

# Preferences Of Indonesian Workers 'Rights In Post-Bankruptcy Company

Aries Harianto

**Abstract**— Worker rights preferences are normatively coupled with the rights preceding the state. Countries with their authorities have the right to take precedence over other creditors after the company is declared bankrupt by a court decision. This fact in the perspective of justice for workers does not reflect the commitment as a welfare state that is functionally obliged to create the welfare of workers and their families as mandated by the constitution of the 1945 Constitution of the Republic of Indonesia. workers are loaded with legal problems that lead to injustice. Certainty is the beginning of the birth of injustice. Therefore, it is necessary to do 'legal reform', especially the Civil Code in the hope that the regulation on the rights of workers/laborers after the bankruptcy decision has a clear and certainty orientation, not a false preference.

**Index Terms**— Worker rights, preferences, company bankruptcy, labor protection.

## 1 INTRODUCTION

Law at the level as a norm cannot be separated from the study of meaning. When talking about meaning, the existence of text is the focus of epistemic discussion considering that studying the text cannot be separated from the context. In such construction, the text as a source of certainty is the main object to assess and evaluate aspects of justice stored in it because the process of creating texts is colored by various material interests such as power, technology, social relations and so on. It is here that the importance of reviewing the text in the form of laws and regulations as well as judges' decisions as a legal legal material in a thematic context is becoming a legal issue concerning workers' rights preferences after the company is declared bankrupt (Harianto, 2013). Preference comes from the word *preferere*, which means, to give advantage, priority, or to select for first payment, as to prefer one creditor over another (Campbell, 1991). Based on the definition, the Worker/Labor Rights Preference after the company is declared bankrupt can be communicated as the right to receive priority for workers/laborers after the company where they work was declared bankrupt by a court decision.

There is a Decision of the Supreme Court Number 070 PK/Pdt.Sus/2009 Special Civil Judgment Case between KPP Pratama Jakarta Tanah Abang Dua against the Curator of PT. Artika Optima Inti (Bankrupt) and PT. Bank Mandiri (Persero) Tbk. The panel of judges in its consideration stated that the repayment of the tax debt must take precedence after that the repayment of the wages of workers and receivables of Bank Mandiri will take place. This is based on Article 1137 of the Civil Code, which regulates that the rights of the state treasury, auction office, and others are public bodies formed by the government, to take precedence (Dharma 2013). A similar decision was also found from the portrait of the reality of Batavia Air as an airline. The Batavia Air company has been declared bankrupt based on a court ruling, but the rights of

workers/laborers in the form of wages and severance are not prioritized by the company (Decision of the Central Jakarta Commercial Court Number 77/Bankrupt/2012/PN Niaga Central Jakarta, dated January 30, 2013).

This is evident from the intensity of demonstrations carried out by ex-workers/laborers against the curator for demands for payment of the remaining wages and severance pay for workers. Often when companies are declared bankrupt, they experience problems paying wages and severance pay for workers who are not clear, even workers/laborers are very difficult to get their rights in accordance with the applicable legislation. Keep in mind, the provisions of Article 95 paragraph (4) of Act No. 13 of 2003 concerning Manpower which states that when a company is declared bankrupt, then the wages and other rights of the worker constitute the debt whose payment takes precedence. In fact, it has also been stated in the provisions of Article 27 of Government Regulation No. 8 of 1981 concerning Wage Protection, when an employer is declared bankrupt, then the wage of the worker/laborer is a debt whose payment takes precedence in accordance with the applicable laws and regulations on bankruptcy.

Based on the legal basis used by the Supreme Court in the decision No. 070 PK/Pdt.Sus/2009 above by juxtaposing the provisions of Article 95 (4) of the Manpower Law, it can be understood that there are norm conflicts concerning the preference of workers' rights which in turn distort workers' rights as a result law after the company is declared bankrupt through a court decision. In other words, the certainty aspect of legal protection for workers/laborers after a company is declared bankrupt in its essence becomes uncertainty itself. This is a 'legal problem' that deserves the attention of the parties, especially practitioners and legal studies so that the constitutional mandate in the effort to create the welfare of workers/laborers and their families is not limited to mere dreams. The constitutional mandate is reflected in the 1945 Constitution of the Republic of Indonesia Article 27 paragraph (2) concerning the right to decent work and and livelihood, as well as Article 28 D paragraph (2) concerning fair and proper remuneration and treatment in work relations. Based on the description and legal considerations above, the researcher was

• Faculty of Law, University of Jember and Expert in Labor Law

enthusiastic to review and analyze the 'legal problem' concerning the regulation of workers' rights after the company was legally declared bankrupt. Such commitment is in line with the mandate of Law No. 17 of 2005 concerning National Long Term Development Plans for 2005 - 2025 Law and Bureaucratic Reform Sector, namely legal development carried out through renewing legal material while paying attention to the plurality of applicable legal orders and the influence of globalization in an effort to improve legal certainty and protection, law enforcement and human rights (human rights), legal awareness, and legal services that have the essence of justice and truth, order and prosperity in the framework of implementing an increasingly orderly, organized, smooth and globally competitive state. This study is expected to provide functional contributions in the framework of legal making and legal reforms to legislation and various regulations concerning legal protection of workers/laborers related to the fulfillment of their rights after the company was declared bankrupt through a court decision. In detail, the issues discussed in this study are related to (1) How do workers/laborers normatively post the company go bankrupt through a court decision when viewed from the principle of legal protection against workers?, (2) What is the position of the state in the context of does the company take precedence after being declared bankrupt in accordance with the principle of justice for workers/laborers?

## 2 PRINCIPLE OF LABOR PROTECTION

The normative rights of workers/laborers are one of human rights, because work is related to the right to life, even the right to a decent life as stipulated in the 1945 Constitution of the Republic of Indonesia. Stated in Article 27 paragraph (2) The 1945 Constitution of the Republic of Indonesia that "Every citizen has the right to work and a decent life for humanity". Such provisions are emphasized in Article 28D paragraph (2) which states that every person has the right to work and receive compensation and fair and proper treatment in work relations. The position of workers/laborers as weak parties in work relations makes legal protection an important and fundamental requirement for workers/laborers. The position of workers/laborers with exploitation is the relationship between superiors and subordinates (subordinates). When talking about the position in a work relationship, it is also necessary to explain about the nature of work relations both juridically, sociologically, and socio-economically. The juridical nature of the relationship between workers and employers is a free relationship because each party can agree on rights and obligations and work conditions in a work agreement. This is based on the principle of freedom in contracting. Sociologically, the nature of the relationship between workers and employers is to have a different background. This is due to the fact that an entrepreneur is usually from a well-educated and respected background, while workers/laborers are mostly from the background of society in general and have low education. The other side is socio-economic, the position of workers and employers is unbalanced.

The position of the employer is higher than that of the worker/laborer. A businessman certainly has a higher economic position than a worker/laborer, an entrepreneur has a broader knowledge of his workers/laborers, and certainly a worker/laborer has a dependency on employers. Because of that the work relationship born from the work agreement between the parties namely the worker/laborer and the employer has its own character as an agreement which is *contractus sui generis*. The cancellation of the work agreement immediately cancels all provisions or articles in the work agreement, while the cancellation of the provisions in the work agreement contains the intent only of the relevant provisions which have experienced legal invalidation. Such cancellation is a manifestation of the principle of legal protection for workers/laborers. Based on the explanation above, it can be understood that legal protection of workers or laborers is a constitutional requirement that requires the state to be present so that exploitation does not occur among the parties. Therefore, after the company is declared bankrupt, the company should first fulfill the normative rights of the worker rather than fulfill the other creditors, including the state.

## 3 WORKER/LABOR RIGHTS IN COMPANIES DECLARED BANKRUPT BASED ON THE MANPOWER ACT

In Article 1 point 1 of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, the definition of Bankruptcy has been formulated, namely the general seizure of all assets of bankrupt debtors whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge (Jono, 2010). In the event that the company is declared bankrupt by the Commercial Court, at that time all matters relating to the company's assets will be the responsibility of the Curator to manage the bankrupt property of the company. Thus, the task of dividing the bankrupt debtor's assets to creditors is the responsibility of the Curator. Based on Article 39 paragraph (1) of the Bankruptcy Act, there are two possibilities that occur to the fate of workers/laborers if the company is declared bankrupt, first the entrepreneur whose authority has been transferred to the curator, can dismiss workers/laborers, and the second possibility is that workers can decide employment relationship, so that it can be concluded from the provisions of Article 39 paragraph (1) of the Bankruptcy Act that the consequences of a worker/laborer in a company considered bankrupt are Termination of Employment.

Still based on Article 39 paragraph (1) of the Bankruptcy Law, the provisions concerning the amount of rights received by workers/laborers follow the provisions in the Manpower Law. Therefore, if there is a termination of employment, the worker/laborer has the right to receive severance pay, years of service and compensation. In the same Article in paragraph (2), that from the date the decision on bankruptcy statement is pronounced, the wages owed before and after the decision on the bankruptcy statement are stated as bankrupt assets. In fact, it has also been stated in the provisions of Article 27 of Government Regulation No. 8 of 1981, when an employer is declared bankrupt, then the wages of the worker/laborer are

the debt whose payment takes precedence in accordance with the applicable laws and regulations on bankruptcy.

The Bankruptcy Law stipulates that the creditor is in accordance with his position as a priority to prioritize the rights and obligations of the bankrupt company. In law there is the principle of *lex specialis derogat legi generalis*, which means that specific legal rules will override the general rule of law (Shubhan, 2009). So the assessment of debt payments when bankrupt companies refer to the Bankruptcy Act. The Bankruptcy Act does not have a clear article stating that the separatist creditor whose rights are prioritized can eliminate the workers' normative rights. Indeed, if among the creditors there are creditors holding collateral rights, this creditor gets priority. This is based on Article 138 of the Law. Bankruptcy.

In addition, in article 55 paragraph (1) the Bankruptcy Act states that "by continuing to pay attention to the provisions referred to in Article 56, Article 57, and Article 58, each creditor is a pawn holder, fiduciary guarantee, mortgage, mortgage or collateral right for other materials, it can execute its rights as if there was no bankruptcy". But in these articles it does not state that separatist creditors can eliminate the normative rights of workers. So the normative rights of workers must still be met by companies that have gone bankrupt (Suyudi, 2004).

From the position of workers in bankrupt companies, workers are given privileges as privileged creditors considering that the fulfillment of their rights is the first priority if it is based on the *pro rata partari paripassu* principle, which means that the assets are joint guarantees for creditors and the proceeds must be distributed proportionally between them. except if there are those creditors who according to the law must take precedence in receiving the payment of the bill. The word prior to receiving payment according to the law is the key word for fulfilling workers' rights, as the relevance of the labor law article 95 paragraph 4. Basically, the right of workers to pay wages when the company is bankrupt has been protected by Law No. 13 of 2003 concerning Labor (UUK). Article 95 paragraph (4) UUK determines that in the event that a company is declared bankrupt or liquidated based on the prevailing laws and regulations, then the wages and other rights of the worker/laborer constitute the debt which the payment takes precedence. Article 1367 of the Civil Code provides broad meaning regarding the responsibility of employers to workers/laborers. When a loss occurs, whether caused by the employer or the worker/laborer, the employer still has the responsibility to fulfill the rights of workers/laborers. Workers/laborers have provided labor and thought to gain profits for the company and when the company suffers a loss, permanent workers/workers will carry the rights as workers/laborers.

Normatively based on Law No. 13 of 2003, if there is a termination of employment, the worker/laborer has the right to receive severance pay, length of service award and compensation. The existing wage component is used as a basis for calculating severance pay, years of service pay, and compensation for rights. Regarding the amount of severance pay and work period awards also depends on the period of

work (Article 156 paragraph (1) and paragraph (2) of the Manpower Act), while compensation for rights is calculated based on the rights that have not been received by workers/laborers, namely annual leave which has not been taken and has not been killed; costs or costs of returning home to workers/laborers and their families to the place where workers/laborers are accepted to work; housing replacements and treatment and care are set at 15% (fifteen percent) of severance pay and/or work period awards for those who fulfill the requirements; and other matters stipulated in work agreements, company regulations or collective labor agreements. The final calculation of the rights of workers/laborers in accordance with Article 165 of the Manpower Act, if the employer terminates the employment of workers/laborers because the company is bankrupt then the worker/laborer is entitled to severance pay of 1 (one) time in Article 156 paragraph (2) of the Manpower Law, work period awards amounting to 1 (one) time stipulation of Article 156 paragraph (3) of the Manpower Act and compensation for rights in accordance with the provisions of Article 156 paragraph (4) of the Manpower Law.

Even though the rights of workers/laborers after the bankruptcy decision are protected by UUK Article 95 paragraph 4, the provisions of this UUK are in line with the right to overtake the State as stipulated in Article 21 paragraph (1) of Law Number 6 Year 1983 concerning General Provisions and Tax Procedures as already the last few changes were made with Law 28 of 2007.

#### **4 STATE'S POSITION IN THE CONTEXT OF THE RIGHT TO PRIORITIZE THEIR RIGHTS AFTER THE COMPANY IS CLAIMED TO BE BANKRUPT JUDGING FROM THE PRINCIPLE OF JUSTICE ON WORKERS/LABORERS**

One of the judges' considerations written on the Decision of the Supreme Court Number 070 PK/Pdt.Sus/2009 Special Civil Judgment Case between KPP Pratama Jakarta Tanah Abang Dua against the Curator of PT. Artika Optima Inti (Bankrupt) and PT. Bank Mandiri (Persero) Tbk as reported in the background above is that the repayment of tax debt must take precedence after that the repayment of the wages of workers and receivables of Bank Mandiri will take precedence. This is based on Article 1137 of the Civil Code, which regulates that the rights of the state treasury, auction office, and others are public bodies formed by the government, to take precedence.

Other provisions that normatively position the state as the party that preceded the bankruptcy decision include Article 21 paragraph 1, paragraph 2, paragraph 3 and paragraph 3A of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times the latest by Law No. 28 of 2007 (UU KUP) stating that the state has a prior right to tax debt on goods belonging to the Tax Insurer. Provisions regarding the preceding rights as referred to in paragraph (1) include the tax principal, administrative sanctions in the form of interest, fines, increases, and tax collection fees.

Furthermore, it is stated that the preceding right for tax debt exceeds all other preceding rights, except for (a) case

costs which are only caused by a penalty for auctioning a movable property and/or immovable property; (b) costs incurred to save said goods; and/or, (c) case fees, which are only caused by the auction and completion of an inheritance. In the event that a Taxpayer is declared bankrupt, disbursed, or liquidated, the curator, liquidator, or person or entity assigned to do the settlement is prohibited from distributing the Taxpayer's assets in bankruptcy, liquidation or liquidation to shareholders or other creditors before using the asset to pay tax debt the taxpayer.

It is necessary to remember, the provisions in Article 95 paragraph (4) of the Manpower Law which states that when a company is declared bankrupt, then the wages and other rights of the worker constitute the debt that the payment takes precedence. In fact, it has also been stated in the provisions of Article 27 of Government Regulation No. 8 of 1981, when an entrepreneur is declared bankrupt, then the wage of the worker/laborer is a debt whose payment takes precedence in accordance with the applicable laws and regulations on bankruptcy. Thus, the position of rights prior to the state with the position of the rights of workers/laborers is essentially the same, that is, both preferential creditors or have special rights granted by law.

It was stated in Article 39 paragraph (2) of the Bankruptcy Act that from the date the decision on bankruptcy statement is pronounced, the wages owed before and after the verdict of bankruptcy statement are declared bankrupt. This means that if the debtor of a bankrupt company cannot pay wages owed, severance pay, and other rights to workers/laborers in accordance with the provisions in the Manpower Law, the obligation is included in the bankruptcy debt category, and then the worker acts as a bankrupt creditor. Article 39 paragraph (2) of the Bankruptcy Law does not further explain the position of workers/laborers as one of the bankrupt creditors. Therefore, payment of workers' rights has not yet received clarity, especially regarding the order of priority for the fulfillment of final receivables in terms of payment of receivables, but with the provisions in Article 95 paragraph (4) of the Manpower Act workers are assured of payment, wages and rights other rights of the worker/laborer are debt which must be prioritized for payment, then in the explanation of the article, what is meant by payment is the wage of the worker/laborer must be paid in advance of the other debt.

The background of the provisions contained in Article 39 paragraph (2) of the Bankruptcy Law which results in workers/laborers domiciled 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. In Article 1134 of the Civil Code it is explained that the creditor of the privileged holder has a higher level than the other debtors. The legal opportunity that can become the basis of workers/workers bearing special rights is Article 1149 of the Civil Code. In Article 1149 of the Civil Code it is explained that the wages of workers/laborers are general privileges so that repayment takes precedence. Therefore, according to Article 39 paragraph (2) of the Bankruptcy Law, Article 95

paragraph (4) of the Manpower Act, and Article 1149 of the Civil Code, wages and severance pay are accounts receivable with special rights. Although the nature of privileges takes precedence, the position of the privilege holder is still under the lien and mortgage holder. Even in the ranks of creditors, privileged holders, workers/laborers are ranked fifth after tax bills, case fees, auction fees, and costs of curators of these workers. Workers/laborers can be placed at the bottom.

In essence, the working relationship between workers/laborers and employers is civil relations. This relationship is based on a work agreement that is subject to the provisions of private law. Provisions regarding work agreements are regulated in Book III of Chapter VIIA of the Civil Code but with the development of time, this relationship develops into public relations. This is because what is regulated in the Civil Code is not enough to protect workers so that the government intervenes in regulating this labor relationship. Government intervention as an effort to prevent exploitation in the private relations of workers/employers with employers makes the term labor law a labor law. Despite the existence of government interference in work relations, researchers argue that the nature of work relations is civil or private relations that fulfill it or are guided by public law.

Based on the normative provisions above, it can be understood that the pre-employment of workers as creditors after a bankruptcy decision on a company can be said to be false. In the level of the application of justice-oriented law, this 'false preference' is actually not appropriate to occur on the basis of the following reasons. First, the state in the relations of employment is not a separate and separate entity, especially related to workers' rights after the company is declared bankrupt by the court. This means that the existence of the state is not in a position as a principal equal to workers/laborers, but more than that is a representation of an organ that is above the parties and functionally provides welfare services as a manifestation of the 1945 Constitution of the Republic of Indonesia. Functionally, the state provides workers with prior rights. Second, in the presence of Article 95 paragraph (4) of the Manpower Law which states that when a company is declared bankrupt, then the wages and other rights of the worker constitute the debt that the payment takes precedence. The provisions of this Act constitute the answer to the fall of the state's prior rights to workers/laborers because based on the principle of preference in conflict norms, the new law overrides the old law if the two laws regulate the same thing.

## 5 CONCLUSION

Normatively the rights of workers/laborers to pay wages when a company is declared bankrupt are protected by Law No. 13 of 2003 concerning Manpower (UUKT). This position is coupled with the right to overtake the State which is regulated in Article 21 paragraph (1) of Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation as amended lastly by Law Number 16 Year 2000. Thus, the worker/laborers' prevalence as a creditor after a bankruptcy decision on a company can be said to be false or without legal

certainty.

In the perspective of the protection of workers based on the 1945 Constitution of the Republic of Indonesia with the concept and commitment of the state of welfare, workers legally have a prior right to other creditors, including the state, considering the relation between workers and employers, positioning the state not as a principal who is equivalent to a worker/laborer, but more than that is a representation of an organ that is above the parties and functionally provides welfare services as a manifestation of the 1945 Constitution of the Republic of Indonesia. Thus, it can be understood that if legislation positions the state as a principal along with the inherent rights of the company declared bankrupt by the court, such an arrangement truly opens the space for injustice because it has negated or ignored the rights of workers/laborers and their families as mandated by the Constitution Republic of Indonesia in 1945. Injustice to workers/laborers is an indicator of poor legal protection for workers/laborers and their families.

Based on the consideration of maintaining commitment and constitutional consistency in efforts to create the welfare of workers and their families, it is considered important and urgent to revise laws and regulations in an integrated manner that is oriented to the aspects of certainty and justice for workers' rights after the company is declared bankrupt this can be resolved by norm conflicts in laws and regulations as well as court decisions. This idea was realized to erode the potential of multiple interpretations of law enforcement officials in implementing the applicable laws and regulations. The revision meant also meant to reposition the state no longer as a principal but as an entity or organ that carries out welfare in general including workers/laborers.

## REFERENCES

- [1] Campbell Henry. (1991). Black's Law Dictionary. USA: West Publishing Co.
- [2] Decision of the Central Jakarta Commercial Court Number 77/Bankrupt/2012/PN Niaga Central Jakarta, dated January 30, 2013
- [3] Decision of the Supreme Court Number 070 PK/Pdt.Sus/2009 Special Civil Judgment Case between KPP Pratama Jakarta Tanah Abang Dua against the Curator of PT. Artika Optima Inti (Bankrupt) and PT. Bank Mandiri (Persero) Tbk
- [4] Dharma, S. A. (2013). Position of Workers/Laborers in Bankruptcy Cases Judging from Legislation Regulations and Justice Theory. *Jurnal Supremasi Hukum* 2(1).
- [5] Harianto, A. (2013). The Meaning of Not Contradicting Decency as a Legitimate Terms of Work Agreement (Desertation, Doctoral Education Program of the Faculty of Law, Brawijaya University Malang).
- [6] Law No. 17 of 2005 concerning National Long Term Development Plans for 2005 - 2025 - Chapter IV Long-term Development Direction, Stages and Priorities for 2005-2025 - Letter C number 1
- [7] Shubhan, M. H. (2009). *Bankruptcy Law: Principles, Norms, and Practices in Courts*. Jakarta: Kencana.
- [8] Suyudi, A., Nugroho, E., & Nurbayati, H. S. (2004). *Bankruptcy in Bankrupt Land*. Jakarta: Center for Indonesian Law and Policy Studies.