



ADMINISTRATIVE AND ENVIRONMENTAL LAW REVIEW

Volume 4 Issue 2, August 2023: pp.141-152.

Faculty of Law, Universitas Lampung, Bandar Lampung, Indonesia.

<http://jurnal.fh.unila.ac.id/index.php/aelr>

P-ISSN: 2723-2484

E-ISSN: 2745-9330

The Legal Certainty of the Right to Severance Pay for Retiring Workers of Companies Undergoing Acquisitions

Fajar Ramadhan¹ Agus Mulya Karsona² Holyness N Singadimeja³

¹Universitas Padjadjaran, Indonesia

E-mail: ramadhanfajar081@gmail.com

²Universitas Padjadjaran, Indonesia

E-mail: agus.mulya@unpad.ac.id

³Universitas Padjadjaran, Indonesia

E-mail: holyness@unpad.ac.id

Submitted: Aug 07, 2023; Reviewed: Aug 31, 2023 Accepted: Oct 20, 2023

Article's Information

keywords:

Acquisition, Job Creation, Employee rights

DOI :

<https://doi.org/10.25041/aelr.v4i2.3134>

Abstract

The ease of transactions in the digital era has resulted in increased competitiveness between companies in the trade sector. To maintain the existence of the company, it is not uncommon for companies to restructure through the acquisition process. However, the acquisition process has an impact on the existence of workers in the previous company, especially on workers entering retirement age. Law Number 6 of 2023 on Job Creation Article 61 paragraph (3) regulates the transfer of responsibility for workers' rights which illustrates that the new employer is responsible for fulfilling workers' rights, but the transfer agreement allowed by this law does not guarantee the fulfillment of workers' rights as a whole. Therefore, it is necessary to know the legal certainty of workers entering retirement age in companies that experience acquisitions and the implementation of severance pay rights for workers entering retirement age in companies that experience acquisitions. The legal approach involves looking at secondary data or library resources. The



Administrative and Environmental Law Review is a journal published by Faculty of Law, Universitas Lampung, under a Creative Commons Attribution-ShareAlike 4.0 International License

results showed that Law Number 6 of 2023 on Job Creation concerning Interim Replacement (PHK), employees who have been laid off eligible for severance money, long service pay, and compensatory pay. The rights of workers affected by termination of employment on the grounds of entering retirement age in companies experiencing takeover are calculated based on the length of service of workers in a company, as well as the rights that have not been obtained by workers during their work which can be used as nominal money.

A. Introduction

Pancasila, the ideological foundation of Indonesia, particularly emphasizes social justice for all its citizens as articulated in its fifth principle, underscoring the paramount importance of fairness over the interests of specific groups.¹ This ethos of justice extends to the realm of employment, as stipulated in the 1945 Constitution of the Republic of Indonesia, Article 27 paragraph (2), which asserts that "Every citizen has the right to work and to live in human dignity." This principle is further elaborated by Law Number 6 of 2023 on Job Creation, guaranteeing all citizens the right to decent work, equitable remuneration, and fair treatment, thus underpinning the pursuit of a decent standard of living. These legislative measures not only detail the constitutional commitment to justice but also serve as the juridical basis for labor laws.²

The surge in individuals and companies launching or expanding their business ventures on digital platforms is driven by the convenience and efficiency these platforms offer. This shift has notably heightened competitiveness within the trade sector, making it challenging for any single entity to dominate the market.³ In response to this competitive environment, there's a growing trend of individuals striving to establish Limited Liability Companies (LLCs), further intensifying market competition. A key factor contributing to an LLC's diminished competitiveness is its failure to maintain a strong presence and the quality of the goods or services it offers.⁴ Moreover, the rapid evolution of the digital era necessitates that traditional companies adapt to thrive in the burgeoning digital marketplace. Consequently, LLCs are compelled to undergo restructuring to sustain their relevance and competitive edge in this dynamic business landscape.⁵

The term "business" is typically used to refer to a broad range of activities carried out by an individual or organization on a regular and ongoing basis, specifically activities involving the provision of goods or services to be traded, exchanged, or leased with the intention of obtaining a profit.⁶

¹ Ferry Irawan, "Keadilan Berdasarkan Pancasila Sebagai Dasar Filosofis Dan Ideologis Bangsa," *DiH: Jurnal Ilmu Hukum* 13, no. 25 (2017): p. 1–27.

² Athoillah Islamy, "Moderasi Beragama Dalam Ideologi Pancasila" 3 (2022), p. 18–30. <https://doi.org/10.53491/porosnim.v3i1.333>.

³ Rezmia Febrina, "Proses Akuisisi Perusahaan Berdasarkan Undang-undang No 40 Tahun 2007 Tentang Perseroan Terbatas," *Jurnal Ilmu Hukum* 4, no. 1 (2007), p. 161–76. <https://doi.org/http://dx.doi.org/10.30652/jih.v4i1.2090>.

⁴ Steven Leonardo et al., "Restrukturisasi Organisasi Di Pt Samudra Alam Raya Surabaya" 1, no. 3 (2013).

⁵ *Ibid.*

⁶ Richard B Simatupang, *Aspek Hukum Dalam Bisnis* (Jakarta: Rineka Cipta, 2003), p. 3.

To be competitive, a company requires skilled workforce.⁷ Workforce according to Payaman Simanjuntak refers to people who have or are currently working, are looking for work, and who carry out other activities, such as going to school and taking care of the household. He argued that the term workforce or labor is determined by age.⁸ Work relationship is defined as a relationship between an employer and a worker based on a work agreement. Government Regulation Number 35 of 2021 stipulates specific time work agreements (*PKWT*), Outsourcing, working time, and termination of employment (*PHK*). Work agreements made between employers and workers must not conflict with applicable laws and regulations.⁹

Article 6 of the 2023 Job Creation Law on substitute regulations for job creation allows for the termination of employment under specific conditions. These include the death of the employee, the expiration of the employment contract, the completion of the task for which the employee was hired, a legal decision by a court, or other conditions explicitly stated within the employment agreement. Termination of employment occurs because workers enter retirement age where workers can no longer work due to a policy stipulated in the collective labor agreement and are entitled to receive their rights in the form of severance pay, long service awards, and compensation for rights.

Fulfilling the rights of workers entering retirement age often encounters problems when companies make acquisitions. The acquisition, referred to as a takeover in Law Number 40 of 2007 concerning Limited Liability Companies, is a legal process executed by an individual or a legal entity to acquire shares in a company. This action leads to a transfer of control over the company. From a legal standpoint, taking over a company involves purchasing a portion or all of the company's shares.¹⁰

As stipulated in Law Number 6 of 2023 on Job Creation, employer must pay severance pay for every work termination made. This issue stems from workers receiving new employment contracts from different employers or companies, leading to uncertainty about who is responsible for ensuring their rights as workers are fulfilled. However, the Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes in Article 61 paragraph (3) regulates the transfer of responsibility for workers' rights. This article reads: In the event of a transfer of the Company, the rights of the worker are under the responsibility of the new employer, unless otherwise specified otherwise in the transfer agreement which does not reduce the rights of the worker. However, the transfer agreements allowed by this law do not ensure the fulfillment of workers' rights as a whole, considering the position of the workers as subordinates who can either accept or reject the agreement.

Legal certainty must be properly and precisely guaranteed. The term certainty means fixed, firm, and clear.¹¹ According to Gustav Radbruch, a German legal philosopher, there are three basic legal ideas which many legal theorists and legal philosophers interpret as the three objectives of law; justice, expediency and legal certainty.¹² Basically, the principle of legal certainty emphasizes law enforcement based on formal evidence, where an act can only be

⁷ Erik Iriyanto and Arianto Nugroho, "Analisis Yuridis Terkait Pemutusan Hubungan Kerja Karena Efisiensi Tidak Diikuti Dengan Penutupan Perusahaan Yang Disebabkan Perusahaan Mengalami Kerugian," *Novum: Jurnal Hukum* In Press, no. 13 (2021), p. 28–38, <https://doi.org/https://doi.org/10.2674/novum.v0i0.47516>.

⁸ Sedjun H Manulang, *Pokok-Pokok Hukum Ketenagakerjaan Di Indonesia* (Jakarta: PT Rineka Cipta, 1995), p. 3.

⁹ Taufik Yulianto, "Ketentuan Mengenai Pemberian Uang Kompensasi Terhadap Pekerja / Buruh Yang Hubungan Kerjanya," *aOrbith: Majalah Ilmiah Pengembangan Rekayasa Dan Sosial* 18, no. 3 (2022) p. 216–20, <https://doi.org/http://dx.doi.org/10.32497/orbith.v18i3.4365>.

¹⁰ Abdul R and Saliman, *Hukum Bisnis Untuk Perusahaan* (Jakarta: Kencana Prenadamedia Group, 2005), p. 115.

¹¹ Wilfridus Josephus Sabarija and Poerwadarminta, *Kamus Umum Bahasa Indonesia*, Edisi keti (Balai Pustaka, 1966).

¹² Ali Achmad, *Revealing Legal Theory (Legal Theory) & Judicial Prudence Including Law (Legisprudence)*, Volume I (Jakarta: Kencana Prenada Media Group, 2010), p. 288.

categorized as a violation if it violates certain written rules. On the other hand, according to the principle of justice, actions that are unreasonable and disgraceful can be considered as violations to uphold the justice despite the absence of the prohibiting law.¹³

The presence of legal certainty within a country leads to the creation and enactment of laws by the government, forming a legal system that is not predicated on arbitrary decisions.¹⁴ The principle of legal certainty serves to guarantee the appropriate application of the law, ensuring it does not result in harm to any individual. It is imperative that the law safeguards society against various criminal acts or harassment towards individuals or groups, and it should be embraced as a guiding principle for everyone's conduct.¹⁵

In several instances, companies undergoing normal business operations have faced deteriorating conditions and incurred losses after being acquired by other companies. This situation has been exacerbated by the current COVID-19 pandemic, leading to an even greater accumulation of losses for the affected companies. The transfer is an effort that strengthens the company through restructuring scheme and acquisition process. This acquisition affects the workers in the previous company.

The granting of this new work agreement has an impact on employees who will be entering retirement age based on the acquisition process related to the calculation of the length of service. This affects the amount of severance pay, long service awards, and replacement rights that they will receive when they reach retirement age in the new employment agreement. As stipulated in Law Number 6 of 2023 on Job Creation concerning Substitutes for Job Creation, employer has to pay the severance for employees that retire. The severance pay is determined by the length of service of the worker. In this case, it is the new company's obligation to pay severance pay to the worker starting from the time the worker has worked at the previous company. However, within the new work agreement with a new company, the working period of the worker counts after the signing the new work agreement with the new company. This situation creates problems related to legal certainty for workers whose companies have been acquired.

This juridical normative research examined secondary data in the forms of relevant legal literatures using a statutory approach. This research particularly taps on the legal certainty of the right to severance pay among employees who retire at companies that undergo acquisitions.

B. Discussion

1. Legal Certainty for Workers Entering Retirement Age In Companies Experiencing Acquisitions

A worker is defined any person who works for an entrepreneur or company by receiving wages as their rights as agreed with the employer or compensation in other forms as stipulated in Article 1 paragraph (3) of Government Regulation Number 35 of 2021 concerning *PKWT*, *outsourcing*, time Work And time Rest and layoffs.¹⁶ A work agreement states the rights and obligations, as well as the period of time the worker works for the company or the

¹³ Mahfud M.D, *Kepastian Hukum Tabrak Keadilan*, dalam Fajar Laksono, Ed., *Hukum Tak Kunjung Tegak: Tebaran Gagasan Otentik Prof. Dr. Mahfud MD*, Bandung: Citra Aditya Bakti, 2007, p. 9.

¹⁴ Amelia Puspita Sari, "Jaminan Asas Kepastian Hukum Dalam Peraturan Perundang-Undangan Tentang Tenaga Kesehatan Di Indonesia," *Court Review: Jurnal Penelitian Hukum* 1, no. 4 (2021). p. 1–10.

¹⁵ Siti Halilah and Fakhrurrahman Arif, "Asas Kepastian Hukum Menurut Para Ahli," *Jurnal Hukum Tata Negara* 4, no. Desember (2021), p. 56–65.

¹⁶ Siti Kunarti, "Perjanjian Pemborongan Pekerjaan (Outsourcing) Dalam Hukum Ketenagakerjaan," *Jurnal Dinamika Hukum* 9, no. 1 (2009), p. 67–76, <https://doi.org/tp://dx.doi.org/10.20884/1.jdh.2009.9.1.70>.

employer.¹⁷ In the employment agreement, both workers and employers must regulate or agree on the length of service of the worker.

The regulation regarding the length of service of the worker in the employment agreement between the employer and the worker is closely related to the rights that will be received by the worker that include wages, benefits, severance pay, years of service award and compensation pay.¹⁸ The connection between an employee's years of service and the benefits they are entitled to upon reaching retirement includes severance pay, long-service awards, and compensation for rights. The value of these benefits is directly influenced by the duration of the employee's tenure at the company.

Workers and employers can terminate the worker's tenure with an action, namely termination of employment. In the event of termination of employment, both workers and employers are required to give prior notification. In the event that termination of employment cannot be avoided, the termination must be based on the reasons as stipulated in Law Number 6 of 2023 concerning Substitutes for Job Creation. Employers can initiate employment termination for two primary reasons: one, organizational changes such as company mergers, consolidations, takeovers, or separations, where either the worker is unwilling to continue the employment relationship or the employer is unwilling to retain the worker; and two, when the employee reaches retirement age as stipulated in Article 154A paragraph (1) letters a and n of Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes.¹⁹

During a crisis, companies can take various actions to save the company, including company takeover or acquisition. Acquisition is an act of taking over a company's controlling interest by another company or by another individual through company shares. Acquisition is the process for taking over part or all of a company's shares without revocation permission and liquidation. In this case, all policies in the financial and strategic fields of the company very depends on acquirer who usually will become the holding company.

The act of acquiring a company involves one company purchasing a minimum of 51% of the total shares of another company, thereby gaining a controlling interest. This action resulted the change in the structure of shareholders and authorities. The presence of a new party in the structure will lead to new policies, including policies related to employment. Legal certainty for workers prioritized during the acquisition considering the position of the workers as subordinates who do not own authorities.

Legal certainty basically emphasizes law enforcement based on several pieces of evidence. Legal certainty is a useful reference that helps every individual understand the actions that may and may not be done. This principle is a guarantee that a law must be carried out properly and precisely because the purpose of law is to provide certainty. The presence of legal certainty within a country drives the state to enact and implement laws aimed at ensuring that the legal framework is applied correctly, thereby preventing harm to individuals.²⁰ In a company that experienced an acquisition, the legal certainty over workers' rights is a top priority that should be upheld by old company and new company, including the rights of employees who are entering the retirement age. Essentially, when a company is

¹⁷ Azzarqa and Ika Novi Nur, "Pengupahan Dalam Perspektif Hukum Islam Dan Hukum Positif," *Az- Zarqa : Jurnal Hukum Bisnis Islam* 9, no. 2 (2017), <https://doi.org/https://doi.org/10.14421/azzarqa.v9i2.1463>.

¹⁸ Ida Hanifah, "Legal Protection Policy for Domestic Workers Through Legal Certainty," *Journal of Indonesian Legislation* 17, no. 2 (2020), p. 193–208.

¹⁹ Indi Nuroini, "Penyelesaian Perselisihan Pemutusan Hubungan Kerja Yang Memasuki Purnatugas Menurut Undang – Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Deposisi, Jurnal Publikasi Ilmu Hukum* 1, no. 1 (2023), <https://doi.org/tps://doi.org/10.59581/deposisi.v1i1.573>.

²⁰ Dinda Heidiyuan Agustalia and Deni Setya Bagus Yuherawan, "Makna Kepentingan Umum Pada Kewenangan Deponering Dalam Perspektif Kepastian Hukum," *Jurnal Suara Hukum* 4, no. 1 (2023), p 160–189, <https://doi.org/10.26740/jsh.v4n1.p160-189>.

acquired or taken over, the acquiring entity will likely establish or revise policies. This leads to a changed work environment where operations align with the standards of the previous role.

The provision of a new work agreement between employers and workers is often prone to uncertainties. In such scenarios, determining responsibility for ensuring workers' rights previously guaranteed by the old company becomes ambiguous. Additionally, a significant issue that emerges for employees is securing their entitlements as they approach retirement age. The amount of granting rights to workers entering retirement age is determined based on the years of service of the workers. Law Number 6 of 2023 on Job Creation concerning Substitutes for Job Creation and Government Regulation Number 35 of 2021 Concerning *PKWT*, outsourcing, Time Work and Time Rest and layoffs state that the amounts of severance pay, long service pay, and compensation for rights are calculated based on years of service in the company.

The introduction of a new employment contract following a corporate acquisition or merger may result in the employee's previous tenure with the old company not being recognized by the new company.²¹ If an employee agrees to this new contract, their period of service will start anew, impacting the severance benefits they receive upon retirement. Under Law Number 6 of 2023 on Job Creation, specifically Article 154A paragraph (1) letters a and n, retirement and corporate restructuring (merging, consolidating, acquiring, or separating) are legitimate grounds for employers to terminate employment relationships. These grounds allow employers to either offer a new employment agreement or terminate employment. Should termination occur, whether initiated by the employee or the company, due to retirement or acquisition, the law mandates the fulfillment of severance pay, long service pay, and compensation. These payments are calculated based on the employee's basic salary and fixed allowances for the employee and their family, as outlined in Article 157 paragraph (1) of the same law.

The obligation for companies to provide severance pay, long service pay, and compensation upon terminating employment due to retirement or during an acquisition is clearly mandated by Article 156 paragraph (1) of Law Number 6 of 2023 on Job Creation. This legislation explicitly requires that businesses fulfill these rights, emphasizing that termination of employment, whether because of acquisition or an employee's retirement, necessitates the provision of severance pay, long service awards, and rights compensation. The calculation of these benefits is based on the employee's service duration and includes considerations of wages and benefits.²² However, the acquisition process introduces a new business entity or owner, leading to uncertainties about who is responsible for upholding these employee rights in situations of employment termination due to acquisition or retirement. This highlights the need for precise legal and contractual provisions to protect employee rights amidst corporate changes.

In the case of company acquisition between LLC Asuransi PT. Asuransi Mega Pratama which was acquired by Sea Group or PT Asuransi Umum SeaInsurance, workers who agreed to continue working at the new company must sign a new work agreement. The new employment agreement in namely PT Asuransi Umum SeaInsurance resume to years of services of the workers. Workers' years of service at the old company was not acknowledged

²¹ Yunani, Taufik Akhyar, and Reni Apriani, "Potensi Konflik Atas Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Jurnal Studi Ilmu Politik* 2, no. 2 (2023), p. 129–44, <https://doi.org/https://doi.org/10.19109/jsipol.v2i2.16121>.

²² Emilia Metta Wijaya, "Tinjauan Yuridis Asas Pembangunan Tenaga Kerja Dalam Pemberian Pesangon Di Indonesia," *Justitia et Pax* 38, no. 1 (2022), p. 25–52, <https://doi.org/10.24002/jep.v38i1.3822>.

in the new agreement. This situation brought major impact for workers who are entering retirement age as the amount of their severance pay would be fewer.

As stipulated in Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes, the acquiring companies hold full responsibility for fulfilling the rights of workers who have experienced termination of employment due to a company take over. Law Number 6 of 2023 on Job Creation, specifically in Article 61 paragraph (3), addresses the scenario of a company transfer, which includes changes in ownership such as acquisitions, stating that the responsibility for fulfilling workers' rights falls upon the new employer or company. However, this Article introduces a caveat allowing the old and new companies to negotiate the fulfillment of workers' rights, a process from which workers are excluded due to vested interests. This exclusion creates a lack of legal certainty for employees concerning the assurance of their rights, especially for those nearing retirement in companies undergoing acquisitions. Despite this, the responsibility of the new company in the event of a transfer is unequivocally established, as Article 156 paragraph (1) of the same law mandates the provision of severance pay, long service pay, and compensation as essential rights that employers must meet for employees facing termination due to retirement amid an acquisition. This legal framework emphasizes the obligation of the new company to uphold these rights, despite potential agreements between the previous and new owners regarding their fulfillment.

2. The Granting of Severance Rights for employees who are entering retirement age in companies undergoing acquisitions

The provision of the rights to severance pay, long service pay, and compensation pay to workers are under company's responsibility.²³ Company's obligations are clearly stated in Law Number 6 of 2023 on Job Creation. The rules governing the granting of workers' rights in the event of termination of employment for workers entering retirement age in companies undergoing acquisition are stipulated in Article 61 paragraph (3). The article states that the new company is responsible for fulfilling workers' rights when the company experiences a transfer.

The responsibility for ensuring the rights of workers, specifically the provision of severance pay, long service pay, and compensation, falls upon the new company in cases where employees are terminated due to reaching retirement age amidst company acquisitions.²⁴ This obligation is underscored in Article 156 paragraph (1) of Law Number 6 of 2023 on Job Creation, which mandates that employers are required to fulfill certain entitlements for employees affected by lawful termination, including severance pay, gratuity pay, and compensation. These provisions clarify that the obligation to grant these rights to employees, particularly those at retirement age during an acquisition, is a duty that new business owners must uphold.

Under Government Regulation Number 45 of 2015 on the implementation of pension insurance programs, alongside Law Number 6 of 2023 on Job Creation, there has been a gradual adjustment in the retirement age: from 58 years during 2020 to 2022, it was increased to 59 years for the period of 2023 to 2025, with a plan to eventually reach a maximum retirement age of 65 years. Employees reaching retirement are subject to the terms of the employment agreement established with the company. Specifically, for employees terminated

²³ Muhammad Yasid Nasution and Dody Suryandi, "Penyedia Jasa Pt Golgon Akibat Tindak Pidana Pencurian Dilakukan Pekerja / Satpam," *Jurnal Rectum* 3, no. 1 (2021), p. 66–83, <https://doi.org/http://dx.doi.org/10.46930/jurnalrectum.v3i1.819>.

²⁴ AdistiMaria Anggia and Arinto Nugroho, "Pekerja Yang Mengundurkan Diri Atas Perintah Pengusaha," *Novum: Jurnal Hukum* Art 1, no. In Press (2023), p. 13–22, <https://doi.org/https://doi.org/10.2674/novum.v0i0.50726>.

due to reaching retirement age in the context of a company undergoing acquisition, their entitlement to severance pay and long service awards is calculated based on the duration of their employment.²⁵ Article 156 paragraph (2) of Law Number 6 of 2023 on Job Creation specifies the criteria for calculating the severance pay, emphasizing that the amount is determined by the employee's length of service.

According to the regulatory framework, the entitlements of employees who are terminated due to reaching retirement age, especially in scenarios where the company has undergone an acquisition, include severance pay and long service awards. The computation of these benefits is explicitly based on the duration of the employee's tenure with the company.

Besides receiving severance and long-service payments, employees who are terminated due to reaching retirement age during company acquisitions are entitled to certain benefits. These entitlements are outlined in Law Number 6 of 2023 on Job Creation, specifically in the section concerning Substitutes for Job Creation, detailing the components of compensation rights that employees are eligible to receive as follows.

- a. annual leave that has not been used or expired
- b. expenses of return transportation for the worker and his family to the location where they are hired to work
- c. other conditions outlined in the job contract, company rules, or collective bargaining agreement

These three components are part of the rights that must be fulfilled by employers or new companies when an acquisition occurs. The provision of annual leave, costs or fees for workers and their families, or better known as benefits is stated in the employment agreement between the worker and the old company. As a result, during a company acquisition, there will be a lack of legal certainty regarding the terms of the employment contract with the new company because the employment agreement is renewed.

Workers who are terminated due to reaching retirement age in companies undergoing acquisition are entitled to certain benefits, with these entitlements calculated based on the monthly wages received by the workers from the company. This calculation includes both the basic salary and fixed benefits provided to the workers and their families. The formula for determining severance pay and long-service awards, as stipulated in Law Number 6 of 2023 on Job Creation, focusing on Job Creation Substitutes, involves multiplying the years of service by the sum of the basic salary and fixed benefits received monthly by the workers.

The provision of severance pay, gratuity pay, and compensation for entitlements for workers terminated due to reaching retirement age in companies undergoing acquisitions is a fundamental right tied to their employment contracts. Typically, in the case of a company acquisition, the new ownership may issue new employment contracts to its employees, which can affect how their years of service are calculated. This recalibration of service duration, initiated through the issuance of new employment agreements by the acquiring company, can alter the amounts of severance pay, long service pay, and compensation for entitlements due to workers who are terminated because they have reached retirement age during the acquisition process.

Provision of rights to severance pay, gratuity pay, and compensation for rights that

²⁵ Nurmadiyah Nurmadiyah, "Penyelesaian Perselisihan Pemutusan Hubungan Kerja Menurut Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *JIIIP - Jurnal Ilmiah Ilmu Pendidikan* 5, no. 8 (2022), p. 3167–72, <https://doi.org/10.54371/jiip.v5i8.819>.

should have been received by workers affected by termination of employment for reasons of entering retirement age in companies undergoing acquisitions. It is the right of workers who are closely related to the work agreement in obtaining it. In the event of a company acquisition, a new company usually gives a new work agreement to its workers where the new work agreement will have an impact on the calculation of the worker's tenure at a company. Years of service are counted only when a new company provides a new employment agreement to workers will change the amount of the right to severance pay, compensation for long service pay, and compensation for rights to workers affected by termination of employment for reasons of entering retirement age in companies experiencing acquisition.

C. Conclusion

In regards to the results and discussion of this research, conclusions were drawn as presented in the following section.

Consolidations, mergers, takeovers, or acquisitions are strategies frequently adopted by companies to mitigate losses. Such maneuvers result in the emergence of new business entities or entrepreneurs, who bring about changes under new governance. According to Law Number 6 of 2023 on Job Creation, specifically the provisions related to Substitutes for Employee Job Creations, employees terminated as a result of these business restructuring processes are entitled to severance pay, long service pay, and compensation pay. However, the introduction of new employment agreements in the wake of such corporate actions can lead to legal uncertainties, especially since the entitlement to these benefits is intricately linked to the employees' tenure.

Legal certainty is a foundational principle that relies on evidence to delineate permissible from impermissible actions. For employees reaching retirement age in companies experiencing acquisitions, Law Number 6 of 2023 on Job Creation clearly outlines their entitlements, aiming to ensure legal certainty. This law mandates the transfer of responsibility to the acquiring company or new entrepreneurs for fulfilling the rights of transferred employees, barring any alternative agreements that might diminish the workers' rights.

Employees nearing retirement are entitled to severance pay, long service awards, and compensation for rights they ought to have received. When such employees are terminated due to company acquisitions, their entitlements are calculated based on their tenure and any previously unclaimed rights that can be quantified monetarily. The calculation of severance and gratuity pay upon reaching retirement age is grounded in the monthly wages and benefits employees receive. According to Law Number 6 of 2023 on Job Creation, specifically the section on Job Creation Substitutes, the responsibility to fulfill these entitlements for employees entering retirement in companies that have been acquired falls entirely on the acquiring entity. This legal provision ensures that workers' rights to severance, gratuity, and compensation pay are safeguarded under the stewardship of the new ownership.

D. Suggestion

To enhance legal certainty for employees facing termination due to reaching retirement age amid company acquisitions, it is imperative for the central government to refine existing legislation concerning the transfer of corporate responsibilities. This would ensure the protection of workers' rights in the event of an employment termination for this specific reason during corporate transitions. The revised laws should clearly mandate that in any

acquisition scenario, the original company (prior to acquisition) is obligated to fulfill all entitlements of employees terminated due to reaching retirement age. This includes the completion of employment termination procedures and the settlement of all due benefits with the original company before any transition to a new employer. Such legal amendments are crucial for safeguarding workers' rights and providing them with a sense of security as citizens.

To ensure the rights of employees terminated due to reaching retirement age during a company acquisition are protected, the government could introduce specific regulations. These would serve as detailed guidelines to secure legal certainty for the entitlements of affected workers, including severance pay, service appreciation pay, and compensation that such employees are due. The regulations would underline the responsibility of the original company (pre-acquisition) to fulfill these obligations prior to finalizing any acquisition process.

References

A. Book

- Achmad, Ali. *Revealing Legal Theory (Legal Theory) & Judicial Prudence Including Law (Legisprudence)*. Volume I. Jakarta: Kencana Prenada Media Group, 2010.
- Josephus Sabarija, Wilfridus, and Poerwadarminta. *Kamus Umum Bahasa Indonesia*. Edisi keti. Balai Pustaka, 1966.
- Mahfud M.D, *Kepastian Hukum Tabrak Keadilan*, dalam Fajar Laksono, Ed., *Hukum Tak Kunjung Tegak: Tebaran Gagasan Otentik Prof. Dr. Mahfud MD*, Bandung: Citra Aditya Bakti, 2007.
- Manulang, Sedjun H. *Pokok-Pokok Hukum Ketenagakerjaan Di Indonesia*. Jakarta: PT Rineka Cipta, 1995.
- R, Abdul, and Saliman. *Hukum Bisnis Untuk Perusahaan*. Jakarta: Kencana Prenadamedia Group, 2005.
- Simatupang, Richard B. *Aspek Hukum Dalam Bisnis*. Jakarta: Rineka Cipta, 2003.

B. Journal

- Agustalita, Dinda Heidiyuan, and Deni Setya Bagus Yuherawan. "Makna Kepentingan Umum Pada Kewenangan Deponering Dalam Perspektif Kepastian Hukum." *Jurnal Suara Hukum* 4, no. 1 (2023): 160–89. <https://doi.org/10.26740/jsh.v4n1.p160-189>.
- Anggia, AdistiMaria, and Arinto Nugroho. "Pekerja Yang Mengundurkan Diri Atas Perintah Pengusaha." *Novum: Jurnal Hukum Art 1*, no. In Press (2023): 13–22. <https://doi.org/https://doi.org/10.2674/novum.v0i0.50726>.
- Azzarqa, and Ika Novi Nur. "Pengupahan Dalam Perspektif Hukum Islam Dan Hukum Positif." *Az- Zarqa : Jurnal Hukum Bisnis Islam* 9, no. 2 (2017). <https://doi.org/https://doi.org/10.14421/azzarqa.v9i2.1463>.
- Febrina, Rezmia. "Proses Akuisisi Perusahaan Berdasarkan Undangundang No 40 Tahun 2007 Tentang Perseroan Terbatas." *Jurnal Ilmu Hukum* 4, no. 1 (2007): 161–76. <https://doi.org/http://dx.doi.org/10.30652/jih.v4i1.2090>.
- Halilah, Siti, and Fakhrurrahman Arif. "Asas Kepastian Hukum Menurut Para Ahli." *Jurnal*

- Hukum Tata Negara* 4, no. Desember (2021): 56–65.
- Hanifah, Ida. “Legal Protection Policy for Domestic Workers Through Legal Certainty.” *Journal of Indonesian Legislation* 17, no. 2 (2020): 193–208.
- Irawan, Ferry. “Keadilan Berdasarkan Pancasila Sebagai Dasar Filosofis Dan Ideologis Bangsa.” *DiH: Jurnal Ilmu Hukum* 13, no. 25 (2017): 1–27.
- Iriyanto, Erik, and Arianto Nugroho. “Analisis Yuridis Terkait Pemutusan Hubungan Kerja Karena Efisiensi Tidak Diikuti Dengan Penutupan Perusahaan Yang Disebabkan Perusahaan Mengalami Kerugian.” *Novum: Jurnal Hukum* In Press, no. 13 (2021): 28–38. <https://doi.org/https://doi.org/10.2674/novum.v0i0.47516>.
- Islamy, Athoillah. “Moderasi Beragama Dalam Ideologi Pancasila” 3 (2022): 18–30. <https://doi.org/10.53491/porosonim.v3i1.333>.
- Kunarti, Siti. “Perjanjian Pemborongan Pekerjaan (Outsourcing) Dalam Hukum Ketenagakerjaan.” *Jurnal Dinamika Hukum* 9, no. 1 (2009): 67–76. <https://doi.org/tp://dx.doi.org/10.20884/1.jdh.2009.9.1.70>.
- Leonardo, Steven, Eddy Madiono, “Restrukturasasi Organisasi Di Pt Samudra Alam Raya Surabaya” 1, no. 3 (2013).
- Mila, Rd, and Agung Iriantoro. “Pengaruh Ketentuan Skala Usaha Pada Ketepatan Legalitas Umkm Sesuai Dengan Amanat Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia (Perppu) Nomor 2 Tahun 2022 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja.” *Otentik: Jurnal Hukum Kenotariatan* 5, no. 1 (2023): 23–38. <https://doi.org/https://doi.org/10.35814/otentik.v5i1.4604>.
- Nasution, Muhammad Yasid, and Dody Suryandi. “Penyedia Jasa Pt Golgon Akibat Tindak Pidana Pencurian Dilakukan Pekerja / Satpam.” *Jurnal Rectum* 3, no. 1 (2021): 66–83. <https://doi.org/http://dx.doi.org/10.46930/jurnalrectum.v3i1.819>.
- Nurmadiyah, Nurmadiyah. “Penyelesaian Perselisihan Pemutusan Hubungan Kerja Menurut Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja.” *JHIP - Jurnal Ilmiah Ilmu Pendidikan* 5, no. 8 (2022): 3167–72. <https://doi.org/10.54371/jiip.v5i8.819>.
- Nuroini, Indi. “Penyelesaian Perselisihan Pemutusan Hubungan Kerja Yang Memasuki Purnatugas Menurut Undang – Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja.” *Deposisi, Jurnal Publikasi Ilmu Hukum* 1, no. 1 (2023). <https://doi.org/tps://doi.org/10.59581/deposisi.v1i1.573>.
- Sari, Amelia Puspita. “Jaminan Asas Kepastian Hukum Dalam Peraturan Perundang-Undangan Tentang Tenaga Kesehatan Di Indonesia.” *Court Review: Jurnal Penelitian Hukum* 1, no. 4 (2021): 1–10.
- Wijaya, Emilia Metta. “Tinjauan Yuridis Asas Pembangunan Tenaga Kerja Dalam Pemberian Pesangon Di Indonesia.” *Justitia et Pax* 38, no. 1 (2022): 25–52. <https://doi.org/10.24002/jep.v38i1.3822>.
- Yulianto, Taufik. “Ketentuan Mengenai Pemberian Uang Kompensasi Terhadap Pekerja / Buruh Yang Hubungan Kerjanya.” *Orbith: Majalah Ilmiah Pengembangan Rekayasa Dan Sosial* 18, no. 3 (2022): 216–20. <https://doi.org/http://dx.doi.org/10.32497/orbith.v18i3.4365>.
- Yunani, Taufik Akhyar, and Reni Apriani. “Potensi Konflik Atas Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja.” *Jurnal Studi Ilmu Politik* 2, no. 2

(2023): 129–44. <https://doi.org/https://doi.org/10.19109/jsipol.v2i2.16121>.