

Discussing the Issue of Compliance with the Law on Paying Social Insurance Contributions by Non-State Enterprises in Vietnam



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ABSTRACT: In Vietnam, although non-state enterprises account for a very high proportion of the total number of enterprises in the country, the rate of participation in social insurance for employees is still low, the amount of contributions to the social insurance fund is still limited, late payment of social insurance and evasion of payment of social insurance is common. This shows that non-state enterprises have not strictly complied with the law on social insurance contributions. The authors used the method of researching documents, collecting data from secondary sources, and using traditional statistical and analytical methods to clarify the legal provisions on Social insurance contributions and the status of compliance with the law on social insurance contributions by non-state enterprises in Vietnam (status of participation and contribution to social insurance funds, delayed payment of social insurance). On that basis, the authors propose some recommendations to strengthen compliance with the law on social insurance of non-state enterprises in Vietnam.

KEYWORDS: law compliance, law enforcement, social insurance, non-state enterprises, Vietnam

1. INTRODUCTION

In Vietnam today, non-state enterprises are growing and growing, attracting a large workforce, creating more jobs, and making positive contributions to the economy. According to the General Statistics Office, by the end of 2020, Vietnam has 660,055 non-state enterprises, accounting for about 96.5% of enterprises nationwide (by 2020, the total number of enterprises operating with effective production and business of the whole country is 684,260 enterprises); the number of employees working in non-state enterprises is 8,607,047 employees, accounting for 58.6% of the total number of enterprise employees (in 2020, the total number of enterprise employees nationwide is 14,702,546 people). However, in the process of implementing the law on social insurance, the level of compliance with the law on payment of social insurance by non-state enterprises is still low. The evidence is that the rate of participation in social insurance for employees and the number of contributions to the social insurance fund of non-state enterprises are low, and not commensurate with the size of enterprises and employees (in 2020, only about 60% of the total number of employees). employees working in non-state enterprises participating in social insurance; the amount of social insurance contributions of non-state enterprises in 2021 is VND 83,199,573 million, equivalent to about 31% of the total collection of compulsory social insurance), late payment of social insurance premiums of non-state enterprises always account for the highest proportion in the total amount of late payment of compulsory social insurance (in 2021, the amount of late payment of social insurance contributions of state enterprises is VND 8,106.7 billion, accounting for a proportion of more than 79 percent). Non-state enterprises have not strictly complied with the law on social insurance contributions, affecting the interests of employees working at enterprises, and limiting revenue to the social insurance fund. The authors used the method of researching documents, collecting data from secondary sources, and using traditional statistical and analytical methods to clarify the legal provisions on Social insurance contributions and the status of compliance with the law on social insurance contributions by non-state enterprises in Vietnam (legal regulations, status of participation and contribution to social insurance funds, delayed payment of social insurance). On that basis, the authors propose several recommendations to strengthen compliance with the law on social insurance of non-state enterprises in Vietnam, ensuring the purpose of social insurance is implemented in practice.

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2. THEORETICAL BASIS

Social insurance is a pillar in the national social security policy system. Social insurance is a tool to help the state regulate society in a market economy effectively, helping to link economic development with the implementation of equity, progress, and sustainable social development. According to Law on Social Insurance No. 58/2014/QH13 promulgated by the National Assembly of the Socialist Republic of Vietnam on November 20, 2014, the concept of social insurance is understood as follows “Social insurance refers to a guarantee of income replacement or compensation when employees’ earning capacities are lost or reduced due to sickness, occupational accidents, occupational disease, maternity leave, old age or death, based on contributions to the social insurance fund”. The law on social insurance is a system of rules of conduct including the rights and obligations of the subjects participating in social insurance; The sum of these rights and obligations constitutes a legal regulation that compels employees, employers and the State to be responsible for each other in the performance and maintenance of harmonious and stable labor relations. determined.

Law enforcement is an activity to implement the provisions of the law, make these provisions come to life, and become actual lawful acts of the legal subject; the process of law enforcement is conducted through various forms, including (i) law enforcement, (ii) law enforcement, (iii) law enforcement and (iv) law application (Doan, N. M. et al., 2020). In practice, these forms of law enforcement are often carried out simultaneously, not separately; This form of law enforcement includes other forms of law enforcement when the subjects exercise their rights and perform their obligations in each legal relationship. From the perspective of specialized legal language, the concept of law compliance has a clear distinction between law enforcement and law enforcement (law enforcement is a specific form of law enforcement). However, from a common language perspective, the concept of legal compliance is often used without distinction from law enforcement.

In this article, the authors use the term legal compliance with the same meaning as law enforcement. Accordingly, compliance with the law on social insurance is understood as an activity to bring the law of social insurance to life, making the provisions of the law on social insurance become the actual legal behavior of the legal subject of social insurance. Actual legal acts of the legal subject of social insurance include: (i) observance of the law on social insurance, which is the performance of the legal subjects of social insurance by the provisions of the law on social insurance; (ii) do not perform the acts prohibited by the law on social insurance. In the organization that implements the law on social insurance, many subjects comply with the law on social insurance (may be employees, employers, social insurance organizations, trade unions, employers' representative organizations. motion, and other subjects); This article only studies the subject of compliance with the law on social insurance, which is an employer, specifically non-state enterprises in Vietnam. According to the White Book on Vietnamese Enterprises 2022 of the General Statistics Office, non-state enterprises include domestic capital enterprises whose capital is privately owned by one or a group of people or has state ownership but accounts for 50% of charter capital or less.

3. METHODS

The authors used the method of researching documents to systematize the theoretical basis of the research topic. At the same time, the authors use the method of collecting data from secondary sources of different agencies and organizations, focusing mainly on the following sources: The White Book on Vietnamese Enterprises of the General Department of Statistics on the development of Vietnamese enterprises over the years, Report on management and use of social insurance fund for the years of Vietnam Social Security; the system of legal documents on social insurance being applied in Vietnam and other sources to the research topic. To clarify the status of compliance with the law on social insurance contributions by non-state enterprises in Vietnam (legal regulations, status of participation, contribution to social insurance funds, delayed payment of social insurance), the authors used a combination of traditional statistical and analytical methods to synthesize, compare, contrast and draw conclusions. From the secondary data, the authors use basic mathematical methods to calculate several indicators reflecting the compliance with the law on social insurance contributions of non-state enterprises in the article, such as the level of social insurance coverage of non-state enterprises (calculated as a percentage of the number of employees participating in social insurance over the total number of employees), the level of compliance with regulations on income for calculation of social insurance contributions (represented in through the percentage of the average salary registered to pay social insurance premiums on the actual average income of employees), the proportion of the amount of late payment of social insurance contributions of non-state enterprises (calculated as a percentage of the late payment of social insurance premiums of non-state enterprises over the total amount of late payment of compulsory social insurance).

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4. RESULTS

4.1. Legal regulations on Social insurance payment of non-state enterprises in Vietnam

About the object of the application

In Vietnam at present, the subjects applying/participating in social insurance are specified in Article 2, Law on Social Insurance No. 58/2014/QH13 promulgated on November 20, 2014. Accordingly, a non-state enterprise that hires or employs employees under a labor contract (whose employees are eligible to participate in compulsory social insurance according to the provisions of the Law on Social Insurance No. 58/2014/QH13) shall enterprises are eligible to participate in compulsory social insurance. Contract workers at non-state enterprises eligible to participate in compulsory social insurance include Persons working under indefinite-term labor contracts, definite-term labor contracts, and labor contracts seasonally or according to a certain job with a term from full 3 months to less than 12 months, including the labor contract signed between the employer and the legal representative of the person under 15 years old according to the law provisions of the law on labor; Persons working under labor contracts with a term of from full 1 month to less than 3 months; The business manager has a salary.

Regulations on responsibilities related to payment of social insurance

The employer's responsibilities regarding social insurance are specified in Article 21 of the Law on Social Insurance No.58/2014/QH13. Accordingly, non-state enterprises participating in compulsory social insurance have responsibilities related to payment of social insurance, such as: compile dossiers for employees to be granted social insurance books and pay social insurance premiums; to pay social insurance premiums according to the provisions of law for the employees they use and to deduct monthly from the employee's salary according to regulations to pay at the same time to the social insurance fund; to provide accurate, complete and timely information and documents related to the payment of social insurance premiums at the request of competent state management agencies and social insurance agencies; every 6 months, publicly post information on the payment of social insurance premiums for employees; provide information on employees' social insurance contributions when requested by employees or trade unions; every year, publicly posting information on social insurance contributions of employees provided by the social insurance agency according to regulations. In this article, the authors only focus on reviewing/analyzing and clarifying the responsibilities of participating and paying social insurance premiums into the social insurance fund of non-state enterprises and do not delve into other responsibilities.

Regulations on salary as the basis for payment of social insurance

The salary used as the basis for payment of compulsory social insurance shall comply with the provisions of Article 89, Law on Social Insurance No. 58/2014/QH13, and specific instructions in Article 30, Circular No. 59/2015/TT-BLĐTBXH. Accordingly, for employees working in non-state enterprises, the salary used as the basis for payment of compulsory social insurance is the salary and salary allowance in accordance with the labor law. From January 1, 2018, onward, the monthly salary on which social insurance premiums are based on contract workers working in enterprises (including non-state enterprises) is the salary, salary allowance, and other supplements in accordance with the provisions of the labor law. Salary allowances for which social insurance contributions are calculated are salary allowances to compensate for factors such as working conditions, job complexity, living conditions, and the level of labor attraction that the salary agreed upon in the contract labor that has not been taken into account or is incompletely calculated such as allowances for positions and titles; responsibility allowance; heavy, toxic and dangerous allowances; seniority allowances; regional allowances; mobile allowance; attraction allowance and allowances of a similar nature. In case the prescribed monthly salary is higher than 20 times the base salary, the monthly salary used as the basis for social insurance payment is equal to 20 times the base salary.

Regulations on prohibited acts related to social insurance payment:

Prohibited acts related to payment of social insurance are specified in Article 17 of the Law on Social Insurance No. 58/2014/QH13, including evasion of payment of compulsory social insurance; late payment of social insurance premiums; misappropriating social insurance premiums; fraud or falsification of records in the implementation of social insurance; illegal use of social insurance funds; obstructing, causing difficulties or causing damage to the lawful and legitimate rights and interests of employees and employers; illegally accessing or exploiting the database on social insurance; false statements; providing inaccurate information and data on social insurance and unemployment insurance.

The forms of handling violations on payment of social insurance include (i) administrative sanctions/fines (specified in Article 39 of Decree No. 12/2022/ND-CP issued on January 17th, 2022 by the Government of the Socialist Republic of Vietnam, in which the maximum fine level is not more than 75,000,000 VND; administrative sanctions are applied to cases of late payment of compulsory social insurance compulsion, paying social insurance premiums at the wrong rate or an insufficient number of people participating

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in compulsory social insurance (which is not an evasion of payment), misappropriating employees' social insurance premiums, evading paying compulsory social insurance but not to the extent of criminal prosecution); and (ii) criminal handling (for the crime of evading social insurance contributions in specific cases, detailed in Article 216, Penal Code No. 100/2015/QH13, National Assembly of the Socialist Republic of Vietnam issued on November 27, 2015).

4.2. Status of compliance with the law on social insurance contributions of non-state enterprises in Vietnam

The situation of labor and non-state enterprises

In Vietnam today, implementing the renovation policy, the non-state sector economy has grown tremendously, operating in almost all fields of the economy. The data in Table 1 show that non-state enterprises in Vietnam account for the vast majority of the total number of enterprises in the country (average period 2016-2020, non-state enterprises have 585,863 enterprises, accounting for 96.7% of the total number of operating enterprises with production and business results); employing a relatively large labor force (from 2016 to 2020, on average, non-state enterprises each year attract 8.8 million employees, accounting for 60.1% of the total workforce of the whole enterprise). It can be seen that non-state enterprises in Vietnam are growing stronger and stronger, creating favorable conditions for attracting workers, creating more jobs, and making important contributions to economic and social development.

Table 1. Situation of labor and non-state enterprises in Vietnam

<i>Statistical indicators</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>
Number of operating enterprises with production and business results	505,059	560,417	610,636	668,505	684,260
Number of operating non-state enterprises with production and business results	488,395	541,753	591,481	647,634	660,055
<i>Percentage of non-state enterprises in total number of enterprises</i>	<i>96.70%</i>	<i>96.67%</i>	<i>96.86%</i>	<i>96.88%</i>	<i>96.46%</i>
Number of employees of the enterprise currently operating with production and business results	14,012,276	14,512,179	14,795,763	15,151,989	14,702,546
Number of employees of non-state enterprises operating with production and business results	8,572,418	8,800,316	8,941,071	9,075,625	8,607,047
<i>Percentage of employees of non-state enterprises over total employees of the whole enterprise</i>	<i>61.18%</i>	<i>60.64%</i>	<i>60.43%</i>	<i>59.90%</i>	<i>58.54%</i>

Source: The author's team calculated from the data of the General Statistics Office and Social Insurance of Vietnam

Status of participation and contributions to the social insurance of non-state enterprises

According to data from the General Statistics Office and Vietnam Social Insurance, the proportion of non-state enterprise employees participating in social insurance compared to the labor force working in this enterprise sector tends to increase over the years, but the number of employees participating in social insurance is still low; On average, in the period 2016-2020, the ratio of the number of employees participating in social insurance compared to the labor force working in non-state enterprises is only about 50% (Figure 1).

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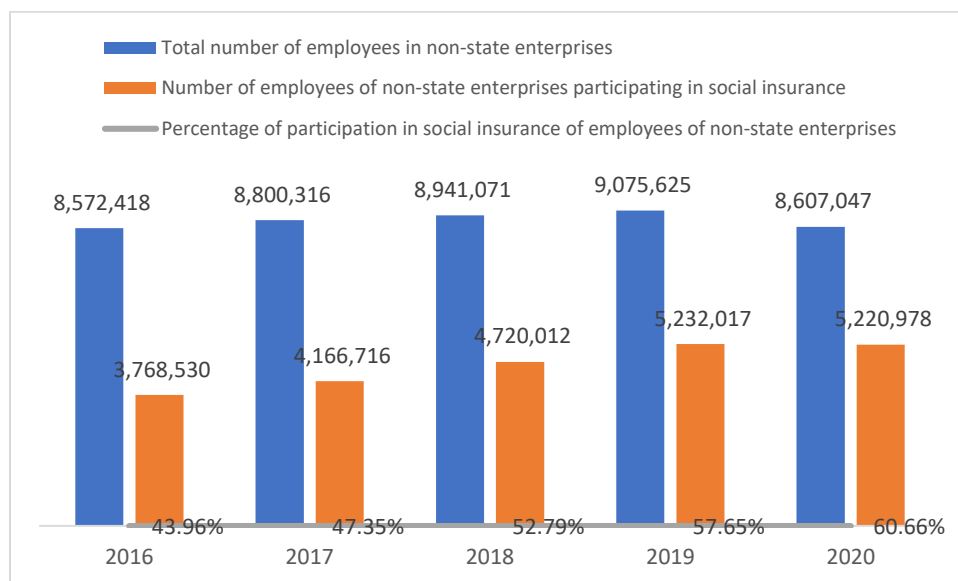


Figure 1. Situation of employees participating in social insurance of non-state enterprises

Source: The author's team calculated from the data of the General Statistics Office and Social Insurance of Vietnam

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It can be seen that, although non-state enterprises have the largest number and attract a large labor force in the total number of enterprises in the country, the rate of participation in social insurance for employees is still not high. Along with that, non-state enterprises declare that the salary registered to pay social insurance contributions of employees is much lower than the actual income of the employees. From 2016 to 2020, the average salary of employees working in non-state enterprises is about 7.7 million VND, while the average salary as the basis for paying social insurance contributions of employees is only about 4.5 million VND (Figure 2). Thus, the average salary used as a basis for paying social insurance contributions in this period is only approximately 59% of the actual salary.

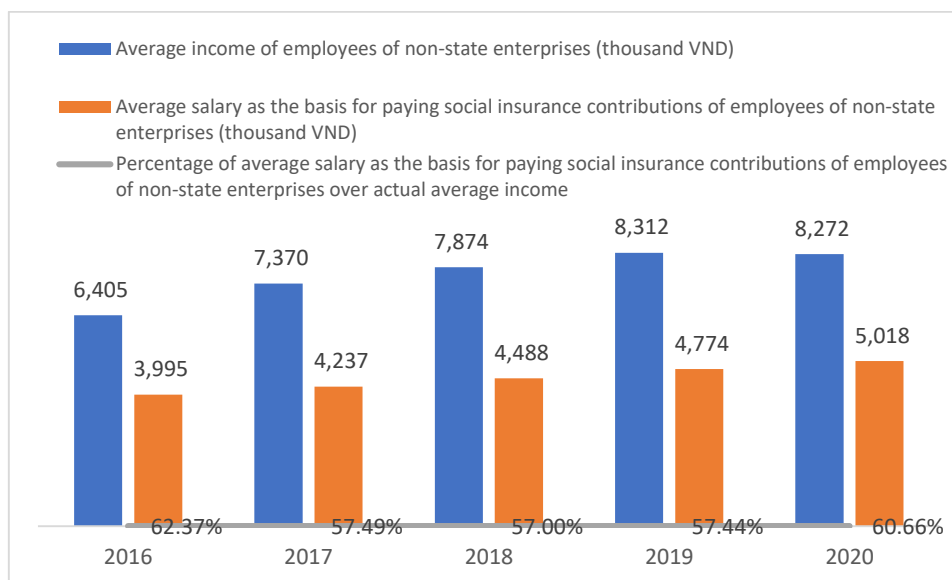


Figure 2. Average salary as the basis for paying social insurance premiums of employees of non-state enterprises

Source: The author's team calculated from the data of the General Statistics Office and Social Insurance of Vietnam

The difference between the actual salary and the salary registered for social insurance payment and the low level of social insurance coverage in non-state enterprises significantly affects the revenue of the social insurance fund, affecting the legitimate interests of employees. According to the data of Vietnam Social Insurance, in the period of 2016-2020, on average, the contribution rate to the social insurance fund of non-state enterprises accounts for an average rate of less than 30% (Figure 3). In 2021, the total collection of compulsory social insurance will be 263,474,581 million VND; in which, the amount of social insurance contributions of non-state enterprises is 83,199,573 million VND, accounting for about 31%. If compared with the labor size of

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non-state enterprises, it can be seen that the contribution rate to the social insurance fund of non-state enterprises is still very modest and not commensurate with the potential.

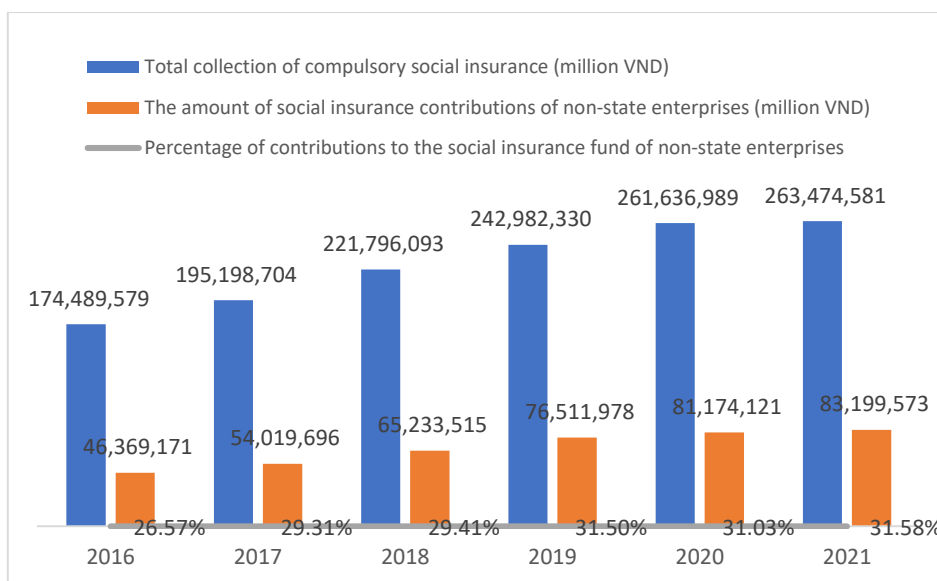


Figure 3. Amount of social insurance contributions of non-state enterprises

Source: The author's team calculated from the data of the General Statistics Office and Social Insurance of Vietnam

Besides, according to data reported by Vietnam Social Security, the situation of debt payment and late payment of social insurance in the business sector is quite common, mainly concentrated in non-state enterprises (Figure 4). In the 2016-2020 period, on average, the amount of late payments by non-state enterprises is VND 5,528.4 billion per year. In 2021, the late payment of social insurance by non-state enterprises is 8,106.7 billion VND, accounting for more than 79% of the total amount of late payment of compulsory social insurance (10,233 billion VND).

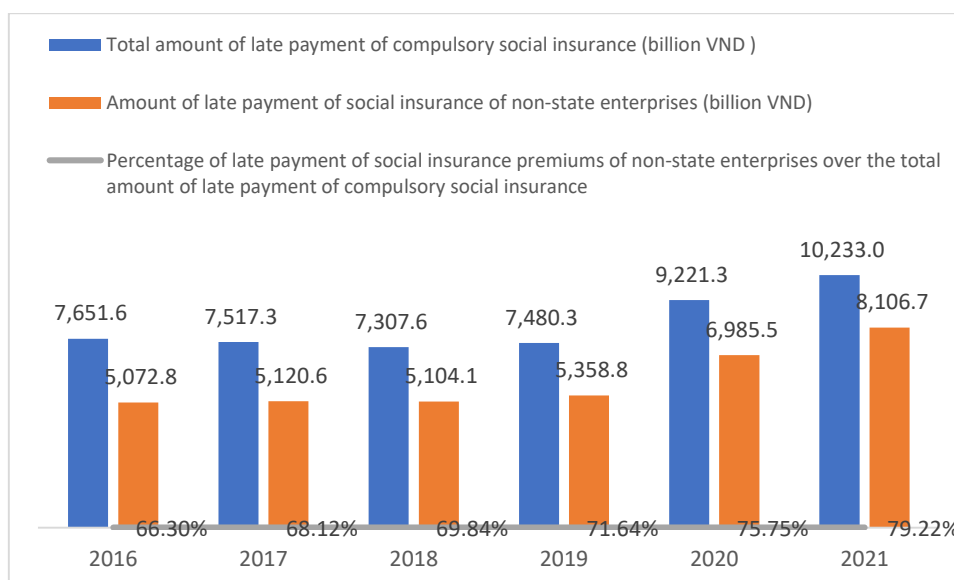


Figure 4. Late payment of social insurance premiums of non-state enterprises

Source: The author's team calculated from the data of the General Statistics Office and Social Insurance of Vietnam

Through analyzing the collected data on the status of participation and contributions to the social insurance of non-state enterprises in Vietnam, it can be seen that non-state enterprises have not strictly complied with the law on social insurance contributions, the level of Non-state enterprises' compliance with the law on social insurance is still low, and the situation of evasion and late payment of social insurance contributions is still common. Some of the main reasons leading to the inadequate compliance with the law on social insurance contributions by non-state enterprises are:

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- (i) The state management of social insurance is still limited; The authorities have not managed well the labor force and employees' income, leading to the evasion of the insurance payment responsibility of enterprises.
- (ii) The inspection and examination of the labor sector have not been regular and continuous due to the limitation of human resources; on the part of the social insurance agency, although it has been assigned the function of specialized inspection on social insurance contributions, this work is currently in the early stages of implementation, so the effect has not been as expected.
- (iii) Sanctions to deter and punish acts of violating the responsibility to pay social insurance premiums for employees are not strong enough and not severe enough to force enterprises to comply with the law on social insurance.
- (iv) The employer's contribution to the current compulsory social insurance fund in Vietnam is relatively high compared to other countries in the region and the world, reducing profits and competitive advantages of enterprises; Therefore, in many cases, enterprises cope by only paying compulsory social insurance for employees with a salary not lower than the regional minimum wage, except in the case of trained workers or doing heavy and hazardous occupations.
- (v) The sense of compliance with the labor law and the law on social insurance of some enterprises is still low, and the sense of social responsibility of enterprises is not high; even many non-state enterprises have no sense of responsibility in this regard. At the same time, the lack of understanding and awareness of employees about social insurance is also one of the basic reasons.

5. RECOMMENDATIONS

To ensure the rights of employees, it is necessary to strengthen compliance with the law on social insurance by enterprises, especially improve the compliance with the law on social insurance of non-state enterprises, through promoting social insurance. Strongly implement synchronously administrative, economic, and judicial measures.

Firstly, strengthen inspection, and supervision and strictly handle cases where enterprises have not complied with the law on social insurance contributions: Complete sanctions for handling violations of the law on social insurance, especially for acts of evading payment, paying debts, taking advantage of social insurance in the direction of the state management agency in charge of social insurance and the management agency of the Social Insurance Fund having the authority to sanction enterprises evading payment, paying debt, cheating, taking advantage of social insurance; at the same time, enterprises and employees have the right to complain or sue the state management agency and the social insurance fund management agency if there is any violation in the implementation of the social insurance policy. It is necessary to strengthen the inspection and specialized inspection of social insurance contributions, thereby contributing to promoting enterprises to strictly observe social insurance policies and laws; take drastic measures to collect arrears from enterprises that deliberately delay or evade payment of social insurance. On the other hand, promoting coordination between relevant departments and agencies, especially the Public Security agency in the work of inspection, examination, and prevention of crimes and violations of the law in the field of social insurance. Strengthen coordination between tax authorities and Vietnam Insurance to check and compare declared taxable income and insurable income.

Second, focus on and promote measures to reduce administrative and financial burdens for businesses to encourage and support enterprises in fulfilling their responsibility to pay social insurance contributions: Promote reform of administrative procedures, implementing online public services in all areas of social insurance; complete and promote the connection of the national insurance database with relevant database systems; continue to modernize the management of social insurance, invest in the development of advanced technologies and management methods in the organization that implements social insurance. To increase compliance with the law on social insurance, the social insurance agency needs to continue to publicize the administrative procedures and the payment and payment process of social insurance, thereby helping employees to self-monitor their participation in social insurance. On the other hand, the National Assembly and the Government need to study and adjust the proportion of contributions to the social insurance fund in the direction of harmonizing the interests of employers and employees. Having tax incentives for businesses that perform well on social insurance; stop incentives for businesses that do not comply to ensure compliance with the law on social insurance, the social insurance agency should continue to publicize the administrative procedures and the process of paying social insurance contributions, thereby helping employees to self-monitor their participation in social insurance.

Third, promote communication about obligations and benefits that enterprises enjoy when fully fulfilling their responsibility to pay social insurance contributions, and at the same time strengthen propaganda to raise awareness among employees participating in social insurance. It is necessary to promote propaganda through forms such as newspapers, television, internet, seminars, seminars, knowledge and experience exchange or consulting support from organizations and experts in the field of science and technology domestic and foreign; it is necessary to strengthen direct dialogue with enterprises, step by step changing the perception of enterprises about implementing social security responsibilities is indispensable in the process of development, creating competitive advantages of enterprises. Strengthen communication to raise awareness among employees participating in

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social insurance. When employees themselves have knowledge and understanding of the law, they will clearly understand their legal rights and interests, and the State's legal policies, including the obligations and benefits of social insurance. Since then, employees accompany the enterprise in fulfilling the responsibility of paying social insurance contributions to the enterprise.

6. CONCLUSION

The issue of compliance with the law on social insurance contributions for non-state enterprises in Vietnam is always topical and receives much attention. Although accounting for the highest proportion of the total number of enterprises in the country and employing a sizable workforce, in recent years, non-state enterprises in Vietnam have not strictly complied with the law enforcement law on social insurance contributions. In this article, the authors used the method of researching documents, collecting data from secondary sources, and using traditional statistical and analytical methods to clarify the legal provisions on social insurance payment and the status of compliance with the law on social insurance payment of non-state enterprises in Vietnam. On that basis, the authors propose some recommendations to strengthen compliance with the law on social insurance by non-state enterprises in Vietnam: strengthen inspection, supervision, and handling activities handling violations on payment of social insurance; focusing on measures to reduce administrative and financial burdens to encourage and support enterprises in fulfilling their responsibility to pay social insurance premiums; promote communication on social insurance, strengthen direct dialogue with enterprises, gradually raise awareness of employees and sense of social responsibility of enterprises.

REFERENCES

- 1) Doan, N. M. et al (2020). *Textbook of General Theory on State and Law*. Judicial Publishing House, Hanoi.
- 2) General Statistics Office of Vietnam (2021). *The White Book on Vietnamese Enterprises 2021*. Statistical Publishing House, Hanoi.
- 3) General Statistics Office of Vietnam (2022). *The White Book on Vietnamese Enterprises 2022*. Statistical Publishing House, Hanoi.
- 4) Government of the Socialist Republic of Vietnam (2022). *Decree No. 12/2022/ND-CP stipulating the sanctioning of administrative violations in the field of labor, social insurance and Vietnamese workers working abroad under contracts*, promulgated on November 17 year 2022.
- 5) Ministry of Labour - Invalids and Social Affairs (2015). *Circular No. 59/2015/TT-BLDTBXH detailing and guiding the implementation of a number of articles of the Law on Social Insurance regarding compulsory social insurance*, issued on December 29, 2015.
- 6) National Assembly of the Socialist Republic of Vietnam (2014). *Law on Social Insurance No. 58/2014/QH13*, promulgated on November 20, 2014.
- 7) National Assembly of the Socialist Republic of Vietnam (2014). *Penal Code No. 100/2015/QH13*, promulgated on November 27, 2015.
- 8) Vietnam Social Insurance (2020, 2021). *Report on management and use of social insurance fund*.



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