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CRIMINAL RESPONSIBILITY OF BUSINESS ENTITY LEADERS FOR DEDUCTIONS OF PARTICIPANTS OF EMPLOYMENT SOCIAL SECURITY ORGANIZING AGENCY IN PEKANBARU CITY

Gabriel Francius Silaen¹, Indra Afrita², Irawan Harahap³

¹²³Master of Law Program, Universitas Lancang Kuning Pekanbaru

Email: gabrielfrancius3@gmail.com

ABSTRACT

Article 55 of Law Number 24 of 2011 concerning the Social Security Administering Body regulates criminal sanctions in imprisonment and fines for business entities that do not pay and deposit their workers' BPJS employment membership contributions to the local BPJS employment. The purpose of the study is to analyze criminal liability; and to examine obstacles and efforts to overcome them. The research method is sociological legal research, legislative approach, and cases; the research location is the Pekanbaru BPJS Employment Branch Office; population and samples from relevant sources; data sources are primary, secondary, and tertiary; data collection techniques are observation, structured interviews, and document/literature studies; data analysis is qualitative with conclusions: inductive. The study results are that Article 55 of Law Number 24 of 2011 concerning BPJS has not been fully implemented, because of the 25 business entities in Pekanbaru City that have not paid and deposited membership contributions, only 2 business entities have been subject to criminal sanctions. The implementation of criminal sanctions against the leaders of the business entity has encountered obstacles. The obstacles and efforts to overcome the obstacles are legal factors/legislation, namely: Legal factors/legislation, namely the lack of regulations governing expert witnesses so that evidence is difficult, the police's efforts to allocate a budget to present expert witnesses; Criminal law enforcement procedures in regulations must go through long and multi-sector stages, efforts to improve coordination and cooperation between agencies. Law enforcement/government factors, namely the lack of coordination and cooperation between agencies for settlement through litigation, these agencies by improving coordination and cooperation to take the litigation route; police investigators' knowledge is still limited, investigators are taking Vocational Education; ultimatum remidium is prioritized by the police, efforts if it has been 2 times then the police must apply criminal penalties; The commitment to law enforcement that has not been fully implemented by the Riau Regional Police, efforts to enforce the law according to the law; Lack of socialization so that companies are not aware of the existence of criminal sanctions, efforts to increase the intensity of the approach in terms of coaching and supervision. Community factors, namely differences in worker positions make workers afraid to report their superiors, efforts are made so that workers have the courage to report; Low worker awareness to protect themselves from the risk of work accidents, efforts are made to organize education and training; uncooperative business entities and workers have complicated the handling process at the Riau Province Manpower and Transmigration Service, efforts are made to provide guidance by the agency to business entities.

Keywords: Criminal Liability, BPJS Contributions, Pekanbaru

ABSTRAK

Pasal 55 Undang-Undang Nomor 24 Tahun 2011 tentang Badan Penyelenggara Jaminan Sosial mengatur sanksi pidana penjara dan denda bagi badan usaha yang tidak membayar dan menyetorkan iuran kepesertaan BPJS kerengakerjaan pekerjanya kepada BPJS kerengakerjaan setempat. Tujuan penelitian ialah Untuk menganalisis pertanggungjawaban pidananya; Untuk menganalisis hambatan dan upaya mengatasinya. Metode penelitian yaitu penelitian hukum sosiologis, pendekatan perundang-undangan dan kasus; lokasi penelitian yaitu Kantor Cabang BPJS Ketenagakerjaan Pekanbaru; populasi dan sampel dari narasumber-narasumber relevan; sumber data

ialah primer, sekunder dan tersier; teknik pengumpulan data ialah observasi, wawancara terstruktur dan studi dokumen/kepuustakaan; analisis datanya kualitatif dengan kesimpulan: induktif. Hasil penelitian yaitu belum terlaksana sepenuhnya dalam Pasal 55 Undang-Undang Nomor 24 Tahun 2011 tentang BPJS, dikarenakan dari 25 badan usaha di Kota Pekanbaru yang belum membayar dan menyeter iuran kepesertaan baru 2 badan usaha yang diterapkan sanksi pidananya. Penerapan sanksi pidana terhadap pimpinan badan usaha tersebut mengalami hambatan. Hambatan dan upaya mengatasi hambatannya adalah Faktor hukum/peraturan perundang-undangan, yaitu: Faktor Hukum/peraturan perundang-undangan yaitu masih kurang regulasi yang mengatur saksi ahli sehingga sulitnya pembuktian, upayanya pihak Kepolisian mengalokasikan anggaran guna menghadirkan saksi ahli; Prosedur penegakan hukum pidana dalam regulasi harus melalui tahapan panjang dan multi sektor, upayanya meningkatkan koordinasi dan kerjasama antar instansi. Faktor aparat penegak hukum/pemerintah yaitu Kurangnya koordinasi dan kerjasama antar instansi untuk penyelesaian secara litigasi, para instansi tersebut dengan meningkatkan koordinasi dan kerjasama untuk menempuh jalur litigasi; pengetahuan penyidik kepolisian masih terbatas, penyidiknya mengikuti Pendidikan Kejuruan; ultimatum remidium dikedepankan kepolisian, upayanya jika sudah 2 kali maka pihak kepolisian harus menerapkan pemidanaan; Komitmen penegakan hukum yang belum sepenuhnya oleh Kepolisian Daerah Riau, upayanya melaksanakan penegakan hukum sesuai undang-undang; Kurangnya sosialisasi sehingga perusahaan tidak mengetahui adanya sanksi pidana, upayanya meningkatkan intensitas pendekatan dalam hal pembinaan dan pengawasan. Faktor masyarakat yaitu perbedaan posisi pekerja membuat pekerja takut melaporkan pimpinannya, upayanya Agar pekerja mempunyai keberanian melaporkan; Rendahnya kesadaran pekerja untuk memproteksi diri dari resiko kecelakaan kerja, upayanya menyelenggarakan pendidikan dan pelatihan; badan usaha dan pekerjanya yang tidak kooperatif telah mempersulit proses penanganannya di Dinas Ketenagakerjaan dan Transmigrasi Provinsi Riau, upayanya dilakukan pembinaan oleh Dinas instansi tersebut terhadap badan usaha.

Kata Kunci: Pertanggungjawaban Pidana, Iuran BPJS, Pekanbaru

INTRODUCTION

It is imperative that the rights of workers in Pekanbaru City to social security are given protection. Protection of workers' rights to social security is given protection by the state through law called preventive legal protection (prohibited) which is fundamentally regulated in the Indonesian constitution, namely. According to E. C. S Wade, the Constitution is: A text that describes the framework and main tasks of the governing bodies of a country to determine the principal ways of working of these bodies. The rights of workers are contained in Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that: Every person has the right to social security that enables his/her full development as a human being with dignity..

The law is made to have a goal to be achieved or called the *ius constituendum*. *Ius constituendum* are rules such as laws that are aspired to by the association of life and the state.¹ The labor sector, especially those that regulate social security for workers, is then made in the form of laws to achieve legal objectives. According to Van Apeldorn, the purpose of law is to regulate the order and association of human life in a peaceful and just manner, and the law wants peace.² The state must design a

¹ Sudarsono, *Pengantar Ilmu Hukum*, (Jakarta : Rineka Cipta, 2009), hlm. 194.

² Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2014), hlm. 165.

state regulation by taking into account aspects of the national interest.³ Therefore, Law Number 24 of 2011 concerning the Social Security Organizing Agency was made.

The organizer of the social security program is the Social Security Provider Agency, which is known from the juridical definition of the Social Security Provider Agency in Article 1 number 1 of Law Number 24 of 2011 concerning the Social Security Provider Agency, which states: Social Security Provider Agency is a legal entity established to organize social security programs.

One of the juridical forms of social security for workers formed by the Social Security Provider Agency according to Article 5 paragraph (2) letter a of Law Number 24 of 2011 concerning the Social Security Provider Agency is the Employment Social Security Provider Agency. The Employment Social Security Provider Agency plays a vital role in assisting and protecting workers at work, especially the occurrence of work accidents. The protection aims to guarantee the continuity of a harmonious working relationship system between workers and employers without pressure from the employer as a strong party to the worker as a weak party.⁴

In the realm of labor law, there is a legal relationship that we know as a work relationship. According to Imam Soepomo is: the relationship between laborer and employer is born after an agreement is made between the two, the laborer declares his ability to work for the employer by receiving wages, and the employer declares his ability to employ the laborer by paying wages.⁵ The implementation of legal relations between workers and employers related to the implementation of the Employment Social Security Provider Agency program creates an obligation for employers in Article 15 paragraph (1) of Law Number 24 of 2011 concerning the Social Security Provider Agency, that: The Employer is gradually obliged to register himself and his Workers as Participants to the Social Security Provider Agency in accordance with the Social Security program that is followed.

The employer is also obliged to pay the membership contribution as stipulated in Article 19 paragraph (1) of Law Number 24 of 2011 concerning the Social Security Organizing Agency, that: The Employer is obliged to collect dues that are borne by the Participants from their employees and deposit them with the Social Security Organizing Agency. The definition of contribution is as stated in Article 1 point 6 of Law Number 24 Year 2011 on Social Security Organizing Agency, that: "Contribution is a sum of money paid regularly by Participants, employers, and/or the Government." For contributions that have been collected, the employer has an

³ Ardiansah dan Silm Oktapani, "Politik Hukum Pemenuhan Hak Atas Kesehatan Rakyat Indonesia Berdasarkan UU SJSN dan Undang-Undang BPJS, *Jurnal IUS Kajian Hukum dan Keadilan*, Vol. 8 No. 1 April 2020, hlm. 169.

⁴ Hafiz Sutrisno, "Pengaruh BPJS Ketenagakerjaan Dalam Meningkatkan Kesejahteraan Tenaga Kerja," *Jurnal Prepotif*, Vol. 4 No. 1 April 2020, hlm. 80.

⁵ Imam Soepomo, *Pengantar Hukum Perburuhan*, (Jakarta: Djambatan, 2003), hlm. 41.

obligation stipulated in Article 19 paragraph (2) of Law Number 24 of 2011 concerning the Social Security Organizing Agency, that: The employer is obliged to pay and deposit the contributions for which he is responsible to the Employment Social Security Organizing Agency. This obligation is the legal responsibility of the employer to the Social Security Provider Agency and workers who have been collected by the employer. Legal responsibility is a consequence of the consequences of a person's freedom in relation to his actions which are correlated with ethics or morals in carrying out an act/action.⁶

Legal sanctions for Employers who do not carry out their obligations to pay and deposit membership contributions to BPJS for which they are responsible are regulated in Article 55 of Law Number 24 of 2011 concerning the Social Security Organizing Agency, that: Employers who violate the provisions referred to in Article 19 paragraph (1) or paragraph (2) shall be punished with a maximum imprisonment of 8 (eight) years or a maximum fine of Rp 1,000,000,000.00 (one billion rupiah).

Some literature that studies the implementation of the application of sanctions for Employers who do not carry out their obligations to pay and deposit membership contributions to BPJS and their problems have been carried out and written by several previous researchers which are then used as a literature review in this study as the authors describe as follows:

First, an article in the PALAR Journal (Pakuan Law Review), written by Rahmawati Kusuma, AD. Basniwati, Lalu Guna Nugraha and Sri Hariati, with the title "Rights of Participants of the Employment Social Security Organizing Agency". In the narrative of the journal it is stated that: Implementatively, in fact, the Employment Social Security Organizing Agency together with the government has attempted to impose sanctions on employers who do not deposit the contributions of workers' employment social security participants to the Employment Social Security Organizing Agency, but in the field there are still frequent problems where employers do not deposit the contributions of workers' employment social security participants as required by law. Employers who on average build their business in the form of companies experience financial problems so that this has a negative impact on delays and even non-payment of workers' social security contributions to the Employment Social Security Provider Agency. Then it was also found that there were also many companies that deliberately did not deposit the contributions of the participants of the Employment Social Security Organizing Agency for their workers.⁷

Second, sourced from an article in the Journal of Education, Humanities and Social Sciences (JEHSS) entitled "Criminal Liability for Perpetrators of the Crime of Embezzlement of Employment Social Security Provider Fund Contributions," as written by Didik Mihardja, which states that: In this case the defendant took advantage of his position in the company by using the contributions of the Employment Social Security Organizing Agency funds to fulfill his personal

⁶ Soekidjo Notoatmojo, *Etika dan Hukum Kesehatan*, (Jakarta: Rineka Cipta, 2010), hlm. 46.

⁷Rahmawati Kusuma, AD. Basniwati, "Lalu Guna Nugraha dan Sri Hariati, "Hak Peserta Badan Penyelenggara Jaminan Sosial Ketenagakerjaan", *Jurnal PALAR (Pakuan Law Review)*, Vol. 07 No. 02 Juli-Desember 2021, hlm. 199-200.

interests. The contribution money should have been deposited by the defendant to the Employment Social Security Organizing Agency, but he did not deposit it. As a result of the defendant's actions, Insani Stabat Hospital suffered a loss of Rp.49,063,280.00 (forty nine million sixty three thousand two hundred and eighty rupiah). The panel of judges should in handling this case impose a penalty on the defendant in accordance with Article 19 paragraph (2) Jo. Article 55 of Law Number 24 of 2011 concerning the Social Security Organizing Agency with a maximum penalty of 8 years imprisonment. However, in fact the panel of judges only imposed a sentence based on Article 374 Jo. Article 64 (1) of the Criminal Code on embezzlement and embezzlement in office only, so that the sentence of imprisonment imposed on the defendant was only 2 years imprisonment.⁸

Based on the observations made by the author, it is known that the procedure for deducting contributions from participants in the social welfare security of employment to payment and depositing it to the Employment Social Welfare Security Provider Agency, Pekanbaru Branch is carried out in accordance with the provisions stipulated in Law Number 24 of 2011 concerning the Social Security Provider Agency, as follows: *First*, the head of the company collects dues from his workers who have been registered as participants in the employment social welfare insurance; *Second*, the dues are collected by deducting the workers' salaries; *Third*, the dues that have been collected are then paid and deposited by the head of the company to the Employment Social Welfare Insurance Provider Agency, Pekanbaru Branch Office, but the facts show that there are still problems in fulfilling workers' rights to employment social security. The government to this day is still working hard to realize legal protection for workers related to employment social security, although there are many problems in its implementation.⁹ This fact also happens a lot in Pekanbaru City.

Based on the author's observations made in preliminary research, it is known that the obligations of employers, namely legal entities in the form of PT and CV as stipulated in Article 19 paragraph (2) of Law Number 24 of 2011 concerning the Social Security Organizing Agency, are still not well implemented in Pekanbaru City. In 2021 to 2023 there are still 25 (twenty five) leaders of business entities in the form of PT and CV who have not paid and deposited contributions which are their responsibility to the Pekanbaru Branch Employment Social Security Organizing Agency, even though these contributions have been collected from their workers by deducting workers' salaries.

⁸Didik Mihardja, "Pertanggungjawaban Pidana terhadap Pelaku Tindak Pidana Penggelapan Iuran Dana Badan Penyelenggara Jaminan Sosial Ketenagakerjaan," *Journal of Education, Humaniora and Social Sciences (JEHSS)*, Vol. 5 No. 1 Agustus 2022, hlm. 186.

⁹Miftah Ilmi dan Else Suhaimi, "Penyelesaian Iuran Jaminan Sosial Ketenagakerjaan oleh Badan Penyelenggara Jaminan Sosial Ketenagakerjaan sebagai Upaya Perlindungan Hukum Terhadap Pekerja: Studi Kasus pada Kantor BPJS Ketenagakerjaan Cabang Jakarta Ceger," *Law Dewantara: Jurnal Ilmu Hukum*, Vol. 2 No. 1 Maret 2022, hlm. 67.

Sanctions against employers, in this case focused on the head of a business entity that violates the obligation to pay and deposit contributions of employment social security participants who are their responsibility to the Social Security Organizing Agency, may be subject to sanctions. The sanction is a form of criminal liability that can be imposed on the head of the company concerned. Criminal responsibility in its concept is not only related to legal issues, but also related to moral values or public decency which actually does not only concern legal issues but also concerns moral values or public decency adopted by a society or community groups. It is enacted so that the goal of justice-oriented criminal responsibility can be achieved.¹⁰

Criminal liability for the head of the business entity is as stipulated in Article 55 of Law Number 24 of 2011 concerning the Social Security Organizing Agency, that: Employers who violate the provisions referred to in Article 19 paragraph (1) or paragraph (2) shall be punished with a maximum imprisonment of 8 (eight) years or a maximum fine of Rp 1,000,000,000.00 (one billion rupiah).

However, based on observations made by the author in preliminary research, it is known that from 2021 to 2023 in Pekanbaru City against 25 (twenty-five) leaders of business entities in the form of PT and CV who have not paid and deposited contributions to the Pekanbaru Branch of the Employment Social Security Organizing Agency, the sanctions are only applied to 2 leaders, while the other 23 leaders have not applied sanctions. Such conditions do not provide protection and legal certainty for workers in Pekanbaru City for their labor social security rights. The companies are:

Table 1
List of Companies in Pekanbaru City that Do not Deposit Participant Contributions of the Employment Social Security Organizing Agency 2021 to 2023 Based on Implementation of Criminal Sanctions

No.	Company Name	
	No Sanctions Yet	Already Sanctioned
1.	Hermi Karya Sentosa	Dungo Reksa
2.	Waneri Sukses Bersama	Femili Karya Abadi
3.	Munary Mekar Jaya	
4.	Sekawan Sempurna	
5.	Panji Properti	
6.	Sixpoint Carwash Cafe	
7.	Riau Sukses Abadi	
8.	Barokah Mutiara Energi	
9.	Panji Jaya Mulia	
10.	Merdeka Selalu	
11.	Dynamo Electric Bengkel	

¹⁰ Mahrus Hanafi, *Sisitem Pertanggung Jawaban Pidana*, Cetakan pertama, (Jakarta: Rajawali Pers, 2015), hlm-16

12.	Amanah Ayah Bunda	
13.	Tiga Saudara Elektrik	
14.	Jiwa Jasa Saudara	
15.	Omarindo Putra Gemilang	
16.	Cahaya Putri Agung	
17.	Maju Jaya Teknik Elevator	
18.	Agung Perkasa Ekspresindo	
19.	Jasa Indah Sentosa	
20.	Nijuna Sukses Bersaudara	
21.	Selasih Indo Raya	
22.	Arbina Akbar Rizky	
23.	Apotek Assyafni	
Total	23	2

Data Sourced: BPJS Ketenagakerjaan Pekanbaru, processed in 2024.

This research is urgent to be conducted because in general, the Indonesian Constitution provides legal protection for the community in working and obtaining a decent life and the guarantee of social security. Then specifically Law Number 24 of 2011 concerning the Social Security Organizing Agency provides protection for workers' rights in BPJS Employment membership as a form of social security as well as the obligation of employers to deposit membership contributions and sanctions for employers who do not deposit these contributions to BPJS Employment to ensure the intended protection can be obtained by workers. This research seeks a solution / problem solving to the unimplemented application of criminal sanctions for leaders / employers who do not deposit their workers' BPJS Ketenagakerjaan membership contributions to the BPJS Ketenagakerjaan.

RESEARCH METHODOLOGY

This research uses sociological legal research, namely: A legal research method that functions to be able to see the law in a real sense and examine how the law works in a community environment. Because this research is examining people in living relationships in society, the empirical legal research method can also be said to be sociological legal research.¹¹ Sociological / empirical legal research prioritizes field studies, namely methods to find specifically and the reality of what is happening in society so conduct research on some actual problems / hottest issues that are currently raging and expressing in the form of symptoms or social processes.¹²

In this research, the research approaches used to answer research problems are: *First*, the statutory approach, the statutory approach is: "The approach used to examine all laws and regulations relating to the legal problems or issues at hand. This statutory approach is carried out by studying the consistency / suitability

¹¹ Soerjono Soekanto, *Sosiologi Suatu Pengantar*, (Jakarta: Rajawali Pers, 2012), hlm. 12.

¹² Hadari Nawawi, *Metode Penelitian Bidang Sosial*, (Yogyakarta: Gadjah Mada University Press, 1998), hlm. 63.

between applicable laws. This approach is used to examine various legal rules that are the focus of a study.”¹³ In the statutory approach method, researchers need to understand the hierarchy of legislation and the principles of statutory regulation.¹⁴ *Second*, the case approach, the case approach is: an approach that is carried out by examining cases related to the legal issues at hand.¹⁵

DISCUSSION

Criminal Liability of Business Entity Heads for Deducting Contributions of Participants of the Employment Social Security Organizing Agency in Pekanbaru City

Legal liability is based on 2 (two) things, namely as follows:¹⁶

1. The matter that causes the birth of a legal right for a person to prosecute another person. Where in this thesis research, legal liability arises because of the rights of workers to social security, especially labor social security.
2. Subjects that cause the birth of legal obligations to others to provide accountability. Whereas the emergence of legal obligations in thesis research is the legal obligation of the head of a business entity to deposit and pay the labor social security membership contributions of its workers who have registered and collected contributions (through salary deductions) of the Employment Social Security Organizing Agency. .

Related to legal responsibility from the aspect of the onset of the obligation in question, where business entities, especially business entities in Pekanbaru City, have an obligation to pay and deposit membership contributions for their workers who have been registered as participants in the Employment Social Security Organizing Agency, after first collecting these contributions from their workers' salaries. Regarding the collection of contributions to their workers, based on the results of the author's interview with the Head of the Pekanbaru Branch Office of the Employment Social Security Provider Agency, the source of the contribution is known, as he said that: The worker's membership fee is collected by the business entity where the workers work by deducting the worker's salary. The collection of contributions is carried out on workers who have been registered as Participants of the Employment Social Security Provider Agency in the Job Loss Insurance Program.

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¹³ Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan -11, (Jakarta : Kencana, 2011), hlm. 133.

¹⁴ *Ibid.*

¹⁵ *Ibid*, hlm. 134.

¹⁶ Titik Triwulan dan Shinta Febriana, *Perlindungan Hukum Bagi Pasien*, Cetakan Ke 1, (Jakarta: Prestasi Pustakarya, 2010), hlm. 48.

¹⁷ Author Interview with Mr. Ruszian Dedy, A. Si. Apt. As the Head of the Pekanbaru Employment Social Security Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Employment Social Security Agency Branch Office.

Based on the results of the author's interview with the Head of the Branch Office of the Employment Social Security Agency Pekanbaru, it is also known that the procedures for registering Participants of the Employment Social Security Agency in the Job Loss Insurance program above also apply to registration in the health insurance program, Work Accident Insurance old age insurance, pension insurance, and Death Insurance; and, except for the provisions stating that Workers have been included in social security as follows:¹⁸

1. Workers/Laborers employed in large and medium-sized enterprises shall be included in the health insurance program, Work Accident Insurance, old age insurance, pension insurance, and Death Insurance; and
2. Workers/laborers employed in micro and small enterprises shall be included in at least one of the following programs: health insurance, Work Accident Insurance, old-age pension, and Death Insurance.

After that, related to the obligation of business entities in Pekanbaru City to pay and deposit membership contributions for their workers who have been registered as participants in the Employment Social Security Organizing Agency, regulated in Article 19 paragraph (2) of Law Number 24 of 2011 concerning the Social Security Organizing Agency, that: The employer is obliged to pay and deposit the dues that are his responsibility to the Employment Social Security Organizing Agency.

Article 19 paragraph (2) of Law Number 24 of 2011 concerning the Social Security Organizing Agency depends on the level of legal compliance, where the problem of legal compliance or obedience to rules in general, has become a subject of considerable discussion.¹⁹ The results of the author's observations are strengthened by the results of the author's interview with the Head of the Pekanbaru Employment Social Security Provider Agency Branch Office, who stated that throughout 2021 to 2023 which has been running there are still 25 business entity leaders in Pekanbaru City who have not complied with their obligations to pay and deposit their workers' membership contributions who have registered as participants in the Employment Social Security Provider Agency as many as 25 business entities.²⁰

Based on the results of the author's interview with the Head of the Pekanbaru Employment Social Security Agency Branch Office, it is also known that the respective number of cases from 2021 to 2023 is as the author presents in the form of a graph as follows:

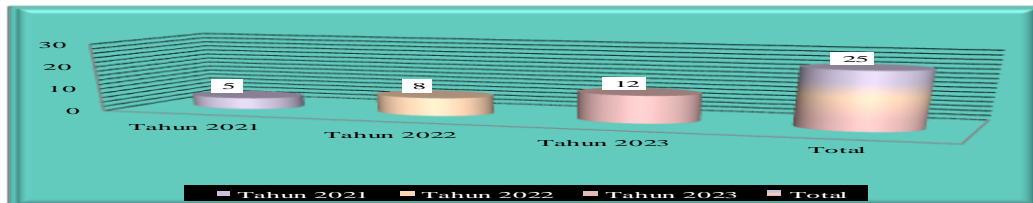
¹⁸ Author Interview with Mr. Ruszian Dedy, A. Si. Apt. As the Head of the Pekanbaru Employment Social Security Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Employment Social Security Agency Branch Office.

¹⁹ Soerjono Soekanto, *Suatu Tinjauan Sosiologi Hukum Terhadap Masalah - Masalah Sosial*, (Bandung: Citra Aditya Bakti, 1989), hlm. 54.

²⁰ Author Interview with Mr. Ruszian Dedy, A. Si. Apt. As the Head of the Pekanbaru Employment Social Security Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Employment Social Security Agency Branch Office.

Figure.1

Number of Cases Per Year of Business Entity Leaders in Pekanbaru City Who Do Not Pay and Deposit Membership Contributions of the Employment Social Security Organizing Agency for Their Workers in the Period of 2021 to 2023



Source of Data: *Branch Office of the Employment Social Security Organizing Agency Pekanbaru, processed in 2024*

Graph of the Number of Cases Per Year of Business Entity Leaders in Pekanbaru City Who Do Not Pay and Deposit Membership Fees for the Employment Social Security Organizing Agency for Their Workers in the Period of 2021 to 2023, above based on the results of interviews conducted by the author with the Head of the Pekanbaru Employment Social Security Organizing Agency Branch Office, he can explain as follows:²¹

1. In 2021, the number of business entity leaders in Pekanbaru City who did not pay and deposit membership contributions to the Employment Social Security Organizing Agency was 5 people.
2. In 2022 the number of business entity leaders in Pekanbaru City who do not pay and deposit membership fees for the Employment Social Security Organizing Agency is 8 people.
3. In 2023 the number of business entity leaders in Pekanbaru City who do not pay and deposit membership fees for the Employment Social Security Organizing Agency is 12 people.
4. The total number of business entity leaders in Pekanbaru City who did not pay and deposit membership fees for the Employment Social Security Organizing Agency from 2021 to 2023 was 25 people..

Non-compliance with the provisions of 19 paragraph (2) of Law Number 24 of 2011 concerning the Social Security Organizing Agency according to the results of the Author's Interview with several leaders of business entities in Pekanbaru City who have not complied with their obligations to pay and deposit their workers' membership contributions who have been registered as participants in the Employment Social Security Organizing Agency, one of which is the Head of

²¹ Author's Interview with Mr. Ruszian Dedy, A. Si. Apt. as Head of the Pekanbaru Social Security Administration Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Social Security Administration Agency Branch Office.

Cahaya Putri Agung, in this case represented by the Human Resource Development of Cahaya Putri Agung, known to be caused by several factors, namely:²²

1. Delays in payment of invoices by the company's partners cause cash-flow to depend, which has an impact on the deposit of BPJS Ketenagakerjaan contributions.
2. There are problems with electrical equipment which is the company's main business so that electrical equipment renters are waiting for equipment repair or replacement, this also makes the invoice disbursement process behind schedule.

Based on the results of the author's interview with the Head of the Branch Office of the Employment Social Security Provider Agency Pekanbaru, it is known that the procedure for paying and depositing membership contributions of the Employment Social Security Provider Agency as the right of workers by business entities in Pekanbaru City. The procedure is as the author presents in the form of a picture as follows:

Figure.2
Procedures for Payment and Deposit of Worker Participation Fees by Business Entities in Pekanbaru City to BPJS Employment Pekanbaru



Source of Data: Branch Office of the Employment Social Security Agency Pekanbaru, processed in 2024.

Based on the results of the author's interview with the Head of the Pekanbaru Employment Social Security Agency Branch Office, the Picture of the Procedure for Payment and Deposit of Worker Participation Fees by Business Entities in Pekanbaru City to the Pekanbaru Employment Social Security Agency, above, he explained as follows:²³

²² Author's Interview with the Leader of Cahaya Putri Agung, Represented by Mrs. Atika Hilmiyati, SE as Human Resource Development of Cahaya Putri Agung, on Tuesday, July 16, 2024, at 11.45 WIB, at the Cahaya Putri Agung Office.

²³ Author Interview with Mr. Ruszian Dedy, A. Si. Apt. As the Head of the Pekanbaru Employment Social Security Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Employment Social Security Agency Branch Office.

1. Employers collect their employees' membership contributions through salary deductions
2. Employers pay the contributions to the Employment Social Security Administering Body based on membership data from the Employment Social Security Administering Body that has been integrated with membership data from the Health Social Security Administering Body
3. Payment and deposit of contributions are made collectively on behalf of the business entity/not individually by workers to the Employment Social Security Administering Body.
4. Payment and deposit are made by the business entity through the available payment channels, as follows:
 - a. Through bank tellers
 - b. Through e-banking
 - c. Through the post office, etc.

In legal terminology, there are two terms that refer to accountability: liability and responsibility. Liability refers to the most comprehensive meaning, encompassing nearly every type of risk or obligation—definite, contingent, or possible. Meanwhile, responsibility refers to the obligation to comply with the law and to remedy or otherwise compensate for any damage caused. Thus, the meaning of accountability, when brought to a legal process where a person can be sued, held accountable, or blamed, includes bearing the consequences of both one's own actions and the actions of others.²⁴

A person can also be sued, held accountable, and blamed, bearing the consequences of their own actions or others' actions within the criminal law concept as a form of legal accountability. Therefore, a business entity that fails to pay and remit its employees' membership contributions to the Pekanbaru Branch of the Social Security Administration for Employment (BPJS Ketenagakerjaan), despite having deducted these contributions from employees' salaries, is subject to criminal sanctions as a form of legal accountability. Essentially, a criminal act points to prohibited actions that are punishable by law. A person who commits a criminal act can be sentenced according to the punishment prescribed, depending on whether the act contains the elements of an offense. Liability without fault on the part of the violator is termed "*leer van het materiele feit*".²⁵

The criminal penalties referred to are stipulated in the provisions of Article 55 of Law Number 24 of 2011 concerning the Social Security Administration Agency (BPJS), which states: "An Employer who violates the provisions referred to in Article 19, paragraph (1) or paragraph (2), shall be subject to imprisonment for a maximum of 8 (eight) years or a fine of up to IDR 1,000,000,000 (one billion rupiah)."

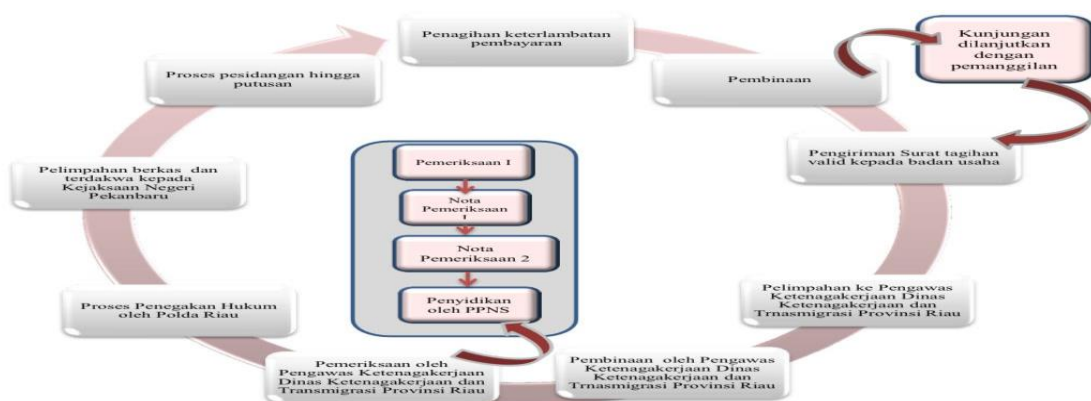
²⁴ Riawan Tjandra, *Hukum Administrasi Negara*, (Yogyakarta: UII Press, 2003), hlm. 249.

²⁵ Moeljanto, *Asas-Asas Hukum Pidana*, (Jakarta: Rineka Cipta, 2009), hlm. 165

Based on the author's interview with the Head of the Pekanbaru Branch Office of the Social Security Administration Agency for Employment (BPJS Ketenagakerjaan), it was found that the legal enforcement procedures against business entities in Pekanbaru City that fail to pay and remit their employees' contributions to the BPJS Ketenagakerjaan Pekanbaru Branch Office are presented by the author in the form of the image below:

Figure.1

Legal Enforcement Procedure for Business Entities in Pekanbaru City That Fail to Pay and Remit Employee Contributions to the Pekanbaru Branch of the Social Security Administration for Employment (BPJS Ketenagakerjaan)



Source of Data: Pekanbaru Branch of the Social Security Administration for Employment (BPJS Ketenagakerjaan), Compiled in 2024.

The diagram of the Legal Enforcement Procedure for Business Entities in Pekanbaru City That Fail to Pay and Remit Employee Contributions to the Pekanbaru Branch of the Social Security Administration for Employment (BPJS Ketenagakerjaan), as shown above, is based on the author's interview with the Head of the BPJS Ketenagakerjaan Pekanbaru Branch. The procedure can be explained as follows:²⁶

1. Collection of Late Payments: The Pekanbaru Branch of the Social Security Administration for Employment (BPJS Ketenagakerjaan) sends a payment reminder to the business entity's address, both physically and electronically (email), along with a calculation of a 2% late payment penalty for each month of delay.
2. Non-Payment Action: If the contributions are not paid, the BPJS Ketenagakerjaan Pekanbaru Branch's membership staff will take the following steps to guide the business entity:

²⁶ Author Interview with Mr. Ruszian Dedy, A. Si. Apt. As the Head of the Pekanbaru Employment Social Security Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Employment Social Security Agency Branch Office.

- a. A visit.
 - b. If the payments are still not made, the case will be escalated to the BPJS Ketenagakerjaan Pekanbaru Branch's supervisory and inspection team.
3. Billing Notice: The results of the summons will be sent in the form of a valid billing letter to the business entity.
4. Internal Resolution Failure: If the internal resolution is not complied with by the business entity, the case will be referred to the Labor Inspectorate of the Riau Provincial Manpower and Transmigration Office.
5. Supervision by the Riau Provincial Manpower and Transmigration Office.
6. Further Action If Contributions Are Still Unpaid: If, despite supervision, the contributions remain unpaid, an inspection will be conducted by the Labor Inspectorate of the Riau Provincial Manpower and Transmigration Office, with the following steps:
 - a. First Inspection
 - b. First Inspection Notice
 - c. Second Inspection Notice
 - d. Based on Second Inspection Notice by the Labor Inspectorate of the Riau Provincial Manpower and Transmigration Office, an investigation will be conducted by the Civil Servant Investigator at the Riau Provincial Manpower and Transmigration Office
7. Report to the Riau Regional Police: The Civil Servant Investigator at the Riau Provincial Manpower and Transmigration Office will report the case to the Riau Regional Police, leading to the issuance of a police report. Based on this report, the Riau Regional Police will conduct a confrontation examination by simultaneously questioning the reported business entity and the Civil Servant Investigator from the Riau Provincial Manpower and Transmigration Office.
8. Legal Action: If the business entity is found guilty during the confrontation examination, the legal enforcement process will be conducted by the Riau Regional Police in accordance with the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana).
9. File and Defendant Transfer to the Pekanbaru District Prosecutor's Office.
10. Court Trial Process: The case will proceed to trial, leading to a verdict by the Pekanbaru District Court.

Unfortunately, based on the author's observations in this thesis research, the criminal sanctions stipulated in Article 55 of Law Number 24 of 2011 concerning the Social Security Administration Agency have not been fully enforced by the

Pekanbaru Branch of the Social Security Administration for Employment (BPJS Ketenagakerjaan), the Riau Provincial Manpower and Transmigration Office, and the Riau Regional Police. These observations are supported by the author's interview with the Head of the BPJS Ketenagakerjaan Pekanbaru Branch, who explained the following during the interview:²⁷

1. The application of sanctions tends to focus on late payment and contribution remittance fines. This sanction has been fully implemented for business entities in Pekanbaru City. A fine of 2% of the contribution due is applied for each month of delay, serving as a deterrent for negligence or intentional delay in paying contributions. However, many business leaders have still not fulfilled this late payment fine obligation.
2. The application of criminal sanctions, as stipulated in Article 55 of Law Number 24 of 2011 concerning the Social Security Administration, has been limited. Among the 25 business entities that failed to pay and remit their employees' social security contributions between 2021 and 2023, only 2 have faced criminal sanctions, while the other 23 have not yet been subject to these sanctions.

The cases and forms of legal enforcement in question are as follows:

First, the author's interview with the Head of the Pekanbaru Branch of the Social Security Administration for Employment (BPJS Ketenagakerjaan) revealed that the management of Panji Properti has not paid and remitted its employees' social security contributions to the BPJS Ketenagakerjaan Pekanbaru Branch. Despite ongoing collection efforts and the imposition of fines since 2021, no settlement has been made for the outstanding payments.²⁸

The author also interviewed the Head of the Manpower and Transmigration Office of Riau Province, represented by the Head of the Labor Standards Section, who stated that they are still guiding the management of Panji Properti, which has not paid and remitted its employees' social security contributions to the BPJS Ketenagakerjaan Pekanbaru Branch. They are considering several factors, including the financial condition of the business entity, which has delayed reporting the case to the Riau Regional Police for criminal proceedings.²⁹

²⁷ Author Interview with Mr. Ruszian Dedy, A. Si. Apt. As the Head of the Pekanbaru Employment Social Security Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Employment Social Security Agency Branch Office.

²⁸ Author Interview with Mr. Ruszian Dedy, A. Si. Apt. As the Head of the Pekanbaru Employment Social Security Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Employment Social Security Agency Branch Office.

²⁹ Author's Interview with the Head of the Riau Province Manpower and Transmigration Service, in this case represented by Mr. Agus Andriansyah, ST.MM as the Head of the Manpower Norms Section of the Riau Province Manpower and Transmigration Service, on Monday, July 8, 2024, at 09.00 WIB, at the Riau Province Manpower and Transmigration Service Office.

Furthermore, the author also conducted an interview with the Director of Special Criminal Investigation of the Riau Regional Police, represented by the Head of Unit 2, Sub-Directorate IV of the Special Criminal Investigation Division of the Riau Regional Police. In the interview, he emphasized that they have not initiated criminal procedures at the police level against the management of Panji Property because, to date, no reports have been filed with them regarding violations of the provisions in Article 19, paragraph (1) of Law Number 24 of 2011 concerning the Social Security Administration.³⁰

The author also interviewed the management of Panji Property, represented by the Financial Officer of Panji Property. In the interview, he stated that from 2021 to the present, they have still not settled all payments for their employees' social security contributions to the BPJS Ketenagakerjaan, including current contributions, arrears, and fines, as the business entity is experiencing financial difficulties. The Pekanbaru Branch of BPJS Ketenagakerjaan has consistently attempted to collect these payments. Additionally, they have been summoned by the Riau Provincial Manpower and Transmigration Office regarding this issue, and guidance has been provided to the business entity. However, as of now, the matter has not yet proceeded to the police level.³¹

Second, based on the author's interview with the Head of the BPJS Ketenagakerjaan Pekanbaru Branch, it was revealed that the management of Cahaya Putri Agung has not paid and remitted its employees' social security contributions to the BPJS Ketenagakerjaan Pekanbaru Branch. Since 2023, efforts to collect the payments and impose fines have been made, yet no full or partial payment has been made on the outstanding contributions or late payment penalties. The case has now reached the Riau Regional Police and is currently under investigation.³²

The author also interviewed the Head of the Manpower and Transmigration Office of Riau Province, represented by the Head of the Labor Standards Section. He stated that they have frequently provided guidance to the management of Cahaya Putri Agung, which has not paid and remitted its employees' social security contributions to the BPJS Ketenagakerjaan Pekanbaru Branch, taking several factors into consideration. However, the business entity has shown no goodwill. The Manpower and Transmigration Office has summoned the company's management,

³⁰ Author's Interview with the Director of Special Criminal Investigation of the Riau Regional Police, in this case represented by AKP. Zainal Arifin, SH., MH as Head of Unit 2 Sub Directorate IV of Special Criminal Investigation of the Riau Regional Police, on Monday, July 15, 2024, at 10.15 WIB, at the Riau Regional Police Headquarters.

³¹ Author's Interview with the Head of Panji Property, in this case represented by Mrs. Denny Trinanda as the Finance Officer of Panji Property, on Thursday, July 11, 2024, at 13.40 WIB, at the Panji Property Office.

³² Author Interview with Mr. Ruszian Dedy, A. Si. Apt. As the Head of the Pekanbaru Employment Social Security Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Employment Social Security Agency Branch Office.

and the Civil Servant Investigators from the Riau Provincial Manpower and Transmigration Office are still actively handling this case. They have reported the business to the Riau Regional Police, but it remains under police investigation.³³

The author also conducted an interview with the Director of Special Criminal Investigation at the Riau Regional Police, represented by the Head of Unit 2, Sub-Directorate IV of the Special Criminal Investigation Division. In the interview, he emphasized that they are handling the case regarding the failure to pay and remit social security contributions for workers at Cahaya Putri Agung. According to the reports, the case is still under investigation. Several challenges have been encountered in the handling of the case. The police are continuing to work with the BPJS Ketenagakerjaan Pekanbaru Branch to obtain the necessary data to prove the criminal act as outlined in Article 19, paragraph (1) of Law Number 24 of 2011 concerning the Social Security Administration. They are also collaborating with labor inspectors and Civil Servant Investigators at the Riau Provincial Manpower and Transmigration Office to ensure that criminal sanctions, including fines and imprisonment under Article 55 of the same law, are applied to the management of Cahaya Putri Agung.³⁴

The author also interviewed the management of Cahaya Putri Agung, represented by the Human Resource Development officer. In the interview, he stated that from 2023 to the present, they have still not settled all payments for their employees' social security contributions to BPJS Ketenagakerjaan, including current contributions, arrears, and fines, as the business entity is experiencing financial difficulties. The case is currently being handled by the Riau Regional Police.³⁵

³³ Author's Interview with the Head of the Riau Province Manpower and Transmigration Service, in this case represented by Mr. Agus Andriansyah, ST.MM as the Head of the Manpower Norms Section of the Riau Province Manpower and Transmigration Service, on Monday, July 8, 2024, at 09.00 WIB, at the Riau Province Manpower and Transmigration Service Office.

³⁴ Author's Interview with the Director of Special Criminal Investigation of the Riau Regional Police, in this case represented by AKP. Zainal Arifin, SH., MH as Head of Unit 2 Sub Directorate IV of Special Criminal Investigation of the Riau Regional Police, on Monday, July 15, 2024, at 10.15 WIB, at the Riau Regional Police Headquarters.

³⁵ Author's Interview with the Head of Cahaya Putri Agung, in this case represented by Mrs. Atika Hilmiyati, SE as Human Resource Development of Cahaya Putri Agung, on Tuesday, July 16, 2024, at 11.45 WIB, at the Cahaya Putri Agung Office.

The application of criminal sanctions against the leadership of a business entity for the deduction of social security contributions for participants of the Social Security Organizing Agency for Employment in Pekanbaru.

The application of sanctions is an integral part of the broader process of law enforcement. From the perspective of the ideal concept of law enforcement, it should be understood as an interactive process. This means that the outcomes of law enforcement cannot be regarded solely as the work of law enforcement officers or agencies, but rather as the result of a mutual influence among the various components involved in the process.³⁶ Therefore, if all the components involved in criminal law enforcement do not work well together, obstacles often arise in the law enforcement process as a form of criminal accountability.

Based on the results of the interview with the Head of the Pekanbaru Branch of the Social Security Agency for Employment, it was found that the obstacles in the criminal accountability of business leaders for the deduction of BPJS Employment participant contributions in Pekanbaru are as follows:³⁷

1. Law enforcement/government factor: The commitment to law enforcement has not been fully implemented by the Riau Regional Police.
2. Societal factor: Low public awareness regarding the Social Security Agency for Employment; Low self-awareness among the public, especially workers, to protect themselves from work-related accidents, leading to failure to report companies that do not pay and remit the social security contributions that have been deducted from their wages.

Regarding the obstacles mentioned in the interview with the Head of the Pekanbaru Branch of the Social Security Agency for Employment, according to him, efforts can be made to overcome these obstacles. The efforts are as follows:³⁸

1. Regarding the obstacle from the law enforcement/government factor, efforts can be made to encourage the Riau Regional Police to commit to enforcing the law as mandated by the law.
2. Regarding the obstacle from the community factor:
 - ✓ Efforts can be made to increase public knowledge about the Social Security Agency for Employment by conducting mass socialization of employment social security laws in Pekanbaru.

³⁶ Satjipto Rahardjo dan A. Tabah, *Polisi, Pelaku dan Pemikir*, (Jakarta: Gramedia Pustaka Utama, 1993), hlm. 23..

³⁷ Author's Interview with Mr. Ruszian Dedy, A. Si. Apt. as Head of the Pekanbaru Social Security Administration Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Social Security Administration Agency Branch Office.

³⁸ Author's Interview with Mr. Ruszian Dedy, A. Si. Apt. as Head of the Pekanbaru Social Security Administration Agency Branch Office on Wednesday, July 10, 2024, at 10.30 WIB, at the Pekanbaru Social Security Administration Agency Branch Office.

- ✓ Efforts can be made to raise the awareness of the public, especially workers, to protect themselves from work-related risks through education and training for workers, so that they feel confident in reporting companies that do not pay and remit the employment social security contributions that have been deducted from their salaries.

Based on the author's interview with the Head of the Manpower and Transmigration Office of Riau Province, represented by the Head of the Employment Standards Section, it was revealed that the obstacles in the criminal accountability of business leaders regarding the deduction of BPJS Employment participant contributions in Pekanbaru are as follows:³⁹

1. Legal/Legislation Factors: The criminal law enforcement procedure, especially as regulated in Law Number 24 of 2011 on the Social Security Organizing Agency, regarding the handling of businesses that fail to pay and deposit social security contributions for their employees, requires a lengthy and multi-sectoral process, leading to a loss of momentum in law enforcement.
2. Law Enforcement/Government Factors: The concept of **ultimum remedium** (the last resort), emphasized by the police, means that they are reluctant to enforce penalties, thus failing to provide a deterrent effect on businesses.
3. Society Factors: There is a lack of legal awareness among the public, especially among business owners and workers, leading to a lack of cooperation, which complicates the resolution process at the Riau Provincial Manpower and Transmigration Office.

Regarding the obstacles as identified in the interview with the Head of the Manpower and Transmigration Office of Riau Province, represented by the Head of the Manpower Standards Section at the Manpower and Transmigration Office of Riau Province, he stated that efforts can be made to address these obstacles. The efforts are as follows:⁴⁰

1. Regarding the obstacle from the legal/regulatory factor, efforts can be made to improve coordination and cooperation so that the lengthy and multi-sectoral criminal law enforcement process is properly implemented.

³⁹ Author's Interview with the Head of the Riau Province Manpower and Transmigration Service, in this case represented by Mr. Agus Andriansyah, ST.MM as the Head of the Manpower Norms Section of the Riau Province Manpower and Transmigration Service, on Monday, July 8, 2024, at 09.00 WIB, at the Riau Province Manpower and Transmigration Service Office.

⁴⁰ Author's Interview with the Head of the Riau Province Manpower and Transmigration Service, in this case represented by Mr. Agus Andriansyah, ST.MM as the Head of the Manpower Norms Section of the Riau Province Manpower and Transmigration Service, on Monday, July 8, 2024, at 09.00 WIB, at the Riau Province Manpower and Transmigration Service Office.

2. Regarding the obstacle from the law enforcement/government factor, the concept of *ultimum remedium* should only be applied twice. If the business leaders continue to fail to comply with their obligations, the Riau Regional Police must still enforce the criminal procedure against the business leaders to provide a deterrent effect on the business.
3. Regarding the obstacle from the societal factor, efforts can be made to provide guidance from the Manpower and Transmigration Office of Riau Province to businesses in Pekanbaru, encouraging them to cooperate when the Office is handling such cases.

CONCLUSION

1. The criminal accountability of business leaders in Pekanbaru has not been fully implemented as stipulated in Article 55 of Law Number 24 of 2011 concerning Social Security Administrators, because out of the 25 businesses in Pekanbaru that have not paid and remitted the BPJS Employment contributions, only 2 businesses have been given criminal sanctions;
2. The implementation of criminal sanctions against business leaders has faced several obstacles, which can be addressed through efforts originating from various factors:
 - a. Legal/Regulatory Factors:
 - i. There is a lack of regulation governing expert witnesses, which makes proving the case difficult. The local police have made efforts by allocating additional funds to bring in expert witnesses.
 - ii. The procedure for enforcing criminal law is long and involves multiple sectors. Efforts to overcome this include improving coordination and cooperation between agencies.
 - b. Law Enforcement/Government Factors:
 - i. There is a lack of coordination and cooperation between agencies in resolving issues through litigation. The solution lies in enhancing coordination and collaboration to pursue litigation channels.
 - ii. The knowledge of police investigators is still limited. The solution is to send investigators to vocational education for further training.
 - iii. The police emphasize *ultimum remedium* (last resort), but the solution is to apply criminal penalties if the issue persists after two *ultimum remedium* applications.
 - iv. The commitment to law enforcement by the Riau Regional Police is still not fully implemented. Efforts are being made to enforce the law according to the legal framework.

- v. There is a lack of socialization, leading companies to be unaware of criminal sanctions. The solution is to increase the intensity of outreach efforts for guidance and supervision.
- c. Community Factors:
 - i. The disparity in positions between workers and employers causes workers to be afraid to report violations. The solution is to encourage workers to have the courage to report such issues.
 - ii. There is low awareness among workers to protect themselves from the risks of work accidents. The solution is to organize education and training to improve awareness.
 - iii. The lack of cooperation from businesses and workers has complicated the handling of the issue by the Riau Provincial Department of Manpower and Transmigration. The solution is to carry out continuous guidance and counseling for the parties involved.

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