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Legal Uncertainty in Retirement-Based Termination of Employment in Indonesia: A Normative-Empirical Analysis of Workers' Pension Rights and the Tripartite Legal System

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Abstract

This study examines specific legal uncertainties concerning workers' rights in termination of employment due to retirement in Indonesia, particularly the absence of explicit regulation on workers' right to initiate retirement, ambiguity in compensation calculation and payment mechanisms, and the weakened protection following regulatory changes under Government Regulation No. 35 of 2021. Existing studies have largely discussed pension protection from economic or policy perspectives, while limited attention has been given to the interaction between normative ambiguity, judicial interpretation, and empirical industrial relations practices. This study addresses that gap by combining normative juridical and empirical juridical approaches. The legal materials analyzed include the 1945 Constitution of the Republic of Indonesia, Law No. 13 of 2003 on Manpower, Law No. 6 of 2023, Government Regulation No. 35 of 2021, regulations on pension security and industrial relations dispute settlement, as well as selected decisions of the Industrial Relations Court and the Supreme Court concerning retirement-based termination disputes. Empirical data were obtained through interviews with workers, employers, government officials, employer associations, and labor union representatives. The findings show that legal uncertainty arises from the employer-centered formulation of retirement-based termination, the lack of clear recognition of worker-initiated retirement, inconsistent interpretation of pension fund contributions in compensation calculations, weak execution of court decisions, and the limited effectiveness of bipartite, mediation, and tripartite mechanisms. These conditions place workers in a weaker bargaining position and often compel them to pursue lengthy litigation to obtain retirement entitlements. The study's original contribution lies in proposing a tripartite regulatory reform model that explicitly recognizes workers' right to apply for retirement, standardizes retirement compensation and payment procedures, strengthens state supervision and enforcement, and institutionalizes coordinated tripartite oversight through a specialized labor pension mechanism. Such reform is necessary to transform retirement-related termination from a dispute-prone employer prerogative into a legally certain, enforceable, and equitable workers' rights framework.

Keywords: *Legal Uncertainty; Employee Pensions; Termination of Employment; Labor Relations; Pension Benefits; Tripartite*

Introduction

Termination of employment due to retirement has become one of the most persistent sources of legal uncertainty within Indonesia's industrial relations system. Although retirement is generally understood as a natural and foreseeable stage in the employment relationship, disputes concerning pension entitlements, severance pay calculations, retirement applications, and employer obligations continue to arise before the Industrial Relations Court and the Supreme Court. A central problem lies in the absence of explicit legal recognition of workers'

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rights to initiate retirement, coupled with differing interpretations regarding compensation mechanisms and pension-related benefits. As a result, workers frequently encounter difficulties in obtaining retirement entitlements and are often required to pursue lengthy dispute resolution processes in order to secure rights that should, in principle, be guaranteed by law.

This situation has become increasingly significant following regulatory changes introduced through the Job Creation Law and Government Regulation No. 35 of 2021, which altered the framework governing retirement-related termination of employment and reduced several components of workers' compensation. The combination of normative ambiguity, inconsistent implementation, and employer-dominated decision-making has created a legal environment in which workers' retirement rights are often uncertain in both substance and enforcement. Consequently, retirement-related disputes no longer concern merely the calculation of compensation but also raise broader questions regarding legal certainty, fairness, and the effectiveness of labour protection mechanisms within Indonesia's employment law system (Colquitt, 2001).

The significance of this issue must be understood within Indonesia's constitutional framework as a state governed by law. Article 1 paragraph (3) of the Constitution of the Republic of Indonesia 1945 affirms that Indonesia is a rule-of-law state, requiring all aspects of employment relations, including termination of employment, to be regulated and implemented in accordance with principles of legal certainty, justice, and legal protection. Furthermore, Article 27 paragraph (2) guarantees every citizen the right to work and to a livelihood worthy of human dignity. These constitutional provisions establish worker protection as an integral component of fundamental rights that must be safeguarded throughout the entire employment relationship, including during the transition from active employment to retirement. Therefore, persistent legal uncertainty concerning retirement-related termination of employment represents not merely a regulatory problem but also a challenge to the realization of constitutional guarantees afforded to workers.

Within the framework of national labour law, termination of employment due to retirement is regulated under various statutory instruments, including Law No. 13 of 2003 on Manpower and Government Regulation No. 35 of 2021. Normatively, workers who reach retirement age are entitled to compensation in the form of severance pay, long-service awards, and compensation of rights (Tanera, 2023; Pakpahan et al., 2020). However, in practice, the implementation of these norms reveals significant discrepancies, as reflected in numerous industrial relations disputes. This condition indicates the presence of legal uncertainty, which directly affects the protection and welfare of workers.

These issues can be analytically approached through the conceptual distinction between *das sollen* and *das sein*. *Das sollen* represents law as an ideal normative framework that ought to be implemented, whereas *das sein* reflects the empirical reality of how law operates within society (Fuady, 2011; Yulianta & Mulyana, 2026). In the context of termination of employment due to retirement, *das sollen* requires that workers who have reached retirement age are entitled to fair and certain pension benefits. However, *das sein* demonstrates that workers frequently encounter obstacles in obtaining such rights, due to divergent interpretations of legal norms, weak regulatory oversight, and the dominant bargaining position of employers in employment relations. As has been observed, "a problem arises where there is a gap between *das sollen* and *das sein*" (Suryabarata, 2010).

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The discrepancy between normative provisions and their practical implementation is further exacerbated by the evolving dynamics of labor regulation in Indonesia. Article 167 paragraph (5) of Law No. 13 of 2003 on Manpower previously provided strong protection for workers by requiring employers to pay enhanced severance compensation where employees were not enrolled in pension programs. However, the removal of sanctions under Law No. 6 of 2023 has weakened the enforceability of this protection. At the same time, Government Regulation No. 35 of 2021 reduced severance entitlements and eliminated several compensation components, thereby potentially diminishing workers' post-retirement economic security (Christina & Hufron, 2025). Although these regulatory changes have attracted scholarly attention, existing labor-law studies have primarily examined their implications from the perspectives of workers' welfare, pension benefits, severance calculations, or employment policy reform. Limited attention has been devoted to the legal uncertainty generated by normative ambiguities, conflicting interpretations of retirement rights, and the interaction between statutory provisions, judicial interpretation, and industrial relations practices. Moreover, previous studies have generally relied on either doctrinal legal analysis or policy-oriented discussions, without systematically integrating statutory analysis, judicial decision analysis, and empirical evidence from key industrial relations stakeholders. This study addresses that gap by examining how legal uncertainty is produced and reproduced across legal norms, court decisions, and institutional practices. By combining analysis of labor legislation, Industrial Relations Court and Supreme Court decisions, and interviews with workers, employers, labor unions, employer associations, and government officials, this research offers a more comprehensive understanding of retirement-related termination disputes. The study's distinctive contribution lies in the development of a tripartite legal system and compliance-engineering framework designed to bridge the gap between normative expectations (*das sollen*) and empirical realities (*das sein*), while strengthening legal certainty and substantive justice in retirement-related employment termination.

Beyond the normative dimension, legal uncertainty also arises from the structural configuration of the regulation, which grants dominant authority to employers. Article 56 of Government Regulation No. 35 of 2021 stipulates that employers "may" terminate employment upon a worker reaching retirement age. This formulation indicates that the prerogative to end the employment relationship rests primarily with the employer, while workers lack an equivalent legal position to initiate retirement. Consequently, in practice, worker-initiated retirement is often construed as voluntary resignation, resulting in a reduction of the entitlements received by the worker.

This phenomenon is not merely normative in nature but is also substantiated by empirical data indicating a high incidence of disputes related to termination of employment due to retirement. Data from the Supreme Court of Indonesia show that between 2016 and 2025, a total of 1,127 cases of retirement-related termination were adjudicated up to the cassation level. Furthermore, data from Statistics Indonesia indicate that as of December 2025, there were 44,298,796 workers aged 50 and above approaching retirement (BPS, 2026). The magnitude of this figure underscores that the issue carries broad and systemic implications for industrial relations in Indonesia.

From an international perspective, the protection of workers in cases of termination of employment constitutes an integral component of global labour law standards developed by the International Labour Organization (ILO). The Termination of Employment Convention,

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1982 (ILO Convention No. 158) stipulates that termination must be based on valid grounds and accompanied by safeguards protecting workers against arbitrary dismissal (ILO, 2021). Furthermore, ILO standards emphasize the importance of social security, including pension schemes, as a fundamental element of worker protection following the cessation of employment.

Nevertheless, international scholarship indicates that the principal challenge in labour law lies not merely in the existence of normative frameworks, but in the disparity between norms and their practical implementation, commonly referred to as the implementation gap. Studies conducted by the ILO reveal that many countries encounter significant difficulties in ensuring employer compliance with legal obligations, particularly with respect to compensation payments and pension entitlements. Regulatory complexity, weak enforcement mechanisms, and economic pressures are identified as key factors contributing to legal uncertainty in practice (ILO, 2021).

In addition, comparative research across jurisdictions highlights the phenomenon of the pension gap, defined as the discrepancy between normatively expected pension benefits and those actually received by workers (Milazzo & Vigna, 2018; Wen, 2023). This phenomenon demonstrates that even in relatively advanced legal systems, the protection of workers' pension rights continues to face structural challenges. Further studies published in the European Labour Law Journal confirm that tensions between employers' economic interests and the protection of workers' rights frequently constitute a primary source of legal uncertainty in termination of employment cases (Gyulavári & Kártyás, 2018).

In Southeast Asia, existing studies indicate that ambiguity in the regulation of retirement age and workers' entitlements may generate normative vacuums, leading to inconsistent industrial relations practices. This condition suggests that legal uncertainty in employment termination due to retirement constitutes a cross-jurisdictional phenomenon, thereby necessitating a systemic and comprehensive approach.

Drawing on the development of the literature, three major global issues in the protection of workers' retirement rights can be identified. First, there exists a gap between legal norms and their implementation in practice. Second, there is fragmentation between severance pay schemes and pension security systems. Third, weak law enforcement mechanisms tend to reinforce employer dominance within employment relationships (Herlambang et al., 2023; Naelayara & Lie, 2024; Manalu et al., 2021) .

Notwithstanding these findings, a substantial gap remains within labour law scholarship concerning legal uncertainty in retirement-related termination of employment. Existing studies on pension rights, severance pay, and retirement policies predominantly examine economic efficiency, welfare policy, or social security administration, while insufficient attention has been paid to the specific problem of normative ambiguity and interpretative conflict regarding workers' rights to initiate retirement and obtain retirement compensation within industrial relations disputes. Prior research has also tended to analyse retirement protection either from a purely doctrinal perspective or from a socio-economic standpoint, without systematically integrating statutory analysis, judicial interpretation, and empirical industrial relations practices into a single analytical framework. Consequently, the interaction between legal norms (*das sollen*), judicial enforcement, and practical implementation (*das sein*) remains underexplored in labour law studies.

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Moreover, previous scholarship has rarely employed a combined normative-empirical approach that incorporates analysis of Industrial Relations Court and Supreme Court decisions together with empirical interviews involving workers, employers, labour unions, employer associations, and government officials. As a result, the structural causes of legal uncertainty particularly those arising from employer dominance, weak enforcement mechanisms, fragmented retirement regulation, and inconsistent judicial interpretation have not been comprehensively examined. This study therefore advances existing labour law scholarship by developing a tripartite legal system and compliance-engineering model designed to bridge the gap between normative protection and empirical implementation. The proposed framework extends beyond conventional discussions of pension compensation by emphasizing institutional supervision, enforceable retirement rights, coordinated tripartite governance, and preventive legal mechanisms aimed at strengthening legal certainty and substantive justice in retirement-related termination of employment.

In this context, the present study seeks to address a gap that has received limited attention in existing labour law scholarship. While previous doctrinal studies on retirement-related termination in Indonesia have primarily focused on statutory interpretation, pension entitlements, severance pay calculations, and the legal consequences of regulatory reforms, they have rarely examined how legal uncertainty is produced through the interaction between normative ambiguities, judicial interpretation, institutional enforcement, and industrial relations practices. Moreover, limited research has integrated doctrinal analysis with empirical evidence from workers, employers, labour unions, employer associations, and government institutions in order to explain why retirement-related disputes persist despite the existence of an extensive regulatory framework.

Accordingly, this study occupies a distinctive position by combining normative and empirical perspectives to examine not only the content of retirement regulations but also their implementation and effectiveness in practice. Beyond identifying legal and institutional deficiencies, the study advances labour law scholarship by proposing a tripartite legal system and compliance-engineering model designed to strengthen employer compliance, enhance state supervision, and improve coordination among workers, employers, and government institutions. Through this approach, the research contributes a more operational and institutionally oriented framework for bridging the gap between legal norms and practical realities, thereby promoting greater legal certainty and substantive justice in retirement-related termination of employment.

In line with this objective, the study is structured around three principal research questions: (1) what type of legal system can effectively address legal uncertainty regarding workers' rights in termination of employment due to retirement; (2) how the technical implementation of retirement regulations can be designed to engineer employer compliance in fulfilling workers' pension rights; and (3) what form of pension security program can ensure justice in employment termination between workers and employers.

Accordingly, this study is expected to provide theoretical contributions to the development of labour law, particularly in relation to the concepts of legal uncertainty and social engineering within industrial relations. In addition, it aims to offer practical contributions toward the formulation of more effective and equitable legal policies in protecting workers' pension rights.

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Methodology

This study adopts a combined legal research design integrating normative juridical and empirical juridical approaches in order to produce a comprehensive analysis of legal uncertainty concerning workers' rights in termination of employment due to retirement in Indonesia. The methodological framework is constructed on the premise that legal phenomena cannot be adequately understood solely through the examination of statutory norms as formally enacted (law in books), but must also be analyzed through their implementation and practical operation within society (law in action). Accordingly, this research moves beyond conventional doctrinal legal analysis by incorporating empirical investigation into how retirement-related legal norms are interpreted, implemented, contested, and enforced in industrial relations practices (Suryabarata, 2010).

The normative juridical component focuses on the systematic analysis of constitutional provisions, labor legislation, implementing regulations, judicial decisions, and pension-related legal instruments governing retirement-based termination of employment. The primary legal materials examined include the 1945 Constitution of the Republic of Indonesia, particularly Article 27 paragraph (2) and Article 28D paragraph (1) concerning legal certainty and workers' rights; Law No. 13 of 2003 on Manpower; Law No. 6 of 2023 concerning the enactment of the Job Creation Law; Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Time, and Termination of Employment; Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement; and regulations concerning pension security and labor social protection programs administered by BPJS Ketenagakerjaan and private pension institutions. The normative analysis also examines collective labor agreements, company regulations, and internal pension arrangements used within private companies.

The doctrinal analysis aims to identify the structure, consistency, and legal implications of retirement-related norms, particularly regarding workers' rights to initiate retirement, pension compensation mechanisms, severance pay calculations, employer obligations, and dispute settlement procedures. Special attention is directed toward identifying normative ambiguities, overlapping regulations, legal gaps, and inconsistencies between statutory provisions and constitutional principles of justice and legal certainty. In addition, the study applies conceptual approaches grounded in legal system theory, welfare state theory, corrective justice theory, and Roscoe Pound's theory of law as a tool of social engineering in order to evaluate the effectiveness of the current labor law framework.

A substantial component of the normative analysis involves judicial decision analysis. The research examines selected decisions of the Industrial Relations Court and the Supreme Court of Indonesia concerning retirement-related termination disputes issued between 2016 and 2025. The decisions were selected purposively based on several criteria. First, the cases must involve disputes concerning termination of employment due to retirement or disputes over retirement compensation and pension rights. Second, the cases must contain significant legal reasoning concerning the interpretation of retirement provisions, severance pay calculations, pension fund contributions, or workers' rights to initiate retirement. Third, the selected decisions must demonstrate either interpretative inconsistencies, enforcement problems, or institutional weaknesses relevant to legal uncertainty within industrial relations.

The judicial analysis includes examination of cases involving disputes between workers and private companies concerning pension compensation payment methods, retirement

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application procedures, employer refusal to recognize retirement requests, and disputes over the inclusion of pension fund contributions in compensation calculations. The court decisions were analyzed through qualitative legal interpretation focusing on judicial reasoning, patterns of interpretation, legal arguments used by judges, consistency of jurisprudence, and practical implications for workers' rights protection. The analysis also assesses how courts function as corrective institutions in filling normative gaps left by statutory regulations.

Complementing the normative analysis, the empirical juridical component was conducted to examine how retirement-related legal norms operate in practice within industrial relations. Empirical data were collected through semi-structured interviews conducted between January and March 2025. The study involved twelve informants selected through purposive sampling based on their direct involvement, expertise, and practical experience in retirement-related employment disputes and pension implementation. The purposive sampling technique was chosen because the research required informants possessing specific knowledge and practical experience relevant to industrial relations and retirement disputes.

The interviewees consisted of four workers who had directly experienced retirement-related termination disputes, including disputes concerning compensation payment and retirement recognition; three employer representatives from private companies responsible for labor and human resource management; two labor union representatives actively involved in retirement dispute advocacy; one representative from the Indonesian Employers Association (APINDO); and two government officials from manpower institutions and labor offices involved in industrial relations supervision and dispute mediation. These categories of informants were selected to ensure balanced representation of the principal actors within Indonesia's tripartite industrial relations system.

The interviews focused on several key issues, including interpretation of retirement regulations, practical implementation of pension compensation, mechanisms of dispute settlement, enforcement of judicial decisions, institutional supervision, collective labor agreement practices, and perceptions regarding legal certainty and fairness within retirement-related termination. Interviews were conducted both directly and online depending on the accessibility and availability of informants. All interviews were semi-structured in nature, enabling the researcher to maintain consistency in the principal questions while allowing flexibility for informants to elaborate on specific experiences and perspectives.

In addition to interviews, document analysis was conducted systematically to examine statutory regulations, judicial decisions, collective labor agreements, company regulations, government reports, labor statistics, institutional policy documents, and academic literature related to pension protection and industrial relations. Documentary materials were analyzed comparatively to identify inconsistencies between legal norms and practical implementation. The analysis further explored how legal norms are operationalized at the company level and how institutional actors interpret retirement-related provisions in practice.

The empirical findings were analyzed qualitatively through thematic analysis. Data obtained from interviews and documents were categorized into recurring themes, including normative ambiguity, employer dominance, enforcement weaknesses, pension compensation disputes, litigation dependency, and institutional limitations in industrial relations mechanisms. The thematic analysis enabled the identification of structural patterns contributing to legal uncertainty and inequitable treatment of workers in retirement-related disputes. The qualitative approach was selected because the study primarily seeks to understand legal behavior,

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institutional interaction, and interpretative practices rather than measuring statistical correlations.

To ensure the validity and reliability of findings, the study applied triangulation techniques through cross-verification between statutory analysis, judicial decisions, interview data, and secondary legal materials. Triangulation was conducted to compare normative legal provisions with empirical realities experienced by workers, employers, labor unions, and government institutions. The triangulation strategy also enabled the researcher to identify discrepancies between legal design and implementation, particularly regarding pension rights enforcement and retirement compensation practices. Furthermore, triangulation strengthened the credibility of the research findings by reducing potential bias arising from reliance on a single source of information.

The study additionally incorporates a prescriptive analytical dimension aimed at formulating recommendations for legal reform and institutional strengthening. In this regard, the research does not merely describe existing legal problems but also evaluates the effectiveness of current legal structures and proposes a more operational tripartite legal system model capable of engineering compliance and improving workers' protection in retirement-related termination. The proposed framework is analyzed from the perspective of legal certainty, substantive justice, welfare state principles, and industrial relations sustainability.

Ethical considerations were observed throughout the research process. Prior to participation, all interviewees were informed regarding the objectives and academic purpose of the study, and informed consent was obtained from each participant. Informants were given the opportunity to decline participation or withhold sensitive information where necessary. To protect confidentiality and minimize professional risks arising from disclosure of industrial relations disputes, the identities of certain participants and companies were anonymized in the presentation of findings. In addition, all collected data were used exclusively for academic purposes and analyzed objectively to maintain scholarly integrity and neutrality.

Through this integrated normative-empirical methodological design, the study seeks to produce a comprehensive, transparent, and analytically robust understanding of legal uncertainty concerning workers' rights in termination of employment due to retirement. The combination of statutory analysis, judicial interpretation, empirical interviews, and institutional examination enables the research to bridge the gap between normative expectations (*das sollen*) and empirical realities (*das sein*) while contributing to the development of labor law scholarship and retirement protection policies in Indonesia.

Result

The Legal System for Addressing Legal Uncertainty in Retirement-Based Termination

The first research question concerns the type of legal system required to address legal uncertainty regarding workers' rights in termination of employment due to retirement. The findings show that Indonesia's industrial relations framework formally provides institutional instruments for balancing the interests of workers, employers, and the government. Employment relations in private companies are not merely bilateral contractual relations between workers and employers but form part of a broader industrial relations system involving the government as regulator, facilitator, and supervisor (Joka, 2020).

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Statutory findings indicate that Article 103 of Law No. 13 of 2003 provides several instruments for the implementation of industrial relations, including labor unions, employers' organizations, bipartite cooperation institutions, tripartite cooperation institutions, company regulations, collective labor agreements, statutory regulations, and industrial relations dispute settlement bodies. Normatively, these instruments are designed to support harmonious and equitable industrial relations. Bipartite cooperation institutions are intended to function as communication and consultation forums between workers and employers at the company level (Astutik, 2023), while tripartite institutions are designed to involve the government, employers, and workers in broader labor policy coordination (Asyhadie & Kusuma, 2019). In principle, these institutions may serve as platforms for information exchange, negotiation, policy consultation, and joint decision-making (Marnisah, 2019).

However, empirical findings show that the tripartite structure has not operated effectively as a preventive mechanism in retirement-related termination disputes. In practice, disputes are still commonly resolved through bipartite negotiations, mediation, and litigation rather than through coordinated tripartite intervention. This indicates that the institutional framework exists formally but has not yet developed sufficient operational authority to prevent or resolve retirement disputes efficiently.

The statutory findings further show that regulations on retirement-related termination have shifted over time. The Decree of the Minister of Manpower No. Kep-150/Men/2000 gave employers authority to terminate employment without approval from dispute settlement institutions when workers reached retirement age (Prasetianingsih et al., 2025; Naelayara & Lie, 2024). Law No. 13 of 2003 subsequently introduced stronger protection through Article 167, which guaranteed severance pay amounting to twice the prescribed provision, long-service awards, and compensation of rights. This reflected a worker-protection orientation. However, the enactment of Law No. 11 of 2020 on Job Creation, later amended by Law No. 6 of 2023 (Orias, 2024), and Government Regulation No. 35 of 2021 (Khadri, 2025), changed the protection structure by reducing severance pay to 1.75 times the prescribed provision. This regulatory shift indicates a movement from protective labor regulation toward a more efficiency-oriented framework.

Court-decision findings demonstrate that this regulatory shift has produced uncertainty in the implementation of retirement compensation. In the dispute between worker P and PT GPGM, the main issues concerned the installment-based payment of compensation and the calculation of wages below the statutory minimum wage. The Industrial Relations Court and the Supreme Court held that retirement compensation must be paid in a lump sum and calculated based on the applicable minimum wage. Nevertheless, even after the decision obtained final and binding legal force, the worker reportedly had not received the compensation for several years. This finding indicates that legal uncertainty does not end with judicial interpretation; it continues at the stage of execution and enforcement (Herlambang et al., 2023; Manalu et al., 2021).

Another court-decision finding concerns the treatment of pension fund contributions in compensation calculations. In this type of dispute, the employer argued that pension fund contributions could be treated as part of the compensation package, while the worker rejected this position because the matter had not been expressly regulated in the Collective Labor Agreement (Wen, 2023). The court accepted that pension fund contributions may be included as part of compensation, and this decision was upheld by the Supreme Court. This shows that

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ambiguity in statutory norms allows courts to adopt interpretations that may vary depending on the factual and contractual context of each case.

Interview findings reinforce these statutory and judicial findings. Workers' legal counsel explained that workers often face prolonged legal processes before obtaining retirement entitlements. In the case of worker P, although the worker succeeded up to the Supreme Court level, the pension benefits remained unpaid for three years. Interviews also revealed employer practices aimed at avoiding compensation obligations, including pressuring workers to resign or framing alleged misconduct as a basis to deny retirement benefits. Workers who are not affiliated with labor unions were identified as particularly vulnerable, confirming the importance of trade unions in protecting workers' rights (Darmawan et al., 2025).

Based on these findings, the principal sources of legal uncertainty in the existing legal system are: unclear rules on compensation payment mechanisms and calculation bases; excessive reliance on company-level instruments such as Collective Labor Agreements and Company Regulations; weak enforcement of final and binding court decisions; and the limited preventive role of tripartite institutions. These findings indicate that Indonesia's current industrial relations system remains reactive rather than preventive in dealing with retirement-related termination disputes.

Related to Compliance Engineering in Retirement Regulation

The second research question concerns how the technical implementation of retirement regulation can be designed to engineer employer compliance in fulfilling workers' pension rights. The central finding is that the Indonesian labor law framework does not explicitly recognize workers' right to initiate termination of employment on the ground of retirement. Article 56 of Government Regulation No. 35 of 2021 primarily formulates retirement-related termination as an employer's authority. This formulation places workers in a passive position, even when they have reached retirement age or are no longer physically able to continue working.

Statutory findings show that the absence of explicit recognition of worker-initiated retirement creates interpretative space for employers. In practice, a worker's request for retirement may be treated as voluntary resignation, which reduces or eliminates entitlement to full retirement compensation. This creates a structural imbalance in industrial relations because the employer has the authority to determine whether retirement-based termination occurs, while the worker lacks an equivalent statutory right to initiate the process.

Court-decision findings demonstrate that judges have sometimes filled this normative gap through substantive interpretation. In Industrial Relations Court Decision No. 37/G/2016/PHI.Sby and Supreme Court Decision No. 902 K/Pdt.Sus-PHI/2016, an employee identified as S, also referred to as G, had worked for nearly 40 years and submitted a retirement request, but the company did not respond. The employer argued that retirement decisions were entirely within company discretion, based on operational needs and the employee's condition. The Industrial Relations Court and the Supreme Court rejected this position and held that the employment relationship could be terminated because the employee had reached retirement age. The courts ordered the payment of retirement benefits in accordance with statutory provisions. This decision implicitly recognized the worker's right to apply for retirement, although the right is not expressly regulated in statutory law.

A second court-decision finding reinforces this pattern. In the case involving employee RM, the worker had reached retirement age and requested termination with retirement benefits.

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The employer rejected the request and classified it as voluntary resignation (Naelayara & Lie, 2024; Colquitt, 2001). The employer also raised allegations of misconduct in stock management, which appeared to function as an alternative basis to avoid retirement compensation. The Industrial Relations Court and the Supreme Court ultimately held that the employment relationship ended due to retirement and ordered payment of retirement benefits. This decision confirms that judicial practice may protect workers' retirement claims, but it also shows that protection often depends on litigation.

Interview findings show that the government's approach remains relatively flexible and company-centered. An official from the Bekasi Regency Manpower Office stated that retirement arrangements are generally delegated to companies through Company Regulations or Collective Labor Agreements (A. Supriyadi, personal communication, 2025). The government does not expressly grant workers a right to apply for retirement but tends to assume that retirement occurs automatically when a worker reaches a certain age. This approach positions the government more as a facilitator than an active regulator.

Employer interviews also show that many companies do not specifically regulate workers' right to apply for retirement. Companies usually only determine retirement age in Company Regulations. In practice, even where workers have reached the stipulated age, the authority to terminate the employment relationship remains largely with the employer. Workers who are still considered productive may have their employment extended through new employment agreements. Nevertheless, employer representatives acknowledged the need for additional regulation on workers' right to apply for retirement to reduce legal uncertainty and prevent disputes (A. Adisastra, personal communication, 2025).

The findings identify five operational causes of non-compliance and dispute escalation. First, legal norms do not clearly regulate workers' entitlement to apply for retirement. Second, employer dominance is reinforced by rules that give employers discretion in determining retirement-based termination. Third, many Collective Labor Agreements and Company Regulations do not clearly stipulate retirement age or retirement application procedures. Fourth, employers may use strategies to avoid compensation obligations, including recharacterizing retirement applications as resignation or relying on alternative grounds for termination. Fifth, mediation remains weak because mediator recommendations are generally non-binding and may be disregarded by employers.

These findings suggest that compliance engineering requires clearer and more mandatory legal standards. The regulation should explicitly grant workers the right to apply for retirement, determine objective procedures for submitting and approving retirement applications, define consequences for employer refusal or delay, and strengthen government supervision over the implementation of retirement rights. Without such operational mechanisms, retirement-related termination will continue to depend heavily on employer discretion and judicial correction.

Related to Pension Security and Substantive Justice

The third research question concerns the form of pension security program capable of ensuring justice in termination of employment between workers and employers. The findings show that pension protection in Indonesia remains fragmented because company-based pension schemes, DPLK arrangements, and BPJS Ketenagakerjaan are not fully integrated.

Statutory and macro-labor findings indicate that pension security is closely linked to broader economic and labor market conditions. Indonesia's GDP per capita in 2024 was USD

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4,960, which remains lower than Malaysia at USD 11,867, Thailand at USD 7,345, and the People's Republic of China at USD 13,303 (World Bank Group, 2025). The open unemployment rate in February 2025 was 4.76%, equivalent to approximately 13.6 million unemployed persons, while the national poverty rate was 8.57%, or 24.2 million people. Under the World Bank standard, poverty may reach 68.3%, and wealth inequality is reflected in the finding that 1% of the population controls 50% of national assets (Tempo, 2025). These conditions show that pension protection is not merely a labor issue but also a welfare redistribution issue.

The statutory findings further show that the Indonesian pension security system is conceptually based on mutual cooperation and tripartite responsibility among government, employers, and workers. This aligns with the understanding of social security as an institutionalized form of social solidarity (Fadillah & Fatriani, 2025) and forms an integral part of a collective welfare system (Esping-Andersen, 1990; Barr, 2012).

However, implementation remains uneven because *BPJS Ketenagakerjaan* administers social security programs but does not directly manage private corporate pension funds. As a result, the fulfillment of company-based pension rights still depends heavily on employer compliance.

Court-decision findings show that Government Regulation No. 35 of 2021 has created new disputes concerning compensation standards. The regulation reduced severance pay from twice the stipulated amount to 1.75 times and eliminated the 15% compensation component previously allocated for housing, medical care, and treatment. In the dispute between employee Z and PT KI, the employer calculated compensation based on Government Regulation No. 35 of 2021, while the employee relied on the Collective Labor Agreement, which still referred to the previous provision of double severance pay plus 15% compensation of entitlements. The Industrial Relations Court and the Supreme Court ruled in favor of the employee and ordered the employer to pay a compensation difference of IDR 56,240,102. However, the need to litigate for this entitlement shows the inadequacy of preventive protection.

A second court-decision finding involved an employee who had completed 25 years of service and applied for retirement based on the Collective Labor Agreement, but the employer rejected the application because it had not been approved in advance (Wen, 2023).

The Supreme Court affirmed that the right to apply for retirement did not require employer approval and was inherent under the Collective Labor Agreement. However, the Court rejected several compensation components, including the 15% compensation element, because it was no longer regulated under Government Regulation No. 35 of 2021. This case shows an internal inconsistency in the protection of workers' rights: the right to apply for retirement may be recognized, while the value of compensation may still be reduced.

Interview findings reveal conflicting perspectives among tripartite actors. APINDO stated that employers generally comply with government regulations and that the reduction of severance pay and elimination of compensation components were government policy choices based on business cost efficiency (BPHN, 2020).

APINDO also emphasized that worker welfare should not depend solely on retirement compensation, but should be supported by empowerment programs such as entrepreneurship training and post-retirement "new career" programs. However, this view shifts part of the responsibility for post-retirement welfare from the state and employers to individual workers.

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Labor unions took a different position. They argued that the regulatory changes harmed workers and reduced the quality of social protection. The reduction in compensation and removal of entitlement components were considered inconsistent with the principle of justice under Article 28D paragraph (2) of the 1945 Constitution. Labor unions also emphasized uncertainty regarding retirement age and workers' right to apply for retirement. In some cases, workers who had not reached formal retirement age but were no longer physically able to work were compelled to resign without pension benefits. This indicates that the existing system does not sufficiently accommodate workers' diverse health, productivity, and age conditions (Samriadin, 2024; Manalu et al., 2021).

Another empirical finding concerns DPLK. Companies that implement Dana Pensiun Lembaga Keuangan tend to provide greater certainty in the fulfillment of pension rights because pension payment obligations are managed through a third-party institution. This reduces the immediate burden on company cash flow when compensation becomes due and gives workers greater assurance that benefits will be paid. However, DPLK cannot yet serve as a universal solution because many small and medium-sized enterprises lack the financial or administrative capacity to implement such schemes (Samriadin, 2024)

The study also identifies a gap between company-based pension schemes and BPJS Ketenagakerjaan. In some cases, workers retiring at the age of 56 must wait until the age of 59 to access BPJS benefits, creating a multi-year protection gap. This shows that labor regulation and the national social security system are not yet fully synchronized.

From these findings, four patterns of injustice emerge. First, normative injustice occurs because workers are treated differently before and after Government Regulation No. 35 of 2021. Second, procedural injustice occurs because workers must undergo lengthy and burdensome legal processes to obtain retirement entitlements. Third, substantive injustice occurs because compensation values are reduced in ways that directly affect post-retirement welfare. Fourth, power asymmetry persists because employers retain stronger bargaining power in determining retirement policy implementation (Fadillah & Fatriani, 2025; Yulianta & Mulyana, 2026).

Overall, the findings show that Indonesia's pension security system has not fully reflected the principles of a welfare state. The reduction of compensation, weak integration between BPJS and company-based schemes, and limited tripartite supervision suggest a shift away from strong social protection toward a more market-oriented model. Therefore, a more equitable pension security model requires regulatory reform, stronger state supervision, clearer recognition of workers' retirement rights, integration between public and private pension schemes, and a more operational tripartite mechanism involving the government, employers, and workers.

Table 1. Summary of Main Findings and Data Sources

Research	Finding	Statutory Source	Court-Decision Source	Interview/Empirical Source
What legal system can address legal uncertainty in	The current industrial relations system has not functioned preventively	Law No. 13 of 2003; Law No. 2 of 2004; Government	Disputes involving worker P and PT GPGM; cases on pension fund contribution and	Workers' legal counsel; labor unions; employer representatives

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retirement-related termination?	because tripartite institutions remain weak and disputes are still dominated by bipartite negotiations and litigation.	Regulation No. 35 of 2021	compensation calculation	
How can retirement regulation engineer employer compliance?	Legal uncertainty arises from the absence of explicit recognition of workers' right to initiate retirement and from employer dominance in determining retirement-based termination.	Article 56 of Government Regulation No. 35 of 2021; Company Regulations; Collective Labor Agreements	Industrial Relations Court Decision No. 37/G/2016/PHI.Sby; Supreme Court Decision No. 902 K/Pdt.Sus-PHI/2016; RM retirement dispute	Bekasi Regency Manpower Office; employer representatives; workers
What pension security model can ensure justice?	Pension protection remains fragmented because company-based pension schemes, DPLK, and BPJS Ketenagakerjaan are not fully integrated, while regulatory changes reduce workers' compensation.	Law No. 13 of 2003; Law No. 6 of 2023; Government Regulation No. 35 of 2021; pension security regulations	Dispute between employee Z and PT KI; case involving 25-year service employee under CLA	APINDO; labor unions; workers; government officials

Discussion

Legal System Failure in Retirement-Related Termination of Employment

The findings of this study demonstrate that legal uncertainty in retirement-related termination of employment cannot be understood merely as a problem of unclear statutory wording. Rather, it reflects a broader failure of the Indonesian labour law system to harmonize legal substance, legal structure, and legal culture. Using Lawrence M. Friedman's legal system theory, the uncertainty surrounding workers' retirement rights emerges from the interaction of three weaknesses: ambiguous legal norms, limited institutional enforcement, and an unequal industrial relations culture (Friedman, 1975).

At the level of legal substance, Government Regulation No. 35 of 2021 provides a general framework for termination of employment due to retirement, but it does not establish sufficiently precise standards regarding workers' right to initiate retirement, the legal

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consequences of retirement requests, the calculation of pension-related compensation, and the treatment of pension fund contributions. This regulatory design leaves significant interpretative space for employers and courts. As a result, the law does not operate as a clear preventive norm but becomes a source of contestation between workers and employers.

This finding extends prior studies on pension rights and severance pay, which generally emphasize compensation reduction, social security adequacy, or employer obligations after termination. Previous studies have identified the weakening of worker protection following changes in labour regulation, particularly after the Job Creation Law and Government Regulation No. 35 of 2021. However, this study adds that the central problem is not only the reduction of compensation value, but also the absence of an operational legal mechanism capable of converting normative rights into enforceable entitlements. In other words, legal uncertainty arises not merely because workers receive less compensation, but because the legal system does not clearly determine when, how, and by whom retirement rights must be activated and enforced.

At the level of legal structure, the findings indicate that existing institutions have not functioned effectively as preventive or corrective mechanisms. Bipartite negotiation, mediation, labour inspection, and judicial proceedings exist formally, but they do not always provide timely and effective protection. Workers are frequently required to pass through lengthy procedural stages before obtaining their retirement entitlements. This condition shows that institutional structure remains reactive rather than preventive. The court may correct injustice in individual cases, but litigation cannot substitute for a clear and enforceable regulatory system.

At the level of legal culture, industrial relations remain marked by an imbalance of bargaining power. Employers generally hold stronger control over employment termination, retirement timing, and compensation practices, while workers often depend on unions, mediators, or courts to assert their rights. This imbalance demonstrates that formal equality within employment agreements does not necessarily produce substantive equality in practice. Therefore, the retirement issue must be located within the broader culture of industrial relations, where employer discretion and worker vulnerability continue to shape the practical meaning of legal norms.

Law as Social Engineering and the Limits of Regulatory Flexibility

The findings may also be interpreted through Roscoe Pound's concept of law as a tool of social engineering. In this framework, law should not merely regulate social relations passively, but should guide institutional behavior toward order, fairness, and social balance (Pound, 1940). Applied to retirement-related termination, labour regulation should engineer employer compliance, reduce disputes, and ensure that workers obtain pension benefits without unnecessary litigation.

However, this study shows that Government Regulation No. 35 of 2021 has not fully performed that social-engineering function. Instead of directing employers and workers toward predictable compliance, the regulation leaves important matters to company regulations, collective labour agreements, or judicial interpretation. Such flexibility may be justified in the name of business efficiency, but in the absence of minimum mandatory standards, it creates uneven protection and increases dependency on dispute resolution mechanisms (Colquitt, 2001).

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This discussion advances prior scholarship by showing that regulatory flexibility in labour law is not neutral. Previous studies on Indonesian labour reform often frame flexibility as a tension between investment climate and worker protection. This study contributes a more specific argument: in retirement-related termination, excessive flexibility transforms retirement from a predictable normative event into a disputable employer-controlled process. The law therefore fails to engineer compliance because it does not provide clear incentives, sanctions, or institutional pathways to ensure pension benefit payment.

The proposed compliance-engineering model responds to this weakness by shifting the function of retirement regulation from dispute settlement to dispute prevention. Retirement should be treated not merely as one ground for termination, but as a legally structured transition from active employment to post-employment social protection. This requires explicit recognition of workers' right to apply for retirement, standardized procedures for processing retirement requests, clear rules on compensation calculation, and enforceable sanctions against non-compliant employers. Such measures would enable the law to function as an instrument that shapes conduct before disputes arise, rather than merely correcting violations after litigation.

Justice, Welfare Protection, and the Tripartite Model

From the perspective of justice theory, the findings reveal three forms of injustice in the current retirement protection regime: normative injustice, procedural injustice, and substantive injustice. Normative injustice appears in the unequal distribution of legal authority between employers and workers, particularly where the employer is positioned as the dominant actor in determining retirement-based termination. Procedural injustice occurs when workers must undergo lengthy negotiations, mediation, and litigation to obtain rights that should be granted as a consequence of long-term service. Substantive injustice arises when regulatory changes reduce compensation and weaken the economic security of workers entering retirement.

Aristotle's conception of distributive and corrective justice provides a useful analytical lens for understanding these problems (Aristoteles, 2009). Distributive justice requires a proportional allocation of benefits and burdens between employers and workers. In the retirement context, this means that workers who have contributed labour over a long period should receive adequate post-employment protection. Corrective justice, by contrast, becomes relevant when employers fail to fulfill their obligations and courts must restore the balance. The findings indicate that Indonesia's current system relies too heavily on corrective justice through litigation, while failing to establish distributive justice through clear and balanced regulation.

This study therefore extends previous research by connecting pension protection not only to compensation formulas but also to the architecture of justice within industrial relations. Prior studies have discussed severance pay, pension benefits, and social security gaps, but they have not sufficiently explained how regulatory ambiguity, employer discretion, weak enforcement, and fragmented pension schemes combine to produce systemic injustice. By integrating normative analysis, judicial interpretation, and empirical stakeholder perspectives, this study demonstrates that retirement protection must be designed as a justice-based legal system, not merely as a financial obligation.

The tripartite model proposed in this study is intended to address this systemic weakness. Tripartism should not be understood merely as a consultative forum involving government, employers, and workers. It should be reconstructed as an institutional mechanism for

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compliance, supervision, and coordination in the implementation of retirement rights. The government must act not only as regulator, but also as supervisor and enforcer. Employers must be required to internalize pension obligations as part of long-term employment responsibility. Workers and trade unions must be given meaningful participation in monitoring retirement policies and ensuring that company-level arrangements do not reduce statutory protection.

In this context, the proposed Labour Pension Council or similar tripartite mechanism would fill an institutional gap in the current labour system. Its function would not be to replace courts, but to reduce dependence on litigation by providing preventive supervision, technical guidance, dispute-prevention mechanisms, and monitoring of pension benefit compliance. This would advance labour law scholarship by transforming tripartism from a general principle of industrial relations into an operational model of retirement governance.

Contribution to Existing Labour Law Scholarship

Compared with previous studies, this research makes three main contributions. First, it identifies retirement-related termination as a distinct site of legal uncertainty, rather than treating it merely as part of general severance pay or social security debates. The study shows that retirement disputes arise from specific normative ambiguities concerning the right to initiate retirement, compensation calculation, pension fund integration, and enforcement of entitlements.

Second, it demonstrates the originality of combining normative and empirical analysis. The normative approach reveals weaknesses in statutory design, while judicial analysis shows how courts respond to regulatory gaps. Empirical interviews further explain how workers, employers, unions, and government actors experience and interpret those gaps in practice. This integrated approach enables the study to bridge the gap between das sollen and das sein more effectively than purely doctrinal or purely policy-based research.

Third, the study develops a compliance-engineering model grounded in tripartite governance. This model advances labour law scholarship by proposing that legal certainty in retirement-related termination requires more than textual reform. It requires enforceable procedures, institutional supervision, coordinated tripartite participation, and a justice-oriented pension framework. Thus, the contribution of this study lies not only in identifying legal uncertainty, but also in proposing an operational structure for transforming retirement protection into a predictable, enforceable, and equitable labour right.

Overall, the discussion confirms that Government Regulation No. 35 of 2021 has not yet provided an adequate foundation for legal certainty and substantive justice in retirement-related termination of employment. The problem is multidimensional, involving legal substance, institutional structure, and industrial relations culture. Therefore, reform must not be limited to revising compensation formulas. It must include explicit recognition of workers' retirement rights, stronger labour inspection, enforceable sanctions, integration between company pension schemes and national social security, and an operational tripartite institution capable of engineering compliance. Through this approach, retirement regulation can move from a dispute-prone framework toward a preventive and justice-oriented system of labour protection.

Conclusion

This study demonstrates that the most significant source of legal uncertainty in retirement-related termination of employment in Indonesia is the absence of explicit legal recognition of workers' rights to initiate retirement, combined with the employer-centered

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formulation of retirement provisions under Government Regulation No. 35 of 2021. As a consequence, retirement-related termination is frequently subject to divergent interpretations among employers, workers, mediators, and courts, creating inconsistencies in the determination of pension benefits, severance pay, and retirement compensation. The findings further reveal that legal uncertainty extends beyond normative ambiguity to include structural weaknesses in law enforcement, ineffective execution of judicial decisions, and the limited capacity of existing industrial relations institutions to provide preventive dispute resolution.

The study confirms the existence of a substantial gap between das sollen and das sein in the protection of workers' retirement rights. Although statutory regulations formally provide retirement-related benefits, workers often encounter lengthy bipartite negotiations, mediation procedures, and court litigation before obtaining their entitlements. This condition reflects a legal system that remains predominantly reactive rather than preventive, thereby undermining both legal certainty and substantive justice. The empirical findings also indicate that regulatory changes introduced through Government Regulation No. 35 of 2021 have contributed to reduced compensation protection and reinforced the bargaining imbalance between employers and workers.

Based on these findings, the study proposes a concrete regulatory reform aimed at amending Government Regulation No. 35 of 2021 and related labor regulations by explicitly recognizing workers' rights to apply for retirement upon reaching the prescribed retirement age or satisfying other legally defined retirement criteria. Such reform should also establish clear and uniform procedures governing retirement applications, compensation calculations, payment mechanisms, and the legal relationship between employer-funded pension programs and statutory retirement benefits. Furthermore, retirement compensation standards should be formulated in a mandatory and unambiguous manner to minimize interpretative disputes and ensure consistent implementation across sectors.

In addition to regulatory reform, this study proposes the establishment of a specialized tripartite institutional mechanism, namely a Labour Pension Council, consisting of representatives of the government, employers, and workers. This institution would function as a supervisory, advisory, and dispute-prevention body responsible for monitoring compliance with retirement obligations, facilitating coordination among stakeholders, reviewing retirement policies, and strengthening enforcement mechanisms before disputes escalate into litigation. Through a more operational tripartite framework, retirement protection can be transformed from a predominantly dispute-driven process into a preventive and compliance-oriented system.

The expected impact of these reforms is the creation of greater legal certainty regarding retirement rights, more effective enforcement of pension-related obligations, reduced dependence on judicial intervention, and a more balanced distribution of rights and obligations within industrial relations. Such measures would also strengthen the realization of constitutional guarantees concerning legal certainty and fair treatment in employment relations while supporting the broader objectives of a welfare-state-oriented labor protection system.

The principal contribution of this study lies in its integration of normative and empirical approaches to explain how legal uncertainty in retirement-related termination emerges simultaneously from deficiencies in legal substance, institutional structures, and legal culture. Furthermore, the study advances labor law scholarship by developing a tripartite compliance-

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engineering model that links regulatory design, institutional supervision, and enforcement mechanisms as interconnected elements of retirement protection.

Nevertheless, this research is subject to several limitations. The empirical findings are based on a limited number of interviews with selected stakeholders and on a purposive sample of retirement-related judicial decisions, which may not fully capture the diversity of industrial relations practices across all sectors and regions of Indonesia. In addition, the study primarily focuses on the Indonesian legal context and does not undertake a systematic comparative analysis with other jurisdictions.

Accordingly, future research should expand the empirical scope by examining a broader range of industrial sectors, regions, and retirement dispute cases. Comparative studies involving jurisdictions with more developed pension protection systems would provide valuable insights into alternative regulatory models and institutional arrangements. Longitudinal research is also recommended to assess the effectiveness of future regulatory reforms and tripartite institutions in improving compliance, reducing disputes, and strengthening the enforcement of workers' retirement rights over time.

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