Legal Certainty of the Right to Severance Pay for Workers Who Retire in Companies That Undergo Acquisitions

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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 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 as the ideology of the Indonesian State, especially as contained in the fifth precept which reads “social justice for all Indonesian people”, has the meaning that justice for the Indonesian people is far more important than certain groups. Justice must be upheld, including justice for workers/laborers. In the Republic of Indonesia’s 1945 Constitution Article 27 paragraph (2), it is stated that “Every citizen has the right to work and a decent living for humanity” in this Article explains that there is recognition and guarantees for all people to have a life and work to achieve a decent life for humanity. Based on Law Number 6 of 2023 on Job Creation, it is explained that the law guarantees all citizens to get decent jobs and get rewards and fair treatment at work with implications for meeting decent living needs, in this case the law as an elaboration of the constitution which only fulfills the elements of norms in general and as a juridical basis for work law or labor law.

Many individuals and companies are just starting or developing their business activities through digital platforms because of the convenience and efficiency offered. This has resulted in an increase in the level of competitiveness in the trade sector but has resulted in the difficulty for individuals or companies to dominate the market. Individuals are competing to set up a Limited Liability Company (LLC) which results in an increase in the amount of competitiveness that is unavoidable. Factors that cause a LLC to experience unhealthy conditions so that it experiences a decrease in competitiveness is the lack of existence and quality of the goods or services traded by the LLC. Apart from that, with the development of the digital era, many conventional companies need to adapt to the booming digital market. So that the LLC must carry out a company restructuring, this is useful for maintaining the existence of the LLC concerned.

This business problem is often expressed as a matter or trade activity. The term “business” is typically used to refer to a broad range of activities carried out by an individual of organization on a regular and ongoing basis, specifically activities involving the provision

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4 Steven Leonardo et al., “Restrukturisasi Organisasi Di Pt Samudra Alam Raya Surabaya” 1, no. 3 (2013).
5 Ibid
of goods or services as well as facilities to be traded, exchanged, or leased with the intention of turning a profit.6

Behind it all, in the process of competition for a company in the world economy, here the company clearly needs skilled workers, in which case the worker has a working relationship with the owner of the company.7 The definition of workforce according to Payaman Simanjuntak is residents 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. According to him, the definition of workforce and not labor is determined by age/age.8 Work relationship is defined as a relationship between an employer and a worker based on a work agreement as stated in government Regulation Number 35 of 2021 discussing specific time work agreements (PKWT), Outsourcing, working time, and termination of employment (PHK). Work agreements made by employers and workers must not conflict with applicable laws and regulations.9

Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes regulates the possibility of termination of employment provided that certain reasons are met, namely the worker dies, the expiration of the agreement period, the completion of a job, a court decision, and a condition stated in the work 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. Acquisition or which in Law Number 40 of 2007 concerning Limited Liability Companies is known as takeover is a legal act carried out by a legal entity or individual to take over the shares of a Company resulting in a transfer of control over the Company. Juridically, to take over a company is by buying shares in part or in whole.10

As stipulated in Law Number 6 of 2023 on Job Creation concerning Substitutes for Job Creation, where every termination of employment, the entrepreneur must pay severance pay or awards. However, this problem arises because workers get new work agreements with new employers or companies so that workers do not get legal certainty about who is responsible for fulfilling their rights as workers. However 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 become the responsibility of the new Employer, unless otherwise specified otherwise in the transfer agreement which does not reduce the rights of the Worker. This illustrates that new employers become responsible for fulfilling workers' rights. However, the transfer agreements allowed by this Law do not ensure the fulfillment of workers' rights as a whole. Because the agreement made by the old and new employers is a business interest in which the position of the worker is clearly below the employer. So that only has the option to agree and disagree with the agreement.

8 Sedjun H Manulang, Pokok-Pokok Hukum Ketenagakerjaan Di Indonesia (Jakarta: PT Rineka Cipta, 1995). Hlm. 3.
Legal certainty is a guarantee that a law must be implemented properly and precisely because the main purpose of law is certainty. Certainty comes from the word “definitely”, which means certain, fixed, not allowed or not, something that is certain.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, including justice, expediency and legal certainty.12 Basically the principle of legal certainty emphasizes law enforcement based on formal evidence, meaning that an act can only be categorized as a violation if it violates certain written rules. On the other hand, according to the principle of justice, actions that are unreasonable, disgraceful, violate decency and so on can be considered as violations for the sake of upholding justice even though formally there is no law prohibiting it.13

The existence of legal certainty in a country also causes efforts to regulate the law embodied in a law made by the government.14 These laws and regulations are the legal system that applies, namely those that are not based on momentary decisions. The principle of legal certainty is a concept to ensure that the law has been implemented properly so that it does not cause any harm to anyone, the law must protect and protect society from various acts of crime or harassment of individuals or groups and must be used as a way of life for every person.15

As happened in several companies that were acquired by other companies, companies that were originally carrying out normal business activities experienced a declining condition resulting in losses that the company experienced, this was getting worse due to the current COVID-19 pandemic which resulted in the company experiencing more and more losses. So that the company owner transfers the company to another company as an effort to strengthen the company by using a company restructuring scheme through the acquisition process. This acquisition has an impact on the existence of workers in the previous company where workers experience a change of employer which allows them to take different actions from the previous employer.

The granting of this new work agreement has an impact on employees who will be entering retirement age based on the acquisition process. The existence of these conditions led to changes in new employers which allowed for new policies. One of the impacts of the acquisition on employees who are entering retirement age is the calculation of the length of service, where workers experience uncertainty regarding the calculation of the length of service they have. This affects the nominal amount of severance pay, long service awards, and replacement rights that they will receive when they reach retirement age. As stipulated in Law Number 6 of 2023 on Job Creation concerning Substitutes for Job Creation, where every termination of employment, the entrepreneur must pay severance pay or awards. The provision of severance pay or awards must be adjusted according to 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, with a new work agreement with a new company, the working period of the worker is only counted since signing the new work agreement with the new company. With the occurrence of these conditions, there is no legal certainty for workers whose companies have been acquired.

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The problem in this study is the legal certainty of workers entering retirement age in companies that have experienced acquisitions and implementation of severance rights for employees who are entering retirement age in companies that have undergone acquisitions. The method used in this research is method approach juridical normative that is something method law Which done with researching material References or data secondary and using a statutory approach. Normative legal research library material is a basic material classified as data secondary Which relate with legal certainty of the right to severance pay for employees who retire at companies that have experienced acquisitions.

B. Discussion

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

Worker is 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. Every worker has a work agreement which regulates the rights and obligations, as well as the period of time the worker works for the company or the employer. 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, both wages, benefits, severance pay, long service award and compensation pay. The relationship between years of service and the rights that workers will receive when they reach retirement age are the nominal amount of severance pay, long service awards, and compensation for rights, the amount of which is determined by the length of time the worker has worked in a 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. Apart from that, 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 on Job Creation on Job Creation concerning Substitutes for Job Creation. In the regulation regarding the reasons that are permissible for terminating employment, it is regulated in Law Number 6 of 2023 on Job Creation on Job Creation concerning Job Creation Substitutes. There are two reasons that allow employers to take action to terminate employment relations with their workers, namely the reasons for the company to merge, consolidate, take over, or separate the Company and the Worker are not willing to continue the Employment Relationship or the Employer is not willing to accept the Worker, and the worker is entering the age of retired. As stipulated in Article 154A paragraph (1) letters a and n of Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes.

When the company experiences various obstacles in carrying out its business, the company can take various actions to save the company. One of them is a takeover or acquisition, an acquisition or what is often referred to as a take over is an act of taking over a

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company’s controlling interest by another company or by another individual through company shares. It can be said that an acquisition is a process for taking over part or all of a company's shares without revocation permission and liquidation, with objective take over control. Matter This legally causing the party controlling the company to be the acquiring party. Therefore, all policies in the financial and strategic fields of the company very depends on acquirer, in practice, usually the acquiring party will become the holding company.

The act of taking over a company by another company by buying shares with a minimum of 51% of the total number of shares. This action resulted in the emergence of a new majority shareholder so that there would also be control over the company by a new party that had full authority over the company. The emergence of a new party in control of this company will lead to new policies that are applied to workers. Legal certainty for the fulfillment of workers’ rights must be prioritized in the takeover of this company because workers have a lower position compared to those in authority in determining their existence in the company.

Basically legal certainty actually emphasizes law enforcement based on several pieces of evidence. Legal certainty is a useful reference so that every individual understands that a rule is to determine 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 certainty. The existence of legal certainty in a country causes efforts by the state to realize its legal arrangements through legislation whose purpose is to ensure that the law has been properly implemented so that it does not cause any harm to anyone. As happened in a company that experienced an acquisition in an effort to save the company. Legal certainty over workers’ rights that must be obtained is a top priority that must be prioritized by old companies and new companies. This includes the rights that must be fulfilled by the company at the time of the acquisition of employees who are entering retirement age. Basically, when a company makes an acquisition or takeover of a company, there will be development or re-making of new policies by the new company. So that it will lead to a new work situation and the action will be in accordance with the previous job.

The provision of a new work agreement between employers and workers will cause uncertainty. Where in terms of fulfilling workers' rights that should have been given by the old company it became a condition for which it is not known who should be responsible. Another problem that will arise for workers is the fulfillment of workers' rights when entering retirement age. Granting rights when workers enter retirement age is the hope of workers as a provision for workers to continue their lives after not working. The nominal amount of granting rights to workers entering retirement age is closely related to the length of service of workers in a company. As stipulated in 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 that the calculation of severance pay, long service pay, and compensation for rights are calculated based on years of service in the company.

The granting of this new work agreement can cause the worker's tenure at the old company to not be counted at the new company. If the worker agrees to the new work agreement, the worker's service period will be calculated from the beginning again which will have an impact on the provision of severance pay that will be received by the worker when he

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reaches retirement age.\textsuperscript{21} Retirement age and companies merging, consolidating, taking over or separating are reasons that are justified or permissible for employers to terminate the employment relationship with their workers as stipulated in Law Number 6 of 2023 on Job Creation concerning Substitutes for Job Creation Article 154A paragraph (1) letter a and n. The two reasons that are permissible for companies to terminate employment of their workers are as a basis for employers to provide a new work agreement or to terminate employment. When the option of termination of employment is chosen by the worker or the company, the right that must be fulfilled in terminating employment on the grounds that the worker is entering retirement age or because the company is making an acquisition is fulfilling the worker's right to severance pay, long service pay, and compensation for rights based on the the calculation is based on basic wages, fixed allowances given to workers and families in accordance with the provisions stipulated in Article 157 paragraph (1) of Law Number 6 of 2023 on Job Creation concerning Copyright Substitutes.

The provision of severance pay, long service pay, and compensation pay for workers is a right that must be fulfilled by companies that terminate employment because workers are entering retirement age when the company makes an acquisition. As stipulated in Article 156 paragraph (1) of Law Number 6 of 2023 on Job Creation concerning Substitutes for Copyright which stipulates that a company or entrepreneur is required to fulfill the rights that should be received, namely severance pay, long service pay, and compensation for rights. In Article 156 paragraph (1) of Law Number 6 of 2023 on Job Creation concerning Copyright Substitutes it is very clear that the obligations of an entrepreneur or company when a termination of employment occurs for reasons of acquisition and workers entering retirement age are the provision of severance pay, long service awards, and compensation for rights that should be received by workers. The amount of severance pay, gratuity pay and compensation pay is determined based on the worker's length of service at the company with a nominal value that is adjusted to the worker's wages and benefits.\textsuperscript{22} The granting of workers' rights to severance pay, gratuity pay, and compensation pay at the time of company acquisition is an event that cannot be separated in the company acquisition process. The act of acquiring this company will bring up a new company or entrepreneur who will create a new authority as well. So that it results in uncertainty for workers about who will fulfill workers' rights when termination of employment occurs on the grounds that the company made an acquisition and the worker entered retirement age.

As happened in LLC Asuransi PT. Asuransi Mega Pratama which was acquired by Sea Group or PT Asuransi Umum SeaInsurance. When an acquisition occurs, workers who agree to continue working at the new company must sign a new work agreement. Approval of the new employment agreement by the workers and the new company, namely PT Asuransi Umum SeaInsurance, results in changes to the working period of the workers. Workers who agree to the work agreement are only counted for their working time with the new company PT Asuransi Umum SeaInsurance when signing the new work agreement. The working period of workers at the old company is not counted in this work agreement. This is very influential for workers who are entering retirement age due to the existence of the new work agreement. Workers who enter retirement age will receive a nominal amount of entitlements that are not in accordance with their length of service.


As stipulated in Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes, it is actually the companies or new entrepreneurs who hold full responsibility for fulfilling the rights of workers who have experienced termination of employment due to a company takeover.\(^\text{23}\) In Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes in Article 61 paragraph (3) it states that in the event of a company transfer, it can be interpreted that the transfer is a process of changing the ownership of an old company to a new company, one of which is acquisition. Workers' rights that must be fulfilled by the company are the responsibility of the employer or new company. However, in this Article there are exceptions regarding the new company's responsibility for the fulfillment of workers' rights. The exception is in the form of the ability to make an agreement between the old company and the new company regarding the fulfillment of these workers' rights. Making an agreement between the old company and the new company is an area that cannot be entered by workers because of interests. This is what results in the absence of legal certainty for workers regarding the fulfillment of the rights of workers who are entering retirement age in companies that have experienced acquisitions. The responsibility of the new company in the event of a company transfer is something that the new company should absolutely do. Because as stipulated in Article 156 paragraph (1) of Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes, the provision of severance pay, gratuity pay, and compensation pay is part of the rights that must be fulfilled by employers for workers who subject to termination of employment on the grounds of retirement when the company undergoes an acquisition.

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

Giving the right to severance pay, long service pay, and compensation pay to workers is a company's responsibility to workers as a reward for the employee's dedication to the company.\(^\text{24}\) This company's obligations are clearly stated in the laws and regulations of the Republic of Indonesia which are regulated in Law Number 6 of 2023 on Job Creation. The rules governing the granting of workers' rights in the event of termination of employment because the worker is entering retirement age and the company is undergoing an acquisition are regulated in Article 61 paragraph (3) which regulates the obligations of the new company in terms of fulfilling workers' rights when the company experiences a transfer.

Fulfillment of workers' rights that must be fulfilled or become the responsibility of the new company, including the fulfillment of the right to severance pay, gratuity pay, and compensation for rights that should be received by workers when workers are terminated for reasons of entering retirement at the company undergoing acquisitions.\(^\text{25}\) As stipulated in Article 156 paragraph (1) of Law Number 6 of 2023 on Job Creation which stipulates that in the event of termination of employment for reasons permitted by law, the employer is obliged to pay a number of rights that must be received by the worker. those affected by termination of employment, in the form of severance pay, gratuity pay, and compensation pay. From these two Articles it can be said that the granting of rights to workers in the form of severance pay, long service pay and compensation pay that should have been received by workers at


retirement age when the company undergoes an acquisition is an obligation that must be carried out by new entrepreneurs.

Workers entering retirement age and companies taking acquisitions is an event that is very common in a company in the process of doing business. Both of these are also events that are permitted by law for employers to terminate the employment of their workers. When termination of employment is unavoidable, it is the company's obligation to provide the rights of the worker affected by the termination of employment in the form of severance pay, gratuity pay, and compensation for rights that should have been received by the worker.

In Government Regulation Number 45 of 2015 concerning the implementation of pension insurance programs and in Law Number 6 of 2023 concerning Job Creation that in 2020 to 2022 the retirement age is 58 years, and in 2023 to 2025 the retirement age becomes 59 years until the maximum retirement age reaches 65 years. Workers who have entered retirement are subject to company regulations in accordance with the agreed employment agreement. The provision of severance pay and long service awards as the rights of workers who are terminated for reasons of entering retirement age in companies experiencing acquisitions in the calculation of the award is determined based on the length of time the worker has worked in the company. This is regulated in Article 156 paragraph (2) of Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes which regulates the amount of severance pay that workers will receive based on length of service.

Based on the calculation provisions above, both the rights of employees affected by termination of employment for reasons of entering retirement age at the company experienced acquisitions in the form of severance pay and long service awards. The amount of these two rights is determined based on the length of time the worker has worked in a company.

In addition to the provision of severance pay and long-service pay, workers who have been terminated for reasons of entering retirement age at companies experience acquisitions. The components of rights that should be received by workers are regulated in Law Number 6 of 2023 on Job Creation concerning Substitutes for Job Creation, the components of compensation for rights that should be received by workers consist of:

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 which has an impact on workers affected by termination of employment for reasons of entering retirement age in companies experiencing acquisitions. These three components are also very closely related to work agreements. Because the provision of annual leave, costs or fees for workers and their families, or better known as benefits, is an agreement between the worker and the old company. So in the event of a company acquisition, legal certainty over the conditions of the work agreement with the new company will not exist. This is because the conditions in the company are certainly different from the previous company due to the existence of new entrepreneurs or companies.

Rights that should be received by workers affected by termination of employment due to retirement age in companies that take over. It has a nominal basis for granting based on the wages received by workers every month from the company. The wage component is used as the basis for calculating severance pay, long service pay consists of basic wages and fixed benefits provided to workers and their families. Based on these provisions regulated in Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes, the acquisition of the rights of workers affected by termination of employment on the grounds of entering retirement age in companies experiencing acquisitions in the form of severance pay and long service awards is determined based on years of service multiplied with the basic wages and other benefits that workers receive each month from the company.

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

There is no guarantee that creates a lack of legal certainty over the calculation of the worker's tenure at the old company to also be calculated in the new work agreement with the new company. Making the position of workers who are below become disadvantaged because in terms of giving the right to severance pay, long service pay, and compensation pay for workers' rights is the only hope or even the only income for workers who are last before the workers retire Work.

C. Conclusion

Based on the abovementioned conclusions, conclusions can be drawn from the form.

Consolidation, merger, or takeover or acquisition is an action that is very often carried out by companies in an effort to save the company from losses. This action will bring up new companies or entrepreneurs who will change conditions because of the new authority. As stipulated in Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes, workers who have been terminated are entitled to severance pay, long service pay, and compensation pay. Granting a new agreement will cause legal uncertainty because the fulfillment of this right is closely related to the period of service. Legal certainty is a principle based on evidence as a reference for determining which actions are permissible and which are not. Legal certainty for workers regarding the rights they should get when they enter retirement age in companies that have undergone acquisitions has been regulated in Law Number 6 of 2023 on Job Creation concerning Substitutes for Employee Job Creations. Where this arrangement transfers the responsibility for fulfilling the rights of workers who are transferred to new companies or entrepreneurs, unless there is another agreement that may not reduce workers' rights.

Workers who are entering retirement age have the right to severance pay, long service awards, and compensation for rights that workers should receive. The granting of rights to workers affected by termination of employment for reasons of entering retirement age in companies undergoing acquisitions is calculated based on the worker's length of service in a company, as well as rights that have not been obtained by workers while working which can
be made into a nominal amount of money. Calculation of severance pay, gratuity pay that workers will receive when they reach retirement age has a nominal basis based on the wages and benefits they receive each month. The granting of rights to severance pay, gratuity pay and compensation pay to workers entering retirement age in companies that have undergone acquisitions is the full responsibility of the new company as stipulated in Law Number 6 of 2023 on Job Creation concerning Job Creation Substitutes.

D. Suggestion

It is better for the central government as the holder of authority to guarantee legal certainty to workers affected by termination of employment on the grounds of entering retirement age in companies experiencing acquisitions to revise laws and regulations governing the transfer of company responsibility for fulfilling the rights of workers affected by termination of employment. with the reason of entering retirement age in companies undergoing acquisitions that switch to new companies but with the exception of other agreements. It becomes stipulated that in any takeover, the company that is responsible for fulfilling all the rights of employees affected by termination of employment with the reason of entering retirement age at the company undergoing acquisition is the old company with the procedure for terminating employment first with the old company and fulfilling all rights - worker rights that workers should get first. In order to create legal certainty for workers as citizens

In the implementation of the granting of rights to workers affected by termination of employment on the grounds of entering retirement age, the company underwent an acquisition. The government can issue government regulations as implementing regulations that guarantee legal certainty for the fulfillment of the rights of workers affected by termination of employment on the grounds of entering retirement age in companies undergoing acquisitions consisting of severance pay, long service pay, and compensation pay that should have been received by workers who emphasizing that these obligations are carried out or must be carried out by the old entrepreneur before making an acquisition.

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