

ANALYSIS OF BPJS KETENAGAKERJAAN AGENCY SYSTEM WITH LEGAL CERTAINTY

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Received : 31 October 2024

Published : 07 Maret 2025

Revised : 03 Januari 2025

DOI : <https://doi.org/10.54443/morfai.v5i1.2581>

Accepted : 15 Februari 2025

Publish Link : <https://radjapublika.com/index.php/MORFAI/article/view/2581>

Abstract

The inconsistency of informal sector participant acquisition activities by Perisai agents is also an impact of weak supervision of BPJS Ketenagakerjaan as the principal. The purpose of this study is to determine and analyze the implementation of the basic principles of agency in the BPJS Ketenagakerjaan agency system and to determine and analyze the BPJS Ketenagakerjaan agency system model that has legal certainty. The type of research used in this study is juridical-normative. The specifications in this study are analytical descriptive research. The data collected were then analyzed using qualitative analysis methods. BPJS Ketenagakerjaan Board of Directors Regulation Number: 13/PERDIR.02/042022 Concerning the BPJS Ketenagakerjaan Agency System defines the Indonesian Social Security Driving Agent as an individual who is a member of the Wadah and has met the requirements set by BPJS Ketenagakerjaan. The definition of the Indonesian Social Security Driving Agent does not describe the legal relationship as the definition of an agent is a party who receives the authority given by the principal to carry out certain legal acts for and on behalf of its principal. This is crucial considering that in practice agency problems often occur, such as issues of authority, principal responsibility and responsibility towards third parties.

Keywords: agency, BPJS Ketenagakerjaan, system.

A. Background

Agents are one form of intermediary in trade that is widely used by business actors in order to achieve their business goals. Agency is a form of cooperation between business actors and other parties that can be done in 2 (two) ways. First, appointing another party to do certain work for and on behalf of the employer and under the supervision of the employer. This type will be subject to the provisions relating to agency law. Second, by forming a certain business organization, this type will be subject to the provisions relating to corporations as well as agency law.

Black's Law Dictionary defines agency as a legal relationship between an agent who acts for and on behalf of the principal and is subject to the principal's supervision. The relationship between the principal and the agent is a fiduciary relationship, the principal allows the agent to act on his behalf and is under his supervision.¹ Agency according to Regulation of the Business Competition Supervisory Commission No. 7 of 2010 concerning Guidelines for the Implementation of Article 50 Letter D concerning Exceptions from the Provisions of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition Regarding Agreements in the Framework of Agency, is agency in the narrow sense, namely an agent who acts for and on behalf of the principal. This means that the agent only represents the producer who is not bound by the rights and obligations of the agency agreement made on behalf of the producer. An agency agreement is an agreement between the principal and the agent

¹Suharnoko, 2012, *Contract Law Theory and Case Analysis*, 7th Edition, Jakarta, Kencana Prenada Media, pp. 42-43, quoted from Jr. Myron G Hill, Howard M. Rossen, and Wilton S. Sogg, 1999, *Agency and Partnershi*, Larchmont, NY: Emanuel Law Outlines, Inc, p. 3.

in which the principal gives a mandate to the agent to and on behalf of the principal sell goods and/or services owned or controlled by the principal.²

The agency system is also used by BPJS Ketenagakerjaan in order to increase social security coverage, especially for informal sector workers or Non-Wage Recipients which is specifically regulated in BPJS Ketenagakerjaan Board of Directors Regulation Number: 13/PERDIR.02/042022 Concerning the BPJS Ketenagakerjaan Agency System. Informal sector workers are all people who work and earn income by carrying out economic activities or businesses independently, this participant category includes employers/businessmen, workers outside of employment relationships and independent workers, for example: farmers, fishermen, parking attendants, tour guides, street vendors, workshops and partnership workers (online motorcycle taxis).³ The coverage of informal sector workers is very low, where penetration has only reached 3.04 million or 7% of the potential eligible of 43.64 million based on the number of active BPJS Ketenagakerjaan participants as of December 2023. BPJS Ketenagakerjaan is aware of the importance of providing educational information about Social Security for Employment. The temporary hypothesis is that there is a correlation between the low level of continuity of participant contribution payments and the level of understanding of the workforce regarding the importance of social security for employment.

In its implementation, the BPJS Ketenagakerjaan agency system encountered the problem of inconsistencies in acquisition activities by Perisai, which was the impact of the lack of supervision by BPJS Ketenagakerjaan as the principal. The things that caused this supervision to not be optimal were the complexity of work in the informal sector and the absence of a special verification process for participant registration through Perisai agents by BPJS Ketenagakerjaan. In the technical realm, the informal sector participant registration process through Perisai agents is processed directly by Perisai agents through a website-based application owned by BPJS Ketenagakerjaan and the contributions received by prospective participants are paid using the contribution code/payment code received directly by BPJS Ketenagakerjaan. This is a gray area between the moral hazard of Perisai agents and the lack of supervision by BPJS Ketenagakerjaan. From the above, the problem that arises next is the issue of responsibility to informal sector participants as a third party when there is a risk of death. BPJS Ketenagakerjaan refuses to pay benefit claims if it is found that the informal sector participant registration does not comply with the provisions.

B. Problem Formulation

Based on the formulation of the problem, the research questions that can be formulated are as follows:

1. How is the implementation of the basic principles of agency in the BPJS Ketenagakerjaan Agency System?
2. How is the BPJS Ketenagakerjaan agency system model that has legal certainty?

C. Purpose of Writing

The objectives of this study are as follows:

1. To find out and analyze the implementation of basic agency principles in the BPJS Ketenagakerjaan agency system.
2. To analyze and find a BPJS Ketenagakerjaan agency system model that has legal certainty.

D. Research Methods

The type of research used in this study is juridical-empirical, namely legal research regarding the application or implementation of normative legal provisions directly in each specific legal event that occurs in society namely observing the process of law working. The specification in this study is analytical descriptive research, namely research that describes in detail the results of the analysis of legal principles, legal systematics, levels of vertical and horizontal synchronization, comparative law and inventory of positive law. A descriptive study is intended to provide data that is as accurate as possible about humans, conditions or other symptoms. It is hoped that this study can provide a clearer, more detailed and systematic picture that refers to the legal norms contained in the laws and regulations by

² Ministry of Trade of the Republic of Indonesia, 2006, Collection of Agency and Distributor Regulations, Jakarta, Directorate of Business Development and Company Registration, Directorate General of Domestic Trade, pp. 8 and 17

³I Gusti Ngurah Brama Abimayu and I Ketut Westra, 2023, Social Security for Workers in the Informal Sector as a Form of Implementation of the Fifth Principle of the 1945 Constitution of the Republic of Indonesia, Kertha Desa Journal, Vol 9 No 3, Page 92

describing the main problems that are the objects of this study. The data in this study are secondary data and primary data. Secondary data is data obtained from or derived from library materials⁴. Secondary data includes primary legal materials, secondary legal materials and tertiary legal materials.⁵ Primary legal materials, namely binding legal materials such as laws and regulations. Secondary legal materials are legal materials that provide explanations regarding primary legal materials such as literature or written results, works of legal practitioners and journal research related to the research being discussed. Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials, namely in the form of dictionaries, encyclopedias related to the research being discussed. Primary data is data obtained directly through interviews to strengthen secondary data. Interviews will be conducted at BPJS Ketenagakerjaan

The collected data is then analyzed using qualitative analysis methods, namely by interpreting data and presenting it in the form of sentences to answer the problem systematically, then analyzed qualitatively by induction by studying a process or discovery that occurs naturally based on the legal discipline specifically to achieve clarity of the general problem that will be discussed and through this discussion it is hoped that the problem can be answered so that it is easier to draw conclusions from the problem.

E. Theoretical and Legal Framework/Review

Agency according to Regulation of the Business Competition Supervisory Commission No. 7 of 2010 concerning Guidelines for the Implementation of Article 50 Letter D concerning Exceptions from the Provisions of Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition Regarding Agreements in the Framework of Agency, is agency in the narrow sense, namely an agent who acts for and on behalf of the principal. This means that the agent only represents the producer who is not bound by the rights and obligations of the agency agreement made on behalf of the producer. An agency agreement is an agreement between the principal and the agent in which the principal gives the agent a mandate to and on behalf of the principal to sell goods and/or services owned or controlled by the principal⁶.

It is further stated that "agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act". Thus, agency is a relationship based on full trust which is a manifestation of the agreement of the parties where one agrees to perform certain legal actions or deeds for and on behalf of another person, and under the supervision and approval of the other person. Three important elements of agency are first, Agency is a relationship of trust that is consensual between the principal and the agent, because it is based on the fact of agreement and a relationship of trust because it is based on trust. Second, the Agent acts on behalf of the principal, is an intermediary between the principal and a third party and through his actions creates rights and obligations for the principal, thus creating a legal relationship for the principal, and third, the Agent is subject to the supervision of the principal, is the most important element of agency and determines whether the agency relationship exists or not. Principal is the party that gives authority to the agent to perform certain actions and supervises the agent actions. While the party that makes transactions with the agent is called a third party⁷.

Social Security Organizer or abbreviated as BPJS is a legal entity formed to organize a social security program. The national social security system is a state program that aims to provide certainty of protection and social welfare for all people. That in order to realize the objectives of the national social security system, it is necessary to form an organizing body in the form of a legal entity based on the principles of mutual cooperation, non-profit, openness, prudence, accountability, portability, mandatory participation, trust funds, and the results of managing social security funds are entirely for program development and for the greatest benefit of participants. BPJS Ketenagakerjaan is an organizing body for employment social security that organizes Work Accident Insurance, Death Insurance, Old Age Insurance and Pension Insurance programs. Regulation of the Board of Directors of BPJS Ketenagakerjaan Number: 13/PERDIR.02/042022 Concerning the BPJS Ketenagakerjaan Agency System Article 2 states that BPJS

⁴P Joko Subagyo, 2006, *Research Methods in Theory and Practice*, Jakarta, Rineka Cipta, p.88

⁵Ibid., p.52

⁶ Ministry of Trade of the Republic of Indonesia, 2006, *Collection of Agency and Distributor Regulations*, Jakarta, Directorate of Business Development and Company Registration, Directorate General of Domestic Trade, pp. 8 and 17

⁷ Budi Santoso, 2015, *Keagenan (Agency)*, Bogor, Ghalia Indonesia, p. 5

Ketenagakerjaan can cooperate and use the services of other parties in organizing employment social security programs, the cooperation in question uses an agency system.

Legal certainty is not only the sole responsibility of the state but also of every legal subject or human being in life, outside the role of the state itself in implementing legislative and judicial laws. Legal certainty is stated in the 1945 Constitution of the Republic of Indonesia Article 28D paragraph (1) which states "everyone has the right to recognition, guarantee of protection, and certainty of fair law and equal treatment before the law". According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is implemented, that those who are entitled according to the law can obtain their rights and that decisions can be implemented.⁸

Responsibility can be interpreted as human awareness of their behavior or actions, whether intentional or unintentional. Responsibility is a characteristic of civilized humans, humans feel responsible because they are aware of the good or bad consequences of their actions, and are also aware that other parties need justice or sacrifice.⁹ Legal responsibility according to Ridwan Halim states that legal responsibility is a further consequence of the implementation of a role, whether the role is a right and obligation or power. Generally, responsibility is interpreted as an obligation to do something and behave in a certain way that does not deviate from existing regulations.¹⁰

A concept related to the concept of legal obligation is the concept of legal responsibility (accountability). That a person is legally responsible for certain actions or that he bears legal responsibility, meaning that he is responsible for a sanction if his actions are contrary to applicable regulations.¹¹ According to Hans Kelsen, the theory of legal responsibility states that a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of an act that is contrary to law.¹² Legal responsibility means the existence of a function of burden on the parties where each party has a right and obligation that is always correlated and must be fulfilled. Thus, the parties must be aware of their obligations in acting and being legally responsible in accordance with applicable laws and regulations.

F. Discussion Results

1. Implementation of Basic Agency Principles in the BPJS Ketenagakerjaan Agency System

The agency system is used by BPJS Ketenagakerjaan in order to increase the coverage of social security participants, especially for informal sector workers or Non-Wage Recipients, called the Indonesian Social Security Activator Agent (Perisai Agent). The BPJS Ketenagakerjaan Perisai is an adoption of the *Sharoushi* and *Jimmikumiai* concepts in Japan. *Jimmikumiai* is an organization that has a license and certification to acquire participants and collect social security contributions, while *Sharoushi* is an expert profession or agent who is an extension of *Jimmikumiai* in Japan to carry out the administrative process of participant acquisition while providing mediation, advocacy and information about Social Security and Employment programs and benefits.

The legal basis for the implementation of the work program activities with this agency system is Government Regulation Number 85 of 2013 concerning Procedures for Relations between Institutions of Social Security Administering Bodies, where Article 6 states that BPJS in carrying out its duties, can collaborate with other organizations or institutions in the country and abroad in order to improve the quality of BPJS or improve the quality of its services to participants. This is also reinforced by the Regulation of the National Social Security Council Number 3 of 2020 concerning Work Procedures, Code of Ethics, and Symbols of the National Social Security Council which stipulates the role of the Indonesian Social Security Driving Agent, hereinafter referred to as Perisai, to carry out socialization, acquisition and management of participant data for the Employment Social Security program.

Furthermore, in the BPJS Ketenagakerjaan Board of Directors Regulation Number: 13/PERDIR.02/042022 Concerning the BPJS Ketenagakerjaan Agency System, Article 2 explains that BPJS Ketenagakerjaan can cooperate and use the services of other parties in organizing the employment social security program. The

⁸ Chairul Arrasjid, 2008, Basics of Legal Science, Jakarta, Sinar Grafika, p. 160.

⁹ Julista Mustamu, Government Legal Accountability (Study on Scope and Relationship with Discretion), Sasi Journal, Vol 20, No 2, July-December 2014, p. 22.

¹⁰ Khairunnisa, 2008, Position, Role and Legal Responsibilities of Directors, Medan, Postgraduate, p. 4

¹¹ Hans Kelsen, 2006, "General Theory of Law and State", Bandung, PT. Raja Grafindo Persada, p. 95

¹² *Ibid.*, p. 81.

cooperation in question uses an agency system to carry out acquisition and management of membership, which consists of:

a. Community Agency

Community Agency is carried out through cooperation with Wadah and Perisai. Wadah is an organization/association that oversees Perisai in the agency system that is tasked with recruiting prospective Perisai, monitoring and evaluating Perisai's performance to be reported to BPJS Ketenagakerjaan and carrying out the incentive transfer process to Perisai every month. Meanwhile, Perisai is tasked with socializing the program, carrying out acquisition activities, managing data and processing informal sector participant contribution payments.

b. Corporate Agency

Corporate Agency is carried out through cooperation with banks and non-banks both domestically and abroad. The duties of corporate agency are to carry out socialization activities, carry out acquisition activities, manage data and process informal sector participant contribution payments.

Looking deeper into the BPJS Ketenagakerjaan Board of Directors Regulation Number: 13/PERDIR.02/042022 Concerning the BPJS Ketenagakerjaan Agency System and also the Cooperation Agreement between BPJS Ketenagakerjaan and Wadah regarding the Cooperation Wadah Penggerak Jaminan Sosial Indonesia (PERISAI) which is the basis for implementing the agency system, there are things that are not in accordance with the basic principles of agency. First, the definition of an agent is not in accordance with the basic principles of agency. BPJS Ketenagakerjaan Board of Directors Regulation Number: 13/PERDIR.02/042022 Concerning the BPJS Ketenagakerjaan Agency System states that Penggerak Jaminan Sosial Indonesia (PERISAI) Agent is an individual who is a member of the Wadah and has met the requirements set by BPJS Ketenagakerjaan, while the Indonesian Social Security Activist Office hereinafter referred to as the Wadah, is an organization/association that oversees Perisai in the Agency System at BPJS Ketenagakerjaan. The definition of a Perisai agent should include the granting of direct authority from BPJS Ketenagakerjaan. Perisai Agent is a party/person who receives authority from BPJS Ketenagakerjaan to carry out certain legal acts for and on behalf of its principal and is subject to the supervision of BPJS Ketenagakerjaan. Academically, in order to provide adequate limitations regarding agents, an understanding must first be given regarding what an agency is, this is because the understanding of an agent only emerges after the underlying legal relationship is known, namely the legal relationship of agency.

Second, the implementation of the BPJS Ketenagakerjaan agency system and Perisai agents is based on a cooperation agreement. The agent is not the party who cooperates but the party who receives authority or authority from the principal, so what should be used is an agency agreement. An agency agreement is a form of anonymous agreement or in other words an agreement that does not receive special regulations in the Civil Code and Commercial Code. Although it contains the aspect of "representation," an agency agreement is not entirely the same as a power of attorney agreement (lastgeving). The granting of power itself is an agreement by which a person gives power (authority) to another person, who receives it, to and on behalf of him to carry out a certain matter (Article 1792 of the Civil Code). Basically, there is no special or specific form of an agency agreement. As long as it does not conflict with applicable provisions, the parties may determine the form and content of their own agreement. Sometimes, a simple agreement is made between the principal and the agent containing the main points about what are the rights and obligations of the parties into an agency agreement that contains detailed provisions, the more detailed an agreement is, the less likely it is to be misinterpreted.

Third, lack of supervision of BPJS Ketenagakerjaan as principal to Perisai agents. Supervision by the principal in the agency is important to ensure that the actions taken by the agent reflect the interests of the principal. Supervision by BPJS Ketenagakerjaan has actually been regulated, supervision carried out regarding the conformity of activities carried out by Wadah and Perisai agents with the terms and conditions stated in the cooperation agreement and laws and regulations. Supervision conducted by BPJS Ketenagakerjaan on Wadah and Perisai agents aims to create a better control mechanism to ensure the effectiveness of the program. However, the regulation on supervision is not optimal in its implementation. Based on the Cooperation Agreement between BPJS Ketenagakerjaan and Wadah regarding Cooperation of the Penggerak Jaminan Sosial Indonesia (PERISAI), Wadah, which is the organization that oversees Perisai agents, supervises Perisai agents every week including the suitability of activities carried out by Perisai agents, the informal sector participant registration process and membership management, then Wadah will report the implementation of its supervision of Perisai agents to BPJS

Ketenagakerjaan. Supervision should be carried out directly by BPJS Ketenagakerjaan as the principal to Perisai agents and not completely handed over to Wadah because Perisai agents are the individuals who market the BPJS Ketenagakerjaan program.

Problems arising from the mismatch of Perisai agent activities should be anticipated with a direct, strict and continuous supervision process. Based on the results of interviews with BPJS Ketenagakerjaan Special Account Representatives who are BPJS Ketenagakerjaan officers who supervise Perisai agents, mismatched activities are mostly due to unintentional and ignorance of Perisai agents. For example, Perisai agents register prospective participants but the one who registers is not the prospective participant directly (family/other people) so that the Perisai agent cannot properly verify the eligibility of the prospective participant's work which is the result of the absence of technical guidelines or regulations that clearly regulate the criteria for active informal sector workers. The main obstacle faced by Perisai agents is the absence of technical guidelines or regulations that clearly regulate the criteria for active informal sector workers to reach prospective participants outside their community. When prospective participants are not part of a particular community, for example, a freelancer who does not have official documents to prove their work activities or a seasonal porter whose income is inconsistent may be difficult for Perisai agents to verify. Perisai agents must make extra efforts to ensure that the worker is indeed an active worker. In addition, supervision in the form of sampling of informal sector participant registration is also carried out by Wadah to Perisai agents and not by BPJS Ketenagakerjaan to Perisai agents, even though BPJS Ketenagakerjaan is the principal and the party that will pay benefits to participants.

Fourth, regarding responsibility to third parties, in this case payment of death benefit for BPJS Ketenagakerjaan informal sector participants. The Cooperation Agreement between BPJS Ketenagakerjaan and Cooperation of Wadah Penggerak Jaminan Sosial Indonesia (PERISAI) Article 11 states that BPJS Ketenagakerjaan can reject the claim submission of informal sector participants registered by Perisai agents if it is proven that the informal sector participants are not eligible. This is not in accordance with the classification fully disclosed where BPJS Ketenagakerjaan should be fully responsible because prospective informal sector participants know and understand that Perisai agents are agents of BPJS Ketenagakerjaan and register for the BPJS Ketenagakerjaan program because BPJS Ketenagakerjaan is the only agency that organizes social security for employment. The BPJS Ketenagakerjaan clause can reject claims that are not symmetrical with the basic principles of agency because it provides ambiguity over the right to payment of informal sector participant benefits.

The liability to the third party is based on the classification of the agency agreement signed with the principal. The BPJS Ketenagakerjaan agency system is classified as fully disclosed, where the agent carries out his work as an agent of the principal and the principal's identity is clearly known to the third party, whether it is notified by the agent or through other means. In such a case, the contract is actually made between the principal and the third party, thus the principal is fully responsible to the third party who signs the contract because the third party is willing to sign the contract also because of the reputation of the principal.

2. BPJS Ketenagakerjaan Agency System Model with Legal Certainty

Legal certainty is a provision or rule made by a country's legal system which is able to provide guarantees for the rights and obligations of every citizen.¹³ Legal certainty refers to the implementation of clear, permanent and consistent laws where the implementation cannot be influenced by subjective circumstances. Quoting the opinion of Lawrence M. Friedman, a Professor at Stanford University, he argues that to realize "legal certainty" at least it must be supported by the following elements, namely: legal substance, legal structure, and legal culture.

Lawrence M. Friedman's Legal System Theory can be used as a framework for implementing a BPJS Ketenagakerjaan agency system that has legal certainty. According to Lawrence M. Friedman, the structure of the legal system is a permanent framework of the legal system that keeps the process within its boundaries. In the BPJS Ketenagakerjaan agency system, BPJS Ketenagakerjaan is a single legal structure element in the BPJS Ketenagakerjaan agency system. BPJS Ketenagakerjaan is the party that creates or forms the agency system itself, and compiles regulations or provisions for implementing the agency system according to its needs.

Substance in a legal system is defined as the rules, norms and real behavioral patterns of humans within the system. BPJS Ketenagakerjaan Board of Directors Regulation Number: 13/PERDIR.02/042022 Concerning

¹³ Bagir Manan and Kuntanan Magnar, 2017, Several Problems of Constitutional Law, Bandung, PT. Alumni, P. 23.

the BPJS Ketenagakerjaan Agency System, BPJS Ketenagakerjaan Regulation Number 1 of 2023 concerning Penggerak Jaminan Sosial Indonesia (Perisai) and the Cooperation Agreement between BPJS Ketenagakerjaan and Wadah concerning Cooperation of Wadah Penggerak Jaminan Sosial Indonesia (PERISAI) are legal products that are prepared and used as the basis for implementing the BPJS Ketenagakerjaan agency system. The legal substance should cover all issues and phenomena that exist in the field. Although it already exists, a series of legal products of the BPJS Ketenagakerjaan agency system still have shortcomings.

In realizing a legal certainty agency system, there needs to be an improvement to a series of legal products of the BPJS Ketenagakerjaan agency system. First, is the strengthening of the basic principles of agency in all legal products used in the BPJS Ketenagakerjaan agency system. Without a strong and clear basic principle of agency, it can cause legal problems that may arise in the future, not an agency legal relationship. Based on Gustav Radbruch's opinion on legal certainty that law is a positive thing that is able to regulate the interests of every human being in society and must be obeyed, then the main characteristics of the agency should be stated in writing and in detail in all agency system products. This is to strengthen the basic principles of the agency itself and anticipate problems that may arise in the future can be resolved based on agency law.

In addition to strengthening the basic principles of agency, the second is the guarantee related to the death benefit rights of informal sector participants. As the purpose of social security is a form of state responsibility in providing social protection to all its citizens, so all legal products of the agency system should accommodate the rights of informal sector participants. Clause in the Cooperation Agreement between BPJS Ketenagakerjaan and Wadah Penggerak Jaminan Sosial Indonesia (PERISAI) states that BPJS Ketenagakerjaan can reject the application of informal sector participant benefit claims even though the informal sector participant has paid the contribution. This clause was created by BPJS Ketenagakerjaan to ensure that benefit payments are given to the right informal sector participants. This goal is good but it is not enough to provide legal certainty to prospective informal sector participants who will register. In practice, for prospective informal sector participants who want to register for the BPJS Ketenagakerjaan program, they only need to fill out the registration form attached with supporting data for their KTP and/or KK and pay the contribution, then they will automatically become BPJS Ketenagakerjaan participants. There are no special verification stages or mechanisms to ensure the eligibility of informal sector participant work. Usually it is only done by collecting information through interviews with prospective participants regarding what activities are currently being carried out. Verification of the eligibility of informal sector participant work is actually carried out when there is a death benefit application that is considered doubtful by officers by checking the case.

The process of verifying the eligibility of informal sector participants' work carried out when the worker dies creates uncertainty about the benefits of the BPJS Ketenagakerjaan program. Although informal sector participants have registered and paid contributions, it is not certain whether or not they will receive death benefits from BPJS Ketenagakerjaan if there is an error in the registration process. In order to ensure legal certainty over the benefits, the process for verifying informal sector work eligibility is carried out at the time of initial registration. From the beginning, prospective informal sector participants who register can be assured that when registering and paying contributions and there is a risk, there will be no death benefit claim submissions rejected by BPJS Ketenagakerjaan.

Legal culture is the attitude of people towards law and the legal system, including beliefs, values, thoughts and hopes. Legal culture also includes the social atmosphere and social forces that determine how law is used, avoided or misused. Without legal culture, the legal system itself will be powerless.¹⁴ In the midst of the complexity of the world of employment, the presence of Perisai agents has an important role in provide broader and more comprehensive social protection for informal sector workers in Indonesia. Perisai Agents are at the forefront of providing useful information and services for informal sector workers. Based on the results of interviews with BPJS Ketenagakerjaan Perisai agents, in carrying out their duties to educate the public about the employment social security program, Perisai agents always prioritize good intentions. Although Perisai agents have carried out good intentions, this does not rule out the potential for moral hazard by Perisai agents. Deficiencies in the legal products of the BPJS Ketenagakerjaan agency system can be a loophole for errors/mistakes, either intentional or unintentional, by Perisai agents. Anticipating this, in addition to improvements in the legal products of the BPJS Ketenagakerjaan agency system, a strict Perisai agent selection

¹⁴Taufiq, M, 2014, Substantial Justice Cuts the Chain of Legal Bureaucracy. Student Library.

process is also needed. Agent certification is also an important point as one of the efforts so that Perisai agents can carry out their duties well. Certification is an effort to improve agent professionalism so that their competence and abilities are recognized. Recognition of the professional expertise of agents through certification is expected to make the holders of this certificate not only technically capable (skills) but also have readiness and work ethics and be able to adapt to applicable regulations and standards.

G. Conclusion

1. Conclusion

- a. BPJS Ketenagakerjaan agency system should be based on the principle of fiduciary duty that regulates the relationship between BPJS Ketenagakerjaan as the principal and Perisai agents as agents. Normatively, there are still inconsistencies regarding the basic principles of agency in all legal products of the BPJS Ketenagakerjaan agency system. Furthermore, in terms of practice, there are still shortcomings in the implementation of supervision and ambiguity regarding responsibility to third parties, namely the payment of death benefits for informal sector participants. These shortcomings can create loopholes for legal problems that may arise and can affect the legal protection of the parties. To optimize the implementation of the BPJS Ketenagakerjaan agency system, it is necessary to strengthen the basic principles of agency in all legal products and better implementation of supervision by BPJS Ketenagakerjaan.
- b. The BPJS Ketenagakerjaan agency system with legal certainty is an ideal illustration for the implementation of an agency system that provides certainty of benefits to BPJS Ketenagakerjaan informal sector participants as a third party. The elements of legal structure, legal substance and legal culture become a complete unity of the order consisting of elements that are interconnected and closely related. Although all three are important, to realize a BPJS Ketenagakerjaan agency system with legal certainty, strengthening legal substance is the main homework. Agent certification as one of the efforts to create competent and reliable Perisai agents needs to be pursued by BPJS Ketenagakerjaan because Perisai agents are a representation of the BPJS Ketenagakerjaan agency itself.

2. Suggestion

- a. For BPJS Ketenagakerjaan
BPJS Ketenagakerjaan needs to clarify the basic principles of agency in the legal product of the BPJS Ketenagakerjaan agency system. This is to strengthen the legal relationship of agency between BPJS Ketenagakerjaan and Perisai Agents. In addition, BPJS Ketenagakerjaan must improve the supervision mechanism for Perisai agents to ensure the suitability of their activities. In addition, it is necessary to conduct training and provision programs for Perisai agents, including providing competency certification to ensure that Perisai agents have the standard of knowledge and skills that are in accordance with their duties. This step will not only increase the reliability of Perisai agents but also strengthen participant trust in the BPJS Ketenagakerjaan agency system.
- b. For Perisai Agents
Perisai Agents need to strengthen their understanding of the principles of fiduciary duty and legal responsibility in acting on behalf of BPJS Ketenagakerjaan. For this reason, Perisai agents are required to participate in certification and training organized by BPJS Ketenagakerjaan to update their knowledge of social security regulations, and improve their communication skills and provide accurate and clear information to informal sector participants and prospective participants.
- c. For the Government
The government needs to encourage regulatory harmonization to support better governance of the BPJS Ketenagakerjaan agency system. One way is to draft additional regulations or technical guidelines regarding the eligibility criteria for informal sector participants. In addition, the government also needs to supervise the implementation of the agency system to ensure that BPJS Ketenagakerjaan, Perisai agents, and other related parties carry out their roles transparently, accountably, and in accordance with applicable legal principles. This effort is important to increase public trust in the social security program and protect participant rights.

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