

Normative Contestation between Severance Pay and Employment Social Security in Indonesian Labour Law

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Abstract

Introduction: This article analyzes the normative contestation between severance pay and employment social security benefits within Indonesian labour law following recent legislative reforms. The blurring distinction between employer-based severance obligations and contributory social security schemes has generated legal uncertainty, inconsistent judicial decisions, and potential erosion of worker protection principles in termination of employment cases.

Purposes of the Research: The purpose of this research is to examine whether employment social security benefits, particularly Old-Age Security Benefits and Pension Security Benefits, may be lawfully interpreted as substitutes for or deductions from severance pay. The study aims to clarify doctrinal boundaries and reaffirm the protective function of labour law grounded in justice and employer responsibility.

Methods of the Research: This research employs normative legal research using statutory, conceptual, and case approaches. Primary legal materials include labour legislation, constitutional provisions, and industrial relations court decisions, supported by scholarly literature. Legal interpretation and systematic analysis are applied to identify normative inconsistencies and formulate prescriptive legal conclusions.

Findings of the Research: The findings reveal a fundamental normative misreading that conflates severance pay with employment social security benefits. This research offers originality by demonstrating that such substitution reallocates termination risk to workers, undermines legal certainty, and weakens labour protection. It proposes reaffirming severance pay as an independent, mandatory labour right.

Keywords: Severance Pay; Employment Social Security; Labour Law; Legal Certainty.

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INTRODUCTION

The protection of workers' rights represents a core objective of labour law and reflects the broader commitment of the state to social justice and human dignity within employment relations. In Indonesia, labour law has historically been constructed as a protective legal regime that recognizes the structural imbalance between employers and workers, particularly in matters concerning termination of employment. One of the most significant legal instruments designed to mitigate the economic consequences of termination is severance pay, which serves as a form of financial compensation and social protection for workers who lose their employment due to dismissal or retirement. Severance pay is not merely a contractual entitlement but a statutory right that embodies the principle of employer responsibility and the state's duty to ensure minimum standards of worker welfare.¹ Alongside severance pay, the Indonesian legal system has developed employment social security schemes as part of the national social protection framework. Programs such

¹ Iman Soepomo, *Hukum Perburuhan Bidang Hubungan Kerja*, 1st ed. (Yogyakarta: Djambatan, 2001).

as Old Age Security and Pension Security, administered by BPJS Ketenagakerjaan, are intended to guarantee workers' income security in old age and to prevent poverty after the end of productive employment.² These programs are based on a contributory insurance model, funded through regular contributions from workers and employers over the course of employment. As such, employment social security is conceptually distinct from severance pay, as it represents deferred earnings accumulated by workers rather than direct compensation arising from termination of employment.³

The normative distinction between severance pay and employment social security, however, has become increasingly blurred following the enactment of Law Number 6 of 2023 on Job Creation. This legislative reform significantly amended Indonesia's labour law framework, including the removal of Article 167 paragraph (6) of Law Number 13 of 2003 on Manpower. Prior to its repeal, this provision explicitly ensured that employers remained obliged to pay the difference when pension benefits were lower than the statutory severance and length-of-service compensation. The elimination of this safeguard has generated legal ambiguity regarding the relationship between severance pay and employment social security benefits, particularly concerning whether JHT and JP may be calculated as substitutes for or deductions from severance entitlements.⁴

This regulatory shift has generated normative contestation within Indonesian labour law because two distinct legal regimes, namely employer based severance obligations and state mandated social security schemes, are increasingly treated as functionally interchangeable. From a doctrinal perspective, this approach risks eroding the protective character of labour law by shifting the burden of employment termination from employers to workers themselves. Since employment social security benefits are partly financed through workers' own contributions, allowing such benefits to reduce severance pay may effectively require workers to fund their own termination compensation. This outcome is inconsistent with the fundamental principles of labour protection and corrective justice.⁵

The practical implications of this normative uncertainty are evident in the inconsistent application of the law by Industrial Relations Courts. Several judicial decisions have concluded that JHT and JP cannot be used as deductions from severance pay because they constitute workers' rights arising from contributory schemes rather than employer compensation. Conversely, other rulings have permitted such deductions by emphasizing the functional similarity between severance pay and pension benefits in providing post-employment income security. This divergence in judicial reasoning highlights the absence of a clear normative framework and exposes workers and employers alike to legal uncertainty, inconsistent outcomes, and prolonged industrial disputes.⁶

From a constitutional perspective, this situation raises serious concerns regarding the protection of workers' rights as guaranteed under Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which affirms the right of every person to fair treatment and remuneration in employment relationships. The weakening of severance

² Nurhadi et al., *Jaminan Sosial Di Indonesia : Sejarah, Teori, Dan Tantangan Masa Depan* (Jakarta: Friedrich Ebert Stiftung, 2024).

³ Reza Rizky Farza, Agus Mulya Karsona, and Betty Rubiati, "Jaminan Pensiun Bagi Pekerja Kontrak Dalam Rangka Meningkatkan Kesejahteraan Pekerja Kontrak," *Jurnal Bina Mulia Hukum* 4, no. September (2019): 150–67, <https://doi.org/10.23920/jbmh.v4i1.9>.

⁴ Mulfirana, Moh Taufik, and Ajus Wiratman, "Kebijakan Publik Dalam Perspektif Hukum: Studi Kasus Implementasi Undang-Undang Cipta Kerja Dengan Metode Studi Dokumen," *PERKARA: Jurnal Ilmu Hukum Dan Politik* 3, no. 1 (2025): 731–49, <https://doi.org/10.51903/perkara.v3i1.2335>.

⁵ Gustav Radbruch, *Vorschule Der Rechtsphilosophie* (California: Vandenhoeck & Ruprecht, 1965).

⁶ Imam Budi Santoso and Erdin Tahir, *Penyelesaian Perselisihan Hubungan Industrial: Dalam Teori Dan Praktik Di Indonesia* (Jakarta: PT. RajaGrafindo Persada, 2024).

protections through ambiguous interpretations of employment social security schemes may also conflict with the state's obligation to promote social justice as mandated by the fifth principle of Pancasila. In this context, legal reforms aimed at enhancing economic flexibility must be carefully balanced against the constitutional imperative to safeguard workers' welfare and dignity.⁷

The urgency of this research is further reinforced by broader theoretical debates in legal philosophy concerning the relationship between justice, legal certainty, and utility. According to Gustav Radbruch, law loses its moral legitimacy when it prioritizes formal legality and economic expediency at the expense of substantive justice.⁸ Similarly, John Rawls' theory of justice emphasizes that social and economic arrangements must be structured to benefit the least advantaged members of society, a principle that is particularly relevant in labour relations where workers occupy a structurally weaker position.⁹ The potential reduction of severance pay through employment social security benefits raises critical questions about whether current labour law reforms remain aligned with these foundational theories of justice.

In light of these considerations, this research seeks to examine the normative relationship between severance pay and employment social security schemes within Indonesian labour law. The central issue addressed in this study concerns whether benefits derived from JHT and JP may be lawfully interpreted as deductions from severance pay and length-of-service compensation. By adopting a normative legal research method that incorporates statutory analysis, conceptual examination, and case law review, this study aims to clarify doctrinal boundaries, identify inconsistencies within the existing legal framework, and offer a principled interpretation grounded in justice, legal certainty, and worker protection.

The findings of this research are expected to contribute to the development of labour law doctrine by providing a systematic analysis of the normative contestation between severance pay and employment social security. Practically, this study may serve as a reference for judges, policymakers, employers, and workers in interpreting and applying labour law provisions related to termination and post-employment benefits. Ultimately, this research aspires to support the formulation of a more coherent and equitable legal framework that reconciles economic objectives with the fundamental values of social justice and human dignity in Indonesian labour law.

METHODS OF THE RESEARCH

This research employs a normative legal research method that focuses on law as a system of norms regulating employment relations, particularly concerning the relationship between severance pay and employment social security in Indonesian labour law. The study applies a statute approach by examining relevant legislation, including labour laws and regulations governing severance pay as well as Old-Age Security Benefits and Pension Security Benefits, a conceptual approach to analyze legal doctrines and principles related to worker protection and employer liability, and a case approach through the review of selected Industrial Relations Court decisions. The research was conducted during the 2025 academic year through library-based study without a specific empirical location, relying on primary, secondary, and tertiary legal materials. Legal materials were collected through

⁷ Jimly Asshiddiqie, *Konstitusi Dan Konstitutionalisme Indonesia*, 2nd ed. (Jakarta: Sinar Grafika, 2010).

⁸ Radbruch, *Vorschule Der Rechtsphilosophie*.

⁹ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

systematic document review and analyzed qualitatively using legal interpretation and legal reasoning techniques to identify normative inconsistencies and clarify doctrinal boundaries. The analysis aims to produce prescriptive conclusions regarding the lawful position of employment social security benefits in relation to severance pay, in accordance with the normative legal research framework as formulated.¹⁰

RESULTS AND DISCUSSION

A. Normative Hierarchy, the Evolution of Mandatory Severance Pay, and the Structural Misreading of Employment Social Security in Indonesian Labour Law

The normative contestation between severance pay and employment social security in Indonesian labour law must be approached as a structural and historical problem embedded in the evolution of labour protection norms. Severance pay did not emerge merely as a technical financial entitlement but as a legal response to the socio-economic vulnerability experienced by workers upon termination of employment¹¹. Historically, Indonesian labour law has consistently recognized termination as a critical moment requiring heightened legal protection due to the asymmetrical power relationship between employers and workers. This recognition is reflected in the construction of severance pay as a mandatory statutory right imposed upon employers as a direct legal consequence of dismissal.¹²

Within the doctrinal framework of labour law, severance pay functions as an imperative norm (dwingend recht). Imperative norms are distinguished by their binding force and non-derogable character; they establish minimum standards of protection that cannot be contractually waived or indirectly undermined.¹³ The normative status of severance pay as an imperative labour right signifies that it operates not merely as compensation, but as an institutional guarantee of social justice within employment relations. Its purpose extends beyond individual financial relief to include broader objectives such as preventing arbitrary termination, internalizing dismissal costs, and maintaining social stability.¹⁴ The mandatory nature of severance pay is closely linked to the principle of employer responsibility. Employers exercise managerial authority over hiring, supervision, and termination and therefore bear legal responsibility for the economic consequences of termination decisions. Severance pay reallocates dismissal risk from workers, who are structurally weaker and economically dependent, to employers, who possess greater bargaining power and control over employment continuity. In this sense, severance pay functions as a corrective legal mechanism that mitigates market inequality and reinforces the protective character of labour law.

Employment social security schemes such as Old-Age Security Benefits and Pension Security Benefits, however, originate from a fundamentally different normative tradition. These schemes are products of social security law, which is grounded in welfare-state principles, social insurance theory, and collective risk distribution. The primary objective of employment social security is not to regulate employment termination, but to provide long-term income security against life-cycle risks such as old age, disability, and reduced earning

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, Ketujuh Be (Jakarta: Kencana, 2023).

¹¹ Dina Susiani, *Perkembangan Hukum Ketenagakerjaan Di Indonesia*, 1st ed. (Jember: CV Pustaka Abadi, 2020).

¹² Soepomo, *Hukum Perburuhan Bidang Hubungan Kerja*.

¹³ Zaeni Asyhadie and Rahmawati Kusuma, *Hukum Ketenagakerjaan Dalam Teori Dan Praktik Di Indonesia* (Jakarta: Kencana, 2019).

¹⁴ Wike Nopianti, Imam Budi Santoso, and Muhamad Abas, "Pemenuhan Hak Pesangon Pekerja Akibat Pemutusan Hubungan Kerja Dalam Kepailitan Perusahaan Perspektif Pancasila," *Jurnal Hukum Mimbar Justitia (JHMJ)* 10, no. 1 (2024): 1-14.

capacity. Benefits under these schemes are accumulated gradually through periodic contributions and calculated using actuarial logic rather than legal consequence logic.¹⁵

The normative contestation emerges when severance pay and employment social security are conflated or treated as interchangeable within the legal system. This conflation reflects a structural misinterpretation of normative hierarchy, whereby mandatory labour rights grounded in employer liability are improperly subordinated to insurance based entitlements derived from contributory welfare logic. From the perspective of normative legal theory, such an approach constitutes an error of legal qualification because it disregards the distinct sources, functions, and binding force of the respective norms.

This misreading is not merely doctrinal but ideological. It reflects a broader regulatory shift toward labour market flexibilization, where employer obligations are increasingly reframed as social risks to be collectively managed rather than responsibilities to be individually borne. While social security systems play an essential role in welfare provision, their use as substitutes for severance pay represents a departure from the protective logic of labour law. Severance pay is transformed from a non-derogable right into a residual entitlement, contingent upon the perceived adequacy of social security benefits. Such transformation undermines the normative authority of severance pay and weakens its deterrent function against unjust termination.¹⁶

Furthermore, this structural misinterpretation threatens the coherence of the legal system as a whole. Labour law functions as *lex specialis* designed to correct market imbalances, while social security law operates as *lex generalis* addressing broader social risks. Allowing social security benefits to override labour rights reverses this hierarchy and reintroduces market logic into an area of law explicitly intended to resist it. Accordingly, the interaction between severance pay and employment social security constitutes a substantive normative contestation within Indonesian labour law, reflecting a clash between protective labour norms and welfare-oriented insurance rationality.

B. Normative Consequences of Substitution: Risk Reallocation, Justice Deficit, and the Reorientation of Indonesian Labour Law

The substitution of severance pay with employment social security benefits generates profound normative consequences that reshape the structure, function, and moral orientation of Indonesian labour law. At its core, severance pay is designed to internalize the economic consequences of termination within the employer's domain of responsibility. By linking financial liability directly to the act of dismissal, labour law ensures that employers account for the social costs of termination when making managerial decisions. This linkage serves both compensatory and preventive functions, reinforcing accountability and discouraging exploitative employment practices.¹⁷

Employment social security schemes, by contrast, are not termination-specific instruments. JHT and JP are designed to provide income continuity during old age or retirement, regardless of the circumstances under which employment ends. When these benefits are used to offset or replace severance pay, the legal logic of termination protection is fundamentally altered. The risk of dismissal is no longer borne primarily by employers

¹⁵ Nurhadi et al., *Jaminan Sosial Di Indonesia : Sejarah, Teori, Dan Tantangan Masa Depan*.

¹⁶ Syahwal Syahwal, "The Dilemma of the Right To Work in Flexible Labour Markets Policies," *Jurnal HAM* 13, no. 2 (2022): 271-86.

¹⁷ I Gede Krisna, Andyka Permana, and Luh Merry Dyanthi, "Tinjauan Yudiris Perlindungan Hukum Terhadap Hak-Hak Pekerja Akibat Pemutusan Hubungan Kerja Sepihak Berdasarkan Undang-Undang No . 11 Tahun 2020 Tentang Cipta Kerja," *PUBLIC SPHARE: Jurnal Sosial Politik, Pemerintahan Dan Hukum* 2, no. 1 (2023): 20-25, <https://doi.org/10.59818/jps.v2i1.505>.

but redistributed to workers through contributory insurance mechanisms. This redistribution effectively compels workers to finance their own termination protection through contributions accumulated over their working lives.

The normative implications of this risk reallocation are particularly severe for older workers. Workers approaching retirement often possess extensive contribution histories and therefore accrue substantial social security benefits. Using these benefits to reduce severance pay creates a paradoxical outcome: the more diligently workers contribute to social security schemes, the less protection they receive upon termination. Such outcomes contradict the principle of cumulative protection that underlies both labour law and social security law, transforming protective institutions into instruments of exclusion and inequality.¹⁸ From the perspective of justice theory, this substitution reveals a significant justice deficit within the legal framework. Labour law is grounded in substantive justice and corrective equity, not merely formal legality. Radbruch, famously argued that law forfeits its moral legitimacy when positive legality conflicts intolerably with justice. Interpreting employment social security as a substitute for severance pay may satisfy formal statutory interpretation or economic efficiency, but it does so at the expense of fairness, dignity, and social solidarity.¹⁹

This justice deficit is further aggravated by the erosion of legal certainty within the labour law system. When severance pay and employment social security are treated as functionally equivalent, legal actors are deprived of clear normative guidance regarding the scope, purpose, and limits of each institution. Judges are compelled to rely heavily on discretionary interpretation in the absence of coherent doctrinal boundaries, resulting in fragmented and inconsistent judicial reasoning. Employers, in turn, face uncertainty concerning the extent of their legal obligations, particularly in termination cases, which may encourage compliance strategies that prioritise cost minimisation over worker protection. Workers ultimately bear the greatest burden, as they are subjected to unpredictable and uneven levels of protection depending on interpretative choices rather than firmly established rights. Such normative ambiguity undermines the predictability, coherence, and reliability of labour law as a system of rights and weakens its foundational function as an instrument of social justice and legal protection.

More fundamentally, the substitution of severance pay with social security benefits signals a reorientation of Indonesian labour law away from a rights-based paradigm toward a risk-management model. In a rights-based paradigm, labour law prioritizes employer responsibility, worker dignity, and social justice. In a risk-management paradigm, employment protection is reframed as a collective insurance problem rather than a matter of legal entitlement. While risk management has a legitimate role within social security policy, its dominance within labour law threatens to dilute the normative essence of labour protection.

Ultimately, the continued acceptance of substituting severance pay with employment social security benefits reflects a profound normative contestation concerning the identity and future trajectory of Indonesian labour law. The core issue is whether labour law will persist as a protective legal regime grounded in principles of justice and employer accountability or whether it will transform into a hybrid system that prioritises flexibility

¹⁸ Kartika Eka Putri, Siska Aprilianti, and Diana Permata Dewi, "Legalitas Penetapan Usia Pensium Karyawan Swasta Yang Tidak Sesuai Dengan Regulasi Pemerintah," *JUrnal Syntax Imperatif: Jurnal Ilmu Sosial Dan Pendidikan* 6, no. 1 (2025): 10–16.

¹⁹ Gustav Radbruch, *Legal Philosophy* (Massachusetts: Harvard University Press, 1950).

efficiency and risk distribution at the expense of substantive worker protection. Addressing this contestation requires a clear and firm normative reaffirmation that severance pay constitutes an independent and mandatory labour right while employment social security functions as a complementary mechanism that reinforces rather than weakens the protective structure of labour law.

CONCLUSION

This research concludes that the normative contestation between severance pay and employment social security in Indonesian labour law arises from the conflation of two distinct legal regimes with different normative foundations, functions, and purposes. Severance pay constitutes a mandatory labour right grounded in employer responsibility and triggered by termination of employment, whereas employment social security benefits operate within an insurance-based framework designed to address long-term social risks. Interpreting employment social security benefits as substitutes for or deductions from severance pay results in a misreading of normative hierarchy, reallocation of termination risk to workers, and erosion of the protective character of labour law. To address this issue, future legal development should reaffirm the independent and non-derogable nature of severance pay and clarify doctrinal boundaries through explicit legislative provisions or consistent judicial interpretation. Such measures are essential to ensure legal certainty, uphold substantive justice, and strengthen worker protection within Indonesia's labour law system.

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