Law, namely:

- a. Employers do not collect contributions that are the responsibility of their employees.
- b. Employers collect contributions that are the responsibility of their employees but do not pay them to BPJS.
- c. The employer does not pay and deposit the contributions that are his responsibility to BPJS.

7. Subject and object

The subject of criminal law is something that is considered by statutory regulations to be able to commit a crime and can be held criminally responsible or subject to criminal sanctions. The subject of a crime includes people (natural humans) and corporations (associations) both with legal entity status and non-legal entity status (Probowati et al., 2024). Regarding criminal liability, if in human legal subjects the ability to be responsible is a condition for guilt, this is different from corporations. The (internal) condition for guilt in corporations is not the 'ability to be responsible' like humans, but rather the obligation of corporations to always distance themselves as much as possible from the occurrence of a crime. Based on several theories of criminal liability below (Rahim et al., 2023):

- a. Vicarious liability theory, the basic understanding of this theory emphasizes the responsibility of a corporate owner for all actions taken by his employees.
- b. Identification theory, the most emphasized thing is that the perpetrator must be a person who truly represents a corporation.
- c. Delegation Theory, this theory is actually a modification of the identification and vicarious liability theories. The theory emphasizes that the scope of individuals who are considered to represent the corporation is expanded to those who serve in the director's function.

Based on the explanation above, the subject of the imposition of criminal sanctions for violations of Article 19 paragraph (1) and paragraph (2) in conjunction with Article 55 of the BPJS Law is the employer. Based on Article 1 number 9, the employer is an individual, entrepreneur, legal entity, or other body that employs workers or state administrators who employ civil servants by paying salaries, wages, or other forms of compensation. The perpetrators referred to include, for example, owners, officials (Directors), administrators, employees who have a managerial level whose duties are not under the orders or direction of others. This means that the owner of power in this corporation has the authority to represent the corporation (Andi Nimah Sulfiani, 2021).

The object of criminal law is the legal interests protected by material criminal law as regulated in the Criminal Code (KUHP). According to Sumakul & Sumilat, the object of criminal law can be interpreted as the target of a criminal act protected by criminal law. In other words, the object of criminal law is the legal interest that is attacked or that is intended to be attacked by the perpetrator of the crime. According to Limbong, the object of criminal law includes various legal interests such as life, body, freedom, property rights, social rights, dignity and state security. These objects can be the legal interests of individuals or society. Based on this explanation, the object of imposing criminal sanctions for violations of Article 19 paragraph (1) and paragraph (2) in conjunction with Article 55 of the BPJS Law includes workers' rights to social security protection including health insurance, so that workers receive social security benefits appropriately and on time, as well as the sustainability of BPJS funds so that the contribution funds collected are maintained for the benefit of all participants and legal certainty in the national social security system so that every employer is responsible for the welfare of its workers in accordance with applicable law.

8. Elements of a crime

Simons distinguishes the elements of a crime into objective elements and subjective elements.

- a. Subjective elements in the crime include a person who is capable of being responsible, the existence of a mistake (*dolus/culpa*). The subjective element in Article 55 of the BPJS Law is the intention of the employer not to fulfill the obligation: 1) Collecting and depositing contributions that are the burden of participants from their workers (Article 19 paragraph 1). 2) Paying and depositing contributions that are the responsibility of the employer (Article 19 paragraph 2).
- b. The objective element in a criminal act includes the person's actions, the visible consequences of those actions, and perhaps there are certain circumstances that accompany those actions. The objective element in Article 55 of the BPJS Law is the failure to carry out obligations in the form of collecting, paying and depositing contributions to BPJS.

9. Article 55 of the BPJS Law includes the classification of crimes

Criminal acts in the Indonesian criminal law system are classified into two main categories based on the Criminal Code, namely crimes regulated in Book II of the Criminal Code and violations regulated in Book III of the Criminal Code. Sudikno Mertokusumo in his book explains that criminal acts can be divided into two types, namely:

- a. Misdemeanor is a crime that is more serious and harms many people or countries. Criminal acts refer to acts that are intentionally done to avoid obligations or manipulate data.
- b. Violations that are minor in nature, more focused on administrative regulations, and do not cause major losses to the community. Criminal violations refer to acts that violate the provisions of the law, but are not very serious or do not cause very direct detrimental impacts.

The employer's obligations in Article 19 paragraph (1) and paragraph (2) are imperative, so that non-compliance by the employer with these obligations is categorized as a violation of the law which has criminal consequences. Article 55 of the BPJS Law threatens a maximum prison sentence of 8 years or a fine of 1 billion rupiah. In the Criminal Code, serious crimes (more than 5 years) are generally categorized as crimes, not just violations, when compared to several articles in the Criminal Code such as Article 372 of the Criminal Code (embezzlement) which threatens a maximum prison sentence of 4 years and Article 263 of the Criminal Code (forgery of documents) which threatens a maximum prison sentence of 6 years, both of which are categorized as crimes in the Criminal Code. For this reason, Article 55 is more appropriately categorized as a crime than a violation. In addition, Article 55 of the BPJS Law imposes sanctions on employers who do not collect, pay and deposit contributions that are the burden of participants from their workers and which are the employer's obligation to BPJS. If you look at the nature of the act, this violation tends to be done intentionally, because usually the act is done consciously and intentionally (not due to negligence alone). The purpose of criminalizing non-compliance by employers in paying BPJS contributions is to enforce compliance and provide a deterrent effect. (Hutagaol & Sihombing, 2021).

10. Formal crimes

Formal crimes are crimes or acts prohibited by law that are considered perfect or fulfilled once the act is committed without requiring any consequences from the act. Violations of the obligations in Article 19 paragraph (1) and paragraph (2) in conjunction with Article 55 of the BPJS Law are categorized as formal crimes. In formal crimes, violations are considered to have occurred when the prohibited act is committed, without having to prove that there is a detrimental consequence (for example, the worker feels disadvantaged). In this case, it is sufficient to prove that:

- a. Employers do not collect contributions that are the responsibility of their employees.
- b. Employers collect contributions that are the responsibility of their employees but do not pay them to BPJS.
- c. The employer does not pay and deposit the contributions that are his responsibility to BPJS.

11. Crime Of Omission

The crime of omission is a crime in the form of a violation of an order, namely not doing something that is ordered/required. In Article 55 of the BPJS Law, employers are subject to criminal penalties if they violate the provisions of Article 19 paragraph (1) or paragraph (2), in this context Article 19 paragraph (1) and paragraph (2) are not prohibitions, but orders that must be obeyed by the employer. The phrase "violating the provisions" in Article 55 of the BPJS Law means ignoring or not carrying out an order or not carrying out something that is required by law. The crime of omission can occur either intentionally (*dolus*) or negligence (*culpa*) (Rombot, 2024).

To understand why the crime of omission can be intentional (*dolus*), we need to look at the elements of guilt (*mens rea*) in criminal law, which are divided into:

Intention (*dolus*): The perpetrator knows his obligation but intentionally does not carry it out.

Negligence (*culpa*): The perpetrator does not carry out his obligations due to negligence or lack of care.

According to Article 55 of the BPJS Law, intent can still occur even though this offense is omissionist, because intent can also be in the form of ignoring known legal obligations (LUFITA, 2024).

12. Intentional crime (*dolus*)

Intentional crime (*dolus*) is a crime that in its formulation is done intentionally or contains an element of intention. Our Criminal Code does not provide a definition of this. A person who does an act intentionally must want his act and must be aware of or know the consequences that may occur because of his act. According to Moeljatno, intention is knowledge, which is the existence of an inner or mental relationship with the act carried out by a person (Quintarti et al., 2025). Criminal sanctions under Article 55 apply if it can be proven that the violation was committed intentionally, such as by ignoring obligations even though a warning has been given. In order for criminal sanctions under Article 55 to be applied, evidence may include:

- a. Knowledge: Does the employer know that he/she has an obligation to collect, pay and deposit contributions that are the responsibility of the participants from his/her employees and which are the obligation of the employer.
- b. Active action: Is there evidence that the employer intentionally failed to comply with the rules for collecting, paying and depositing contributions that are the responsibility of the participants from their employees and which are the employer's obligation.
- c. Waiver of obligation: Was the employer informed or given a warning of the obligation to pay contributions that must be carried out in the BPJS Law.

13. Ordinary Crimes

An ordinary crime is a crime for which a complaint from the entitled party is not required to prosecute the perpetrator. A crime can only be categorized as a complaint-based crime if the law explicitly states that the legal process depends on the complaint. In Article 55 of the BPJS Law, there is no clause stating that this crime can only be processed after a complaint from the worker or the injured party. Article 55 of the BPJS Law aims to protect the social security system concerning the rights of workers (participants) in general, not just the interests of certain individuals. If an employer does not pay BPJS contributions, not only one worker is harmed but other workers and their family members are also affected, as well as the stability of the BPJS system as a whole (Sembiring et al., 2023). Therefore, the state has a direct interest in

enforcing this rule without waiting for a complaint from a particular individual. The principle of mutual cooperation is the principle of togetherness between participants in bearing the burden of social security costs, which is manifested in the obligation of each participant to pay contributions according to their level of salary, wages, or income (Mustikawati et al., 2022).

Because Article 55 is an ordinary crime, this case can be reported by various parties without having to wait for a complaint from the worker, parties who can report it include:

- a. BPJS Health or BPJS Employment, if you find an employer who is not compliant.
- b. Workers who are disadvantaged, workers can still report even though it is not mandatory.
- c. Trade Unions or NGOs – Labor organizations can file reports.
- d. The government or law enforcement officers (police/prosecutors), if there is evidence of violations, they can act immediately without waiting for individual reports.

Because this is an ordinary crime, law enforcement officers can immediately conduct investigations and take action without having to have a complaint from the worker (Nuraeni, 2023).

14. Evidence And Items Of Evidence

Article 183 of the Criminal Procedure Code stipulates that a judge may not sentence a person unless with at least two valid pieces of evidence he is convinced that a crime actually occurred and that the defendant is guilty of committing it. As is known, evidence in criminal procedure law is regulated in the Criminal Procedure Code, namely Article 184 paragraph (1) of Law Number 8 of 1981, which details the types of evidence in criminal procedure law, namely as follows:

a. Witness statement

In violation of Article 19 paragraph (1) or paragraph (2) in conjunction with Article 55 of the BPJS Law, witness statements can be in the form of witnesses who know about the violation committed by the relevant party, such as witnesses who know that the company has not paid BPJS contributions according to the provisions, or internal company witnesses who can provide information regarding company policies or practices that ignore the obligation to pay BPJS contributions. For example, witnesses from workers who have been registered as BPJS participants who do not receive BPJS benefits, either the National Health Insurance (JKN) program or other social security due to the employer's non-compliance in paying BPJS contributions. Apart from the worker element, witnesses can be from the BPJS (including BPJS Health or BPJS Employment) who can prove that the employer has committed a violation of Article 19 paragraph (1) or paragraph (2) in conjunction with Article 55 of the BPJS Law (Ernawati & Manuaba, 2024).

b. Expert Statement

Experts in this case can be criminal law experts who can explain violations of Article 19 paragraph (1) paragraph (2) in conjunction with Article 55 of the BPJS Law, employment experts who can explain the employer's obligations towards workers based on BPJS regulations and other experts as needed.

c. Letter

In violation of Article 19 paragraph (1) or paragraph (2) in conjunction with Article 55 of the BPJS Law, an official letter or document issued by BPJS can be used stating

that the company's contributions have not been paid in accordance with applicable provisions. In addition, it can be a letter or document from BPJS regarding the status of the company's BPJS contribution bill, whether it is in arrears or not. Proof of salary/wage slips and/or lists of workers' salaries/wages showing whether there have been deductions from contributions but not deposited with BPJS or whether there have been no deductions from contributions (Arianto et al., 2021).

d. Instructions

In the case of violations of Article 19 paragraph (1) or paragraph (2) in conjunction with Article 55 of the BPJS Law, this can be in the form of the results of an examination by a team from BPJS or related agencies which proves that there are obligations that have not been fulfilled regarding the obligation to pay BPJS contributions and can also be in the form of a history of BPJS contribution payments which can be used as an indication of whether the employer has paid contributions to BPJS.

e. Defendant's statement

The defendant's statement regarding the violation of Article 19 paragraph (1) or paragraph (2) in conjunction with Article 55 of the BPJS Law can be in the form of an admission from the employer or party responsible for the company's financial management that they did not deposit or collect BPJS contributions as required by law (Dewi & Israhadi, 2021).

Evidence is an object used to convince the defendant of his guilt in a criminal case that he is accused of, an object that can be used as evidence in a case. In violations of Article 19 paragraph (1) or paragraph (2) in conjunction with Article 55 of the BPJS Law, evidence can include:

- a. Proof of salary/wage slips and/or employee salary/wage lists showing whether there were contribution deductions but not deposited to BPJS or whether there were no contribution deductions.
- b. Company bank statement showing whether there are any BPJS contribution deposit transactions, as well as proof that the Company pays salaries/wages in full without any deductions for BPJS contributions to workers who are registered as Wage Receiving Workers (PPU) in the Company.
- c. The Company's financial report shows that BPJS contribution funds have been used for other purposes.
- d. Notification letter or warning letter or contribution collection document from BPJS to companies that have not paid BPJS contributions (are in arrears).
- e. List of all workers showing the number of workers registered and not registered with BPJS.
- f. A company computer system or software used to record or manage employee data and payroll.
- g. An employment agreement that states the employer's obligations towards the employee but is not implemented in relation to BPJS membership.
- h. Report on the results of supervision and inspection by BPJS or agencies in the field of employment which show that the employer does not collect, pay and deposit contributions which are the burden of the participants from the workers and which are their obligations.

15. Article 55 of the BPJS Law does not explicitly state the elements of an unlawful act.

Article 55 of the BPJS Law does not use the phrase "intentionally committing an unlawful act" as is often found in crimes in the Criminal Code. According to Barda Nawawi Arief, the concept is based on the opinion that unlawful nature is an absolute element of a crime. This means that even though the formulation of the crime is not explicitly formulated as an unlawful element, an act (crime) that has been formulated as a criminal act in the law must always be considered unlawful. So the formal formulation in the law must be seen as an objective factor or measure to declare an act unlawful. Article 55 of the BPJS Law is included in this category, because violations of Article 19 paragraph (1) or paragraph (2) can be punished without the need to prove other elements outside its normative provisions (Ramadhani et al., 2021).

16. Alternative criminal threat system

Peter Mahmud Marzuki explained that in the alternative criminal system, the choice of punishment can be cumulative, that is, the perpetrator can be given more than one punishment at once, or it can be alternative, where the judge chooses one type of punishment that suits the circumstances of the perpetrator and the case. Article 55 of the BPJS Law is included as a sanction with an alternative criminal threat, because the formulation uses the word "or".

The alternative criminal threat system in the case of Article 19 paragraph (1) or paragraph (2) in conjunction with Article 55 of the BPJS Law can involve several types of penalties that can be applied, namely a maximum imprisonment of 8 (eight) years or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). The alternative criminal threat system in Article 55 of the BPJS Law allows the judge to decide whether a prison sentence or a fine will be imposed on employers who violate the obligation to pay BPJS contributions.

17. Article 55 of the BPJS Law Is Included As A Simple Crime

A simple offense is an offense that has an ordinary form without any aggravating elements or circumstances. A simple offense (*eenvoudige delict*) is an offense in the main form as formulated by the legislator. A simple offense is an act that is committed based on the basic and principal elements of the applicable law.

Article 55 of the BPJS Law is included as a simple crime because there are no aggravating elements that result in heavier penalties, there are no differences in sanctions based on certain consequences or conditions and the structure of the article does not contain qualifications that increase the threat of criminal penalties.

18. Single offense

A single crime is a crime that can be said to be a crime that is only done once. A single crime (*enkelvoudige delict*) is a crime in which the perpetrator can be punished only by committing a prohibited act once or failing to do an obligatory act.

Article 19 paragraph (1) and paragraph (2) regulate two different obligations in paying contributions. Looking at the structure of the norm, a violation of Article 55 means that the employer does not fulfill the obligations of Article 19 paragraph (1) or paragraph (2). The main act prohibited in Article 55 of the BPJS Law is violating Article 19 paragraph (1) or paragraph (2), a violation of one of the obligations of Article 19 paragraph (1) or paragraph (2) is sufficient to be subject to criminal penalties, so that Article 55 of the BPJS Law does not require two acts to be carried out simultaneously in order to be subject to criminal penalties (Wijayanti et al., 2024).

CONCLUSION

The application of criminal sanctions under Article 55 of the BPJS Law, as a law enforcement mechanism in the implementation of the National Health Insurance (JKN) program, is based on violations of Article 19 paragraph (1) or paragraph (2) of the BPJS Law. Workers who are not registered as BPJS participants and have never paid contributions means that the worker cannot be categorized as a participant. Article 19 paragraph (1) and paragraph (2) in conjunction with Article 55 of the BPJS Law are categorized as formal criminal acts. This means that a violation is considered to have occurred when a prohibited act is committed, without having to prove that there is a detrimental effect (for example, the worker feels disadvantaged). Article 55 is an ordinary crime, so this case can be reported by various parties without having to wait for a complaint from the worker. There are 3 (three) conditions that can be imposed on criminal sanctions under Article 55 of the BPJS Law, namely first, the employer does not collect contributions that are the burden of the participant from its workers. Second, the employer collects contributions that are the burden of the participant from its workers but does not deposit them to BPJS. Third, the employer does not pay and deposit contributions that are his responsibility to BPJS. Up to now, there has never been an employer who has been subject to criminal sanctions under Article 55 of the BPJS Law for non-compliance with payment of BPJS Health contributions, due to the diversity of interpretations regarding the enforcement and application of sanctions for violations of Article 19 paragraph (1) or paragraph (2) in conjunction with Article 55 of the BPJS Law, making it increasingly difficult to apply these criminal sanctions to employers who are non-compliant in paying BPJS contributions.

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