

CHAPTER II LITERATURE REVIEW

A. CONCEPTUAL FRAMEWORK

1. GENERAL REVIEW ON EMPLOYMENT LAW

Employment law are a combination of two word, which are law and employment. Law itself is a set of rule appointed by authorized officials or the government and having the quality to bind a society behaviour.⁷ Meanwhile, the word employment defines the act to work to be paid by a company⁸ or anything in relation to labor before, while, and after labor. These words combined as Employment Law defines a set of rules appointed by government and officials a like to manage anything related to labor or a set of rules dealing the rights of employee and obligation of employer.⁹

Employment Law can be inspected from various point of view, and doesn't hold an absolute definition as there are numerous experts in law with their own opinion and view.¹⁰

Numerous of Indonesian experts had defined employment law in Indonesia, there are:¹¹

Soetikno defines employment laws as:

“A whole set of legal regulations about work relation which involve a individual person to positioned over a leader (order) and circumstances involved within work relationship.”

⁷ “Meaning of Law in English – Cambridge Dictionary , “accessed February 24th, 2019, <https://dictionary.cambridge.org/dictionary/english/law>

⁸ “Meaning of employment in English – Cambridge Dictionary, “accessed February 24th, 2019, <https://dictionary.cambridge.org/dictionary/english/employment>

⁹ “Meaning of employment law in English – Cambridge Dictionary, “accessed February 24, 2019, <https://dictionary.cambridge.org/dictionary/english/employment-law>

¹⁰ Eko Wahyudi, Wiwin Yulianingsoh, and Moh. Firdaus Sholihin, *Hukum Ketenagakerjaan*, Cet.

1 (Jakarta: Sinar Grafika, 2016)

¹¹ *Pengertian Hukum Ketenagakerjaan – Hukum Corner*, “accessed February 24th, 2019, <http://www.hukumcorner.com/pengertian-hukum-ketenagakerjaan/>.

Prof. Imam Soepomo defines employment law as :

“compilation of rules, written or unwritten which are related with occasions a person works under other to receive wage.”

Molenaar defines employment law as :

“a section of law wherever are in effect in a certain nation, which in principle managed relationship amongst employees and amongst employee with employer.”

NEH Van Asveld defines employment law as :

“law involved with employment in work relationship and over work relationship.”

Employment laws originated from numerous of source, such as:¹² Laws, or government regulation in lieu of law (hereinafter will be abbreviated as Indonesian abbreviation Perpu) incuded, have the power equals to law itself, is a set of rules composed by the president with consent from Legislative Assembly (hereinafter will be abbreviated as Indonesian abbreviation DPR). Laws and Perpu are one of employment law origin.

Other regulation proposed here are any rules which possess legal force under the law and Perpu such as:

Government Regulation (Indonesian abbreviated PP) is a set of rules composed by the president with the purpose to guide everything regulated in law. Ministerial decree issued by a minister for everything, are a regulation related to their authority and equal standing with government regulation.

Presidential Decree (Indonesian abbreviated Keppres) proposed here are any presidential decree which is final, concrete, and individual. Presidential decree need not to be regulating and disparate with most rules

¹² “Hukum Ketenagakerjaan Indonesia: Sumber Hukum Ketenagakerjaan Indonesia. “ accessed February 24, 2019, <http://hukumketenagakerjaanindoneisa.blogspot.com/2012/03/sumber-hukum-ketenagakerjaan-indonesia.html>.

which could be constantly converted. Presidential decree usually issued on an irreplaceable event, such as presidential decree on national holiday.

Agency Regulations and Verdict, within employment law, there is a privilege, which a certain official or agency have an authority to issue a regulation or verdict binding the masses.

Customs proposed here are the unwritten rules and lifestyle within society for a period of time. Customs is considered as collection of values of society and the way of life of a society.

Verdict, in case of legal vacuum, verdict issued by a magistrate, who found his / her own law, could be the source of law for others.

Contract, within employment, there will be employment contract which is an essential in a contract. This contract will then manage the rights and obligation of employee and employer. Within an employment contract can be discovered the clarification of rights and obligation of the party involve that gathered together into a law.

Treaty is an agreement made between nation, and in this context is field of employment. Generally, treaty within the field of employment is regulated and set by international labour organization conference.

2. GENERAL REVIEW OF EMPLOYEE

Within article 1 number 3, Employment Law of Indonesia, employee or labourer are defined as anyone worked and gain wage or rewards.

Employee is part of manpower based on Indonesian Employment Law:

“every person who is capable of work such as production or service to fulfill own or society necessity.”

Mentioned in article 68, Employment Law of Indonesia, employer are prohibited to employ a child. And as defined in article 1 number 26, Employment Law of Indonesia, a child is “every person under the age of 18 (eightteen) years old.” Considering minimum age of employment is eight teen years old.

However, there is exception in article 68, Employment Law of Indonesia which further explained in article 69 point 1, Employment Law of Indonesia sounds as,

“Article 68, could be excluded for child within the age of 13 (thirteen) years old to 15 (fifteenth) years old to do light work as long as it doesn’t interfere with the child development and physical condition, mental, and social.”

Employee are divided in two, such as:¹³

Permanent Employee is an employee who holds a fixed status is a employee which obtain an agreement or employment contract with employer that doesn’t state the end of a contract or referred as permanent. Generally, an employee obtain a fixed status or permanent will gain more privilege over a contracted employee.

Contracted Employee is an employee who hold a temporary status is an employee contracted by the employer which in the employment contract stated the end of contract between the employee and employer in a certain company. Contracted employee can’t be dismissed as wished by the employer and holds less privilege than permanent employee.

3. GENERAL REVIEW OF EMPLOYER

Employer or also known as a person or business body that employs an individual or more to make use of them as a work force, in exchange for salary or wages or any other type of reward for their service of labor.¹⁴

Based on Article 1 number 5 Indonesian Law of Employment, entrepreneurs are meant as :

“individual person, partnership, or legal body which is operating their own company;

¹³ “Pengertian Karyawan Dan Sejenisnya Secara Umum – Penegrtian Apapun,” accessed February 24th, 2019, <http://www.pengertianku.net/2017/01/pengertian-karyawan-dan-sejenisnya-secara-umum.html>.

¹⁴ “Employer,” accessed May 28th, 2019, <https://www.dictionary.com/browse/employer>.

individual person, partnership, or legal body which is standing-alone and operates a company not theirs

individual person, partnership, or legal body located in Indonesia which is representing a company meant by alphabet a and b which domiciled outside the Indonesia's region."

And based on Article 1 number 6 Indonesia Law of Employment, companies are meant as :

Every business form that are legal or not, own by an individual person, partnership, or legal body, both private and state-owned that employ employee or laborer in exchange with salary or any kind of reward;

Social business venture and others which have management and employ other in exchange of salary or any kind of reward."

Companies in Indonesia are generally divided as:¹⁵

Extractive company is a company that in their operation didn't need any material processing to be marketed but they marketed the finished product. Material processing will be done by other companies where extractive company purchased from. Such as fishing company, woodcutter company, etc for instance.

Industries or manufacturer is a company that process raw material into finished product or parts of a finished product that are sold to consumer like the extractive company. Such as ironmongery that process iron ore into bolt and nuts, etc for instance.

Agrarian company is a company that manage, process, and cultivate renewable natural resources on Earth. Such as coffee garden, cattle company, etc.

Service company is a company that markets their service to consumer without any direct product but in service given for a certain task needed by the consumer. Such as transportation company.

¹⁵ "Jenis-Jenis Perusahaan Yang Ada Di Indonesia." Accessed May 28th, 2019, <https://www.jurnal.id/id/blog/2017/jenis-jenisperusahaan-yang-ada-di-indonesia>.

Trade company is a company that resells the product purchased to other consumer with higher price without processing the product. The only step needed by this type of company is setting a new price for a product. Like supermarket, groceries, etc for instance.

In Indonesia, companies have a variety of forms that utilized by employer. These are the forms of companies :

Trading business is a form of cbusiness that isn't a legal body and as explained in Book of Trade Law (hereinafter will be abbreviated as KUHD) trading business also owns the characteristic of an individual. The employer of this form of company are liable to personal assets if there is a problem. Generally, the employer of this form of company runs the company personally. This form of company also doesn't need any minimum capital in its establishment.¹⁶

Civil partnership or Maatschap is a partnership regulated in Code of Civil Law (hereinafter will be abbreviated as KUHPdata) and acknowledge by 2 (two) or more individual to bond through a pact (pact can be done orally, under hand, or autentic) and stored an object as capital (in form of money, object or skills) in order to gain profit from the capital. Generally, in a civil partnership, individual that bonds together have common profession.¹⁷

Firm (Fa) is a form of company that is a business entity regulated in KUHD and established by 2 (two) and a maximum of 10 (ten) individual under same name together in the business. Generally, firm's establishment is done in the presence of notary with a deed of agreement. The liability of firms are the personal assets of the founder included in the deed.¹⁸

¹⁶ "Perbandingan Badan Usaha Berbentuk UD dan PT – HukumOnline.Com," accessed May 28th, 2019, <https://www.hukumonline.com/klinik/detail/cl3894/perbandingan-badan-usaha-berbentuk-ud-dan-pt>.

¹⁷ "Maatschap (Persekutuan, Perseroan, Atau, Perserikatan) – Jurnal Hukum," accessed May 28th, 2019, <https://www.jurnalhukum.com/maatschap-persekutuan-perseorangan-perserikatan/>.

¹⁸ "Firma : Pengertian, Ciri, Tujuan, Kelebihan, Kekurangan – Ilmu Dasar," accessed May 28th, 2019, <https://www.ilmudasar.com/2017/08/Pengertian-Ciri-Unsur-Tujuan-Kelebihan-dan-Kekurangan-Firma-adalah.html>.

Limited partnership or Commanditaire Venootschap (CV) are based on KUHD is a form of company established by 2 (two) or more person and stored an object (such as money, object, or skills) as capital in order to gain profit. In this limited partnership there are active body or complementary and passive body or commanditaire. Complementary body is part of limited partnership that actively manage the company's business, meanwhile the commanditaire body doesn't participate in the management of company's business and only as a share holder. Because of these difference in duty in case of loss, complementary body will be held liable with their personal assets included, while commanditaire will be liable only to the capital stored.¹⁹

Private limited (Pte. Ltd) is a form of company that legally regulated in Indonesian Law Number 40 of 2007 pertaining to Private Limited. Private limited minimum number of individual requirements for establishment are two individual or share holder. The liability of private limited are only the capital stored by share holders without including the share holder personal assets. In private limited, the separation of occupation are clearly stated, from the General Share Holder Meeting (hereinafter will be abbreviated as RUPS), Board of Directors, Board of Commissioner, and etc. In order to establish a private limited the minimum capital needed are Rp50,000,000.00 (fifty million rupiah) with minimum of 25% (twenty five percent) capital stored. There are two types of private limited such as : Open Private Limited and Closed Private Limited. Open Private Limited meant here is anyone can buy the company's stock from Stock Exchange, meanwhile Closed Private Limited is a private limited that didn't sell their stock publicly and owned by a certain individual commonly assigned to family members.²⁰

Cooperative is a form of company that legally regulated in Indonesian Law Number 17 of 2012 pertaining to Cooperative. Its member are

¹⁹ "Sekelumit Tentang Persekutuan Komanditer – HukumOnline.Com," accessed May 28th, 2019, <https://www.hukumonline.com/berita/baca/hol17820/sekelumit-tentang-persekutuan-komanditer>.

²⁰ "Pebandingan Badan Usaha Berbentuk UD dan PT – HukumOnline.Com, Op.cit"

individual person with the aim of creating prosperity within masses based on family principle and mutual cooperation. Cooperative don't have the purpose of gaining profit, but to improve its members prosperity. Cooperative capital are gained from its members in the form of principal savings, mandatory savings and grant that will be invested and returned to its member as Business Remainders Revenue. Cooperative itself is divided into savings and loaning cooperative, service cooperative, etc.²¹

Institution is a form of company that legally regulated in Indonesian Law Number 28 of 2004 pertaining to Institution. Institution is established by a person or legal body with resource seperated and used to aid in social fields, religious fields, etc. Institution is established specifically for serving the masses and not gaining profit like other company forms. A institution needs to be established in the presence of notary or by the Wills regarding the establishment of institution. In an institution there are management, supervisor, and elder member.²²

General company or Perum is a form of legal company that is regulated in Indonesian Law Number 19 of 2003 pertaining to State Owned-Enterprises and the government owns the capital of the company. Perum owns a seperate resources aside from state resources. Perum is established by the government to serve the masses and gained massive profit in the process. To establish a Perum, one will need a minister and president agreement on the matter.²³

Regional Owned Enterprises (BUMD) is a form of legal company that is regulated in Indonesian Law Number 5 of 1962 pertaining to Regional Owned Enterprises and the government owns the capital of the company

²¹ "Definisi Koperasi,": accessed May 28th, 2019, <https://www.finansialku.com/definisi-koperasi-adalah/>.

²² "Pengertian Yayasan Definisi Maksud Tujuan Pengaturan Hukum Di Indonesia Serta Pendirian Dan Pembubaran | Landasan Teori," accessed May 28th, 2019, <https://www.landasanteori.com/2015/09/pengertian-yayasan-definisi-maksud.html>.

²³ "Perusahaan Umum (Perum) : Pengertian, Ciri, Kelebihan, Kekurangan – Ilmu Dasar," accessed May 28th, 2019, <https://www.ilmudasar.com/2017/09/Pengertian-Ciri-Kelebihan-Kekurangan-Perusahaan-Umum-Perum-adalah.html>.

with regional laws implemented. regional owned enterprises is established in order to gained profit that will be utilized to the fundings of regional development.²⁴

4. GENERAL REVIEW OF EMPLOYMENT CONTRACT AND WORK RELATIONSHIP

Contract is defined as such by these experts :²⁵

According to Sudikno, contract is

“the relationship of law between 2 (two) or more sides based on an agreement because of law.”

According to R. Subekti, contract is

“an event where an individual promised to others, or both individual promised to each other to do something.”

According to Prof. R. Wirjono Prodjodikoro, S.H, contract is

“a realionship of law where a certain individual, based on an apledge, is obligated to do something and other individual have the right to demand that obligation.”

According to R. Setiawan, contract is

“an act of law where an individual or more bonds themselves or declare itself bonded to others.”

According to Sri Soedewi Masjchoen Sofwan, contract is

“a legal action where one individual or more bonds itself to others.”

According to Abdulkadir, contract is

“an agreement with 2 (two) or more individual that bonds each other self to do something in wealth.”

According to Handri Raharjo, contract is

“an relationship of law in wealth based on agreement between legal subjects, and between them (parties or legal subject) binding itself in

²⁴ “Pengertian Badan Usaha Milik Daerah (BUMD),” accessed May 28th, 2019, <https://www.sumberpetimbangan.co/pengertian-badan-usaha-milik-daerah-bumd>.

²⁵ “Perjanjian Menurut Para Ahli,” accessed June 3rd, 2019, <https://kostummerdeka.blogspot.com/2014/06/perjanjian-menurut-para-ahli.html>.

order for legal subjects that have the right over the promise and other legal subject is obligated to carry out the promise as promised by both parties and cause legal consequences.”

According to KMRT Tirodiningrat, contract is

“an legal action based on words promised between 2 (two) or more individuals that cause the legal consequences that could be forced by the law.”

According to Van Dunne, contract is

“a legal action between 2 (two) or more parties based on agreement that will cause legal consequences.”

Based on Article 1313 Code of Civil Law, contract is “a deed where one individual or more bonds themselves to others.”

The legal cause of an agreement are regulated on Article 1320 Indonesian Code of Civil Law, there are :²⁶

Both parties or more agreed or reached a conclusion to an agreement. Something that each parties wants and these desires can't be forced, or because of a blunder or under the pretense and must be genuine from their own will.

The competence or the ability of an individual to do a legal action are considered as an adult. In Indonesia, the definition of an adult are basically an individual with the age of 21 (twenty-one) years old or married before twenty-one years old.

In an agreement, the existence of something agreed upon is a must and are the core of an agreement and the object of the agreement. The core of these agreement must be carried out and called as prestasi (things must be done).

This requirement covers the issue of an agreement created by both parties. The issue created and agreed in the agreement must follows the law and didn't stray from public morals.

The first and second requirements of Article 1320 Indonesian Code of Civil Law or called as subjectif requirement, is a subject with direct

²⁶ Indonesian Code of Civil Law, Article 1320.

relation with the parties that became the subject of the agreement and if violated the agreement will be terminated with the correct law procedure. Meanwhile the third and fourth requirements of Article 1320 Indonesian Code of Civil Law. Civil law or referred as objective requirements are the requirements to directly related to every thing that became parts of objective part of the agreements and if violated will be punished.²⁷

Within a contract, there are principles to be observed, there are :²⁸ Personality principle, Good Faith Principle, Consensualism Principle, Legal Certainty Principle, and Freedom of Contract Principle.

Personality principle explains that a contract will not have execution power to others except to those who binds itself into a contract. In the creation of a contract, a party can not act as other party but can act as themselves.

Good faith principle explains that a contract must be compiled based on good faith of parties that will be binding themselves to a contract. Good faith here is referring to the act of trust to each other, no deception in other words honest, and do not hide anything in other words free-for-all.

Consensualism principle explains that a contract have been formed and binding parties at the time when the word of consent are concluded. Therefore, a contract can be formed orally, except if the law specifically regulates a contract needs to be formed in writing, for instance a credit contract.

Legal certainty principle or *pacta sunt servanda* explains that a contract if there is conflict, and filed a lawsuit to the court, accordingly the judge in the court have the authority to pass sentence to a party who is considered guilty and to provide legal protection to parties in detriment.

Freedom of contract principle explains that a contract can be created with over issue with the requirement of adhering to Article 1320 Indonesian Code Of Civil Law.

²⁷ R. Subekti, *Hukum Perjanjian*, Cet. 8 (Jakarta: PT. Intermasa).

²⁸ “Asas-Asas Perjanjian | Legal Akses,” accessed June 4th, 2019, <https://www.legalakses.com/asas-asas-perjanjian/>.

A contract consist of these elements :²⁹ Essential Elements, Natural Element, and Accidental Element.

Essential elements is also known as the core fo a contract and a determininding factor in the creation of a contract. Essential elements are the legal requirement to form a contract and regulated in Indonesian Code Of Civil Law Article 1320,

Natural element is an element that usually adheres to a contract automatically and considered agreed by parties where anything that have not been regulated specifically within a contract, will be regulated in positive law in effect.

Accidental element is an element that regulate matters that must be contained or described in detail within the contract of parties. The matters that are considered mandatory or the subject of contract, agreement of parties, object of contract, purpose of contract, and form of contract (orally or in writing).

As referred in Article 1 Number 14 of Indonesian Law Number 13 of 2003 pertaining to Employment :

“a contract between employee / laborer with employer or entrepreneur that contains the working conditions, rights, and obligation of parties.”

Indonesian Employment Law recognize employment agreement are to be made orally or in writing as mentioned in Article 51 Paragraph 1. A employment agreement must at least arrenge the rights and obligation of parties (employee, employer along with trade unions), the effective date of contract along with validity period of contract, and approval of parties proven by including the signature included within the contract.³⁰

Employment agreement are divided in 2 (two), there are :³¹

Definite Time Employment Agreement (hereinafter will be abbreviated as PKWT) is an employment agreement that have the validity

²⁹ “Syarat-Syarat Perjanjian Dan Unsur-Unsur Perjanjian | Sankoen, Op.cit.”

³⁰ Indonesian Law Number 13 of 2003 pertaining to Employment.

³¹ “Perjanjian Kerja:PKWT Dan PKWTT | Legal Akses,” accessed June 4. 2019, <https://www.legalakses.com/perjanjian-kerja-pkwt-pkwtt/>.

period and compiled in 2 (two) forms. The first one is a PKWT compiled based on certain time table where employee will be employed based on the validity period within the contract (like within six month, one year, and so on) and after the validity period ends, the employment agreement will end automatically. The second is a PKWT based on time of completion of project where in this PKWT will be divided based on one time project (maximum of 3 years), seasonal workers (based on the weather), employment based on brand new product (maximum of 2 years), and casual daily work. PKWT employee also known as contracted employee. PKWT must be compiled in writing and registered to Labor Offices (in Indonesia labor office are known as Disnaker), if there is no registration to Disnaker the employment agreement will be considered as indefinite time employment agreement that will give the employee the rights to be granted severance pay by the company if there is termination of employment relationship.

Indefinite Time Employment Agreement (hereinafter will be abbreviated as PKWTT) is an employment agreement that compiled without validity period that only end if there is termination of employment relationship. PKWTT employee are known as permanent employee. PKWTT can be compiled orally or in writing with the note in oral PKWTT, company and employee are expected to submit and agree with every clause within Indonesia's Employment Law and must make a letter of assignment for the employee.

With the existence of employment agreement, the relationship between employee and employer is born. In Indonesian Employment Law Article 1 Number 15 explains work relationship as :

“employment agreement between employee / labor with employer or entrepreneur that contains the working conditions, rights, and obligation of parties.”

Some experts define work relationship as :

According to Hartono Widodo and Judiantoro, work relationship is

“every activities that ordered by entrepreneur or employer regularly to employee for the sake of employer and in accordance with the employment agreement agreed.

According to Tjepi F. Aloewir, work relationship is

“a relationship born from contract amde between employer and employee that binds both parties for a definite or indefinite time period.

The creation of work relationship are the result of employment agreement, at the same time the rights and obligation within the contract must be obeyed. Rights and obligations of employee and employer covers things agreed within the contract and based on Indonesian Employment Law.

5. GENERAL REVIEW SOCIAL SECURITY

Social security or abbreviated as BPJS is part of national social insurance program. National social insurance program is a national program formed with the aim to give assurance of protection and social prosperity for all Indonesian citizens based on Indonesian Law Number 40 of 2004 pertaining to national social insurance system.

Management of social assurance is a nations responsibility, it starts in 1977, where the government issued Government Regulation Number 33 of 1977 pertaining to Social Work Force Insurance Implementation Program (ASTEK), that require all employer; private or state-owned enterprises to follow suit with ASTEK program. ASTEK then developed into Social Work Force Insurance (Jamsostek) by the birth of Indonesian Law Number 3 of 1992. And further more developed at 2011, through Indonesian Law Number 24 of 2011 pertaining to BPJS. BPJS is formed and appointed as the administrator o social insurance program that take over the responsibility of Jamsostek.³²

³² BPJS Ketenagakerjaan, “Sejarah Badan Penyelenggaraan Jaminan Sosial,” accessed June 10th, 2019, <https://www.bpjsketenagakerjaan.go.id/sejarah.html>.

Social Security or abbreviated as BPJS, is regulated in Indonesian Law Number 40 of 2004 pertaining to National Social Insurance Program and Indonesian Law Number 24 of 2011 pertaining to Social Security.

BPJS within BPJS Law is described as a legal entity form to organize social insurance program and aims to fulfill the basic necessities of appropriate life for BPJS participants and / or their family members as guaranteed.

Within article 2 of BPJS Law, mentioned that national social insurance enforcement are based upon humanity principle, benefits and social justice towards all Indonesian citizens.

Article 4 also mentioned that social insurance held according to these principle:

“cooperativeness, non-profit, openness, caution, accountability, portability, participation is mandatory, funds mandate, and the result of the management of social security funds are to be used entirely for program development and for the greatest interest of the Participants.”

BPJS is the rights of an employee as regulated in article 99 Employment Law

“Every employee / laborer and their families entitled to obtain social work force insurance,

Social work force insurance as mentioned in verse 1), held accordingly with law and regulations applicable.

These are then emphasized again in Government Regulation Number 84 of 2013, where in article 2 mentioned that:

“Social work force insurance program consist of:

Insurance in the form of money which cover:

Accident Insurance, Life Insurance, and Pension Plan.

Insurance in the form of service, which is Health Care Insurance.

(1a) Health Care Insurance Program as mentioned in paragraph (1) alphabet b regulated in a separate President Regulations.

Social work force insurance as mentioned in paragraph (1) alphabet a held by organizing body.

Employer that employs at least 10 (ten) employee or more, or pay the least amount of wages Rp.1000.000 (one million rupiah) every month, must enrolls their employees into social work force insurance as mentioned in paragraph (1).”

BPJS is formed based on BPJS Law and divided in 2 (two) these are BPJS of Health that organize health care insurance program and BPJS of Employment that organize accident insurance, old day insurance, pension plan, and life insurance.

For BPJS of Health, there are several types of participation, such as :³³

1. Contribution Assistance Recipient (BPJS-PBI)

Contribution assistance recipient is a BPJS partnership specified for citizens that is considered by the social service as the poor and incapable. Participants of BPJS-PBI monthly contribution are paid by the government.

2. Non Contribution Assistance Recipient (BPJS Non-PBI)

Non Contribution Assistance Recipient is a BPJS partnership where the participants pays for their montly contribution without the assistance of the government. Participant of BPJS Non-PBI are divided into several types, such as:

3. Wage Recipient Employee (PPU) and their family members are those who are categorized as PPU are government employees (PNS), members of Indonesian National Army (TNI) or Republic of Indonesia Police (POLRI), state officials, non civil servant government employees, private employee, and employee that receives wage or foreign nationals (WNA) that have been working in Indonesia at least 6 (six) month. Participant of BPJS PPU are usually enrolled by the company or institution where they works and their montly contribution are assisted by the company or splitted with the employees.

³³ “Mengenal Jenis Kepersetaan BPJS Kesehatan – (PBI, Non-PBI, PBPU, PPU, BP),” accessed June 10th, 2019, <https://www.pasienbpjs.com/2016/07/mengenal-jenis-kepersetaan-bpjs.html>.

4. Non-Wage Recipient Employee (PBP) are employees who are outside the work relationship or independent employee and employees who are not wage recipient employee and WNA who have worked in Indonesia for at least six month. To become a participant of BPJS, PBP must enroll themselves to BPJS office and pay for monthly contribution according to BPJS class chosen.

5. Non-Employee (BP) are investor, employer or company owner, pension funds recipient, war veterans, pioneer of independence, widow or widower or orphan of war veterans or pioneer of independence and non-employee but can pay contributions. To become a participant of BPJS, BP must enroll themselves to BPJS office and pay for monthly contribution according to BPJS class chosen.

For BPJS of Employment, there are several types of participation, such as:

1. Accident Insurance (JKK) program aims to give assistance towards their participants when they encounter accidents during work in the form of health care service and money assistance for certain condition.
2. Old Day Insurance (JHT), In this program, monthly contribution paid and accumulated will be developed by BPJS and later on can be withdrawn by BPJS participant if certain conditions are fulfilled.
3. Pension Plan (JP) this program aims to be assistance towards BPJS participants to acquire appropriate life after pension, permanent disability, or deceased where participant will be given money monthly after entering pension age, permanent disability, and for the participant heir after deceased.
4. Life Insurance (JKM) in this program, the participant heir will be granted cash money with certain nominal after the participant has passed away cause other than accident during work.

For employees within company such as private limited, they are categorized into BPJS of Health Private PPU and are obligated to be

enrolled to all BPJS of Employment program. The monthly contribution that must be paid are as following percentage:³⁴

1. BPJS of Health – Private PPU

The contribution rate is 5% (five percent) of the total wage made each month with distribution:

- a. 4% (four percent) is borne by employer or company.
- b. 1% (one percent) is borne by employee or participant.

The contribution above guarantees 5 (five) family members such as, husband or wife, and 3 (three) child recorded on Family Card (KK). For the 4th (fourth) child and so on along with parents and in-laws who are still dependent towards participant, must pay extra contribution of 1% (one percent) of total wage for each person.

2. BPJS of Employment – Accident Insurance (JKK)

Contribution are fully paid by employer or company with the percentage adjusted to the level of work risk multiplied by the total wage per month:

- a. Very Low Risk Level : 0.24% (zero point twenty four percent)
- b. Low Risk Level : 0.54% (zero point fifty four percent)
- c. Moderate Risk Level : 0,89% (zero point eighty nine percent)
- d. High Risk Level : 1,27% (one point twenty seven percent)
- e. Extreme Risk Level : 1.74% (one point seventy four percent)

3. BPJS of Employment – Old Day Insurance (JHT)

The contribution rate is 5,7% (five point seven percent) of the total wage made each month with distribution:

³⁴ “Cara Menghitung Iuran BPJS Ketenagakerjaan JHT, JKK, JP, JKM (Contoh Kasus Lengkap).”

Accessed June 10th, 2019, <https://www.pasienbpjs.com/2017/01/cara-menghitung-iuran-bpjs-ketenagakerjaan.html>.

a. 3,7% (three point seven percent) borned by employer or company.

b. 2% (two percent) borned by employee or participant.

4. BPJS of Employment – Pension Plan (JP)

The contribution rate is 3% (five percent) of the total wage made each month with distribution of

a. 2% (two percent) borned by employer or company.

b. 1% (one percent) borned by employee or participant.

5. BPJS of Employment – Life Insurance (JKM)

The contribution rate is 0,3% (zero point three percent) of the total wage made each month and fully paid by employer or company.

B. YURIDICAL FRAMEWORK

The rights of an employee as regulated in Indonesian Employment Law Number 13 of 2003 are :

Article 5, declares that all employee deserve the right to get the same job without discrimination.

Article 6, declares that all employee deserve the right to be treated the same by the employer without discrimination .

Article 11, declares that all employee deserve the right to be trained and developed according to their interest.

Article 12 Paragraph 3, declares that all employee deserve the right to be trained and developed according to their field of work.

Article 18 Paragraph 1, declares that all employee deserve the right to gain recognition by certificate or others from their result of work that had been done.

Article 23, declares that all employee deserve the right to gain recognition by certificate or others from their internship in a company or certification body.

Article 31, declares that all employee deserve the right to get the same opportunity to choose or change jobds and get enough wages.

Article 67, declares that all employee deserve with disability condition deserve the right to get protection from employer appropriate to their disabilities.

Article 78 Paragraph 2, declares that all employee that works overtime deserve the right to get overtime wages from employer.

Article 79 Paragraph 1, declares that all employee deserve the right to be given rest and leave from employer.

Article 80, declares that all employee deserve the right to carry out worship according to their religion teachings.

Article 81, declares that all female employee deserve the right to take leave in during their first and second day of their mensruation if agreed beforehand with employer.

Article 82, declares that all female employee deserve the right to get rest one and a half month before and after giving birth according to doctors estimation.

Article 84, declares that all employee deserve the right to get full wage in their usage of right to rest based on article 79 paragraph 2 alphabet b, c, and d along with article 80 and 82.

Article 85 Paragraph 1, declares that all employee deserve the right to not attend work when it is national holiday or official from the government.

Article 86 Paragraph 1, declares that all employee deserve the right to get protection for their safety or health of work, and others based on religious values and human rights.

Article 88, declares that all employee deserve the right to get enough wages to lead a appropriate life.

Article 90, declares that all employee deserve the right to get higher wage over the minimum regulated in article 89.

Article 99 Paragraph 1, declares that all employee along with their dependents deserve the right to get social security valid at this time.

Article 104 Paragraph 1, declares that all employee along with their dependents deserve the right to create or become a member of labor union.

The obligation of an employee as regulated in in Indonesian Employment Law Number 13 of 2003 are :

Article 102 Paragraph 2, declares that an employee have the obligation to do carry out their work that had been agreed before, give opinions and reaching democraton, self development and skills along with developing the company and maintaining the well-being of their team and family.

Article 126 Paragraph 1, declares that an employee have the obligation to carry out the contents of employment agreement agreed upon by employer.

Article 136 Paragraph 1, declares that an employee have the obligation to conduct deliberation to reach consensus if there are dispute between employee and employer.

Article 140 Paragraph 1, declares that an employee have the obligation to notify entrepreneur or certain department when going to be on strike at least 7 (seven) days beforehand.

The rights of an employer as regulated in in Indonesian Employment Law Number 13 of 2003 are :

To get results from employee for the work assigned as agreed in employment agreement and as regulated in article 52 Indonesian Employment Law.

Article 93, declares that an employer owns the right of not giving wages to the employer's employee if the employee didn't carry out their work.

Article 105, declares that an employer owns the right to create or become a member of employer's organization.

Article 150, declares that an employer owns the right to termiante emmployment toward the employer's employee who got wage from the employer.

Besides having to fulfill the rights of employee, an employer have obligations as regulated in Indonesian Employment Law Number 13 of 2003 as :

Article 67 Paragraph 1, declares that an employer have the obligation to give protection to tgeir employee with deisabilities to a certain degree.

Article 76 Paragraph 3, declares that an employer have the obligation to provide nutritious food and drinks along with ensuring safe conditions from the workplace for their female employee before and after work between 11:00 pm up to 07:00 am.

Article 76 Paragraph 4, declares that an employer have the obligation to provide transportation for their female before and after work between 11:00 pm up to 05:00 am.

Article 77, declares that an employer have the obligation to enforce working time as regualted in the laws.

Article 79, declares that an employer have the obligation to give their employee rest and leave as regulated in the laws.

Article 80, declares that an employer have the obligation to allow their employee to carry out worship according to their religion teachings.

Article 85 Paragraph 3, declares that an employer have the obligation to pay overtime wages to employee that was requested to work during national or official holiday.

Article 87 Paragraph 1, declares that an employer have the obligation to owns and implement their occupational health and safety management system that is one of company management system.

Article 90, declares that an employer have the obligation to give wage no smaller that the minimum which is determined.

Article 91, declares that an employer have the obligation to ensure that their employment agreement didn't offer wage smaller than the minimum wage which is determined.

Article 100, declares that an employer have the obligation to provide employee with facilities for welfare in order to improve the welfare of the employee.

Article 106 Paragraph 1, declares that an employer have the obligation to make a biaprtite institution if the company owns more than 49 (forty-nine) employee.

Article 108 Paragraph 1, declares that an employer have the obligation to compile company regulation if the company owns more than 9 (nine) employee.

Article 114, declares that an employer have the obligation to announce and explain company regulation compiled and changes made to their employee.

Article 148, declares that an employer have the obligation to inform the employee when the company will not be in operation at least 7 (seven) days beforehand.

Article 156 Paragraph 1, declares that an employer have the obligation to give severance pay and others to their employee according to what is their rights if employment termiantion is carried out.

Article 160 Paragraph 1, declares that an employer have the obligation to hand over money to relatives from the employee's dependents if the worker is detained by the authorities as a result of an alleged crimal acts which were not reported by the employer.

C. **THEORITICAL FRAMEWORK**

Law Enforcement Theory

The law enforcement theory is a effort to realize the idea of justice, enforcement of law, and social benefit into reality. In general, law enforcement is an idea realization.

Joseph Goldstein categorized that law enforcement must be viewed from 3 (three) dimensions; normative system, administrative system, and social system.

Law enforcement viewed as a normative system perspective is an enforcement of law as a whole that potray the social norms. Law enforcement viewed as administrative system perspective, is an enforcement of law that covers interactions between law enforcers that is part of justice sub-system. Law enforcement viewed as a social system perspective is definited from the perspective of civilians layer of thoughts.³⁵

³⁵ “Tinjauan Pustaka,” accessed 10th November 2019, <http://digilib.unila.ac.id/2827/12/BAB%20II.pdf>