

LEGAL CONSEQUENCES OF EMPLOYER NON-COMPLIANCE IN FULFILLING SOCIAL SECURITY OBLIGATIONS FOR WORKERS SUBJECTED TO UNILATERAL TERMINATION

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ABSTRACT

Labor social security is a fundamental right guaranteed by the state to protect workers from social and economic risks, including unilateral termination of employment. However, in practice, many employers fail to comply with their obligations to provide social security benefits to workers who have been unilaterally dismissed. This non-compliance has severe consequences for workers' well-being and legal implications for employers. This study aims to analyze the legal implications of employers' non-compliance in providing social security benefits to workers affected by unilateral termination and examine the government's role in enforcing the law and protecting affected workers. The research employs a normative juridical method with a statutory and case approach. The findings reveal that employers' failure to pay labor social security contributions can result in administrative, civil, and criminal sanctions under Law Number 24 of 2011 on BPJS and Law Number 13 of 2003 on Manpower. Additionally, workers whose rights are violated can seek legal recourse through the Industrial Relations Court (PHI). The government plays a crucial role in ensuring employer compliance through supervision, law enforcement, and providing dispute resolution mechanisms and legal assistance for workers. This study concludes that enhancing regulatory effectiveness and monitoring employer compliance is essential to safeguarding workers' rights, maintaining economic stability, and promoting social welfare in Indonesia.

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INTRODUCTION

Labor social security stands as a cornerstone of worker protection in modern

employment systems, representing a fundamental right guaranteed by the state to safeguard workers against various social and economic risks. In Indonesia, this system is primarily regulated through Law Number 24 of 2011 on Social Security Administrative Bodies (BPJS) and Law Number 13 of 2003 on Manpower, establishing a comprehensive framework for worker protection. However, despite these legal provisions, a significant challenge persists in the form of widespread employer non-compliance with social security payment obligations, particularly in cases of unilateral termination of employment¹.

Recent studies in labor law enforcement have highlighted a concerning trend in employer non-compliance with social security obligations. This non-compliance not only violates legal requirements but also significantly impacts workers' access to essential social protections, including pension benefits, old-age benefits, and health insurance². When workers experience unilateral termination, the consequences become particularly severe, as they lose both their livelihood and the financial protection needed during the transition period.³ This situation potentially contributes to increased poverty rates and deteriorating social conditions, especially considering that most formal sector workers depend heavily on these social security benefits for their welfare⁴.

From a legal perspective, employer non-compliance with social security payments constitutes a violation of Indonesian law. Both the Manpower Law and BPJS Law explicitly mandate employers to register and pay social security contributions for their workers⁵. Non-compliance can result in administrative sanctions, fines, or other legal consequences. In some cases, workers denied their social security rights can pursue legal action through the Industrial Relations Court (PHI). However, the effectiveness of law enforcement in these cases remains challenging, as many workers lack adequate legal understanding or access to legal assistance to advocate for their rights⁶.

The issue extends beyond legal aspects to encompass social and economic dimensions. Worker welfare and family stability are severely compromised when employers fail to fulfill their social security obligations⁷. This non-compliance can lead to increased unemployment without protection and hinder sustainable economic development. On a broader scale, widespread non-

¹ Omed Aziz Ismail, *Unfair Termination of Employment Contract in Light of International and EU Standards: An Approach to Review Iraqi Labour Law* (PhD diss., University of Debrecen, Marton Géza Doctoral School of Legal Studies, 2022)

² Poltak C. Manik dan Fransiskus A. Rossevelt, "Analisis Kebijakan Perlindungan Sosial Pada Program Jaminan Pensiun BPJS Ketenagakerjaan Bagi Para Pensiunan Di Kota Medan," *Innovative: Journal of Social Science Research* 4, no. 6 (2024): 1449-1460, <https://doi.org/10.31004/innovative.v4i6.16190>

³ Rahmat Ramadan, *Perlindungan Hukum Terhadap Tenaga Kerja yang di-PHK (Pemutusan Hubungan Kerja) Akibat Dampak Pandemi COVID-19 pada UD. Anak Negeri Kota Duri* (Skripsi, Fakultas Hukum, Universitas Islam Riau, 2022)

⁴ Rina Rohayu Harun, Absori, Harun, dan Natangsa Surbakti, *Hukum dan Illegal Logging: Penyelesaian Illegal Logging Berbasis Kearifan Lokal Pati Ongong di Kabupaten Sumbawa* (Surakarta: Muhammadiyah University Press, 2020)

⁵ William, "Perjanjian Kerja Waktu Tertentu Antara Pekerja dan Pengusaha Berdasarkan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan," *SAPIENTIA ET VIRTUS* 5, no. 2 (2020): 47-64, <https://doi.org/10.37477/sev.v5i2.317>

⁶ Peter Wilson, "Memastikan Kompensasi yang Adil bagi Pekerja yang Di-PHK," (Jakarta: Jurnal Hukum Ketenagakerjaan, 2021), 234

⁷ Subhan Purwadinata dan Ridof Wenand Batilmurik, *Perekonomian Indonesia: Persoalan Kebijakan, Isu Kontemporer dan Globalisasi Pembangunan* (Malang: PT. Literasi Nusantara Abadi Grup, 2024)

compliance with labor social security payments can negatively impact national economic stability. The greater the number of unprotected workers, the higher the economic burden on the state, particularly in terms of expenditure for social protection programs for vulnerable groups⁸. Employer non-compliance with labor social security obligations is a widespread issue affecting various countries, often leading to legal disputes and worker hardships. In the United States, companies have faced lawsuits for failing to pay into Social Security and Medicare, depriving employees of crucial retirement and healthcare benefits⁹. Similarly, in Southeast Asia, misclassification of workers as independent contractors in countries like Malaysia and Singapore has allowed employers to evade providing statutory social protections, prompting government interventions.¹⁰ In the European Union, several member states have imposed heavy penalties on businesses that fail to register employees or contribute to social security systems, reflecting the broader global challenge of ensuring employer accountability in safeguarding worker rights.¹¹

This situation also presents a dilemma for the government in executing its supervisory and law enforcement functions. While the government has implemented various policies to increase employer compliance with social security obligations, such as providing incentives for companies that regularly fulfill worker obligations and applying administrative sanctions for violators, the implementation of these policies still faces numerous obstacles¹². These challenges include inadequate effective supervision and weak sanctioning mechanisms for non-compliant employers. More concrete strategic measures are urgently needed to ensure employer compliance with labor social security obligations¹³.

Beyond legal and policy challenges, employer non-compliance with social security payments also impacts workers' psychological well-being. Uncertainty about the future due to lack of social security can cause stress and anxiety among workers, ultimately affecting their productivity and performance. This issue affects not only legal and economic aspects but also influences industrial relations dynamics in the workplace¹⁴.

The scientific novelty of this research lies in its comprehensive analysis of the legal implications arising from employer non-compliance in social security payments, specifically focusing on cases of unilateral termination. While previous studies have examined general aspects of labor law compliance, this research uniquely combines the analysis of legal consequences with an examination of governmental enforcement mechanisms, providing a

⁸ Eka Afrina Djamhari et al., *Kondisi Kesejahteraan Lansia dan Perlindungan Sosial Lansia di Indonesia* (Jakarta: Perkumpulan PRAKARSA, 2020).

⁹ U.S. Department of Labor, “- Employer Responsibilities in Social Security Contributions,” Accounting Insights, 2022, <https://accountinginsights.org/employer-guide-to-social-security-matching-responsibilities/>.

¹⁰ Malaysian Labour Department, “- Misclassification and Social Protection Gaps,” *The Social Security Research Centre*, 2023.

¹¹ European Labour Authority, “Compliance and Enforcement in Social Security Obligations,” 2024, https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination_en.

¹² Yasip Khasani, *Perlindungan Hukum terhadap Peserta Badan Penyelenggara Jaminan Sosial dalam Pelayanan Kesehatan pada Rumah Sakit Swasta* (Masters thesis, Universitas Islam Sultan Agung Semarang, 2024)

¹³ Ariani Sitanggang, Ruth Shelomita, Jovita Lituhayu, and Diny Widya, “Pelaksanaan BPJS Ketenagakerjaan Sebagai Perlindungan Hukum Terhadap Tenaga Kerja,” *Journal of Multidisciplinary Inquiry in Science, Technology and Educational Research* 2, no. 1b (2024): 1311-1317, <https://doi.org/10.32672/mister.v2i1b.2668>

¹⁴ David Salih, “Meningkatkan Partisipasi Pekerja dalam Pembuatan Kebijakan,” (Jakarta: Kajian Hubungan Industrial, 2021), 78

novel perspective on the intersection of legal compliance and worker protection.

Through this analysis, the study aims to contribute to the development of more effective enforcement mechanisms and worker protection strategies, addressing a significant gap in current labor law implementation practices. The findings seek to inform policy development and strengthen the practical application of worker protection measures in cases of unilateral termination.

METHODS

This study employs a normative juridical research method, focusing on the analysis of laws and regulations governing labor social security, particularly in relation to employer obligations and the legal consequences of non-compliance. By examining legal norms within applicable legislation and relevant legal doctrines, the research aims to provide a thorough understanding of the regulatory framework and its impact on worker protection.

The research utilizes both a statutory approach and a case approach. The statutory approach involves a detailed examination of legal provisions within relevant laws and regulations to establish the foundation of employer responsibilities. It assesses the adequacy of these provisions in ensuring compliance with labor social security obligations. Meanwhile, the case approach analyzes actual instances of non-compliance, evaluating how existing legal frameworks are applied in practice and their effectiveness in safeguarding workers' rights. This dual approach enables a comprehensive assessment of both theoretical and practical aspects of labor social security¹⁵.

Legal research materials consist of primary, secondary, and tertiary sources. Primary legal materials include labor-related laws and regulations that directly govern social security obligations. Secondary materials encompass academic literature, legal textbooks, and scholarly articles that provide interpretations and analyses of primary sources.¹⁶ Tertiary materials, such as legal dictionaries and encyclopedias, serve as additional references to clarify relevant legal concepts. The research adopts a qualitative analysis method, comparing legal sources, examining case studies, and assessing the effectiveness of existing regulations. The findings will offer recommendations to improve employer compliance and enhance mechanisms for worker protection, contributing to a more effective and enforceable labor social security system.

RESULTS AND DISCUSSION

Legal Implications of Employer Non-Compliance in Paying Social Security for Workers Experiencing Unilateral Termination

Labor social security is a fundamental right guaranteed by the state as a form of protection for workers' welfare. This is regulated in various laws and regulations, particularly in the BPJS Law, which requires every employer to register their workers and pay social security contributions. Employer non-compliance in fulfilling this obligation can result in various legal

¹⁵ Joupy G. Z. Mambu, "Kajian Yuridis Jaminan Sosial Tenaga Kerja," *Lex Administratum* 3, no. 5 (Juli 2015): 54-64, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/8707>

¹⁶ Taufik Firmanto et al., *Metodologi Penelitian Hukum: Panduan Komprehensif Penulisan Ilmiah Bidang Hukum* (Jambi: PT. Sonpedia Publishing Indonesia, 2024), [nomor halaman]

consequences, both for workers who are harmed and for employers who fail to carry out their obligations.

In the context of unilateral termination, employer non-compliance in paying social security has serious impacts on workers. Social security, which includes old-age benefits, pension benefits, health insurance, and job loss benefits, should provide financial protection for workers who suddenly lose their jobs. However, when employers do not pay social security contributions, workers will lose their rights to receive benefits from these programs, resulting in economic uncertainty and disrupted welfare.

Based on the provisions in the Labor Law and BPJS Law, employers who do not pay social security contributions can be subject to various sanctions, including:

a. Administrative sanctions

Employers who do not register their workers or do not pay their rights can be subject to administrative sanctions in the form of written warnings, fines, business activity restrictions, up to business license revocation as regulated in Article 17 of the BPJS Law.

b. Criminal sanctions

Based on Article 55 of the BPJS Law, employers who deliberately do not fulfill their obligations in paying social security can be subject to criminal penalties with a maximum imprisonment of 8 (eight) years or a maximum fine of 1 (one) billion rupiah.

c. Civil sanctions

Workers whose rights are not fulfilled have the right to sue employers through the Industrial Relations Court (PHI). In many cases, the court has decided that employers are obligated to pay all workers' rights, including unpaid contributions¹⁷.

In various court decisions, the Supreme Court (MA) has affirmed that workers' rights to social security are imperative and cannot be ignored by employers. Companies that neglect this obligation can be held legally accountable strictly by workers and the government.

Employer non-compliance in paying social security will have broad impacts on workers who experience unilateral termination. The impacts that can occur will be very significant, for example:

a. Loss of rights to old-age benefits and pension benefits

This is a form of financial protection for workers after they no longer work. Unpaid contributions can cause workers to lose their rights to the funds they should receive.

b. Not receiving job loss benefits

Job loss benefits are a form of protection for workers who lose their jobs so they still have temporary income until they find new employment. Employer non-compliance in paying social security contributions can cause workers to lose access to these benefits.

c. Hampered access to health insurance

Employers who do not pay workers' health insurance will cause workers and their families to lose access to health services, potentially worsening their social conditions and welfare.

¹⁷ Laura Evans, "Program Dukungan Pemerintah terhadap Pekerja yang Di-PHK," (Jakarta: Riset Kebijakan Sosial, 2021), 152

d. Economic non-compliance

Without adequate social security, workers who receive unilateral termination will experience economic difficulties, especially in meeting daily needs until finding new employment¹⁸.

Workers who experience unilateral termination and do not receive their social security rights can take various legal paths to obtain justice. One step that can be taken is by reporting the problem to the Ministry of Manpower and BPJS Employment. Workers' complaints can request inspection of employers who do not pay workers' social security contributions in accordance with applicable regulations. Additionally, if workers still do not receive their rights, they can file a lawsuit to the Industrial Relations Court (PHI) to demand employers pay workers' overdue rights. Another alternative that can be done by workers is through mediation and negotiation facilitated by the Manpower Office. This dispute resolution can be done by reaching an agreement between workers and employers without having to go through a lengthy judicial process¹⁹.

The government also has an important role in enforcing the law and ensuring employer compliance with labor social security regulations. One effort that can be done is by increasing supervision and law enforcement of companies to ensure employers pay workers' social security on time and in accordance with existing provisions as stipulated in the law. Socialization and education for workers also become important aspects, as many workers do not understand their rights related to social security. The government must be more active in conveying information about the importance of social security and how workers can demand their rights if violations occur. In addition, effectiveness in dispute resolution must also continue to be improved so that workers who feel aggrieved can easily obtain justice through faster and more efficient procedures²⁰.

It is important for the government to conduct regular audits of companies to ensure compliance in paying workers' social security contributions. The government also needs to develop a reporting system that is more transparent and easier for workers to access, so violation cases can be handled more quickly and effectively. Awareness of the importance of social security also needs to be instilled early, both for employers and workers. With more intensive education, it is hoped there will no longer be employers who neglect their obligations and workers who lose their rights due to ignorance about applicable regulations.

Stricter law enforcement against employers who violate rules can also provide a deterrent effect and prevent similar cases in the future. This will make workers' rights to social security more protected. Not only that, this will create a fairer and more prosperous labor system for all parties.

¹⁸ Ahmad Supriyadi, "Dampak Ekonomi Ketidakpatuhan Jaminan Sosial Pada Pekerja Ter-PHK," *Jurnal Studi Ketenagakerjaan Indonesia* 8, no. 3 (2021): 127

¹⁹ M. Arief Mansur, "Perlindungan Hukum Bagi Pekerja Yang Diberhentikan Secara Tidak Benar," *Jurnal Hukum Bisnis* 22, no. 3 (2018): 270

²⁰ Gevan Naufal Wala, "Existence of Customary Land According to the Basic Agrarian Law," *Aurelia: Jurnal Penelitian dan Pengabdian Masyarakat Indonesia* 2, no. 2 (July 2023): 1143-1146

Legal Protection for Workers Experiencing Unilateral Termination Due to Employer Non-Compliance in Paying Social Security

Unilateral termination by employers without fulfilling the obligation to pay social security for workers is one form of labor rights violation in Indonesia. Social security is a fundamental right that has been regulated in various laws and regulations, such as the BPJS Law and Labor Law. The government has an important role in enforcing the law and ensuring that workers who become victims of unilateral termination still receive protection and rights they should receive. The government, through various institutions and policies, has the obligation to enforce the law to ensure that employers comply with rules related to labor social security. Several steps taken by the government in enforcing the law include labor supervision and inspection and enforcement of administrative and criminal sanctions.

The government through the Ministry of Manpower (Kemenaker) and regional Manpower Offices has the authority to supervise employer compliance in paying social security for workers. This supervision includes inspection of employer compliance in registering workers with BPJS Employment and ensuring payment of contributions that become employer obligations.

If employers are found not paying workers' social security, the government can impose administrative sanctions based on Government Regulation Number 86 of 2013 concerning Administrative Sanctions for Violations in Social Security Program Implementation. Sanctions that can be imposed include written warnings, fines, business license suspension, up to business license revocation for employers who still do not comply with rules.

Besides administrative sanctions, non-compliance in paying social security can also be subject to criminal sanctions in accordance with Law Number 24 of 2011 concerning BPJS. Employers who deliberately do not pay workers' social security contributions can be subject to imprisonment or fines in accordance with applicable legal provisions²¹

Besides enforcing the law against employers who violate rules, the government also has an important role in providing protection to workers who become victims of unilateral termination due to employer non-compliance in paying social security. One protection mechanism carried out is through dispute resolution with mediation and arbitration. The government, through the Manpower Office, provides mediation services as an initial step in resolving disputes between workers and employers. Mediation aims to find fair solutions so that workers' rights can be fulfilled without having to go through a lengthy and expensive judicial process. If mediation does not result in agreement, workers have the option to file a lawsuit to the Industrial Relations Court (PHI).

Besides dispute resolution efforts, the government also provides legal aid for workers who experience unilateral termination due to employer negligence in paying social security. Many workers do not have access to legal aid, making it difficult to fight for their rights before

²¹ B. Suharto, "Penegakan Hukum Ketenagakerjaan di Indonesia," *Jurnal Hukum Jakarta* 12, no. 1 (2019): 56-58

the law. Therefore, the government through the Ministry of Manpower and Legal Aid Institute (LBH) provides legal assistance for workers who need it. This legal aid includes consultation, assistance in the mediation process, and lawsuit preparation for workers who bring their cases to the Industrial Relations Court. With this legal aid service, it is hoped workers can more easily access justice and demand their rights that have been ignored by employers.

As a form of social protection for workers who lose jobs due to unilateral termination, the government also develops various social assistance programs. One form of this protection is through the Job Loss Insurance (JKP) program organized by BPJS Employment. This program provides various benefits for workers affected by unilateral termination, such as temporary cash, job training, and access to employment information that can help them get new jobs. The government will have an important role in providing economic guarantees for workers who suddenly lose jobs, so they can still meet living needs while looking for new jobs.

The government also provides assistance through other programs, such as the Pre-Employment Card, which aims to improve skills and competitiveness of workers impacted by unilateral termination²². This program allows workers to participate in various job training that can increase their chances of getting new jobs. With these social assistance and job training programs, workers who lose jobs due to unilateral termination have greater opportunities to return to work and earn decent income. These protection efforts reflect the government's responsibility in ensuring workers' welfare and preventing broader social and economic impacts due to employer non-compliance in paying social security.

Although various steps have been taken by the government in enforcing the law and providing protection to workers, there are still several challenges that must be overcome so that existing policies can run more effectively. Several steps that can be taken to improve the effectiveness of worker protection include:

- a. Increasing supervision of employers
The government needs to increase the frequency and scope of labor inspections to ensure employers comply with obligations in paying social security for workers.
- b. Accelerating dispute resolution processes
The labor dispute resolution process, both through mediation and other means, needs to be accelerated so workers who experience unilateral termination can quickly obtain justice.
- c. Increasing worker awareness about their rights
Many workers are still unaware of their rights related to social security and protection from unilateral termination. The government must be more active in conducting socialization and education to workers about their rights and ways to demand justice.
- d. Increasing stricter regulations

²² Karina Hatane, Saartje Sarah Alfons, dan Merlien Irene Matitaputty, "Perlindungan Hukum Terhadap Pekerja Di Masa Pandemi Covid-19," *TATOHI: Jurnal Ilmu Hukum* 1, no. 3 (21 Juni 2021): 267, <https://doi.org/10.47268/tatohi.v1i3.577>

The government can strengthen regulations by providing heavier sanctions to employers who violate rules, and accelerate implementation of policies that side with workers²³

CONCLUSION

Employer non-compliance in paying social security for workers who experience unilateral termination has significant legal implications. Labor social security is a fundamental right guaranteed by the state through various laws and regulations, such as the BPJS Law and Labor Law. Employer non-compliance in fulfilling this obligation can result in administrative, criminal, and civil sanctions, and directly impacts workers' welfare, such as loss of access to old-age benefits, job loss benefits, and health insurance.

In efforts to protect workers' rights, the government plays an important role in enforcing the law through supervision, imposing sanctions, and providing dispute resolution mechanisms either through mediation, arbitration, or judicial processes in the Industrial Relations Court. Additionally, social protection programs such as Job Loss Insurance (JKP) and Pre-Employment Card become important instruments in maintaining the economic stability of affected workers. The effectiveness of legal protection still faces various challenges, such as workers' lack of awareness of their rights and weak supervision of employer compliance. Improvements in supervision, stricter law enforcement, and education for workers and employers are needed to ensure the labor social security system runs optimally and fairly for all parties.

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²³ Kevin Robinson, "Pemberantasan Korupsi dalam Penegakan Hukum Ketenagakerjaan," (Jakarta: Penerbitan Hukum, 2020), 89

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