

# **RESEARCH ARTICLE**

#### LEGAL PROTECTION OF WORKERS AND TRADE UNIONS IN THE CONTEXT OF COMPANY ACQUISITIONS

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#### ..... Manuscript Info

## Abstract

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Changes in company ownership sometimes cause employers to ignore relations with workers and trade unions. Entrepreneurs do not realize that there is an employment agreement that must be maintained intact before the process of transferring company ownership. This must be taken into account because the old owner has a work relationship which is regulated through a work agreement or collective work agreement. This research aims to examine how the law provides protection for workers and also labor unions when a company acquisition occurs. This research uses normative methods. The conclusion of this research is that the rights of workers and trade unions in foreign companies that change ownership are protected by law. If we look at Law No. 13 of 2003 concerning Employment, protection for workers is contained in the provisions of Article 163 which states; Employers can terminate employment relations with workers/laborers in the event of a change in status, merger, consolidation or change in ownership of the company and workers/laborers. is not willing to continue the employment relationship, then the worker/laborer is entitled to 1 (one) severance pay in accordance with the provisions of Article 156 paragraph (2), 1 (one) time period of service compensation as stipulated in Article 156 paragraph (3) and compensation money in accordance with the provisions in Article 156 paragraph (4).

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..... Introduction:-

The company's establishment and success are supported by two important factors: entrepreneurs/management and workers or workers' unions. However, an important factor that cannot be overlooked in this success is the community, which helps both by sending products as suppliers of goods and services to the company and by using the products of the company in question.

Good relationships between all parties must always be maintained, maintained, and developed in order for all parties involved to continue to benefit. The process of changing company ownership must take into account the existence of all share holders, particularly workers, as well as the Workers' Union's long-term viability. Not only must the

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transfer of company ownership adhere to normative laws or government regulations governing changes in company ownership, but it must also prioritize the welfare of the general public over the interests of individual companies.<sup>1</sup>

Changes in corporate ownership can sometimes cause employers to disregard employee and labor union relations. Entrepreneurs are unaware that an employment agreement must be kept in place before transferring company ownership. The old owner has employment relations that are governed by a Collective Labor Agreement or a Collective Labor Agreement. There are industrial relations that are good in the work relationship between workers and entrepreneurs, whether consciously or unconsciously, and without this, the company cannot develop well. When a foreign company changes hands, certain things cannot be ruled out. These changes must ensure worker survival and the continued existence of trade unions as guardians of bargaining power for the betterment of workers and their families.<sup>2</sup>

According to legislation, management must openly involve workers and trade unions in the process of transferring ownership of a foreign company. This procedure also requires the company to keep no information about the transfer of ownership hidden. Even though workers/laborers and labor unions do not own capital/shares in the company, they play an important role in the company's success. Changing company ownership is a complex process that involves numerous parties. However, it is not uncommon for businesses to struggle with communication. Because mutual trust between the company, workers/laborers, and the Labor Union is lacking, internal conflict within the company arises during the merger or acquisition process.

# Methods:-

This is Normative Law Research. According to legal expert Abdulkadir Muhammad, Normative Legal Research refers to research that uses Normative Law case studies in the form of Legal Behavior products. The primary focus of study is law, which is defined as norms or rules that apply in society and serve as a guideline for everyone's behavior. As a result, Normative Legal Research focuses on locating an inventory of Positive Law, Legal Principles and Doctrine, Legal Discovery in In Concreto Cases, Legal Systematics, Legal Comparison, Legal Synchronization Levels, and Legal History.

#### **Discussion:-**

The existence of Limited Liability Companies as a type of business entity in people's daily lives can no longer be denied. A Limited Liability Company is a business tool used by business actors/entrepreneurs such as traders, industrialists, contractors, investors, distributors, bankers, insurance companies, brokers, and other agents. Running a business on a micro, small, medium, and large scale with a Limited Liability Company.<sup>3</sup>

The statutory book defines a company as "any form of business with a legal entity or not, owned by an individual, owned by an association (association), or owned by a legal entity, whether privately owned or state owned, that employs workers and pays wages and other forms of compensation." There is also an understanding that companies can be intended as social enterprises and other businesses that have an organizational structure (management) and employ workers/laborers by providing wages in the form of an agreed-upon amount of money or other forms of compensation.<sup>4</sup>

In development, there are many things that must be done by a company to continue to exist and maintain its business, but it is not uncommon for a business to run successfully, causing it to grow rapidly to the point of being able to buy another company. There are numerous approaches that businesses can take to solve financial problems or improve the performance of the company as a whole or some of its business units. The Big Indonesian Dictionary

<sup>&</sup>lt;sup>1</sup>Tri Widodo, "Peralihan Kepemilikan Perusahaan dalam Perspektif Perlindungan Hukum bagi Pekerja dan Serikat Pekerja," *Innovative: Journal Of Social Science Research* 3, no. 2 (2023): 7790–7804.

<sup>&</sup>lt;sup>2</sup>Nina Zainab dkk., "PERLINDUNGAN HUKUM bagi Pekerja & Serikat Pekerja dalam hal Peralihan Kepemilikanan Perusahaan," 2022.

<sup>&</sup>lt;sup>3</sup>Dwi Ratna Indri Hapsari, "Perlindungan Hukum Terhadap Pekerja Pada Perusahaan Yang Melakukan Merger Ditinjau Dari Undang–Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," 2013.

<sup>&</sup>lt;sup>4</sup>REGINA AMELIA, "TINJAUAN YURIDIS PERLINDUNGAN HUKUM BAGI TENAGA KERJA YANG MENGALAMI PHK BERDASARKAN UNDANGUNDANG NOMOR 11 TAHUN 2020 TENTANG CIPTA KERJA," 2021.

(KBBI) defines restructuring as "rearranging (so that the structure or order is good"; these actions/progress can be done separately (partial) or simultaneously (simultaneous). Of course, the chosen action has been thoroughly evaluated in terms of all relevant aspects as well as its negative consequences. As a result, these actions do not have to be carried out at the same time. The four most common restructuring solutions used to save a company are as follows:<sup>5</sup>

- 1. Business Restructuring.
- 2. Financial Restructuring.
- 3. Management Restructuring.
- 4. Organizational Restructuring

Changes in company ownership are a natural occurrence during the course of a business. Starting with the reasons for developing the business chain and progressing to saving the company by overcoming the impact of greater losses. The procedure for changing company ownership. In order to take over the target company, the company must first complete at least three (three) basic procedures. These three (three) fundamental procedures are Merger or Consolidation, Share Acquisition, and Asset Acquisition.<sup>6</sup>

Businesspeople are familiar with three basic procedures as initial steps: merger or consolidation, share acquisition, and asset acquisition. Mergers are one of several corporate restructuring strategies that involve combining two or more companies into one. If we interpret it broadly, it refers to the acquisition of one company by another, when the interests of both companies are united and managed jointly. Meanwhile, in a narrow sense, two companies in similar circumstances pool resources in a business.<sup>7</sup>

The following type of restructuring is acquisition, which involves acquiring ownership of another company's assets and shares. Most of the time, both the acquirer and the acquired person carry on as usual. Regarding the subsequent effects of this acquisition, the acquiring company has absolute rights in the acquired company in terms of management, financial, operational, marketing, and other strategic policies. The next basic procedure as a first step regarding the next change in ownership is the acquisition of shares. Share acquisitions are often also carried out to take over another company by buying shares in the target company. Acquisition of shares with this purchase can be carried out in cash, or by exchanging them for other security products in the form of shares or in the form of bonds.<sup>8</sup>

With the Basics of Operational Relationships, Acquisition procedures are classified into several models, namely:<sup>9</sup> a. Horizontal Acquisition

This acquisition is implemented in other companies that have the same business and business field.

b. Vertical Acquisition

Vertical Acquisition is carried out in companies that are in different stages of the Production Process.

c. Conglomerate Acquisitions

Companies undertaking Conglomerate Acquisitions look for target companies with which they have no operational relationships.

Law no. 13 of 2003 concerning Employment is a guideline for every worker/laborer to obtain the right to legal protection and legal justice. Labor/Employment Law is a special Lex Specialis because it specifically regulates Employment or Labor matters. Law no. 13 of 2003 concerning Employment When we talk about rights and obligations, we must first know the process that occurred before the emergence of these rights.<sup>10</sup>

<sup>&</sup>lt;sup>5</sup>H Budi Untung dan CN SH, *Hukum akuisisi* (Penerbit Andi, 2020).

<sup>&</sup>lt;sup>6</sup>MEI ENNISA PASARIBU, "PERLINDUNGAN HUKUM TERHADAP PEKERJA YANG TIDAK MENERIMA HAKNYA PADA SAAT PEMUTUSAN HUBUNGAN KERJA YANG DILAKUKAN OLEH PERUSAHAAN BERDASARKAN UNDANG–UNDANG NOMOR 11 TAHUN 2020 TENTANG CIPTA KERJA," 2022.

<sup>&</sup>lt;sup>7</sup>Ida Nadirah, "Perspektif Hukum Persaingan Usaha Terhadap Merger Dan Akuisisi Perusahaan Di Era New Normal," vol. 1, 2021, 968–73.

<sup>&</sup>lt;sup>8</sup>Nurum Dilia Octri Yanie, Budi Sutrisno, dan Dwi Martini, "AKUISISI PERUSAHAAN NASIONAL OLEH PERUSAHAAN ASING DITINJAU DARI HUKUM POSITIF DI INDONESIA," *Commerce Law* 1, no. 1 (2021): 99–111.

<sup>&</sup>lt;sup>9</sup>Untung dan SH, *Hukum akuisisi*.

<sup>&</sup>lt;sup>10</sup>Hilda Restu Utami, "Penerapan Effects Doctrine Terkait Akuisisi Perusahaan Asing di Luar Negeri Ditinjau dari Perspektif Hukum Persaingan Usaha (Studi Komparatif Hukum Indonesia dan Amerika Serikat)," 2022.

The legal relationship between workers/labourers, trade unions/labor unions and employers or legal entities in the form of companies is contained in Law No. 13 of 2003 concerning Employment, Law No. 11 of 2020 concerning Job Creation, Law No. 21 of 2000 Regarding Workers Unions, Law No. 40 of 2007 concerning Limited Liability Companies (PT). Law no. 13 of 2003 concerning Employment provides an explanation of the meaning of Employment, namely all matters relating to labor before, during and after the employment period.<sup>11</sup>

Employment Relations as a form of Legal Relationship are formed by the existence of a Work Agreement between the Worker/Worker Representative/Worker Union/Labor Union and the Employer. The substance of the Work Agreement must not conflict with the substance of the existing Collective Labor Agreement (PKB), as with Company Regulations the substance must not conflict. with the contents of the PKB, because of how important these three things are, the three Work Relations cannot be separated because they form one unit that cannot be separated as a component of Pancasila Industrial Relations.<sup>12</sup>

The Collective Work Agreement (PKB) that is made must not be contrary to applicable laws and regulations. If the contents of the collective work agreement conflict with the applicable laws and regulations as stated in Paragraph (2), the conflicting rules are null and void and what applies are the rules in the laws and regulations. The validity period of the Collective Labor Agreement (PKB) is a maximum of 2 (two) years and the validity period can be extended by 1 (one) year based on a written agreement between the employer and the Worker/Labour Union. 13 In the event of the dissolution of the Worker/Labor Union or acquisition of ownership company, the Collective Labor Agreement is still valid until the completion of the Collective Labor Agreement period.<sup>13</sup>

If in the event of a merger of companies and each company has a collective work agreement, the applicable collective work agreement is a collective work agreement that is more profitable for workers/laborers. In the event of a company merger (merger) between a company that has a collective working agreement and a company that does not yet have a collective working agreement, the collective working agreement applies to the merged company until the term of the collective working agreement is completed.<sup>14</sup>

Company regulations are an alternative form of third agreement which contains guaranteed rights and obligations for workers/laborers who work in a company. Companies use company regulations as a structure used to regulate the running of the company organization, especially regarding the regulation of employment.<sup>15</sup>

Although the Company Regulations may appear to be one-sided in their preparation, it is recommended that when drafting them, they always take into account the suggestions and considerations of worker/labor representatives in the relevant company. If in the case of the relevant company the workers/laborers have not formed a Workers/Labor Union as stated above, the workers/laborers are elected democratically to represent the interests of the workers/laborers in the relevant company.<sup>16</sup>

Talking about the protection of workers means we are talking about protecting the rights of workers. Protection of Workers'/Labourers' Rights is intended to guarantee the basic rights of Workers/Labourers and guarantee equality of opportunity and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while still paying attention to developments in the business world. This is the spirit promoted by the government through Law no. 13 of 2003 concerning Employment, Law Number 1 of 1970 concerning Work Safety, Law no. 03 of 1922 concerning Social Security for Workers and other Government provisions.

<sup>&</sup>lt;sup>11</sup>Yanie, Sutrisno, dan Martini, "AKUISISI PERUSAHAAN NASIONAL OLEH PERUSAHAAN ASING DITINJAU DARI HUKUM POSITIF DI INDONESIA."

<sup>&</sup>lt;sup>12</sup>Farra Fathia, "Perlindungan Hukum Terhadap Pekerja yang Terkena Pemutusan Hubungan Kerja Pasca Terjadinya Akuisisi Perusahaan," 2020.

<sup>&</sup>lt;sup>13</sup>Afif Johan, Ramlani Lina, dan Marni Emmy Mustofa, "Perlindungan Hukum Terhadap Hak Pekerja dalam Perusahaan Melakukan Coorporate Action Merger dan Akuisisi," *PROSIDING IDEAS PUBLISHING*, 2023.

<sup>&</sup>lt;sup>14</sup>RIZKA WULAN PRAVITASARI, "PERLINDUNGAN HUKUM PEKERJA AKIBAT PERUSAHAAN AKUISISI DAN DINYATAKAN PAILIT," 2019.

<sup>&</sup>lt;sup>15</sup>Robert DeKeyser, "Skill acquisition theory," dalam *Theories in second language acquisition* (Routledge, 2020), 83–104.

<sup>&</sup>lt;sup>16</sup>Michael W Zarlenga dkk., "PROOF Acquisition Corp I," t.t.

Trade Unions/Labour Unions, federations and confederations of Trade Unions/Labor Unions were established with the aim of being able to provide protection, defend rights and interests, and improve adequate welfare for Workers/Laborers and their families.<sup>17</sup>

Provisions regarding Company Rights and Obligations towards Workers in Law no. 13 of 2003 concerning Employment. Companies have the rights mentioned in the description of the Employment Law, namely in Law Number 13 of 2003 concerning Employment. These rights are as follows. The company has the right to the results of employee activities.<sup>18</sup>

- 1. The company has the right to organize/manage employees or workers to achieve goals.
- 2. The company has the right to dismiss employees/workers if they violate previously agreed provisions.
- 3. The company has the right to close the company (lock out) to refuse workers/laborers in part or in whole to carry out their work as a result of failed negotiations.
- 4. The company has the right to demand that workers carry out their work even though they have exceeded the working hours that have been mutually agreed upon in the collective work agreement or special agreement between the entrepreneur/company and the workers/laborers.
- 5. The company has the right form and become members of employers' organizations.

Regarding the obligations of companies/entrepreneurs, in principle companies have an obligation to provide protection to all their workers, divided into 3 (three) types, namely:<sup>19</sup>

- 1. Economic protection, namely protection of workers in the form of sufficient income, including if workers are unable to work outside his will.
- 2. Social Protection, namely protection of workers in the form of occupational health insurance, and freedom of association and protection of the right to organize.
- 3. Technical Protection, namely worker protection in the form of work safety and security.

In the provisions of Law no. 13 of 2003 concerning Employment, regarding Company Mergers or Company Takeovers, there is no mention of the involvement of workers or Trade Unions in company takeovers or mergers. Law no. 13 of 2003 concerning Employment in the provisions of Article 163 contains:<sup>20</sup>

- 1. Employers can terminate employment relations with workers/laborers even though there is a change in status, merger, consolidation, or change in company ownership and the worker/laborer does not wish to continue the employment relationship, then the worker/laborer is entitled to 1 (one) severance pay according to provisions of Article 156 Paragraph (2), work period appreciation money 1 (one) times the provisions of Article 156 Paragraph (3) and compensation money according to the provisions of Article 156 Paragraph (4).
- Employers can terminate employment relations with workers/laborers due to changes in status, merger or consolidation of companies, and entrepreneurs do not wish to accept workers/laborers in their companies, then workers/laborers are entitled to severance pay equal to 2 (two) times the provisions of Article 156 Paragraph (2), service award money 1 (one) time as stipulated in Article 156 Paragraph (3), as well as compensation money for rights according to the provisions in Article 156 Paragraph (4).

There is a relationship between status change events, mergers, consolidations, or changes in company ownership with the worker's continued employment status in the company as well as the worker's desire to continue joining (status as worker/laborer) in these changes or not. If the worker/laborer is invited to join and there is no change regarding the length of service or employment status (permanent worker/PKWTT), the company has no obligation to provide layoff compensation for the change in company status. This is different when the worker/laborer is not invited to join or the worker does not want to join a new company, then the worker/laborer is entitled to the amount of compensation in accordance with the provisions of Law no. 13 of 2003 concerning Employment article 156 paragraphs (2), (3) and (4).

<sup>&</sup>lt;sup>17</sup>Utami, "Penerapan Effects Doctrine Terkait Akuisisi Perusahaan Asing di Luar Negeri Ditinjau dari Perspektif Hukum Persaingan Usaha (Studi Komparatif Hukum Indonesia dan Amerika Serikat)."

<sup>&</sup>lt;sup>18</sup>Untung dan SH, *Hukum akuisisi*.

<sup>&</sup>lt;sup>19</sup>Zainab dkk., "PERLINDUNGAN HUKUM bagi Pekerja & Serikat Pekerja dalam hal Peralihan Kepemilikanan Perusahaan."

<sup>&</sup>lt;sup>20</sup>Zainab dkk.

Sometimes before the parties enter into a takeover or company merger transaction, it is necessary to carry out due diligence or legal due diligence or legal audit, namely an investigation of a business or individual and is a form of goodwill carried out before the parties who want to work together enter into an agreement. In the world of health, it is often called a medical check-up, namely a comprehensive health examination. Through this examination, it is hoped that an illness or health problem can be detected early. In the world of banking, due diligence is often referred to as Know Your Customer (KYC), which is the process by which the bank obtains factual information about the customer's identity. The aim is for banks to avoid the risk of misuse for criminal acts and to understand their consumers. In the business world, we are familiar with the term Know Your Vendor (KYV), namely due diligence on vendors with the aim of, among other things, finding out the potential vendor's performance, track record and legal status. This good intention is the basis for a cooperation agreement as stated in Article 1338 Paragraph 3 of the Civil Code. In other words, good intentions are an important point in legal and universally recognized cooperation. Good intentions will also provide legal force to the parties entering into an agreement if undesirable things happen while the cooperation contract is in effect.

The provisions of the Manpower Law state: In the event of a company transfer, the rights of the workers/laborers are the responsibility of the new entrepreneur, unless otherwise stipulated in the transfer agreement which does not reduce the rights of the workers/laborers. The phrase unless otherwise specified in the transfer agreement does not reduce the rights of workers/labourers, there is a potential that the status of workers (at the old company) will experience changes at the new company which may be related to the provisions of article 163 of Law no. 13 of 2003 concerning Employment.

Regarding workers' rights regarding acquisitions within the company, it has been regulated in PP Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations, namely as follows:

- a. In the event that a company makes an acquisition, but the workers are not willing to continue their employment relationship at the company that has been acquired, the workers can apply for layoffs. This provision is as explained in Article 42 paragraph 2 of PP Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations which states that "In the event of a company takeover which results in changes to work and employee conditions /laborer is not willing to continue the employment relationship, the entrepreneur can terminate the employment relationship and the worker/laborer is entitled to:
  - 1) severance pay of 0.5 (zero point five) times the provisions of Article 40 paragraph (2);
  - 2) service award money of 1 (one) time the provisions of Article 40 paragraph (3); and 3) compensation money for rights in accordance with the provisions of Article 40 paragraph (4).
- b. In the event that an acquisition occurs, but the acquiring company objects and is not willing to accept workers from the old company, the entrepreneur can carry out layoffs which will result in the employer's obligations towards the workers as explained in the provisions of Article 42 paragraph (1) PP Number 35 of 2021 concerning Agreements. Certain Time Work, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations which states that, "Employers can terminate employment relations with workers/laborers for reasons of taking over the company, so the workers/laborers are entitled to:
  - 1) severance pay of 1 (once) the provisions of Article 40 paragraph (2);
  - 2) service award money of 1 (one) time the provisions of Article 40 paragraph (3); and
  - 3) compensation money for rights in accordance with the provisions of Article 40 paragraph (4).

In the acquisition process, all parties should avoid layoffs so as not to cause problems. Layoffs should be a last resort if other measures do not work. These steps have even been recommended in accordance with the Circular Letter of the Minister of Manpower and Transmigration of the Republic of Indonesia related to the prevention of Termination of Employment Relations (Number: SE.907/MEN/ PHIPPHI/X/2004).

Regarding the position of workers after an acquisition, Article 61 paragraphs (2) and (3) of the Manpower Law states that in principle the employment agreement between a company and workers/laborers does not end due to the transfer of rights to the company due to the sale of the company. This means that the employment relationship between employers and workers continues until the employment relationship is terminated and a transfer or change in ownership of the company does not affect the status of the employment relationship. With the acquisition, responsibility for workers' rights, including regarding employment relations, is regulated in the acquisition agreement. If the acquisition agreement does not include a clause regarding workers' rights, then at the time of

termination of the employment relationship, if it has not been resolved before the acquisition, the rights and obligations related with employees being the responsibility of the new entrepreneur. Meanwhile, the calculation of the working period is taken into account from the start of the employment relationship at the company before it was acquired and the rights apply as stipulated in the Employment Law, and guaranteeing workers' rights is the responsibility of the new entrepreneur.

When a company acquisition occurs and the worker/laborer is unwilling to continue the employment relationship, in such a case, the worker/laborer is entitled to one-time severance pay. On the other hand, if due to a company acquisition and the entrepreneur is not willing to accept workers or laborers in his company, then the workers/laborers are entitled to twice the severance pay.

Legal protection of workers is a legal necessity as mandated by the Constitution of the 1945 Constitution, because labor rights are human rights because they relate to the needs of human life, so legally the burden of legal responsibility lies primarily on the state government as mandated constitution. More than that, entrepreneurs have the main responsibility in accordance with the provisions of applicable legislation in the field of employment.

# **Conclusion:-**

When a company acquisition occurs and the worker/laborer is unwilling to continue the employment relationship, in such a case, the worker/laborer is entitled to one-time severance pay. On the other hand, if due to a company acquisition and the entrepreneur is not willing to accept workers or laborers in his company, then the workers/laborers are entitled to twice the severance pay.

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