



## Legal Position of Employees Post Spin off PT Perkebunan Nusantara III (Persero) Medan Operations Become PT Perkebunan Nusantara IV (Study at PT Perkebunan Nusantara IV Regional I)

Muhammad Parrij Abdi<sup>\*1</sup> , Mahmud Siregar<sup>2</sup> , Agusmidah<sup>3</sup>

<sup>1,2,3</sup> Universitas Sumatera Utara, Medan, Indonesia

\*Corresponding Author: [farrij1985@gmail.com](mailto:farrij1985@gmail.com)

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### ABSTRACT

This article examines the corporate responsibilities of Indonesian state-owned enterprises (BUMN) concerning employee status following a spin-off, specifically the transformation of PT Perkebunan Nusantara III (Persero) Operational Medan into PT Perkebunan Nusantara IV Regional I. Spin-offs often involve organizational restructuring, which may impact employees' employment status, contracts, and entitlements. Current Indonesian labor regulations, including the Labor Law and the Omnibus Law, do not provide explicit legal certainty for employees in spin-off scenarios, while the Limited Liability Company Law primarily governs asset and liability allocation rather than employee rights. This study analyzes the legal framework, company practices, and challenges in safeguarding employees' rights during the spin-off process. The findings indicate that employees face uncertainty regarding job security, benefits, and contractual terms due to ambiguous clauses in existing agreements and insufficient regulatory guidance. To address these issues, the study recommends establishing specific regulations for spin-offs, ensuring continuity of employment contracts, strengthening labor supervision, involving trade unions in decision-making, and providing training programs to enhance employee resilience. Government involvement is also critical to monitor compliance and mediate potential disputes. In conclusion, creating clear legal frameworks and corporate policies for spin-offs is essential to guarantee employees' legal certainty, uphold industrial harmony, and fulfill BUMN's social responsibilities. Proper implementation ensures that operational efficiency is balanced with the protection of employee rights, promoting sustainable business practices in state-owned enterprises.

**Keyword:** Spin-off, Employees, Legal certainty, BUMN.

### ABSTRAK

Artikel ini membahas tanggung jawab perusahaan milik negara (BUMN) terkait status karyawan pasca spin-off, khususnya transformasi PT Perkebunan Nusantara III (Persero) Operasional Medan menjadi PT Perkebunan Nusantara IV Regional I. Spin-off sering melibatkan restrukturisasi organisasi yang dapat memengaruhi status pekerjaan, kontrak, dan hak-hak karyawan. Regulasi ketenagakerjaan Indonesia saat ini, termasuk Undang-Undang Ketenagakerjaan dan Undang-Undang Cipta Kerja, belum memberikan kepastian hukum yang jelas bagi karyawan dalam situasi spin-off, sedangkan Undang-Undang Perseroan Terbatas lebih menitikberatkan pada pembagian aset dan kewajiban perusahaan tanpa mengatur secara spesifik hak karyawan. Penelitian ini menganalisis kerangka hukum, praktik perusahaan, dan tantangan dalam melindungi hak karyawan selama proses spin-off. Hasil penelitian menunjukkan bahwa karyawan menghadapi ketidakpastian terkait keamanan pekerjaan, hak tunjangan, dan kontrak kerja akibat klausul yang ambigu dalam perjanjian yang ada serta kurangnya regulasi khusus. Untuk mengatasi masalah ini, disarankan adanya regulasi khusus mengenai spin-off, keberlanjutan kontrak kerja, penguatan pengawasan ketenagakerjaan, pelibatan serikat pekerja dalam pengambilan keputusan, dan program pelatihan untuk meningkatkan ketahanan karyawan. Keterlibatan pemerintah juga penting untuk memastikan kepatuhan dan menjadi



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mediator dalam penyelesaian sengketa. Kesimpulannya, pembentukan kerangka hukum dan kebijakan perusahaan yang jelas terkait spin-off sangat penting untuk menjamin kepastian hukum karyawan, menjaga harmoni industrial, dan mewujudkan tanggung jawab sosial BUMN, sehingga efisiensi operasional seimbang dengan perlindungan hak karyawan

**Keyword:** Spin-off, Karyawan, Kepastian hukum, BUMN.

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## 1. Introduction

Indonesia is constitutionally affirmed as a state based on law (*rechtsstaat*) and not on mere power (*Machtsstaat*), as enshrined in Article 1 paragraph (3) of the 1945 Constitution.<sup>1</sup> The concept of *Rechtsstaat* requires that all government actions, including those of state-owned enterprises (BUMN), be grounded in law to ensure predictability, accountability, and justice.<sup>2</sup> At the same time, Indonesia adopts the idea of a *welfare state*, where the state bears the responsibility of ensuring social justice and collective prosperity. This dual foundation implies that economic policies and corporate governance within BUMN must not only pursue efficiency but also fulfill constitutional obligations to improve the welfare of citizens, including employees.

Article 33 of the 1945 Constitution provides the normative basis for Indonesia's economic system. It affirms that the economy is organized as a common endeavor based on kinship, and that branches of production which are vital for the state and affect the livelihood of many people are to be controlled by the state. In practice, BUMN function as the institutional embodiment of these constitutional mandates.<sup>3</sup> They play a dual role: *first*, to deliver accessible and reliable public goods and services; and *second*, to enhance state revenues and employee welfare. To fulfill this role effectively, BUMN must remain adaptive to global competition, technological advances, and domestic socio-economic needs. One legal mechanism for adaptation is the corporate spin off, a restructuring strategy regulated under Law No. 40 of 2007 on Limited Liability Companies.<sup>4</sup>

A spin off, under Indonesian company law, constitutes the legal transfer of assets and liabilities from one company to another, either in full (pure spin off) or in part (partial spin off).<sup>5</sup> For state-owned plantation companies such as PT Perkebunan Nusantara (PTPN), spin offs are not merely corporate strategies but also instruments of national policy. They must align with the Tri Dharma Perkebunan, which emphasize sustainable productivity, employee welfare, and national development contributions. In this context, restructuring initiatives such as the consolidation of PTPN subsidiaries under sub-holdings like PalmCo, SupportingCo, and SugarCo are intended to achieve efficiency and global competitiveness.<sup>6</sup> However, these measures also raise fundamental questions concerning workers' rights and the state's obligation to uphold legal certainty.

The principle of legal certainty (*rechtssicherheit*) is central to the philosophy of law.<sup>7</sup> Gustav Radbruch identifies three essential values of law: justice, expediency, and certainty, of which certainty is indispensable for ensuring order and predictability. Similarly, Sudikno Mertokusumo emphasizes that legal certainty is achieved when laws are not only clearly codified but also consistently applied, enabling citizens to anticipate legal consequences.<sup>8</sup> In the context of corporate restructuring, legal certainty ensures that employees' status and rights are not arbitrarily jeopardized by managerial or policy decisions. Without such certainty, corporate spin offs risk generating industrial disputes, eroding trust in BUMN, and undermining the welfare orientation embedded in Indonesia's constitutional framework.

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<sup>1</sup> Muslim Aminullah dan Ahmad Saleh Kusno, "Kepastian Hukum Terhadap Status Tenaga Kerja Akibat Pemisahan (Spin Off) Perusahaan", *Jurnal: Hukum Responsif*, Vol. 13, No. 1, (February 2022), Pp. 119.

<sup>2</sup> Didik J. Rachbini, *Ekonomi Politik: Kebijakan dan Strategi Pembangunan*, (Jakarta, Granit, 2004), Pp. 45.

<sup>3</sup> M. Dawam Rahardjo, "Evaluasi dan Dampak Amandemen UUD 1945 terhadap Perekonomian di Indonesia", UNISIA, No. 49/XXVI/III/2003.

<sup>4</sup> Yeti Sumiyati, "Peranan BUMN dalam Pelaksanaan Tanggung Jawab Sosial Perusahaan untuk Meningkatkan Kesejahteraan Rakyat", *Jurnal Hukum Ius Quia Iustum*, No. 3, Vol. 20, (Juli 2013), Pp. 249

<sup>5</sup> Threesy Agustina, Budiman N. P. D. Sinaga, dan Kasman Siburian, "Analisis Yuridis Spin Off Dalam Perusahaan Menurut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas", *Patik : Jurnal Hukum*, Vol. 07, No. 3, (Desember 2018), Pp. 241.

<sup>6</sup> Muhammad Said Nasution, "Akta Merger Dan Spin Off Pembentukan Sub Holding Palm Co Dan Supporting Co Ditandatangani" <https://www.bidikkasusnews.com/2023/12/akta-merger-dan-spin-off-pembentukan.html>, accessed 22 March 2024.

<sup>7</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2012), Pp. 45

<sup>8</sup> Asikin Zainal, *Pengantar Tata Hukum Indonesia*, (Jakarta: Rajawali Press, 2012), Pp. 39

The restructuring of PT Perkebunan Nusantara III (Persero) into PT Perkebunan Nusantara IV Regional I represents a concrete manifestation of these tensions. On one hand, the spin off seeks to optimize management, increase competitiveness, and contribute to the national economy. On the other hand, it directly impacts employees whose status, job security, and rights may be affected. Indonesian labor law, particularly Law No. 13 of 2003 on Manpower as amended by Law No. 6 of 2023 and Government Regulation No. 35 of 2021, provides protections to ensure that employees' normative rights remain intact during corporate transformations. Nevertheless, practical challenges emerge in reconciling corporate efficiency with the safeguarding of employees' legal certainty.

Previous studies have only partially addressed these issues. Muslim Aminullah and Ahmad Saleh Kusno, in their article "Perlindungan Hukum terhadap Pekerja Pasca Pemisahan Perusahaan (Spin Off)", analyzed legal certainty for employees in spin offs but limited their focus to normative frameworks without exploring the specific responsibilities of BUMN.<sup>9</sup> Kevin Darmawan, Holyness N. Singadimedja, and Rafan Darodjat, in "Pemutusan Hubungan Kerja dan Pesangon dalam Perspektif Peraturan Pemerintah Nomor 35 Tahun 2021", discussed termination of employment and compensation under Government Regulation No. 35 of 2021, but did not fully address the continuity of employees' status during restructuring. Consequently, a research gap persists in understanding how corporate law, labor law, and the unique responsibilities of BUMN intersect in the context of spin offs.<sup>10</sup>

This study is intended to fill that gap by specifically examining the legal certainty of employees' status following the spin off of PT Perkebunan Nusantara III (Persero) into PT Perkebunan Nusantara IV Regional I. The inquiry is guided by three research problems. *First*, how does Indonesian positive law regulate corporate spin offs? *Second*, how can legal certainty be assessed with regard to employees' status in the spin off of PT Perkebunan Nusantara III (Persero) into PT Perkebunan Nusantara IV Regional I? *Third*, what corporate responsibilities arise for BUMN concerning employees' status as a consequence of the spin off?

The novelty of this study lies in its integration of corporate law and labor law analysis within the specific framework of BUMN restructuring, an intersection that has been underexplored in existing literature. Unlike prior works that treat spin offs merely as corporate actions, this research situates them within Indonesia's constitutional and welfare-oriented obligations. By focusing on the spin off of PT Perkebunan Nusantara III (Persero) into PT Perkebunan Nusantara IV Regional I, this study provides both a theoretical contribution by enriching the discourse on legal certainty through Radbruch's value theory and corporate responsibility theory, and a practical contribution by offering policy recommendations to ensure that BUMN restructuring aligns corporate efficiency with the protection of employees' rights in Indonesia's welfare state framework.

## 2. Methods

This study employs a normative juridical method with three approaches: the statute approach, the conceptual approach, and the case approach.<sup>11</sup> The statute approach is applied by examining all relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia, Law No. 40 of 2007 on Limited Liability Companies, Law No. 13 of 2003 on Manpower as amended by Law No. 6 of 2023, and Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours, and Termination of Employment.

The conceptual approach is undertaken by analyzing legal doctrines, principles, and scholarly opinions concerning legal certainty,<sup>12</sup> corporate responsibility, and the protection of workers' rights during corporate restructuring. Meanwhile, the case approach is employed by examining the restructuring and spin off of PT Perkebunan Nusantara III (Persero) into PT Perkebunan Nusantara IV Regional I as the primary case study, thereby allowing the assessment of how existing legal norms operate in practice.

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<sup>9</sup> Muslim Aminullah and Ahmad Saleh Kusno, "Kepastian Hukum terhadap Status Tenaga Kerja Akibat Pemisahan (Spin Off) Perusahaan," *Responsif: Jurnal Hukum* 13, no. 1 (2022), <https://doi.org/10.33603/responsif.v13i1.6717>.

<sup>10</sup> Kevin Darmawan, Holyness N. Singadimedja, and Rafan Darodjat, "Perlindungan Hukum Pekerja Tetap Atas Pemutusan Hubungan Kerja Akibat Pemisahan Perseroan (Spin Off) Ditinjau dari Peraturan Pemerintah Nomor 35 Tahun 2021," *Federalisme* 2 (2025): 68–81.

<sup>11</sup> Devi Yulida and Dedy Novindra, "Clean Coal Energy: The Perspective of Environmental Law on Steam Power Plants in Indonesia," *Mahadi: Indonesia Law Journal* 4, no. 1 (February 2025): 1–15.

<sup>12</sup> Firmanto, T., Sufiarina, S., Reumi, F., & Saleh, I. N. S. (2024). *Metodologi Penelitian Hukum: Panduan Komprehensif Penulisan Ilmiah Bidang Hukum*. PT. Sonpedia Publishing Indonesia.

The specification of this research is descriptive-analytical, aiming not only to describe and explain but also to critically analyze the legal framework and its implementation in relation to the issues under study. Data collection relies on library research, which includes the examination of primary legal materials (statutes, regulations, and official documents), secondary legal materials (books, journal articles, and research reports), and tertiary legal materials (legal dictionaries and encyclopedias)<sup>13</sup>. All collected materials are analyzed through a qualitative juridical analysis using deductive reasoning,<sup>14</sup> moving from general legal norms and principles to their specific application in the case of the PTPN spin off.

### 3. Result and Discussion

#### *Implementation of Separation or Spin Off*

Based on the concept adopted in Article 135 paragraphs (2) and (3) of Law Number 40 of 2007 concerning Limited Liability Companies, there are two types of separation, namely pure separation and partial separation. Pure separation results in the transfer by operation of law of all assets and liabilities to two or more recipient companies, and the company carrying out the separation ceases to exist by operation of law. Partial separation results in the transfer by operation of law of only part of the assets and liabilities to one or more recipient companies, while the company carrying out the separation remains in existence. Both types of separation have similarities and differences. Their similarity lies in the transfer by operation of law of assets and liabilities from the company conducting the separation. The difference lies in the existence of the company after the separation. In a pure separation, the company ceases to exist, while in a partial separation, the company remains in existence together with the newly established entity.<sup>15</sup>

There are several reasons why separation or spin off is carried out. One reason is that a company may operate in a business field that is too broad, making management ineffective and difficult to control. Through a spin off, both the parent company and the new entity are expected to improve performance when operating independently and optimizing their respective resources.<sup>16</sup>

When a spin off takes place, a new independent company is established, and the shares of the new company are distributed to the existing shareholders in the same way as stock dividends. No new shareholders are introduced and no cash transaction occurs, therefore no tax obligation arises. However, when the existing shareholders later sell their shares to other parties, new ownership will occur. The process of separation or spin off generally consists of three stages from different perspectives, namely the perspective of the business environment, the perspective of the parent company, and the perspective of the spin off entity. These stages are divided into three phases, which are the pre spin off phase, the spin off process, and the post spin off phase.<sup>17</sup>

In the pre spin off phase, from the business environment perspective, the spin off influences the character of the business because the company expands into a new line of business different from its previous operations. This expansion must consider the level of business competition, as this stage is crucial for making the decision on whether to proceed with the spin off. From the perspective of the parent company, the decision alters the company's business principles and requires decisions regarding human resources, whether to rely on existing personnel or recruit additional employees. From the spin off perspective, the process is a test of entrepreneurial capacity.

During the spin off process, attention must be given to legal requirements as well as to the protections provided to the companies involved. Market conditions must also be carefully considered. From the point of view of the parent company, the spin off requires strong support from top management to ensure success, while for the new company, the process provides valuable management experience. After the separation, the new

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<sup>13</sup> Vita Cita Emia Tarigan, Devi Yulida, Rina Melati Sitompul, and Nor Akhmal Hasmin, "Studi Komparatif Food Safety Policy Ditinjau dari Sustainable Development Goals," *Law Journal* 5, no. 2 (February 2025): 158–169.

<sup>14</sup> Setiono, *Pemahaman Terhadap Metodologi Penelitian Hukum*, (Surakarta: Program Studi Ilmu Hukum Pascasarjana UNS, 2005), Pp 6.

<sup>15</sup> Gunawan Widjaja, *150 Pertanyaan tentang Perseroan Terbatas*, Cetakan ke-2, (Jakarta: Forum Sahabat, 2008), Pp. 102.

<sup>16</sup> Abdul Moin, *Merger, Akuisisi dan Divestasi*, Edisi-2, (Yogyakarta: Ekonisia, 2007), Pp. 338.

<sup>17</sup> Naufan Mufti Sudarmono, Tinjauan Yuridis Konsep Kebijakan Spin-Off Pada Unit Usaha Syariah Pasca Diberlakukannya Omnibus Law, *Jurnal Syntax Literate: Jurnal Ilmiah Indonesia*, Vol. 8, No. 3, (Maret 2023), Pp. 8

company is expected to adapt to the market characteristics it has chosen and to compete with existing businesses.

In the post spin off phase, the parent company experiences the effects of the process, including the costs incurred during separation and possible structural changes. From the perspective of the new company, the spin off is expected to generate positive effects for future development. The new entity also requires operational knowledge and experience gained from the parent company.

The success of a spin off is often determined during the decision making stage, which usually gives rise to controversy due to differing views between those who support and those who oppose the plan. Adjustments and harmonization are therefore required. From the perspective of the spin off, the process may be seen as an entrepreneurial effort to develop new types of businesses that are not necessarily aligned with the core principles of the parent company. Consequently, the parent company, particularly if it is conservative in nature, may regard the spin off as potentially harmful. Conversely, from the perspective of the separation itself, the process creates the expectation that the new company will be able to build a stronger and more independent business. Ultimately, the success of a spin off depends heavily on the support of the parent company, ranging from shareholders to employees, as well as on the proper selection of the business sector to be entered.

Legally, the procedure for spin off is regulated under Law Number 40 of 2007 concerning Limited Liability Companies, particularly Articles 126, 127, 128, and 135. These provisions stipulate that the process must protect stakeholders, including the company, minority shareholders, employees, creditors, business partners, and also safeguard public interest and fair competition.

Article 126 emphasizes that corporate actions such as merger, consolidation, acquisition, or separation must take into account the interests of the company, minority shareholders, employees, creditors, business partners, the public, and fair competition. Article 127 requires the board of directors to announce a summary of the separation plan in at least one newspaper and to notify employees at least thirty days prior to the general meeting of shareholders. This ensures transparency and provides the opportunity for objections. Article 128 requires that the approved separation plan be stated in a notarial deed in Indonesian. Article 135 explicitly provides for two forms of separation, namely pure separation and partial separation.

The procedural steps of separation or spin off are as follows.

The board of directors must announce the separation plan in a newspaper and notify employees at least thirty days before the general meeting of shareholders. This announcement informs the public and stakeholders and gives them the opportunity to raise objections.

After the announcement is made and objections are resolved, the board of directors convenes the general meeting of shareholders to approve the separation. Approval requires the presence of at least three fourths of the voting shareholders and the approval of at least three fourths of the votes cast, unless the articles of association require a higher quorum.

Decision making in the general meeting of shareholders must be based on consensus in order to ensure legal certainty and fairness for all parties, including shareholders, employees, and the company itself. Shareholders who disagree with the decision have the right to sell their shares back to the company at a fair value. The decision of the general meeting of shareholders is then formalized in a notarial deed, which gives binding legal effect to the separation.

In addition to statutory provisions, spin off procedures must also address creditor protection, taxation, financial restructuring, the application of good corporate governance principles, and post separation legal consequences. The success of a spin off therefore depends not only on compliance with the statutory framework but also on managerial strategy, stakeholder support, and market readiness.

### ***The Role of the Job Creation Law in Providing Legal Protection for Workers***

Legal protection for workers is intended as an effort to guarantee the rights of employees or laborers in carrying out their work in the workplace. Its purpose is to ensure equal treatment without discrimination of any kind in order to achieve the welfare of workers and their families, while at the same time taking into account the progress of business development. Work protection refers to all forms of measures undertaken by companies to secure both the physical and mental rights of workers, so that they feel comfortable at work and can increase productivity.<sup>18</sup>

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<sup>18</sup> Zaeni Asyhadie, *Aspek-Aspek Hukum Jaminan Sosial Tenaga Kerja*, (Jakarta : Raja Grafindo Persada, 2008), Pp 84.



Work protection may be provided through guidance, assistance, or by enhancing the recognition of human rights, as well as physical and socio-economic protection, which are established through prevailing norms in the company in accordance with the Manpower Law, several provisions of which have been amended by the Job Creation Law.<sup>19</sup>

Theoretically, there are three forms of work protection: *First*, Social protection, which is related to community efforts that aim to enable workers to enjoy and develop their livelihood as human beings in general, and more specifically as members of society and family. This type of protection is also referred to as occupational health. *Second*, Technical protection, which refers to efforts to safeguard workers from accidents that may be caused by tools or materials in the workplace. This type is more commonly referred to as occupational safety. *Third*, Economic protection, which refers to efforts to provide workers with adequate income to meet their daily needs and those of their families, including in situations when the worker is unable to work due to circumstances beyond their control. This type is usually called social security.

The Job Creation Law has amended several provisions of the Manpower Law. It restricts the determination of district and municipal minimum wages and formulates them based on inflation and economic growth. The determination of the minimum wage considers the standard of living of workers through the assessment of economic growth and inflation. The Job Creation Law also reduces severance pay from thirty-two months' wages to nineteen months, supplemented by six months' wages provided by the government. The severance pay calculation differs from that under the Manpower Law.

The regulation on wage structure and scale in the Job Creation Law states that "employers are obliged to prepare the wage structure and scale in the company by taking into account the capacity of the company and productivity." The difference from the Manpower Law lies in the elimination of considerations such as job classification, position, length of service, education, and competency, so that the wage structure and scale are now determined only on the basis of company capacity and productivity.<sup>20</sup> This change is intended to encourage workers to improve their competence by linking wage increases to performance. However, the new provision may in fact become counterproductive to the goal of improving the quality of human resources.<sup>21</sup>

Article 92 paragraph (2) stipulates that the wage structure and scale serve as a guideline for determining wages, which are based on units of time and units of output. Article 88B paragraph (1) provides that wages may be determined according to time units or output units. A time-based wage is determined according to a daily, weekly, or monthly basis, while an output-based wage is determined by the result of the agreed work. This is different from the Manpower Law, which did not regulate wage calculation based on time units and output. Even though the Job Creation Law does not explicitly refer to hourly wages, it opens the possibility that such a system could be implemented in the future. If this guideline is used, workers may receive take-home pay below the regional minimum wage.<sup>22</sup>

One of the most important issues for workers in labor relations is the termination of employment. Termination leads to the loss of livelihood, which creates hardship for workers and their families. Under the Job Creation Law, there is a significant reduction in workers' rights, particularly in the amendment of Article 93 paragraph (1), which regulates the right to wages when workers do not attend work. This change may affect protections for female workers during menstruation, as well as their freedom of religion and worship. Termination of employment will also increase if the amount of severance pay is reduced.

Mass termination of employment threatens workers because dismissal may be cheaper for employers than continuing to pay wages. This situation creates job insecurity. Compared to the Manpower Law, the provisions of the Job Creation Law are different, and in some respects worse, even though the earlier law itself was not ideal for workers. For instance, the Manpower Law prohibited termination for female workers who were pregnant, giving birth, experiencing miscarriage, or breastfeeding. The Job Creation Law contains no such prohibitions.

As the Job Creation Law does not regulate termination prohibitions, workers facing conditions as described in Article 158 of the Manpower Law may face difficulties if the employer terminates their

<sup>19</sup> Otti Ilham Khair, Analisis Undang-Undang Cipta Kerja Terhadap Perlindungan Tenaga Kerja di Indonesia, *Jurnal Widya Pranata Hukum*, Vol. 3, No 2, (September 2021), Pp 48.

<sup>20</sup> Jawahir Gustav Rizal dan Rizal Setyo Nugroho, Ketentuan Upah di UU Ketenagakerjaan dan UU Cipta Kerja, Apa Bedanya?, Diakses dari: <https://www.kompas.com/tren/read/2020/11/04/162000665/ketentuan-upah-di-uu-ketenagakerjaan-dan-uu-cipta-kerja-apa-bedanya->, pada tanggal 25 January 2025.

<sup>21</sup> Sigit Riyanto, dkk, Catatan Kritis Terhadap UU No 11 Tahun 2020 Tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020), Kertas Kerja, Edisi 2/ 5, (Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, 2020), Pp. 46.

<sup>22</sup> Siti Solekhah, dkk, Omnibus Law Cipta Kerja dan Perspektif Ekonomi Islam tentang Tenaga Kerja, *Jurnal Ats-Tsarwal*, Vol, 1, No. 1, (March 2021), Pp. 23

employment. There is also discriminatory treatment of both prospective workers and current workers, as protections provided in the Manpower Law are not covered in the Job Creation Law. For example, Article 93 of the Manpower Law ensures that workers continue to receive wages even if they are not working under certain conditions. This protection is absent in the Job Creation Law, which means that workers unable to perform their duties may lose wages and even their jobs. Such circumstances create disadvantages, particularly for female workers on maternity or miscarriage leave, as they may be deemed unproductive and therefore denied wages.

Employment protection programs are crucial to ensuring that workers enjoy a decent livelihood. Workers need productive job opportunities that provide a fair income, as well as social protection, opportunities for personal development, and freedom to express grievances in the workplace. The Job Creation Law, however, creates obstacles to the realization of decent employment opportunities. Although it was issued to provide flexibility for businesses in adapting to global economic volatility, it has weakened labor protections. Excessive labor regulations may increase labor costs, but overly relaxed rules increase the vulnerability of workers.<sup>23</sup>

Non-permanent employment relations weaken workers' positions because employers consider the appointment of permanent workers as burdensome, due to pension obligations and severance costs. Non-permanent relations therefore increase the risk of exploitation and marginalization of workers.

Employment relations arise from a work agreement between the employer and the worker. Such relations can end through termination of employment. Under Law Number 13 of 2003, termination was strictly regulated, especially for absenteeism or breaches of company rules. By contrast, under Law Number 11 of 2020 on Job Creation, termination can be carried out by employers for various reasons that are not objective.

Nevertheless, the Job Creation Law introduces Job Loss Insurance (JKP) to help workers who lose their jobs find new employment and maintain their standard of living. One of its benefits is access to labor market information provided by the Ministry of Manpower. To ensure the effectiveness of JKP, the Ministry must develop an inclusive "Karirhub-Sisnaker" platform. This requires:<sup>24</sup>

1. Mandatory company employment reporting (WLKP);
2. Integration of Karirhub-Sisnaker with regional government and private sector platforms;
3. Education for employers to post detailed vacancies, and for jobseekers to regularly update their résumés on Karirhub-Sisnaker;
4. The creation of a dedicated social media account with engaging content to direct jobseekers to the platform;
5. The addition of features such as part-time and internship vacancies, free online training videos, counseling, and free aptitude and interest tests.

Based on the above explanation, it can be concluded that the labor cluster of the Job Creation Law does not fully provide legal protection for workers. This contradicts the theory of legal protection, which is the protection of dignity and the recognition of human rights as provided by law against arbitrary actions. The Job Creation Law attempts to regulate employment matters in a way that benefits workers, but in practice it contains many gaps that weaken workers' positions. Preventive legal protection generally gives society the opportunity to voice opinions before government decisions become final, thus avoiding disputes. However, in the drafting of the Job Creation Law, the public was not given the opportunity to participate. This has led to widespread rejection of the law, particularly in its labor cluster.

### **Corporate Responsibilities of BUMN Concerning Employees' Status Following a Spin-Off**

The spin-off of a state-owned enterprise (BUMN), as exemplified by the transformation of PT Perkebunan Nusantara III (Persero) into PT Perkebunan Nusantara IV Regional I, generates complex and multifaceted corporate responsibilities concerning employees' rights, status, and welfare. One of the foremost responsibilities of the company is to ensure legal certainty for employees whose employment may be affected by the spin-off.<sup>25</sup> Determining whether employees will continue employment with the newly established entity

<sup>23</sup> Gusti, UU Cipta Kerja Menjauhkan Pekerja Dapat Penghidupan Layak, accessed from: <https://ugm.ac.id/id/berita/22608-uu-cipta-kerja-menjauhkan-pekerja-dapat-penghidupan-layak/>, 25 January 2025.

<sup>24</sup> Palmira Permata Bachtiar, dkk, Mengembangkan Informasi Pasar Kerja Yang Inklusif Untuk Mengoptimalkan Pelaksanaan Jaminan Kehilangan Pekerjaan, *Catatan Kebijakan Smeru*, No. 1, (November 2021), Pp. 1

<sup>25</sup> PT Perkebunan Nusantara IV, *PT Perkebunan Nusantara IV dan entitas anaknya/and its subsidiaries*, (Jakarta: PT Perkebunan Nusantara IV, 2023), Pp. 11.

or remain associated with the original company requires meticulous evaluation and careful adjustment of employment contracts. Employment contracts must reflect the new corporate structure while simultaneously safeguarding the legal rights of employees under Indonesian labor law, including the Manpower Law (Law No. 13 of 2003) and the Job Creation Law (Law No. 11 of 2020). These contracts should include provisions for continuity of employment, severance and long-service compensation, and the protection of all accrued benefits, thus minimizing potential legal disputes and uncertainties regarding employment status.

Spin-offs inherently entail organizational restructuring, which frequently leads to workforce reductions or termination of employment. In such cases, BUMNs carry the responsibility of ensuring that all termination processes are conducted in strict compliance with labor laws, including the provision of severance pay, recognition of accrued service benefits, and protections against discrimination. Special attention must be given to vulnerable employee groups, including pregnant employees, employees on maternity leave, or employees with disabilities, to ensure that their rights are not undermined during the transition. Companies must avoid practices that bypass legal requirements, such as unilateral termination without proper consultation with labor unions or without providing adequate justification, as these can lead to violations of labor regulations and potential litigation.<sup>26</sup> Furthermore, companies must address potential gaps between existing labor regulations and actual practices, recognizing that some BUMNs may exploit regulatory ambiguities to reduce labor costs, thereby undermining employee rights.

Transparency and effective communication constitute additional core corporate responsibilities. Employees must be fully informed at the earliest stages of the spin-off regarding the rationale, procedures, and potential consequences for their employment. Such transparency allows employees to understand whether they will be transferred to the new company, the terms of contract adjustments, their entitlement to severance or compensation, and the procedures for raising complaints or disputes.<sup>27</sup> Effective communication minimizes confusion and anxiety, facilitates employee decision-making regarding retention or resignation, and fosters a sense of trust between management and the workforce.

Employee capacity-building represents another dimension of corporate responsibility. Companies are expected to provide training programs aimed at enhancing both technical and soft skills of employees impacted by the spin-off. These programs should be accessible at no cost to employees and must not be deducted from severance or other benefits. By investing in workforce development, BUMNs enable employees to adapt to new operational environments, maintain productivity, and improve long-term employability. Training initiatives may include skill enhancement for digital plantation management, operational excellence, or other competencies aligned with the strategic objectives of the newly formed company.

The role of labor unions and employee representation is crucial in ensuring that corporate responsibilities are fully realized. BUMNs must actively involve unions throughout the spin-off process, providing them with the authority and capacity to protect employee interests, negotiate contract modifications, and serve as intermediaries in dispute resolution. Union representatives should receive training in labor law, negotiation strategies, and advocacy to effectively safeguard the rights of employees. Active involvement of labor unions ensures that corporate restructuring does not disproportionately disadvantage employees and that their legal protections are maintained throughout the transition.

Government oversight represents a final, indispensable aspect of corporate responsibility in the context of a BUMN spin-off. Coordination with the Ministry of Manpower and other relevant government agencies is necessary to ensure regulatory compliance, monitor termination procedures, validate severance calculations, and intervene when disputes arise. Government participation may also include mandatory approval for spin-off processes, ensuring that employees' rights are formally recognized and protected. By engaging the government as a mediator and regulatory enforcer, BUMNs reduce the risk of unilateral decisions that could adversely affect employees, strengthen accountability, and reinforce social trust.<sup>28</sup>

In conclusion, corporate responsibilities arising from a BUMN spin-off encompass legal compliance, employee protection, transparent communication, capacity-building initiatives, labor union engagement, and government oversight. These responsibilities aim to balance operational efficiency and corporate restructuring

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<sup>26</sup> Elirica Aliyah Irwan Bauw, *Perlindungan Hukum Bagi Pekerja/Buruh Yang Terancam Phk Pasca Adanya Akuisisi Dan Marger Perusahaan, Causa: Jurnal Hukum Dan Kewarganegaraan*, Vol. 5, No.1, (2024), Pp 6.

<sup>27</sup> Guntur Putra Ramadhan, Muhammad Rizal, dan Sari Usih Natari, *Pemutusan Hubungan Kerja Secara Sepihak Berdasarkan UU Cipta Kerja (Studi Kasus Pada PT. Shopee Internasional Indonesia)*, *Digital Bisnis: Jurnal Publikasi Ilmu Manajemen dan E-Commerce*, Vol. 2, No. 3, (2023), Pp. 5

<sup>28</sup> Redhytta Putri Wulandari, Muhamad Rizal, dan Sari Usih Natari, *Analisis Pelanggaran Hukum Ketenagakerjaan Yang Dilakukan Oleh PT. Alpen Food Industry Terhadap Karyawan*, *Deposisi: Jurnal Publikasi Ilmu Hukum*, Vol. 1, No. 1, (March 2023), Pp. 6



with the welfare, rights, and job security of employees.<sup>29</sup> By implementing comprehensive strategies that integrate legal safeguards, training programs, union participation, and government oversight, BUMNs can mitigate legal and social risks while fostering sustainable workforce development.<sup>30</sup> Ultimately, fulfilling these responsibilities contributes not only to the protection of employees' rights but also to the long-term resilience, ethical integrity, and social accountability of the enterprise in the broader context of Indonesia's agribusiness and state-owned economic sectors.

#### 4. Conclusion

The research findings indicate that the spin-off of PT Perkebunan Nusantara III (Persero) into PT Perkebunan Nusantara IV Regional I has created legal uncertainty regarding employee status, as existing regulations, including the Manpower Law and the Limited Liability Company Law, do not specifically govern employee treatment during corporate separation. Although clauses in the joint agreement between the company and the labor union provide some protection for employee rights, the flexibility to amend these provisions introduces potential ambiguity and risks for legal certainty. Therefore, corporate transparency and clear communication regarding employment status, rights, and obligations are essential to ensure the protection of employee rights following the spin-off.

To provide legal certainty and maximum protection for employees, the company should establish new employment agreements or amend existing contracts, ensuring that employee status, rights, and obligations in the new company are clearly defined and safeguarded. Additionally, the company should conduct monitoring and assessment of the spin-off's impact on employees, including job satisfaction and potential complaints, while ensuring that the entire separation process complies with the Limited Liability Company Law and the Manpower Law. By doing so, employee welfare is maintained, legal risks are minimized, and the transition to the spin-off company can be carried out fairly, transparently, and systematically.

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<sup>29</sup> Rizki Amalia Fitriani, dkk, Efektivitas Pengawasan Ketenagakerjaan Terhadap Upah Minimum Pekerja, *Jurnal USM Law Review*, Vol. 5, No. 2, (2022), Pp. 7

<sup>30</sup> Pierre Abraham dan Yunita Sugiastuti, Peranan Hukum terhadap Faktor yang Mempengaruhi Permintaan Tenaga Kerja dan Rata-rata Upah/ Buruh/Karyawan/Pegawai Menurut Provinsi dan Lapangan Pekerjaan Utama, *Jurnal Hukum Media Justitia Nusantara*, Vol. 12, No. 2, (September 2022), Pp 6.

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