

## ROLES OF BPJS MANPOWER SOCIAL SECURITY AGENCY IN PROTECTING WORKERS' RIGHTS AFFECTED BY TERMINATION OF EMPLOYMENT DURING COVID-19 PANDEMIC (A Study of BPJS at Serdang Bedagai Branch)

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### ABSTRACT

Based on the results of the research, it can be seen that the regulation of BPJS Ketenagakerjaan (the Manpower Social Security Agency) in Indonesia is basically regulated in the BPJS Law and Government Regulations such as the Government Regulation no. 44 of 2015, Government Regulation No.45 of 2015, and Government Regulation No. 46 of 2015 as the implementing regulations of each BPJS Ketenagakerjaan particularly those in Serdang Bedagai area, regarding the implementation of BPJS Ketenagakerjaan regulated in the District Head Regulation of Serdang Bedagai No. 49/2016. The implementation of the manpower social security at the BPJS Ketenagakerjaan Office of Serdang Bedagai Branch was carried out in accordance with the procedures stated in the BPJS Law and all government regulations governing the respective manpower social security. Adjusting to the Covid 19 pandemic period, in the companies with layoffs, such as PT Purnulixindo, claim filings were directed to online queues. The efforts of the BPJS of Serdang Bedagai Branch in protecting the rights of the BPJS Ketenagakerjaan participants' laid-off in Serdang Bedagai Branch Office area were by responding, processing and disbursing the benefits of JHT (Pension Insurance) submitted by the workers who had been laid off. BPJS Ketenagakerjaan of Serdang Bedagai Branch Office could only provide legal protection to the participants who are laid off when the participant had been registered in the JHT program. The JHT guarantee provided was in the form of disbursement of contribution money collected during the participant's working period.

Key words: BPJS Ketenagakerjaan, Layoffs during the Covid-19 Pandemic.

### A. INTRODUCTION

The development of the manpower sector as part of efforts to develop human resources is an integral part of national development as the practice of Pancasila and the implementation of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia).<sup>1</sup>

The development of the manpower sector is aimed at enhancing human dignity and capability, as well as self-confidence in the context of creating a prosperous, just and prosperous society both materially and spiritually.<sup>2</sup>

Therefore, in the concept of Islam working is an obligation for every human being, because even though Allah has guaranteed the sustenance of every human being, this sustenance will not come to humans without the efforts of those concerned. By working each individual can fulfill the needs of himself and his family, do good to his family and can provide help to those who need it.<sup>3</sup>

In labor law, there is a workforce social security program which is intended to provide protection for workers against the socio-economic risks that befall workers in carrying out work, whether in the form of work accidents, illness, old age, or death, and at the same time it will create work peace to improve work productivity.

The workforce social security program is the basic protection for workers and their families that provides compensation in the event of a work accident, life insurance, and old age insurance. Thus, in essence, this workforce social security program provides legal certainty for the continuation of family income as a replacement for part or all of the lost income.

Provisions regarding labor protection guarantees can be found in constitutional juridical terms in the 1945 Constitution of the Republic of Indonesia, namely in Article 28 D Paragraph (2) of the 1945 NRI Constitution which states that "Everyone has the right to work and is entitled to compensation and fair and proper treatment in a work relationship", furthermore in Article 28 H Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that "Every person has the right to social security which enables his complete development as a useful human being".

Social protection security is also regulated in the provisions of Article 34 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "The state develops a social security system for all people and empowers people who are weak and underprivileged according to human dignity".

In its development, regulations regarding social security related to labor issues are regulated in Law Number 40 of 2004 concerning the National Social Security System (hereinafter referred to as Law No.40 of 2004). In Article 1 Paragraph (1) of Law No.40 of 2004, it is stated that social security is a form of social protection to ensure that all people can fulfill their basic needs for a decent life. The form of social security referred to in Law No.40 of 2004 is stated concretely in Article 18 of Law No.40 of 2004.

<sup>1</sup> Siti Ummu Adillaha and Sri Anik, *Kebijakan Jaminan Sosial Tenaga Kerja Sektor Informal Berbasis Keadilan Sosial Untuk Meningkatkan Kesejahteraan (Social Justice-Based Social Security Policy for Informal Sector Workers to Improve Welfare)* Jurnal Yustisia Vol. 4 No. September 3 - December 2015, p. 564.

<sup>2</sup> *Ibid*

<sup>3</sup> Uswatun Hasanah, *Hak-hak Buruh dalam Perspektif Hukum Islam (Labor Rights in the Perspective of Islamic Law)*, Jurnal Law Review, Volume XII No. 1, July 2012, p. 58.

The complete sound of the contents of Article 18 of Law No.40 of 2004 states that the types of social security programs include: health insurance, work accident insurance, old age insurance, pension benefits, and death benefits.

Article 5 Paragraph (2) of the *BPJS* Law states that in carrying out its activities, *BPJS* is divided into *BPJS Kesehatan* and *BPJS Ketenagakerjaan*. *BPJS Ketenagakerjaan* is a transformation of PT. Jaminan Sosial Tenaga Kerja (hereinafter referred to as *Jamsostek*). Its duty is to provide protection for Indonesian workers, both informally and informally. Meanwhile, *BPJS Kesehatan* is a transformation of PT. Asuransi Kesehatan (hereinafter referred to as *Askes*). The task of *BPJS Kesehatan* is to provide basic health protection for all Indonesian people, without exception.<sup>4</sup>

The issuance of Law Number 24 of 2011 concerning Social Security Administering Bodies (hereinafter referred to as the *BPJS* Law) then replaced Law No.40 of 2004 in regulating social security in Indonesia. Article 1 Paragraph (1) of the *BPJS* Law states that the Social Security Administering Body (hereinafter referred to as *BPJS*) is a legal entity that organizes social security programs to ensure that all Indonesian people can fulfill their basic needs for a decent life.

Article 6 Paragraph (2) In carrying out its activities, *BPJS Ketenagakerjaan* will function as the party administering the workforce social security program, including, among other things, work accident insurance, old age security, pension security and death security.

Article 2 Paragraph (3) Government Regulation Number 84 of 2013 concerning the Ninth Amendment to Government Regulation Number 14 of 1993 concerning the Implementation of the Workforce Social Security Program (hereinafter referred to as PP Number 84 of 2013), states that employers employ as many as 10 workers (ten) people or more, or pay wages of at least IDR. 1,000,000 (one million rupiah) a month, are obliged to involve their workers in the workforce social security program.

Article 6 Paragraph (1) Presidential Regulation Number 109 of 2013 concerning the Staging of Social Security Program Participation (hereinafter referred to as Presidential Decree No.109 of 2013) states that the stages of membership are grouped based on business scale consisting of large businesses, medium enterprises, small businesses, and micro businesses.

Article 6 Paragraph (3) *Pepres* No. 109/2013 further explains that:

- a. Large and medium-sized businesses are required to participate in work accident insurance programs, old-age security programs, pension security programs, and death security programs.
- b. Small businesses are required to take part in the work accident insurance program, old age insurance program, and death insurance program.
- c. Micro businesses are required to take part in the work accident insurance program and the death insurance program.

PP Number 84 of 2013 states in Article 9 Paragraph (2), the work accident and death insurance contributions are fully borne by the employer, while for old age security according to Article 9 Paragraph (3) PP Number 84 of 2013 states that the contribution is 3.7 % (three point seven percent) borne by employers and 2% (two percent) borne by workers. For pension program guarantees, the contribution amount is regulated in Article 28 Paragraph (3) Government Regulation Number 45 of 2015 concerning the Implementation of Pension Security (hereinafter referred to as PP 45 of 2015) is calculated at 3% (three percent) consisting of 2% (two percent) employer's contribution and 1% (one percent) employee contribution.

In addition to these norms, in Serdang Bedagai Regency area, there are also regulations regulated in the Regent Regulation of Serdang Bedagai Regency No. 49 of 2016 concerning the Obligations for Employment Social Security Participation in Certain Public Services in Serdang Bedagai Regency, which basically emphasizes the company's obligation to register workers in the labor social security program.

Problems that occur related to social security for workers have increased in 2020 as the impact of the spread of the corona virus in Indonesia. One of the problems related to social security concerns the termination of employment (hereinafter referred to as layoffs) of workers in Indonesia. As a result, the submission of claims for *BPJS Ketenagakerjaan* is also expected to increase due to the slowdown in the domestic economy and made many companies layoffs amid the corona pandemic.<sup>5</sup>

In this connection, the Indonesian Employers' Association (APINDO) stated; the total workforce who was sent home during the Covid-19 pandemic had reached 6 million, and this situation had a negative impact on the economy as a whole, because usually the workers who were sent home did not get their full salary. <sup>6</sup> the Director of *BPJS Ketenagakerjaan*, Krishna Syarif, estimates that claims will increase after Eid because submitting a claim for Old Age Security can only be processed after one month of layoffs due to corona workers.<sup>7</sup>

In response to this, it is interesting to conduct further research on the protection of labor social security by *BPJS Ketenagakerjaan* for workers who have been laid off in *BPJS Ketenagakerjaan* area at the Serdang Bedagai Branch office with the title "**The Role of *BPJS Ketenagakerjaan* in Protecting the Rights of Workers Affected by Termination of Employment During the Covid-19 Pandemic**", with study at the *BPJS Ketenagakerjaan* of Serdang Bedagai Regency Branch Office.

<sup>4</sup> <https://www.bpjsketenagakerjaan.go.id/berita/1253/Ini-Beda-BPJS-Ketenagakerjaan-&-BPJS-K-Health.html>, accessed 27 April 2020, at 15:30 WIB

<sup>5</sup> <https://money.kompas.com/read/2020/05/22/035904826/banyak-phk-di-tengah-covid-19-klaim-bpjs-ketenagakerjaan-bakal-naik>

<sup>6</sup> 5 million workers laid off, Public Daily Alert, Friday 27 November 2020, p. A1 and A2.

<sup>7</sup> <https://money.kompas.com/read/2020/05/22/035904826/banyak-phk-di-tengah-covid-19-klaim-bpjs-ketenagakerjaan-bakal-naik>

## B. RESEARCH METHOD

### 1. Research Specifications

Based on the background in this study, the specification or type of research in this study was *descriptive*<sup>8</sup> because through this study it was aimed to obtain a description of the existence of the *BPJS* of Serdang Bedagai District Branch in protecting the workers affected by layoffs during the Covid-19 period.

With regard to this research, the role of the *BPJS* of Serdang Bedagai Regency was analyzed in describing workers' rights protected through the labor social security program so that a holistic study was obtained in the context of implementing labor protection.

### 2. Approach Method

The method used in this research was normative juridical research method (*legal research*).<sup>9</sup> by using several approaches to answer the problems studied, such as statute and conceptual approaches,<sup>10</sup> Normative legal research was used because the data studied was in the form of secondary data or legal library materials, which include primary, secondary, and tertiary legal materials.

The statutory approach was used to examine in depth regulations relating to labor protection through the employment social security program, as a constitutional juridical implementation of the 1945 Constitution of the Republic of Indonesia, as well as various legal institutions, such as: Law Number 40 of 2004 concerning System National Social Security, Law Number 24 of 2011 concerning Social Security Administering Bodies, Government Regulation Number 84 of 2013 concerning the Ninth Amendment to Government Regulation Number 14 of 1993 concerning the Implementation of the Workforce Social Security Program, and Presidential Regulation Number 109 of 2013 concerning Phasing Social Security Program Membership.

The conceptual approach was used to understand the existence of the *BPJS* in providing protection to workers, in the event of termination of employment, especially at the Branch of Serdang Bedagai Regency.

In analyzing field data, empirical legal research was also used, which is one type of research that analyzes and studies the work of law in society.<sup>11</sup> The type of empirical research used in this research was sociology of law research. Sociology of law research is a research in the form of empirical studies to find theories on the processes of occurrence and operation of law in society.<sup>12</sup>

## C. RESEARCH RESULTS AND DISCUSSION

Workers in carrying out their jobs have rights that employers need to pay attention to. The existence of the Manpower Law and the Social Security Administering Body Act is a form of legal guarantee and protection so that workers' rights can be implemented properly. Workers, apart from having rights in the form of employment social security, other rights possessed by workers are in the form of severance pay to every worker who has been laid off or retired.

Layoffs can occur because a certain period of time that has been mutually agreed upon or previously agreed upon has ended, and can also occur due to labor disputes, as stated by Willy Farianto, that the work agreement between the worker and the employer ends if:

- a. worker dies,
- b. expiration of work agreement
- c. The existence of a court decision and / or decision or determination of an industrial relations dispute settlement institution that has permanent legal force, or there are
- d. certain circumstances or events stated in the work agreement, company regulations, or collective working agreement that can cause the termination of the working relationship<sup>13</sup>.

Based on the results of research conducted at *BPJS Ketenagakerjaan* at Serdang Bedagai Regency Branch Office, it was found that *BPJS Ketenagakerjaan* of Serdang Bedagai Branch Office has been established since 2015. Based on the Director Regulation of *BPJS Ketenagakerjaan* Number 17/06/2020 (hereinafter referred to as Perdir *BPJS Ketenagakerjaan*), the composition of the organization at *BPJS Ketenagakerjaan* at Serdang Bedagai District Branch can be seen in the following chart:

<sup>8</sup> M. Solly Lubis, *Philosophy of Science and Research*, CV. Mandar Maju, Bandung, 1994, p. 77.

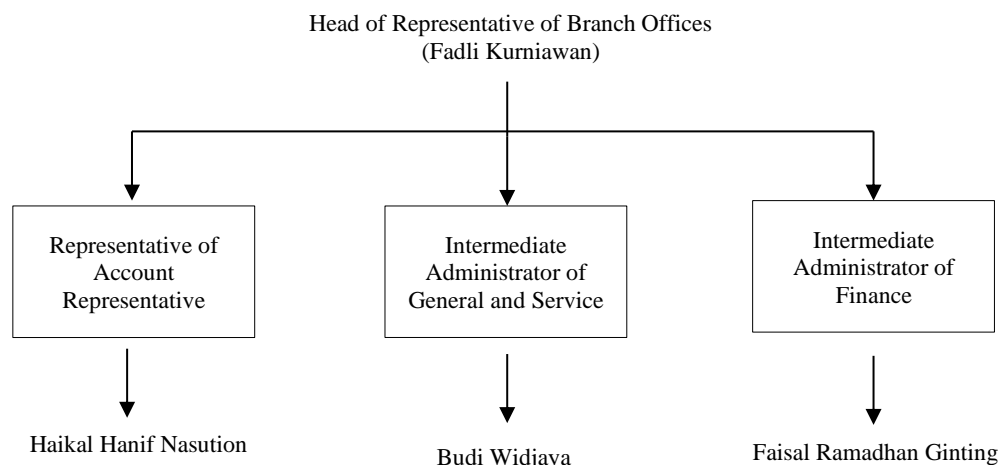
<sup>9</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research One Brief Overview*, (Jakarta: CV Rajawali, 1985), p. 15. see Bambang Sunggono, *Legal Research Methodology*, Rajawali Pers, Jakarta 2001, p. 43.

<sup>10</sup> Peter Mahmud Marzuki, *Legal Research*, Kencana, Jakarta, 2005, p. 93-94.

<sup>11</sup> Salim HS and Erlis Septiani Nurbani, *Application of Legal Theory in Dissertation and Thesis Research*, Raja Grafindo Persada, Jakarta, 2015, p. 20

<sup>12</sup> Bambang Sunggono, *Legal Research Methods*, Raja Grafindo Persada, 2001, p. 2

<sup>13</sup> Willy Farianto, *Employer and Worker Relationship Patterns*, Sinar Grafika, East Jakarta, 2019, p., 62.



In this connection, based on the research data obtained, the *BPJS Ketenagakerjaan* at the Serdang Bedagai District Branch Office between 2019 and 2020 has registered 520 (five hundred and twenty) companies consisting of Small companies to medium-sized companies that participate in the employment social security program, which generally begins with the Work Accident, Death and Old Age, and Pension Security programs so that it is hoped that peace of work for workers will be realized and productivity will increase<sup>14</sup>.

Based on these data, from 520 companies, there were ± 7,000 (seven thousand) workers classified in 5,000 (five thousand) workers in the Old Age, Work Accident, Death and Pension Security programs, while the remaining 2,000 (two thousand) were the workers who only participated in the Work Accident Security and Death Insurance programs.

In this context, the Covid-19 pandemic period certainly had an influence on layoffs. Several business sectors that are vulnerable to termination of employment include in the hotel, industry, and restaurant sectors. However, what really has an influence is hospitality and business in the tourism sector.

Thus, during the Covid-19 pandemic, which was epidemic, was no exception in Indonesia which had a major impact across sectors which was not limited to medical problems, but weakened economic activity was also another impact. Restrictions on activities that involve mass activities have the effect of reducing the income of many companies. As a result, it is not uncommon for companies to adopt layoff policies for their employees.

For the work area of the *BPJS Ketenagakerjaan*, Serdang Bedagai Branch Office, the majority of businesses in the plantation and MSMEs sector have terminated several employment relations affected by the Covid-19 pandemic, there is 1 (one) company, namely 193 PT Purnulixindo and PT. Aqua Farm with an insignificant amount.

Although practically PT. Purnulixindo is under the guidance of *BPJS Ketenagakerjaan* at the Tanjung Morawa Branch Office, for the process of claiming the benefits of each guarantee, PT Purnulixindo can do this at the *BPJS* of Serdang Bedagai Branch Office because regionally it is closer to the *BPJS* of the Tanjung Morawa Branch Office. However, for administrative matters such as membership issues and others, PT Purnulixindo absolutely must refer to the *BPJS* of the Tanjung Morawa Perintis Branch Office, not in the work area of other *BPJS* Branch Offices.<sup>15</sup>

In this connection, to facilitate service to workers, during the Covid-19 pandemic, the *BPJS Ketenagakerjaan* implementation mechanism at the Serdang Bedagai Branch, both in the context of registering participants and submitting the claim process, was carried out *online*.

This mechanism *online* was also applied to participants who chose to come directly to the *BPJS Ketenagakerjaan* office. This was done as an implementation of health protocols and efforts to prevent the wider spread of Covid-19.

In this connection, *BPJS Ketenagakerjaan* in Serdang Bedagai Regency during the Covid 19 pandemic only received 13 claims per day, which were dominated by claims for Old Age Security, Work Accident Security and Death Security.

*BPJS Ketenagakerjaan* of Serdang Bedagai Regency Branch Office in carrying out the claim process for each social security, sometimes faced various obstacles which are generally based on technical problems in submitting participant claims.

These constraints, among others, stem from administrative documents which are often incomplete when submitted, thus complicating the process of disbursing employment social security benefits. Another obstacle that is often faced by *BPJS Ketenagakerjaan* at Serdang Bedagai Regency Branch is the element of *fraud* or manipulation in claims for work accidents. However, to overcome this, the *BPJS Ketenagakerjaan* of Serdang Bedagai Branch Office conducts case checks for work accidents that are considered potential to have an element of *fraud* in them.

The *BPJS Ketenagakerjaan* of Serdang Bedagai Regency Branch Office also coordinates with participants in the event of incomplete administrative documents so that participants immediately complete the lack of administrative documents.

In this regard, claims for the JHT program both in the Serdang Bedagai area and in other areas in Indonesia have increased along with the outbreak of Covid 19 throughout Indonesia. The number of companies that laid off their workers during the Covid 19 pandemic was allegedly one of the biggest indications of the increasing JHT claim submissions.

<sup>14</sup> Lalu Husni, *Pengantar Hukum Ketenagakerjaan*, PT Raja Grafindo Persada, Jakarta, 2017, p. 151..

<sup>15</sup> Interview with Haikal Hanif Nasution, Account Representative, *BPJS Ketenagakerjaan* Serdang Bedagai Branch Office, Friday 26 June 2020, at 10:00 - 10:30 WIB

Workers who are laid off can basically apply for the disbursement of JHT benefits even though they have not reached the age of 56 years or have been participating for 10 years. Workers who experience layoffs need to wait for 1 (one) month from the time they are no longer working due to layoffs.

This is in accordance with the contents of Article 5 Paragraph (1) and Article 6 Paragraph (1) of the Manpower Social Security Administering Body Regulation Number 7 of 2015 concerning Implementation Guidelines for the Payment of Old Age Security Benefits (hereinafter referred to as BPJS Regulation No.7 of 2015) which state that workers who are part of the BPJS *Ketenagakerjaan* who are laid off can apply for payment of JHT benefits with a waiting period of 1 (one) month from the time they are laid off.

Workers who wish to submit claims disbursement from the JHT program must be carried out independently by the worker concerned without being represented by a proxy in any form.<sup>16</sup> If the participant has passed away, JHT claims can be submitted through the heirs of the worker concerned. Submission of claims in the JHT program cannot be represented by the employer or the company where the worker works.

Workers, if they want to submit a claim for JHT, are asked to prepare administrative documents consisting of a work recommendation letter, KTP (Identity Card), KK (Family Card). Submission of these documents is then followed by filling out the JHT claim form that has been provided. For the record, if a worker is in dispute with the company, the work recommendation letter can be replaced with a letter from PHI or a work contract between the worker and the company concerned.

If the worker has passed away, the administrative documents in filing an JHT claim are added with a Death Certificate (hereinafter referred to as a Death Decree), and a Certificate of Inheritance (hereinafter referred to as SK Expert Inheritance) from the sub-district or village known to the sub-district head.<sup>17</sup> Adjusting to the Covid 19 pandemic situation which requires a health protocol, the BPJS *Ketenagakerjaan* in the Serdang Bedagai area calls on the claim process to be carried out by queuing *online*.

The mechanism for submitting claims in queues *online* is broadly similar to submitting conventional claims. Workers are directed to the BPJS *Ketenagakerjaan* website, then asked to complete the required documents by *uploading* files on the *platform* provided. After the file submission process is carried out *online*, the BPJS *Ketenagakerjaan* Serdang Bedagai Branch Office will then verify the files, and generally the disbursement process will be carried out no later than 3 (three) days from the time the files are declared complete.

However, the convenience provided in submitting an labor social security claim process can *online* not be separated from several weaknesses, especially in time efficiency, because BPJS *Ketenagakerjaan* in verifying the files for submitting claims for the social security program in line *online* has a quota limit per day.

This is different when compared to conventional claim submissions which do not specify a limit or limit on the number of claims submitted per day. However, this must be understandable in order to prevent further spread of Covid 19.

In this regard, according to Haikal Hanif Nasution, to anticipate the impact of covid-19, several programs were carried out:

In response to the COVID-19 pandemic situation which had an impact on labor issues globally, all BPJS *Ketenagakerjaan* including BPJS *Ketenagakerjaan* Serdang Bedagai Perintis Branch Office provided subsidized assistance dues to participants of Rp. 2,400,000.00 (two million and four hundred thousand rupiah) which will be given during the Covid 19 pandemic. BPJS *Ketenagakerjaan* will also provide a contribution relaxation program starting from a 99% deduction specifically for Work Accident and Death Insurance contributions. In addition, BPJS *Ketenagakerjaan* also provides dispensation for participants who experience delays in payment of contributions.<sup>18</sup>

It is important to note that the protection provided by BPJS *Ketenagakerjaan* to workers who have been laid off can only be given if the participant has participated in the previous Old Age Security program. This means that in this case, BPJS *Ketenagakerjaan* cannot provide any protection to workers participating in BPJS *Ketenagakerjaan* who only enroll in 2 (two) insurance programs, namely Work Accident Security and Death Security, because of the responsibility of BPJS *Ketenagakerjaan* in providing social security to workers in Layoffs arise because of a membership relationship that is based on the respective employment social security programs that are followed.

Based on the normative provisions contained in the regulations on the implementation of the Old Age Security program and the Manpower Law, the forms of legal protection provided for workers who are laid off are as follows: *First*, if the layoffs occur in BPJS *Ketenagakerjaan* participants who are not registered in the program Old Age Security at BPJS *Ketenagakerjaan*, the form of protection provided will refer to the regulatory mechanism contained in the Manpower Law, particularly regarding severance pay which is a form of company obligation to workers, if the worker gets dismissed as regulated in Article 156 Paragraph (1) The Manpower Law states that in the event of termination of employment, employers are required to pay severance pay and / or service pay and compensation fees that should be received. *Second*, if layoffs occur in participants who have participated in the Old Age Security program, they will receive protection in the form of cash disbursement equal to the amount of contributions deposited to BPJS *Ketenagakerjaan* during the participant's term of employment.

<sup>16</sup>Interview with Haikal Hanif Nasution, Account Representative, BPJS Ketenagakerjaan Serdang Bedagai Branch Office, Friday 26 June 2020, at 10:00 - 10:30 WIB

<sup>17</sup> Interview with Haikal Hanif Nasution, Account Representative, BPJS Ketenagakerjaan Serdang Bedagai Branch Office, Friday 26 June 2020, at 10:00 - 10:30 WIB

<sup>18</sup> Interview with Haikal Hanif Nasution, Account Representative, BPJS Ketenagakerjaan Serdang Bedagai Branch Office, Friday 26 June 2020, at 10:00 - 10:30 WIB



#### D. CONCLUSION

Based on the results of this analysis, the following conclusions can be drawn:

1. In the BPJS of Serdang Bedagai District Branch, the Covid-19 pandemic has affected various sectors of the economy, leading to various terminations.
2. the BPJS of Serdang Bedagai Regency Branch Office plays an important role in providing protection for the rights of workers who have been terminated, through easy claims for workers who have been included in the Old Age Security Program through an online system and a short claim settlement time according to procedures regulated by the Law on Social Security Administering Bodies and government regulations on social security for workers.

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