

Research Article

Legal Synchronization of Bankruptcy Asset Distribution: Prioritizing Workers Over State Taxes (An Analysis of the Constitutional Court Decision No. 67/PUU-XI/2013 Regarding the Position of Workers and State Taxes in Bankruptcy Asset Distribution)

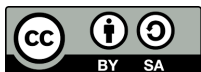
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Abstract: This study examines the legal conflict between workers' wage claims and state tax obligations in bankruptcy proceedings under Indonesian law, focusing on the constitutional imperative to prioritize workers' rights. The Introduction contextualizes the tension between Article 95(4) of the Labor Law, which mandates wage prioritization, and tax legislation granting precedence to state claims, highlighting the landmark Constitutional Court Decision No. 67/PUU-XI/2013 that affirmed workers' constitutional rights to timely wages. Employing a Method of normative legal research, the analysis integrates statutory and case approaches, reviewing laws on bankruptcy (UU No. 37/2004), labor rights, and taxation, alongside judicial decisions and international frameworks like ILO Conventions No. 100 and 111. Results reveal that while the Constitutional Court's decision established workers' absolute priority over tax claims, regulatory disharmony persists due to conflicting provisions in the Tax Law (UU KUP) and the 2020 Job Creation Law (UU Cipta Kerja), which ambiguously subordinates tax claims only to secured creditors. Discussion underscores the necessity for legal synchronization to align labor and tax regulations, ensuring compliance with Gustav Radbruch's principles of legal certainty and Hans Kelsen's normative hierarchy. The study advocates legislative reforms to codify workers' priority in bankruptcy, drawing parallels with Malaysia's Employment Act 1955 and France's AGS system, which institutionalize wage protection. By addressing regulatory contradictions, Indonesia can harmonize constitutional mandates with fiscal policies, balancing social justice and economic stability.

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Keywords: Bankruptcy Asset Distribution; Legal Synchronization; Workers' Wage Priority

1. Introduction

Bankruptcy is the administration and liquidation of a debtor's assets by a curator under the supervision of a judge, whereby a bankruptcy ruling issued upon the request of either the debtor or the creditor serves to prevent seizure, individual execution, or plundering of the debtor's assets [1]. A bankruptcy ruling enables creditors to obtain fair settlement of their claims in accordance with Law No. 37 of 2004 concerning Bankruptcy and Suspension of

Debt Payment Obligations (PKPU), with emphasis on the principles of justice and legal certainty. Bankruptcy aims to balance the interests of creditors, debtors, and the public through effective, transparent, prompt, and fair debt resolution. For the sake of justice, legal certainty must also be upheld, as justice cannot be achieved without legal certainty. The distribution of the bankrupt's assets is regulated based on three principles: structured pro rata, paritas creditorium, and pari passu pro rata parte, to ensure a fair distribution to all creditors [2].

The principle of structured prorata divides creditors into three categories: separatist creditors, who receive priority due to their property rights (such as warehouse receipts, fiduciary security, mortgage rights, pledges, and hypothecs) and may execute their claims as if there were no bankruptcy (regulated under Article 1134 of the Indonesian Civil Code and Article 138 of the Bankruptcy Law); preferential creditors, who possess priority rights over other creditors, such as workers' wages and tax debts (regulated under Article 95(4) of the Labor Law, Article 19 of the State-Owned Enterprises Law, and Article 21 of the General Taxation Law); and concurrent creditors. All of the debtor's assets, both movable and immovable, serve as security for the settlement of obligations to creditors in accordance with the principle of paritas creditorium [3]. Concurrent creditors are ranked last and are entitled to a proportional share of the bankrupt debtor's assets corresponding to the amount of their claim, in accordance with the principle of pari passu pro rata parte [4].

A legal issue arises in determining the priority between preferred creditors, specifically tax debts and workers'/laborers' wages. Initially, tax debts were given precedence due to their special status as state obligations, even taking priority over secured creditors (separatist creditors) under Article 21(3) of the General Tax Provisions and Procedures Law (UU KUP) and Article 19(6) of the Law on State Revenue and Expenditure (UU PPSP). However, Constitutional Court Decision No. 67/PUU-XI/2013 stipulates that the payment of outstanding workers'/laborers' wages must take precedence over all types of creditors, including secured creditors and state claims, while other workers' rights are prioritized above all claims except those of secured creditors. The Constitutional Court reasoned that workers' wages constitute a vital right for their livelihood and are constitutionally guaranteed, and therefore must be prioritized.

Subsequently, the revision of Article 95(4) of the Manpower Law through Article 81(25) of the Job Creation Law (UU Ciptaker) now affirms that outstanding workers'/laborers' wages are to be paid before all other creditors except those holding property security rights (secured creditors). However, to date, there has been no synchronization between these provisions and those in the General Tax Provisions and Procedures Law (UU KUP) or the Law on State Revenue and Expenditure (UU PPSP), resulting in ongoing regulatory disharmony regarding the position of preferred creditors. Regulatory synchronization is essential to ensure legal certainty and fairness in the settlement of debts in bankruptcy proceedings [5].

Legal synchronization is intended to remove the potential for conflict among laws and regulations, thereby establishing legal certainty and enabling the enforcement of regulations within a sector to be carried out more effectively and efficiently [6]. The systematic and complementary development of legal substance requires the synchronization of regulations concerning the distribution of bankrupt assets in order to achieve legal certainty. According

to Jan Michiel Otto, legal certainty can only be realized if regulations are established by competent authorities in a clear, consistent, and accessible manner. The synchronization of the legal system is necessary so that legal certainty attains a high level of predictability, enabling all parties to understand the consequences and their property rights [7]. Harmonious regulation is absolutely necessary to create legal certainty, because the disharmony of written legal norms leads to multiple interpretations, overlaps, contradictions, and hinders the enforcement of the law. Legal certainty requires rules that are clear and do not give rise to any doubt in their application [8].

In line with this, this research will address two issues: first, how do judges consider the interpretation of the distribution of bankruptcy assets to labor as preferred creditors in Constitutional Court Decision No. 67/PUU-XI/2013

2. Literature Review

Legal Certainty Theory

Legal certainty is fundamental to the existence of law, as according to Hans Kelsen, legal norms arise from deliberative human actions that crystallize into general regulations serving as guidelines for legal subjects' interactions, and their implementation creates certainty [9]. In line with this view, Van Apeldoorn asserts that legal certainty is a situation or action specifically determined by law to ensure the application of law in protecting the rights of legal subjects from arbitrary actions. Legal certainty also prevents the disruption or distortion of those rights due to fluctuating application of the law [10].

Theory of Legal Synchronization

Legal synchronization refers to the harmonization of a legal system based on the meaning of "synchronization" in the Indonesian Dictionary (KBBI), which is "occurring simultaneously or in alignment." According to Endang Sumiarni, it encompasses both vertical adjustment (the hierarchy of regulations) and horizontal adjustment (regulations at the same level) to prevent legal conflicts [5]. Peter Mahmud Marzuki states that, in the process of legal synchronization, the principle of *lex superior derogat legi inferiori* applies: a lower-hierarchy regulation must be set aside if it conflicts with a regulation of a higher hierarchy [11].

Research Method

The research method used in this thesis is the normative juridical method, which positions law as a system of norms within legislation, focusing on systematic analysis, the correlation among regulations, and the prediction of future legal development. Consequently, the study examines the prevailing legal norms rather than their empirical application, aiming to construct juridical arguments regarding legal issues such as gaps, ambiguities, and disharmony, particularly concerning the preferential creditors of workers' wage claims and tax debt. The approach employed is the statute approach (legislative approach) and case law approach, analyzing court decisions especially Constitutional Court Decision No. 67/PUU-XI/2013 as well as examining the mechanisms for applying legislative principles and the characteristics of relevant legal products. The types and sources of legal materials used include primary legal materials (legislation, court decisions), secondary

legal materials (books, journals, legal doctrines), and tertiary legal materials (encyclopedias, legal dictionaries), all of which are collected through literature study. Legal material analysis is conducted descriptively and analytically through the stages of identification, classification, data processing, and problem analysis, with conclusions drawn deductively, so that comprehensive solutions can be found to the legal disharmony in the distribution of bankruptcy assets among preferential creditors [12].

3. Result and Discussion

Judicial Reasoning Interpretation in the Distribution of Bankrupt Estate to Workers as Preferential Creditors in the Constitutional Court Decision Number 67/PUU-XI/2013

Workers are the most important epicenter in an economic system. According to Adam Smith in his idea of “The Wealth of Nations,” labor is the primary source of a nation’s wealth. Therefore, without the presence of labor, it would be impossible for a country to effectively and efficiently operate its economic machinery [13]. As an essential component, the state certainly has an obligation to comprehensively fulfill the basic rights of every worker, from the recruitment process to the payment of obligations or wages. The comprehensive fulfillment of workers’ basic rights is an indicator of the realization of just welfare within a country. This, of course, serves as a manifestation of the fulfillment of the objectives of the state as explained in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely, to create public welfare.

The 1945 Constitution, as the fundamental norm of the Indonesian nation specifically in Article 27 paragraph (2) and Article 28 paragraph (2) essentially emphasizes that every person in the nation has the right to obtain employment in order to create a decent life, and such work must provide fairness in the process of remuneration. The commitment outlined in the constitution must be the responsibility of the state, so that workers’ rights are fulfilled comprehensively and there should be no violations of workers’ rights, either in the legal realm or in its implementation. This is especially relevant today, as there are many problems faced by workers in Indonesia.

The fulfillment of workers’ rights is a very complex aspect to examine. One of the problems that often arises in relation to labor is the issue of wages, both during the period of employment and when companies face bankruptcy or insolvency. This issue has become a shadow for more than 140 million workers in Indonesia [14]. Issues surrounding the payment of workers’ wages are highly diverse, ranging from low minimum wage standards and inequities in wage-setting systems to delays in wage payments. The root of these problems lies in the weakness of labor protection regulations in Indonesia. In fact, the fulfillment of basic rights such as wages is a state responsibility that should be strictly regulated in various laws and regulations. In this regard, wage-related aspects are not only governed by the Labor Law, but also require cross-sectoral harmonization within the national legal system.

The lack of strong legal protection for workers has resulted in the derogation of many workers’ rights. One of these is the failure to fulfill the right to wages when a company is declared bankrupt. Article 95 paragraph (4) of the Labor Law stipulates that workers are, in principle, prioritized creditors in the distribution of bankrupt estates. However, in practice, workers find it very difficult to realize this right when compared to the state’s basic rights,

such as tax collection or fiduciary security rights. As a result, workers often do not receive their rights in full, even though they have fulfilled their obligations in industrial relations. Therefore, a legal breakthrough is needed to provide legal certainty for workers not only as ordinary preferred creditors, but also as absolute preferred creditors, as explained in Constitutional Court Decision No. 67/PUU-XI/2013.

Constitutional Court Decision No. 67/PUU-XI/2013 serves as a legal bridge that facilitates workers in claiming their basic rights in wage payment, especially regarding the distribution of bankrupt assets. This decision strengthens the legal status of workers by affirming that wage payments must be the foremost creditor claim, followed by state obligations and claims by other secured creditors. In this way, the decision makes the distribution of bankrupt estates more focused on protecting workers' rights in Indonesia [15]. Protection for labor mandated by Constitutional Court Decision No. 67/PUU-XI/2013 constitutes a tangible manifestation of the implementation of legal objectives, specifically the provision of legal certainty. This concept is in line with Gustav Radbruch's legal theory of *Rechtssicherheit*, which emphasizes that law must be clear, consistent, and predictable in order to be applied properly and without discrimination. The legal purpose formula he adheres to states:

“Positive law must be followed even if its content is unjust, except when the injustice reaches such an intolerable level that the law can no longer be called law.” This idea affirms that legal certainty is one of the highest aspects in formulating fair policies and preventing the abuse of power, since predictable law enables consistent application.

The value of legal certainty regarding the distribution of bankruptcy assets for labor in Indonesia has not yet been realized. This is due to the fact that Article 95 paragraph (4) of the Manpower Law is often subject to multiple interpretations, resulting in inconsistent policies and the neglect of workers' wage rights in the bankruptcy asset distribution process in Indonesia. Constitutional Court Decision No. 67/PUU-XI/2013 reflects the constitutional judges' commitment to realizing the value of legal certainty as articulated by Gustav Radbruch, aiming to prevent dual interpretations of Article 95 paragraph (4) of the Manpower Law. Therefore, the jurisprudence of this decision should serve as a legal landmark that enhances the principle of legal certainty in the implementation of bankruptcy asset distribution for labor as preferred priority creditors.

The Constitutional Court granted the judicial review request of Article 95 paragraph (4) of the Manpower Law in Decision No. 67/PUU-XI/2013 based on several fundamental reasons. First, there is discrimination that places workers in an unequal position compared to other separate creditors. This is because separate creditors have bound themselves to Guarantee Law such as pawn, mortgage, fiduciary, and others as a separate civil right. Consequently, workers' wage rights in bankruptcy asset distribution are marginalized. However, under industrial contract law, the employment relationship between workers and employers is binding as long as the rights and obligations of both parties are explicitly stated in the employment agreement. Therefore, there must be no erosion of workers' wage rights in Indonesia.

The legal force of employment agreements in industrial relations, whether in the form of fixed-term employment agreements (PKWT) or indefinite-term employment agreements (PKWTT), is also governed by the civil law principle of *pacta sunt servanda*, meaning that

every agreement must be fulfilled by the parties. This is based on the fact that both types of agreements have fulfilled the validity requirements of agreements as regulated in Article 1320 of the Civil Code. Therefore, if there is a violation of the employment agreement, according to Articles 151–156A of the Manpower Law, the employer is obliged to pay severance pay, service appreciation money, and compensation to the worker.

According to the Bankruptcy and Suspension of Debt Payment Obligation Law (UUKPKPU), Articles 55 and 56 essentially state that bankruptcy assets must be distributed prioritizing the public interest. Article 2 of the Manpower Law emphasizes that labor is the most important aspect of national development based on the values of justice, equality, and togetherness. This article envisions employment as an integral part of the public interest, thus constituting a unified aspect of the public interest. This interpretation is reinforced by Article 38 paragraph (1) of the Human Rights Law, which affirms that workers have the right to protection in every condition of employment, as part of human rights that hold public interest value. Efforts to obtain bankruptcy assets under Articles 104 to 105 of the Bankruptcy and Suspension of Debt Payment Obligation Law explain that workers must ensure that their workplace registers proof of claims so that wages can be paid from the bankruptcy assets. Therefore, it is important from the outset for workers to discuss contract clauses to ensure their rights are protected in the future.

Supreme Court Regulation (Perma) No. 1 of 2023 concerning Procedures for Managing and Settling Bankruptcy Assets stipulates the curator's obligation to conduct comprehensive verification of parties listed in the claim register, considering and based on the Manpower Law and Constitutional Court decisions. The curator may include workers in the claim register first, provided certain conditions are met: (1) wage payment has matured, (2) wage rights are explicitly stated in the employment/industrial agreement, (3) registration is conducted by the curator, and (4) there is legally valid evidence such as pay slips, employment agreements, termination letters, attendance records, and other supporting documents. Thus, when these conditions are met, *mutatis mutandis*, workers are entitled to receive their rights from the bankruptcy assets.

The second reason the Constitutional Court granted the request in Decision No. 67/PUU-XI/2013 is the urgent need to interpret the phrase “prioritized” in Article 95 paragraph (4) of the Manpower Law. This interpretation is necessary to provide legal certainty for workers to avoid legal conflicts with Article 28D paragraph (2) of the 1945 Constitution. Legal certainty in the bankruptcy asset distribution process is crucial to prevent prolonged disputes and legal problems. Gustav Radbruch emphasizes that legal certainty plays a pivotal role because it guarantees consistency and stability in the application of law [16]. Therefore, legal certainty regarding the distribution of bankruptcy assets, particularly for workers, will result in the establishment of objective and non-discriminatory laws. As stated by Imam Soepomo, employment and industrial relations represent a specific aspect of civil law, since they concern humanitarian aspects and the continuity of workers' living needs [17].

Third, the Constitutional Court granted the decision on the grounds that the curator's practice was inconsistent with the spirit of labor protection. Prior to the Constitutional Court's ruling, in the implementation stage, curators administering the distribution of bankruptcy assets tended to prioritize and give precedence to secured creditors due to the

status of collateral, as explained above. This approach inevitably resulted in legal conflicts between the curator and the workforce. One notable example is the dispute between the curator of PT. Henrison Iriana and its employees. According to the Makassar Commercial Court Decision No. 02/Pdt.Sus.Pailit/2014/PN Mks, dated November 13, 2014, PT. Henrison Iriana was declared bankrupt, and the process of liquidating the company's assets was entirely entrusted to the curator's team.

However, in this case, the curator failed to prioritize the settlement of workers' rights as a principal aspect in the distribution of bankruptcy assets. One employee, Adi Sugiarto, filed a lawsuit with the Manokwari Industrial Relations Court under case No. 03/PDT-SUS.PHI/2015/PN. In its ruling, the judge affirmed that there had been an abuse of authority and unlawful termination of employment at PT. Henrison Iriana, and ordered the curator to fully pay the workers' wages in accordance with the provisions of the Labor Law. This case underscores the necessity for concrete legal certainty in the distribution of bankruptcy assets.

Although the Labor Law explicitly stipulates that workers' rights are to be prioritized, in practice, there is often an overlap between the Labor Law and the Bankruptcy and Suspension of Debt Payment Obligations Law, which has led to inconsistencies. The issuance of Constitutional Court Decision No. 67/PUU-XI/2013 is therefore expected to serve as a "green open space" for the protection of workers' rights.

The legal protection established by Constitutional Court Decision No. 67/PUU-XI/2013 encourages the harmonization of legislation, particularly regarding the protection of workers' rights. Prior to this decision, disharmony frequently arose due to differing legal interpretations by curators, which created opportunities for the infringement of workers' fundamental rights, as previously described. Consequently, the emergence of this Constitutional Court decision constitutes a jurisprudence of the Constitutional Judge, aimed at establishing absolute priority rights for workers in the process of distributing bankruptcy assets [18]. According to Sudikno Mertokusumo, an absolute priority right is a right inherent to a person as a legal subject, whereby any attempt to infringe upon or violate that right can be legally pursued [19]. Therefore, through this decision, the Constitutional Court has implicitly recognized wages as a quasi-absolute right.



Figure 1. Regulatory Scheme for Bankruptcy Settlement

This Constitutional Court decision is *erga omnes* in nature, meaning that its enforcement is not limited solely to the petitioner but also applies to all workers throughout various regions of the country. However, Article 95 paragraph (4) of the Labor Law remains unchanged and has not been revised in the Job Creation Law (Law No. 6 of 2023, which was originally Government Regulation in Lieu of Law No. 2 of 2022). Consequently, although the Constitutional Court has recognized workers' wages as an absolute priority right in the process of distributing bankrupt assets, there has been no significant legislative commitment to provide absolute legal protection for workers' wage rights. This, in effect, constitutes a form of legislative resistance to the Constitutional Court's decision, which undeniably undermines constitutional supremacy and perpetuates legal uncertainty in Indonesia.

The most significant impact of this Constitutional Court decision is the absence of implementing regulations that detail the mechanism for distributing bankrupt assets based on workers' absolute priority rights. This is clearly evident in Supreme Court Regulation No. 1 of 2023 concerning Procedures for Handling Bankruptcy and Suspension of Debt Payment Obligation (PKPU) Cases, which still places secured creditors above workers' rights. Workers' status in the distribution of bankrupt assets is still classified as preferred creditors rather than creditors with absolute priority rights. One relevant provision in the Bankruptcy and PKPU Law that grants a higher position to secured creditors over workers' wage claims is Article 55, which stipulates that banks, as secured creditors, can execute their collateral independently, even in cases of corporate bankruptcy. This has resulted in the violation of workers' rights in the distribution of bankrupt assets. Therefore, there is a need for harmonization between the Bankruptcy and PKPU Law, the Labor Law, and the regulations of the Financial Services Authority, in accordance with Constitutional Court Decision No. 67/PUU-XI/2013.

Efforts to synchronize and harmonize statutory regulations both at the law and implementing regulation levels with Constitutional Court Decision No. 67/PUU-XI/2013 are urgently required to strengthen the protection of workers' wage rights in the distribution of bankrupt assets. For comparison, Malaysia, through its Employment Act 1955 and Bankruptcy Act 1967, explicitly stipulates that workers' wages fall under the category of preferential debt, which is given priority in the distribution of bankrupt assets. These provisions reflect Malaysia's commitment to upholding workers' rights, especially regarding wages, in cases of bankruptcy.

Similarly, the United States, a country that highly values workers' rights, also grants wages the status of priority unsecured claims under the US Bankruptcy Code (Chapter 7 & 11) and the Fair Labor Standards Act. These regulations provide legal protection for American workers, allowing them to claim a certain amount of their rights even in cases of company bankruptcy, with their claims being ranked just below court administration costs in the distribution of bankrupt assets. These provisions in the United States are in line with the spirit of Constitutional Court Decision No. 67/PUU-XI/2013, which aims to place workers as absolute priorities in the distribution of bankrupt assets.

The Constitutional Court's interpretation of Article 95 paragraph (4) in Decision No. 67/PUU-XI/2013, as stated in the operative part of the decision, declares:

“Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia Year 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) is contrary to the 1945 Constitution of the Republic of Indonesia insofar as it is not interpreted as: ‘the payment of workers’ owed wages shall be prioritized over all types of creditors, including secured creditors, state claims, auction offices, and public agencies established by the Government, while the payment of other workers’ rights shall be prioritized over all claims, including state claims, auction offices, and public agencies established by the Government, except for claims by secured creditors.’

Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia Year 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) does not have binding legal force insofar as it is not interpreted as above.”

This Constitutional Court decision explicitly aims to ensure and guarantee optimal legal protection for workers’ rights, particularly regarding wages. One of the fundamental principles in wage payment, as emphasized by ILO Convention No. 100 and No. 111, is the principle of non-discrimination. The meaning of non-discrimination here is not limited to race, social status, or religion but also extends to the legal status of workers. In practice, discrimination often occurs between workers, secured creditors, and state tax claims in the distribution of bankrupt assets.

Although the ILO, as an international legal instrument, does not have jurisdiction to impose sanctions on states that violate its provisions, as an international custom, the ILO has a control mechanism that can exert international pressure, especially on states that have ratified its conventions. Indonesia, as a state that has ratified ILO Convention No. 100 and No. 111 through Law No. 21 of 1999, should fulfill its obligation to eliminate all forms of discrimination related to workers’ wages, including in the context of distributing bankrupt assets. If this obligation is truly implemented, it would be impossible for any violation of workers’ rights to occur in Indonesia, including in the distribution of bankrupt assets.

Constitutional Court Decision No. 67/PUU-XI/2013 carries several significant legal implications that must be further understood following its enactment. First, the decision explicitly changes the priority structure in the payment of bankrupt assets, where previously secured creditors with collateral rights such as mortgages were ranked first; now, workers are given absolute priority in the distribution of bankrupt assets. Second, the decision consciously provides constitutional reinforcement of legal protection for workers regarding wage payments in the process of distributing bankrupt assets, as part of the implementation of Article 28D paragraph (2) of the 1945 Constitution. According to Jimly Asshiddiqie, wages are one of the fundamental human rights directly derived from the 1945 Constitution [20].

Therefore, as one of the fundamental human rights, it is important for the state to holistically consider the payment of workers' wages throughout the entire process, from upstream to downstream. Thirdly, with the constitutional enhancement and strengthening of the status of workers through Constitutional Court Decision No. 67/PUU-XI/2013, workers are no longer bound by the principle of *Pari Passu Pro Rata Parte*, since they are no longer classified as ordinary concurrent or preferred creditors, but rather as absolute priority

preferred creditors. In line with Munir Fuady's explanation, fundamentally, workers are not part of the concurrent creditors to whom the *Pari Passu Pro Rata Parte* principle applies, because workers have been granted special rights under the law and reinforced by the Constitutional Court as absolute priority preferred creditors [21].

Thus, the issuance of this Constitutional Court (MK) decision is expected to strengthen the legal framework for the distribution of bankrupt assets to workers in Indonesia. Ultimately, this decision reinforces the status and rights of workers regarding their wages during the process or period of a company's bankruptcy. This means that as long as there is no court decision legally terminating the employment, the company's obligation to pay workers' wages in accordance with the employment contract remains ongoing [22]. The termination of the contract will only occur once the company has been declared bankrupt with a legally binding decision, at which point Article 1447 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*) will come into effect, stipulating that one of the parties in this case, the company is no longer able to fulfill its obligations. Based on this, it is crucial to ensure the dynamic enforcement of the law as a result of the MK's decision, both by workers, the company, and the curator as the party responsible for conducting payments and distributing bankrupt assets in accordance with applicable Indonesian laws and regulations.

Based on the overall explanation presented, it can be concluded that Constitutional Court Decision No. 67/PUU-XI/2013 has had a significant positive impact regarding the strengthening of protection and the constitutional recognition of workers' basic rights in wage matters. This decision not only affirms the position of workers as preferred creditors but also elevates their status to that of preferred creditors with absolute priority, granting them special rights through Constitutional Court jurisprudence in the distribution of bankrupt assets in Indonesia. Therefore, based on this, it is the responsibility of the government and stakeholders to ensure that this decision is implemented effectively without giving rise to future problems that could undermine the basic rights of workers in Indonesia, especially in the process of distributing bankrupt assets.

Distribution of Bankruptcy Estate to Workers as a Priority Right Over State Claims in the Distribution of Bankruptcy Estate for Preferred Creditors in Indonesia

Generally, the provisions regarding the mechanism for distributing assets in bankruptcy in Indonesia are regulated by the Bankruptcy and Suspension of Debt Payment Obligations Law (KPKPU Law). In this context, bankruptcy is defined as a legal condition in which a debtor is no longer able to settle their debts that have matured and are payable. Article 2 of the Bankruptcy and PKPU Law stipulates at least two concrete conditions for a debtor to be declared bankrupt: first, the debtor must have at least two or more active creditors, one of whose debts has matured (due date) and is payable, but the debtor is unable or incapable of making the payment.

There are several legal subjects authorized to file a bankruptcy petition, starting with the debtor themselves, followed by creditors, public prosecutors, Bank Indonesia, and certain financial institutions such as the Financial Services Authority (*Otoritas Jasa Keuangan*). The specific provisions regarding the parties entitled to file a bankruptcy petition are regulated from Article 2 paragraphs (1), (2), (3), (4), and (5) of the KPKPU Law, which also include further technical requirements.

The bankruptcy process essentially aims to provide a pathway for the debtor to fulfill their debt payment obligations to creditors. According to Subekti, the essence of bankruptcy is a form of general attachment of the debtor's assets, intended for the common interest of all creditors. Meanwhile, R. Subekti and R. Tjitrosudibio emphasize that the main objective of bankruptcy is to provide a collective legal settlement mechanism to resolve debt issues based on the principle of justice.

As a collective legal mechanism, the bankruptcy process encompasses all of the debtor's assets. This is confirmed in Articles 1131 and 1132 of the Indonesian Civil Code (KUHPerdata), which state that bankruptcy results in the general or collective security of all assets owned by the debtor. In the context of bankruptcy, Ridwan Khairandy emphasizes that justice is one of the strongest forms of legal protection, ensuring fairness not only for creditors but also for debtors, as the process is conducted fairly and transparently based on court decisions [23]. Therefore, it is essential to ensure the establishment of a healthy legal climate throughout every stage of the bankruptcy process in Indonesia, in order to protect the rights of every legal subject involved.

One of the issues frequently encountered in Indonesian bankruptcy practice relates to the difficulty curators face in determining which creditors are to be prioritized whether they are preferred or concurrent creditors so that they may receive their rights from the bankruptcy estate. A common dispute that curators must address is the determination of which creditor should be given primary priority in the distribution of bankruptcy assets, particularly between state tax authorities and workers. Munir Fuady emphasizes that state tax is an imperative obligation of the debtor, which means that state tax is directly attached to the object of the debt. Consequently, its payment should be prioritized over the rights of other creditors. He further adds that state tax is accorded a higher priority than workers' wages because tax is considered part of the public interest, whereas wages, which are the right of workers, are considered part of private interest.

Conversely, Iman Soetikno argues that the position of workers as creditors in the distribution of bankruptcy assets is crucial. Essentially, wages reflect a causal and reciprocal relationship between workers and employers, and it is only right that workers should receive their wages, which are necessary to support themselves and their families. Therefore, the payment of wages should be the main priority to be settled from the bankruptcy estate [24]. A similar view was expressed by Maria Farida Indrati in the Constitutional Court Decision No. 67/PUU-XI/2013, wherein she asserted that wages arising from employment relationships constitute a fundamental part of human rights. Consequently, she argued that no other interest including state tax interests as a fiscal matter can supersede the value of human rights.

Protection of workers in the payment of wages under bankruptcy law serves as a form of legitimacy for the existence of justice. According to John Rawls in his concept of "Justice as Fairness," the principle of justice should be designed to provide equal freedom and justice within society. However, Rawls also emphasizes two key principles in this theory, one of which is the Difference Principle. This principle allows for inequality, but only if it benefits the least advantaged groups in society. In the context of bankruptcy law, workers are the group most significantly affected by bankruptcy, as they lose their jobs and, consequently, their primary means of livelihood for themselves and their families. Therefore, the state must

ensure that workers are prioritized as absolute preferred creditors to uphold legal justice in Indonesia.

Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UUKPKPU) stipulates in Article 21 paragraph (4) that state receivables have the status of preferred creditors and are directly attached to the debtor's assets. Thus, the Directorate General of Taxation is authorized to collect tax obligations from the bankrupt estate. Administratively, the procedures for settling tax receivables are regulated by the Director General of Taxation Circular Letter No. SE-33/PJ/2008 regarding the handling of taxes in bankruptcy. The process begins when the Tax Office submits a receivable claim to the curator, followed by the issuance of a Tax Assessment Letter (STP), Underpayment Tax Assessment Letter (SKPKB), Additional Underpayment Tax Assessment Letter (SKPKBT), and the conduct of a debt verification meeting by the curator together with relevant government officials, along with various other processes.

The following is the specific procedure for tax payment using the bankrupt estate according to various legal regulations:

1. Bankruptcy Declaration: There has been a bankruptcy declaration by a final and binding decision of the Commercial Court.
2. Curator's Administration: The curator takes control of the debtor's assets and conducts an inventory of the bankrupt estate.
3. Tax Receivable Collection: The Directorate General of Taxation submits a claim to the curator regarding tax receivables against the bankrupt estate, attaching proof of STP, SKPKB, or SKPKBT, whether submitted before or during the debtor's debt verification by the curator.
4. Receivable Verification Meeting: A verification meeting for receivables is held.
5. Creditor List Preparation: The curator carefully prepares a list of creditors entitled to a share of the bankrupt estate.
6. Tax Payment Realization: The tax payment is realized.
7. Reporting: The payment is reported to the Directorate General of Taxation and the supervising judge.

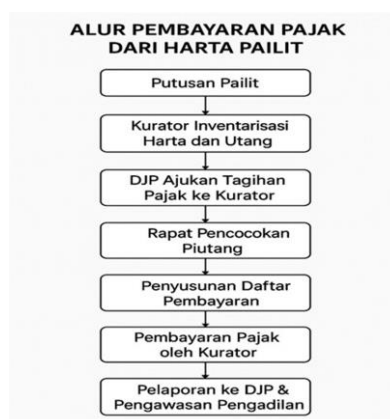


Figure 2. Flow of Tax Payment in Bankruptcy

In addition to the obligation to settle tax receivables, the process of paying wages to workers also plays a crucial role. Disagreements between the curator and workers regarding wage claims often lead to prolonged disputes that must ultimately be resolved through litigation in court.

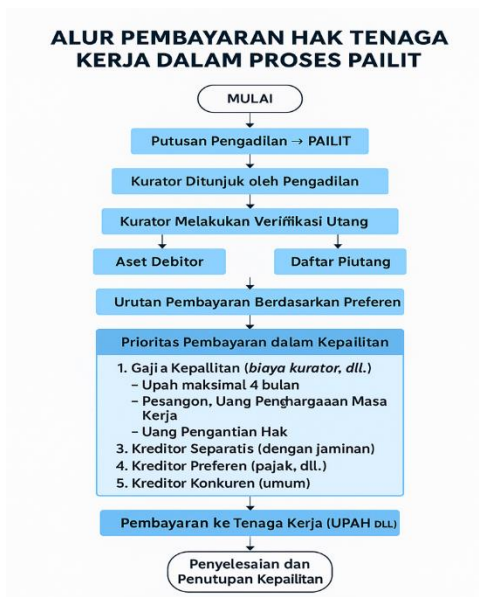


Figure 3. The Flow of Wage Payment in Bankruptcy

In practice, determining the order of creditor priority in the distribution of bankrupt assets often gives rise to complex legal challenges, particularly regarding the overlapping legal status of preferred claims between tax authorities and labor claims in Indonesia. Article 21 paragraph (4) emphasizes that tax receivables are classified as preferred creditors, whereas Constitutional Court Decision No. 67/PUU-XI/2013 places labor rights as preferred creditors with absolute priority. Therefore, normatively, labor wage claims should be prioritized as the primary list in the bankruptcy estate. However, in actual implementation, there is considerable confusion and legal ambiguity.

One example of this issue is found in Supreme Court Decision No. 49 PK/Pdt.Sus-Pailit/2014, which discusses the list of bankruptcy assets. In its ruling, the panel of judges prioritized the repayment of tax debts over other creditor claims, including labor wage claims. The judges' reasoning was based on Article 21 paragraph (4) of the Law on Bankruptcy and Suspension of Debt Payment Obligations (KPKPU), without considering Constitutional Court Decision No. 67/PUU-XI/2013. In their considerations, the judges argued that the Constitutional Court's decision lacks technical or concrete regulations in the law to implement and prioritize labor claims in Indonesia.

Similar phenomena are also found in several commercial court rulings, not only at the first instance level but also at the appellate and cassation levels. Examples include Supreme Court Decisions No. 45 PK/Pdt.Sus/Pailit/2016, No. 72 PK/Pdt.Sus-Pailit/2015, No. 116 PK/Pdt.Sus-Pailit/2013, No. 49 PK/Pdt.Sus/2011, and No. 070 PK/Pdt.Sus/2009, all of which show a similar tendency to prioritize tax claims in bankruptcy distribution. Conversely, there are also commercial court decisions that follow the Constitutional Court's ruling, resulting in different rulings that place labor as a preferred creditor with absolute priority, such as Surabaya Commercial Court Decision No. 24/Plw.Pailit/2014/PN.Niaga.Sby and Central Jakarta Commercial Court Decision No. 37/Pdt.Sus.GLL/2019/PN.Niaga.Jkt.Pst. This inconsistency reflects ambiguity in the application of the legal basis regarding payment priority between labor and state tax in the distribution of the bankruptcy estate.

The ambiguity in various court decisions has the potential to create legal uncertainty, which ultimately may undermine the legal protection system, both for labor and other

aspects of the bankruptcy system in Indonesia. This legal uncertainty has serious implications for various components of national life, one of which is losses for creditors.

The phenomenon of inconsistent court decisions in the context of bankruptcy, as previously outlined, not only has a direct impact on the legal aspect but also significantly affects other sectors. These impacts include a decline in public trust in the integrity of the legal enforcement system in bankruptcy, social shifts, and even disruption to the stability of the economic system. Douglas North, a prominent historian and economist, emphasizes that legal certainty is one of the fundamental components of an economy, as clear legal certainty provides clarity regarding business risks, whereas uncertain law can complicate economic transitions and cause investors to be reluctant to invest.

A similar opinion is put forward by Gary Becker, who states that legal uncertainty is a major factor causing information asymmetry. This condition makes it difficult for business actors to assess risks when making decisions within a company, which ultimately leads to disaster for the economic stability of a country. For example, Venezuela, according to the World Justice Project (WJP) Rule of Law Index 2024, is ranked among the lowest of 142 countries regarding the quality of legal certainty, with a score of 0.26, categorized as having low legal certainty [25]. This situation is also reflected in the 2024 Economic Freedom Index by The Heritage Foundation, where Venezuela is classified as a country with a severely repressed economy, scoring only 28.1 and ranking 174th out of 177 countries [26].

A comparison between countries as described above can serve as a reference and an ideal target for Indonesia in its efforts to build economic system stability by enhancing the aspects and values of legal certainty, particularly in the context of the distribution of bankruptcy assets. To create a bankruptcy climate that upholds the principle of legal certainty, comprehensive handling from upstream to downstream is necessary regarding the settlement and distribution of bankruptcy assets in Indonesia. One urgent issue that must be addressed within the bankruptcy system itself begins with reform steps through the simplification of the bankruptcy process. This is because the resolution of bankruptcy issues in Indonesia can take at least six months and, depending on the characteristics of the case, may even take up to two years [27].

One notable example of a bankruptcy case in Indonesia with the most protracted litigation period is that involving PT. Intercontinental Distribution (ID) Tbk., which required up to seven years to reach final resolution [28]. The duration of this process is influenced by several factors, including the difficulties encountered during negotiation as well as lengthy and complicated administrative procedures. This protracted bankruptcy resolution process inevitably gives rise to various problems for both creditors and debtors [29]. The simplification of procedures can be implemented in both debt verification and dispute resolution. The next area requiring improvement is the enhancement of protection for small creditors through the strengthening of the institutional function of commercial courts. Additionally, legal reforms to the Bankruptcy Law (Undang-Undang Kepailitan) and the Suspension of Debt Payment Obligations Law (PKPU) are necessary to align them with the dynamics and climate of the global economy.

The second step that must be taken is to improve and strengthen regulations regarding labor protection in Indonesia. Labor protection is crucial as a commitment to implement Constitutional Court Decision No. 67/PUU-XI/2013 by synchronizing the Labor Law

(Undang-Undang Ketenagakerjaan) and the Law on Suspension of Debt Payment Obligations and Bankruptcy (KPKPU Law). This synchronization should explicitly strengthen the legal status of workers in both laws and provide detailed mechanisms concerning the process of wage settlement. This can be achieved by establishing specific implementing regulations that address the payment of workers' wages through the distribution of bankrupt assets, or by creating a specialized institution capable of providing legal protection to workers during bankruptcy proceedings, ensuring they receive their wages.

One country that has specific and clear regulations regarding the payment of workers' wages, both before and after a declaration of bankruptcy, is France. This is regulated in the Code du Travail and Code de Commerce, which stipulate mechanisms for wage payment in bankruptcy situations. In France, there is a specialized institution called the AGS (Association for the Management of Employee Claims), which is responsible for ensuring the payment of salaries, severance, and benefits to employees of companies declared bankrupt by the court. In addition to guaranteeing these payments, AGS can also provide bridging funds distributed through the court-appointed trustee or mandataire judiciaire, so that workers can receive their rights without having to wait for the completion of the bankruptcy process.

Based on this, it is very important to encourage legal reform by clearly aligning the KPKPU Law and the Labor Law. This synchronization aims to create legal certainty in the bankruptcy process in Indonesia, grounded in human rights values especially labor protection while still safeguarding the interests and legal protection of entrepreneurs. By establishing implementing regulations that clarify the rights of workers in bankruptcy proceedings and by forming an agency capable of guaranteeing legal protection for both workers and entrepreneurs in bankruptcy cases, a bankruptcy system can be established that is based on the objectives of the law: justice, utility, and legal certainty. Once these steps have been implemented, Indonesia will have a bankruptcy system that truly serves these legal purposes.

Conclusion

Based on the overall arguments and findings in this research, it can be concluded that Constitutional Court Decision No. 67/PUU-XI/2013 has become a significant milestone in strengthening legal protection for workers in Indonesia, particularly regarding their status as absolute preferred creditors in the distribution of bankrupt assets. This decision places workers' rights above the state's tax interests as an implementation of constitutional values and legal certainty. However, although the decision is binding and applies erga omnes, in practice there are still inconsistencies between the relevant regulations, such as the Bankruptcy Law, the Suspension of Debt Payment Obligations (PKPU) Law, and the Manpower Law. These inconsistencies make it difficult to effectively implement the Constitutional Court's decision, and workers are often still positioned lower than the state's tax interests in various commercial court decisions.

Therefore, regulatory revision and harmonization, institutional oversight optimization, and increased legal awareness among workers are necessary so that the legal protection

mandated by Constitutional Court Decision No. 67/PUU-XI/2013 can be realized in a just and effective manner in the practice of bankrupt asset distribution in Indonesia.

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