

## Reconsidering Legal Protection: The Urgent Need to Regulate the Retirement Age of Worker

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### Article History:

Submitted:

02-11-2025

Received:

07-01-2025

Accepted:

29-01-2026

### Keywords:

retirement age; legal protection; legal certainty; social justice; workers.

### Abstract

The absence of a national legal norm that explicitly regulates the retirement age of workers in Indonesia has created a normative vacuum that generates legal uncertainty, enables arbitrary practices in employment relations, and increases the potential for industrial relations disputes. This study aims to analyze how the state should exercise its role in providing legal protection for workers and to explain the urgency of regulating the retirement age within the framework of Indonesian labor law. The research employs a normative legal method using statutory, conceptual, and comparative approaches, including an examination of retirement-age regulation in selected ASEAN countries such as Malaysia, Thailand, and the Philippines. The findings show that workers constitute a vulnerable group requiring state protection, and that the normative vacuum regarding retirement age has resulted in inconsistencies and discriminatory practices in company-level retirement policies. The divergence between the retirement age set by companies and the requirements of the Pension Benefit Program under Government Regulation No. 45 of 2015 further contributes to legal uncertainty concerning workers' rights to pension benefits. Comparative analysis demonstrates that several ASEAN countries have adopted clear, uniform retirement-age standards as instruments of legal and social protection. The novelty of this study lies in its normative argument that the Indonesian state, as a Pancasila-based rule-of-law state, must establish a clear, firm, and legally certain national retirement-age standard as a form of preventive legal protection and as a mechanism to ensure workers' welfare in old age.

## 1. Introduction

Workers occupy a structurally subordinate position in employment relations, where employers generally hold stronger bargaining power. The legal construction of an employment relationship; consisting of work, wages, and subordination; further reinforces workers' dependency and their vulnerability to unequal treatment. Within the framework of the Pancasila rule-of-law state, the protection of citizens' fundamental rights constitutes a constitutional mandate, as reflected in Article 27(2) and Article 28D of the 1945 Constitution, which guarantee the right to work and the right to legal protection. This constitutional framework underscores the necessity of state intervention to safeguard workers' rights, including the need for a legally certain and non-discriminatory retirement age regulation.<sup>1</sup>

One of the most pressing legal issues affecting worker protection is the absence of a clear statutory retirement age. Although retirement is listed as a basis for termination of employment under existing termination provisions, Indonesian labor law does not specify a normative retirement age for workers. At the same time, the BPJS Ketenagakerjaan Pension Benefit Scheme prescribes a different retirement age as an eligibility requirement, gradually

<sup>1</sup> Nely Anggraeni, Indra Koswara, and Yopie Gunawan, "Analysis of 'Legal Protection of Labor', in the Implementations of Layoff," *Legal Brief* 11, no. 2 (2022): 379-88, <https://legal.isha.or.id/index.php/legal/article/view/137>.

increasing from 58 in 2022, to 59 in 2025, and to 60 in 2043. This regulatory discrepancy creates a structural gap between employment termination rules and pension benefit entitlement, generating uncertainty for workers approaching the end of their productive years.

The divergence between company-level retirement policies and the statutory retirement age under the national pension system produces substantive legal and socio-economic consequences. Where company regulations, collective labor agreements, or employment contracts set retirement at 55, workers may face a multi-year gap before qualifying for BPJS TK pension benefits, which by 2025 requires a minimum age of 58. During this interim period, workers lack both income and pension benefits, exposing them to heightened vulnerability and potential socio-economic hardship. This stands in stark contrast to the detailed and normatively certain retirement-age regulations applicable to professions such as civil servants (ASN)<sup>2</sup>, teachers<sup>3</sup> and lecturers, military personnel (TNI)<sup>4</sup>, police officers (Polri)<sup>5</sup>, and judges<sup>6</sup>. Such disparity illustrates the absence of coherent statutory protection for ordinary workers.

The existing legal vacuum has resulted in significant disparities between workers and other regulated professions, and has undermined the consistency of the Pension Benefit System. The absence of a statutory retirement age not only places workers in a position of legal uncertainty but also enables employers to set retirement age policies unilaterally through internal regulations or bargaining instruments, which frequently lead to contested interpretations and disputes. This situation is incompatible with the aims of social protection embedded in the national Pension Benefit Scheme, which seeks to guarantee a dignified standard of living in old age. Without clear normative guidance from the state, workers remain exposed to both legal ambiguity and socio-economic risks.

Population aging further underscores the urgency of establishing a clear retirement age. Data shows that the proportion of the elderly population ( $\geq 60$  years) continues to increase, which in the long term has implications for the increasing burden on the pension insurance system and the risk of declining worker welfare after entering non-productive age. Nirwesti (2023) emphasized that the current pension insurance system in Indonesia is not fully adequate

<sup>2</sup> Rolando Keni Sumanti, "Tinjauan Hukum Tentang Pemberhentian Aparatur Sipil Negara, Berdasarkan Pasal 87 UU No. 5 Tahun 2014," *Lex Privatum, Jurnal Fakultas Hukum Universitas Sam Ratulangi* XII, no. 1 (2023), <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/49420>.

<sup>3</sup> Hafin Auni Qashrina, "Batas Usia Pensiun Guru Swasta:Ditinjau Berdasarkan UU 13 Tahun 2003 Tentang Ketenagakerjaan," *Media Juris* 1, no. 3 (2018): 439–56, <https://doi.org/10.20473/mi.v1i3.10201>. DOI: 10.20473/mi.v1i3.10201

<sup>4</sup> Putra Krisna Suryantoro, "Perubahan UU TNI : Telaah Atas Substansi Dan Dampaknya," *Juris Studia, "Jurnal Kajian Hukum"* 6, no. 2 (2025): 557–65, <https://jurnal.bundamedia grup.co.id/index.php/iuris/article/view/946>.

<sup>5</sup> Rolando Marpaung et al., "Implementasi PP Nomor 1 Tahun 2003 Tentang Pemberhentian Anggota Polri, Dihubungkan Dengan Krimonologi (Studi Putusan Nomor PUT KKEP/11/IX/2018/KKEP)," *JIIP, "Jurnal Ilmiah Ilmu Pendidikan"* 7, no. 8 (2024): 8432–37, <https://doi.org/https://doi.org/10.54371/jiip.v7i8.5785>.

<sup>6</sup> Wahdiny Alindra Afwany and Abid Rohmanu, "Perubahan Pengaturan Masa Jabatan Hakim Konstitusi Dan Implikasinya Perspektif Pendekatan Sistem Jasser Auda," *El-Dusturie: Jurnal Hukum Dan Perundang-Undangan* 4, no. 1 (2025): 64–80, <https://doi.org/https://doi.org/10.21154/eldusturie.v4i1.10853>.

because the benefits received are relatively small and coverage is still limited, especially for informal sector workers, whose numbers are significant.<sup>7</sup> This situation demonstrates that changing retirement age policy is not merely an administrative matter; it is a substantive and structural necessity to provide sustainable legal, social, and economic protection, guarantee workers' rights as they enter old age, and mitigate the social and economic pressures brought on by aging. Several neighboring ASEAN countries such as Malaysia<sup>8</sup>, Singapore, and Thailand<sup>9</sup>, have already set clear retirement age limits. The determination of a normative and binding retirement age limit for workers by the state will protect workers' rights to obtain legal certainty regarding their retirement age limit, so that they can design, plan, and face their lives in old age after stopping work.

This research has been compared with several previous studies. The first focused on the issue of population aging and the need for pension system reform in Indonesia. This article demonstrated that increasing life expectancy puts pressure on the national pension system, necessitating reform. However, this study did not specifically address legal protection for workers, particularly regarding the retirement age limit, a right that must be protected and guaranteed by the state. The second research focus is legal certainty in pension regulations. This study focuses on the misalignment between regulations and the implementation of retirement age regulations. While emphasizing legal certainty, this study does not address substantive justice for workers as a vulnerable group in need of legal protection from the state. The third study emphasizes the problem of the validity of retirement age regulations in private companies which are often not in line with government regulations.<sup>10</sup> However, the study does not position the retirement age of workers as a matter of legal protection requiring state regulation. The second study, conducted by Nirwesti (2023), emphasizes the demographic pressures arising from an aging population and the urgency of reforming the national pension system;<sup>11</sup> although its analysis is structurally robust, the study does not address the dimension of legal protection for workers that affects the certainty of their entitlement to pension benefits. Meanwhile, the third study by Prayitno and Iskandar (2022) demonstrates the need for harmonization between company-level retirement age policies and government regulations,<sup>12</sup> yet the solutions offered remain confined to formal compliance and do not address the urgency

<sup>7</sup> Gayatri Waditra Nirwesti, "Populasi Menua Dan Urgensi Reformasi Sistem Pensiun," *Bappenas Working Papers* 6, no. 3 (2023): 335-47, <https://doi.org/https://doi.org/10.47266/bwp.v6i3.232>.

<sup>8</sup> Muhammad Amrullah et al., "Comparative Analysis of Malaysian and Indonesian Retirement Plan," *Lex Scientia Law Review* 7, no. 2 (2023): 659-708, <https://doi.org/https://doi.org/10.15294/lesrev.v7i2.69847>.

<sup>9</sup> Inge Nur Az'zahra Maheswari Dharmalinga Wiritanaya, "Perbandingan Hukum Perburuhan Negara Indonesia, Dengan Hukum Perburuhan Di Singapura, Malaysia, Dan Thailand," *MHI, "Media Hukum Indonesia"* 2, no. 2 (2024): 543-54, <https://ojs.daarulhuda.or.id/index.php/MHI/article/view/566>.

<sup>10</sup> Langga Lagandhy, "Kesejahteraan Pekerja Di Hari Tua," *Jurnal Pengembangan Ketenagakerjaan* 1, no. 1 (2023), <https://doi.org/10.59574/jpk.v1i1.26>.

<sup>11</sup> Nirwesti, "Populasi Menua Dan Urgensi Reformasi Sistem Pensiun." <https://doi.org/https://doi.org/10.47266/bwp.v6i3.232>.

<sup>12</sup> Sugeng Prayitno and Imam Iskandar, "Pengaturan Usia Pensiun Pekerja Di PT Surya Toto Indonesia Tbk Dihubungkan Dengan Peraturan Pemerintah Nomor 45 Tahun 2015 Tentang Penyelenggaraan Program Jaminan Pensiun," *Jurnal Pilar Keadilan* 2, no. 1 (2022): 1-18, <https://doi.org/http://dx.doi.org/10.33592/jeb.v24i1.204>.

of establishing a binding national normative framework governing the retirement age of workers as an integral component of legal protection within the rule-of-law system. Among the three studies, the approach taken by Nirwesti (2023) provides the most comprehensive systemic analysis, but it still does not directly respond to the need for legal protection of workers. This article seeks to fill that gap by offering a normative analysis of the urgency for the state to regulate the retirement age of workers as part of its obligation to provide legal protection. Accordingly, the novelty of this article lies in its focus on the retirement age of workers as a legal-protection issue that requires the presence of a clear and binding national norm, and in its integration of the perspectives of legal protection and legal certainty to articulate the urgency of regulating the retirement age of workers as a form of state protection toward workers.

The purpose of this study is to analyze the extent to which the state must fulfill its constitutional role in protecting workers, thereby articulating the urgency of regulating workers' retirement age from the standpoint of legal protection. This analysis is conducted by examining the normative vacuum within Indonesia's labor law, assessing its implications for workers' welfare, and comparing regulatory models adopted in selected ASEAN jurisdictions. The study advances a novel legal-protection approach that situates the retirement age within the normative structure of the Pancasila rule-of-law state and formulates an argument for establishing a clear, binding, and legally certain national retirement-age norm.

## 2. Methods

This study was conducted using a method that emphasizes relevant legal studies. The focus is not only on theoretical aspects but also on the real-world implementation of laws and regulations, taking into account the opinions of legal professionals. This perspective allows for objective analysis. In addition to analyzing existing regulations, this study examines conceptual ideas regarding the legal protections workers should receive. A comparative method is used to examine how various countries in Southeast Asia, including Malaysia, Thailand, and the Philippines, establish laws regarding workers' retirement ages. Through this combination, the study seeks to provide a more comprehensive understanding of how the state must recognize the urgency of setting a retirement age for workers in Indonesia and provide legal protection for workers.

## 3. Results and Discussion

### 3.1. Ensuring Legal Protection

The goal of a state based on the rule of law to achieve substantive justice is demonstrated through the legal protections established for workers. Workers in an employment relationship are inherently subordinate due to their reliance on orders and wages. This subordinate position represents an unequal relationship between workers and employers, thus including workers as a vulnerable group in need of state legal protection.

The Pancasila rule of law, as emphasized by Arisanti and Hadi (2022), is not merely interpreted as the supremacy of law; the obligations of a state based on the rule of law also encompass the state's obligation to protect the fundamental rights of its citizens, especially

those belonging to vulnerable groups who are easily marginalized in employment practices.<sup>13</sup> Thus, the concept of setting a retirement age limit cannot be separated from the state's constitutional obligation to provide legal certainty for its citizens. The problematic retirement age limit for workers in Indonesia still demonstrates a lack of norms. Although retirement is stated as one of the grounds for termination of employment, there are no labor laws that clearly, specifically, and definitively stipulate a retirement age limit that applies to all workers.<sup>14</sup> This empty norm strengthens the disparity for workers because on the other hand, there are various professions<sup>15</sup> such as ASN<sup>16</sup>, judges<sup>17</sup>, TNI<sup>18</sup>, Polri<sup>19</sup>, teachers<sup>20</sup>, lecturers whose retirement age limits are clearly regulated in statutory provisions. The absence of norms regarding the retirement age limit for workers is certainly detrimental to workers because it provides wider space for employers to be able to legalize the determination of a retirement age limit that is biased towards their own interests in a power relationship wrapped in the form of an agreement that is stated in the PK and PKB, or stipulated in the PP.

Situmorang et al. (2025) explain that from the perspective of Satjipto Rahardjo's progressive legal theory, law must be understood not merely as a normative text, but as an instrument to protect humans from injustice.<sup>21</sup> Therefore, the state's courage to interpret the law in accordance with the goals of substantive justice must be used to protect workers related to the retirement age limit. As emphasized by Philip M. Hadjon, legal protection has two forms: preventive and repressive, according to Dena et al. (2025).<sup>22</sup> Preventive protection requires the existence of clear, definite, and binding retirement age regulations so that workers'

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<sup>13</sup> Nanda Arni Arisanti and Syofyan Hadi, "Perlindungan Hak, Buruh Penyandang Disabilitas, Dalam Memperoleh Pekerjaan Dan Penghidupan Yang Layak Bagi Kemanusiaan," *Jurnal Hasil Penelitian* 7, no. 2 (2022): 219-32, <https://doi.org/https://doi.org/10.30996/jhp17.v7i2.6186>.

<sup>14</sup> Flentje Christina, "Saat Usia Jadi Batas: Kepastian Hukum Dalam Aturan Pensiun," *Journal Evidence Of Law* 4, no. 2 (2025): 427-33, <https://jurnal.erapublikasi.id/index.php/JEL/article/view/1237>.

<sup>15</sup> Retno Anggraeni, Maman Sudirman, and Benny Djaja, "Urgensi Kepastian Hukum Batas Usia Pensiun Profesi Penilai Publik Dalam PMK Nomor 101 / Pmk . 01 / 2014 Terhadap Penyelesaian Sengketa Kantor Jasa Penilai Publik Retno Anggraeni , Maman Sudirman , Benny Djaja Universitas Tarumanagara , Indonesia Email: R," *Jurnal Global Ilmiah* 2, no. 3 (2024): 1-8, <https://jgi.internationaljournallabs.com/index.php/ji/article/view/154/180>.

<sup>16</sup> Karmenita Sendi Bawinto, Ronny A. Maramis, and Audi H. Pondaag, "Kajian Hukum Terhadap Faktor Yang Menyebabkan Pegawai Negeri Sipil Dapat Di Berhentikan," *Lex Administratum, Jurnal Fakultas Hukum Universitas Sam Ratulangi XII*, no. 1 (2023), <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/52601>.

<sup>17</sup> Afwany and Rohmanu, "Perubahan Pengaturan Masa Jabatan Hakim Konstitusi Dan Implikasinya Perspektif Pendekatan Sistem Jasser Auda."

<sup>18</sup> Suryantoro, "Perubahan UU TNI : Telaah Atas Substansi Dan Dampaknya."

<sup>19</sup> Marpaung et al., "Implementasi PP Nomor 1 Tahun 2003 Tentang Pemberhentian Anggota Polri, Dihubungkan Dengan Krimonologi (Studi Putusan Nomor PUT KKEP/11/IX/2018/KKEP)."

<sup>20</sup> Qashrina, "Batas Usia Pensiun Guru Swasta:Ditinjau Berdasarkan UU 13 Tahun 2003 Tentang Ketenagakerjaan."

<sup>21</sup> Andre Fernando Situmorang et al., "Peran Hukum Progresif Dalam Mencari Keadilan (Menurut Satjipto Rahardjo)," *Jurnal: Pendidikan Seni, Sains Dan Sosial Humaniora* 3, no. 1 (2025): 1-15, <https://journal.forikami.com/index.php/nusantara/article/view/971/693>.

<sup>22</sup> Stefania M. Dena, Darius Mauritsius, and Helsina Fransiska Pello, "Perlindungan Hukum, Bagi Tenaga Kerja Di Koperasi Bongkar Muat Pelabuhan Tenau Kupang (Berdasarkan UU 13/2003 Tentang Ketenagakerjaan)," *Law Jurnal: Petitum* 2 (2025): 471-82, <https://doi.org/https://doi.org/10.35508/pelana.v2i2.20336>.

rights are protected from the outset. Meanwhile, the existence of an industrial relations dispute resolution mechanism as a mechanism for restoring workers' rights in the event of violations of workers' rights is a form of repressive protection.

The aging population phenomenon reinforces the urgency of legal protection in setting retirement age limits for workers. Research by Nirwesti (2023) shows that the elderly population in Indonesia continues to increase. The low pension benefits and limited coverage, particularly for informal workers, revealed in this study, demonstrate the unpreparedness of Indonesia's national pension insurance system to address the aging population.<sup>23</sup> If the government does not immediately formalize a legally binding retirement age, workers will face socioeconomic risks, including the loss of income upon retirement and old age, with no certainty of receiving pension benefits. The core of this issue is not merely an administrative matter, but rather concerns workers' fundamental right to a decent living and a legally binding retirement age.

Comparisons with several ASEAN countries also reinforce the importance of legal protection in this context. Research by Amrullah et al. (2023)<sup>24</sup> and an ILO review of Thailand's pension system<sup>25</sup> indicate that Malaysia and Thailand have clear and universally applicable retirement age regulations for workers.

The clarity of these norms provides certainty and serves as a social protection instrument. This, in turn, highlights the reality that there are still gaps in the policy setting for retirement age limits in Indonesia. The opposite situation exists in Indonesia, where workers remain uncertain about the lack of a retirement age limit, which can lead to the risk of workers' normative rights being unprotected upon retirement.

Thus, the urgency of regulating the retirement age for workers from a legal protection perspective stems from at least four main points. First, workers are a vulnerable group that must be protected by the state. Second, the lack of norms regulating the retirement age for workers opens up room for arbitrariness. Third, progressive legal theory and the concept of preventive-repressive protection demand a firm retirement age regulation. Fourth, empirical challenges in the form of an aging population and comparative practice with several ASEAN countries demonstrate the importance of retirement age regulation as a social protection instrument.

### 3.2. Providing Legal Certainty

The primary foundation of the employment law system is legal certainty. Employment relationships are vulnerable to arbitrary acts and uncertainty about workers' futures without legal certainty. In the context of setting retirement age limits, legal certainty serves to provide workers with a definite timeline for planning their post-employment socio-economic lives, and for employers to develop employment policies consistent with applicable norms. Gustav Radbruch, in Ndruru and P. Jamba (2023), emphasized that legal certainty is one of the

<sup>23</sup> Nirwesti, "Populasi Menua Dan Urgensi Reformasi Sistem Pensiun."

<sup>24</sup> Amrullah et al., "Comparative Analysis of Malaysian and Indonesian Retirement Plan."

<sup>25</sup> International Labour Organization, *Review of the Pension System in Thailand* (Thailand: International Labour Organization, 2022), [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40asia/%40ro-bangkok/documents/publication/wcms\\_836733.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40asia/%40ro-bangkok/documents/publication/wcms_836733.pdf).

fundamental legal values that ensures that laws are positive, based on social facts, clearly formulated, and maintained for public reliance.<sup>26</sup> The existence of clear, predictable, and consistent standards to protect workers' rights until they retire is known as legal certainty in the context of employment relations. The study shows that in practice, many companies still set retirement age limits that are subject to multiple interpretations, with various variations, and retirement age limits that differ from the retirement age norms in the Pension Guarantee program. This legal ambiguity creates uncertainty for workers, especially regarding the receipt of pension benefits and other compensation after retirement. This raises the issue of legal certainty in employment practices in Indonesia. Christina (2025) shows that there is no law that specifically sets a retirement age for private sector employees, reinforcing this phenomenon.<sup>27</sup>

According to Putri et al. (2025), disharmony between government regulations and company practices causes a gap in legal protection for workers entering retirement age.<sup>28</sup> In many cases, retirement age is often used as a reason to terminate employment without clarity on whether workers have the right to BPJS Ketenagakerjaan pension insurance or not. The lack of alignment regarding the retirement age limit agreed upon in the company and the retirement age limit stipulated in the Pension Guarantee program (based on PP 45 of 2015) threatens workers' legal certainty. The welfare state principles enshrined in Articles 28H(3) and 34(2) of the 1945 Constitution obligate the state to provide social security and legal protection for citizens. Henry and Arshita (2024) argue that this constitutional mandate requires the state to regulate socio-economic affairs to ensure general welfare. Workers' social rights must be legally protected, and the state's responsibility to do so in this context is by setting a retirement age limit. The principles of a welfare state as outlined in Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution are implemented through the provision of social security through BPJS. Therefore, the state is legally and morally responsible for establishing clear, consistent and legally certain retirement age standards to ensure that workers' rights to social security are protected efficiently and socially justly.<sup>29</sup>

From Gustav Radbruch's perspective in Manullang (2022), legal certainty is a fundamental pillar for the functioning of a positive legal system. Radbruch emphasized that the law must provide clarity, order, and predictability so that citizens can regulate their

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<sup>26</sup> Mei Rahmat Syah Ndruru and Padrisan Jamba, "Perlindungan Hukum Bagi Pekerja/Buruh Atas Pemberian Upah Kerja Dibawah Upah Minimum Menurut Perspektif Hukum Di Indonesia," *Universitas Putera Batam* 5, no. 4 (2023), <https://doi.org/https://doi.org/10.33884/scientiajournal.v5i4.7381>.

<sup>27</sup> Christina, "Saat Usia Jadi Batas: Kepastian Hukum Dalam Aturan Pensiun."

<sup>28</sup> Gunawan et al., "Legalitas Penetapan Usia Pensiun Karyawan Swasta, Yang Tak Sesuai Regulasi Pemerintah," *Jurnal Syntax Imperatif: "Jurnal Ilmu Sosial Dan Pendidikan"* 6, no. 1 (2025): 10-16, <https://doi.org/http://doi.org/10.54543/syntaximperatif.v6i1.614>.

<sup>29</sup> Eben Henry RMS and Dian Arsitha W, "Implementasi Konsep Negara Kesejahteraan (Welfare State) Dalam Penyelenggaraan Jaminan Sosial Di Indonesia Implementation of the Welfare State Concept in the Implementation of Social Security in Indonesia," in *Konferensi Nasional Ilmu Administrasi 8.0* (Jakarta, 2024), 620-28, <https://doi.org/2988-5485>.

behavior based on definite and unchanging norms.<sup>30</sup> Legal certainty in Radbruch's conception in this sense according to Tan (2021) is not merely the existence of written regulations, but also includes clarity of formulation, consistency of application, and stability of norms over time.<sup>31</sup> Julyano and Sulistyawan (2019) explain Radbruch's view that without certainty, law loses its normative function as a guide to behavior, because society cannot predict the legal consequences of its actions.<sup>32</sup>

Kadroni (2022) explains that Radbruch rejects moral relativism in the formation of laws, which makes laws dependent on the subjective interpretations of their creators. According to him, legal legitimacy depends on consistent enforcement, a standard hierarchy, and a legitimate formation process.<sup>33</sup> This understanding aligns with the modern legal positivist view, which places legal certainty as a prerequisite for a rational legal system. Norms formulated with clear wording, not open to multiple interpretations, and with predictable scope for application by legal subjects are the requirements of the concept of legal certainty.

In the context of regulating the retirement age limit for workers, this principle requires clear, explicit, and generally applicable norms, so as not to create disparities between work sectors or between companies. When determining the retirement age is left entirely to internal company policy without a basis in uniform national legal norms, the legal certainty that is the spirit of the positive legal system loses its meaning. As emphasized by Radbruch in Supriyadi et al. (2025), vague and uncertain laws have the potential to give rise to practical injustice, because they open up space for arbitrary interpretation by authorities or more powerful parties.<sup>34</sup> Thus, legal certainty in the paradigm of Radbruch's theory requires the state to be able to establish a definite and stable retirement age limit as a form of protection for workers' interests within a positive legal framework that is orderly and reliable.

Radbruch's idea, as presented by Supriyadi et al. (2025), emphasizes that legal certainty cannot be separated from the stability of norms and the consistency of their application.<sup>35</sup> Laws that frequently change or are open to multiple interpretations will only create uncertainty for legal subjects. In this case, the government, as the maker of employment policy, must guarantee legal stability through consistent pension norms integrated with the national social security system. Legal certainty in setting the retirement age limit also means certainty in the

<sup>30</sup> E. Fernando M. Manullang, "Misinterpretasi Ide Gustav Radbruch Mengenai Doktrin Filosofis Tentang Validitas Dalam Pembentukan Undang-Undang," *Undang: Jurnal Hukum* 5, no. 2 (2022), <https://doi.org/10.22437/ujh.5.2.453-480>.

<sup>31</sup> Seow Hon Tan, "Radbruch's Formula Revisited: The Lex Injusta Non Est Lex Maxim in Constitutional Democracies," *Canadian Journal of Law and Jurisprudence* 34, no. 2 (2021): 461-91, <https://doi.org/10.1017/cjlj.2021.12>.

<sup>32</sup> Mario Julyano and Aditya Yuli Sulistyawan, "PEMAHAMAN TERHADAP ASAS KEPASTIAN HUKUM MELALUI KONSTRUKSI PENALARAN POSITIVISME HUKUM," *Jurnal Crepido* 1, no. 1 (2019): 13-22, <https://doi.org/10.23920/jbmh.v6i1.324>.

<sup>33</sup> Kadroni Kadroni, "Kepastian Hukum Terhadap Batas Waktu Perundingan (Bipartit) Sebagai Syarat Mogok Kerja Di Dalam Undang-Undang Ketenagakerjaan," *Jurnal Impresi Indonesia* 1, no. 8 (2022): 834-49, <https://doi.org/10.36418/jii.v1i8.245>.

<sup>34</sup> Mohamad Wangsit Supriyadi et al., "Pokok Pikiran Dan Sumbangsih Fundamental Gustav Radbruch Terhadap Perkembangan Ilmu Dan Hukum," *Quantum Juris: Jurnal Hukum Modern* 07, no. 1 (2025): 395-413, <https://journalpedia.com/1/index.php/jhm>.

<sup>35</sup> Supriyadi et al.

transition of workers from the productive phase to the retirement phase. When regulations do not guarantee clarity on the timing and mechanism of retirement, the state fails to carry out its protection function as mandated by the 1945 Constitution (UUD 1945) as stipulated in Article 27 paragraph (2).

Furthermore, predictability is closely related to legal certainty. Research by Wibowo (2020) shows that many workers past the age of 55 still work without clear legal status because there is no legal basis governing retirement obligations or extensions of employment.<sup>36</sup> This situation creates uncertainty for both workers and employers and often leads to industrial relations disputes. In this regard, legal certainty is necessary not only for terminating employment relationships but also for regulating workers' transition rights to retirement in a humane and dignified manner.

Bakroh and Hiilamo (2024) in their study highlighted the government's policy plan to extend the retirement age in Indonesia, which aims to adapt the working life of older people to current socio-economic and health conditions. Their study emphasized that the government must establish clear, firm, and open-ended retirement age guidelines to strengthen protection for older workers, particularly by strengthening the social safety net for vulnerable older people. This plan to extend the retirement age to 65 years is considered a strategic step to manage the dynamics of employment and the health of older workers fairly and inclusively, providing legal certainty regarding extended working life.<sup>37</sup>

Maulana et al. (2024) stated that the primary objective of employment law is to create order for workers in their employment relationships with employers. To achieve this order, guidelines in the form of normative regulations are needed to ensure legal certainty, leading to the realization of values of justice and benefit for all parties involved. The principle of equality before the law, as stated in the Indonesian philosophy and constitution, in this case, is not only a contributing factor to legal certainty but also guarantees workers' rights fairly and sustainably within the framework of the employment relationship.<sup>38</sup> A study by Al'anam and Armadani (2025) showed that normative ambiguity creates uncertainty in the application of workers' rights<sup>39</sup>, opening up the potential for abuse by employers. In the context of retirement age limits, a similar ambiguity exists: the law does not clearly state the exact retirement age for workers, but only links it to the termination of employment. This results in legal protection for workers being reactive, rather than preventative.

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<sup>36</sup> Habib Iftighar Wibowo, "Tindakan Pengusaha, Yang Tak Pensiunkan Pekerja, Setelah Melewati Usia Pensiun," *"Jurist - Diction"* 3, no. 3 (2020): 1015, <https://doi.org/https://doi.org/10.20473/jd.v3i3.18635>.

<sup>37</sup> David Syam Budi Bakroh and Heikki Hiilamo, "Rethinking Retirement: Implications Of Extended Pension Statutory Age On Elderly Health And Labor Dynamics In Indonesia," in *Public Sector International Conference 2024*, vol. 1 (Jakarta: PKN STANS PRESS, 2024), 1-4, <https://doi.org/10.1017/S0144686X2000063X>.

<sup>38</sup> M. Hafizh Maulana et al., "Analisis Hukum Ketenagakerjaan Di Indonesia," *Jurnal Cendikia ISNU-SU (JCISNU)* 1, no. 2 (2024): 139-46, <https://journal.isnu-sumut.org/index.php/jcisnu/article/view/252/87>.

<sup>39</sup> Muklis Al'Anam and Armadani, "Legal Ambiguity Pengecualian Pembayaran Upah Minimum Bagi Pengusaha Mikro Dan Kecil Pasca UU No . 6 Tahun 2023 Tentang Cipta Kerja," *Eksekusi: Jurnal Ilmu Hukum Dan Administrasi Negara* 3, no. 1 (2025): 18-36, <https://doi.org/https://doi.org/10.55606/eksekusi.v3i2.1806>.

Legal certainty in setting the retirement age limit is a normative imperative within the framework of a Pancasila state based on law. The state must not allow legal uncertainty to threaten workers' fundamental rights, particularly their right to work and a dignified life in old age. The retirement age limit must contain stable, clear, and realistic legal certainty, while maintaining a balance between worker protection and the needs of the business world. Such legal certainty will demonstrate the government's commitment to realizing social justice for every Indonesian citizen.

It can be concluded that setting the retirement age limit for workers is urgent in the context of legal certainty for three reasons: first, to eliminate the normative gap that creates uncertainty in employment relationships. Second, to align the retirement age limit with the Pension Guarantee program so that workers' rights to Pension Guarantee benefits have legal certainty upon retirement. Third, to create equitable legal certainty in accordance with the principles of a Pancasila state based on law. Without legal certainty in setting the retirement age limit for workers, legal protection for workers will remain superficial, suboptimal, incomplete, and partial (between labor laws and social security laws).

### 3.3. Preventing arbitrariness in employment relationships

One of the primary functions of labor law in a state governed by the rule of law is to ensure equitable employment relations between workers and employers. In practice, this relationship is often unequal because workers' bargaining power is significantly weaker. When the state does not explicitly regulate the retirement age, this creates room for employers to act arbitrarily, for example by unilaterally setting a retirement age in company regulations without considering worker welfare. Sutra and Hadi (2022) emphasize that in the context of a state governed by the rule of law, economic power cannot operate without legal oversight, as this would give rise to new forms of structural injustice in the workplace.<sup>40</sup> Therefore, the state is obliged to introduce regulations capable of correcting this power gap so that the law does not become a tool to legitimize employer domination over workers.

Abuse in employment relationships often occurs due to weak normative protection for workers, especially in the final stages of an employment relationship, such as contract termination or retirement. Hadjon, in Dena et al. (2025), identifies two types of legal protection: preventive and repressive. Preventive protection is achieved through clear regulations and government oversight of employment policies, while repressive protection applies when workers need assistance to resolve problems if their rights are violated.<sup>41</sup> In the context of retirement age, a form of preventive protection is the state's determination of a definite age limit so that employers cannot determine workers' retirement times based solely on company interests. Conversely, repressive protection must guarantee workers access to sue if their pension rights are violated. Without this dual protection system, employment relationships are prone to shifting into exploitative ones.

Gunawan et al. (2025) stated that there are variations in the determination of retirement ages in private companies in Indonesia where the retirement age limit is set differently from

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<sup>40</sup> Heni Sutra and Syofyan Hadi, "KEWAJIBAN NEGARA, DALAM MEMBERIKAN PERLINDUNGAN HUKUM PADA PEKERJA MIGRAN INDONESIA NON PROSEDURAL: DALAM PERSPEKTIF HAM," *Sigli, "Jurnal Sosial Humaniora"* 6 (1945): 449-60, <http://journal.unigha.ac.id/index.php/JSH%0A1>.

<sup>41</sup> Dena, Mauritsius, and Pello, "Perlindungan Hukum, Bagi Tenaga Kerja Di Koperasi Bongkar Muat Pelabuhan Tenau Kupang (Berdasarkan UU 13/2003 Tentang Ketenagakerjaan)."

the Pension Guarantee provisions.<sup>42</sup> This practice not only harms workers economically but also violates the principle of non-discrimination guaranteed in national labor law. Workers who contribute to the Pension Guarantee program during active employment, when the retirement age limit in the company is regulated in an agreement under the retirement age limit provisions in PP 45/2015 Pension Guarantee, then when the worker retires will not be able to immediately receive Pension Guarantee benefits until the retirement age limit determined by the Pension Guarantee program. This is different from workers whose retirement age limit in the company is the same as the retirement age limit stipulated by the BPJS Ketenagakerjaan Pension Guarantee program. Although these workers are both participants in the BPJS Ketenagakerjaan Pension Guarantee program, there is different treatment for workers who retire from the company before the retirement age stipulated by the BPJS Ketenagakerjaan Pension Guarantee program and those who retire at the retirement age stipulated by the BPJS Ketenagakerjaan Pension Guarantee program. As stated by Satjipto Raharjo in Situmorang et al. (2025), progressive law must boldly reject oppressive formal legality and side with humanity.<sup>43</sup> This principle emphasizes that law should not be a protector of power, but rather a guardian of the dignity of the people who work.

Thus, setting a retirement age has not only administrative dimensions, but also moral and constitutional ones. The Pancasila rule of law requires the government to prevent all forms of abuse of power that harm workers, including in setting retirement ages. Establishing clear and uniform norms will eliminate the gray area that allows for arbitrary practices in the workplace. As Radbruch emphasized in Tan (2021), the law loses its meaning when used to justify actions that negate human rights.<sup>44</sup> Therefore, establishing a clear and binding retirement age for workers is a concrete form of implementing the law's corrective function in maintaining a balance of just and dignified industrial relations.

It can be concluded that regulating the retirement age limit for workers is urgent in the context of preventing arbitrariness in employment relations for four reasons: first, the lack of norms regarding the retirement age limit for workers opens up the potential for arbitrary acts in regulating the retirement age limit for workers. Second, the lack of norms regarding the retirement age limit for workers creates the potential for discriminatory practices among workers. Third, preventative legal protection is needed to close the space for abuse of power in regulating the retirement age limit for workers. And fourth, regulating the retirement age limit for workers will be a form of state protection for workers that can prevent arbitrariness against workers.

### **3.4. Preventing industrial relations disputes.**

Conflicts in industrial relations often arise from misunderstandings between workers and employers regarding labor laws governing their rights and obligations. A common standard that leads to varying interpretations, interests, and applications is the retirement age guidelines. In their study, Prayitno and Iskandar (2022) demonstrated varying interpretations of the retirement age as stipulated in Government Regulation Number 45 of 2015 (PP 45/2015) and its implementation in the workplace, with lower agreements in employment agreements (PK), collective labor agreements (PKB), or government regulations (PP). This leads to a waiting period for receiving pension benefits, which creates uncertainty and ultimately leads

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<sup>42</sup> Gunawan et al., "Legalitas Penetapan Usia Pensiun Karyawan Swasta, Yang Tak Sesuai Regulasi Pemerintah."

<sup>43</sup> Situmorang et al., "Peran Hukum Progresif Dalam Mencari Keadilan (Menurut Satjipto Rahardjo)."

<sup>44</sup> Tan, "Radbruch's Formula Revisited: The Lex Injusta Non Est Lex Maxim in Constitutional Democracies."

to disputes in the Industrial Relations Court (PHI).<sup>45</sup> Research by Fahlevi (2019) indicates that there is a disagreement regarding the creation or changes to work conditions applied in PK, PKB, or government regulations, in this case related to differing opinions regarding the retirement age limit between workers and employers.<sup>46</sup> The reasons that cause this discrepancy in opinion are triggered by the comparison of the retirement age limit with the real physical condition of workers who are still able to work but are set to retire in the PK, PKB, or PP; comparison with the retirement age limit in the same business association; and comparison with other legal provisions in this case the regulation of the retirement age limit both in the Pension Guarantee program and other legal provisions that regulate the retirement age limit for other professions.

If a dispute arises regarding the retirement age limit, then like other industrial relations disputes, the dispute resolution mechanism is carried out according to the industrial relations dispute resolution scheme, namely starting with bipartite negotiations by workers and employers. If this initial step fails to be achieved, then the parties can agree in the minutes of their negotiations to implement the next stage of the industrial relations dispute resolution mechanism, namely submitting an application or implementing a tripartite mechanism by a neutral third party from an agency or service in charge of employment. This bipartite and tripartite mechanism in the form of conciliation, arbitration, or mediation is a mandatory mechanism that must be fulfilled in the settlement of industrial relations disputes, according to the provisions of Law No. 2 of 2004 in Article 3. If the negotiation steps that have been taken cannot reach an agreement, the disputing parties can take the dispute resolution route through litigation to the court in charge of industrial relations.<sup>47</sup>

Legal protection for workers regarding retirement age limits can be provided by the state in the form of a regulation of a definite retirement age limit for workers (either in the Law or its implementing regulations) so that there are no differences in interpretation and implementation in determining the retirement age limit. This also limits the scope of agreements that can be detrimental to workers. A clear retirement age limit norm, for example in the form of a retirement age range, will be the main reference for determining the retirement age whenever it still has to be agreed upon in the PK, PKB, or ratified in the PP. This norm can be a minimum standard for drafting agreements that must not be lower than the interest of providing protection for workers. Another form of legal protection related to the retirement age limit is the existence of a norm that stipulates that the retirement age limit regulated in the provisions of employment laws, whether regulated specifically by the government, regulated in the form of an age range, in the form of regulations per sector or per work characteristics, whether agreed or not; guarantees workers to be able to enjoy the benefits of the BPJS Ketenagakerjaan Pension Insurance program they participate in. Thus, regardless of the retirement age limit, workers can enjoy the right to pension insurance benefits for which they have contributed during their work. The existence of labor law norms that regulate compensation schemes for workers' rights who experience termination of employment (PHK)

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<sup>45</sup> Prayitno and Iskandar, "Pengaturan Usia Pensiun Pekerja Di PT Surya Toto Indonesia Tbk Dihubungkan Dengan Peraturan Pemerintah Nomor 45 Tahun 2015 Tentang Penyelenggaraan Program Jaminan Pensiun."

<sup>46</sup> Z Fahlevi, "Sengketa Penentuan Batas Usia Pensiun Di Pengadilan Hubungan Industrial," *Jurnal Ilmu Dan Budaya*, 2019, 44, <http://journal.unas.ac.id/ilmu-budaya/article/view/717%0Ahttp://journal.unas.ac.id/ilmu-budaya/article/download/717/590>.

<sup>47</sup> M Rahmandio, Novan Pratama, and Bima Satriojati, "Perlindungan Hukum Atas Pemutusan Hubungan Kerja Karena Memasuki Usia Pensiun Pasca Berlakunya UU Cipta Kerja," *Jurnal Kertha Semaya* 11, no. 2 (2023): 336–52, <https://doi.org/10.24843/KS.2023.v11.i02.p10>.

due to retirement, in the form of severance pay (UP), long service award pay (UPMK), compensation for rights, separation pay, and other rights that can be agreed upon between employers and workers as conveyed by Huda and Garavan (2023) is also another form of legal protection related to the retirement age limit.<sup>48</sup> Ultimately, legal protection related to the retirement age limit for workers is to guarantee workers' right of access to industrial relations dispute resolution mechanisms if there are workers' rights that are violated when workers reach retirement age.

Setting a clear retirement age limit for workers is the state's primary instrument for preventing disputes related to retirement age limits. First, firm norms prevent arbitrary interpretations by employers or the practice of negotiating unequal agreements with workers who have a weaker bargaining position. Second, having a standard retirement age limit for workers minimizes the disparity between the right to receive social security benefits (Old Age Security, Pension Security) and the actual conditions of workers in the company, so that a waiting period without income can be avoided; then closes the potential for injustice and the potential for workers to fall into poverty after retirement due to lack of income. Third, setting a retirement age limit for workers is oriented towards fairness in the receipt of Pension Security benefits by all participants in the Pension Security program when they reach retirement age. Thus, setting a definite retirement age limit becomes a preventive legal protection effort in avoiding disputes, as the concept of preventive legal protection by Hadjon in Dena (2025).<sup>49</sup>

From the overall explanation above, it can be concluded that regulating the retirement age limit for workers is urgent in the context of preventing industrial relations disputes for three reasons: first, the lack of norms regarding the retirement age limit for workers is one of the causes of industrial relations disputes, because it gives rise to differences in interpretation and practice in the field between workers and employers. Second, regulating the retirement age limit normatively is a form of preventive legal protection for workers, in order to avoid an imbalance in bargaining positions and potential disputes in employment relations. Third, legal certainty in regulating the retirement age limit is a concrete effort to maintain harmonious industrial relations, while guaranteeing the protection of workers' rights in a just manner.

#### 4. Conclusions

The current regulation of the retirement age limit for workers in Indonesia still experiences a normative vacuum that causes legal uncertainty, arbitrary acts against workers, and potential disputes in industrial relations. Therefore, the state is obliged to provide normative legal protection by regulating a clear, firm, and binding retirement age limit that applies nationally to ensure legal certainty and post-employment welfare for workers. Based on the results of this study, it is recommended that labor unions and employer associations explore the concept of legal protection for workers to support legal certainty in regulating the retirement age limit for workers in Indonesia, focusing on the value of state legal protection for workers.

#### 5. Acknowledgments

The author would like to express his gratitude to the Master of Law Program, Faculty of Law, University of 17 August 1945 Surabaya, for the guidance and knowledge provided during the preparation of this research. He would also like to thank all parties who provided

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<sup>48</sup> Nurul Huda and Thomas N. Garavan, "Juridical Analysis Of Article 167 Paragraph (1) Concerning Age And Workers' Retirement Rights In Law Number 13 Of 2003," *Equalegum International Law Journal* 1, no. 13 (2023): 171-75, <https://doi.org/https://doi.org/10.61543/equ.v1i13.49>.

<sup>49</sup> Dena, Mauritsius, and Pello, "Perlindungan Hukum, Bagi Tenaga Kerja Di Koperasi Bongkar Muat Pelabuhan Tenau Kupang (Berdasarkan UU 13/2003 Tentang Ketenagakerjaan)."

support and the opportunity to conduct this study. I would also like to thank his colleagues, academics, and labor practitioners who provided constructive input in developing this research.

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