

Legal Protection of Employees of PT Askes Which Was Transferred By Legal Relationship Becoming Health BPJS Employees

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ABSTRACT

The background of this research is the existence of a legal vacuum due to not regulating the transfer of legal relations of employees. PT ASKES (Persero) becomes an employee of BPJS Kesehatan (a public legal entity) in Law Number 24 of 2011 concerning the Social Security Organizing Body and its implementing regulations and the absence of provisions, which regulates public legal entities. This study uses normative juridical research with the method of legislation approach and grammatical interpretation techniques and systematic interpretation to analyze primary, secondary and tertiary legal materials. The results showed that the legal relationship born after the employees of PT ASKES became employees of BPJS Kesehatan was an employment relationship according to Law Number 13 of 2003 concerning Manpower so that its legal protection other than through work agreements and directors' regulations was also through Law Number 13 of 2003 concerning Manpower Law Number 24 of 2011 concerning the Social Security Organizing Body.

Keywords: employees, legal relationships, PT ASKES, BPJS Health

1. INTRODUCTION

The aim of the establishment of the Indonesian Government in the Preamble to the fourth paragraph of the Constitution of the Republic of Indonesia in 1945, among others, is to protect the entire Indonesian nation and the entire Indonesian bloodshed and to promote the general welfare as stated in The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia NRI) gives a mandate to the state to develop a national social security system which is then implemented by Law Number 40 of 2004 concerning the National Social Security System (hereinafter referred to as with the SJSN Law). The aim is to provide social security so that the basic needs of a decent life for all Indonesians can be fulfilled through health insurance programs, work accident insurance, pension benefits, pension and life insurance guarantees, each of which is organized by the social security organizing body.

Based on Article 5 Paragraph (3) of the SJSN Law, it is stated that the social insurance organizer is PT JAMSOSTEK, PT TASPEN, PT ASABRI, and PT ASKES. Then Article 52 paragraph (2) of the SJSN Law mandates for the adjustment of the social insurance provider body by giving an estimated time of its execution no later than 5 (five) years since the SJSN Law is enacted.

Based on the mandate of the SJSN Law and based on the Court's Decision on the case Number 007 / PUU/III / 2005 dated 31 August 2005 stating that Article 5 paragraph (2), (3) and (4) of Law Number 40 Year 2004 regarding Social Security System National is declared contradictory to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. Since August 31, 2005, the four above mentioned social insurance providers remain valid as long as they are not in accordance with Law Number 40 Year 2004 regarding the National Social Security System.

Then the Government and the House of Representatives enact an implementing regulation at the level of Act No. 24 of 2011 on the Social Security Administering Board (hereinafter referred to as the BPJS Law). With the enactment of UU BPJS, the four institutions of social security program organizer transformed or changed into Social Security Administering Board hereinafter abbreviated as BPJS.

The change of the providers of social security programs, one of which is PT ASKES which is a state-owned business entity, hereinafter abbreviated as BUMN in the form of a state-owned company, becomes BPJS Kesehatan, public legal entities, resulting in changes in the nature, organs and principles of management, structure and culture, and resulted in the transfer of participants, assets and liabilities, rights and obligations, including PT ASKES employees who were transferred to BPJS employees.

The transfer of PT ASKES employees to BPJS Kesehatan employees in the BPJS Law only ordered the transfer of employees and did not regulate the transfer of employees and the legal relationship of PT ASKES employees who were transferred to BPJS Health employees.

With the transfer of the employees of PT ASKES to become employees of BPJS Health, the status of the workers changed as state-owned employees to become employees of public legal entities. BUMN employees are subject to Law Number 19 of 2003 concerning State Owned Enterprises and Law Number 13 of 2003 concerning Manpower.

Whereas for employee of BPJS Kesehatan who is employee of public legal entities there is no provision regarding public legal entities that regulate employee legal relations. With the status of employee of public legal entities, the existence of Law Number 5 of 2014 regarding the State Civil Apparatus (hereinafter referred to as the ASN Law) creates a dilemma for employees of BPJS Kesehatan to submit to or not to the Law, given the BPJS Kesehatan has the same function to organize public or public services.

There is a legal vacuum regarding the legal relationship of PT ASKES employees who were transferred to BPJS employees and the unclear transfer process in the BPJS Regulation because it does not explicitly change PT ASKES to become BPJS Health or revocation of laws and regulations related to the formation of PT ASKES and the absence of legislation regulating the public legal entity will affect the legal relationship between workers and employers, and also affect

the rights and obligations of workers in this case are employees of PT ASKES who were transferred to BPJS Health employees and companies namely PT ASKES which was transferred to BPJS Health.

This is the reason and attracts the curiosity of researchers to conduct further research on Legal Protection of PT ASKES Employees who are Transferred By Legal Relations to Employees of BPJS Health.

2. FORMULATION OF THE PROBLEM

Based on the background of the above problems, the following problems can be formulated: **First**, How is the legal relationship of PT ASKES employees transferred by legal relations to employees of BPJS Health? **Second**, how is the legal protection of PT ASKES employees who have been transferred by legal relations to BPJS Health employees?

3. DISCUSSION

This study uses a type of normative juridical research with a method of approach to legislation in reviewing primary legal materials, namely legislation, secondary legal materials, namely books, journals, theses and tertiary legal materials. The whole is obtained through literature studies and internet access which are then analyzed using grammatical and systematic interpretations.

3.1. Transfer of Legal Relations of PT ASKES Employees Become Employees of BPJS Health

3.1.1. Establishment of BPJS Kesehatan

Article 52 Paragraph (1) Sub-Paragraph d of the SJSN Law mandates to establish a Social Security Administering Body through the Law within 5 (five) years ended on October 19, 2009. as long as it has not been established and adjusted, PT ASKES remains as the organizer of social security.

Then on August 31, 2005, the Constitutional Court based on its decision on the case number 007 / PUU-III / 2005 states Article 5 paragraph (2), paragraph (3) and paragraph (4) of the SJSN Law is contradictory to the 1945 Constitution of the Republic of Indonesia.

As a result, the legal status of the four Persero, one of which is PT ASKES is in the transition period and there must be an agency or institution that is formed and re-established as the organizing body of social security with a Law.

On October 28, 2011 the Indonesian House of Representatives and the Government agreed to pass Law Number 24 of 2011 concerning the Social Security Administering Body as the basis for

the establishment of a Social Security Guarantee Agency, hereinafter referred to as BPJS as a follow up to the mandate of the SJSN Law.

On January 1, 2014 PT ASKES was dissolved simultaneously with the operation of BPJS Health organizing a national health insurance program. Based on Article 60 Paragraph (3) letter a and Article 67 of the BPJS Law that PT ASKES is declared disbanded without liquidation and not stipulated by Government Regulation as well as the dissolution of the Company as regulated in Article 142 paragraph (2) letter a of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law and Article 64 paragraph (1) of Law Number 19 of 2003 concerning State-Owned Enterprises (hereinafter referred to as the BUMN Act).

The BPJS Law does not explicitly regulate the changes of PT ASKES to BPJS Health, nor the revocation of laws and regulations related to the formation of PT ASKES. The Act only states the dissolution of PT ASKES to become BPJS Kesehatan since the operation of BPJS Health on January 1, 2014 and only said all employees of PT ASKES became Employees of BPJS Health.

Since then, all of PT ASKES's assets in the form of assets and liabilities and liabilities as well as legal rights and obligations have been transferred to BPJS Health including all employees of PT ASKES as BPJS health employees as stated in Article 60 Paragraph (3) letter b of the BPJS Law.

3.2. Legal Relations between PT ASKES Employees and PT ASKES Transferred Legal Relations to be between BPJS Health Employees and BPJS Health.

The change of PT ASKES into BPJS Kesehatan based on BPJS Law, one of which caused PT ASKES employees to be transferred to BPJS Kesehatan employees according to Article 58 of the BPJS Law which is instructed PT ASKES's board of commissioners and directors to prepare staff transfers.

The purpose of this Article is the transfer of the legal relationship of PT ASKES employees because PT ASKES employees are legal subjects of people who can assume rights and obligations not as transferable items. So what is transferred is the legal relationship that contains the rights and obligations of the parties. With the transfer of the legal relationship, based on Article 60 Paragraph 3 letter B of the BPJS Law, it was said that when BPJS Health began operating all employees of PT ASKES became employees of BPJS Health.

This creates a new legal relationship that is not regulated by legal relationship or the transfer of legal relationship within the BPJS Act. To find out what legal relationship was formed, first explained the legal relationship between PT ASKES employees and PT ASKES which was formed at the time BPJS Health had not operated. The legal relationship between employees of PT ASKES and PT ASKES is an employment relationship according to the Manpower Act. Employment Relations according to Article 1 Number 15 of the Manpower Act, the relationship between employers and workers / laborers based on a work agreement, which has elements of

work, wages and orders. The working relationship between the employees of PT ASKES and PT ASKES containing the three measures was due to work that was agreed to be given to PT ASKES employees in order to carry out a health insurance program, the monthly wages provided by PT ASKES and bonuses to BPJS Health employees, as well as orders from PT ASKES to PT ASKES employees in carrying out the work.

In addition to the elements of the work relationship, in the article it can be known also the things that are attached to the working relationship, namely: First, the subject to support the employment relationship is the entrepreneur and worker / laborer. The legal subject who is an entrepreneur is PT ASKES. is a legal entity that runs a company in the form of a company as stated in Article 5 paragraph (3) letter d of the SJSN Law, PT ASKES is a legal entity that is a state-owned enterprise, hereinafter referred to as BUMN, in the form of Persero. BUMN is a business entity that all or most of its capital is owned by the state through direct participation derived from the separated State assets. And those who are based as workers are employees of PT ASKES because PT ASKES employees are people who meet certain conditions who work for PT ASKES to receive monthly wages or rewards. Then the second, the thing that is attached to the work relationship is a work agreement (Roesli, Syafi'i, and Amalia 2018). Because only a work agreement can give birth to a legal relationship called an employment relationship. Legal subjects who can make work agreements not only between workers / laborers and employers but also between workers / laborers and employers.

Under the Employment Act the employer as a legal subject in the employment agreement covers something wider than the employer. Because employers are included in the employer. That means employers are always employers, but employers are not necessarily entrepreneurs. But only work agreements are made between workers and employers that can give birth to employment relationships. Based on the explanation above, the legal relationship between PT ASKES employees and PT ASKES is a work relationship because based on the work agreement agreed upon by PT ASKES employees as workers and PT ASKES as entrepreneurs.

During the employment relationship the Manpower Act provides balanced protection between PT ASKES employees as workers and PT ASKES as employers who are employers. Included in the event of the dynamics of working relationships due to the transformation of PT ASKES into BPJS Health.

When PT ASKES was declared dissolved, BPJS Health started operating in accordance with Article 60 Paragraph (3) Sub-Paragraph a of the BPJS Law and all employees of PT ASKES became employees of BPJS Kesehatan. The transformation of the original parties of PT ASKES into BPJS Health and employees of PT ASKES become employees BPJS Kesehatan, will certainly affect the legal relationship between employees BPJS Kesehatan and BPJS Health. To find out

what legal relationship was born between PT ASKES employees who changed into BPJS Kesehatan employees and PT ASKES who turned into BPJS Kesehatan. The researcher will first explain the position of the parties. According to the researchers, even though the parties changed due to the transformation of PT ASKES into BPJS Health, the position of the parties remained the same, namely the workers and employers. PT ASKES employees who change to become employees of BPJS Health are permanently based as workers and BPJS Health as entrepreneurs.

Understanding BPJS Health employees contained in the General Guidelines of Good Governance BPJS Kesehatan states that "Employees are people who have met the specified requirements, appointed by BPJS Health officials authorized as employees to do work with receive wages or benefits from BPJS Health. ". Based on that, then BPJS Kesehatan employees can be considered as worker's worker according to the Manpower Law because doing a job or work to BPJS Health and get wages or rewards in other forms of work called income earned every month.

Furthermore, the position of BPJS Kesehatan, according to Article 1 Number 5 letter a of the Manpower Law referred to by employers, one of which is an individual, partnership, or legal entity that runs a company of its own And in Article 1 Number 6 Sub-Article b of the Manpower Act, it is mentioned that the definition of a company is "social enterprises and other businesses that have management and hire others by paying wages or other forms of remuneration." BPJS Health can be categorized as an entrepreneur based on the above article because BPJS is a legal entity that runs a company which is its own social business that is carrying out social security and have management and hire workers by paying wages or compensation in other form.

Based on Article 20 of the BPJS Law, BPJS Health has an administrator called BPJS Kesehatan organ consisting of supervisory board and board of directors. Each organ has the functions, duties and authority in organizing a health insurance program. In addition to the views of the status of the parties, also seen from the legal relationship that was born before PT ASKES changed into BPJS Kesehatan is a working relationship based on the employment agreement between employees of PT ASKES and PT ASKES. Under Article 55 of the Manpower Act, as long as the parties to the agreement agree or agree the work agreement may be amended without having the agreement null and void and replaced by the new agreement. The amendment of such work agreement must be made before PT ASKES is dissolved at the time of preparing the operation of BPJS Health.

With the work agreement is one form of follow-up of the provisions of Article 58 letter b of the BPJS Law which ordered to prepare the transfer of employees. So that required work agreement as a form of transfer of legal relationship between employee of PT ASKES with PT ASKES and base of birth legal relationship between BPJS Health officer and BPJS Health. The amendment of the employment agreement shall remain in compliance with the terms of the

employment agreement even though the employment agreement complies with the terms of the terms of the terms of the conditions set forth in Article 52 paragraph (1) of the Manpower Law and the formal conditions set forth in Article 54 paragraph (1) Law Number 13 of 2003 concerning Manpower.

The terms and conditions set forth in the employment agreement, to the extent not being altered, remain valid and binding on the parties, namely BPJS Health officer and BPJS Kesehatan. With the fulfillment of the elements of work, wages, and orders and the fulfillment of formal and material requirements in the employment agreement, the legal relationship between BPJS Health employees as workers and BPJS Health as entrepreneurs is a working relationship according to the Manpower Act.

Given the employment relationship has a dimension of private law and public law. The change of the parties in the original working relationship between the employees of PT ASKES and PT ASKES become employees of BPJS Health with BPJS Health in addition to through private law that is the amendment of work agreement or amendment of work agreement based on Manpower Law also through public law, its purpose to provide certainty, protection and guarantee the rights of the parties, especially the employees of PT ASKES become employees of BPJS Health which is located as worker.

From the public dimension, according to what the researcher explained earlier above that in the BPJS Law only ordered to prepare the transfer of PT ASKES employees and stated that all PT ASKES employees were BPJS Health employees. However, the Law is not regulated regarding the transfer of legal relations which is a working relationship and the procedure for transferring legal relations of PT ASKES employees to BPJS Health employees.

In order to avoid a legal vacuum and to provide certainty and legal protection for the rights of employees of PT ASKES, the legal relationship has been transferred to become employees of BPJS Kesehatan, through Article 24 paragraph (3) of the BPJS Law, it is stated that the Board of Directors is authorized to establish a staffing system and administer BPJS personnel management including the appointment, transfer, and dismissal of BPJS employees as well as determining the income of BPJS employees, whose procedures are regulated through the directors' regulations.

So with the directors' regulation, it is specifically and comprehensively regulates about the transfer of legal relations and employment relationships between PT ASKES employee employees and PT ASKES, whose legal relationship is transferred to between BPJS Kesehatan Employees and BPJS Kesehatan.

3.3. Legal Protection for PT ASKES Employees Transferred Legal Relations Become Employees of BPJS Kesehatan

Legal protection for workers / laborers used is protection of workers' rights by using legal means. Considering the legal relationship is the employment relationship and the position of BPJS Kesehatan employees as Workers and BPJS Kesehatan as entrepreneurs, BPJS Kesehatan employees are certainly subject to the Manpower Law as a means of protection of workers' basic rights. Especially the most basic labor rights provided by the Manpower Act include:

a. Protection of wages

In addition to Article 88-98 of the Manpower Act, the Government issued a Regulation that specifically regulates wages, namely the Government Number 78 of 2015 concerning Wages. BPJS Kesehatan may provide more wages and no less than the provisions that have been regulated and in effect.

b. Protection of working time

Working time based on the provisions of Article 77 Paragraph (2) of the Manpower Act 7 (seven) hours 1 (one) day and 40 (forty) hours 1 (one) week for 6 (six) working days in 1 (one) week or 8 (eight) hours 1 (one) day and 40 (forty) hours 1 (one) week for 5 (five) working days in 1 (one) week. If BPJS Kesehatan employees work more than work time or on weekly rest days and on official holidays set by the government, it is said to be a working time of melting and BPJS Kesehatan is obliged to pay wages of overtime work to employees. Provisions regarding work time are regulated more specifically in Article 1 number 1 of the Decree of the Minister of Manpower and Transmigration Number 102 of 2004 concerning Overtime and Overtime Work Time.

c. Occupational Health and Safety

In the Manpower Act, the right of workers to obtain occupational safety and health protection is regulated in Article 86 and Article 87. The Government makes Government Regulation Number 50 of 2012 concerning the Implementation of Occupational Safety and Health Management Systems which aims to provide uniformity for each company in implementing a management system occupational safety and health so that the protection of occupational safety and health of workers including BPJS Health employees, efficiency and productivity of BPJS Health can be realized.

d. Social Security

The right of BPJS Kesehatan employees to obtain social security is contained in Article 99 of Act Number 13 of 2003 concerning Manpower. Social security is regulated in the SJSN Law and BPJS Law covering health insurance organized by BPJS own Health, work accident insurance, old age insurance, pension and death insurance guarantees organized by BPJS Employment.

e. Rights in employment relationships

Protection of rights in a working relationship between employees of PT ASKES who are employees of BPJS Kesehatan and BPJS Kesehatan based on the principle of freedom of contract that is set forth in a work agreement that is not regulated in the labor law and is contrary to the applicable laws and regulations.

Normatively, the prevailing laws and regulations, one of which is that the Manpower Law has provided adequate protection for workers, especially for PT ASKES employees whose legal relationship has been transferred to BPJS Kesehatan employees who are also subject to the BPJS Law.

In order to provide certainty and legal protection against employees of PT ASKES who transfer their legal relationship to BPJS Health employees. Given that PT ASKES and BPJS Health have different legal and character forms. So that the Law of SOEs is no longer valid for employees of PT ASKES who turned into employees BPJS Health.

The absence of laws and regulations governing public legal entities is primarily about public legal officers and viewed from the character of BPJS Health as a public legal entity. The researcher refers to Law Number 5 Year 2014 on State Civil Apparatus (hereinafter referred to as ASN Law) because equally as public service.

To find out whether or not BPJS Kesehatan officer employees against ASN Act. it is necessary to know what is meant by the Civil State Apparatus (hereinafter referred to as ASN). ASN is a profession for civil servants and government employees with employment agreements working in government agencies. ASN employees are civil servants and government employees with work agreements that are appointed by official civil servants and are assigned tasks in a government position or assigned to other countries and are paid based on legislation.

Based on the explanation above, it can be concluded that ASN employees are employees who in government agencies and occupy a government position that is permanently appointed by official civil servants or employees who carry out governmental duties in order to organize government.

Furthermore, the understanding of BPJS Health employees is in the General Guidelines for BPJS Health Good Governance. Based on the BPJS Kesehatan Good Governance (Good Governance) General Guidelines, it is stated that "Employees are people who have fulfilled the specified requirements, appointed by BPJS Health officials who are authorized as employees to do work by receiving wages or rewards from BPJS Kesehatan". If we look from the definition of employees above, according to researchers BPJS Health employees are not included as ASN employees. **First**, it's because in accordance with Article 24 Paragraph (3) letter b of the BPJS Law BPJS Kesehatan employees are appointed by the directors of BPJS Kesehatan not by official

civil servants according to the ASN Law and according to the Government Regulation of the Republic of Indonesia Number 9 of 2003 concerning Authority of Appointment, Transfer and Dismissal of Civil Servants.

Second, BPJS Kesehatan is not included in government agencies according to the ASN Law and is not a non-ministerial government institution because BPJS is not mentioned in the Presidential Regulation of the Republic of Indonesia Number 145 of 2015 concerning the Eighth Amendment to Presidential Decree Number 103 of 2001 concerning Position, Function, Authority, Composition, Organization and Work Procedures of Non-Ministry Government Institutions (Yustianti and Roesli 2018). In addition, BPJS Kesehatan cannot be regarded as a non-ministerial government institution because it has a different organizational structure and on non-ministerial government institutions there are provisions of echelon positions while BPJS does not recognize echelon positions. Therefore, although BPJS belongs to institutions in the state administration system which is at the central level and runs some of the administration of government power, BPJS Kesehatan is not included in government institution. Since BPJS Kesehatan is an autonomous public legal entity established by a ruler with a law that is responsible to Predate, and has the authority established by law and can only be intervened through legislation.

So from the above explanation can be seen that although employees BPJS Health and employees ASN has the same function as a public servant. However, BPJS Kesehatan employees are not employees of ASN and therefore are not subject to ASN Law. Based on what has been explained, it can be seen that the legal tools to protect PT ASKES employees who transferred their legal relationship becomes BPJS Health employees through private law, namely a work agreement based on the provisions of Law Number 13 of 2003 concerning Manpower and Directors' Regulations made by directors on the authority granted by Law Number 24 Year 2011 regarding the Social Security Administering Agency. Then, through public law, namely the Law in the field of manpower and Law No. 24 of 2011 concerning the Agency for Organizing Social Security.

4. CONCLUSION

It can be concluded that based on the position of the parties who remain as workers and employers, the legal relationship between employees of PT ASKES and PT ASKES that has been transferred into legal relations between BPJS Health employees and BPJS Kesehatan is an employment relationship born of a work agreement.

Given the legal relationship that is formed from the employment relationship according to the Manpower Act. Legal protection for employees of PT ASKES other than through work agreements and regulations of BPJS Health directors, also through the Manpower Act along with implementing regulations in the field of manpower and the BPJS Law. The ASN Law cannot be

used as a means of legal protection because BPJS Kesehatan employees do not include ASN employees.

Based on the results of the discussion that has been explained and concluded, the following suggestions from researchers are submitted to several related parties, namely:

The Indonesian government, in particular the legislators are expected to formulate a legal product on public legal entities for legal protection facilities for employees of BPJS Kesehatan who are employees of public legal entities.

The Board of Directors as the executor of the operation of BPJS operational activities is expected to be able to propose to the government to make a legal product on public legal entities that regulates the legal relations of employees of public legal entities. And based on the authority possessed to make work agreements and director's regulations that better regulate the rights of PT ASKES employees, the legal relationship is transferred to become BPJS Health employees.

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