

# Responsibility in Transfer of Workers' Wages Limited Liability Company Bankruptcy

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## Abstract

The issue of responsibility in the transfer of workers' wages in a limited liability company that is bankrupt is an important issue in employment and bankruptcy law. When a limited liability company (PT) is declared bankrupt, there are significant challenges related to workers' rights, especially regarding unpaid wages. This study aims to analyze the legal responsibility in the transfer of workers' wage payment obligations from a bankrupt company to other parties, such as a third party or a replacement company. The methodology of this study uses a qualitative approach with case studies of several companies that are bankrupt. Data were collected through literature reviews, interviews with legal practitioners, and analysis of applicable laws and regulations. The findings of this study indicate that responsibility in the transfer of workers' wages depends not only on existing legal provisions, but also on the agreement between the parties involved in the bankruptcy process. The results of this study reveal that in practice, the transfer of responsibility for workers' wages often creates uncertainty for workers, especially in terms of certainty of payment. Recommendations provided include the need for clearer regulations regarding the transfer of wage obligations, as well as increasing legal protection for workers affected by company bankruptcy.

**Keywords:** responsibility, transfer of wages, labor, limited liability companies, bankruptcy.

## I. INTRODUCTION

Currently, to realize a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the development of national law must be able to support and guarantee certainty, order, enforcement, and legal protection aimed at realizing justice and truth. The more advanced the economy and trade today, the more debt problems arise in society. One of the debts that occurs between a company and a creditor with the aim of expanding the company's business market.<sup>1</sup>

In the current era of globalization, it is undeniable that the existence of businesses, especially companies, is increasing rapidly. Because it has a significant role in every aspect of life, from the economy to social, business entities are very important in the daily lives of Indonesians and have a significant contribution to the country. One form of business entity in Indonesia is a Limited Liability Company.

Workers are one of the most important components in supporting national development. National development is carried out to achieve welfare, justice, and material and spiritual prosperity that is evenly distributed. Workers or laborers are every individual who works by receiving a salary or compensation in any form.<sup>2</sup>

In 2020, Indonesia has been affected by the Corona Virus 19 outbreak, so that in this case limited liability companies are required to survive in the midst of unstable economic conditions, so that in this condition many limited liability companies have to file for bankruptcy because they are unable to survive and adapt in the midst of a pandemic. Bankruptcy is a state where the debtor has stopped paying his debts. This condition indicates that the debtor in question has not carried out his obligations properly, and the cessation of payment can occur because he is unable to pay or does not want to pay the debts.<sup>3</sup> After that, bankruptcy is a condition where a debtor is in financial difficulty in paying his debts and is declared bankrupt by a court decision, in this case a commercial court.<sup>4</sup> In the current situation, apart from experiencing difficulties in repaying debts to creditors, companies are also experiencing difficulties in fulfilling workers' rights.

<sup>1</sup>Indonesia, Law of the Republic of Indonesia concerning Bankruptcy and Suspension of Debt Payment Obligations, Law No. 37 of 2004, State Gazette of the Republic of Indonesia (LNRI) Number 131, Consideration letter a

<sup>2</sup>Sri Wijayanti, Post-Reform Employment Law, DKI Jakarta: SinarGrafika, 2015, p.6.

<sup>3</sup>ManSastrawidjaja, Bankruptcy Law & Postponement of Debt Payment Obligations, Bandung City: Alumni, 2010, p.17.

<sup>4</sup>J. Djohansyah, Commercial Court, Settlement of Huang Through Bankruptcy/Postponement of Debt Payment Obligations, Bandung City: Alumni, 2001, p. 23.

Bankruptcy law plays an important role in the flow of business activities. The law should function to provide protection guarantees for aspects of life and legal relationships, so bankruptcy law plays a role in providing certainty in resolving debt disputes between business actors by regulating protection for the interests of each party. In principle, bankruptcy law confiscates all assets of the bankrupt debtor, both existing and non-existent, with the main objective of using the proceeds from the sale of these assets to pay all debts of the bankrupt debtor proportionally (prorate parte) and equal to the creditor structure. With certain exceptions, bankruptcy law expects a fair and proportional distribution of the debtor's assets to each creditor. Seizure and execution carried out by creditors independently cannot be avoided by implementing general confiscation. Creditors must act collectively in accordance with the principles stipulated in Article 1132 of the *Burgerlijk Wetboek* (Civil Code).

Debts which are the obligations of a debtor must be fulfilled or paid off, with the following times when the debtor does not fulfill his obligations or the debtor stops paying his debt.<sup>5</sup> A person may refuse to pay a debt because they are unable or unwilling to pay it. There will be a dispute between the two if the debtor's obligations are not fulfilled by the creditor. The state of the debtor's cessation of payment can be resolved in various ways. One method of resolving the dispute, compared to other methods, is bankruptcy. In addition, the Commercial Court can determine bankruptcy as a legal condition for a debtor who has at least two creditors and is unable or unwilling to pay at least one debt that is due and collectible. The bankrupt debtor loses the right to control and manage the assets included in the bankruptcy estate from the date the bankruptcy declaration decision is pronounced.<sup>6</sup>

Upon the decision of a debtor to become a bankrupt debtor by the Commercial Court, there will be a legal consequence which is theoretically regulated in Part Two of Law of the Republic of Indonesia No. 37 of 2004 which consists of Article 19 to the provisions of Article 62. Among the consequences of bankruptcy is the execution of assets and wealth of the bankrupt debtor. Settlement and settlement of bankruptcy are carried out by the curator under the supervision of the supervising judge. The main purpose of this settlement is to pay all debts of the bankrupt debtor proportionally and in accordance with the creditor structure by using the proceeds from the sale of assets. In the field of civil law, in addition to the right to collect (*Vorderingsrecht*), a creditor has the right to collect the debtor's assets, in the amount of his receivables to the debtor, if the debtor does not want to fulfill his obligation to pay his debt. Creditors have the right to sue if a debtor ignores or neglects his responsibilities and as a result performs poorly:<sup>7</sup>

- a. Regarding the fulfillment of the achievements that are entitled to be obtained;
- b. Compensation is added with the possibility and/or estimation of further compensation. Termination of employment will have a negative impact or implication, even very bad, on the company's employees or their families. At this time, many companies are facing the threat of bankruptcy applications in the Commercial Court, due to difficulties in paying the company's debts to all its creditors.<sup>8</sup>

Although they are one of the parties in a bankrupt company, the constitutional rights of laborers or workers are often ignored during the bankruptcy process. This shows that their position is very weak in obtaining their rights, even though their functions and roles are very important for the smooth production and progress of the company. The bill for payment of laborers' wages or workers can be categorized as a general privilege based on Article 1149 of the Civil Code (*KUH Perdata*), even though it is in a "privileged" position, when the bankrupt assets are distributed by the curator, the laborers' wages are not in the first place in the queue of creditors' bills. Laborers' wages and rights often do not have sufficient protection in the bankruptcy process, both in practice and based on applicable legal provisions. This can happen because the bills of the state and the guarantee holders are positioned higher than the laborers' wages by the Law of the Republic of Indonesia on Bankruptcy and Suspension of Debt Payment Obligations, the Civil Code, and the Tax Law.<sup>9</sup>

The company may go bankrupt. First, the bankrupt company curator can still run his business even though he has been declared bankrupt. This means that he still has to pay business expenses such as telephone, electricity, taxes, salaries, and other expenses. Second, according to Article 165 of the Manpower Law No. 13 of 2003, the bankrupt company curator has the right to terminate employment. Currently, the curator who manages the bankrupt estate, who is more concerned with himself and other creditors, ignores many of the rights and interests of workers. Disputes often occur between workers and the company represented by the curator. This curator usually focuses on the rules contained in the Republic of Indonesia Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and tends to

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<sup>5</sup>Man S Sastrawidjaja, *Bankruptcy Law and Postponement of Debt Payment Obligations*, Alumni: Bandung City, 2006, p.2.

<sup>6</sup>Indonesia, Law of the Republic of Indonesia concerning Bankruptcy and Suspension of Debt Payment Obligations, Law No. 37 of 2004, State Gazette of the Republic of Indonesia (LNRI) Number 131, Article 24 Paragraph 1.

<sup>7</sup>F. Tengker, *Law: An Elementary Approach*, Bandung City: Nova Publisher, 2003, p. 80.

<sup>8</sup>Muhammad Reza, *Analysis of Limited Partnership Bankruptcy & Its Legal Consequences Based on Law No. 37/2004 Concerning Bankruptcy & Suspension of Debt Payment Obligations (Study of Medan Commercial Court Decision Number: 01/Bankruptcy/2006/Medan Commercial Court)*, Journal of Law, Volume Three, 2012, p. 134.

<sup>9</sup>Soekarno, *Renewal of the Labor Movement in Indonesia & Pancasila Labor Relations*, Bandung City: Alumni, 1979, p. 75.

ignore the rights of workers regulated in the law.<sup>10</sup>The entrepreneur acts as a bankrupt debtor during the bankruptcy process, and he is replaced by a curator. The curator still adheres to the laws and regulations in the field of employment that regulate layoffs and the amount of severance pay. According to Article 95 Paragraph (4) of the Republic of Indonesia Law Number 13 of 2003 concerning Employment: "in the event that a company is declared bankrupt or liquidated based on applicable regulations, wages and other rights of workers or laborers are debts that must be paid first."

In other words, Article 39 Paragraph (2) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states that from the date the bankruptcy decision is pronounced, wages owed both before and after the bankruptcy decision is pronounced are included in the debts of the bankrupt estate. In other words, the status of workers in bankruptcy makes them creditors who are privileged or must be paid in advance of other debts. This always contradicts the protection of workers' rights promised by the 1945 Constitution of the Republic of Indonesia. Equal treatment (which is impartial) and fair legal certainty, because workers have the right to receive balanced treatment for their work and wages that repay their services, which support their right to live. Currently, there are many cases of disputes between curators and workers' rights related to the settlement of bankrupt estates. In this case, workers have to deal with other people to pay their rights. One of them is the case of the Mitradana Savings and Loan Cooperative, which resulted in a violation of workers' rights.

The problem of rights to wages that have not been paid or have not been fulfilled but in other cases there are creditor interests that divide the assets of the bankrupt company with a curator as a liaison. During the bankruptcy process, the curator is appointed by Law on Bankruptcy and Suspension of Debt Payment Obligations Number 37 of 2004, replacing the debtor or entrepreneur who owns the bankrupt company. According to the Constitutional Court Decision Number 67/PUU-XI/2013, payment of wages owed to workers and laborers must be prioritized over all types of creditors, including separatist creditors, state rights claims, auction offices, and public bodies formed by the government.

In the bankruptcy process, the Constitutional Court decision Number 67/PUU-XI/2013 provides legal protection and legal certainty to workers to obtain their rights in the form of wage payments and other rights. Therefore, this Constitutional Court decision is contrary to the PKPU Law which divides creditors in bankruptcy into 3 (three) categories: separatist creditors, preferred creditors, and concurrent creditors. However, Articles 1131 to 1138 of the Civil Code (KUH Perdata) in conjunction with Law No. 28 of 2007 concerning the Third Amendment to Law No. 6 of 1983 concerning General Provisions and Tax Procedures (UU KUP) and Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) are the basis for determining creditor groups in bankruptcy in Indonesia. Based on the above regulations, this group of creditors includes:

- 1) Creditors whose position is above creditors who hold collateral (for example tax debts) where the legal basis for these creditors is contained in Article 21 of Law No. 28 of 2007;
- 2) Creditors holding collateral are referred to as separatist creditors (the legal basis is Article 1134 paragraph 2 of the Civil Code). Until today, collateral known/regulated in Indonesia is Pawn, Fiduciary, Mortgage rights; and Ship mortgage.
- 3) Debts of bankrupt estate. Debts of bankrupt estate include the following: Bankruptcy costs and curator fees (wages); Labor wages, both for the period before the debtor goes bankrupt and after the debtor goes bankrupt; Building rent after the debtor goes bankrupt and so on.

According to the previous explanation, labor bills are in third place under creditors holding collateral, also known as separatist creditors. However, payment of workers' wages can be considered a general privilege. Article 95 Paragraph 4 of Law No. 13/2003 concerning Manpower regulates the provision: "In the event that a company is declared bankrupt or liquidated based on applicable laws and regulations, wages and other rights of workers/laborers are debts that must be paid first."

Although it is not clear how much debt must be paid first, at least it has been written that there is a privilege to pay wages of workers or laborers. In other words, the law proposed by the holder of the privilege must be implemented first before the bankrupt estate is handed over to competing creditors. strengthened by Law Number 37/2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), which stipulates: "Since the date of the bankruptcy declaration decision is pronounced, wages owed before, or after the bankruptcy declaration decision is pronounced are debts of the bankrupt estate".

Specifically, payment of wages which is a debt of the bankrupt estate must be recorded by the curator in the list of debts of the bankrupt estate. Before the claims submitted by the creditors themselves are finally adjusted, the list must be announced to the public. If a dispute later occurs due to differences between the creditor's claims and the curator's list, the supervising judge has the authority to reconcile. The dispute must be resolved through the court if it has not been resolved. Specifically, the position of workers to support wage payments is quite strong because:

- 1) Privileged bills include bills for payment of workers' wages;
- 2) It is legally recognized that the fulfillment of wages is a debt of the bankrupt estate; and

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<sup>10</sup>M. Hadi Shubhan, *Bankruptcy Law: Principles, Norms & Practices in Court*, Jakarta: Kencana, 2009, p.01.

- 3) There is a role and contribution from the court institution that will handle the problem if there is a difference between the worker's count and the list issued by the curator. This means that the worker's preference position cannot be simply preceded.

But there are some conditions where workers or laborers do not get compensation. The first condition is when there is not enough money. This means that workers will not get anything in this situation, whether the bankrupt estate is only enough to pay court costs and tax bills or there are no more costs that can be paid from the bankrupt estate. The second condition is when the bankrupt estate only consists of objects that are guaranteed to the separatist creditor. If the value of the separatist creditor's claim is greater than the value of the executed objects, the bankrupt estate is automatically lost. However, the remainder can still be divided if the receivables of the collateral holder can be covered by the execution value.<sup>11</sup>

The condition between the company (employer) and the workforce (worker/laborer) is known as an employment relationship. An employment relationship is a relationship that occurs during the implementation of work between workers and employers in a company. This relationship takes place within the limits of the work agreement and work regulations that have been agreed upon by both parties. Every employee has the right to wages and normative rights such as severance pay, compensation, and length of service awards. The rights of these workers/laborers have been protected and regulated in laws and regulations. These rights must still be fulfilled by the company even though the company has gone bankrupt. From the description above, the researcher conducted a study by taking the title "RESPONSIBILITY IN THE TRANSFER OF WORKERS' WAGES OF BANKRUPT LIMITED COMPANIES".

## **LITERATURE REVIEW LABOR OR MANPOWER**

Currently, the existence of workers or laborers who are in the interests of employers is closely related to individual workers or laborers so that they always follow their workplace. Employers sometimes easily terminate their employment because their workforce is no longer needed. Because the conditions of work or laborers are lower than the business owner, also known as subordinates, namely superiors and subordinates. Therefore, the government or state makes regulations to protect and protect the weak party (workers or laborers) from the power of employers who run arbitrarily. The goal is to place the weak party in a proper position in accordance with human dignity and to guarantee their rights that must be obtained as a result of carrying out their obligations.<sup>12</sup>

Based on the Big Indonesian Dictionary (KKBI) published by the Indonesian Language Development & Development Center Team, the definition of a laborer is a person who works for someone else by receiving wages or compensation for the services or labor provided. If we look at the definition above, it unilaterally arises due to the implementation of the rights and obligations of workers, who receive compensation in the form of wages.<sup>13</sup> In everyday life in society, it is known that workers work to maintain their livelihood through wages. Workers' wages are closely related to compensation for the implementation of work. Workers' wages are closely related to compensation for the work done. Wages are the rights of workers or laborers given by employers or employers to workers or laborers which are determined and paid in accordance with work agreements, agreements, or laws and regulations. Wages also include allowances for workers or laborers and their families for work or services carried out on the basis of the implementation of rights and obligations. From the definition above, it is very clear that compensation is paid based on the agreement of the parties when carrying out their duties and responsibilities. When the employment relationship and implementation of work end, the right to receive wages arises. In determining salaries, employers or business owners must not differentiate between men and women for the same job. Work must be assessed based on the level of work with reference to the amount of the minimum wage.<sup>14</sup>

Based on Article 88 of Law of the Republic of Indonesia No. 13 of 2003, the Indonesian government is committed to protecting workers' wages. This means that every worker or laborer has the right to earn an income that meets a decent living for humanity and the sustainability of his life. To achieve this, the government has established a wage policy. As a form of wage protection, the first is the minimum wage. The government has set the amount of the minimum wage based on decent living needs by considering productivity and economic growth. The minimum wage as regulated in Article 88 number 3 letter a consists of the minimum wage based on the province or district or city area, as well as the minimum wage based on the sector in the province or district or city area.

The minimum wage is set by the governor after considering recommendations from the Provincial Wage Council, the Regent, and the Mayor. According to Article 90 of Law of the Republic of Indonesia No. 13 of 2003, employers are

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<sup>11</sup> Imam Nasima and Eryanto Nugroho, Payment of Workers' Wages in Bankruptcy Process, <https://www.hukumonline.com/berita/a/pembayaran-upah-buruh-dalam-proses-kepailitahol19037> (online) accessed on May 1, 2024, at 09.25 WIB

<sup>12</sup> Zaeni Asyhadie, *Work Law: Employment Law in the Field of Employment Relations*, Jakarta: PT Raja Grafindo Persada, 2007, p. 17.

<sup>13</sup> Republic of Indonesia Language Development & Development Center Team, *Big Indonesian Dictionary*, Jakarta: Balai Pustaka, 1995, p. 191.

<sup>14</sup> Lalu Husni, *Introduction to Employment Law*, Jakarta: PTRajGrafindo, 2010, p. 144.

prohibited from paying wages lower than the minimum wage that has been determined. The relevant Ministerial Decree regulates the components and implementation of the stages of achieving decent living needs. The determination of the minimum wage must provide benefits and protection of decent living for workers and their families to improve their standard of living. Because wages that are too low can result in decreased work enthusiasm or work demotivation, which ultimately hinders work productivity and work performance which in turn affects increased production and business continuity (company), if this condition is too bad, it is very possible that the company will go bankrupt, because the company's production is unable to cover its operational needs.<sup>15</sup>

## **BANKRUPTCY**

### **HISTORY OF BANKRUPTCY REGULATION IN INDONESIA**

In order to understand and know about the bankruptcy regulations and laws enforced in the Republic of Indonesia, researchers need to study and discuss its history. Another goal is to be able to find out the history of the implementation and philosophy contained therein. In this section, researchers limit themselves to discussing only the regulations after independence. In 1947, the government under Dutch occupation in the Jakarta area had stipulated and issued the Emergency Bankruptcy Regulation of 1947 or commonly referred to as *Noodsregeling Faillissementen* of 1947. This regulation was made in essence to provide a legal basis for the elimination of bankruptcy decisions in Indonesia that occurred before the fall of Japan.

However, this is *Noodsregeling Faillissementen* not used in its entirety. The indication of the cause is because through the existence of the legal regulation in society is less known, understood and not easily understood. The perspective of society at that time was very negative towards the agency or institution that handles the justice. The community feels that there are no or have not been easy and effective facilities and tools that can be used by creditors to protect their interests. Due to the above conditions, the Indonesian Government issued Bankruptcy Law Number 04 of 1998, but the regulation is still considered inadequate and does not meet the needs of legal regulation in society. The Commercial Court at the Central Jakarta District Court (PN) has issued and determined a decision declaring bankruptcy of the limited liability company *Asuransi Jiwa Manulife Indonesia (Manulife)* and the limited liability company *Prudential Life Assurance (Prudential)*. Although both of the above decisions were overturned by the Supreme Court. The conditions also made the decision a debate and discussion material in various levels of society considering that the two limited liability companies have assets and assets that far exceed their debts. Such things show that there are still many loopholes and deficiencies in the implementation of Law Number 4 of 1998 that need to be improved. On that basis, the government of the Republic of Indonesia finally made arrangements and improvements again through Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

### **DEFINITION OF BANKRUPTCY**

The term "bankrupt" comes from the word "failliet", which comes from the Dutch word "failliet", which has a double meaning, namely "thing" and "nature". From French, "failliet" comes from the original word "faillite", which means a strike or payment delay. However, in Indonesian, "bankrupt" means "bankrupt", which is when a creditor cannot pay a debt that has matured within a predetermined period and can be collected by the entitled party.

According to the understanding of experts R. Subekti and R. Tjitrosudibio, "bankruptcy" is a situation where a debtor or business owner stops and delays debt payments for certain reasons. In certain situations, the Panel of Judges must intervene to protect the common interests of its creditors and ensure that their rights are protected and protected.<sup>16</sup>

The definition of bankruptcy itself as stated in Article 1 Paragraph 1 of Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states as follows: "General seizure of all assets of the bankrupt debtor for its management and settlement is carried out by the curator under the supervision of the supervising judge as regulated in statutory regulations."

Bankruptcy is basically oriented towards the interests of creditors without any distinction from the creditors themselves. The interests of these creditors are to fulfill all their rights that have been postponed. The meaning of bankruptcy also provides an illustration that the purpose and essence of bankruptcy are oriented or focused on the interests of creditors. The existence of bankruptcy as a whole is to guarantee the creditor's right to collect in the settlement of the debtor's debt from the assets of the bankrupt debtor for arbitrary matters that may occur or that may arise. The Bankruptcy and Suspension of Debt Payment Obligations Law basically aims to protect and guarantee the rights of creditors who provide receivables to debtors that occur because of providing collateral for their debts or because they have carried out certain work. However, payment has not been made or settlement has not been made.

Mean while, when viewed from a business perspective, the word bankruptcy is a condition of financial conditions that worsen in the company's household budget, resulting in low performance for a certain period of time that continues, which ultimately causes the company to lose or even drastically decrease the resources and funds it has. In the theory of education in the field of finance (financial distress) this is divided into various types of categories, including the following:<sup>17</sup>

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<sup>15</sup>Asri Wijayanti, *Post-Reformation Employment Law*, Jakarta: Sinar Grafika, 2009, p. 109.

<sup>16</sup>Victor Situmorang & Soekarso, *Introduction to Indonesian Bankruptcy Law*, Jakarta: Rineka Cipta, 1995, p. 18.

<sup>17</sup>Dr Ali Abdullah SH, MH, MM, MKn, *Bankruptcy Law and PKPU*, Jakarta: Pancasila University, 2023, page 2.

- a. *Insolvencybankruptcy* which means that the value or amount of the book on total liabilities exceeds the total value of the company's assets, based on this condition the company is worse than technical insolvency which can lead to liquidity. Technical insolvency or technically insolvent, where the company is in a state and is declared bankrupt if it cannot fulfill its obligations to pay debts that have matured to Creditors. Creditors in this condition get a state where they have completed their obligations and are just waiting for the fulfillment of their rights. Technical insolvency can be a temporary lack of liquidity which at one time the company can collect and can reproduce money from the company's profits to fulfill its obligations and continue to live and run its business. On the other hand, this technical insolvency is an early symptom of economic or financial failure of the corporation, meaning this is a sign of a failure in the company;
- b. The condition of the company that results in business failure. This condition can be interpreted as where the company has stopped or stopped the production process, its activity process with the result of losses to its creditors for the conditions of fulfilling their rights. A company's business can be categorized as failing, even though the company does not go through a normal and formal bankruptcy process according to laws and regulations. Due to this condition, a business can be stopped or temporarily closed its production process but is not considered a failure.
- c. Limited liability company with the condition of economic failure. This condition is where the company's funding cannot cover the costs, including the company's capital costs. A business entity experiencing this condition of economic failure can only continue or continue its activities, its production process as long as other creditors are willing to provide additional capital and the owner can accept a rate of return below the market interest rate at that time;
- d. Meanwhile, Bankruptcy or legal bankruptcy is a condition of bankruptcy imposed by the court in accordance with applicable laws, and has met certain requirements for the company to be declared Bankrupt. So that for this condition, the settlement of the assets, assets and capital of the Company must be carried out.

The Law of the Republic of Indonesia concerning Bankruptcy and Suspension of Debt Payment Obligations also provides regulations to avoid potential chaos and unrest that could potentially arise as a result of each creditor wanting to control their own collateral given to the debtor as collateral for debt repayment. In addition, this condition is also to distribute compensation or debt repayment fairly and evenly to creditors, in accordance with the order determined by the regulation. The essence of bankruptcy is not only to fulfill the interests of creditors but also to distribute the sale of assets (if any), the assets of the bankrupt debtor to creditors with the assistance of the curator, this is done so that the settlement of assets and assets of the debtor is free from separate confiscation by creditors or looting by creditors or free from certain arbitrariness, then a joint confiscation is carried out to distribute the debtor's assets to creditors according to their respective rights. This condition is expected to be able to realize justice for the creditors of the bankrupt company.

## **BANKRUPTCY PRINCIPLES**

In the implementation and enforcement of bankruptcy law in Indonesia, several principles can be used, including:<sup>18</sup>

- a) **Principle of Balance**  
This principle is useful and aims to provide and harmonize the balance between one party and another through provisions and arrangements that have been made with the aim of preventing the occurrence of misappropriation and abuse of authority and position by both debtors and creditors who have bad or bad intentions.
- b) **Principle of Business Continuity**  
The principle of Business Continuity aims to provide potential and opportunities and/or move forward to businesses run by new corporate persons or Debtors to continue to move and be run and obtain company profits and gains.
- c) **Principle of Justice**  
This concept of the principle of justice is important and aims to prevent. Creditors who try to make settlement payments to debtors without regard to other creditors can experience difficulties.
- d) **Principle of Integration**  
The Integration Principle is the only formal and material law included in the national civil procedure and civil bankruptcy law system, namely this integration principle.

## **CONDITIONS FOR BANKRUPTCY**

According to Article 2 paragraph 1 and Article 8 paragraph 4 of the Republic of Indonesia Law concerning Bankruptcy and Suspension of Debt Payment Obligations, a bankruptcy request submitted to the commercial court must meet the following requirements:

- a) Debtors who have two or more creditors and are unable to pay off at least one debt that is due and collectible;

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<sup>18</sup>Rachmadi Usman, Legal Dimensions of Bankruptcy in Indonesia, Jakarta: Gramedia Pustaka Main, 2004, p. 12

- b) The Court's decision has been declared bankrupt, either on behalf of the debtor or on behalf of another party. The debt may come from an agreement, a delay in collection, a fine or sanction, or a court decision and an arbitrator;
- c) There are some debts that are due and can be collected. The debt can be due to being agreed upon, the acceleration of the collection period, sanctions or fines, or court and arbitrator decisions.

## **CURATOR**

Definitively, in accordance with Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, a Curator is an individual appointed by the court to manage and settle the bankruptcy estate under the supervision of a Supervisory Judge. After the bankruptcy decision is issued by the commercial judge, the curator is responsible for settling the bankruptcy estate. In carrying out his duties, the curator has a legal relationship with the Curator to settle the debtor's assets and is responsible to the supervisory judge. In some cases, the curator organizes and notifies creditors through a creditor committee meeting.<sup>19</sup>

The curator has the task of settling the bankrupt estate after the bankruptcy verdict is issued by the commercial judge, in carrying out his duties he has a legal relationship with all parties in the bankruptcy. The curator settles the debtor's assets and is responsible to the supervising judge, the curator in making certain decisions coordinates and notifies creditors through a creditor committee meeting.

To manage and settle the bankrupt estate, the curator must act with integrity based on truth and justice and comply with professional and ethical standards that are in accordance with its letter and spirit. Integrity requires, among other things, to be honest and trustworthy and not to sacrifice public trust for personal gain, which requires the curator to be objective and to carry out his profession carefully and thoroughly.<sup>20</sup>

The requirements to become a Curator have been regulated in Article 3 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 18 of 2013 concerning the Requirements and Procedures for Registration of Curators and Administrators, namely as follows:<sup>21</sup>

- a) Having the nature of being devoted to God Almighty;
- b) Be an Indonesian citizen and domiciled in Indonesia;
- c) Loyal and confident in Pancasila and the 1945 Constitution of the Republic of Indonesia;
- d) Have perfect physical and mental health;
- e) Have a degree in advocacy, public accounting, law degree, or economics degree with a major in accounting;
- f) Have attended curator and administrator training and have passed the exam conducted by the joint committee;
- g) Never been convicted of a crime punishable by a sentence of 5 (five) years or more based on a court decision that has permanent legal force;

The curator is authorized to guarantee the implementation of reciprocal agreements at the request of the parties who entered into an agreement with the debtor; this includes accepting claims for compensation from the parties who entered into an agreement with the debtor if they do not respond or are unwilling to continue the agreement and providing assurance that they will do so. The curator may terminate the lease agreement, provided that notification of termination is made before the end of the agreement in accordance with local customs.<sup>22</sup>

In order to maintain the continuity of the debtor's business, if there is adequate protection for the interests of creditors or third parties, the Curator may use the bankruptcy estate in the form of movable or immovable property or sell the bankruptcy estate under the Curator's control. Inheritance lost during bankruptcy may be accepted or rejected by the Curator. The bankrupt estate benefits from the inheritance received, but the Supervisory Judge's permission is required to reject it. If the bankrupt debtor is a legal entity, such as a limited liability company, then this provision does not apply. In addition, if the Curator can prove at the time the grant was made that the debtor knew or should have known that the action would result in losses for the creditor, the Curator has the right to request the cancellation of the grant.<sup>23</sup>

Without prior approval from the Supervising Judge, the Curator can be held personally liable. The Curator is responsible for negligence or errors that cause losses or decrease in the value of the bankrupt estate.<sup>24</sup> Basically, legal protection is the same for men and women. As a country of law based on Pancasila, Indonesia must provide legal

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<sup>19</sup>Indonesia, Law of the Republic of Indonesia concerning Bankruptcy and Suspension of Debt Payment Obligations, Law No. 37 of 2004, State Gazette of the Republic of Indonesia (LNRI) Number 131, Article 1 Paragraph 5.

<sup>20</sup>Determination of the Code of Professional Ethics of the Indonesian Association of Curators and Administrators dated December 9, 2021, Part One Principle Five,

<sup>21</sup>Indonesia, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 18 of 2013 concerning the Requirements and Procedures for Registration of Curators and Administrators, State Gazette of the Republic of Indonesia (BNRI) No. 726 of 2013, Article 3 Paragraphs 2 and 3.

<sup>22</sup>Hadi Shuban, Bankruptcy Law: Principles, Norms, and Judicial Practices in Court, p. 115

<sup>23</sup>Munir Fuady, Bankruptcy Law in Theory and Practice (Revised Edition Adjusted to Law No. 37 of 2004), Bandung: Mandar Maju, 2005, p. 47.

<sup>24</sup>Imran Nating, The Role and Responsibilities of the Curator in the Management and Settlement of Bankrupt Assets, Jakarta: PT Raja Grafindo Persada, 2005, p. 114.

protection to its citizens. This protection will give birth to the recognition and protection of human rights as individuals and social in the context of a unitary state that upholds the spirit of family to achieve common prosperity.

## CONCEPTUAL FRAMEWORK

- 1) Legal responsibility is a theory that analyzes the responsibility of legal subjects or perpetrators who have committed unlawful acts or criminal acts to bear costs or losses or carry out criminal penalties for their mistakes or negligence;
- 2) Wages are compensation given for time and energy to carry out certain production of goods or services of a company;
- 3) A worker is a person who works and receives wages or compensation for the work he does;
- 4) Bankruptcy is a general seizure of all the assets of a bankrupt debtor, the management and settlement of which is carried out by a curator under the supervision of a supervising judge as regulated in Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.<sup>25</sup>

## THEORETICAL BASIS

Legal theory is an attempt to integrate law into society (social life) through legal learning. No single field of science is different from others in terms of its topics or objects. What distinguishes each field of science from others is the method by which people gain knowledge. Therefore, the researcher uses and refers to the following theories:<sup>26</sup>

### 1) THEORY OF RESPONSIBILITY

The theory of legal responsibility analyzes the obligations of individuals or legal entities that have committed unlawful acts or crimes to bear costs, losses, or undergo punishment for their mistakes or negligence. According to Hans, responsibility is closely related to obligation, although not the same. This obligation arises from legal rules that assign duties to legal subjects. Legal subjects who have obligations must carry out these duties in accordance with the orders of the legal rules. If this obligation is not fulfilled, sanctions will arise, namely coercive actions from legal rules so that obligations are fulfilled properly by legal subjects. Hans states that legal subjects who are subject to sanctions are called 'responsible' or legally responsible for the violations committed.<sup>27</sup>

### 2) LEGAL PROTECTION THEORY

According to Satjipto Rahardjo, legal protection is providing protection for human rights that are harmed by others and this protection is given to society so that it can enjoy all the rights granted by law.<sup>28</sup> However, CST Kansil legal protection is a variety of legal efforts that must be carried out by law enforcement officers to provide a sense of security both mentally and physically from disturbances and various threats from any party.<sup>29</sup> Philip M. Hadjon said that legal protection is an action to protect or assist legal subjects by using legal instruments.<sup>30</sup>

Legal protection in the concept of a state of law is legal protection. Preventive and repressive legal protection are basically two types of legal protection. Preventive legal protection functions as prevention. Preventive legal protection is very important for government actions based on freedom of action because it encourages the government to be careful when making decisions. Legislation provides preventive protection to prevent violations and limit liability. Repressive Legal Protection is used to resolve disputes that arise as a result of violations. The end of this protection is sanctions for violations.

## II. METHOD

### NATURE OF RESEARCH

The type of research when examined from the nature side, this research is descriptive research which means research that describes a certain object and explains things related to systematic facts in a certain field factually and carefully. This research is descriptive because the research is able to describe, explain and depict an object to draw conclusions that apply generally.

### TYPES OF RESEARCH

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<sup>25</sup>Indonesia, Law of the Republic of Indonesia concerning Bankruptcy and Suspension of Debt Payment Obligations, Law No. 37 of 2004, State Gazette of the Republic of Indonesia (LNRI) Number 131, Article 1 Number 1.

<sup>26</sup>Ramlani Lina Sinaulan, *Theory of Legal Science*, Yogyakarta: Zahir Publishing, 2018, p. 36

<sup>27</sup>Hans Kelsen, *Pure Theory of Law*, Translated by Raisul Muttaqien, *Pure Theory of Law: Basics of Normative Legal Science*, Sixth Edition, Bandung: Nusa Media Publisher, 2008, page 136

<sup>28</sup>Satjipto Rahardjo, *Legal Studies*, Bandung: PT Citra Aditya Bakti, 2000, p. 54.

<sup>29</sup>CSTKansil, *Introduction to Indonesian Law and Legal System*, Jakarta: Balai Pustaka, 1989, p.102.

<sup>30</sup>Philipus M. Hadjon, *Introduction to Indonesian Administrative Law*, Yogyakarta: Gajah Mada University (UGM) Press, 2011, p. 10.



The main study in this type of research is the law that is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that the research uses the type of Normative Juridical research, because with this type of research the researcher will analyze the laws and regulations relating to bankruptcy law related to the fulfillment of the obligations of companies declared bankrupt. The researcher will analyze each of the current regulations regarding Bankruptcy Law and Company Law that are enforced in the Unitary State of the Republic of Indonesia. This type of research was chosen by the researcher to analyze the problems or legal issues that arise regarding bankruptcy law.

### **PROBLEM APPROACH**

In legal research there are several approaches. With the chosen approach, researchers will obtain information from various aspects regarding legal issues or problems for which they are seeking the right and correct answers.<sup>31</sup> In this study, the researcher used several approaches, namely as follows:

#### **1) Case Approach**

This approach is carried out by examining cases related to the issues being faced and have become decisions that have permanent legal force. In this approach, the researcher will examine the judge's considerations in deciding a decision related to labor wages in a company that has been declared bankrupt.

#### **2) Statute Approach**

Legislation, also known as the statute approach, is a written regulation made by a state institution or authorized official. This regulation is generally binding. From the definition above, it can be concluded that laws and regulations are what is meant as statutes. Therefore, the statutory regulation method uses legislation and regulations. Researchers use the statutory regulation approach by identifying and studying specific laws and general laws related to bankruptcy or corporate law. With this method, researchers will study and look for legal problems related to researchers, namely wages of workers in bankrupt companies.<sup>32</sup>

### **DATA COLLECTION TECHNIQUE**

Legal Material Search Technique in this study was conducted by conducting a literature study (library research) conducted at the Law Faculty Library, Pancasila University. Literature study searches were conducted on laws and regulations related to bankruptcy. While secondary materials were conducted by studying literature from books, articles, or articles and journals on the internet or print media related to the research discussed, namely on the responsibility of labor wages in companies declared bankrupt. The plan for Secondary Legal Data is as follows:

- a) Primary Legal Materials are legal materials that are binding or that make people obey the law such as laws and judge's decisions. The primary legal materials that the researcher uses in this study are the Civil Code, the Law of the Republic of Indonesia concerning Bankruptcy and Suspension of Debt Payment Obligations, Law No. 37 of 2004, the State Gazette of the Republic of Indonesia (LNRI) Number 131 and Court Decisions;
- b) Secondary Legal Materials are legal materials that are not binding but are able to explain primary legal materials which are the result of the processed opinions or thoughts of experts or specialists who study a particular field;
- c) Tertiary Legal Materials are legal materials that provide guidance or explanations to primary and secondary legal materials. The tertiary legal materials used are the Great Dictionary of the Indonesian Language (KBBI), Encyclopedia and the Internet.

### **DATA PRESENTATION TECHNIQUES**

The research results are presented in the form of systematically arranged descriptions, meaning that the secondary data obtained will be linked to each other according to the problems being researched, so that overall it forms a complete unit according to the research needs.

### **DATA ANALYSIS TECHNIQUES**

The legal material analysis technique allows researchers to answer the problems raised by examining the contents or content of current laws relating to bankruptcy regulations. Then, the law is described in paragraph form and connected to other legal materials. The legal materials are written and analyzed inductively to see the laws and regulations on bankruptcy labor wages.

## **III. RESULTS AND DISCUSSION**

### **LIABILITY OF LIMITED LIABILITY COMPANIES DECLARED BANKRUPTCY FOR WORKERS' WAGES**

The liability of a company declared bankrupt to third parties is manifested in the company's obligation to provide disclosure to third parties regarding any company activities that are considered to be able to affect the company's assets.

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<sup>31</sup>Peter Mahmud Marzuki, *Legal Research*, Jakarta: Pustaka Media Group, 2010, p. 93.

<sup>32</sup>Peter Mahmud Marzuki, *Ibid*, p. 97

When a company is declared bankrupt by a commercial court, it retains its legal status, regardless of whether the limited company's assets are taken over or transferred by the curator from the board of directors as the management. To protect workers and the welfare of the company, the management has the authority to take over the authority of the directors. This is regulated in Article 16 Paragraph 1 of Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, in this case the Curator has the authority to carry out duties and handle the settlement of bankrupt assets starting from the date the company's bankruptcy decision is declared, regardless of the possibility of cassation or judicial review in the decision. The authority and responsibility of the company's management are limited to providing severance pay, wages, and workers' or laborers' rights. The curator is also responsible for providing and protecting the rights of workers and laborers.<sup>33</sup>

In general, an employer or an organ of a company has the responsibility and obligation to protect the rights and obligations of workers or laborers. As employers, they are not only responsible for the rights and obligations of workers or laborers but also have the obligation to fulfill those rights and obligations. An employment agreement creates a relationship between workers/laborers and employers. An employment agreement establishes the rights and obligations and conditions related to employment.

An entrepreneur must try to improve the condition of his company so that they can fulfill and realize the rights of workers and vice versa. Bankruptcy does not always mean that the company will be dissolved. If the company suffers a loss, whether caused by the entrepreneur or its workers, the entrepreneur remains responsible and guarantees to fulfill the rights of workers and laborers, because workers and laborers have devoted their energy and thoughts to gain profit and benefits for the company. Workers and laborers will still have and be guaranteed their rights as workers and laborers.

If a company is declared bankrupt, there are two possibilities that will occur to the fate of workers or laborers, according to Article 39 Paragraph 1. First, the employer can dismiss workers or laborers after their authority has been transferred to the curator. Second, workers or laborers will terminate their employment, which can be concluded from Article 39 Paragraph 1 of the Bankruptcy Law that workers or laborers in a company that is considered bankrupt will terminate their employment at least 45 days after notification of termination of employment. The definition of termination of employment based on Article 1 number 4 of the Decree of the Minister of Manpower Number: Kep - 150 / MEN / 2000 concerning the Settlement of Termination of Employment and Determination of Severance Pay, Service Bonus Money and Compensation in the Company is the termination of employment between the employer and workers / laborers based on permission from the Regional Committee or Central Committee.<sup>34</sup>

Since Article 1 Paragraph 25 of the Manpower Law regulates termination of employment (PHK), this definition is no longer used. According to this Article, termination of employment means the end of the employment relationship for certain reasons, which results in the end of the rights and obligations between workers or laborers and employers. Based on Article 39 Paragraph 1 of the Bankruptcy Law, the amount of rights granted to workers or laborers is regulated by the provisions of the Manpower Law. Therefore, workers and laborers are entitled to severance pay, compensation for work period, and replacement of rights in cases of termination of employment.

The relationship between employers and employees is a relationship between superiors and subordinates, and workers and laborers need legal protection because they are the weaker party in industrial relations. Talking about the position in the employment relationship, it is important to remember the nature of the employment relationship legally, sociologically, and socio-economically. Legally, this relationship is free because each party can agree on the rights and obligations and terms of employment in the employment agreement. Freedom of contract is the basis of this.

From a sociological perspective, the relationship between workers/laborers and employers is essentially different, this is because an employer usually comes from an educated and respected background, while workers/laborers in Indonesia mostly come from a background of society in general and have low education.

Workers or laborers, and employers are in an unequal position socio-economically. Employers have a higher position than workers or laborers. An entrepreneur clearly has a higher economic status, more knowledge than workers or laborers, and is certainly more dependent on employers. The conditions of workers or laborers have been considered in the Bankruptcy Law, as shown by literature searches. The provisions in the Bankruptcy Law, both directly and indirectly, will affect the payment of workers' wages in bankruptcy, including:<sup>35</sup>

## **STATUS OF INDUSTRIAL RELATIONS BY AND BETWEEN WORKERS AND THE COMPANY**

Labor law regulates industrial relations between employers and workers, which are prone to disputes, especially between employers and workers. Disputes occur because of different opinions between the parties, usually before the dispute develops and widens. But because of the very weak position of workers, in addition to the role of labor unions in bipartite communication which is expected to be able to fight for workers' rights in carrying out their roles is still not

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<sup>33</sup>Susilo Andi Darma, *Supremacy of Law: The Position of Workers/Laborers in Bankruptcy Cases Reviewed from Legislation and Justice Theory*, Yogyakarta: UGM Press, 2013, p. 126

<sup>34</sup>*Ibid*, p.129.

<sup>35</sup>Susilo Andi Darma, *Supremacy of Law: The Position of Workers/Laborers in Bankruptcy Cases Reviewed from Legislation and Justice Theory*, Yogyakarta: UGM Press, 2013, p. 129.

optimal because they do not have enough bargaining power when faced with employers, so that there is often an arbitrary attitude from employers, this happens because it is motivated by the stronger economic position of employers.

In its operations, the company does not always show about the development of profits, because there are financing risks in the business activities, namely investment risks and operational risks. This can threaten the continuation of the company's profits and losses, and if the company is unable to pay its debt obligations, the company can be said to be bankrupt or insolvent. Bankrupt is a debtor who cannot pay off the debts of his creditors. Because of the difficulty, in the context of its operations, the company to carry out its obligations, namely paying salaries to workers, will certainly experience problems and tend not to be able to pay off the payments. But if there is a bankruptcy or termination of employment in the company, many workers have difficulty getting their rights. Termination of Employment (PHK) is not determined by law as the sole consequence of bankruptcy.

In essence, the relationship between workers/laborers and employers is a civil relationship. This relationship is based on an employment agreement that is subject to private law provisions. Provisions regarding employment agreements are regulated in Book III CHAPTER VII A of the Civil Code, but over time, this relationship has developed into a public relationship. This is because what has been regulated in the Civil Code is not enough to protect workers/laborers, so the government intervenes in regulating this employment relationship. Despite government intervention in employment relationships, researchers argue that the essence of employment relationships is a civil or private relationship whose fulfillment or guidance is based on public law.

### **WORKERS OR LABORERS HAVE AND HOLD PRIVILEGES**

According to Article 39 Paragraph 2 of the Bankruptcy Law, wages owed both before and after the bankruptcy declaration decision is pronounced are considered debts of the bankrupt estate from the date the bankruptcy declaration decision is pronounced. In other words, if the debtor of a bankrupt company cannot pay wages owed, severance pay, or other rights stipulated in the Employment Law, then these obligations fall into the category of debts of the bankrupt estate. Therefore, there is no clarity regarding the payment of workers' and laborers' rights. This is mainly related to the priority order for the fulfillment of workers' and laborers' receivables. Although workers and laborers may be paid last for receivables, Article 95 Paragraph 4 of the Employment Law states that workers and laborers receive certainty of payment. This means that payment of wages and other rights of workers/laborers must be paid before other debts. Further explanation of the article shows that payment of workers/laborers' wages must be paid before other debts.

The background of this provision is contained in Article 39 Paragraph 2 of the Bankruptcy Law which results in workers/laborers being positioned as bankrupt creditors is the existence of Article 1134 of the Civil Code and 1149 of the Civil Code. To determine the position of workers/laborers in the queue of bankrupt creditors is to look at the provisions in Article 1134 and Article 1149 of the Civil Code. Article 1134 of the Civil Code explains that creditors holding privileges have a higher level than other creditors. The legal opportunity that can be the basis for workers/laborers to hold privileges is Article 1149 of the Civil Code. Article 1149 of the Civil Code explains that workers/laborers' wages are a general privilege so that their payment must be prioritized. Therefore, according to Article 39 Paragraph 2 of the Bankruptcy Law, Article 95 Paragraph 4 of the Manpower Law, and Article 1149 of the Civil Code, wages and severance pay are receivables bound by privileges. Although the nature of the privilege is prioritized, the position of the holder of the privilege is still below the holder of the lien and mortgage. Even in the ranks of creditors holding privileges, workers/laborers are ranked fifth after tax bills, court costs, auction costs, and curator fees.

Receivables for movable and immovable property are generally listed below and are collected in the following order.<sup>36</sup>:

- a) court costs arising solely from the sale of goods as implementation of a decision regarding claims regarding ownership or control, and saving property; it takes precedence over pledges and mortgages;
- b) burial costs, without prejudice to the Judge's authority to reduce them if the costs are excessive;
- c) all final medical expenses;
- d) wages of workers from the previous year and what is still to be paid for the current year;
- e) receivables due to the delivery of food ingredients, made to debtors and their families during the last 6 months
- f) receivables of boarding school entrepreneurs for the last year
- g) debts of children who are still minors or under the care of their guardians or guardians in connection with their management, insofar as these cannot be collected from mortgages or other guarantees that must be made according to Chapter 15 of the First Book of this Civil Code, as well as maintenance and education allowances that are still due to be paid by parents for their legitimate children who are still minors.

### **WAGE RIGHTS THAT CANNOT BE FULFILLED BY A LIMITED LIABILITY COMPANY DECLARED BANKRUPT CONSTITUTES A BREACH OF PERFORMANCE**

Researchers argue that rights such as wages must be paid first in bankruptcy. Wages and other rights are the rights of workers or laborers, or in other words, the obligations of employers. Not fulfilling the agreement or default. A

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<sup>36</sup>Article 1149 of the Civil Code. The researcher argues that through the regulation of this article it is emphasized that payment of wages of workers from the past or previously must still be paid, until there is settlement. However, this regulation does not emphasize how long the grace period given by the Limited Liability Company is.

person is considered to be in default of an agreement if they make a mistake by not fulfilling the contents of the agreement even though they have been warned or emphasized beforehand. There are two conditions for being said to be in default, namely, as follows: Material conditions include and include the existence of errors and losses. Errors themselves have two meanings, namely: errors in the broad sense, which include intent and negligence, while the second error is an error in the narrow sense, which includes negligence only.<sup>37</sup>

Intention is defined as an act done knowingly and intentionally. Negligence is when someone does something without knowing the consequences, while intention is when someone does something without knowing the consequences. Therefore, one can conclude that the entrepreneur's mistake can be a cause of bankruptcy. In a company, the entrepreneur or the board of directors has the authority to set policies or actions. However, these policies or actions may not be in accordance with the entrepreneur's expectations, which can lead to bankruptcy.

Losses are things that actually arise from failure. Losses consist of two components: actual losses suffered (*damnum emergens*) include: costs, losses, and profits not obtained (*lucrum cessans*) include interest. The law only regulates compensation for material losses and potential immaterial, intangible, moral, non-monetary, and non-economic losses, such as physical illness, mental suffering, fear, and so on. Losses suffered by a worker or laborer as a result of bankruptcy can be in the form of unpaid wages or rights regulated in Article 95 Paragraph 4 of the Manpower Law. Workers or laborers receive certainty of payment, wages, and other rights from workers/laborers are debts that must be paid before others. The existence of a warning or warning from the creditor so that the debtor immediately fulfills his promise is a formal requirement to be considered in default. If the intended performance is stated in the agreement, a warning is not necessary. This means that the payment of wages and other rights has been determined when and under what conditions. This provision is usually found in the work agreement or collective work agreement. A collective labor agreement made based on an agreement between the employer and the employee must not conflict with other labor agreements. In the case of bankruptcy, this formal requirement is the maturity or expiration of the deadline given to the employer to pay all debts to its creditors so that bankruptcy is carried out.

#### **CURATOR AS A PARTY THAT MANAGES AND Administers THE ASSETS OF A BANKRUPT COMPANY**

Article 1365 of the Civil Code (hereinafter referred to as the Civil Code) regulates unlawful acts, which states that every unlawful act that causes harm to another person requires the person who does it to bear the loss. If the debtor cannot pay his debt to his creditor, it is called bankruptcy.

Often, the inability to pay is caused by the financial problems of the debtor company that has experienced a decline. However, bankruptcy is a court decision that confiscates all of the bankrupt debtor's assets, both existing and non-existent. The management and settlement of bankruptcy is carried out by the curator under the supervision of the supervising judge. The main purpose of the bankruptcy settlement is to proportionally pay all debts of the bankrupt debtor through the proceeds from the sale of assets. If analyzed in the case of workers' wages in a bankrupt company. If there is an element of unlawful acts committed by the Curator because it does not include workers' wages as a priority condition. This causes losses for workers because the rights protected by law cannot be fulfilled properly. The condition of the administrative expiration reason, through the Constitutional Court Decision No. 100 / PUU-X / 2012, it is stated that Wages and all payments arising from employment relationships are workers' rights that must be protected as long as workers do not commit acts that harm the employer. Therefore, wages and all payments arising from employment relationships cannot be cancelled due to the lapse of a certain period of time.

In such conditions, the Curator often ignores the rights/salary debts of the workers/laborers because the Curator only acts according to the rules in the Bankruptcy Law without paying attention to the rules in the Manpower Law. In fact, the position of the Curator is actually only temporary to replace the position of the Company because it is in a state of bankruptcy. This means that the Curator must also act as a Company that is obliged to protect and accommodate the rights of Workers/laborers as mandated by the Manpower Law.

Problems like this often befall workers who in fact only rely on their livelihood from the wages they receive from their work. So this must be a concern for the Government on how to respond to the protection of workers' rights after a bankruptcy decision and ensure that the interests and rights of workers/laborers remain protected. For this reason, the Bankruptcy and Suspension of Debt Payment Obligations Law is seen as one solution for companies that are in the position of debtors from various problems that may arise as a result of the inability to pay their debts. In this understanding, a company that is financially and management-wise considered unable to continue its activities, bankruptcy is the best way so that the company does not cause wider losses, including to the business climate and the general national economic conditions. If there is still hope, the suspension of debt payment obligations can be a solution.

#### **POSITION OF WORKERS IN BANKRUPTCY REVIEWED FROM THE THEORY OF RESPONSIBILITY AND JUSTICE**

The Republic of Indonesia is also known as a welfare state, this is reflected in the Opening of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) paragraph four, stating and affirming that: "Then from that to form a Government of the State of Indonesia that protects all the Indonesian people and all of Indonesia's territory and to advance general welfare, educate the life of the nation and participate in implementing world order ..... etc."

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<sup>37</sup>*Ibid*,p.131.

Currently, the state is not only trying to maintain legal order, but also trying for the welfare and happiness of its people and building a just and prosperous society. The opening of the 1945 Constitution of the Unitary State of the Republic of Indonesia has accommodated the objectives of the welfare state. The first objective is to maintain legal order, as indicated by the declaration of the Government of the State of Indonesia which protects all the Indonesian people and all of Indonesia's territory. The second objective is to actively strive for the welfare and happiness of its people, as indicated by the State being responsible for improving general welfare, educating society, and improving welfare.

In bankruptcy cases, injustice occurs when each interested party does not simultaneously understand several rules governing the same issue. As a result, there is no basic justice available to each party. Especially when the interests of each party, especially the State and the interests of workers and laborers, clash. Especially in relation to state tax debts, they argue that tax debts are the state's priority rights, or the rights of the state treasury, which will be used to develop the state and its people, including creating new jobs for workers.

Workers as preferred creditors with general privileges because they take payment from the proceeds of the sale of all the debtor's assets are in fourth position, after preferred creditors with special privileges (purchase of goods that have not been paid for, services of craftsmen, etc.). Finally, the position of concurrent creditors with general guarantees. But that was before Law Number 13 of 2003 concerning Manpower came into effect. Logically, when a worker or laborer works and gets paid, it is possible that the employer also benefits from the work of the worker or laborer. In any case, the rights of workers or laborers must be prioritized. According to the researcher, this can happen because both parties have a reciprocal relationship, and their relationship begins with an agreement. However, separatist creditors take over the position of laborers and workers in bankruptcy cases. This clearly results in losses for employees. Workers clearly make a significant contribution to employers in terms of productivity.

Referring to the decision of the Constitutional Court of the Republic of Indonesia Number 15/PUU/VI/2008, it is stated that justice does not always mean treating every society or every person equally. Justice can be interpreted as treating equally, according to its portion towards things that are indeed the same and treating differently towards things that are indeed different. Thus, in that condition, it would be unfair if different things were treated equally towards everyone. Based on the considerations of the Constitutional Court of the Republic of Indonesia above. It is analogous that the position of the State of Indonesia in the right to precedence clearly cannot be equated with the position of workers/laborers who are given priority or priority. The State's obligation has a very large authority but not for workers/laborers. This is clear when the position of the State's tax debt is prioritized for payment which will later be used for the development of the Indonesian state and society in general, including to create jobs and new opportunities for workers or the Indonesian people (workers who are affected by termination of employment or new workforce due to the company going bankrupt) while what about the fate of workers/laborers who, while waiting for the results of a bankruptcy filing process, must go into debt to other people in order to meet their daily needs in order to survive.

Another concerning and sad thing is that there are cases of tax fraud, tax evasion by state tax officials, clearly this hurts the sense of justice of the Indonesian people. According to Constitutional Law Expert, Jimly Asiddiqie expressed the opinion that legal certainty prioritizes regulations implemented in accordance with the wording of the regulation itself without exception. A point of view in responding or an interpretation that is slightly different from the wording is considered disobedient or disobedient in the sense that the community is breaking the law. However, basically the essence or purpose of the law is to realize the creation of social justice. When legal certainty itself is in conflict with social justice, then the authority of the law is questioned. In addition to having to have legal certainty, the purpose of the law is to realize justice and order. Legal justice, legal certainty, and the orderliness of the implementation of a rule in society must be realized simultaneously in order to create the goal of peaceful living together.<sup>38</sup> Justice can be formed if everyone in society is able to accept, understand and know that others adhere to the same principles of justice without discrimination and the basic social institutions that exist are generally in line with these societal principles. In other words, legal justice can be realized if a society adheres to, follows or has the same understanding of a concept of justice, but in a democratic life in society, this cannot be forced because every person in society has the freedom to express opinions, express ideas, especially regarding the concept of justice itself.

Expert Opinion, which comes from Aristotle, discusses justice. Distributed justice is justice that demands that every member of society receive what is their right, or receive the fulfillment of their rights or quota. Depending on what they produce, what they give, or their nature, the portion of this quota is not the same for each individual. Therefore, workers or laborers should get the largest portion and according to their efforts. Regardless of the capital owned by the entrepreneur, workers or laborers are the parties that generate profits for the company. Workers play an important role in driving the wheels of business. The state in this case the government only collects taxes which are then used for development and creating national welfare. No one can be allowed to dominate choices or take advantage of unfair opportunities such as the advantages of their natural gifts or their social position itself. Regarding this, the researcher has one opinion, namely that the state in this case the government is not allowed to dominate or take advantage of unfair opportunities (the existence of the State's Priority Rights) obtained from the provisions of the law while there are parties who do not have a great opportunity or are in a weak position, in this case workers who compete to get their rights in a bankruptcy process. Everything is viewed based on its criteria and priorities.

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<sup>38</sup>*Ibid*, p. 135

According to the researcher's opinion, the wage conditions of PT Mulia Raya Prima workers are categorized as a privilege in making a list of fixed receivables, and the expiration in matching debts cannot be used as a reason to eliminate this right. This is also reinforced by the Decision of the Constitutional Court of the Republic of Indonesia Number 100/PUU/X/2012, which in its explanation, Wages and all payments arising from the impact of the employment relationship with the business owner are the rights of workers that must be protected and given protection as long as the workers do not commit acts that are detrimental to the employer. So that wages and all payments arising from the employment relationship cannot be eliminated because of the passing of a certain time or usually called administrative expiration. Therefore, what has been given by workers as a prestatie must be realized with wages and all payments arising from the employment relationship as a prestatie between the business owner and the workers. A business without workers, the business will not run. Regarding, wages and all payments arising from the employment relationship are the property rights of every individual and may not be taken over, may not be transferred arbitrarily by anyone, either by individuals or through the provisions of laws and regulations, because these wages are born based on agreements and fulfillment of achievements.

### **RESPONSIBILITY OF COMPANY ORGANS FOR BANKRUPTCY**

The Board of Directors is a company organ that has the authority and is fully responsible for managing the company for the benefit of the company in accordance with the intent and purpose, including representing the company both inside and outside the court in accordance with the provisions of its articles of association. Each member of the board of directors must act in good faith and with full responsibility in carrying out their duties for the benefit of the company. This has legal consequences for each member of the board of directors to be personally responsible for the company's losses if the person concerned is guilty or negligent in carrying out their duties. The board of directors has a central role and considerable authority in carrying out the company's business activities. However, this authority is not absolute but rather has limitations as stipulated in the PT Law and the company's articles of association. One of the limitations of the board of directors' authority stipulated in the PT Law is related to the transfer of the company's assets or guarantees of company assets that exceed 50% must obtain the approval of the GMS (Article 102 paragraph [1] of the PT Law). If the company goes bankrupt, it is necessary to pay attention to whether the board of directors has carried out its duties in accordance with the company's articles of association and the provisions of applicable laws and regulations or not. The provisions in the Limited Liability Company Law also state that each member of the board of directors is personally fully responsible for the company's losses if the person concerned is guilty or negligent in carrying out his duties in accordance with the company's intent and objectives.

The occurrence of bankruptcy in a company has legal consequences for the board of directors who are no longer authorized to manage the company's assets. The authority to manage the assets of a bankrupt company is directly delegated by the court to the curator under the supervision of the Supervisory Judge from the date the bankruptcy decision is pronounced, even if a cassation or judicial review is filed. During the bankruptcy, basically the bankrupt debtor no longer has the right and authority to make agreements that bind his assets. Any agreement made by the bankrupt debtor during the bankruptcy does not bind the bankrupt estate. However, this provision is excluded for debtor obligations issued after the bankruptcy declaration decision benefits the bankrupt estate (Article 25 of the Bankruptcy Law).

The company's responsibility to employees is to provide a decent salary and according to what employees want before getting a job. The form of responsibility given by the Company that has been declared bankrupt is to prioritize the payment of basic wages that have not been paid to its employees because based on the order of settlement, the company that is declared bankrupt must prioritize the payment of employee wages, then pay state taxes and pay off the company's debts, regarding the severance pay that will be given, it is adjusted to the amount of funds and assets of the company that are still remaining because if the company is declared bankrupt, the company automatically has debts that must be paid to creditors, so regarding severance pay to employees, it is adjusted to the company's cash because the priority of the bankrupt company is to pay off debts to customers. However, due to this condition, the bankrupt Company must be assisted by a Third Party, namely the Curator, in its settlement. The responsibility of a company that is declared bankrupt to a third party is manifested in the company's obligation to provide transparency (disclosure) to third parties regarding any company activities that are considered to be able to affect the company's assets. A company that is declared bankrupt or bankrupt must go through a court decision. When a company goes bankrupt, it means that the company stops all its activities and thus can no longer conduct transactions with other parties, except for liquidation or settlement, namely collecting debts, calculating all the company's assets, then selling them to be used to pay the company's debts.

### **LEGAL EFFORT THAT CAN BE TAKEN BY WORKERS TO OBTAIN WAGE RIGHTS FROM BANKRUPT LIMITED COMPANIES**

According to the provisions contained in Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, this declaration of bankruptcy must be determined and decided by a commercial court through a general court. Article 39 Paragraphs 1 and 2 of the Bankruptcy Law mandate unilateral termination of employment. One of the rights arising from the employment agreement made by the employer and employee is the employee's right to receive wages for the work they do. One of the company's obligations in the employment agreement is to have the ability to pay employee wages, which are stated in full in each article of the

employment agreement between the employer and employee. If the Company is unable to carry out its obligations, in this case paying wages, then this can result in debt to employees, or a default.<sup>39</sup>

The concept of debt is very important in the bankruptcy process because without it, it is impossible for a bankruptcy case to be processed and examined. Because bankruptcy is a legal institution that requires entrepreneurs, or debtors, to liquidate their assets to pay their debts to their creditors as a way to fulfill their rights. Without unpayable debt, the concept of bankruptcy becomes unimportant.<sup>40</sup>If they are faced with conditions by employers who have power and capital owners, workers or labor are always the weak party. They are always considered the weak party, and they often experience injustice and arbitrariness when dealing with the interests of the company. However, the employment agreement covers all the rights and obligations of the parties.

Business owners or entrepreneurs have the right to have labor or worker obligations. The main obligation of workers or employees is to complete and complete all work according to the instructions that have been decided by the employer or entrepreneur. The element of working under the leadership of another party, which causes many problems in practice because of many doubtful things, such as the head of the representative office, traveling traders, and other merchant agents. If employees run a representative office at their own expense and responsibility, there is no employment relationship with the head of the representative office. The obligations that must be fulfilled by the Labor or Worker Party in the Employment Agreement are as follows, namely:<sup>41</sup>Performing work, complying with the rules and instructions of the employer or employer, and paying compensation and fines if necessary. As stipulated in Law Number 13 of 2003 concerning Manpower, the company must fulfill the rights of its workers after the workers have fulfilled their obligations to the company.

When a company experiences problems, especially those related to finances, conditions of termination of employment, or unilateral layoffs, often occur. Workers are laid off one by one for various reasons and company conditions. This is done to ensure that the company's condition is maintained. However, the most difficult thing to avoid termination of employment is when the company is declared bankrupt by the commercial court. If a company is declared bankrupt by the Commercial Court, the curator will be responsible for managing all of the company's assets and assets. The curator will also be responsible for dividing and settling debts if the bankrupt debtor's assets are given to creditors.

Due to this unequal legal relationship, legal protection is needed for workers against situations where employers act arbitrarily in managing their businesses. The purpose of this legal protection is to achieve balance and equality in the relationship between employers and workers. In terms of worker protection, there are three types of protection: economic protection, occupational safety, and occupational health. It is feared that arbitrary actions by employers against workers will increase if there is no such protection. The highly sensitive and vulnerable industrial legal relationship often causes conflict between these two subordinates. Although many provisions of laws and regulations provide protection, many employers violate the normative rights of workers for various reasons and backgrounds. The problem of wages for workers whose companies or business owners are declared bankrupt is a problem that often occurs in the field.

The state also makes policies to protect workers in cases of labor rights violations. The state will provide legal remedies for workers to claim their rights. Such as state administrative, criminal, and civil legal channels. The state provides labor inspectors in legal remedies through state administrative channels. These inspectors are responsible for ensuring that industrial relations between workers and employers are in accordance with the law.

If a violation occurs, the labor inspector is responsible for providing and following up on administrative sanctions in the form of a warning letter to termination of service or recommendations for termination of the implementation of the permit or company. On the other hand, in cases related to the criminal path, the state provides Civil Servant Investigators (PPNS) from the Indonesian National Police. This criminal path or criminal law stipulates criminal sanctions for violations of workers' rights in accordance with laws and regulations. Examples include payment of wages below the minimum, failure to provide social security to workers, failure to pay wages as agreed, and systematic violations of labor unions, which can result in imprisonment or fines.

Company employees or workers in this case are the parties who become creditors in the bankruptcy process and suspension of debt payment obligations (PKPU). In the Bankruptcy Law, there are no regulations or provisions that explicitly and specifically regulate employees as creditors or the types of creditors. Based on the provisions of Article 39 Paragraph 2 of the Bankruptcy Law, since the date the bankruptcy declaration decision is pronounced and announced, the wages of workers owed before or after the bankruptcy declaration decision is pronounced are debts of the bankrupt estate and are included in the bankruptcy estate. Based on Article 1149 of the Civil Code, it is explained that wages of workers are one of the privileges that must be paid off and must be paid first.

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<sup>39</sup>Such circumstances and conditions trigger the occurrence of losses for the Company's employees or workers. The resolution of these problems through methods or solutions in settling their debts, one of which can be done through a bankruptcy institution. The definition of bankruptcy is formulated and explained implicitly through the regulation in Article 1 Paragraph 1 of Law of the Republic of Indonesia No. 37 of 2004 "general seizure of all assets (including assets) of the Bankrupt Debtor whose management and settlement are carried out through a Curator under the monitoring and control of the Supervisory Judge."

<sup>40</sup>Mhadi Shubhan, *Bankruptcy Law: Principles, Norms & Practices in the Courts*, Jakarta: Kencana Prenada Media Group, 2008, p. 34

<sup>41</sup>H.R.Abdussalam, *Employment Law, Labor Law*, Bogor: Restu Agung, 2008, p.61

Employers have a legal obligation to protect and fulfill the rights of their employees. They are not only responsible for paying their employees, but also have an obligation to fulfill other rights that employees have. Because the relationship between workers and employers is formed by an employment agreement, where the parties have reached an agreement on the rights and obligations and conditions related to work. The agreement lays the foundation for reciprocal practices. Bankruptcy does not always mean that the company is dissolved or liquidated; employers must strive to improve the state of their company to fulfill the rights of unpaid workers and vice versa.

Based on the provisions of the regulation in Article 1367 of the Civil Code, it provides a broad definition of the employer's responsibility towards employees or workers. When a loss occurs, whether caused by the employer or its employees, the employer still has the responsibility to fulfill the employee's rights. Employees have given their energy, time and thoughts to gain profit for the company, carry out their duties and when the company suffers a loss, employees will still have the rights as workers/laborers and be protected in fulfilling their rights.

Employees are also entitled to wages owed before and after the bankruptcy decision, according to Article 39 Paragraph 2 of Bankruptcy. Wages owed before and after the bankruptcy decision is announced are considered debts of the bankrupt estate. In addition, employees are entitled to severance pay, wages if unpaid, compensation for length of service and work period, and replacement of other rights as regulated.

Referring to the provisions, it is then strengthened by other provisions, namely the Provisions of Article 95 Paragraph 4 of the Manpower Law which states that when a company is declared and decided bankrupt, then the wages of workers and other rights of workers/laborers are debts that are prioritized, prioritized for payment. Also emphasized by the provisions of Article 27 of Government Regulation Number 8 of 1981, when an employer is declared and decided bankrupt, then the wages of workers are debts that are prioritized for payment in accordance with applicable laws and regulations on bankruptcy.

The position of employees in industrial relations is a weaker party because the position of employees with employers is a relationship between superiors and subordinates in the company structure. Based on these reasons and conditions, legal protection is greatly needed by employees in this industrial relationship. Bankruptcy is a legal institution that has and carries out important functions, namely as a realization and manifestation of the existence of two important articles in the Civil Code concerning the Debtor's responsibility for the obligations made, namely Articles 1131 and 1132 of the Civil Code, the regulations of which are as follows:

**Article 1131 of the Civil Code** *"All the debtor's property, both movable and/or immovable, and those that already exist or will exist in the future, become a liability for all his individual obligations."*

**Article 1132 of the Civil Code** *"The property becomes a joint guarantee for all the people who owe it; The income from the sale of the object is subdivided according to the balance. The composition of the size and/or size of each receivable, unless there is a valid reason for priority among the receivables."*

Bankrupt debtors can apply for rehabilitation after the bankrupt estate is able to pay all debts to its creditors. The rehabilitation process is the restoration of the status of the bankrupt debtor to become a full legal subject of his assets. A bankrupt person must have paid all debts to his creditors before being able to apply for rehabilitation. Creditors must provide proof that you have paid off the debt. In addition, the rehabilitation application must also be announced in two newspapers every day as determined by the commercial court. The problem of not fulfilling obligations in bankrupt debts is a private matter between the parties who agree to the debt agreement, but if this problem is related to bankruptcy and delay in debt payments, the condition of the problem becomes a public problem, this is because the bankruptcy decision concerns the interests of other parties other than those who entered into the cooperation agreement.

It is not a matter of creditor status that workers and laborers are worried about getting their rights. The biggest fear is the long time it will take for workers and laborers to get their rights in full, as well as the possibility that the bankrupt estate's assets will be insufficient and not enough to be distributed to creditors. This condition makes me sad. This fear has an impact on the workers' struggle for their rights immediately. Although workers' rights in bankrupt companies should not be a big problem if implementing Law of the Republic of Indonesia Number 13 of 2003 Article 95 Paragraph 4 is implemented into bankruptcy cases in determining workers/laborers as one of the entitled bankrupt creditors.

If the employer fails to pay the rights of workers or laborers, it can be considered as the employer's debt to the worker, and the employer must pay and settle the debt to the entitled worker. In Indonesian bankruptcy law, debts that can be used as a basis for filing a bankruptcy petition are any performance obligations that must be paid by the debtor that are issued based on a cooperation agreement made by the debtor with its creditors, or the performance comes from a law that stipulates that the debtor must pay or fulfill the performance if the debtor does not pay or fulfill the performance to its creditors.<sup>42</sup>

Referring to the Decision of the Constitutional Court of the Republic of Indonesia Number: 67/PUU-XI/2013, the Constitutional Court of the Republic of Indonesia expressed its opinion that workers' wages or laborers' wages

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<sup>42</sup> Unair News, Filing for Bankruptcy is the Right of Workers Who Are Not Paid by Employers, <https://unair.ac.id/pengajuan-kepailitan-hak-pekerja-yang-tidak-dibayar-pengusaha> accessed on May 27, 2024



are the things that must be prioritized when a company experiences bankruptcy. In terms of socio-economics, the position of employers and workers is not equal because the position of employers is stronger when compared to workers/laborers, so the law must provide protection guarantees to fulfill the rights of workers/laborers when the company goes bankrupt (unstable economy). The Constitutional Court of the Republic of Indonesia assessed and stated that there are differences between employers and workers related to property and humans. In accordance with Article 28 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the fulfillment and protection of workers' wages is very important in cases of company bankruptcy. Based on the explanation above, the Constitutional Court of the Republic of Indonesia has determined that Article 95 Paragraph 4 of Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower does not have binding legal force, because it is interpreted that payment of wages owed to workers or laborers takes priority over all types of creditors, including creditor bills. In addition, civil legal efforts can be taken by workers or laborers, if the decision of the business owner due to efficiency cannot be justified. In the sense that initial steps have not been taken to avoid efficiency in the number of workers. In civil law, workers can file a lawsuit for damages with the District Court based on the provisions of Article 1365 of the Civil Code (KUHP), namely: "Every unlawful act that causes harm to another person, requires the person whose fault causes the loss, to compensate for the loss."

In addition, settlement can also be achieved through administrative legal efforts. In this case, bipartite efforts are made between workers and employers as parties bound by the employment relationship to reach a settlement. If the negotiations reach an agreement, the results of the agreement can ask for advice and advice from the Manpower Office in their area. To resolve industrial relations disputes between business managers and workers, employers and workers, labor unions, or labor unions are required to hold deliberations to reach a consensus to resolve legal problems. If not achieved, employers and workers, labor unions, or labor unions use industrial relations dispute resolution procedures regulated and stipulated by law, namely:

### **Bipartite Dispute Settlement**

Private companies and state-owned enterprises can use the principle of resolving industrial labor disputes through bipartite. However, the parties to this dispute can be workers or laborers individually or trade union organizations or labor unions with employers. Industrial relations disputes can also occur between trade unions or labor unions with other trade unions or labor unions in one company. Initially, industrial relations disputes were resolved through mutual deliberation for consensus by the disputing parties (bipartite).<sup>43</sup>

### **Dispute Resolution Through Mediation**

If negotiations between the disputing parties (bipartite) are unsuccessful, one or both parties can register their dispute with the local agency responsible for labor affairs. This includes disputes about labor interests, disputes about termination of employment, or disputes between trade unions and labor unions.<sup>44</sup>

### **Settlement of disputes through Conciliation and Arbitration**

If there is a dispute regarding employment rights that cannot be resolved through mediation, both parties can request a settlement through conciliation or conciliation stage. The conciliation stage is carried out by a conciliator registered at the office responsible for employment in the local district or city, and the settlement is carried out by the conciliator after the parties have resolved the dispute.<sup>45</sup> If there is no agreement between the two parties to resolve this dispute through conciliation, disputes of interest, disputes over termination of employment, or disputes between trade unions can be resolved through arbitration. Based on the agreement of both parties on which arbitration path will be chosen.

### **Dispute Settlement through the Industrial Relations Court**

On the dispute path stage above, if both parties do not reach an agreement to resolve their dispute through consolidation and arbitration, then mediation must be carried out before the dispute is filed and registered in the industrial relations court. The purpose of this mediation is to prevent industrial relations disputes from piling up in court. In this case, in order to ensure a quick, appropriate, fair, and inexpensive settlement. The settlement of industrial relations disputes through the industrial relations court which is in the general court environment is limited in its process and stages by not opening up the opportunity to file an appeal to the high court, district court decisions concerning disputes over rights and disputes over termination of employment can be directly appealed to the Supreme Court. Meanwhile, industrial relations decisions in the district court concerning disputes over interests and disputes between trade unions or labor unions in one company are first and final level decisions that cannot be appealed to the Supreme Court.<sup>13</sup>

Based on the dispute efforts above, along with the issue of wages and all payments arising from the employment relationship, labor rights must be protected as long as workers do not take actions that are detrimental to their employers. Wages and all payments originating from the employment relationship cannot be removed due to expiration or overdue.

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<sup>43</sup>Adrian Sutedi, Labor Law, Jakarta: Sinar Grafika, 2009, p. 110

<sup>44</sup>*Ibid*, p. 112

<sup>45</sup>HR Abdussalam, Employment Law (Labor Law), Jakarta: Restu Agung, 2008, p. 161

The Constitutional Court of the Republic of Indonesia stated that wages and all payments originating from the employment relationship must be comparable to what is given to workers as a result of their work. As long as the company goes bankrupt, the salary and all payments of its rights are owned by the individual.<sup>46</sup> Referring to the application numbered 100/PUU/X/2012 which in general outline explains that if he feels that his constitutional rights are being obstructed to make demands for wages and all payments of his rights arising from the employment relationship. His claim is considered expired because the claim has exceeded the period of 2 (two) years since the rights arose, namely after he was declared to have been terminated from his employment in the company.

The Constitutional Court of the Republic of Indonesia emphasized in its legal considerations that the conditions of employment relations are not only civil relations because the relationship involves greater interests—thousands of workers, namely the interests of the public, society, and the state. The Constitutional Court of the Republic of Indonesia stated that the expiration provisions relate to the use of the right to take legal action after losing the right. According to the Constitutional Court, the Applicant's right to demand wages for workers or laborers and all payments arising from the employment relationship is a right that arises because the Applicant has made sacrifices and spent time and energy to complete the work. Therefore, this right is related to the Applicant as the owner of the rights. It is the same as the right to ownership of goods. As long as the owner of the property rights does not relinquish his rights, the property rights are maintained as the rights to work that has been carried out. The Constitutional Court of the Republic of Indonesia decided that Article 96 of the Republic of Indonesia Manpower Law does not have binding legal force because it is contrary to Article 28 D Paragraph 1 and Paragraph 2 of the 1945 Constitution of the Republic of Indonesia.

The Indonesian legal system, both civil and criminal, often limits the right to sue due to expiration. It is very important to set an expiration date to provide legal security for the party claiming their rights and the party to be sued to fulfill their obligations. The following conditions can eliminate or eliminate the agreement between the creditor and the bankrupt debtor:

- a) due to payment;
- b) because there is an offer of cash payment, followed by storage or deposit;
- c) due to renewal of said debt;
- d) due to debt encounters or compensation given;
- e) because there was a mixture of debts between them;
- f) due to debt relief;
- g) due to the destruction of the goods owed;
- h) due to cancellation or annulment;

In this case, the researcher argues that if it is associated with the above, as long as the act in Article 1381 of the Civil Code above is not carried out or does not occur, the obligation is not extinguished. In other words, the right to collect will remain, even though the bankruptcy process is complete and creditors who are not included in the distribution list have not yet been paid their debts. So the researcher argues that workers can file for the fulfillment of their rights to the district court through the fulfillment of the performance of the work agreement. Payment of wages owed to workers or laborers is a priority. Efforts that can be taken, if the worker's debt is not included in the list of fixed receivables, namely by submitting a Civil application for the payment of debts that occur between workers and employers, or through Criminal for unlawful acts committed by the curator.

#### IV. CONCLUSIONS

Based on the discussion described above, the researcher can draw the following conclusions:

1. The Responsibility of a Limited Liability Company That Has Been Declared Bankrupt for Workers' Wages is transferred to the Curator who is responsible for managing the assets of the bankrupt company. The Curator is responsible for workers' wages and all payments arising from the employment relationship must be prioritized, because in addition to the workers having carried out their obligations to work both in terms of time, energy and mind.
2. Legal efforts that can be taken by workers to obtain wage rights from limited liability companies that have been declared bankrupt are through non-litigation or litigation upon submission of a civil application for payment of debts that occur between workers and employers, or through criminal law for unlawful acts committed by the curator, if the curator does not respect the special rights inherent in workers.

#### SUGGESTION

Based on the description discussed by the researcher above, the researcher can provide suggestions regarding the provision of guaranteed protection for workers' wages in Indonesia:

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<sup>46</sup>Official Website of the Constitutional Court of the Republic of Indonesia, MK: Wages and all Rights of Workers Who Are Laid Off Must Not Be Lost Due to Expiration, <https://www.mkri.id/index.php?page=web.Berita&id=8944&menu=2> accessed on June 05, 2024, 10.00 WIB.

## 1. Government

The current condition, which is identical to digitalization, the Government should have a unified administrative system that can monitor the payment of workers' wages, through tracking of wage tax payments reported by the company. If it turns out that it is not renewed or updated, the employer will receive a warning letter. And there is no expiration limit for verifying the matching of workers' wage payment debt bills. The matching status must be confirmed to workers who are registered as workers through the BPJS Ketenagakerjaan account reported by their Limited Liability Company.

## 2. Entrepreneurs, Workers and Society

Allocating risk mitigation costs, or reserve funds in the operations of each company, so that wage cases do not become an issue when the bankruptcy process is carried out. When the company is in the bankruptcy process, workers must actively carry out periodic checks at the commercial court that will decide the case. If the worker's wages are delayed, it can be communicated to the manager as soon as possible, if there is no good faith, a report can be made to the local labor office.

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