

# Settlement Of Labor Social Guarantee Administration Agency (BPJS) Through State Official Lawyers (Case Study PT. Matahari Sentosa Jaya)

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**Abstract:** *PT. Matahari Sentosa Jaya, which has become a participant in the Social Security Administration (BPJS) for Employment, has an obligation to pay contributions, especially regarding Social Security rights which are directly related to the National Social Security System which is basically a State program and carries out the mandate of Law Number 40 2004 concerning the National Social Security System and the Social Security Administering Body (BPJS) for Employment based on Law Number 24 of 2011 as a National Social Security institution in the executor of the National Social Security System and related to the Work Agreement regarding the Social Security rights of PT. Matahari Sentosa employees Jaya, who later was unable to carry out his obligations resulting in arrears in dues.*

**Key Words:** *Employment Social Security Administration (BPJS), State Attorney General, Alternative Dispute Resolution.*

## 1. INTRODUCTION:

In the United Nations Universal Declaration of Human Rights 1948, Article 22 and Article 25 stated that: "Everyone, as a member of society, has the right to security, everyone, as a member of society, has the right to social security: in terms of unemployment; sick, disabled, unable to work, widowed, old age. " The recognition of social security as a part of human rights has been embodied by the Republic of Indonesia. This is evident in Law Number 39 of 1999 concerning Human Rights. Article 41 paragraph (1) of this law provides that: "Every citizen has the right to social security necessary for a decent life and for his full personal development." [1]

Protection of workers / labor, including protection of the basic rights of workers / laborers to bargain with employers, protection of occupational safety and health, special protection for women workers / laborers, children and persons with disabilities, and protection of wages, to socio-economic development. as one of the implementation of national development policies it has resulted in a lot of progress, including improving people's welfare. This welfare must be enjoyed in a sustainable, just, and equitable manner to reach all people. The dynamics of the development of the Indonesian nation have created challenges along with demands for handling various unsolved problems. One of them is the implementation of social security for all people, which is mandated in Article 28 paragraph (3) regarding the right to social security and Article 34 paragraph (2) of the 1945 Constitution. Social security is also guaranteed in the 1948 United Nations Declaration on Human Rights. and confirmed in the ILO Convention No. 102 of 1952 which recommends all countries to provide minimum protection to every worker. Furthermore, the Indonesian People's Consultative Assembly (MPR) in TAP Number X / MPR / 2001 assigned the President to form a National Social Security System in order to provide comprehensive and integrated social protection.

In his life, humans face uncertainty, be it speculative uncertainty or pure uncertainty that always causes losses. This pure uncertainty is often called risk. Risks exist in various fields, and can be classified into two main groups, namely fundamental risks and special risks. These fundamental risks are collective in nature and are felt by the entire community, such as political, economic, social, defense and international risks. Meanwhile, special risks are more individual in nature because they are felt by individuals, such as risks to property, to oneself, and to business failure. To deal with this risk, of course, we need an instrument or tool that at least will be able to prevent or reduce the risk of it. This instrument or tool is called social security. [2]

## 2. CONCEPTUAL FRAMEWORK:

### a. Completion

According to the Big Indonesian Dictionary, the meaning of completion is already finished (about something that is made), finished while completion is a process, an act, a way to finish. [3]

### b. Arrears

Conception According to the Big Indonesian Dictionary, the meaning of arrears has a meaning; unpaid installments; remaining work. [4]

c. Contribution

According to Article 1 number (10) of Law of the Republic of Indonesia Number 40 of 2004 concerning the National Social Security System is an amount of money paid regularly by participants, employers, and/or the Government.

d. Institution of Social Security employment (BPJS Ketenagakerjaan)

According to Article 5 paragraph (2), Article 6 paragraph (2), 7 paragraph (1) and paragraph (2) Law Number 24 Year 2011 concerning BPJS states that the Employment Social Security Administration (BPJS Ketenagakerjaan) is a public legal entity who is responsible to the president.

e. State

Attorney State is a prosecutor based on a special power of attorney to enforce law and legal aid or based on a warrant to carry out legal considerations, other legal actions and legal services in the civil and state administration sector. [5]

### 3. THEORITICAL FRAMEWORK:

a. Legal Entity Theory

According to Friedrich Carl von Savigny, the theory of legal entities is solely state-made. The legal entity is just a fiction, that is, something that actually doesn't exist, but the person who animates it in the image is a legal subject who can carry out legal actions like humans.

b. Agreement Theory

According to the new theory put forward by van Dunne, what is defined as an agreement is "A legal relationship between two or more parties based on an agreement to cause legal consequences". [6]

c. Dispute Resolution Theory

According to the pluralism teaching put forward by Benda Beckmann, states that at the same time and in the same place there are various independent legal systems, each of which has a dispute resolution mechanism. In contractual relationships there are often parties who use different legal systems, usually choosing and agreeing on how to resolve disputes.

### 4. LITERATURE REVIEW:

The social security program cannot be separated from Law no. 3 of 1992 concerning Jamsostek which focuses on social protection such as workers who do work well in work relationships and outside work. The goal is to provide peace of mind to workers by providing social security so that discipline and productivity are increased. There are 4 (four) social security programs regulated in this Law, namely the Health Service Security, Work Accident Insurance, Death Security and Old Age Security Programs. Of the four programs, 3 (three) of which the contributions are paid by the employer (JPK, JKK, JKM) and only the Old Age Security (JHT) which is paid for sharing with employers and workers. [7]

In practice it is managed by PT. Jamsostek to organize JKK, JKM and JHT until the end of June 2015 in accordance with Law no. 3 of 1992 concerning Jamsostek, then held four JKK, JKM, JHT and pension security programs with reference to Law no. 40 of 2004 concerning SJSN and Law no. 24 of 2011 concerning The Social Security Administration Agency (BPJS) and its implementing regulations. In Law no. 40 of 2004 concerning SJSN regarding the types of Social Security programs covering health insurance; accident insurance; pension plan; pension guarantee; and a death guarantee. Health insurance is provided by Social Security Administration Agency (BPJS). Accident insurance; pension plan; pension guarantee; and a death guarantee. organized by Institution of Social Security employment.

Discussions regarding the responsibility for payment of contributions and fulfillment of labor social security rights, the implementation of national social security cannot be separated from the rights and obligations held by participants. In principle, the most basic rights possessed by national social security participants have been mentioned in the consideration (preamble) letter a of the SJSN Law, which states that: "that everyone has the right to social security in order to fulfill the basic needs of a decent life and increase their dignity towards their realization. a prosperous, just and prosperous Indonesian society." [8]

In general, a work relationship can only occur if there is an agreement between workers and employers by receiving wages that have an element of work and orders. This relationship between employers and workers / laborers occurs because of an agreement. Within the scope of labor law, there are work agreements, company regulations, and labor agreements (Collective Bargaining Agreements) that cannot be separated from the legal requirements of

agreements in general. Entrepreneurs in running a business are very dependent and need workers so that the business can run well and generate profits. On the other hand, workers in life certainly want welfare and have various needs to be able to meet these needs workers are required to work. So that the work agreement is very important for the employer and the workforce related to the rights and obligations of each party.

Any legal relationship that can give rise to legal consequences is likely to lead to a dispute. According to Nurmaningsih Amriani, what is meant by dispute is a dispute that occurs between the parties to the agreement because of a default committed by one of the parties to the agreement. [9]

The role and position of the Attorney General's Office in law enforcement is in a central and very strategic position because it is between the police (investigator) and the judiciary (judge). Prosecutors have an important role in the field of law in the judicial process, both as Public Prosecutors, as State Lawyers and other State duties in accordance with applicable regulations. [10]

## **5. METHOD:**

The method used in this study uses an empirical juridical approach to the problem, where the juridical approach is used to analyze various laws relating to the problems that the author proposes, while the empirical approach is used to analyze the law by looking at the legal reality that occurs in society. [12]

## **6. DISCUSSION:**

Institution of Social Security employment cannot implement it alone, especially with regard to law enforcement regarding National Social Security that Institution of Social Security employment requires State instruments, namely Law Enforcement Officials, one of which is the State Attorney General who is in the State Attorney's Office of the Republic of Indonesia which has special authority in the field of Civil and State Administration.

The existence of a prosecutor's office in Indonesia is regulated in Law Number 16 of 2004 concerning the Republic of Indonesia Attorney General's Office. The law states that the power to exercise State powers in the field of prosecution is exercised by the prosecutor's office. Apart from playing a role in criminal justice, the prosecutor's office also has other roles in the fields of law, civil and State Administration (TUN), namely representing the State and Government in civil and state administration cases. [13]

PT. Matahari Sentosa Jaya, which has become a participant of the Social Security Administration for Employment to carry out its obligation to pay contributions, especially regarding Social Security rights which are directly related to the National Social Security System which is basically a State program and carries out the mandate of Law Number 40 2004 concerning the National Social Security System and the Social Security Administering Body (BPJS) for Employment based on Law Number 24 of 2011 as a National Social Security institution in the executor of the National Social Security System.

The principles of the National Social Security System which guide Institution of Social Security employment in carrying out its duties to manage contributions, should be contributions from PT. Matahari Sentosa Jaya or the company's obligation to be paid to Institution of Social Security employment, therefore there was a civil dispute between PT. Matahari Sentosa Jaya as a participant and the Cimahi branch of the Social Security Administering Body (BPJS).

Settlement of disputes in a state of law must be pursued legally and cannot take the law into one's own hands. Common forms of dispute resolution are judicial or judgmental processes (adjudication) and out-of-court or consensual (processesnon-adjudication). The form of adjudication is litigation or commonly known as court proceedings. A court is an official state institution that is given the authority to judge, namely to accept, examine and decide cases based on the procedural law and applicable provisions [14]. Therefore, the court is still relevant as the last place to seek truth and justice so that theoretically it can still be relied on as a body that functions and plays a role in upholding truth and justice (enforcetothe truth and justice). [15] State as law enforcement apparatus.

## **7. ANALYSIS:**

### **A. The occurrence of dues arrears on PT. Matahari Sentosa Jaya to the Employment Social Security Administration (BPJS)**

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## **B. Settlement of arrears on PT. Matahari Sentosa Jaya against the Social Security Organizing Agency (BPJS) Employment and its settlement efforts made by the Attorney General of the State Attorney General of Cimahi State**

Part Cimahi Branch Employment Social Security Administration (BPJS) send a letter of application for legal aid billing in arrears in the amount employers (BPJS participants) and received by the Cimahi District Attorney for the First stage with an application letter Number B / 613 Ketenagakerjaan1062015 Ketenagakerjaan dated 11 June 2015. Employers (BPJS participants) who are in arrears in the payment of their Contribution Employment Social Security Administration (BPJS).

Provision of Legal Aid by the State Attorney's Office of the Cimahi District Attorney Cimahi Branch Employment Social Security Administration (BPJS) In the matter of settling arrears, contributions and fines are part of the duties of the State Attorney General in recovering State Finance / Wealth. The definition of State Financial Recovery / Wealth in the Attachment to the Attorney General's Regulation Number: Per-025 / A / JA / 11/2015 concerning Guidelines for Law Enforcement, Legal Aid, Legal Considerations, Other Legal Actions and Legal Services in the Civil and State Administration are activities carried out by State Attorneys and Lawyers in carrying out Law Enforcement or in providing Legal Aid and Legal Considerations in the Civil Sector provided to the State or the Government in the context of protecting or restoring State Finances / Assets. The reason for being categorized as Financial Recovery / State Assets is because of the existence of receivables from the State / Other Legal Entities, which are legal entities in which the State or Government has an interest related to Civil Law and State Administration, in this case the Cimahi Branch Social Security Administering Body (BPJS). State finances / assets that must be returned to the State as regulated in statutory regulations.

## **8. CONCLUSION:**

From the discussion as explained earlier, several conclusions can be drawn, including:

- The arrears of dues at PT. Matahari Sentosa Jaya to the Employment Social Security Administration (BPJS) which started with PT. Matahari Sentosa Jaya is unable to run the company based on Internal factors, namely management inability, lack of capital and external factors in the form of economic, social, customers that cause arrears in dues and fines to the Social Security Administration for Employment that are not in accordance with the Law and Work Agreement related to social security. The Social Security Administering Body (BPJS) for Employment as a public legal entity is experiencing dues arrears from PT. Matahari Sentosa Jaya, who then asked for Legal Assistance in collecting the arrears of the arrears from the State Attorney in the context of Recovery of State Finance / Wealth based on the Civil Code and other related regulations.

- Settlement of dues arrears at PT. Matahari Sentosa Jaya to the Social Security Administration Agency (BPJS) for Employment by the Cimahi State Prosecutor's Attorney General's Office by taking steps according to the rules and Standard Operating Procedures outlined in the implementation of the duties and functions of the Attorney General's Office in Civil and State Administration by means of an The Social Security Administrators (BPJS) for Employment authorize in the form of a Special Power of Attorney and Substitute Power of Attorney to conduct Negotiations (Non Litigation / Out of Court) to settle the arrears of dues at PT. Matahari Sentosa Jaya regarding the time and method of payment in order to achieve the payment of dues arrears and fines in the context of Financial Recovery / State Assets based on the Civil Code and other related regulations.

## 9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- To avoid the occurrence of similar problems, the Social Security Administration (BPJS) for Employment, so that in every indication of arrears in arrears, for an earlier consultation with the State Attorney, so that it can be quickly handled either Non-Litigation / Out of Court or the last option through Litigation (court) before the arrears of dues increase.
- So that in every implementation of the duties and functions of the Attorney General's Office in the Civil and State Administration sector, it is truly carried out optimally based on existing regulations and always considers all factors that may affect the success of the work of State Attorneys in representing the State and the Government in providing legal assistance in business. Rescue and Recovery of State Finances / Assets so as to avoid the risk of not succeeding (failing) in carrying out their duties.

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