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JURIDICAL IMPLICATIONS OF SPIN OFF AT PT PLN (PERSERO) REVIEWED FROM THE PERSPECTIVE OF LEGAL PROTECTION FOR WORKERS

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Abstract:

One of the corporate actions carried out by companies in the form of limited liability companies is restructuring to achieve competitiveness and competition to meet market demands and maintain their existence. One of the restructurizing carried out is through impure separation (*spin off*) towards one of the business units which has an impact on the organizational structure and changes in the status of workers in the limited liability company. The separation mechanism is impure (*spin off*) This group company in a State-Owned Enterprise (BUMN) has not been specifically regulated in a regulation, giving rise to multiple interpretations and different interpretations in practice. Therefore, this topic is important to be researched in this article. This research method uses normative research based on secondary data. The results of the research can be concluded that the workers' working relationship with the parent company has been broken since they were transferred to a subsidiary company and the transfer of workers to another company without a transfer agreement does not provide legal protection for workers' normative rights. So that the government makes implementing regulations for the Employment Law that regulates technically group companies and mechanisms for transferring workers from parent companies to subsidiary companies.

Keywords: *impure separation; limited liability company; legal protection; workers.*

I. Introduction

One of the important instruments in the concept of the national economy as mandated in Article 33 paragraph (2) of the 1945 Constitution which reads, "*Branches of production which are important*

for the state and which affect the lives of many people are controlled by the state". So, the implementation of the political economy of Article 33 paragraph (2) of the 1945 Constitution gave birth to State-Owned Enterprises (BUMN) which were

formed through Law Number 19 of 2003 concerning State-Owned Enterprises.

Importance sustainable arrangement on implementation the role of BUMN in system national economy, especially efforts to increase company performance and value have also been mandated by the People's Consultative Assembly (MPR) through Decree Number IV/MPR/1999 concerning Outlines of State Policy for 1999-2004. The MPR Decree outlines that BUMN, especially those whose businesses are related to the public interest, need to continue to be organized and healthy through restructurisation and divide BUMN which the business is not related to the public interest and is in a sector that has been competitively pushed to privatization.¹

Privatization of BUMN is a method used to make improvements to BUMN with the aim of achieving various targets simultaneously, including increasing the company's added value, improving performance, improving management and financial structures, and increasing competitiveness.²

Conceptually, state ownership of the capital included in the Persero through state capital participation (PMN) will be transformed into state ownership

of shares in the Persero and in return this capital will be transformed into the Persero's wealth as legal entity.³

One of the BUMNs whose production activities are related to the livelihoods of many people is PT PLN (Persero) which operates in the electricity business sector. PT PLN (Persero)'s status as a limited liability company is based on Government Regulation Number 23 of 1994 concerning the Transfer of the State Electricity Public Company (Perum) to a Limited Liability Company (Persero). So, referring to Article 11 of Law Number 19 of 2003 concerning BUMN, PT PLN (Persero) applies all the provisions and principles that apply to limited liability companies as regulated in the Limited Liability Company Law.

PT PLN (Persero)'s business activities in the electricity sector to date have opened up opportunities and provided opportunities for Indonesia's best sons and daughters to work for PT PLN (Persero). So that the state's aim is to promote general welfare in other aspects as mandated in Article 27 Paragraph (2) of the 1945 Constitution which reads, "*Every citizen has the right to work and a life worthy of humanity*", it has automatically been realized that around

¹ Dona Pratama Jonaidi, "Telaah Terhadap Kebijakan Privatisasi BUMN di Indonesia", *Jurnal Hukum Universitas Bengkulu* Volume 4 Issue 1 (2019): 12-13, <https://doi.org/10.33369/ubelaj.4.1.1-18>

² Mohamad Fandrian Adhianto, "Konstitusionalitas Holding Sub Holding BUMN di Bidang Usaha Penyediaan Ketenagalistrikan",

Jurnal Konstitusi Volume 20 Issue 4 (2023): 662, <https://doi.org/10.31078/jk2046>

³ Sindy Riani Putri Nurhasanah and Ulil Afwa, "Pertanggungjawaban Hukum Direksi Induk Terhadap Risiko Bisnis Anak Perusahaan pada Holding Company BUMN", *Indonesia Law Reform Journal* Volume 1 Issue 3 (2021): 304, <https://doi.org/10.22219/ilrej.v1i3.18335>

45,000 employees of PT PLN (Persero) are currently the best sons and daughters of Indonesia spread across all business areas from Sabang to Merauke.

As stated in Article 87 Paragraph (1) of Law Number 19 of 2003 concerning BUMN, BUMN employees are BUMN workers whose appointment, dismissal, position, rights and obligations are determined based on a collective work agreement in accordance with the provisions of laws and regulations in the field of employment. With this status, PT PLN (Persero) workers have become part of labor law, namely receiving adequate and fair compensation in the employment relationship as mandated by Article 28D Paragraph (2) of the 1945 Constitution, which is then implemented in accordance with the norms regulated in the Law. -Law Number 13 of 2003 concerning Employment.

In practice, the relationship between companies, workers and other related parties is known as industrial relations. Namely a system of relationships formed between actors in the process of producing goods and/or services consisting of entrepreneurs, workers/laborers and the government based on the values of Pancasila and the 1945 Constitution, as intended in Article 1 number 16 of Law Number 13 of 2003 About Employment.

In accordance with Article 1 paragraph (1) of Law Number 19 of 2003

concerning BUMN, PT PLN (Persero) as BUMN aims to make a profit. One of the corporate actions currently being carried out to increase profits is by separating business units and then forming them into *sub holding* (subsidiary company), with the aim of making corporate actions leaner, more agile and efficient as well as having flexibility in making business decisions at *sub holding* the. In a company, corporate actions are like forming *sub holding* of this business unit is known as restructuring.

Restructuring and reengineering have become commonplace in the corporate landscape across the United States and Europe. Restructurisation (*restructuring*) is also called downsizing (*downsizing*), realignment (*rightsizing*), or regrouping (*delaying*) involves reducing the size of the company in terms of the number of employees, number of divisions, or units, as well as the number of hierarchical levels in the company's organizational structure. This reduction in size is intended to increase efficiency and effectiveness.⁴

With the expanding role of BUMN in national development, it is necessary to increase value, strengthen competitiveness, expand business networks and the independence of BUMN. The government's strategy to achieve this, for example, is through restructuring and privatization. BUMN restructuring is intended to revitalize

⁴ Fred R. David, *Manajemen Strategis Konsep*, Edisi 12, (Jakarta: Salemba Empat, 2021), 410.

BUMN. In this way, it is hoped that BUMN can operate more efficiently, professionally and transparently. BUMN restructuring is intended to revitalize BUMN. In this way, it is hoped that BUMN can operate more efficiently, professionally and transparently.⁵

However, as is known the practice of formation *holding company* This does not yet have specific regulations to regulate it further. This is what causes the many interpretations and different interpretations regarding *holding company* and limitations of its scope. The special characteristics of BUMN as group companies are in fact not covered by clear regulations regarding the relationship between parent companies and subsidiaries. The only provisions governing Law No. 19 of 2003 concerning BUMN and Law No. 40 of 2007 concerning Limited Liability Companies. Meanwhile, the PT Law itself only regulates mergers, consolidations and separations. Thus, no special regulations can be found regarding the status of a corporate form *holding company*.⁶

One of the business units of PT PLN (Persero) which was separated and

formed into *sub holding* (subsidiary company) and will start operating in early 2023. This is a generation business unit. To *besub holding* This means that all PT PLN (Persero) generating machine assets have now been transferred and their management is under two *sub holding* generation namely PT PLN Indonesia Power and PT Nusantara Power. And later PT PLN (Persero) will be the parent company (*holding*) will focus on the electric power transmission and marketing business only.

PLN President Director Darmawan Prasodjo said that in this corporate action the company has at least two subholdings that will focus on the generating sector, namely PLN Indonesia Power (Genco 1) managing a generating capacity of 21 Giga Watt (GW), while PLN Nusantara Power (Genco 2) amounting to 18 GW. The formation of this Subholding is a transformation with organizational restructuring throughout the PLN Group environment. In this way, assets that were previously scattered can be integrated so that they are more efficient.⁷

⁵ Huta Disyon and Elisatris Gultom, "Telaah Kritis Pelaksanaan Holdingisasi BUMN Dari Perspektif Anti Monopoli Dan Persaingan Usaha Tidak Sehat", *Jurnal Penelitian Hukum De Jure* Volume 22 Issue 2 (2022): 193, <http://dx.doi.org/10.30641/dejure.2022.V22.191-204>

⁶ Melva Theresia Simamora, Budiman Ginting, Agusmidah and Mahmud Siregar, "Kedudukan Dan Perlindungan Terhadap Tenaga Kerja Pada Perusahaan Anak Dalam

Perusahaan Grup", *Jurnal Kajian Hukum Iuris Studia* Volume 2 Issue 3 (2021): 480, <https://garuda.kemdikbud.go.id/documents/detail/2523264>

⁷ Verda Nano Setiawan, *Aset Subholding Pembangkit PLN Jadi Terbesar di Asia Tenggara*, CNBC Indonesia, 21 September 2022, <https://www.cnbcindonesia.com/news/20220921184415-4-373987/aset-subholding-pembangkit-pln-jadi-terbesar-di-asia-tenggara> (diakses 22 April 2024).

Legally, the formation model *sub holding* by separating the generation business unit at PT PLN (Persero), it only separates some of the assets and liabilities, so that the existence of PT PLN (Persero) as a legal entity still exists. In the Limited Liability Company Law, it is known as impure separation (*spin off*).

There are also no regulations that technically regulate the transfer of workers between companies within group companies, leaving a legal vacuum. However, this regulation is important considering that not all transferred workers are willing to be transferred considering whether the normative rights received will remain the same when transferred.

The legal relationship in a limited liability company or a company that is separating itself is a continuation of the company that is separating. Likewise, the employment relationship of employees in a company that is separating itself is a continuation of the employment relationship in the company that is separating. This means that the employment relationship of employees in the company that is separating itself continues in the company that is separating itself.⁸

Formation of two *sub holding* This generation not only caused a shift in the management of generation assets, but

also PLN workers who originally worked in the generation business unit also switched to PT PLN Indonesia Power and PT PLN Nusantara Power. The process of transferring PLN workers to PT PLN Indonesia Power and PT Nusantara Power is carried out by collecting data and filling out a statement of willingness. Workers who are willing are then given a Work Assignment Decree.

When viewed from the legal entity status, among PT PLN (Persero) as *holding* and *sub holding* are legal entities, each of which stands alone and separately. So, the transfer of PT PLN (Persero) workers to PT PLN Indonesia Power and PT PLN Nusantara Power resulted in the workers being completely under the management of PT PLN Indonesia Power and PT PLN Nusantara Power, and no longer under the management of PT PLN (Persero).

According to Article 61 paragraph (3) of Law number 13 of 2003 concerning Employment as amended by Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (UU 6/2023), stipulates that dIn the event of a transfer of the Company, the rights of the Workers/Labourers become the responsibility of the new Employer,

⁸ Threesy Agustina, Budiman N.P.D. Sinaga and Kasman Siburian, "Analisis Yuridis Spin Off Dalam Perusahaan Menurut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas", *Jurnal Hukum PATIK*

unless otherwise stipulated in the transfer agreement which does not reduce the rights of the Workers/Labourers. However, until now there are no implementing regulations that regulate in detail the transfer agreement as intended in Article 61 paragraph 3 of Law 6/2023.

The choice of topic for this article is very important, considering that electricity is currently an important production sector for the country and affects the lives of many people. Therefore, electricity sector managers must ensure that legal protection for PT PLN (Persero) workers is absolutely necessary.

Based on the background of the problem described above, The Work Assignment Decree which is used as the legal basis for the transfer of workers cannot provide legal protection for the normative rights of PT PLN (Persero) workers who are transferred to *sub holding* as an impact of impure separation (*spin off*) in the generation business unit. So, it's necessary mechanism for transferring workers from the parent company to the subsidiary company can provide legal protection for the workers normative rights.

From the identification of this problem, the following research questions arise:

1. What is the legal relationship between PT PLN (Persero) workers who are transferred from the parent company to the subsidiary company as an implication of the impure separation action (*spin off*)?
2. What is the legal protection for PT PLN (Persero) workers who are transferred from the parent company to the subsidiary company as an implication of the impure separation action (*spin off*)?

Based on the identification of existing problems, the objectives to be achieved from this research are:

1. Analyzing the legal relationship between PT PLN (Persero) workers who were transferred from the parent company to the subsidiary company as an implication of the impure separation action (*spin off*).
2. Analyze legal protection for PT PLN (Persero) workers who are transferred from the parent company to the subsidiary company as an implication of the impure separation action (*spin off*).

II. Legal Material and Methods

Research methods are scientific ways to obtain data with specific goals and uses. There are four keywords that need to be considered, namely, scientific method, data, objectives, and use.⁹

Scientific research is carried out by humans to channel the desire to know which has reached a scientific level,

⁹ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, Cetakan 23, (Bandung: Alfabeta, 2016), 2.

which is accompanied by a belief that every symptom can be studied and the cause-and-effect relationship, or trends that arise, can be studied. So research is a means used by humans to strengthen, develop and develop knowledge.¹⁰

Legal research has a very important role within the framework of developing legal science and revealing the factors that cause problems related to law.¹¹ Legal research is carried out to find solutions to legal issues that arise, within the framework *know-how* in law.¹²

Legal research carried out by examining library materials or secondary data alone can be called normative legal research or library legal research. In addition, there is sociological or empirical legal research which mainly examines primary data.¹³

Normative legal research is legal research that places law as a system of norms. The norm system in question is about principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings).¹⁴

Meanwhile, this research uses normative legal research because the researcher uses library materials as the

main data to analyze the phenomena that occurred in the transition of PT PLN (Persero) workers from the parent company to the subsidiary company (*sub holding*) due to the action of impure separation (*spin off*) as a research object.

The data source used in this research is secondary data. Secondary data is data that is already in finished form, such as data in documents and publications.¹⁵

Secondary data in normative legal research consists of primary legal materials, secondary legal materials, and tertiary legal materials,¹⁶ are as follows:

- (1) Primary legal materials are legal materials that are authoritative, meaning they have authority, consisting of legislation, official records, or judge's decisions.¹⁷ The primary legal material in this research consists of:
 - (a) 1945 Constitution.
 - (b) Law Number 13 of 2003 concerning Employment.
 - (c) Law Number 19 of 2003 concerning State-Owned Enterprises.

¹⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cetakan 3, (Jakarta: Universitas Indonesia, 2019), 3.

¹¹ Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, (Jakarta: Rajawali Pers, 2018), 5.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan 13, (Jakarta: Kencana, 2017), 83.

¹³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Edisi 1, Cetakan 20, (Jakarta: Rajawali Pers, 2021), 13.

¹⁴ Mukti Fajar ND and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Hukum Empiris*, (Yogyakarta: Pustaka Pelajar, 2010), 34.

¹⁵ Rianto Adi, *Metodologi Penelitian Sosial dan Hukum*, Edisi Revisi, (Jakarta: Yayasan Pustaka Obor Indonesia), 65.

¹⁶ Soerjono Soekanto dan Sri Mamudji, *Op. cit.*, 12-13.

¹⁷ Djulaeka dan Devi Rahayu, *Buku Ajar Metode Penelitian Hukum*, (Surabaya: Scopindo Media Pustaka, 2020), 36.

- (d) Law Number 40 of 2007 concerning Limited Liability Companies.
 - (e) Law Number 30 of 2009 concerning Electricity.
 - (f) Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 to Become Law.
 - (g) Government Regulation Number 33 of 2005 concerning Procedures for Privatization of Company Companies.
 - (h) Government Regulation Number 43 of 2005 concerning Mergers, Consolidations, Takeovers and Changes in the Form of Legal Entities of State-Owned Enterprises.
 - (i) Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises.
 - (j) Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises.
- (2) Secondary legal materials, namely library materials or data that provide information or explanations regarding primary data.¹⁸ In this research, the secondary materials

used consisted of books, scientific works and previous research.

- (3) Tertiary legal materials, namely materials that provide instructions and explanations for primary and secondary legal materials.¹⁹ The tertiary legal materials in this research are legal dictionaries, Indonesian dictionaries, English dictionaries.

III. Result and Discussion

The legal relationship between PT PLN (Persero) workers who were transferred from the parent company to the subsidiary company as an implication of the separation action is not pure (spin off)

BUMN is not only used by the government to invest or do business by investing capital, but also has a strategic function, namely as a state tool to carry out the function of state control in management aspects, especially in the strategic sector. The most important thing for the state is to control the lives of many people, so that BUMN should not just be considered an ordinary corporation. Thus, the legal umbrella issued by the government should be able to balance the two roles of BUMN, namely the interests of BUMN as a competitive business activity and as an agent of nation development.

As an effort to increase the efficiency and productivity of BUMN, restructuring and privatization can be carried out, one form of corporate

¹⁸ Soerjono Soekanto dan Sri Mamudji, *Op. cit.*, 13.

¹⁹ *Ibid.*

restructuring is carried out through the formation of a BUMN holding, namely transferring state ownership to one or several BUMNs to additional state assignments to another BUMN, so that the BUMN becomes a holding or holding company.²⁰

One of the actions in a limited liability company is known as separation, which is the transfer of all the company's assets and liabilities to two or more companies, or some of the company's assets and liabilities to one or more other companies, which are divided into two as regulated in Article 135 of the Law. - Law Number 40 of 2007, namely the separation of pure and impure separation.

A pure separation results in all of the Company's assets and liabilities being transferred by law to 2 (two) other Companies or more that receive the transfer and the Company carrying out the business separation ends by law, while an impure separation results in some of the Company's assets and liabilities being transferred by law to 1 (one) another or more companies that accept the transfer, and the company that carries out the separation continues to exist.²¹

The separation of a limited liability company does not only concern the

interests of the limited liability company itself. But rather the interests of shareholders, third parties, employees, suppliers, the environment and society, known as stakeholders (*stake holder*). So, their interests must be taken into account when wanting to carry out a takeover or separation of a limited liability company.

Impure separation (spin off) carried out by PT PLN (Persero) in early 2023 for the generation business unit has given birth to a new legal entity, namely PT PLN Indonesia Power and PT PLN Nusantara Power. Impure separation corporate action (spin off) this not only has an impact on the transfer of control and operational management of generating machine assets owned by PT PLN (Persero) to the two subsidiary companies, but also the shift of PT PLN (Persero) workers to the generation business unit.

As the organ theory put forward by Otto von Gierke, It can be interpreted that the legal entity itself is like a human being which has organs within it. Thus, every legal entity, whatever its form, has organs that act for and on behalf of the legal entity. Such as a Foundation which has three organs: Trustees, Management and Supervisory Cooperatives which have three organs: Supervisors, Management and Member Meetings,

²⁰ Hayyu Rahmanda Adi Nugroho, Reka Dewantara and Rumi Suwardiyati, "Status Hukum Privatisasi Anak Perusahaan Badan Usaha Milik Negara Di Bidang Usaha Sumber Daya Alam (Perkara Nomor 61/Puu-Xviii/2020)", *Jurnal Warkat* Volume 3 Issue 1 (2023): 42, <https://doi.org/10.21776/warkat.v3n1.5>

²¹ Dandi Jayusman and Reni Budi Setianingrum, "Problematika Perusahaan Grup: Bentuk dan Potensi Praktik Monopoli dan Persaingan Usaha Tidak Sehat", *Media of Law and Sharia* Volume 4 Issue 2 (2023): 135-136, <https://doi.org/10.18196/mls.v4i2.7>

and Limited Liability Companies which have three organs: General Meeting of Shareholders (GMS), Directors and Board of Commissioners. It can be seen from the three known forms of legal entity regularly it is general that every legal entity has different organs within it, so this is also a feature or characteristic that differentiates one legal entity from another legal entity.²²

In the civil law system adopted by Indonesia, a Limited Liability Company (PT) is a legal entity (*legal entity*) separately as a legal subject burdened with rights and obligations. Although there are no special regulations regarding holding companies in the PT Law, in practice subsidiaries of holding companies are established with PT status. So that it has a position as an independent legal entity and is independent as a legal subject. Subsidiaries can act as parties who own their own assets, carry out civil legal actions and can sue and be sued before the court.²³

When a company establishes a subsidiary, the capital investment in the subsidiary comes from the company's assets, not from the capital holders of the parent company. As a result, there are

differences in liability between parent companies and subsidiaries. The responsibility in question is which party in the company is responsible for all its business activities.²⁴

Based on the provisions of article 1 number 1 of Law Number 19 of 2003 concerning State-Owned Enterprises, the definition of BUMN is a business entity whose capital is wholly or partially owned by the state through direct participation originating from separated state assets, whereas according to the provisions of article 2A paragraph (3) and (4) Government Regulation Number 72 of 2016 concerning Amendments to Government Regulation Number 44 of 2005 concerning Procedures for Participation and Administration of State Capital in State-Owned Enterprises and Limited Liability Companies states that state assets in BUMN are transferred to subsidiaries in the form of capital participation is transformed or changed into shares/capital and becomes the assets of the BUMN or Limited Liability Company. Thus, the wealth or assets of a BUMN subsidiary is the wealth or assets of the BUMN that have been separated and become independent assets of the BUMN subsidiary.²⁵

²² Abigail Prasetyo, "Kepemilikan Tunggal Perseroan Terbatas Dalam Undang-Undang Cipta Kerja Berdasarkan Teori Badan hukum", *Jurnal Ilmu Hukum Alethea* Volume 5 Issue 1 (2021): 44-45, <https://doi.org/10.24246/alethea.vol5.no1.p39-54>

²³ Wahyu Syuhada, "Analisis Hukum Perusahaan Pada Kasus Kepailitan Anak Perusahaan Badan Usaha Milik Negara", *UNES*

Law Review Volume 5 Issue 4 (2023): 2358, <https://doi.org/10.31933/unesrev.v5i4>

²⁴ Julio Thimotius Kapitan Smaud Natun, "Status Kepemilikan Anak Perusahaan BUMN", *Mimbar Keadilan* Volume 12 Issue 1 (2019), 6, <https://doi.org/10.30996/mk.v12i1.2161>

²⁵ Iza Sadzili, "Status Badan Usaha Milik Negara Terhadap Anak Perusahaan Holding BUMN", *Eksekusi: Jurnal Ilmu Hukum dan*

The parent company and subsidiaries both have legal entities, so limited rights and obligations apply in the field of assets (limited liability). The principle of limited liability regarding separate assets means that the assets of shareholders and the assets of legal entities are completely separate.²⁶ So, legally the status of PT PLN Indonesia Power and PT PLN Nusantara Power as subsidiary companies is that they are independent, stand-alone legal entities, and have separate assets from PT PLN (Persero) as the parent company.

According to Law Number 13 of 2003 concerning Employment (Employment Law), the legal relationship that exists between employers and workers is based on the employment relationship. Article 1 number 15 of the Manpower Law explains that the employment relationship is the relationship between the entrepreneur and the worker/laborer based on a work agreement, which has elements of work, wages and orders. Then Article 1 number 5 letter 6 of the Manpower Law explains that one of the definitions of an entrepreneur is an individual, partnership or legal entity who independently runs a company that is not owned by him.

In the Work Assignment Decree which is used as the basis for the transfer

of PT PLN (Persero) workers to PT PLN Indonesia Power and PT Nusantara Power, it states in essence that the income, facilities and other rights of the transferred workers will then be paid by PT PLN Indonesia Power and PT PLN Nusantara Power. So, if we refer to the principle of separated legal entity, limited liability company and the employment relationship regulated in the Employment Law, then the employment relationship between PT PLN (Persero) and the transferred workers has been severed, giving rise to a new legal relationship, namely that the transferred workers will then be bound by an employment relationship with PT PLN Indonesia Power and PT PLN Nusantara Power.

Legal protection for PT PLN (Persero) workers who are transferred from the parent company to a subsidiary company as an implication of an impure separation action (spin off)

Labor law was born from the idea of providing protection for parties, especially workers/laborers as weak parties and social justice in work relations between parties who have quite large similarities and differences. The similarity is that humans are both God's creations who have human dignity, while the difference is in terms of socio-

Administrasi Negara Volume 2 Issue 1 (2024): 237, <https://doi.org/10.55606/eksekusi.v2i1.874>

²⁶ Sativa Nisya Padmawati and Aisyah Adilla, "Perlindungan Hukum Terhadap Hubungan Hukum Induk Perusahaan Dan Anak

Perusahaan Dalam Holding Company BUMN", *Jurnal Ilmu Hukum Dan tata Negara* Volume 2 Issue 1 (2024): 133-134, <https://doi.org/10.55606/birokrasi.v2i1.895>

economic position or status, where workers earn income by working for entrepreneurs/employers. One way to achieve the goal of social justice in the field of employment is by protecting workers/laborers against unlimited power on the part of employers/entrepreneurs, through existing legal means.²⁷

Legal protection is the protection of human rights that are violated by other people, causing those human rights to be lost. Provision of legal protection is given to the community so that they do not lose the rights they have which are guaranteed by law. Legal protection is also a legal effort provided by law enforcement officials to the community in order to provide a sense of security both mentally and physically so that avoid threats from parties who do not have good intentions.²⁸

Philipus M. Hadjon differentiates legal protection into 2 (two) types, namely preventive legal protection and repressive legal protection. In preventive legal protection, people are given the opportunity to submit objections (*participation*) or opinion before a government decision takes definitive form. Thus, preventive legal protection

aims to prevent disputes from occurring, while repressive protection aims to resolve disputes.²⁹

According to Imam Soepomo, legal protection for workers is divided into three types as follows:³⁰

- (1) Technical Protection, namely protection to maintain worker safety from dangers arising in carrying out their work.
- (2) Economic Protection, namely protection to ensure that workers have an income that can meet the daily living needs of themselves and their families.
- (3) Social Protection, namely protection to ensure that workers obtain social security for themselves and their families, as well as giving workers the right to socialize and organize.

Indonesia as a country of law certainly regulates everything based on law, including regulations regarding employment. Employment development has many dimensions and connections. This linkage is not only with the interests of workers during, before and after the work period but also with the interests of employers, government and society. For this reason,

²⁷ Niru Anita Sinaga and Tiberius Zaluchu, "Perlindungan hukum Hak-Hak Pekerja Dalam Hubungan Ketenagakerjaan di Indonesia", *Jurnal Teknologi Industri* Volume 6 (2017): 64, <https://doi.org/10.35968/jti.v6i0.754>

²⁸ Robertus Berli Puryanto, I Nyoman Putu Budiarta and Ni Made Puspasutari Ujianti, "Perlindungan Hukum Bagi Pekerja dengan Perjanjian Kerja Tidak Tertulis pada Perusahaan Pemberi Kerja", *Jurnal Interpretasi Hukum*

Volume 2 Issue 1 (2021): 160-161, <https://doi.org/10.22225/juinhum.2.1.3109.158-162>

²⁹ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987), 2.

³⁰ Imam Soepomo dalam Khairani, *Pengantar Hukum Perburuahan dan Ketenagakerjaan*, Cetakan 2, (Depok: Rajawali Pers, 2021), 124-125.

comprehensive arrangements are needed.³¹

Employment or Labor is regulated in Law Number 13 of 2003 concerning Employment, which was promulgated in the 2003 State Gazette Number 39 on March 25, 2003, and come into force on the date of promulgation. According to Law Number 13 of 2003, what is meant by workforce is every person who is able to do work to produce goods and/or services to meet their own needs and those of the community. Furthermore, the definition of worker or laborer is every person who works by receiving wages or compensation in any form. This understanding is somewhat general, but its meaning is broader because it can include everyone who works for anyone, whether individuals, partnerships, legal entity, or other entity by receiving wages or compensation in any form. Confirming rewards in any form is necessary because wages have so far been identified with money, even though there are also workers who receive compensation in the form of goods. The scope of protection for workers/laborers according to the law Number 13 of 2003, among other things in general, includes: 1. Protection regarding wages, welfare, social security for workers; 2. Protection of occupational safety and health; 3. Legal

protection for forming and becoming members of a union; Workers/labor unions; 4. Protection of the basic rights of workers/labourers to negotiate; with entrepreneurs.³²

According to Article 87 of Law Number 19 of 2003 concerning State-Owned Enterprises (UU BUMN) and Article 95 of Government Regulation Number 45 of 2005 concerning the Establishment, Management, Supervision and Dissolution of State-Owned Enterprises (PP 45/2005) regulates that the appointment, dismissal, and regulation of the rights and obligations of BUMN workers are subject to legislation in the field of employment. So, in the context of legal protection, this has the juridical consequence that the regulation of BUMN workers is subject to the Manpower Law and its implementing regulations.

Normatively, the Labor Law does not explicitly regulate the mechanism for transferring workers within a group company. However, the Employment Law requires a transfer agreement if there is a transfer of workers from one company to another company. This is as regulated in Article 61 paragraph 3 of the Manpower Law which states that in the event of a company transfer, the rights of the workers/laborers become the

³¹ Tedi Sudrajat, Siti Kunarti and Abdul Azis Nasihuddin, "Perlindungan Hukum dan Pemenuhan Hak Pekerja pada Program Jaminan Kesehatan Nasional", *Pandecta* Volume 15 Issue 1 (2020): 85, <http://dx.doi.org/10.15294/pandecta.v15i1.23647>

³² Suhartoyo, "Perlindungan Hukum Bagi Buruh Dalam Sistem Hukum Ketenagakerjaan Nasional", *Administrative Law & Governance Journal* Volume 2 Issue 2 (2019): 327-329, <https://doi.org/10.14710/alj.v2i2.326-336>

responsibility of the new entrepreneur, unless otherwise specified in the transfer agreement which does not reduce the rights of the workers/laborers.

As explained in the first sub-discussion above, the status of PT PLN (Persero) as a holding company and PT PLN Indonesia Power and PT PLN Nusantara Power as subsidiary companies are separate legal entities. So, with the transfer of payment of income, facilities and other rights of PT PLN (Persero) workers who were transferred to PT PLN Indonesia Power and PT PLN Nusantara Power as stated in the Work Assignment Decree, the legal status of the employment relationship between the transferred workers and PT PLN (Persero) has broken up, and then there is a new work relationship between the transferred workers and PT PLN Indonesia Power or PT PLN Nusantara Power.

However, the Work Assignment Decree which is used as the basis for the transfer of workers does not meet the qualifications as a work agreement as regulated in Article 61 paragraph 3 of the Manpower Law, because it is only signed by the management of PT PLN (Persero) as a representative. (*legal mandatory*) from PT PLN (Persero) and does not regulate in detail the requirements as regulated in Article 54 paragraph (1) of the Manpower Law which at least includes:

a. Name, company address and type of business;

- b. The name, sex, age, and address of the employee/laborer;
- c. Department or type of job;
- d. Place of employment;
- e. The amount of wages and method of payment;
- f. Work conditions that contain the rights and obligations of entrepreneurs and labor;
- g. The start and duration of the employment agreement;
- h. Place and date the employment agreement was made; And
- i. Signature of the parties in the employment agreement.

Without a transfer agreement containing the conditions as regulated in Article 54 paragraph (1) of the manpower Law, transferred workers do not receive legal protection for their normative rights since being transferred because the Work Assignment Decree which is used as the basis for the transfer is a unilateral action from the company.

With the existence of a transfer agreement, workers will receive legal protection because their terms and normative rights will be guaranteed according to the agreement outlined in the clauses of the transfer agreement.

IV. Conclusion and Suggestion

A. Conclusion

1. The working relationship between workers and PT PLN (Persero) as the parent company was severed after the workers concerned were transferred to subsidiary companies, namely

PT PLN Indonesia Power and PT PLN Nusantara Power. This creates a new working relationship between workers and the two subsidiary companies.

2. The transfer of workers from PT PLN (Persero) as the parent company to PT PLN Indonesia Power and PT Nusantara Power as subsidiary companies without a transfer agreement resulted in the transferred workers not receiving legal protection as regulated by the Employment Law.

B. Suggestion

1. It is recommended that the government issue implementing regulations that regulate legal relations between companies within a group company.
2. It is recommended that the government issue implementing regulations that technically regulate the transfer of workers between companies within a group company.

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