Employee Status After Company Conducted Merger or Acquisition

With the aim of developing business activities, a company often take corporate actions in the form of mergers or acquisitions in their companies. Regulation regarding merger and acquisition can be found in Law No. 40 Year 2007 ("**Company Law**"). Merger is legal action that is done by one company or more to merge itself with yet another company that causes its assets and debts from the merging company to transfer to the surviving company by law, and afterwards the status of the legal entity of that merging company will cease by law (Article 1 paragraph (9) of Company Law). Meanwhile, an acquisition is a legal action taken by a legal entity or individual person to acquire shares in a company resulting in the passing control of the Company (Article 1 paragraph (11) of Company Law).

In essence, what distinguishes between mergers and acquisitions is the legal entity status of the company. If due to the merger, the legal entity status of the company is ceased, while with the acquisition, it does not eliminate the company's legal entity status.

Merger or Acquisition Plan

Before conducting a merger or acquisition, Company Law requires companies to draft a merger or acquisition plan. In the case of a merger, based on Article 123 of Company Law, it is states that the directors of companies that will merge or accept the merger must prepare a merger plan. One of the contents that must be contained in the merger plan is the method of settling the status, rights and obligations of members of the board of directors, board of commissioners, and employees of the company that will carry out the merger (Article 123 Paragraph (2) letter h of Company Law).

Similar in the case of acquisitions, the directors of the company that will be acquired or those who want to acquire are required to prepare an acquisition plan with one of the contents relating to the settlement of the status, rights and obligations of the members of the board of directors, board of commissioners, and employees of the company to be taken over (Article 125 Paragraph (6) letter i of Company Law). After the merger plan or acquisition plan is drafted, directors of the company are required to publish a summary of the draft in at least one newspaper and announce it in writing to the company's employees no later than 30 days before the summons for the General Meeting of Shareholders (GMS) (Article 127 Paragraph (2) of Company Law). The purpose of this announcement is to provide an opportunity for related parties to be aware of the existence of the plan, and to file an objection if they feel that their interests have been harmed.

Through Article 126 paragraph (1) of Company Law, it emphasizes that in carrying out corporate actions, the company must pay attention to the interests of:

a. The company, minority shareholders, employees of the company;
b. Creditors and other business partners of the company; and
c. Society and fair business competition.

After receiving the summary of the proposed merger or acquisition, employees and the employer can decide on the status of their employment relationship after the merger or acquisition has taken place. Please be advise the Manpower Law gives two possibilities, as follows:

a. Employees are not willing to continue their employment;
   In this option, the employees and the company agree terminate employment relationship. This allows the company to terminate the employment relationship by paying a compensation based on prevailing laws and regulations.

b. Employees are willing to continue their employment.
   Even though there is a willingness of the employees to continue their employment, the company has a right to terminate them. However, since the employees are willing to continue to work, they are having a right to receive a higher minimum termination allowance based on prevailing laws and regulations.

Termination Due to Mergers or Acquisitions

In the case of termination, Article 81 Number 42 of Law No. 11 Year 2020 concerning Job Creation ("**Law No. 11/2020**") states that one of the events that can result in termination is that the company conduct merger, consolidation, acquisition, or spin off and the employee is not willing to continue the employment relationship or the employer is not willing to accept the employee.

However, employees who are being terminated due to mergers and acquisitions are entitled to compensation in the form of severance pay, service pay, and compensation pay.

This regulation is elaborated also in Government Regulation No. 35 Year 2021 concerning Definite-term Employment Agreement, Outsourcing, Working and Resting Hours, and Termination of Employment ("**GR No. 35/2021**").

In the event of a merger and the employee is not willing to continue or the employer is not willing to accept the employee, the employee is entitled to obtain (Article 41 of GR No. 35/2021):

1. 1 time severance pay;
2. 1 time service pay; and
3. Compensation pay.

In terms of termination that occur as a result of the acquisition (Article 42 paragraph (1) of GR No. 35/2021):

1. 1 time severance pay;
2. 1 time service pay; and
3. Compensation pay.

In the event of an acquisition, there is a change in the terms of employment which results in the employee not being willing to continue the employment relationship (Article 42 paragraph (2) of GR 35/2021):

1. 0.5 (zero point five) times the severance pay;
2. 1 time service pay; and
3. Compensation pay.

The amount of severance pay, service pay, and compensation pay is adjusted to the length of service that has been taken by the employee and other provisions that have been regulated by Law No. 11/2020 and GR No. 35/2021.

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