

Legal Protection of Labor in Employment for Termination of Employment Due to the Acquisition of the Company

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ABSTRACT

The emergence of competition makes companies do various things to maintain their existence and the stability of companies in the world of economy. One of the ways the company survives in the agreement is to make an acquisition. In addition to generating profits for the company that acquires the acquiring company, acquiring can also balance employment including termination of employment that is detrimental to workers. The subject matter of this research is protection for workers carried out with approval and how to solve the problems requested by companies that carry out procurement actions. This research is normative legal research, which is assisted by field research with interview techniques. The agreement used was approval on invitation (statute approach), conceptual agreement (conceptual approach) and case approach (case approach). Data is collected by literature study, by reading references that are used such as invitation rules, books, journals, which are related to the debate raised, then analyzed by description analysis techniques. Regarding the results obtained in Indonesia's positive law legal protection for workers resulting from acquisitions by companies still relies on the Labor Act, there is no sense of justice for workers when there are terminations due to the acquisition. Termination of employment is resolved by legal action in the form of non-litigation and legal litigation under Settlement of Industrial Relations Disputes Act. This research is important because the labor law is far from the concept of the Pancasila legal rule in which the Pancasila legal rules always uphold public welfare and social justice in the protection of workers, workers in Indonesia are still underestimated, and do not have enough space to protect.

Keywords: Legal Protection; Labor; Acquisition.

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INTRODUCTION

Indonesia is a rule of law (*rechtstaat*), therefore, it has the main purpose of regulating public interests based on law towards its people. One of the tasks of the rule of law is that one wishes it is in accordance with the law. The rule of law in Indonesia is known as the Pancasila



State of Law.¹ The Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) adhere to the integral state theory which is contained in the explanation of the 1945 Constitution which affirms that "the State of agreement of all the Indonesian people and the blood of Indonesia by using unity." In addition, Indonesia also adheres to the understanding of the welfare state (state), where the State can trust the law as one of the weapons to regulate and manage and guarantee the welfare of its people². The prosperity and welfare of the people must be immediately achieved by development, so that the results of development can be provided by the whole community to improve prosperity that is fair and equitable. The success of development will undoubtedly not succeed without the intervention of the community to achieve development carried out by all levels of society.

National development carried out in the context of the development of the Indonesian State as a whole, which aims to create a prosperous, just and prosperous society. In realizing the vision of national development, the role of the workforce considers the importance of one component to realize these development goals, so that it is necessary to ensure justice for workers in this national development. Article 27 paragraph (2) of the 1945 Constitution is an Indonesian labor law relating to national economic development goals that adhere to the Pancasila economic democracy concept with the aim of creating the welfare of the whole Indonesian people.

On the other hand, the current era of globalization is very fierce business competition among businesses that carry out business activities in Indonesia. The companies currently competing with each other and competing in improving services to consumers so that the company can grow and develop. To maintain its existence in the business world, many business actors increase their business by establishing cooperation between companies. One of the forms of corporate cooperation is through acquisition or often known as takeover or in the language of practitioners is known as take of.

The acquisition is the acquisition³ of company ownership by the acquirer³, resulting in the transfer of control over the shares acquired. In this case the acquirer usually has a larger size compared to the acquired party. Juridically, the method adopted in taking over a company is by purchasing shares in whole or in part from the acquired company. In acquiring a company, it can be done internally or externally, internal acquisitions are usually carried out by a company to its own group companies, while external acquisitions are usually carried out against companies outside the group or against other group companies.

¹Sunarjo, S. (2014). Peradilan Sebagai Pilar Negara Hukum Dalam Perspektif Pancasila. *Jurnal Cakrawala Hukum*, 19(1), pp. 71-81.

²Zulkarnaen, A. H. (2016) Perlindungan Hukum Terhadap Pekerja Dalam Pelaksanaan Hubungan Industrial. *Padjadjaran Journal of Law*, 3 (2), 407- 427. DOI: <https://doi.org/10.22304/pjih.v3n2.a10>.

³Arifin, M. (2017). Pertanggungjawaban Hukum atas Keterlambatan Pemberitahuan Akuisisi Asing kepada Komisi Pengawas Persaingan Usaha. *Lex Renaissance*, 2(2), 259-277. <https://doi.org/10.20885/JLR.vol2.iss2.art9>.

The acquisition action is one of the right ways to keep the company in order to always be able to compete in the business world, the acquisition will have a positive impact on the company but the acquisition is also able to bring negative impacts to workers. In the act of acquisition, companies should pay attention to the interests of other parties such as creditors, shareholders and even workers. Basically, if there is an acquisition in a company, it is possible that industrial disputes will arise, especially labor disputes.

Termination of employment is very bright for workers, in the case of the acquisition of workers' companies do not have enough space to make objections and the absence of a forum such as deliberation in determining the fate of workers. Acquisition actions only benefit entrepreneurs to avoid deeper losses. The current regulation does not reflect a sense of justice and does not indicate that this country is a Pancasila State that prioritizes the principles of kinship and harmony that are able to keep the rights of workers and employers equally protected. Regarding termination of employment due to the acquisition of companies that are regulated in the provisions of Article 163 of the Republic of Indonesia Law No. 13 of 2003 concerning Labor (hereinafter referred to as the Labor Act). It even provides only two choices that must be chosen by workers in a company acquisition situation including choosing not to continue working relations and not being accepted by the company. In the industrial world, the relationship between employers and workers is not always in good condition. Harmonious relationships in the world of work between employers and workers are usually because each party has different interests and goals.

Disharmony between employers and workers as an employment event is likened to the phenomenon of the iceberg, the labor problem that is seen is only the surface but the root of the problem covers many things and is classified as very complicated.⁴ Often termination of employment cannot be avoided by both workers and employers, therefore employers must seek all workers' rights arising from the termination of employment caused by the acquisition of the company. Therefore it is necessary to have a legal protection for workers who experience termination of employment caused by the acquisition. The welfare of Indonesia's labor force is the responsibility of the government in accordance with Article with Article 4 of the Labor Act which regulates labor development goals. Therefore, it is necessary to learn more about the legal protection of workers as a result of company acquisitions and the efforts made by workers against industrial relations disputes, especially if there is termination of employment so that legal protection and dispute settlement formulations are found that position workers and employers as a proportional.

Research on legal protection for workers as a result of the acquisition of this company has a different study with other studies that also examine the protection of law against workers.

⁴Syafa'at, R. (2008). *Gerakan Buruh dan Pemenuhan Hak Dasarnya: Strategi Buruh dalam Melakukan Advokasi*. Intrans Publishing: Malang, p. 2.

The scientific works that examine the legal protection of workers are as follows: first Sabri Faturuba (2011) with the title research on Legal Protection for Stakeholders for the Acquisition Process of PT. Bank Jasa Artha by PT. Bank Rakyat Indonesia Tbk in this study the focus of the study is on the acquisition process of Bank Jasa Artha by Bank Rakyat Indonesia Tbk in terms of positive law and legal protection for parties who have interests related to the acquisition process.⁵ Secondly by Maya Sari, Abdul Rachmad Budiono, Hanif Nur Widhiyanthi (2017) with the title Legal Protection Analysis for Minority Shareholders in the Acquisition Process Based on Article 126 of Law Number 40 Year 2007 the focus of this study is on the consistency of Law Number 40 of 2007 concerning Limited Liability Companies with respect to legal protection for minority shareholders in the event of a company acquisition⁶.

METHOD

The research method used in this study is the normative legal research method, normative legal research is research that emphasizes how to obtain data from library materials, especially those that have a relationship with the law problem. This research will also be supported by data obtained in the field by interviewing companies that have made acquisitions. In addition to normative research, this research is also assisted by field research with interview techniques to get accurate data from the field. This study uses a statute approach carried out by examining the laws and regulations relating to labor and acquisition legal issues. This approach is carried out with the aim of finding the *legis ratio* and the ontological basis for the birth of the law.⁷ The conceptual approach is also used in this study to obtain views and doctrines that develop in the science of law related to employment and acquisition. By studying the views and doctrines in law, this research will be able to find ideas that give birth to legal understandings, legal concepts, and legal principles that are relevant to the issues at hand.⁸ The last approach is a case approach (case approach) required a case to deepen the results of this study. The legal material used in this study is in the form of primary legal material consisting of legislation related to employment and acquisition, then secondary legal material consisting of textbooks, articles in various scientific journals in the field of labor law and acquisitions. The technique of collecting legal materials is done by collecting library legal materials using a card system and then analyzing them using description, interpretation, evaluation, argumentation and systematization techniques. Claims are carried out by inductive methods, which are things that are specifically interesting and then draw conclusions that are in accordance with those agreed in the study.

⁵Faturuba, S. (2011). Perlindungan Hukum Bagi Para Pihak Berkepentingan Atas proses Akuisisi PT. Bank Jasa Artha oleh PT. Bank Rakyat Indonesia Tbk. *Jurnal Sasi*. Vol. 71 (2), pp. 10-22.

⁶Sari, M., Budiono, A. R. (2017). & Widhiyanti, H. N. Analisa Perlindungan Hukum Bagi Pemegang Saham Minoritas Dalam Proses Akuisisi Berdasarkan Pasal 126 Undang-Undang Nomor 40 Tahun 2007. *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan*, 2(2), 115-124. <http://dx.doi.org/10.17977/um019v2i22017p115>.

⁷Marzuki, P. M. (2014). *Penelitian Hukum edisi Revisi, Cet. Ke-9. Kencana Prenada Media Group: Jakarta*, p. 213.

⁸*Ibid*, p. 133.

ANALYSIS AND DISCUSSION

A. Legal Protection of Workers in Employment Relations for Termination of Employment Due to Company Acquisition

Formally, since 1946, Indonesia has declared itself as a rule of law, this is confirmed in the 1945 Constitution. As a constitutional state, Indonesia has the obligation to pay attention and fulfill the conditions as a constitutional state by taking into account the concept of the rule of law. Ismail Suny gave four formal requirements for the rule of law which would be an obligation for the government to be implemented, including Human Rights; Power Sharing; Government Based on Law and State Administrative Court. In the rule of law also gives the same position to each community, the same position without any difference (equality before the law).⁹ As for the nature of the rule of law which is associated with the basic idea of the rule of law which is associated with the idea of popular sovereignty which then turns into the concept of democracy. If the principle of the rule of law is to prioritize the norms that are reflected in the legislation, then the principle of democracy prioritizes the role of the community in organizing government. There are two streams of democracy, firstly constitutional democracy which aspires to a government that is limited to power, or a state of law (*rechstaat*) that is subject to the rule of law; secondly, democracy based on communism which aspires to a government that cannot be limited by power (*machtsstaat*) and is totaliter.¹⁰ From the two streams of democracy, a significant difference is seen. Constitutional democracy wants a government power that is limited by laws and regulations, and there is no government arbitrariness, as well as a limit on state power so that the opportunity to abuse power is very small, while democracy based on communism wants the opposite.

The embryo of the birth of the concept of the rule of law is derived from the concept of the rule of law (*rechstaat*).¹¹ Julius Stahl notes the formulation of the concept of the rule of law (*rechtsstaat*) including.¹² Protection of human rights; separation of powers; the government must be based on statutory regulations and the administration of administrative justice. Meanwhile, according to Ni'matul Huda, the characteristics of *rechstaat* are the existence of a constitution or constitution which contains written provisions concerning the relationship between business people and the people, the distribution of power, and the protected rights of the people.¹³ When viewed from the opinion of experts on the formulation of the concept of the rule of law and the

⁹Muin, F. (2015). Perlindungan Hukum Terhadap Tenaga Kerja Indonesia (Tinjauan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan dan Perlindungan Tenaga Kerja Indonesia). *Jurnal Cita Hukum*, 3 (1), pp. 11-24, DOI : 10.15408/jch.v2i1.1838.

¹⁰Allan Fatchan Gani Wardhana dan Harry Setyanugraha. (2013). Pemberian Legal Standing kepada Perseorangan atau Kelompok Masyarakat dalam Usul Pembubaran Partai Politik. *Ius Quia Iustum Law Journal*, 20(4), pp. 523-544. DOI: 10.20885/iustum.vol20.iss4.art2.

¹¹Endrawati, N. (2012). Perlindungan Hukum Terhadap Pekerja Anak Di Sektor Informal (Studi Kasus di Kota Kediri). *Jurnal Dinamika Hukum*, 12(2), 2012, pp. 270-283. doi: <http://dx.doi.org/10.20884/1.jdh.12.2.47>.

¹²Asrun, A. M. (2016). Hak Asasi Manusia Dalam Kerangka Negara Hukum: Catatan Perjuangan di Mahkamah Konstitusi. *Jurnal Cita Hukum*, 4(1). 133-154. doi: 10.15408/jch.v4i1.3200.

¹³Basuki, U. (2012). Perlindungan HAM dalam Negara Hukum Indonesia: Studi Ratifikasi Konvensi Hak-hak Disabilitas (Convention on The Rights of Persons with Disabilities). *Jurnal Sosio-Religia*, 10(1), pp. 17-34.

characteristics of the rule of law, both emphasize the recognition and protection of human rights which are based on the principles of freedom and equality.

Talking about the equality of the position of the community before the law, so does the protection of the community before the law. So people should have the same protection by the State. With regard to the protection of the State of its people the State also guarantees the protection of labor. This is regulated in article 28 D paragraph (3) of the 1945 Constitution, which reads that "every citizen has the right to work and to get compensation and fair and proper treatment in employment relations".

Indonesia as a state based on law (*rechtsstaat*) also holds firmly understood the welfare state, which in this case the law functions as a means to regulate the implementation of people's welfare. Jhering and Bentham. The theory he put forward is how to approach the law by considering law as a tool to achieve social goals and tools / instruments for social development towards happiness, the real happiness comes from the nature of the law which has a role to deliver the community to prosperity. Laws that benefit society if they bring happiness. The most important thing for an individual is to increase the happiness, so that the interest of the community is to increase the amount of happiness of individuals who are in the community.¹⁴

Regarding the welfare of the "founding fathers", the Indonesian state uses the term "just and prosperous" as stated in the second paragraph of the opening of the 1945 Constitution, herein is "general welfare" and "social justice" in the fourth paragraph of the Preamble of the 1945 Constitution, the term "social welfare" in Article 33 of the 1945 Constitution and the term "people's prosperity" in paragraph (3) of the said article.¹⁵ Legal protection is a protection of the dignity, as well as recognition of human rights owned by legal subjects based on legal provisions from abuse or as a collection of regulations or rules that will be able to protect one thing from other things. The principle of legal protection in Indonesia is the foundation of Pancasila as an ideology and state philosophy. The principle of legal protection for the people against governmental actions rests and comes from the concept of recognition and protection of human rights because according to its history in the West, the birth of the concepts of recognition and protection of rights to the community and government.¹⁶

So it can be simplified that the protection of workers in Indonesia still rests on the protection of the dignity of workers, including their human rights both individually and as

¹⁴Aji, A. M. (2016). Pemberatasan Tindak Pidana Terorisme di Indonesia (Analisis Terhadap Undang-Undang Nomor 15 dan 16 Tahun 2003 Berdasarkan Teori Hukum). *Jurnal Cita Hukum*, 1(1). <http://dx.doi.org/10.15408/jch.v1i1.2980>.

¹⁵Suhardin, Y. (2007). Peranan Hukum Dalam Mewujudkan Kesejahteraan Masyarakat. *Jurnal Pro Justisia*. 25 (3). pp. 270-282.

¹⁶Anggriani, R. (2017). *Perlindungan Hukum bagi Irregular Migrant Workers Indonesia di Kawasan Asia Tenggara (dalam Perspektif Hukum HAM Internasional)*. *Yuridika*, 32(2), pp. 310-335.

workers.¹⁷ Labor is the backbone of the company, this adagium seems ordinary without meaning, but if it is examined more deeply the truth will be seen. Workers are the backbone in a company because the role of workers is very important, biases can be imagined if there is no labor then the company will not be able to walk even more able to participate in development.

The development and success of a company is very dependent on its workers, the relationship between the company and the workers will need each other, on the one hand workers need the company as a place for them to earn a fortune and on the other hand the company also needs workers as resources who will run the company to achieve the goals of the company the. The importance of the existence of workers for companies, governments and the community, it is necessary to think so that the work has protection in carrying out its work.

Protection of workers can be done both by providing guidance, as well as by increasing recognition of human rights, physical and technical protection as well as social and economic through applicable norms in that work environment. In the preamble letter d of the Labor Act states that "protection of labor is intended to guarantee the basic rights of labor and guarantee equal opportunities and behavior without discrimination without any basis for realizing the welfare of the workforce and their families while taking into account developments in the progress of the business world".

In recent business competition, many companies experience progress or failure in running their business, the main problem they experience is the limited capital to run their business. Many companies have decided to cooperate with other companies both large companies and companies that already have a name to maintain the sustainability of their business. The collaboration can be in the form of mergers or company acquisitions. This is done solely to strengthen the foundation of their business so that they can maintain the existence of their company. Acquisition is one way for entrepreneurs to carry out business activities in order to get the maximum possible profit and avoid losses in running a business. Of course the decision to take over the company is a very appropriate decision for employers, because it will help strengthen their business, but the takeover can also cause problems for workers in their companies. Of course there are workers who agree with the expropriation policy and also those who disagree, those who agree will follow the company, and those who don't agree are likely to leave the company. Now this is something that can make companies have problems with labor.

The company must pay attention to several things in taking acquisitions, especially regarding the interests of the workers. The interests of workers are very important to be considered by business actors in carrying out the act of acquisition, this is because workers have a very large role in running their business to achieve success and maximum profits. Companies without workers will not be able to run as they should, therefore labor rights and

¹⁷Kahfi, A. (2016). Perlindungan Hukum Terhadap Tenaga Kerja. *Jurisprudentie, Fakultas Syariah dan Hukum UIN Alauddin*, 3(2), pp. 59-72. <https://doi.org/10.24252/jurisprudentie.v3i2.2665>.

interests need to get legal protection. The legal protection of these workers is very important so that business actors do not arbitrarily carry out their work in the company, let alone terminate employment, especially termination of employment due to acts of company acquisition.

Acquisition of the company will be based on the structure of the work position, restructuring the work position is not infrequently lead to a mutation of the position that will result in changes in the work agreement. This amendment to the employment agreement can have a negative or good effect on workers who can only add value or reduce the value of the rights or obligations of workers working in companies. If we review the Law of the Republic of Indonesia Number 40 Year 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law) it does not provide space for workers in terms of filing objections to the actions of business actors to make acquisitions. Likewise, the Labor Law provides only two opportunities for workers to make decisions if the company they work for acquires another company or acquires another company, the choice is to accept the action or not. If there is an option not acceptable then be prepared to accept termination of employment by the company on the basis that the employee is not willing to continue the employment relationship resulting from the acquisition action, if the decision is pleasant, then the working period will be continued with the possibility of still being in the original position or a new position, or can rise or demoted. The two laws above do not provide an opportunity for workers to object to the policies taken by the employer to take acquisitions. If we are referring to the concept of a rule of law that guarantees and protects human rights including the right to work, moreover the Pancasila legal state that we profess to promote and emphasize labor issues in order to be resolved by consensus agreement by positioning workers and employers proportionally. Pancasila rule of law requires that labor issues not position workers as factors of production, but rather as partners in the production process.

Tamara Lothion gives different types of labor law into corporate and contractual types. This type of corporatism in the field of labor law is carried out through the practice of legislation policies in the form of legislation making as an attempt by the government to develop national law. This is increasingly getting the basis of justification, if connected with the legal system adopted by Indonesia since the beginning of independence based on the principle of concordance (from Dutch law) which adheres to the Continental European legal system (civil law)¹⁸ and not the Pancasila rule of law system. The corporate type is used, because the working relationship model that is to be developed is a harmony model, namely:¹⁹

- a. The parties do not have freedom, but are controlled by the government through repressive legal provisions.

¹⁸Charada, S. U. (2016). Karakteristik Undang-Undang Ketenagakerjaan Dalam Perlindungan Hukum Terhadap Tenaga Kerja. *Jurnal Wawasan Yuridika*, 32(1), pp. 1-21. <http://dx.doi.org/10.25072/jwy.v32i1.86>.

¹⁹Charada, U. (2012). Reorientasi Reformasi Model Hukum Ketenagakerjaan dalam Kebijakan Pemerintah. *Syar Hukum*, 14(1), pp. 11-25. <https://doi.org/10.29313/sh.v14i1.1448>.

- b. Consensus (cooperation) is required by prohibiting conflicts (strikes).
- c. Required to use the settlement peacefully and prohibit the use of coercive methods (strike or even out lock).

Meanwhile, in the contractual type of labor law, labor relations are based more on the bargaining power of workers against employers, the government is not an active party in making labor regulations, but only acts to facilitate labor organizations by guaranteeing the right to organize. This refers to the type of coalition that has the characteristics of a harmonious work relationship and conflict work relations.²⁰

This contractualist type is a capitalist concept that requires the state not to interfere with workers' problems with employers, but instead is left to the market mechanism with a flexible worker system, but returns to the purpose of labor law and the role of government is still very much needed and eliminates state interference is not the right solution really right. Legislation should provide space for workers to provide input or submit an objection to the actions of business actors in making decisions. The State of Indonesia is a Pancasila State that starts from the principle of family and harmony, these two principles are integrated principles which always put the interests of the community at large, but still respect human dignity.²¹

In connection with the description above, M. Tahir Azhary provides an understanding related to the explanation of the 1945 Constitution used the term *rechtstaat* but which is adopted by the State of Indonesia is not the concept of *rechtstaat* and not the concept of rule of law. But with its own concept, the Pancasila Law State concept with the following characteristics:

- a. There is a close relationship between religion and the state;
- b. Relying on the Godhead of Money;
- c. Religious freedom in a positive sense;
- d. Atheism is not justified and communism is forbidden;
- e. Prioritize the principles of family and harmony.²²

Then Philipus M. Hadjon said that the Pancasila State Law cannot be compared to *rechtstaat* and rule of law for the following reasons:²³

- a. Both the concept of *rechtstaat* and the rule of law from its historical background were a struggle against the arbitrariness of the authorities, whereas the republic of Indonesia since its plan to stand up was clearly opposed to arbitrariness or absolutism;
- b. Both the *rechtstaat* concept and the rule of law place recognition and protection of human rights as the central point, while the Republic of Indonesia which is the

²⁰Agusmidah. (2011). Dilematika Hukum Ketenagakerjaan Tinjauan Politik Hukum. *Sofmedia: Medan*, p. 10.

²¹*Ibid.* p.12

²²Salia, H. E. (2017). Peran Mahkamah Konstitusi Dalam Mewujudkan Negara Hukum Yang Demokratis. *DiH: Jurnal Ilmu Hukum*, 13(25), pp. 28-39. <https://doi.org/10.30996/dih.v13i25.1546>.

²³ Sunarjo, S. (2014) *Op.Cit.* p.77

central point is the harmony of relations between the government and its people based on kinship;

- c. To protect human rights, the concept of *rechtstaat* emphasizes the principle of *wetmatigheid* and the concept of rule of law promotes the principle of equality before the law, while the Republic of Indonesia with the concept of the Pancasila Law State state the principle of harmony in the relationship between the government and the people or between the authorities and the community.

For the reasons stated above, the Labor Act should provide space for workers in raising objections to the actions of business actors in taking acquisitions, because with the opportunity to submit objections contained in deliberations between workers and employers able to accommodate the aspirations of workers so that the principles of family and harmony can be applied and workers feel their rights are protected. Legal protection which is expected to be able to cover workers whose employment has been terminated due to the acquisition of the company is currently only regulated in article 163 of the Labor Act which reads as follows:

- a. Employers may terminate the employment of workers in the event of a change in status, merger, or change of ownership of the company and the worker is not willing to continue the employment relationship aka the worker has the right to severance pay of 1 (one) time the provisions of article 156 paragraph (3) and substitute money rights in accordance with article 156 paragraph (4).
- b. Employers may terminate employment due to changes in status, merger, smelting of companies, and employers are not willing to accept workers in their company, so workers are entitled to severance pay of 2 (two) times the provisions of article 156 paragraph (2), reward for years of service 1 (one) time provision in article 156 paragraph (3), and compensation money according to the provisions in article 156 paragraph (4).

If we look at the provisions of article 163 of the Labor Act above, it does not seem to very much reflect the Pancasila Law State which emphasizes kinship and harmony in the relationship between workers and employers. In connection with termination of employment can occur not only because of the desire of workers to not continue the employment relationship, but also can be done by business actors if the business actor is not willing to accept workers to work again in his company, so this creates a difference in the number of rights accepted by workers as a result of termination of employment.

Termination of employment is one of the four types of disputes governed by Law No. 2 of 2004 Settlement of Industrial Relations Disputes (hereinafter referred to as Settlement of Industrial Relations Disputes Act), disputes between workers and employers are indeed related to harmonious employment relations is indeed not an easy matter. Paragraph (15) of the Labor Act, looks at the employment relationship regulated in simple negotiations, talks in practice

regarding complex employment relations as well as debates on cooperation involving the promotion of justice.

Work relations are carried out based on agreements made by workers and employers, which are in accordance with article 1320 BW that meets the requirements that meet the appropriate requirements and skills, as well as the requirements according to the object and causa. The agreement in this case must be resolved by considering fairness in making the agreement, the thing that needs to be agreed is to be made with the pressure of providing work which ultimately places the workers in a difficult situation to decide and defend their rights. In making an agreement there needs to be an agreement made by way of deliberation so that the rights and opinions of the parties making the agreement are accommodated in the agreement to be found today.

B. Legal remedies approved by workers in Settlement of Termination of Work

Disputes

The Unitary State of the Republic of Indonesia is a state based on law (*rechtstaat*), not based on power (*machtstaat*), and government based on constitution (basic law), not absolutism (unlimited power) regulated in article 1 paragraph (3) of the 1945 Constitution. of article 1 paragraph (3) of the 1945 Constitution contains 3 (three) basic principles that must be upheld by every Indonesian citizen including the rule of law, equality before the law and law enforcement in ways that are not contrary to the law.²⁴ With regard to law enforcement regarding the settlement of termination of employment disputes, it is regulated in Law of the Republic of Indonesia Number 2 of 2014 concerning Settlement of Industrial Relations Disputes act.

Corporate acquisitions are actions that can lead to industrial relations disputes. Industrial Relations disputes are differences of opinion which result in disputes between employers or employers' associations with workers or trade unions due to disputes regarding rights, disputes of interest and disputes regarding termination of employment and disputes between workers in a company. The understanding of Industrial Relations Disputes is regulated in the provisions of article 1 paragraph (1) of the Settlement of Industrial Relations Disputes act and the provisions of article 1 paragraph (22) of the Labor Law. Based on these provisions, disputes can be classified into four (4) forms of disputes, namely:

- a. Rights disputes are rights disputes that arise because rights are not fulfilled due to differences in implementation or interpretation of the provisions of the legislation, work agreements, company regulations, or collective labor agreements.
- b. Disputes of interest are disputes arising in a work relationship due to the absence of conformity of opinion regarding the making and amendment of terms of work

²⁴Charida U. S. (2006). Reaktulisasi Supremasi Hukum dalam Merekonstruksi Lembaga Peradilan Menuju Indonesia Baru". *Jurnal Jurista Insentif*, Vol. 1 No. 1, Kopertis Wilayah IV Jabar- Banten, Bandung, p. 59.

stipulated in an employment agreement, company regulations, or collective labor agreement.

- c. Termination of employment termination (PHK) disputes are disputes arising from the absence of conformity of opinion regarding termination of employment by one of the parties.
- d. Disputes arising between trade unions in an enterprise are disputes between trade unions and other trade unions in a company because there is no conformity of understanding regarding membership, the exercise of workers' rights and obligations.²⁵

Regarding the actions of business actors in making acquisitions, this will not result in the company being disbanded, but only a change of company controllers will occur, but it will still open the possibility of a Termination of Labor Disputes caused by disagreement between employers who acquire with workers from the acquired company. Legal remedies that can be taken by workers to settle disputes over termination of employment can be done by resolving disputes outside the court (non litigation) with some typology or filing a lawsuit to the Industrial Relations Court (litigation).

B. 1. Settlement of Work Termination Disputes through Non Litigation

Non litigation dispute resolution or dispute resolution outside the court comes from a foreign term Alternative Dispute Resolution (ADR). Altschul provides the ADR understanding as: "A trial of a case before a private tribunal agreed to by the agreed parties so as to save legal costs, avoid publicity, and avoid lengthy trial delays"²⁶ Jacqueline M. Nolan-Halay provides an understanding of "ADR is an umbrella term which refers generally to alternatives to court adjudication of dispute such as negotiation, mediation, arbitration, minitrial and summary jury trial".²⁷ Whereas legally in article 1 number 10 of the Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter referred to as the Arbitration Law and Alternative Dispute Resolution) defines alternative dispute resolution as an agency for dispute resolution or difference of opinion through procedures agreed by the parties the disputing party which is carried out outside the court by means of consultation, negotiation, mediation, conciliation or expert judgment. In resolving industrial relations disputes, it also provides the option to settle disputes outside the court in accordance with the provisions of the Settlement of Industrial Relations Disputes act, including by means of bipartite (negotiation), tripartite (mediation) and conciliation, while arbitration cannot be used as an effort

²⁵Khakim, A. (2004). *Dasar-dasar Hukum Ketenagakerjaan Indonesia*. Cet. IV. *Edisi Revisi*. PT. Citra Aditya Bakti: Yogyakarta, p. 146.

²⁶Yuniarti, R. (2016). Efisiensi Pemilihan Alternatif Penyelesaian Sengketa Dalam Penyelesaian Sengketa Waralaba. *Fiat Justisia*, 10(3), pp. 413-586. <https://doi.org/10.25041/fiatjustisia.v10no3.793>.

²⁷Mamudji, S. (2017). Mediasi Sebagai Alternatif Penyelesaian Sengketa di Luar Pengadilan. *Jurnal Hukum & Pembangunan*, 34(3), pp. 194-209. <http://dx.doi.org/10.21143/jhp.vol34.no3.1440>.

to settle work termination as regulated in article 1 Paragraph (15) of the Industrial Relations Disputes act that can be resolved through arbitration efforts only includes disputes of interest, and disputes between trade unions and trade unions in one company, so disputes over termination of employment are not included in the scope of the arbitration case.

a. Settlement Through Bipartite (Negotiations)

Bipartite is the earliest stage in resolving disputes that can be carried out by workers with employers in the event of industrial relations disputes, specifically regarding disputes over termination of employment as a result of acquisition actions by the company. Settlement of industrial relations disputes by means of bipartite in the literature on Alternative Dispute Resolution (ADR) is referred to as settlement by negotiation or often referred to as deliberation for consensus carried out as a family.

Negotiations come from English, namely negotiation which means negotiations by deliberation, while what is meant by bipartite negotiations is negotiations between workers or trade unions and employers in resolving industrial relations issues. With regard to negotiations as an alternative to dispute resolution, the legal dictionary Dictionary of Law provides the meaning of negotiation is a bargaining process by negotiating between the parties to the dispute to find a mutual agreement.²⁸ The word bipartite is a special terminology in solving industrial relations problems in which the parties constitute an integrated component of the company that has a bond in the employment relationship.

Settlement of industrial relations disputes using bipartite is regulated in article 3 paragraph (1) of the Settlement of Industrial Relations Disputes act, this effort is carried out deliberately to reach consensus by means of kinship so that it is able to find solutions to problems without anyone feeling disadvantaged or finding solutions that are equally beneficial or win-win win solution.

Regarding the grace period in resolving industrial relations disputes by bipartite must be settled no later than 30 (thirty) working days from the date of commencement of negotiations in accordance with article 3 paragraph (1) of the Settlement of Industrial Relations Disputes act. If within 30 (thirty) days as referred to in paragraph (2) one of the parties refuses to negotiate or has negotiated but is not reached an agreement, then bipartite negotiations were deemed a failure. Then if bipartite negotiations are deemed to have failed then one or both parties will register their dispute to the agency responsible for the local Labor field by attaching evidence that the settlement efforts through bipartite negotiations have been carried out, this matter is regulated in article 4 of the Settlement of Industrial Relations Disputes act.

If in the bipartite negotiations find an agreement, then it is obliged to make a collective agreement containing the results of the negotiations in accordance with article 7 of the

²⁸Marwan, M dan Jimmy P. (2009). Kamus Hukum: Dictionary of Law Complete Edition, Reality Publisher: Surabaya, p. 450.

Settlement of Industrial Relations Disputes act. A joint agreement made by the parties to be binding on both parties and has permanent legal force, the agreement must be registered at the Industrial Relations Court so that the agreement has an executive power if one of the parties in the agreement is in default or does not carry out the contents of the agreed agreement.

b. Settlement Through Tripartite (Mediation)

In the etymology of mediation comes from the Latin *mediare* which means in the middle, what is meant in the middle is the role of the mediator in carrying out his duties as an intermediary in resolving disputes. The mediator's position in the middle requires that the mediator be neutral and impartial in resolving disputes.

Industrial relations dispute resolution efforts outside the court can then be resolved by tripartite or mediation using the assistance of a third party. Mediation is an alternative typology of dispute resolution in the provisions of the Law on Arbitrage and Alternative Dispute Resolution.

In the provisions of article 1 paragraph (11) of the Settlement of Industrial Relations Disputes act which regulates mediation is the settlement of rights disputes, disputes of interest, disputes over termination of employment, and disputes between trade unions in one company only through deliberations mediated by neutral mediators. Whereas Article 1 paragraph (12) of the Settlement of Industrial Relations Disputes act states that industrial relations mediators are employees of government agencies responsible for labor that fulfill the requirements as mediators determined by the minister to be the mediator. In completing the assignment, time is given no later than 30 (thirty) working days from receiving the dispute resolution delegation in accordance with what is regulated in article 15 of the Settlement of Industrial Relations Disputes act.

In the mediation process as stipulated in article 13 of the Settlement of Industrial Relations Disputes act, if the parties reach an agreement to settle industrial relations disputes through mediation to settle the termination of employment due to the acquisition of the company, a joint agreement is signed by the party and witnessed by the mediator and registered with the Industrial Relations Court. The purpose of registering a collective agreement in the Industrial Relations Court is so that the collective agreement is legally binding on the parties, so that the parties cannot deny the terms agreed in the collective agreement. If one party reneges on a collective agreement that is agreed upon and registered, then the other party in the collective agreement that feels itself disadvantaged can submit an application for execution to the Industrial Relations Court.

c. Settlement Through Conciliation

According to the big Indonesian dictionary, conciliation is a matter of meeting the wishes of the disputing parties to reach agreement and settle the dispute.²⁹ Meanwhile, according to Oppenheim, conciliation is a process of resolving disputes by submitting it to a commission of people tasked with deciphering facts and making proposals for a settlement but the decision is not binding.³⁰

Conciliation is an attempt to resolve industrial relations disputes undertaken by the parties. Article 1 paragraph (3) of the Settlement of Industrial Relations Disputes act regulates the provisions of conciliation as efforts to settle industrial relations disputes that are specified as non-litigation efforts that are specific to industrial relations disputes that include conflicts of interest, disputes over termination of employment or disputes between trade unions and labor unions in a company. If seen from the conciliation provisions in the aforementioned Law, a dispute over rights cannot be submitted for conciliation. The effort of affiliation is intended so that the parties to the dispute hold a deliberation to reach consensus relating to the right solution to the dispute between the parties so that the parties can make peace without any party who feels they are harmed. If seen from the existence of a neutral third party to mediate disputes between two parties who have an attempt at conciliation settlement, then the conciliation settlement has similarities with mediation.

Article 1 paragraph (4) of the Settlement of Industrial Relations Disputes act states that the industrial relations conciliator consists of one or more qualified as conciliators determined by the minister, has the duty to conciliate and is obliged to provide written recommendations to the disputing parties to settle conflicts of interest, disputes interests, disputes regarding termination of employment and disputes between trade unions and trade unions at one company. In the settlement of industrial relations disputes with conciliation, it is expected that the conciliator will be able to complete his duty no later than 30 (thirty) working days from the day of receiving the request for dispute resolution in accordance with the provisions in article 25 of the Settlement of Industrial Relations Disputes act. This conciliation dispute settlement process has similarities with the mediation dispute settlement process, if an agreement is reached in the conciliation settlement, then a joint agreement is signed by the parties and witnessed by the conciliator and registered at the local Industrial Relations Court in accordance with the provisions of Article 23 of the Settlement of Industrial Relations Disputes act.

B. 2. Settlement of Work Termination Disputes through Litigation

Provisions in Article 1 paragraph (17) of the Settlement of Industrial Relations Disputes act regulating the Industrial Relations Court is a special court established within the district court

²⁹Imaniyati, N. S., & Badruddin, B. (2010). Choice of Forum Dalam Penyelesaian Sengketa Perbankan Syariah. *Jurnal Hukum & Pembangunan*, 40(3), pp. 408-424.

³⁰Wowor, F. (2014). Fungsi Badan Pertanahan Nasional Terhadap Penyelesaian Sengketa Tanah. *Lex Privatum*, 2(2). pp. 95-104

that has the authority to examine, hear and give decisions on industrial relations disputes. As a special court in a district court the industrial relations court has its own characteristics and has a number of things that are special (special) in the context of:

1. Specific authority, industrial relations court has special and limited authority in accordance with the provisions of article 65 of the Settlement of Industrial Relations Disputes act, while the authority is tasked with and has the authority to examine, hear and give decisions on:
 - a. In the first instance to adjudicate rights disputes;
 - b. At the first and last level regarding disputes of interest;
 - c. The first level deals with disputes over termination of employment;
 - d. At the first and last level regarding disputes between trade unions within a company.
2. The specificity of the panel of judges, in industrial relations justice using ad-hoc judges in examining cases. This ad-hoc judge was proposed by trade unions and employers' organizations. The composition of the panel of judges in examining cases consists of 1 (one) career judge as the chairman of the panel and 2 (two) ad-hoc judges as members of the panel that examine and decide upon disputes, and 1 (one) substitute registrar who has the role of assisting the panel.
3. Specific appointments for judges, appointment of ad-hoc judges is carried out based on the proposals of trade unions and employers organizations. The proposed ad-hoc judge was then selected by the Ad-hoc Prospective Judge Selection Implementation Committee formed by the minister responsible for Labor, namely the Minister of Labor and Transmigration. The Minister determines the list of candidates for ad-hoc judges and is submitted to the Chief Justice of the Supreme Court, while the appointment and dismissal of ad-hoc judges by presidential decree on the proposal of the Chief Justice of the Supreme Court.
4. The specificity of legal counsel, the parties can appoint legal counsel to trade unions and employers' organizations.
5. The specificity of the period of court proceedings and legal remedies, proceedings at the industrial relations court are not familiar with the appeal of the legal efforts, so that those who object to the industrial relations court's decision are related to disputes over rights and termination of employment relations. Article 110 and 111 of the Settlement of Industrial Relations Disputes act states that either party or the parties can file an appeal against the Supreme Court through the Registrar's Office at the Industrial Relations Court at the local District Court, with a period of no later than 14 (fourteen) working days with the provisions as follows:

- a. For the parties present, as of the decision was read out in the assembly session; and.
 - b. For parties not present, from the date of receipt Decision Notification. Article 103 of the Settlement of Industrial Relations Disputes act stipulates that the panel of judges must give a decision on the settlement of industrial relations disputes no later than 50 (fifty) working days from the first hearing. Whereas in the cassation process it is regulated in article 115 of the Settlement of Industrial Relations Disputes act that the settlement of rights disputes or disputes over termination of employment at the Supreme Court no later than 30 (thirty) working days from receipt of the request. The regulation on time spans clearly stipulated in this law intends not to spend a long time in the settlement of industrial relations disputes, especially in the case of termination of employment disputes.
6. The specificity of a lawsuit, filing a lawsuit at the industrial relations court must attach a minutes of dispute resolution through mediation and conciliation, if not attaching the minutes of settlement through mediation or conciliation, then based on the provisions in article 83 of the Settlement of Industrial Relations Disputes act the judge is obliged to return the claim to the plaintiff. Examining the contents of this lawsuit is like adopting a dismissal process at the State Administrative Court.
 7. The specificity of the examination, in proceedings at the industrial relations court can be divided into three, namely the examination of the contents of the lawsuit, examination of ordinary events and examination of quick events. Inspections with fast events are carried out based on the provisions of article 98 of the Settlement of Industrial Relations Disputes act, inspections with fast events can be carried out if there are interests of the parties or one of the pressing parties, and the parties or one of the parties can submit an application to the Industrial Relations Court so that dispute resolution is accelerated, based on petition from the parties or one of the parties to the dispute, within 7 (seven) working days after receipt of the request, the president of the court will issue a determination regarding the application that is granted or not. If the application is granted with the issuance of the decision, then the head of the court will determine the panel of judges, the day, place and time of the hearing, without conducting inspection procedures, as well as the deadline for those given for the answer and proof of the parties to the dispute is determined no more than 14 (fourteen) working days. The reasons that can be used by the disputing parties include:
 - a. Notification of work strike plans;
 - b. Announcement of the company's lockout plan;

- c. Information from the police regarding damages or riots or anarchic actions related to the lawsuit; and
- d. Court decision or announcement stating bankrupt company or decision to postpone debt payment obligations.

The state has guaranteed law enforcement in the field of labor with the enactment of the Labor Act and Settlement of Industrial Relations Disputes act, but the industrial relations court that we have known as the state institution of labor justice that resolves disputes in the field of industrial relations is still unable to provide a sense of justice for workers . This situation is because up to now the legal products in Indonesia related to employment are still political products, whereas what the labor community wants is a law enforcement system that is responsive in character, with transparency and social control that is open to every process of law making and enforcement, so weaknesses and deficiencies found in formal institutional mechanisms such as industrial relations justice can be complemented complementary by community participation directly in ensuring justice and truth. With the participation of this community is very important because the system of people's representation through parliament is not biased to be relied upon as a carrier of people's aspirations.

CONCLUSION

Protection of workers as a result of the acquisition by the company still relies on article 163 of the Labor Act, and does not yet reflect a sense of justice for workers when the company decides to acquire or be acquired. In this case workers still do not have bargaining rights in making objections by way of consensus agreement to find something that is proportional to both companies and workers. We know that the Pancasila law state always upholds general welfare and social justice in which the protection of workers in Indonesia still rests on the protection of the dignity of workers, including their human rights both individually and as workers. Workers in Indonesia are still underestimated, and do not yet have the space to be protected. During this termination of employment due to the acquisition action completed with the provisions of article 163 of the Labor Act, without giving room for objections to the workers. Termination of employment that occurs between employers and workers can cause industrial relations disputes, especially disputes regarding termination of employment. Upon termination of employment disputes that occur, workers can take legal action in the form of non-litigation and litigation legal efforts based on the Settlement of Industrial Relations Disputes act.

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