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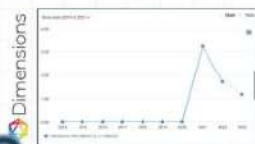
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Corporate takeovers and their implications for employees and the business world

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Keywords:

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Abstract

This paper describes the legal framework surrounding expropriation in Indonesia and the implications this has for



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This paper describes the legal framework surrounding expropriation in Indonesia and the implications this has for key stakeholders, including workers, the business world, and consumers. The research method used in this paper is normative legal research, relying on secondary data from literature and legal sources. The collected data is analyzed qualitatively, and conclusions are drawn through deductive reasoning. The study provides insights into how current regulations impact employment, business operations, and consumer rights. This research adds value by providing a legal analysis that can inform policymakers, legal professionals, and businesses on how to navigate the complexities within Indonesia's legal system.

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Corporate takeovers and their implications for employees and the business world

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ABSTRACT

Keywords:

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This paper describes the legal framework surrounding expropriation in Indonesia and the implications this has for key stakeholders, including workers, the business world, and consumers. The research method used in this paper is normative legal research, relying on secondary data from literature and legal sources. The collected data is analyzed qualitatively, and conclusions are drawn through deductive reasoning. The study provides insights into how current regulations impact employment, business operations, and consumer rights. This research adds value by providing a legal analysis that can inform policymakers, legal professionals, and businesses on how to navigate the complexities within Indonesia's legal system.

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INTRODUCTION

At the end of the 20th century, the business world entered a period of freedom and openness, where there were no longer distances or obstacles that limited all business activities, especially activities between regions and countries. The most important changes in the business environment are globalization, deregulation, technological and information advancements as well as market fragmentation that creates very fierce competition. This condition requires companies (business actors) to always develop strategies in order to survive. The response of companies (business actors) to the increase in competition is very diverse, such as focusing on resources for certain smaller segments, some stick with what they have done, some merge themselves into large companies in the industrial world or in other words carry out corporate actions such as acquisitions or takeovers (Muhammad, 2010).

Acquisition or takeover comes from the word "acquisition" in Latin or "acquisition" in English which means to buy or acquire something or an object to add to something or an object that has been owned before. Acquisition is a legal act in the form of a company takeover in which the acquiring company and the expropriated company each remain and continue to carry out business activities (Ani, 2023; Disemadi & Winata, 2020; Indradjaja & Chamdani, 2024; Putra et al., 2020; Rizka & Hendranastiti, 2023). Law No. 40 of 2007 concerning Limited Liability Companies (UUPT), Article 1 number 11 provides the definition of expropriation as a legal act carried out by a legal entity or individual to take over the Company's shares which results in a transfer of control over the Company.

The wave of corporate actions, both takeovers and mergers, throughout 2022 in Indonesia continues to occur even in the midst of a threatening global economic recession. Based on data from IDX channel several company actions from Indonesian technology companies throughout 2022, including in June 2022 PT. XL Axiata acquired PT Link Net, where Axiata Group Berhad and XL Axiata completed the acquisition process of Link Net (LINK) shares by 66.03% with a value of RM2.63 billion or around Rp8.72 trillion. This acquisition process is part of XL's efforts to expand the provision of digital and convergent services for the community. Furthermore, Indosat Ooredoo merged with Hutchison Tri, where they have announced a merger agreement since September 2021 and officially conducted the merger as of January 4, 2022.

Indosat as the Merger Recipient Company has the obligation to fulfill several commitment points that must be achieved for the next four years or until 2025. Next, the merger carried out by the ticket booking service provider company, namely Tiket.com merger with BliBli, which Tiket.com joined the BliBli Marketplace (PT Global Digital Niaga). The merger of the two companies was carried out in October 2022. The same thing was also done by the Ranch Market supermarket which joined the combined entity BliBli

Tiket. Until early November 2022, the combined company was listed on the Indonesia Stock Exchange (IDX) with the ticker "BUY" after conducting an Initial Public Offering (IPO) (IDX Channel, 2022).

The company's actions are also carried out by online transportation companies and marketplaces, namely the acquisition of Gojek with Tokopedia, Tiktok Shop with Tokopedia. Online shopping service company Tokopedia and transportation application Gojek officially joined on May 17, 2021. In fact, the merger of the two unicorn companies is the process of taking over Tokopedia as a subsidiary of Gojek whose company name was changed from PT Aplikasi Karya Anak Bangsa to PT GoTo (Gojek Tokopedia). GoTo Group itself is claimed to be the largest digital consumer platform in Indonesia. The company's financial statements record that the total gross transaction value (GTV) was more than US\$ 22 billion in 2020, more than 1.8 billion transactions in 2020, the registered driver fleet was more than 2 million as of December 2020, more than 11 million trading partners as of December 2020, above 100 million monthly active users (MAU), the ecosystem covers 2 percent of Indonesia's GDP (more than US\$ 1 trillion). GoTo had been hit by several waves of Termination of Employment (PHK) storms. After 7 months have passed since the first IPO, in November 2022, the company resulting from the merger of Tokopedia and Gojek fired around 1,300 employees, which is a step taken to encourage healthier business performance. The issue of GoTo's mass layoffs of around 600 employees on March 10, 2023 has further added to the series of mass layoffs in Indonesia (Lestari, 2023). The next wave of acquisitions is TikTok's acquisition of Tokopedia. TikTok took over the majority of shares in Tokopedia by 75% of the shares. This means that TikTok has significant control over Tokopedia's operations (Kundiharto, 2023).

Article 126 paragraph (1) letter a of the Limited Liability Company Law mandates that legal acts of Merger, Merger, Takeover, or Separation must pay attention to the interests of the Company, minority shareholders, and employees of the Company. Furthermore, letter c says that legal acts of Merger, Merger, Takeover, or Separation are also obliged to pay attention to the interests of the community and healthy competition in doing business. This means that in a merger, merger, takeover, or separation, the company must pay attention to the interests of employees (workers), the business world, and the community as consumers in addition to the interests of the company. It would be better if the Merger, Merger, Takeover, or Separation of the company was not carried out if it would harm the interests of certain parties such as creditors, business partners, minority shareholders, employees (workers), the business world and the community as consumers indirectly.

In line with the Limited Liability Company Law, the Manpower Law, Law No. 13 of 2003, it is enough to provide protection in the event of a takeover or acquisition, where workers can continue to work as usual and have the same status as before the takeover. Meanwhile, if there is a change related to work due to the takeover, both the employer and the employee can choose to terminate the employment relationship or not, because according to Law Number 13 of 2003 concerning Manpower, it is stated that in the event of a corporate action such as a merger, consolidation, or change of ownership (take over or acquisition), the worker or laborer can only terminate the employment relationship (no longer willing to continue the employment relationship) after organizational restructuring and/or downsizing and there is a rotation or mutation (according to management needs) which results in changes in working conditions, rights and obligations that are different from what has been stated in the employment agreement and/or company regulations/collective labor agreement previously, unless it has been arranged/agreed upon previously (Tobing, 2024).

Referring to Article 3 of Law No.8 of 1999 concerning Consumer Protection (UUPK) said that one of the objectives of the UUPK is to realize a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information by fostering awareness of business actors about the importance of consumer protection so that an honest and responsible attitude grows in doing business and improving the quality of goods and/or services that guarantee business continuity of the production of goods and/or services, health, comfort, security, and safety of consumers. The principles of Indonesian consumer protection are the principles of benefit, fairness, balance, consumer security and safety, and legal certainty. This means that the UUPK also mandates that it not only guarantees legal certainty for the protection of consumers (the community) but also maintains a balance of interests for business actors (companies) in running a business.

How to arrange the takeover of a company from a legal perspective in Indonesia and its implications for workers, the business world, and the community as consumers are the issues discussed in this paper. The purpose of this paper is to describe the expropriation arrangement in the legal perspective in Indonesia and its implications for workers, the business world, and society as consumers. The research contribution of this paper lies in its exploration of the legal framework surrounding expropriation in Indonesia and the implications this has for key stakeholders, including workers, the business sector, and consumers. By examining the expropriation process from a legal perspective, the study provides insights into how current regulations impact employment, business operations, and consumer rights. This research adds value by highlighting the broader socio-economic consequences of expropriation, offering a legal analysis that can inform policymakers, legal

professionals, and businesses on how to navigate the complexities of expropriation within Indonesia's legal system.

METHOD

The research method used in this study is normative legal research, relying on secondary data from literature and legal sources. The approach focuses on analyzing legal norms and regulations related to company law, employment, business competition, and consumer protection in relation to the subject matter. The data for this research consists of secondary sources, including laws and regulations, books, journals, scientific works, and electronic articles. The collected data is analyzed qualitatively, and conclusions are drawn through deductive reasoning.

RESULTS AND DISCUSSION

Corporate Takeover Arrangements Under Law in Indonesia

There are several terms for takeover, namely take over and acquisition. Referring to Law No. 40 of 2007 concerning Limited Liability Companies which has been amended by Law No. 6 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the Constitution), Article 1 number 11 states that "a takeover is a legal act carried out by a legal entity or an individual to take over the Company's shares which results in a transfer of control over the Company." There are several elements of the meaning of expropriation, namely the first element of legal act which is defined as every act of a legal subject (human or legal entity) whose consequences are regulated by law where the consequences can be considered as the will of the person who performs the law. A legal act or legal action only occurs when there is a "statement of will." Furthermore, Rahardjo (2012) explained that legal acts are the beginning of the regulatory process. Legal acts are a momentum that separates the lawless state from the state regulated by law, the separation between the "social world" and the "legal world." Subjecting to the legal order means being subject to legal judgment, legal measure and legal consequences. The definition of legal act is in line with the definition of takeover as stated in Article 1 number 11 of the UUPT that the takeover is carried out by a person or legal entity who indeed wants to control the Company whose shares are taken over.

The second element is that the perpetrator of the expropriation can take the form of a natural human being or a legal entity. Individuals are referred to as natural human beings and legal entities are legal subjects in the Indonesian legal system. A legal entity is an organization, body, group, institution or property that is formed and confirmed by law as a stakeholder of rights, authority, obligations, wealth, duties, status, and its own priorities which in principle are separate from those owned by individual human beings and have administrators who represent and carry out the interests of the legal entity concerned in addition to the interests of its members (Fuady, 2013b). A legal entity, an association or organization that by law is treated like a human being, namely as the bearer of rights and obligations, can have wealth, can sue and can be sued before the Court, for example a limited liability company (PT), Foundation, and the State is also a legal entity (Subekti & Tjitrosudibio, 1982).

Takeover can be carried out on all property, but the UUPT limits that the takeover that is expressly regulated in this UUPT is only the takeover of shares, even though the UUPT also opens the possibility of taking over assets implied in Article 102 Paragraph (1) of the UUPT. The provisions of Article 102 of the UUPT can be interpreted as an embryonic provision of the takeover of the company by taking over assets. Fuady (2013b) stated that the takeover of assets will be carried out against the target Company's assets with or without also taking over all obligations of the target Company to third parties. As a counter-achievement of the acquisition of assets, the Company's shareholders are given a target price that is appropriate in the same manner as in the transfer of shares (Fuady, 2008a). The third is the element of the goal to be achieved from the legal act of expropriation, namely the control of the Company whose shares have been expropriated. The meaning of the word "controller" can be inferred from several regulations of the Financial Services Authority (hereinafter referred to as OJK) such as Article 1 Number 4 of the Financial Services Authority Regulation No. 9 /POJK.04/2018 concerning the Takeover of Public Companies which states that the Controller of the Public Company, hereinafter referred to as the Controller, is a party that either directly or indirectly owns more than 50% (fifty percent) of all shares with paid voting rights full; or have the ability to determine, either directly or indirectly, in any way the management and/or policies of the Public Company. Referring to Article 1 number 7 of the UUPT which refers to a Public Company or a Company that conducts a public offering of shares, in accordance with the provisions of laws and regulations in the field of capital market. According to the researcher, the termination of the controller can also be used for a closed company that has not conducted a public offering or a public company. In general, the controller will usually control more than 50% of the share ownership because in this situation the controller will always win the vote in the General Meeting of Shareholders (hereinafter referred to as the GMS), so that the controller will be able to make other shareholders

follow his wishes. However, it is possible that the controller does not have more than 50% shareholding, but the controller has important things for the progress of the Company such as technology, marketing networks, access to stakeholders that will bring progress to the Company. With this situation, the controller will be important for the limited liability company as well as other shareholders. So that the will of the controller will always be followed even if he does not own more than 50% of the shares.

The term used for this takeover is not singular, so it is often encountered other terms other than takeover such as acquisition or takeover. Black (1968) states that acquisition is the act of becoming the owner of certain property. This term means an action to make oneself the owner of a certain property, which according to the researcher can be interpreted broadly, namely all types of property including stocks. Another term that is often used is take over, which is "to assume control or management of" (Black, 1968). The term take over is more visible to management control in the sense of taking over the management of a company. So it looks far from the meaning of takeover, especially stocks. The existence of these several terms led the researcher to a suggestion that it is better to discuss the takeover of shares, then the term used is the term that has been standardized in the UUPT, namely "takeover" so that it does not give rise to different interpretations.

The takeover has several legal bases, including Law No. 40 of 2007 concerning Limited Liability Companies which has been amended by Law No. 6 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation into Law (hereinafter written as the UUPT), Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, Law No. 13 of 2003 concerning Manpower, Law No. 8 of 1999 concerning Consumer Protection, along with its derivative regulations such as Government Regulation (PP) No. 27 of 1998 concerning Merger, Consolidation and Takeover of Limited Liability Companies, Government Regulation No. 28 of 1999 concerning Mergers, Consolidation and Acquisition of Banks, Government Regulation of the Republic of Indonesia No. 43 of 2005 concerning Mergers, Consolidations, Takeovers, and Changes in the Form of Legal Entities of State-Owned Enterprises, Financial Services Authority Regulation (POJK) No. 9 /POJK.04/2018 concerning Takeover of Public Companies, POJK No. 54 /POJK.04/2015 concerning Voluntary Tender Offers. In addition, there are four Bapepam Regulations that must be considered when acquiring a public company, namely Bapepam Regulation No. IX.E.1 concerning Conflicts of Interest in Certain Transactions, Bapepam Regulation No. IX.E.2 concerning Material Transactions and Changes in Main Business Activities, Bapepam Regulation No. IX.H.1 concerning Takeover of Public Companies, Bapepam Regulation No. X.K.1 concerning Information That Must Be Immediately Announced to the Public, and in addition to Law Number 8 of 1995 concerning the Capital Market (Fuady, 2008a).

The difference in the takeover procedure in Closed Companies and Public Companies lies in the additional stages, where for public companies there needs to be a Statement to Bapepam a maximum of one working day after the takeover, an announcement of the takeover in 2 newspapers (a maximum of 1 working day after the takeover) and the most important thing is to make a mandatory tender offer, namely the offer of the remaining shares by the new controller so that the controller only owns at most 80% of the Company's total shares (number 1 letter e of Bapepam Regulation No. IX.H.1). The implementation is by means of the announcement of information disclosure, implementation and settlement, and the purchase price of shares in the mandatory tender offer.

The takeover process can be divided into 2, namely first, the takeover process through the Company's board of directors (Article 125 paragraph (1) of the UUPT). The takeover is carried out by taking over shares that have been issued and/or will be issued by the Company through the Company's Board of Directors or directly in the form of a legal entity or an individual. The takeover of shares referred to in Article 125 paragraph (1) of the UUPT is a takeover that results in a transfer of control over the Company later as included in Article 7 number 11 of the UUPT. The takeover process through the Company's Board of Directors is as follows: first, the Resolution of the GMS, then the Notification to the Company's Board of Directors, the third is the preparation of the Takeover Draft and then the Takeover Summary of the Draft. The fifth is the submission of the Creditor's objection, the sixth is the preparation of the Takeover Deed before the Notary then notification to the Minister, and finally the announcement of the results of the takeover.

Meanwhile, the process of taking over directly from shareholders where the procedure is carried out is simpler, namely the procedure for taking over shares of a limited liability company must be subject to the provisions on share acquisition as stipulated in the UUPT which, among other things, regulates first, the acquisition of shares must pay attention to the provisions for the transfer of rights to shares in the Articles of Association, and obtain the approval of the General Meeting of Shareholders (GMS). The GMS must be held no later than 30 (thirty) days after the announcement (Article 126 Paragraph (6) and Paragraph (7) of the UUPT). Second, the Board of Directors of the company that will make the acquisition is required to announce the summary of the draft in at least 1 (one) newspaper and announce in writing to the employees of the company no later than 30 days before the invitation of the GMS, (Article 127 Paragraph (8) of the Constitution). Third, Creditors can submit objections to the company no later than 14 days after the announcement of the acquisition in accordance with the design. If the creditor does not raise an objection within that period, the creditor is

deemed to have approved the acquisition. In the event that the dispute from the creditors up to the date of the GMS cannot be resolved by the Company's Board of Directors, the objection must be submitted to the GMS in order to be resolved. Until this objection is resolved, the acquisition cannot be carried out (Article 127 paragraphs (2) (3) (5) (6) and (7) of the UUPT).

Implications of Company Takeover on Workers, Society and the Business World

Juridically, the way to take over a company is to buy shares either partially or completely from the company (Saliman, 2005). The takeover of a company can be done internally or externally. Internal is the takeover of companies in their own group, while external is the takeover of companies outside the group or companies from other groups (Saliman, 2005). Takeover companies are usually large companies that have strong funds, good management, and extensive networks, and are grouped in conglomerates. Takeovers can occur both forcefully (unfriendly takeover/hostile takeover) and voluntary/friendly (friendly takeover). Forced takeover or (unfriendly takeover/hostile takeover), which is a small company that is difficult to grow is acquired by a larger company that is classified as a conglomerate company. Meanwhile, a voluntary/friendly takeover is a small company that is indeed wanted to be acquired by a conglomerate company (Saliman, 2005). In the takeover of the company, there are several advantages, namely the company still uses the old name and does not require a license for a new business, while the disadvantage is that it is easy to duplicate or waste and the company's ownership changes (Saliman, 2005). The interests that need to be considered in the takeover of the company are, the company minority shareholders, the company's employees, creditors and other business partners of the company, the community and healthy competition in doing business (Asyhadie & Sutrisno, 2012).

The takeover has a legal impact, namely the perpetrator of the expropriation will be the controller of the target company who will be able to determine the direction of the target company's policy as well as control other related matters attached to the target company. The UUPT provides a kind of warning in relation to the takeover. Article 126 paragraph (1) of the UUPT states that "legal acts of Merger, Merger, Takeover, or Separation must pay attention to the interests of the Company, minority shareholders, employees of the Company, creditors and other business partners of the Company; community and healthy competition in doing business". The explanation of Article 126 paragraph (1) of the UUPT states that "this provision confirms that a Merger, Merger, Takeover, or Separation cannot be carried out if it will be detrimental to the interests of certain parties. Furthermore, in the Merger, Merger, Takeover, or Separation, the possibility of monopoly or monopsony in various forms that are detrimental to the Community must also be prevented". Editorial Article 126 paragraph (1) of the UUPT contains the word "obligatory to pay attention" which must be interpreted in relation to the legal acts referred to in that article, especially the expropriation, so it is necessary to explain what the meaning of the two words is "obligatory" and "paying attention".

According to the Great Dictionary of the Indonesian Language (hereinafter written by KBBI), the word "mandatory" means "must be done; must not be carried out (abandoned)." The meaning of the word "mandatory" implies something that indeed has no other choice but to be implemented. That is, in other words, something that is forced must be done, so that if it is not done, it will produce a result, either a legal result or another result. While the word "pay attention" according to KBBI is: "look for a long time and be thorough; Observe; looking." The meaning contained is to look carefully for a long time or it can also be interpreted as observing carefully. The observer's attention to the observed is very deep and meticulous, so that all the material from the observed will be seen.

Observing the meaning and significance of the words "obligatory to pay attention" in relation to Article 126 Paragraph (1) of the UUPT, the researcher can conclude, specifically for the expropriation, that is, if there is an act of the expropriation company, then the matters listed in letters a, b and c cannot but and there is no mandatory choice to look carefully and carefully, so that the matters contained in Article 126 Paragraph (1) letter a can be seen, b, and c are visible and not ignored.

This takeover is a legal act that will be prohibited if carried out and will cause losses to several parties as mentioned in Article 126 Paragraph (1) letters a, b and c. Takeover must not be carried out if it harms the company, both the company that carried out the takeover and the target company. The party that can file a lawsuit is the Company who feels aggrieved. The legal remedy taken if the expropriation causes losses is that the expropriation is canceled; or Compensation to the Company by the party that made the takeover; or Cancellation of takeover with compensation (Fuady, 2008a). The takeover must also not harm minority shareholders, namely shareholders who are not classified as a simple majority. In other words, a minority shareholder is a shareholder who owns less than 50% (fifty hundredths) of all shares contained in the company. The UUPT assumes that the takeover action is carried out in the interests of the majority shareholders, with the consideration that if the takeover is carried out to the detriment of the interests of the majority holders, then of course the majority shareholders will not agree at the GMS that decides to carry out the takeover.

Takeover should not harm employees, because nowadays the position of employees in a company (company) is very important and guaranteed by a modern legal system. However, the law does not provide special procedures or remedies for employees whose interests are harmed as a result of a takeover. If anyone is harmed by this act of expropriation, then the one who can file a lawsuit is the employee himself; or Labor organizations. The legal basis for filing a lawsuit is a violation of Article 126 Paragraph (1) a of the Civil Code jo unlawful acts of Article 1365 of the Civil Code (Fuady, 2008a).

Because the process of taking over the company is carried out by purchasing part or all of the shares from the company that is taken over, the legal consequence for the status of the company that is taken over is the transfer of control of the company in the amount of shares purchased by the party that takes over (Kusumadewi & Darmadha, 2016). With the transfer of control from the company, the status of the employee in the company concerned is based on Article 61 paragraph (2) and paragraph (3) of Law No. 13 of 2003 concerning Manpower, in principle, the employment agreement between the company and the employee or laborer does not end automatically because of the transfer of rights to the company unless otherwise agreed in the company transition agreement. Based on Article 63 paragraphs (1) and (2) of Law No. 13 of 2003 concerning Manpower, the working relationship between workers and employers will end if the worker himself no longer wants to cooperate with the new company owner or vice versa where the employer no longer wants to cooperate with the old worker. Based on the amendment of some provisions in Law No. 13 of 2003 concerning Manpower in Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law No. 02 of 2022 concerning Job Creation jo PP No. 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment, the change in status in the company also affects the position and continuity of work for workers in the old company which is indeed different from the regulation in Law No. 13 of 2003 concerning Manpower, especially regarding severance compensation for workers.

The working relationship between the employee and the employer will end if the employee no longer wants to cooperate with the new employer or vice versa. As a result of the law that affects the status of workers related to the change of status, including because of the transfer of share ownership, the workers should get appropriate legal protection, because every worker has the same rights and opportunities without discrimination in order to get protection and decent income that will be used for workers and their families (Banu, 2018).

Termination of Employment (PHK) is a sensitive issue for workers and employers considering the implications caused. Termination of Employment (PHK) is not only detrimental to workers which can be interpreted as the worker loses his livelihood and livelihood but for the employer or company or the employer it also brings losses to the employer because there is an obligation to pay compensation for the layoff. The issue of layoffs is a universal and even controversial problem in employment relations, especially if the layoffs involve many workers/laborers. Layoffs are always in a scary context for workers/laborers, from time to time it is increasingly unsettling because the party is under pressure from employers for various things and reasons that can be used by employers to lay off employees (Yurikosari, 2010). The imposition of layoffs will eliminate livelihoods that are not only detrimental to the worker concerned but also the family of the worker, because the worker could be the backbone of the family.

Layoffs make it difficult for these workers to find a good job, creating an unpleasant situation because they have to be unemployed, this is a negative implication for workers (Hernawan, 2016). Legal protection for employees who are laid off in the event of this acquisition practice is regulated in Article 163 of Law Number 13 of 2003 concerning Manpower which states that: (1) The employer can terminate the employment relationship of the worker/laborer in the event of a change in status, merger, or change in ownership of the company and the worker/laborer is not willing to continue the employment relationship, then the worker/laborer is entitled to severance pay of 1 (one) time according to the provisions of Article 156 Paragraph (2), 1 (one) time of service period award according to the provisions of Article 156 Paragraph (3) and compensation money according to the provisions of Article 156 Paragraph (4). (2) Employers can terminate employment relations with workers/employees

Change in status, merger, or merger of the company, and the employer is not willing to accept workers/laborers in their company, then the worker/laborer is entitled to severance pay of 2 (two) times the provisions of Article 156 paragraph (2), 1 (one) time of service award money in Article 156 paragraph (3), and compensation money according to the provisions in Article 156 paragraph (4) By enforcing these provisions, it is clear that the company that terminates the employment relationship must be responsible By providing severance pay as it should be obtained by the workers who work for the companies. If the company is not responsible as stipulated in these provisions, the worker can sue the company through non-litigation channels or litigation channels in order to achieve justice.

Law Number 13 of 2003 concerning Manpower in several articles has been amended by the Law on Job Creation and the last one is based on Law Number 06 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 02 of 2022 concerning Job Creation, in addition to that it has also been

amended in Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment.

Based on Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Hours, Employment Relations and Rest Time, and Termination of Employment, severance pay given to workers whose company has undergone a change in company status either due to merger (merger), acquisition (takeover) and consolidation (consolidation) is regulated in Law Number 06 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 02 of 2022 regarding Job Creation and Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment Relations, namely companies that carry out mergers, mergers, takeovers or separation of companies and workers/laborers are not willing to work to continue the employment relationship or employers are not willing to accept workers/laborers, then Termination of Employment (PHK) can be carried out against workers who Concerned. Based on Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment There is Article 40 which states that in the event of Termination of Employment, employers are obliged to pay severance pay and/or service period award money, compensation money that should have been received.

The amount of severance pay and service period award money is given based on the employee's service period. The Company also provides compensation money that should be received if there is one in accordance with the new provisions stipulated in Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Hours, Employment Relations and Rest Time, and Termination of Employment Relations. The amount of compensation for this right is listed in Article 43 Paragraph (4), including

annual leave that has not been taken and has not been forfeited; costs or expenses for returning to the place where the worker/laborer is employed; other matters stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement. In addition, Article 43 stipulates that the company or employer can reduce the amount of severance pay to workers, if the company performs efficiency caused by company losses, the company closes and suffers losses, the company goes bankrupt. If these conditions are met, the company is allowed by the Government to provide severance pay of half or 0.5 times the amount of severance pay. However, workers can get an additional amount of service award money of 1 time from the provisions of laws and regulations.

In acquisition cases, it often happens that for reasons of efficiency and downsizing of the business, after the acquisition is carried out, some workers/laborers are decided to terminate or terminate their employment relationship (laid off). According to the Law, the workers/laborers have almost no legal remedy to reject the layoffs. One of the things that can cause layoffs is related to corporate actions, especially related to the takeover of companies that result in changes in the company's ownership status. Article 163 of Law Number 13 of 2003 concerning Manpower states that "layoffs can be made if there is a change in company ownership". Employers can lay off workers/laborers in the event of a change in company ownership because the employer or worker/laborer is not willing to continue the employment relationship. What is meant by the change in the company's leadership here is a legal act of taking over the company's shares, resulting in the transfer of the company's controlling shares. Employers can lay off workers/laborers immediately after the transfer of the company's controlling shares from the previous shareholder to the new shareholder. Layoffs here can be done without any reason, for example not because of the need for reorganization, efficiency, or because the company's financial condition is not good (loss) and others. The layoffs were carried out solely because of the takeover of the company's shares without any other reason. Because the reason for the layoffs was carried out in accordance with the provisions of the applicable laws and regulations, the layoffs are legal, even though Article 126 of the PT. requires that in the event of a takeover of the company, it must pay attention to the interests of the company's workers/laborers, in addition to the interests of other parties, namely the interests of the company, minority shareholders, creditors and other business partners of the Company; and the community and healthy competition in doing business (Aruan, 2022).

Paying attention to the interests of the means is to provide legal protection for workers/laborers and other parties (Fuady, 2008a). Article 163 of this Law does not regulate what reasons can be used by employers to terminate workers/laborers' employment relationships, either because the employer refuses to continue the employment relationship with workers/laborers as well as because workers/laborers refuse to continue employment relations. The reason used here is the takeover of the company which results in a change in the ownership status of the company, this reason is not a substantial reason that can be used as a reason/reason for layoffs. If the action/act of taking over the company (acquisition) is solely made as a reason for layoffs, then for the worker/laborer to have legal protection and certainty for the continuity of the employment relationship is not guaranteed, because at any time there can be a takeover of the company (acquisition), and at any time the worker/laborer is also threatened with layoff. According to the author, the takeover (acquisition) of the

company cannot be used as an excuse by workers/laborers or employers to refuse to continue the employment relationship, because the employment relationship is not with the shareholders but with the legal entity of the company, and the act of taking over the company (acquisition) only changes the owner of the shares and does not result in a change in the legal subject of the employment relationship.

Creditors should also not be harmed by this expropriation action, even though it has the potential to occur, either creditors from the expropriation perpetrators or creditors and the target company. Crucial for creditors who take over, because by taking over (shares) of the target company, it means that there is a flow of funds to the target company. Thus, there is a possibility that the repayment of debts from the company that makes the takeover to its creditors will be hindered, especially if the takeover turns out to be not beneficial to the company that made the takeover (Fuady, 2008a). The takeover will be crucial for the target company's creditors, considering that there are shares taken over by the expropriator as a newcomer who will control the target company. It can happen that creditors already believe in the old shareholders of the target company, but it turns out that the creditors do not trust and are not in line with the new shareholders of the target company. So that debt payments from the target company to its creditors are threatened (Fuady, 2008a).

Article 126 Paragraph (1) c states that the takeover must not harm the community and healthy competition in doing business. In relation to the statement of the UUPT on the takeover must not be detrimental to the interests of the community, it is not explained about the interests of the community and what the consequences are if such losses do occur (Fuady, 2008a). According to the researcher, the public in this case can also be consumers, especially consumers of the target Company who have become accustomed to products, both goods and services from the target Company. If there is a new shareholder in the target Company who is the controller, there is a possibility of changes in the target Company's products or the target Company's product standards that have been determined by the controller so that the products produced by the Company are likely to be detrimental to its consumers. For example, GoTo, two startup companies from Indonesia, namely Gojek and Tokopedia, where Gojek acquired Tokopedia as a subsidiary of Gojek which later changed its name to GoTo.

Gojek's takeover of Tokopedia is expected to be able to expand to a wider market considering that the two companies are engaged in different fields. GoTo managed to raise IDR 15.8 trillion in its IPO in 2022. As time went by, the financial report said otherwise, for two consecutive years GoTo experienced an increase in losses until finally in February 2024 where Tokopedia finally officially ceased to be a subsidiary of GoTo after TikTok bought 75% of GoTo shares, which caused GoTo to no longer have control over Tokopedia (Arifah, 2024). From the aspect of business competition, based on the Decision of the Business Competition Supervisory Commission (ICC) after conducting a thorough assessment of the aspects arising from the company's actions, Gojek's takeover of Tokopedia, which eventually became GoTo, did not violate business competition. In corporate actions, both mergers, takeovers, and mergers will certainly cause market concentration. Gojek and Tokopedia have a multiset of markets so that they do not give rise to market concentration or in other words do not have a significant impact on unfair competition. ICC added that there are several impact analyses carried out, including the impact of barriers to market entry, anti-competition, unilateral conduct, and others so that it can be concluded that there are no significant indications related to the potential to cause unfair business competition. Therefore, ICC approved the corporate action taken by Gojek against Tokopedia because there was no monopoly practice or unfair competition in Gojek's takeover of shares against Tokopedia (Setyowati, 2022). In addition, another impact is the increase in the use of GoPay da GoPayLater on Tokopedia since it was officially launched.

GoPay users continue to increase and GoPay became the most used e-money on Tokopedia in December 2021, so it can be concluded that the acquisition of Tokopedia is quite instrumental in the recovery of the company's condition affected by the pandemic in the previous period. This means that the impact of Gojek's takeover of Tokopedia is not only felt by companies but also by the wider community as consumers see an increase in Gopay and GoPayLater users on the Tokopedia platform (Setyowati, 2022). In addition, it is inevitable that GoTo has officially carried out Termination of Employment (PHK) for 1,300 people or around 12% of the number of GoTo permanent employees. This needs to be done to face global economic challenges as well as to maintain the company's growth rate (Setyowati, 2022).

CONCLUSION

Indonesia's legal framework for takeover arrangements includes various laws and regulations related to corporate law, employment, business competition, and financial services. These regulations cover various aspects such as limited liability companies, job creation, monopolistic practices, and consumer protection. However, takeovers can also have both internal and external impacts, such as job continuity and market conditions. To improve takeover regulations, it is recommended to include clauses guaranteeing quality standards and prices, as well as job continuity for employees. Future research could explore the effectiveness of existing legal frameworks in protecting workers' job continuity and ensuring product quality and price

stability. Comparing Indonesia's approach to corporate takeovers with international best practices could also help identify areas for improvement.

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Corporate takeovers and their implications for employees and the business world

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Corporate takeovers and their implications for employees and the business world

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ABSTRACT

Keywords:

business competition
employment law
consumer protection
company law
corporate takeover

This paper describes the legal framework surrounding expropriation in Indonesia and the implications this has for key stakeholders, including workers, the business world, and consumers. The research method used in this paper is normative legal research, relying on secondary data from literature and legal sources. The collected data is analyzed qualitatively, and conclusions are drawn through deductive reasoning. The study provides insights into how current regulations impact employment, business operations, and consumer rights. This research adds value by providing a legal analysis that can inform policymakers, legal professionals, and businesses on how to navigate the complexities within Indonesia's legal system.

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INTRODUCTION

At the end of the 20th century, the business world entered a period of freedom and openness, where there were no longer distances or obstacles that limited all business activities, especially activities between regions and countries. The most important changes in the business environment are globalization, deregulation, technological and information advancements as well as market fragmentation that creates very fierce competition. This condition requires companies (business actors) to always develop strategies in order to survive. The response of companies (business actors) to the increase in competition is very diverse, such as focusing on resources for certain smaller segments, some stick with what they have done, some merge themselves into large companies in the industrial world or in other words carry out corporate actions such as acquisitions or takeovers (Muhammad, 2010).

Acquisition or takeover comes from the word "acquisition" in Latin or "acquisition" in English which means to buy or acquire something or an object to add to something or an object that has been owned before. Acquisition is a legal act in the form of a company takeover in which the acquiring company and the expropriated company each remain and continue to carry out business activities (Ani, 2022; Disemadi & Winata, 2020; Indradjaja & Chamdani, 2024; Putra et al., 2020; Rizka & Hendranasiti, 2023). Law No. 40 of 2007 concerning Limited Liability Companies (UUPT), Article 1 number 11 provides the definition of expropriation as a legal act carried out by a legal entity or individual to take over the Company's shares which results in a transfer of control over the Company.

The wave of corporate actions, both takeovers and mergers, throughout 2022 in Indonesia continues to occur even in the midst of a threatening global economic recession. Based on data from IDX channel several company actions from Indonesian technology companies throughout 2022, including in June 2022 PT. XL Axiata acquired PT Link Net, where Axiata Group Berhad and XL Axiata completed the acquisition process of Link Net (LINK) shares by 66.03% with a value of RM2.63 billion or around Rp8.72 trillion. This acquisition process is part of XL's efforts to expand the provision of digital and convergent services for the community. Furthermore, Indosat Ooredoo merged with Hutchison Tri, where they have announced a merger agreement since September 2021 and officially conducted the merger as of January 4, 2022.

Indosat as the Merger Recipient Company has the obligation to fulfill several commitment points that must be achieved for the next four years or until 2025. Next, the merger carried out by the ticket booking service provider company, namely Tiket.com merger with BliBli, which Tiket.com joined the BliBli Marketplace (PT Global Digital Niaga). The merger of the two companies was carried out in October 2022. The same thing was also done by the Ranch Market supermarket which joined the combined entity BliBli

Tiket. Until early November 2022, the combined company was listed on the Indonesia Stock Exchange (IDX) with the ticker "BUY" after conducting an Initial Public Offering (IPO) (IDX Channel, 2022).

The company's actions are also carried out by online transportation companies and marketplaces, namely the acquisition of Gojek with Tokopedia, Tiktok Shop with Tokopedia. Online shopping service company Tokopedia and transportation application Gojek officially joined on May 17, 2021. In fact, the merger of the two unicorn companies is the process of taking over Tokopedia as a subsidiary of Gojek whose company name was changed from PT Aplikasi Karya Anak Bangsa to PT GoTo (Gojek Tokopedia). GoTo Group itself is claimed to be the largest digital consumer platform in Indonesia. The company's financial statements record that the total gross transaction value (GTV) was more than US\$ 22 billion in 2020, more than 1.8 billion transactions in 2020, the registered driver fleet was more than 2 million as of December 2020, more than 11 million trading partners as of December 2020, above 100 million monthly active users (MAU), the ecosystem covers 2 percent of Indonesia's GDP (more than US\$ 1 trillion). GoTo had been hit by several waves of Termination of Employment (PHK) storms. After 7 months have passed since the first IPO, in November 2022, the company resulting from the merger of Tokopedia and Gojek fired around 1,300 employees, which is a step taken to encourage healthier business performance. The issue of GoTo's mass layoffs of around 600 employees on March 10, 2023 has further added to the series of mass layoffs in Indonesia (Lestari, 2023). The next wave of acquisitions is TikTok's acquisition of Tokopedia. TikTok took over the majority of shares in Tokopedia by 75% of the shares. This means that TikTok has significant control over Tokopedia's operations (Kundiharto, 2023).

Article 126 paragraph (1) letter a of the Limited Liability Company Law mandates that legal acts of Merger, Merger, Takeover, or Separation must pay attention to the interests of the Company, minority shareholders, and employees of the Company. Furthermore, letter c says that legal acts of Merger, Merger, Takeover, or Separation are also obliged to pay attention to the interests of the community and healthy competition in doing business. This means that in a merger, merger, takeover, or separation, the company must pay attention to the interests of employees (workers), the business world, and the community as consumers in addition to the interests of the company. It would be better if the Merger, Merger, Takeover, or Separation of the company was not carried out if it would harm the interests of certain parties such as creditors, business partners, minority shareholders, employees (workers), the business world and the community as consumers indirectly.

In line with the Limited Liability Company Law, the Manpower Law. Law No. 13 of 2003, it is enough to provide protection in the event of a takeover or acquisition, where workers can continue to work as usual and have the same status as before the takeover. Meanwhile, if there is a change related to work due to the takeover, both the employer and the employee can choose to terminate the employment relationship or not, because according to Law Number 13 of 2003 concerning Manpower, it is stated that in the event of a corporate action such as a merger, consolidation, or change of ownership (take over or acquisition), the worker or laborer can only terminate the employment relationship (no longer willing to continue the employment relationship) after organizational restructuring and/or downsizing and there is a rotation or mutation (according to management needs) which results in changes in working conditions, rights and obligations that are different from what has been stated in the employment agreement and/or company regulations/collective labor agreement previously, unless it has been arranged/agreed upon previously (Tobing, 2024).

Referring to Article 3 of Law No. 5 of 1999 concerning Consumer Protection (UUPK) said that one of the objectives of the UUPK is to realize

by fostering and guarantee business production. The principles of Indonesian consumer protection are the principles of benefit, fairness, balance, consumer security and safety, and legal certainty. This means that the UUPK also mandates that it not only guarantees legal certainty for the protection of consumers (the community) but also maintains a balance of interests for business actors (companies) in running a business.

How to arrange the takeover of a company from a legal perspective in Indonesia and its implications for workers, the business world, and the community as consumers are the issues discussed in this paper. The purpose of this paper is to describe the expropriation arrangement in the legal perspective in Indonesia and its implications for workers, the business world, and society as consumers. The research contribution of this paper lies in its exploration of the legal framework surrounding expropriation in Indonesia and the implications this has for key stakeholders, including workers, the business sector, and consumers. By examining the expropriation process from a legal perspective, the study provides insights into how current regulations impact employment, business operations, and consumer rights. This research adds value by highlighting the broader socio-economic consequences of expropriation, offering a legal analysis that can inform policymakers, legal

professionals, and businesses on how to navigate the complexities of expropriation within Indonesia's legal system.

METHOD

The research method used in this study is normative legal research, relying on secondary data from literature and legal sources. The approach focuses on analyzing legal norms and regulations related to company law, employment, business competition, and consumer protection in relation to the subject matter. The data for this research consists of secondary sources, including laws and regulations, books, journals, scientific works, and electronic articles. The collected data is analyzed qualitatively, and conclusions are drawn through deductive reasoning.

RESULTS AND DISCUSSION

Corporate Takeover Arrangements Under Law in Indonesia

There are several terms for takeover, namely take over and acquisition. Referring to Law No. 40 of 2007 concerning Limited Liability Companies which has been amended by Law No. 6 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2020 concerning Job Creation into Law (hereinafter referred to as the Constitution), Article 1 number 11 states that "a takeover is a legal act carried out by a legal entity or an individual to take over the Company's shares which results in a transfer of control over the Company." There are several elements of the meaning of expropriation, namely the first element of legal act which is defined as every act of a legal subject (human or legal entity) whose consequences are regulated by law where the consequences can be considered as the will of the person who performs the law. A legal act or legal action only occurs when there is a "statement of will." Furthermore, Rahardjo (2012) explained that legal acts are the beginning of the regulatory process. Legal acts are a momentum that separates the lawless state from the state regulated by law, the separation between the "social world" and the "legal world." Subjecting to the legal order means being subject to legal judgment, legal measure and legal consequences. The definition of legal act is in line with the definition of takeover as stated in Article 1 number 11 of the UUPT that the takeover is carried out by a person or legal entity who indeed wants to control the Company whose shares are taken over.

The second element is that the perpetrator of the expropriation can take the form of a natural human being or a legal entity. Individuals are referred to as natural human beings and legal entities are legal subjects in the Indonesian legal system. A legal entity is an organization, body, group, institution or property that is formed and confirmed by law as a stakeholder of rights, authority, obligations, wealth, duties, status, and its own priorities which in principle are separate from those owned by individual human beings and have administrators who represent and carry out the interests of the legal entity concerned in addition to the interests of its members (Fuady, 2013b). A legal entity, an association or organization that by law is treated like a human being, namely as the bearer of rights and obligations, can have wealth, can sue and can be sued before the Court, for example a limited liability company (PT), Foundation, and the State is also a legal entity (Subekti & Tjitrosudibio, 1982).

Takeover can be carried out on all property, but the UUPT limits that the takeover that is expressly regulated in this UUPT is only the takeover of shares, even though the UUPT also opens the possibility of taking over assets implied in Article 102 Paragraph (1) of the UUPT. The provisions of Article 102 of the UUPT can be interpreted as an embryonic provision of the takeover of the company by taking over assets. Fuady (2013b) stated that the takeover of assets will be carried out against the target Company's assets with or without also taking over all obligations of the target Company to third parties. As a counter-achievement of the acquisition of assets, the Company's shareholders are given a target price that is appropriate in the same manner as in the transfer of shares (Fuady, 2008a). The third is the element of the goal to be achieved from the legal act of expropriation, namely the control of the Company whose shares have been expropriated. The meaning of the word "controller" can be inferred from several regulations of the Financial Services Authority (hereinafter referred to as OJK) such as Article 1 Number 4 of the Financial Services Authority Regulation No. 9 /POJK.04/2018 concerning the Takeover of Public Companies which states that the Controller of Public Company, hereinafter referred to as the Controller, is a party that either directly or indirectly owns more than 50% (fifty percent) of all shares with paid voting rights full; or have the ability to determine, either directly or indirectly, in any way the management and/or policies of the Public Company. Referring to Article 1 number 7 of the UUPT which refers to a Public Company or a Company that conducts a public offering of shares, in accordance with the provisions of laws and regulations in the field of capital market. According to the researcher, the termination of the controller can also be used for a closed company that has not conducted a public offering or a public company. In general, the controller will usually control more than 50% of the share ownership because in this situation the controller will always win the vote in the General Meeting of Shareholders (hereinafter referred to as the GMS), so that the controller will be able to make other shareholders

follow his wishes. However, it is possible that the controller does not have more than 50% shareholding, but the controller has important things for the progress of the Company such as technology, marketing networks, access to shareholders that will bring progress to the Company. With this situation, the controller will be important for the limited liability company as well as other shareholders. So that the will of the controller will always be followed even if he does not own more than 50% of the shares.

The term used for this takeover is not singular, so it is often encountered other terms other than takeover such as acquisition or takeover. Black (1968) states that acquisition is the act of becoming the owner of certain property. This term means an action to make oneself the owner of a certain property, which according to the researcher can be interpreted broadly, namely all types of property including stocks. Another term that is often used is take over, which is "to assume control or management of" (Black, 1968). The term take over is more visible to management control in the sense of taking over the management of a company. So it looks far from the meaning of takeover, especially stocks. The existence of these several terms led the researcher to a suggestion that it is better to discuss the takeover of shares, then the term used is the term that has been standardized in the UUPT, namely "takeover" so that it does not give rise to different interpretations.

The takeover has several legal bases, including Law No. 40 of 2007 concerning Limited Liability Companies which has been amended by Law No. 6 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation into Law (hereinafter written as the UUPT), Law No. 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition, Law No. 13 of 2003 concerning Manpower, Law No. 8 of 1999 concerning Consumer Protection, along with its derivative regulations such as Government Regulation (PP) No. 27 of 1998 concerning Merger, Consolidation and Takeover of Limited Liability Companies, Government Regulation No. 28 of 1999 concerning Mergers, Consolidation and Acquisition of Banks, Government Regulation of the Republic of Indonesia No. 43 of 2005 concerning Mergers, Consolidations, Takeovers, and Changes in the Form of Legal Entities of State-Owned Enterprises, Financial Services Authority Regulation (POJK) No. 9 /POJK.04/2018 concerning Takeover of Public Companies, POJK No. 54 /POJK.04/2015 concerning Voluntary Tender Offers. In addition there are four Bapepam Regulations that must be considered when acquiring a public company, namely Bapepam Regulation No. IX.E.1 concerning Conflicts of Interest in Certain Transactions, Bapepam Regulation No. IX.E.2 concerning Material Transactions and Changes in Main Business Activities, Bapepam Regulation No. IX.H.1 concerning Takeover of Public Companies, Bapepam Regulation No. X.K.1 concerning Information That Must Be Immediately Announced to the Public, and in addition to Law Number 8 of 1995 concerning the Capital Market (Fuady, 2008a).

The difference in the takeover procedure in Closed Companies and Public Companies lies in the additional stages, where for public companies there needs to be a Statement to Bapepam a maximum of one working day after the takeover, an announcement of the takeover in 2 newspapers (a maximum of 1 working day after the takeover) and the most important thing is to make a mandatory tender offer, namely the offer of the remaining shares by the new controller so that the controller only owns at most 80% of the Company's total shares (number 1 letter e of Bapepam Regulation No. IX.H.1). The implementation is by means of the announcement of information disclosure, implementation and settlement, and the purchase price of shares in the mandatory tender offer.

The takeover process can be divided into 2, namely first, the takeover process through the Company's board of directors (Article 125 paragraph (1) of the UUPT). The takeover is carried out by taking over shares that have been issued and/or will be issued by the Company through the Company's Board of Directors or directly in the form of a legal entity or an individual. The takeover of shares referred to in Article 125 paragraph (1) of the UUPT is a takeover that results in a transfer of control over the Company later as included in Article 7 number 11 of the UUPT. The takeover process through the Company's Board of Directors is as follows: first, the Resolution of the GMS, then the Notification to the Company's Board of Directors, the third is the preparation of the Takeover Draft and then the Takeover Summary of the Draft. The fifth is the submission of the Creditor's objection, the sixth is the preparation of the Takeover Deed before the Notary then notification to the Minister, and finally the announcement of the results of the takeover.

Meanwhile, the process of taking over directly from shareholders where the procedure is carried out is simpler, namely the procedure for taking over shares of a limited liability company must be subject to the provisions on share acquisition as stipulated in the UUPT which, among other things, regulates first, the acquisition of shares must pay attention to the provisions for the transfer of rights to shares in the Articles of Association, and obtain the approval of the General Meeting of Shareholders (GMS). The GMS must be held no later than 30 (thirty) days after the announcement (Article 126 Paragraph (6) and Paragraph (7) of the UUPT). Second, the Board of Directors of the company that will make the acquisition is required to announce the summary of the draft in at least 1 (one) newspaper and announce in writing to the employees of the company no later than 30 days before the invitation of the GMS, (Article 127 Paragraph (8) of the Constitution). Third, Creditors can submit objections to the company no later than 14 days after the announcement of the acquisition in accordance with the design. If the creditor does not raise an objection within that period, the creditor is

Corporate takeovers and their implications for employees and the business world

deemed to have approved the acquisition. In the event that the dispute from the creditors up to the date of the GMS cannot be resolved by the Company's Board of Directors, the objection must be submitted to the GMS in order to be resolved. Until this objection is resolved, the acquisition cannot be carried out (Article 127 paragraphs (2) (3) (5) (6) and (7) of the UUPT).

Implications of Company Takeover on Workers, Society and the Business World

Juridically, the way to take over a company is to buy shares either partially or completely from the company (Saliman, 2005). The takeover of a company can be done internally or externally. Internal is the takeover of companies in their own group, while external is the takeover of companies outside the group or companies from other groups (Saliman, 2005). Takeover companies are usually large companies that have strong funds, good management, and extensive networks, and are grouped in conglomerates. Takeovers can occur both forcefully (unfriendly takeover/hostile takeover) and voluntary/friendly (friendly takeover). Forced takeover or (unfriendly takeover/hostile takeover), which is a small company that is difficult to grow is acquired by a larger company that is classified as a conglomerate company. Meanwhile, a voluntary/friendly takeover is a small company that is indeed wanted to be acquired by a conglomerate company (Saliman, 2005). In the takeover of the company, there are several advantages, namely the company still uses the old name and does not require a license for a new business, while the disadvantage is that it is easy to duplicate or waste and the company's ownership changes (Saliman, 2005). The interests that need to be considered in the takeover of the company are, the company minority shareholders, the company's employees, creditors and other business partners of the company, the community and healthy competition in doing business (Asyhadi & Sutrisno, 2012).

The takeover has a legal impact, namely the perpetrator of the expropriation will be the controller of the target company who will be able to determine the direction of the target company's policy as well as control other related matters attached to the target company. The UUPT provides a kind of warning in relation to the takeover. Article 126 paragraph (1) of the UUPT states that "legal acts of Merger, Merger, Takeover, or Separation must pay attention to the interests of the Company, minority shareholders, employees of the Company, creditors and other business partners of the Company; community and healthy competition in doing business". The explanation of Article 126 paragraph (1) of the UUPT states that "this provision confirms that a Merger, Merger, Takeover, or Separation cannot be carried out if it will be detrimental to the interests of certain parties. Furthermore, in the Merger, Merger, Takeover, or Separation, the possibility of monopoly or monopsony in various forms that are detrimental to the Community must also be prevented". Editorial Article 126 paragraph (1) of the UUPT contains the word "obligatory to pay attention" which must be interpreted in relation to the legal acts referred to in that article, especially the expropriation, so it is necessary to explain what the meaning of the two words is "obligatory" and "paying attention".

According to the Great Dictionary of the Indonesian Language (hereinafter written by KBBI), the word "mandatory" means "must be done; must not be carried out (abandoned)." The meaning of the word "mandatory" implies something that indeed has no other choice but to be implemented. That is, in other words, something that is forced must be done, so that if it is not done, it will produce a result, either a legal result or another result. While the word "pay attention" according to KBBI is: "look for a long time and be thorough; Observe; looking." The meaning contained is to look carefully for a long time or it can also be interpreted as observing carefully. The observer's attention to the observed is very deep and meticulous, so that all the material from the observed will be seen.

Observing the meaning and significance of the words "obligatory to pay attention" in relation to Article 126 Paragraph (1) of the UUPT, the researcher can conclude, specifically for the expropriation, that is, if there is an act of the expropriation company, then the matters listed in letters a, b and c cannot but and there is no mandatory choice to look carefully and carefully, so that the matters contained in Article 126 Paragraph (1) letter a can be seen, b, and c are visible and not ignored.

This takeover is a legal act that will be prohibited if carried out and will cause losses to several parties as mentioned in Article 126 Paragraph (1) letters a, b and c. Takeover must not be carried out if it harms the company, both the company that carried out the takeover and the target company. The party that can file a lawsuit is the Company who feels aggrieved. The legal remedy taken if the expropriation causes losses is that the expropriation is canceled; or Compensation to the Company by the party that made the takeover; or Cancellation of takeover with compensation (Fuady, 2008a). The takeover must also not harm minority shareholders, namely shareholders who are not classified as a simple majority. In other words, a minority shareholder is a shareholder who owns less than 50% (fifty hundredths) of all shares contained in the company. The UUPT assumes that the takeover action is carried out in the interests of the majority shareholders, with the consideration that if the takeover is carried out to the detriment of the interests of the majority holders, then of course the majority shareholders will not agree at the GMS that decides to carry out the takeover.

Takeover should not harm employees, because nowadays the position of employees in a company (company) is very important and guaranteed by a modern legal system. However, the law does not provide special procedures or remedies for employees whose interests are harmed as a result of a takeover. If anyone is harmed by this act of expropriation, then the one who can file a lawsuit is the employee himself; or Labor organizations. The legal basis for filing a lawsuit is a violation of Article 126 Paragraph (1) a of the Civil Code jo unlawful acts of Article 1365 of the Civil Code (Fuady, 2008a).

Because the process of taking over the company is carried out by purchasing part or all of the shares from the company that is taken over, the legal consequence for the status of the company that is taken over is the transfer of control of the company. The amount of shares purchased by the party that takes over (Kusumadewi & Darmadha, 2016). With the transfer of control from the company, the status of the employee in the company concerned is based on Article 61 paragraph (2) and paragraph (3) of Law No. 13 of 2003 concerning Manpower, in principle, the employment agreement between the company and the employee or laborer does not end automatically because of the transfer of rights to the company unless otherwise agreed in the company transition agreement. Based on Article 63 paragraphs (1) and (2) of Law No. 13 of 2003 concerning Manpower, the working relationship between workers and employers will end if the worker himself no longer wants to cooperate with the new company owner or vice versa where the employer no longer wants to cooperate with the old worker. Based on the amendment of some provisions in Law No. 13 of 2003 concerning Manpower in Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law No. 02 of 2022 concerning Job Creation jo PP No. 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment, the change in status in the company also affects the position and continuity of work for workers in the old company which is indeed different from the regulation in Law No. 13 of 2003 concerning Manpower, especially regarding severance compensation for workers.

The working relationship between the employee and the employer will end if the employee no longer wants to cooperate with the new employer or vice versa. As a result of the law that affects the status of workers related to the change of status, including because of the transfer of share ownership, the workers should get appropriate legal protection, because every worker has the same rights and opportunities without discrimination in order to get protection and decent income will be used for workers and their families (Banu, 2018).

Termination of Employment (PHK) is a sensitive issue for workers and employers considering the implications caused. Termination of Employment (PHK) is not only detrimental to workers which can be interpreted as the worker loses his livelihood and livelihood but for the employer or company or the employer it also brings losses to the employer because there is an obligation to pay compensation for the layoff. The issue of layoffs is a universal and even controversial problem in employment relations, especially if the layoffs involve many workers/laborers. Layoffs are always in a scary context for workers/laborers, from time to time it is increasingly unsettling because the party is under pressure from employers for various things and reasons that can be used by employers to lay off employees (Yurikosari, 2010). The imposition of layoffs will eliminate livelihoods that are not only detrimental to the worker concerned but also the family of the worker, because the worker could be the backbone of the family.

Layoffs make it difficult for these workers to find a good job, creating an unpleasant situation because they have to be unemployed, this is a negative implication for workers (Hermawan, 2016). Legal protection for employees who are laid off in the event of this acquisition practice is regulated in Article 163 of Law Number 13 of 2003 concerning Manpower which states that: (1) The employer can terminate the employment relationship of the worker/laborer in the event of a change in status, merger, or change in ownership of the company and the worker/laborer is not willing to continue the employment relationship, then the worker/laborer is entitled to severance pay of 1 (one) time according to the provisions of Article 156 Paragraph (2), 1 (one) time of service period award according to the provisions of Article 156 Paragraph (3) and compensation money according to the provisions of Article 156 Paragraph (4). (2) Employers can terminate employment relations with workers/employees

Change in status, merger, or merger of the company, and the employer is not willing to accept workers/laborers in their company, the worker/laborer is entitled to severance pay of 2 (two) times the provisions of Article 156 paragraph (2), 1 (one) time of service award money in Article 156 paragraph (3), and compensation money according to the provisions in Article 156 paragraph (4) By enforcing these provisions, it is clear that the company that terminates the employment relationship must be responsible By providing severance pay as it should be obtained by the workers who work for the companies. If the company is not responsible as stipulated in these provisions, the worker can sue the company through non-litigation channels or litigation channels in order to achieve justice.

Law Number 13 of 2003 concerning Manpower in several articles has been amended by the Law on Job Creation and the last one is based on Law Number 06 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 02 of 2022 concerning Job Creation, in addition to that it has also been

amended in Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment.

Based on Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Hours, Employment Relations and Rest Time, and Termination of Employment, severance pay given to workers whose company has undergone a change in company status either due to merger (merger), acquisition (takeover) and consolidation (consolidation) is regulated in Law Number 06 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 02 of 2022 regarding Job Creation and Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment Relations, namely companies that carry out mergers, mergers, takeovers or separation of companies and workers/laborers are not willing to work to continue the employment relationship or employers are not willing to accept workers/laborers, then Termination of Employment (PHK) can be carried out against workers who Concerned. Based on Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment There is Article 40 which states that in the event of Termination of Employment, employers are obliged to pay severance pay and/or service period award money, compensation money that should have been received.

The amount of severance pay and service period award money is given based on the employee's service period. The Company also provides compensation money that should be received if there is one in accordance with the new provisions stipulated in Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Hours, Employment Relations and Rest Time, and Termination of Employment Relations. The amount of compensation for this right is listed in Article 43 Paragraph (4), including

annual leave that has not been taken and has not been forfeited; costs or expenses for returning to the place where the worker/laborer is employed; other matters stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement. In addition, Article 43 stipulates that the company or employer can reduce the amount of severance pay to workers, if the company performs efficiency caused by company losses, the company closes and suffers losses, the company goes bankrupt. If these conditions are met, the company is allowed by the Government to provide severance pay of half or 0.5 times the amount of severance pay. However, workers can get an additional amount of service award money of 1 time from the provisions of laws and regulations.

In acquisition cases, it often happens that for reasons of efficiency and downsizing of the business, after the acquisition is carried out, some workers/laborers are decided to terminate or terminate their employment relationship (laid off). According to the Law, the workers/laborers have almost no legal remedy to reject the layoffs. One of the things that can cause layoffs is related to corporate actions, especially related to the takeover of companies that result in changes in the company's ownership status. Article 163 of Law Number 13 of 2003 concerning Manpower states that "layoffs can be made if there is a change in company ownership". Employers can lay off workers/laborers in the event of a change in company ownership because the employer or worker/laborer is not willing to continue the employment relationship. What is meant by the change in the company's leadership here is a legal act of taking over the company's shares, resulting in the transfer of the company's controlling shares. Employers can lay off workers/laborers immediately after the transfer of the company's controlling shares from the previous shareholder to the new shareholder. Layoffs here can be done without any reason, for example not because of the need for reorganization, efficiency, or because the company's financial condition is not good (loss) and others. The layoffs were carried out solely because of the takeover of the company's shares without any other reason. Because the reason for the layoffs was carried out in accordance with the provisions of the applicable laws and regulations, the layoffs are legal, even though Article 126 of the PT. requires that in the event of a takeover of the company, it must pay attention to the interests of the company's workers/laborers, in addition to the interests of other parties, namely the interests of the company, minority shareholders, creditors and other business partners of the Company; and the community and healthy competition in doing business (Aruan, 2022).

Paying attention to the interests of the means is to provide legal protection for workers/laborers and other parties (Fuady, 2008a). Article 163 of this Law does not regulate what reasons can be used by employers to terminate workers/laborers' employment relationships, either because the employer refuses to continue the employment relationship with workers/laborers as well as because workers/laborers refuse to continue employment relations. The reason used here is the takeover of the company which results in a change in the ownership status of the company, this reason is not a substantial reason that can be used as a reason/reason for layoffs. If the action/act of taking over the company (acquisition) is solely made as a reason for layoffs, then for the worker/laborer to have legal protection and certainty for the continuity of the employment relationship is not guaranteed, because at any time there can be a takeover of the company (acquisition), and at any time the worker/laborer is also threatened with layoff. According to the author, the takeover (acquisition) of the

company cannot be used as an excuse by workers/laborers or employers to refuse to continue the employment relationship, because the employment relationship is not with the shareholders but with the legal entity of the company, and the act of taking over the company (acquisition) only changes the owner of the shares and does not result in a change in the legal subject of the employment relationship.

Creditors should also not be harmed by this expropriation action, even though it has the potential to occur, either creditors from the expropriation perpetrators or creditors and the target company. Crucial for creditors who take over, because by taking over (shares) of the target company, it means that there is a flow of funds to the target company. Thus, there is a possibility that the repayment of debts from the company that makes the takeover to its creditors will be hindered, especially if the takeover turns out to be not beneficial to the company that made the takeover (Fuady, 2008a). The takeover will be crucial for the target company's creditors, considering that there are shares taken over by the expropriator as a newcomer who will control the target company. It can happen that creditors already believe in the old shareholders of the target company, but it turns out that the creditors do not trust and are not in line with the new shareholders of the target company. So that debt payments from the target company to its creditors are threatened (Fuady, 2008a).

Article 126 Paragraph (1) c states that the takeover must not harm the community and healthy competition in doing business. In relation to the statement of the UUPT on the takeover must not be detrimental to the interests of the community, it is not explained about the interests of the community and what the consequences are if such losses do occur (Fuady, 2008a). According to the researcher, the public in this case can also be consumers, especially consumers of the target Company who have become accustomed to products, both goods and services from the target Company. If there is a new shareholder in the target Company who is the controller, there is a possibility of changes in the target Company's products or the target Company's product standards that have been determined by the controller so that the products produced by the Company are likely to be detrimental to its consumers. For example, GoTo, two startup companies from Indonesia, namely Gojek and Tokopedia, where Gojek acquired Tokopedia as a subsidiary of Gojek which later changed its name to GoTo.

Gojek's takeover of Tokopedia is expected to be able to expand to a wider market considering that the two companies are engaged in different fields. GoTo managed to raise IDR 15.8 trillion in its IPO in 2022. As time went by, the financial report said otherwise, for two consecutive years GoTo experienced an increase in losses until finally in February 2024 where Tokopedia finally officially ceased to be a subsidiary of GoTo after TikTok bought 75% of GoTo shares, which caused GoTo to no longer have control over Tokopedia (Arifah, 2024). From the aspect of business competition, based on the Decision of the Business Competition Supervisory Commission (ICC) after conducting a thorough assessment of the aspects arising from the company's actions, Gojek's takeover of Tokopedia, which eventually became GoTo, did not violate business competition. In corporate actions, both mergers, takeovers, and mergers will certainly cause market concentration. Gojek and Tokopedia have a multiset of markets so that they do not give rise to market concentration or in other words do not have a significant impact on unfair competition. ICC added that there are several impact analyses carried out, including the impact of barriers to market entry, anti-competition, unilateral conduct, and others so that it can be concluded that there are no significant indications related to the potential to cause unfair business competition. Therefore, ICC approved the corporate action taken by Gojek against Tokopedia because there was no monopoly practice or unfair competition in Gojek's takeover of shares against Tokopedia (Setyowati, 2022). In addition, another impact is the increase in the use of GoPay da GoPayLater on Tokopedia since it was officially launched.

GoPay users continue to increase and GoPay became the most used e-money on Tokopedia in December 2021, so it can be concluded that the acquisition of Tokopedia is quite instrumental in the recovery of the company's condition affected by the pandemic in the previous period. This means that the impact of Gojek's takeover of Tokopedia is not only felt by companies but also by the wider community as consumers see an increase in GoPay and GoPayLater users on the Tokopedia platform (Setyowati, 2022). In addition, it is inevitable that GoTo has officially carried out Termination of Employment (PHK) for 1,300 people or around 12% of the number of GoTo permanent employees. This needs to be done to face global economic challenges as well as to maintain the company's growth rate (Setyowati, 2022).

CONCLUSION

Indonesia's legal framework for takeover arrangements includes various laws and regulations related to corporate law, employment, business competition, and financial services. These regulations cover various aspects such as limited liability companies, job creation, monopolistic practices, and consumer protection. However, takeovers can also have both internal and external impacts, such as job continuity and market conditions. To improve takeover regulations, it is recommended to include clauses guaranteeing quality standards and prices, as well as job continuity for employees. Future research could explore the effectiveness of existing legal frameworks in protecting workers' job continuity and ensuring product quality and price

stability. Comparing Indonesia's approach to corporate takeovers with international best practices could also help identify areas for improvement.

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