

The Legal Impact of Merger, Acquisition, and Other Corporate Restructuring Activities on Employment Relationship Based on Labor Law in Indonesia After the Enactment of the Job Creation Law

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Abstract:

Mergers, acquisitions, and other corporate restructuring activities are regarded as one of the strategic steps to maintain the company's existence and to carry out business growth, which can be done when the company is in financial difficulties or when the company intends to develop its business and increase its revenue. However, there have often been problems in the past related to employment relations and other legal issues on employment law. This study aims to determine the legal impact of merger, acquisitions, and other corporate restructuring activities on employment relations based on employment regulation in Indonesia after enactment of Law concerning Job Creation. This study uses the normative juridical method with descriptive analysis characteristics. The results of the study show that in the event of a corporate restructuring activities, the employment relationship may continue as long as there is no termination of employment, whether it arises at the initiative of the employer or the employee. The law provides preventive as well as repressive protection for employees in the event of corporate restructuring activities.

Keywords:

merger; acquisition; corporate restructuring; employment relationship; termination of employment

I. Introduction

The implementation of mergers, acquisitions and other corporate restructuring activities is seen as one of the strategic steps that can be taken to maintain the company's existence as well as to grow the business, in which this corporate action is proven to improve company performance by obtaining additional capital and being able to increase a larger market share. Mergers and acquisitions are not only a strategy used when companies are experiencing financial problems, but are also used by companies to develop their business and increase revenue. Based on company law, mergers, acquisitions, and other corporate restructuring activities, must also consider to the interests of minority shareholders, employees, creditors and other business partners of the company.

Labor regulations in Indonesia before the enactment of the Job Creation Law has regulated the legal consequences of corporate restructuring activities to the employment relationship, as in Article 163 of Law Number 13 of 2003 concerning Manpower (UU 13/2003). The provisions in Law 13/2003 often become legal issues, still opens up space for multiple interpretations. Now the provisions in Article 163 of Law 13/2003 has been abolished based on Law Number 6 of 2023 concerning Stipulation of Government Regulations in lieu of Laws Law Number 2 of 2022 concerning Job Creation becomes a Law (Job Creation Law). The Job Creation Law issued to improve people's welfare through creating and expanding employment opportunities.

Thus, the provisions in the Job Creation Law, including labor law, should be able to provide increased protection and welfare for employees, including protection for employees to get decent jobs and protection for employees related to termination of employment. For this reason, it is important to know the arrangements in the labor regulations after the enactment of Job Creation Law, regarding the legal impact of corporate restructuring activities on the employment relationship, including regarding legal certainty in the new regulation, where the existence of the principle of legal certainty is to provide protection for arbitrary actions of other parties, in this case protection for employees who generally have a weaker position when compared to employers, both from an economic and social perspective. Therefore the problems that will be examined in this research are: (1) What is the legal impact of corporate restructuring activities on the employment relationship based on labor law after the enactment of Job Creation Law? and (2) What is the legal protection for employees from the corporate restructuring activities based on labor law after enactment of the Job Creation Law?

II. Literature Review

An employment relationship is a relationship between an employer and an employee based on a employment agreement, and based on Article 52 of Labor Law, employment agreements must be made based on voluntary consent of the parties. The Constitution of the Republic of Indonesia guarantees the rights of every citizen related to work and employment relationships, as stated in Article 27 paragraph (2) of the 1945 Constitution. Then in Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution states state that everyone has the right to recognition guarantees, protection, and fair legal certainty and equal treatment before the law, the right to work and receive fair and decent compensation and treatment in an employment relationship.

In connection with the above, in this study the author will refer to the theory of justice, legal certainty, and legal protection. According to John Rawls, upholding justice with a populist dimension must pay attention to two principles of justice, the first is to provide equal rights and opportunities for the broadest basic freedoms of equal freedom for everyone. Second, being able to manage existing socio-economic disparities so as to provide reciprocal benefits for everyone, both those from fortunate and disadvantaged groups. To realize justice in the field of employment, the law must be able to provide protection for both employees and employers. Legal protection according to Satjipto Raharjo, is an effort to protect someone's interests by allocating a power to him to act in that interest, which one of the characteristics and at the same time the purpose of law is to provide protection to the community. Therefore, legal protection for the community must be realized in the form of legal certainty.

III. Research Methods

This research is normative juridical research, which uses various approaches, including the statutory approach, the case approach, and the conceptual approach. The material used in this study was collected through literature study, in the form of secondary data consisting of primary legal materials as well as secondary legal materials and non-legal materials related to the research. Data analysis in this study was carried out qualitatively, and describing them in a descriptive analysis, explaining in depth how the legal impact of corporate restructuring activities on employment relationships, including legal protection for employees.

IV. Results and Discussions

4.1 The Legal Impact of Corporate Restructuring Activities on the Employment Relationship Based On the Labor Law after Enactment of the Job Creation Law

The provisions in Article 163 of Law 13/2003 have been abolished based on the Job Creation Law, and the Job Creation Law has added one article to the Manpower Act, namely Article 154A, which regulates the causes of termination of employment arrangements, and arrangements related to corporate restructuring activities are contained in Article 154A paragraph (1) letter a of the Labor Law which states that termination of employment can occur for reasons the company is doing a merger, consolidation, acquisition, or separation (demerger) of the company and employees not willing to continue the employment relationship or employers do not want to accept employees. Furthermore, in Article 154A paragraph (3) the Manpower Act mandates to stipulate further provisions regarding terms and procedures for termination of employment to be stipulated in a Government Regulation, and the government has issued Government Regulation Number 35 of 2021 concerning Employment Agreement for a Specified Period of Time, Outsourcing, Working Time, and Rest Time, and Termination of Employment (PP 35/2021).

Referring to Article 154A paragraph (1) letter of the Labor Law, changing the terminology for restructuring activity types, to be merger, consolidation, acquisition, or separation (demerger) of companies. The terminology used in the form of corporate restructuring activities is the same as used in the Law (Limited Liability Company Law). The Limited Liability Company Law has clearly defined what is meant by a company merger, consolidation, acquisition, or separation (demerger), as mentioned in Article 1 number 9, 10, 11, and 12.

Based on the provisions contained in the Limited Liability Company Law, the legal consequences of having restructuring activities in the form of mergers, consolidations, acquisitions, and split-offs will result in the assets and liabilities of the company carrying out the restructuring activity being transferred to another company and the company carrying out the restructuring activity will be ends due to law, so that the employment relationship with employees will also be transferred to the company that receives the transfer of assets and liabilities. Meanwhile, corporate restructuring activities in the form of acquisitions and spin-offs do not result in a company ending due to law, however, in a spin-off there is also a transfer of company assets and liabilities, and allows for a transfer of employment relationships between employers and employees.

Thus in interpreting the form of company activity which can be the basis for termination of employment, may using the systematic interpretation method, which interpreting a legal text by connecting and comparing it with other legal texts. In interpreting the form of corporate restructuring activities which can become the basis for termination of employment, one can refer to the Limited Liability Company Law and other laws and regulations, including the Regulation of the Commission for the Supervision of Business Competition of the Republic of Indonesia (KPPU) Number 3 of 2023 concerning Assessment of Mergers, Consolidations , or Acquisition of Shares and/or Assets That Can Lead to Monopolistic Practices and/or Unfair Business Competition, which defines the acquisition includes legal actions to take over shares and/or assets resulting in the transfer of company control and and/or those assets. This is in line with the view of the panel of judges in the Supreme Court Decision Number 731K/Pdt.Sus-PHI/2021 which interprets that corporate action acquisition of assets can be the basis for termination of employment, so that employers are obliged to pay the termination of employment compensation.

Arrangements regarding termination of employment due to corporate restructuring activities in labor regulations after the entry into force of the Job Creation Law, are contained in the Labor Law and PP 35/2021 as implementing regulations mandated by the Labor Law to further regulate procedures for termination of employment. Article 154 A paragraph (1) letter a of the Labor Law and Article 36 letter a PP 35/2021 states that the termination of employment may occur for the reason of the merger, consolidation, acquisition, or separation and the employees are not willing to continue the Employment Relationship or the employer is not willing to accept the employee. Based on this provision, there are 2 (two) elements that must exist for termination of employment to occur due to corporate restructuring activities. First, corporate restructuring activities in the form of a company merger or consolidation or acquisition or separation (demerger). Second, employees who are not willing to continue the employment relationship or employers who are not willing to accept employees. This second factor is optional, so it can be based on the initiative of employees who are not willing to continue the employment relationship or employers who are not willing to accept employees because of corporate restructuring activities.

Further arrangements regarding procedures and compensation from the termination of employment are regulated in Article 41 and Article 42 PP 35/2021 as follows:

Article 41

An Employer may terminate the employment relationship of a Worker/Laborer for the reason that the Company is merging, consolidating or separating the Company and the Worker/Laborer is not willing to continue the employment Relationship or the Employer is not willing to employ the Worker/Laborer, for which the Worker/Laborer shall be entitled to:

- a. Severance pay of 1 (one) time of the provision of Article 40 paragraph (2);
- b. Reward pay of 1 (one) time of the provision of Article 40 paragraph (3); and
- c. Compensation for rights in accordance with the provision of Article 40 paragraph (4).

Article 42

An Employer may terminate the employment relationship of a Worker/Laborer for the reason of taking over the Company, for which the Worker/Laborer shall be entitled to:

- a. Severance pay of 1 (one) time of the provision of Article 40 paragraph (2);
- b. Reward pay of 1 (one) time of the provision of Article 40 paragraph (3); and
- c. Compensation for rights in accordance with the provision of Article 40 paragraph (4).

In the event of a company takeover which results in a change in working conditions and the Worker/Laborer is not willing to continue the Employment Relationship, the Employer may terminate the employment relationship and the Worker/Laborer shall be entitled to:

- a. Severance pay of 0.5 (zero point five) time of the provision of Article 40 paragraph (2);
- b. Reward pay of 1 (one) time of the provision of Article 40 paragraph (3); and
- c. Compensation for rights in accordance with the provision of Article 40 paragraph (4)

From the formulation in Article 41 and Article 42 PP 35/2021, it can be seen that the current labor regulations in Indonesia separate termination of employment arrangements based on the form of company activity, the first group is termination of employment because company activities are in the form of merger, consolidation or separation (demerger) company, and the second group is company activity in the form of acquisition. In author opinions, referring to the provisions in the Limited Liability Company Law, in acquisitions there is no transfer of employment relationship, thus there is no legal subject or change in legal entity of the company as an employer, in the event of an acquisition of shares there will only be a change in the

controlling shareholder, the parties to the employment agreement are permanent and do not change, therefore in the event of an acquisition, the employee can only terminate employment if there is a change in the working conditions. However, current labor regulations in Indonesia do not yet regulate procedures for termination of employment because of acquisition in the form of a transfer of assets which results in a change in control over a company's assets and business.

Referring to the labor regulations in the Labor Law and PP 35/2021 and the Limited Liability Company Law as described above, the author views that there are at least 2 (two) important factors that must be considered in the termination of employment due to corporate restructuring activities, first is a change in the parties in the work agreement, in this case the entrepreneur or the employer, and secondly, the change in the terms of employment. Protection of employees' interests from the transfer of employment relationship also occurs in conditions of transfer of employees to other companies which are different legal entities or legal subjects, where the transfer of employees or employment relationship transfers between different company entities must be based on agreement or approval from the employer and the employees.

As stipulated in the Manpower Act that an employment relationship occurs because of a work agreement between employers and employees, and work agreements that regulate work conditions must be made based on the agreement of the parties, thus the law must protect the interests of the parties to changes in work agreements, parties to work agreements, and changes to work conditions. Therefore, in the event of a consolidation, merger, and separation (demerger), employees who have the right to declare that they are not willing to continue the employment relationship and termination of employment are carried out, namely employees at companies that end due to law or employees who switch their employment relationship to another company. Different to the other corporate restructuring activities, in acquisitions there are no companies that will end due to law and there are no of employment relationships, so there are no changes to the work agreements or parties to work agreements. Therefore employees can only declare that they are not willing to continue the employment relationship and terminate employment as long as there are changes to the working conditions as stated in Article 42 paragraph (2) PP 35/2021.

In applying termination of employment due to restructuring activities, shall to look at the conditions in each form of company activity that occurs. In merger, consolidation, split-off, spin-off, and assets and business acquisition, the termination shall apply only to the employees in companies who carry such corporation restructuring, and transfer its assets and liabilities to the other companies. Meanwhile it can not be applied to the employees in companies that receive the assets and liabilities transfer. In acquisition, employees only have the right to declare that not willing to continue the employment relationship and termination of employment, if the acquisition caused the change in working terms and conditions, whereas if there is no change in working conditions then the employee has no right to demand termination of employment. Meanwhile the employers have the right under any circumstances to terminate employment because of an acquisition.

In the event of a corporate restructuring activity, it will not automatically result in the employment relationship ending, the employment relationship can continue as long as the employee does not exercise his right to declare that he is not willing to continue the employment relationship and the employer does not exercise his right to refuse to accept employees. For this reason, it is very important to provide clear information by the employer as the party carrying out the corporate restructuring activities, to the employees, regarding the restructuring activities

to be carried out and the status of the employees, how to resolve the status, rights and obligations of employees, whether the employment relationship will be continued at the transferee company, whether there are changes to the terms of work, and other matters related to the protection of the rights and interests of employees.

The employees who have the right not to be willing to continue the employment relationship are limited to certain employees who change their employment relationship or there is a change in working conditions, and the employers can only exercise their right not to accept employees and terminating the employment relationship, only for employees from companies that carry out mergers, consolidations, or spin-offs, while for corporate restructuring activities in the form of acquisitions, employers can terminate employment for their employees.

4.2 The Form of Legal Protection for Employees from the Corporate Restructuring Activities Based on Labor Law after Enactment of the Job Creation Law

Law has a role as a tool to provide protection and function to regulate association and resolve problems that arise in society. In the context of protection in the field of employment for both employees and employers, government intervention is needed to maintain a balance between the parties through statutory regulations, this makes labor law both private and public. The right to get a job is one of the rights related to human rights in the economic, social and cultural fields, where the right of workers is the right to obtain a decent job.

The legal protection of employees in the Manpower Act aims to guarantee the basic rights of employees and guarantee equal opportunities and treatment without discrimination on any basis to realize the welfare of employees and their families while taking into account developments in the progress of the business world. The employee's rights that need to be protected under the Labor Law include, among others are the right to get the opportunity to get a job and equal treatment without discrimination as mentioned in Article 5 and Article 6), and employees must be given a job based on the principles of open, free, objective, fair, equal and without discrimination as mentioned in Article 32 paragraph (1), and the right to equal opportunity to choose, get or change jobs, and get a decent income as mentioned in Article 31.

Legal protection is distinguished based on its purpose and can be divided into two, namely preventive legal protection and means of repressive legal protection. Preventive legal protection aims to protect employees through laws and regulations, which cover various aspects of employment such as protection regarding welfare, health protection, occupational safety protection and legal protection in association. Meanwhile, repressive legal protection concerns employees' rights in laws and regulations to safeguard their normative rights if there are disputes or other abuses committed by employers/employees. Furthermore, repressive protection is protection that is carried out when employees experience problems both internally and with employers.

The implementation of mergers, acquisitions and corporate restructuring activities must consider the protection of employees. The main principle regarding legal protection for employees in the event of a corporate restructuring activity is to guarantee the fulfillment of the basic rights of employees to get a job and earn a decent income. Therefore, both employers and employees must avoid termination of employment in accordance with the mandate in Article 151 paragraph (1) of the Manpower Act, employers must take all possible steps to prevent termination of employment. For this reason, employers must make efforts so that every employee can continue to carry out his work or the employment relationship continues with the same working conditions or not lower than before. Although the parties must prevent

termination of employment from occurring, employees' basic rights to choose a job and to earn a decent income also need to be protected, therefore the Manpower Act gives employees the right to declare that they are not willing to continue the employment relationship.

Article 126 paragraph (1) of the Limited Liability Company Law stated that legal actions of merger, consolidation, acquisition or separation (demerger) must take into account the interests of certain parties, including employees. Then based on Article 123 and Article 125 paragraph (6) of the Limited Liability Company Law stipulates that in the event of a merger, consolidation, separation (demerger), and acquisition through the company's directors, the company's directors are required to make a merger, consolidation, separation (demerger), or acquisition plan, in which one such plan shall mentioned the method of settling the status, rights and obligations of members of the employees. The company's directors are also required to announce the abridge of the plan in a nationally circulated newspaper and announce to employees from companies that will carry out corporate restructuring activities, no later than 30 (thirty) days before the call for the GMS, where the employees and other interested parties granted the right to obtain the proposed merger, consolidation, separation (demerger), or acquisition.

Announcements in newspapers and announcements to employees regarding the company's restructuring activity plan are intended to provide an opportunity for the parties concerned, including employees, to become aware of the existence of the plan and submit objections if they feel their interests have been harmed. Therefore, employers must provide clear and unequivocal information to employees regarding policies that will be implemented by employers against employees due to corporate restructuring activities, settlement of status, rights and obligations of employees. In author opinion the urgency for employers to convey information clearly and unequivocally regarding the policies that will be applied to each employee so that employees can obtain proper information before employees use or do not use their rights to state that they are not willing to continue the employment relationship.

Under Article 154A letter a Labour Laws and Article 41 and Article 42 PP 35/2021, the employers have a right to terminate the employment based on corporate restructuring activity, and the employers is obliged to give notify in writing regarding the termination of employment, which is done in the form of a letter of notification and submitted legally and properly within a period of 14 (fourteen) working days prior to the effective date of the desired termination of employment. The information that must be notified to employees is in the form of the intent and reason for the termination of employment, and termination of employment compensation and other rights for employees arising as a result of termination of employment. Employees are given limited time to submit a rejection of the termination of employment, which must be submitted within 7 (seven) working days after receiving the notice of termination of employment from the employer, as stated in Article 39 paragraph (1) PP 35/2021.

Labor law also provide rights to employees to declare that they are not willing to continue the employment relationship because of the restructuring activity. This is to protect the interests of employees from changes in working conditions, or changes in employees' rights and obligations, which are detrimental to employees. In a corporate restructuring activity it is often followed by a restructuring of human resources, however employers cannot immediately change the working conditions for employees, employers must respect and comply with the work agreement agreed upon by the parties which forms the basis of an employment relationship. In the event that the implementation of a corporate restructuring results in a change in the working conditions for employees, both those that apply generally to all employees and specifically apply to individual employees, then this must be done with the approval or agreement of the parties.

The right of employees to declare that they are not willing to continue the employment relationship due to corporate restructuring is also to protect the basic rights of employees to get equal opportunities to choose, get, or change jobs, and get a decent income, employees must be given the freedom to choose their jobs, including the scope of work, choosing employers or employees, choosing the working conditions, that apply to him. Thus the employee's right to declare that they are not willing to continue the employment relationship can be used as long as the restructuring activity results in the transfer of the employment relationship and/or changes in working conditions, both those that apply generally to all employees and specifically apply to individual employees and/or human resource restructuring that implications for employees.

In interpreting the provisions regarding employees' rights not to continue the employment relationship due to corporate restructuring, can use systematic (logical) interpretation methods, in which based on this method, if the employee has exercised his right not to continue the employment relationship in accordance with the specified requirements, the employer must terminate employment. This is based on the provisions in Article 154A of the Manpower Law, in which the termination of employment shall be done based on 2 (two) factors, first is the existence of corporate restructuring activities in the form of a merger or consolidation or acquisition or separation (demerger), and the second is the employees who are not willing to continue the employment relationship or employers who are not willing to accept employees.

If the employee has exercised his right to declare that he is not willing to continue the employment relationship, but termination of employment can only occur based on the employer's unilateral decision, then this does not provide legal certainty. Therefore, as long as the employee has used his right to declare that he is not willing to continue the employment relationship and such employee has the right to do so, termination of employment must be settled, and this is in line with the provisions in Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution which states that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law.

Furthermore, other protection provided to employees, is the right to receive termination of employment compensation. This compensation is also a form of protection for employees whose employment relationship has been terminated, among other things so that these employees can still obtain a decent living for humanity as mandated in the 1945 Constitution. Labor regulations divided the compensation based on the form of corporate restructuring activity. If such restructuring result in the transfer of employment relationships to other employers as legal subjects or different legal entities (mergers, consolidation, and separation (demerger),) employees will receive termination of employment compensation in the form of severance pay of 1 (one) times, reward pay of 1 (one) time, and compensation for rights.

Whereas the termination of employment that occurs due to acquisition, where there is no transfer of employment relationship, then if the termination of employment initiative originates from the employer, the employee will receive termination of employment compensation in the form of severance pay of 1 (one) time, reward pay 1 (one) time, and compensation for rights, while if the termination of employment is due to the acquisition based on the employee's initiative, the employee will receive lower compensation, namely severance pay of 0.5 (zero point five) times according the specified amount, reward pay of 1 (one) time, and compensation for rights.

Beside preventive legal protection, the law also provides repressive protection, namely by obtaining industrial relations dispute resolution, as well as imposing sanctions on entrepreneurs

in the form of fines, imprisonment, or other penalties. If the implementation of termination violates the applicable law, the employees may take an action for settlement of industrial relations disputes including by filing industrial relations dispute lawsuits in the form of termination of employment dispute lawsuits, namely disputes that arise because there is no conformity of opinion regarding the termination of the employment relationship carried out by one of the parties. The labor law also provides protection for employees whose employment relationship is terminated and does not receive compensation termination of employment as appropriate, through the criminal sanctions against employers as referred to in Article 185 paragraph (1) of the Manpower Act, which stipulates that the employers will be imposed to criminal sanctions if they not fulfil their obligation to pay the termination compensation to the employees.

V. Conclusions

In the event of a corporate restructuring activity in the form of a company merger, consolidation, acquisition, or separation (demerger), the employment relationship can continue, as long as there is no termination of employment that could arise at the initiative of the employer or employee. Labor regulations in Indonesia after the enactment of the Job Creation Law give rights to employees not to continue the employment relationship, as well as give employers the right not to accept employees in the event of a corporate restructuring activity.

The legal protection for employees in the event of a corporate restructuring activity, can be as preventive legal protection, namely to avoid employment termination, to obtain information regarding the corporate restructuring activities as well as the employment impact, to received proper notification regarding their termination and have sufficient time to approve or reject the termination, right to declare to not continue the employment relationship, and right to receive the compensation payment for employment termination. Beside the preventive legal protection, the law also provide repressive legal protection, namely obtaining a settlement of industrial relations disputes including lawsuits for industrial relations disputes, and also the existence of criminal threats for employers who do not fulfil the obligation to pay termination of employment compensation.

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