



Legal Protection of Workers in Higher Education Institutional Restructuring in Indonesia: Perspectives of Legal Certainty and Justice

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Abstract

Institutional restructuring in higher education is strategies used to improve governance quality, management efficiency, competitiveness, and institutional sustainability. Such restructuring may take the form of mergers, institutional objectives, it may also raise legal issues, particularly concerning employment status, financial right, welfare guarantees and legal certainty for academic and non-academic staff. This article aims to analyse the legal protection of workers in higher education institutional restructuring in Indonesia and to formulate legal protection model based on legal certainty and justice. This study uses a normative juridical method with statutory and conceptual approaches. The findings show that labor law and higher education law provide general protection for workers; however, they do not specifically regulate employment transition mechanisms in higher education restructuring, as a result employee protection often depends on the internal policies of each governing body. Therefore stronger technical regulations are needed to govern employment transfer, recognition of service period, financial right, employee participation and dispute resolution in higher education institutional restructuring.

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Introduction

Restructuring is a strategy that helps organisations overcome performance decline, adopt new strategies, and restore institutional credibility. It refers to the reorganisation of structure, ownership,

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and operational aspects of a company or legal entity to improve profitability and adapt to current institutional needs (Efriyenty et al., 2025). In practice, restructuring may take the form of mergers, changes in legal entity status, consolidation, or organisational realignment. In the higher education sector, restructuring extends beyond administrative adjustments. It also involves changes to organisational structure, position realignment, salary system modifications, workload redistribution, and uncertainty over employment continuity. Higher education restructuring fundamentally aims to enhance management efficiency, strengthen institutional capacity, improve academic quality, and expand educational access (Serfiyani, 2020). Consequently, it directly affects the employment relationships of academic and non-academic staff.

In practice, higher education restructuring frequently produces significant employment implications. Changes to organisational structure, transfer of governance bodies, and shifts in institutional status may lead to employment uncertainty, salary system modifications, position adjustments, and potential termination of employment. This situation places higher education workers in a vulnerable position, particularly when restructuring is not accompanied by clear and binding employment transition arrangements (Serfiyani, 2020). Higher education institutions carry distinct characteristics. They are not exclusively profit-oriented but also fulfil social and academic functions, producing highly competitive human resources capable of responding to the development of science, technology, and societal needs (Nurputrama et al., 2024). Academic and non-academic staff are integral to higher education provision and must receive adequate legal protection, including during institutional change. In practice, however, such protection often depends on the internal policies of each governing body rather than nationally binding legal norms.

Normatively, employment regulation in Indonesia is governed by Law Number 13 of 2003 on Manpower as amended by Law Number 6 of 2023, and Government Regulation Number 35 of 2021. Higher education is regulated by Law Number 12 of 2012 on Higher Education and Ministerial Regulation Number 7 of 2020. However, none of these regulations specifically governs worker protection mechanisms in higher education restructuring, particularly regarding employment transfer, recognition of prior service, and continuity of normative rights. The absence of specific regulation reveals a normative gap in the employment law applicable to higher education. This gap leads to inconsistent worker protection heavily dependent on institutional policy. From the perspective of a law-governed state, this condition risks producing legal uncertainty and a power imbalance between institutions and workers.

This condition reflects a gap between general employment regulation and the specific need for worker protection in higher education restructuring. Workers frequently occupy a vulnerable position when organisational change potentially leads to termination of employment, change of employment status, or reduction of normative rights. Unlike the United Kingdom, which has established the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) as a legal mechanism protecting workers during business transfers, Indonesia has no regulation explicitly governing employment continuity in educational institutional restructuring. This confirms the need for more adaptive legal protection mechanisms. Based on this background, this research examines the form of legal protection available to workers in higher education restructuring in Indonesia and formulates legal protection mechanisms grounded in the principles of legal certainty and justice. The research is expected to contribute both theoretically and practically to addressing the dynamics of restructuring in the education sector.

Methods

This study adopts a normative legal research design, which aims to analyse the legal framework for worker protection in higher education restructuring in Indonesia and to formulate legal protection mechanisms that provide legal certainty and justice for workers (Suganda, 2022). The research was conducted through library research during the preparation of the article by examining legislation, legal doctrines, academic literature, and relevant research findings. In normative legal research, the population is not used in the same way as in empirical research; therefore, the subjects of this study are legal materials related to employment, higher education, foundations, employment relations, and higher education restructuring. The approaches employed include the statutory approach, used to examine relevant regulations, and the conceptual approach, used to analyse the concepts of legal protection, legal certainty, justice, employment relations, and institutional restructuring (Putra et al., 2026).

The research procedure was carried out through several stages, namely the inventorying of legal issues, the search for and classification of legal materials, the identification of relevant legal norms, the analysis of compatibility between regulations, and the formulation of legal protection mechanisms for workers in higher education restructuring. Data collection was conducted through library research using a legal document review guide as the research instrument. Primary legal materials included the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2003 on Manpower as amended by Law Number 6 of 2023, Law Number 12 of 2012 on Higher Education, Law Number 16 of 2001 on Foundations as amended by Law Number 28 of 2020, and Government Regulation Number 35 of 2021. Secondary legal materials included legal textbooks, national academic journals, research findings, scientific articles, and relevant expert opinions. The data were analysed qualitatively and normatively using systematic, teleological, and comparative interpretation to identify compatibility, gaps, and weaknesses in the existing legal norms

Results and Discussions

1. Legal Regulation in Indonesia on Higher Education Restructuring and Its Impact on Workers

Higher education restructuring is a policy undertaken to improve institutional governance towards greater effectiveness, efficiency, and sustainability. In practice, it may involve merging institutions, converting a college into a university, consolidating foundations or governing bodies, and reorganising institutional structures. Institutionally, restructuring may yield positive outcomes: strengthened academic capacity, expanded study programmes, improved competitiveness, and reformed governance. From an employment perspective, however, restructuring may also generate vulnerability for higher education staff. A university is not merely an academic structure; it is a community involving lecturers, education support staff, and other supporting elements.

The impacts of higher education restructuring on workers can be seen in several aspects. The first impact is ambiguity in employment status, as staff previously employed by the predecessor institution may face uncertainty regarding whether their employment automatically continues, is renewed, or is terminated. This becomes problematic when restructuring is not accompanied by legal documents that clearly regulate the transfer of employment relations. The second impact concerns financial rights, as institutional change is often followed by adjustments to salary systems, allowances, incentives, work facilities, and welfare guarantees. If such adjustments are made unilaterally, they may

constitute violations of workers' normative rights, particularly when staff are not provided with adequate information.

The third impact relates to changes in position and workload, since restructuring may lead to the abolition of certain positions, positional shifts, additional duties, or changes in authority. In the context of higher education, these changes may affect academic performance, administrative services, and staff motivation. The fourth impact is psychological and social uncertainty, where unclear employment futures may cause anxiety, reduce loyalty, and weaken productivity. The neglect of employee rights may also result in declining work motivation, dissatisfaction, and weakened institutional commitment. Higher education restructuring therefore cannot be viewed as merely administrative policy. It must be understood as a legal and social action with direct consequences for workers' rights.

Normatively, Law Number 12 of 2012 affirms that higher education institutions are educational units comprising academic and support staff. Workers in higher education are thus an essential component of provision and must have their rights protected. Despite this, existing regulations have not specifically governed worker protection mechanisms in higher education restructuring. Ministerial Regulation Number 7 of 2020 addresses institutional and licensing aspects rather than worker protection after restructuring. These regulatory weaknesses give rise to several fundamental problems in protecting workers during higher education restructuring. First, there are no standard guidelines governing the transfer of employment relations from the old institution to the new one, which may create uncertainty over employment status. Second, there is no explicit obligation for governing bodies to prepare employment transition documents as a legal basis for protecting staff rights. Third, there is no minimum standard for safeguarding staff financial rights after restructuring, including salaries, allowances, benefits, and other welfare guarantees. Fourth, there is no mechanism that ensures staff participation in the institutional restructuring process, thereby limiting workers' ability to obtain information, express concerns, and protect their interests.

Law Number 13 of 2003 on Manpower governs employment relations, wages, social security, and termination mechanisms but remains general and does not accommodate employment dynamics specific to higher education restructuring. Law Number 12 of 2012 focuses primarily on higher education provision, governance, and institutional autonomy, without specifically regulating legal protection for workers during mergers or consolidations. Ministerial Regulation Number 7 of 2020 likewise addresses only licensing and institutional matters without provisions on employment transfer or rights protection. This condition indicates a normative gap in the regulation of worker protection during higher education restructuring. The gap has resulted in the absence of binding standards concerning the transfer of employment status, recognition of prior service periods, protection of financial rights, continuity of positions, and mechanisms for worker participation in the restructuring process. As a result, workers may face legal uncertainty and weakened protection when institutional changes occur.

As a consequence, worker protection is heavily dependent on the internal policies of each governing body. From the perspective of the rule of law, this raises serious concern because the principle of legal certainty is not optimally fulfilled. From the perspective of Gustav Radbruch's theory of legal certainty, law must provide clarity regarding the rights and obligations of legal subjects in a consistent manner (Anisyaniawati et al., 2025). The absence of specific regulation on employment transitions produces legal uncertainty for workers, particularly lecturers and support staff directly affected by institutional change. This normative gap represents a structural problem in the

employment law system applicable to higher education, with direct implications for the weakness of worker rights protection during institutional restructuring.

The concept of legal protection is foundational to analysing normative gaps, particularly within a law-governed state, because law functions not only as a regulatory instrument but also as a means of protecting the rights of legal subjects (Prayoga et al., 2023). In the employment context, legal protection is necessary because the relationship between workers and employers is not always balanced. Workers, including academic and support staff, often occupy a weaker position due to their dependence on institutional policies. Satjipto Rahardjo argued that protection refers to the effort to shelter human rights from harm caused by others, enabling the community to enjoy all rights granted by law (Firdaus, 2024). This view affirms that law must actively protect vulnerable parties. In higher education restructuring, workers face potential harm from institutional change, such as changes in employment status, adjustments to financial rights, or ambiguity regarding service periods. Legal protection must therefore function not only as a reactive response to violations but also as a preventive mechanism.

Philipus M. Hadjon classifies legal protection into preventive and repressive forms (Purwito, 2023). Preventive legal protection aims to prevent disputes by providing opportunities to raise objections before a decision is implemented. Repressive legal protection aims to resolve disputes after a rights violation has occurred. In higher education restructuring, preventive protection can be realised through written notification to staff, consultation forums, employment audits, preparation of transition documents, and written guarantees of employment continuity. Preventive protection is particularly important because restructuring is generally a policy that can be planned in advance. Repressive legal protection functions to resolve disputes when a violation has occurred (Rachmat et al., 2024). Workers may use industrial relations dispute resolution mechanisms, mediation, or litigation before the Industrial Relations Court. In practice, however, preventive protection in higher education restructuring remains very weak due to the absence of normative obligations for governing bodies to prepare transition instruments. Protection consequently tends to be repressive, meaning workers only receive protection after a dispute has arisen. This condition indicates that the existing legal system has not been capable of providing comprehensive protection for workers in situations of institutional change. Strengthening specific regulation governing preventive legal protection mechanisms is therefore necessary.

2. Comparative Analysis with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

The United Kingdom's employment law system recognises the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), a legal instrument specifically designed to protect workers when a business transfer or change of service provider occurs. TUPE implements worker protection principles based on employment continuity and comprehensive protection of normative rights (Utama et al., 2024). The primary principle of TUPE is automatic transfer of employment: employment relations automatically transfer to the new employer without requiring renewed consent or a new employment contract. The existing contract remains in effect, with only the employer party changing (Utama et al., 2024). Workers do not lose their legal status or rights as a result of restructuring or organisational transfer. TUPE also guarantees preservation of rights, protecting all terms and conditions of employment, including wages, service periods, and previously acquired rights, ensuring that workers do not experience deterioration in working conditions (Wynn-

Evans, 2020). Service periods continue to be recognised, with consequential effects on severance pay and protection against termination.

Regarding protection against termination, TUPE explicitly prohibits termination where the sole or principal reason is the transfer itself. Termination is permissible only where there are legitimate economic, technical, or organisational reasons. Restructuring therefore cannot serve as a basis for unilaterally eliminating workers' rights. A comparison with Indonesia's labour law system reveals that there is currently no explicit regulation adopting the principle of automatic transfer of employment in the context of institutional restructuring, particularly in higher education. This situation produces legal uncertainty for workers regarding employment continuity and normative rights protection.

3. The Concept of Justice for Workers in Higher Education Restructuring

Justice is a primary objective of law alongside legal certainty and utility. Good law is not merely formally valid; it must also deliver a sense of fairness to those affected by policy. In higher education restructuring, theories of justice are relevant for assessing whether institutional change has taken account of the rights, positions, and welfare of workers. Aristotle divided justice into distributive and corrective justice. Distributive justice concerns the proportional distribution of rights, obligations, and benefits according to the position, contribution, and needs of each party (Pratama et al., 2024). Corrective justice concerns the restoration of balance when harm or disproportion results from a specific action. In higher education restructuring, distributive justice requires that staff receive proportional treatment based on service period, position, competence, and contribution. Corrective justice demands remediation when restructuring causes harm, such as reduction of financial rights or termination without adequate compensation.

John Rawls advanced the concept of justice as fairness: a policy is just when it is structured on principles of equal liberty and the difference principle, whereby inequality is justified only when it benefits the least advantaged group (Hanifah et al., 2025). In higher education restructuring, directly affected staff may be regarded as a vulnerable group. Restructuring policy must therefore provide specific protection for those in the weakest position. Rawls' principle is relevant for analysing efficiency-oriented restructuring policies. Institutional efficiency is important, but it cannot be achieved by sacrificing workers' rights. When restructuring causes employees to lose rights, experience welfare deterioration, or face employment uncertainty, the policy fails to satisfy justice as fairness. Hans Kelsen viewed justice as a relative value, with justice realised within positive law through compliance with applicable norms (Fadillah et al., 2024). In the higher education context, employee protection must be grounded in applicable legal rules. When an institution reduces employee rights without legal basis, such action conflicts with both legal certainty and justice.

Gustav Radbruch placed justice as a fundamental legal value alongside legal certainty and utility, arguing that law must balance all three (Anisyaniawati et al., 2025). When a policy pursues utility or efficiency alone while disregarding justice, law loses its moral significance. In higher education restructuring, the value of utility in pursuing improved quality and efficiency must be balanced with legal certainty and justice for workers. A policy that is administratively lawful may still be unjust if it causes harm to workers. Based on these theories, justice in higher education restructuring must encompass several principles. First, proportionality: treatment of staff must consider service period, contribution, competence, and vested rights. Second, transparency: staff must receive clear information regarding the reasons, process, and impact of restructuring. Third, participation: staff must be given opportunity to express views or objections. Fourth, remediation: when restructuring causes harm, compensation or a fair resolution mechanism must be available. Fifth, protection of

vulnerable groups: contract employees, non-permanent support staff, and staff with weak bargaining positions must receive special attention.

Justice theory establishes that higher education restructuring cannot be evaluated solely on administrative achievement or management efficiency (Marlia et al., 2025). It must also be assessed by the extent to which the policy protects the rights, dignity, and welfare of staff. As educational institutions, higher education bodies should embody the values of humanity and justice, ensuring that every institutional change takes account of workers' rights as an essential component of higher education provision. Higher education restructuring must be conducted according to the principle of justice. Staff must not be sacrificed for institutional efficiency. Higher education institutions have a moral and legal responsibility to maintain the dignity, welfare, and employment certainty of their staff. The principle of justice requires that all changes to employment relations be carried out proportionally, transparently, and humanely. Any changes to positions, salary adjustments, or workload modifications must be grounded in objective, accountable reasons. Justice also requires protection for vulnerable groups, including contract employees, non-permanent support staff, and staff with long service records but without robust formal protection.

When legal protection theory and justice theory are combined, it is clear that higher education restructuring must be built on a foundation of rights protection and balanced interests. Ideal restructuring is not merely institutionally successful; it is just for workers. Although the normative legal framework in Indonesia provides a basis for worker protection, fundamental problems persist in the higher education restructuring context. The absence of specific regulation governing worker protection mechanisms points to a normative gap with potential to produce legal uncertainty. From the perspective of legal certainty, the absence of clear regulation means there is no binding standard that institutions or workers can rely on. Worker protection consequently tends to depend on internal institutional policies that prioritise efficiency over rights.

From the perspective of justice, this situation reflects the failure to achieve balance between institutional interests and workers' rights. As Radbruch argued, law must guarantee not only certainty but also justice (Kurniawan & Ezzerouali, 2024). In restructuring practice, workers often occupy a weak position susceptible to termination without adequate protection. Compared with the TUPE framework in the United Kingdom, it is clear that Indonesia has not yet adopted the principle of employment continuity. Indonesia's legal system remains predominantly administrative and has not been fully oriented towards comprehensive worker protection. A progressive approach is therefore required, one that positions workers as legal subjects to be actively protected at every stage of restructuring.

4. Ideal Legal Protection Mechanisms for Workers in Higher Education Restructuring

The absence of specific regulation on employment transfer in higher education restructuring demonstrates the weakness of legal commitment to workers. Unlike TUPE in the United Kingdom, which explicitly guarantees employment continuity, Indonesian law leaves open the possibility of covert termination of employment through restructuring mechanisms. This places workers in a vulnerable position without legal certainty, potentially violating substantive justice. Given these weaknesses, a legal protection mechanism is needed that bridges legal certainty and substantive justice. Drawing on the comparative analysis of the transfer of undertakings concept, the ideal legal protection model must integrate law, justice, and worker participation at every stage of restructuring. This model consists of three main phases.

The first phase, before restructuring, requires the higher education institution or governing body to conduct a comprehensive employment audit, provide written notification to all workers, and involve staff in consultation and decision-making processes. The second phase, the transition phase, requires the institution or governing body to guarantee full recognition of prior service periods, ensure employment continuity, protect workers' financial rights, and prepare legally binding employment transition documents. The third phase, after restructuring, requires the establishment of internal complaint mechanisms, access to dispute resolution, and safeguards against non-objective changes in position. This research therefore not only identifies normative gaps but also proposes legal protection mechanisms based on the integration of justice principles and the transfer of undertakings concept as a new approach in Indonesian employment law.

Conclusion

Legal regulation on worker protection in higher education restructuring in Indonesia remains incomplete. The existing regulations, namely Law Number 13 of 2003 on Manpower as amended by Law Number 6 of 2023, Law Number 12 of 2012 on Higher Education, and Ministerial Regulation Number 7 of 2020, do not specifically regulate the mechanisms for transferring employment relations, recognising service periods, or protecting the normative rights of workers in higher education restructuring. This condition reveals that worker protection in higher education restructuring remains partial and has not been systematically integrated. The normative gap regarding employment transfer and the weakness of policy implementation oversight indicate that the state has not fully guaranteed legal protection for workers. If this condition is not promptly addressed, higher education restructuring risks becoming an instrument that harms rather than protects workers. Comprehensive legal reform is therefore required, including specific regulation on worker protection in higher education institutional restructuring.

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