

Legal Analysis of the Position of Separatist Creditors Regarding Workers' Wages in Bankruptcy Reviewed from Law Number 37 of 2004

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ABSTRACT

Position of secured creditors in bankruptcy often raises issues regarding the protection of workers' wages. Secured creditors, as holders of material collateral rights, based on Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy, have the right to execute their collateral as if bankruptcy had not occurred. On the other hand, workers have the right to wages as a constitutional right and a basic right to maintain a living. However, practice shows that workers' wages are often disregarded because they only stand as general preferred creditors whose payments are made after those of secured creditors. This creates a conflict with the provisions of Law Number 13 of 2003 concerning Manpower and Law Number 6 of 2023 concerning Job Creation, which stipulate that workers' wages must be paid first.

Study aims to analyze the legal position of workers' wages in bankruptcy cases against secured creditors and examine the judge's considerations in determining this position. The research method used is normative legal research with a descriptive approach, through a review of legislation, court decisions, and the doctrines of legal experts.

Research results show that workers' wages should be paid in priority over those of separatist creditors, as stated in Constitutional Court Decision Number 67/PUU-XI/2013, which prioritizes workers' wages over separatist claims. The judge's considerations are based on the principles of legal protection, the principle of justice, and the constitutional guarantee of Article 28D paragraph (2) of the 1945 Constitution. However, in practice, the application of this rule still creates a conflict of legal certainty between the interests of separatist creditors and workers' rights. Therefore, it is necessary to synchronize bankruptcy regulations with labor law so that the protection of workers' rights can be effectively guaranteed.

Keywords: *Bankruptcy, Secured Creditors, Workers' Wages*

1. Introduction

Capital loans in the form of debt are often the last resort taken by business actors or entrepreneurs to overcome funding problems, which are the main problem that must be faced by business actors in maintaining and supporting the continuity of their business or business activities in the business world. Debt problems arise when a debtor owes money to one or more creditors and the obligation falls due before the debtor has the resources or good faith to repay the loan in full, including all accrued interest to that point. This factor is the background to the filing of bankruptcy petitions by creditors, and often even the petition is made by the debtor themselves. In cases of financial difficulties, debtors can request bankruptcy protection from the court, in this case the Commercial Court, which will then declare the debtor bankrupt. As required by law, the debtor's assets can

be divided among the creditors without collateral.¹

Bankruptcy can be defined as a situation where a debtor stops paying their debts due to inability to do so. The word "bankruptcy" can also be interpreted as "bankrupt." The purpose of bankruptcy law is actually a form of joint effort between creditors and debtors to obtain payments for all creditors fairly and proportionally in accordance with existing and established regulations.²

Bankruptcy laws are enacted by the government for noble purposes. Here are some of the purposes of bankruptcy laws:

- a. To prevent debtors from voluntarily repaying their debts despite a court ruling ordering them to do so, or because they are unable to repay their entire debt, all their assets are confiscated for sale, and the proceeds are distributed among all creditors according to the size of their respective debts, unless there are legitimate reasons for prioritization.
- b. To prevent creditors from simultaneously demanding repayment of their debts from the debtor.
- c. To prevent creditors from seeking privileges to claim their rights by selling the debtor's assets themselves, without considering the interests of other creditors.
- d. To prevent fraud committed by the debtor themselves.
- e. To punish managers whose negligence has caused the company to experience poor financial conditions, leading to insolvency.

Bankruptcy is the matter of being insolvent (bankrupt) or a condition where a person or legal entity is no longer able to pay its obligations (in terms of its debts) to creditors. Meanwhile, according to Munir Fuady, bankruptcy is a general seizure of all assets belonging to the debtor in order to achieve peace between the debtor and the creditors or so that the assets can be divided fairly among the creditors.³ When a company is declared bankrupt, some creditors demand that their debts be paid before others. Some laws and regulations grant certain types of debts priority payment, such as tax debts, secured creditors (hereinafter referred to as secured creditors), and workers' wages.⁴

Employers and workers/laborers are bound in an employment relationship, which arises after both parties agree to an employment agreement. An employment relationship is a relationship between employers and workers based on an employment agreement, which has elements of work, wages, and orders. The concept of an employment relationship, which was initially private because it

¹ Deasy Soeikromo Nurlita Sibli, Ronny A. Maramis, *Perlindungan Hukum Bagi Kreditor Separatis Terkait Jaminan Hak Tanggungan Yang Ditetapkan Sebagai Boedel Pailit (LexEtSocietatis)*.

² Yuhelson, *Hukum Kepailitan Di Indonesia I* (Gorontalo: Ideas Publishing, 2019).

³ Munir Fuady, *Hukum Kepailitan Dalam Teori & Praktek* (Bandung: PT Citra Aditya Bakti, 2017).

⁴ Revillia Wulandari, 'Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 67/PUU-XI/2013 Tentang Pengujian Pasal 95 Ayat (4) Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan', *Fakultas Ilmu Sosial Dan Hukum Universitas Negeri Surabaya*, 2.

was related to an employment agreement, has shifted to the public sphere with the amendment to the constitution and the birth of Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which stipulates that everyone in an employment relationship must receive fair and proper compensation and treatment. The existence of this regulation gives the state the authority to regulate employment relationships, especially regarding matters of fair compensation and treatment.⁵

A company is a legally regulated form of business that operates with the goal of generating profit. Therefore, a company must continue to grow to ensure its profits continue to grow. Profits can be achieved if the company is managed well and professionally and supported by sufficient capital. The company can be managed solely by the entrepreneur, who legally has the responsibility to run the company, or by assigning another person to run the company by granting power of attorney.⁶ Article 1 paragraph (1) of the UUPM emphasizes that a limited liability company is a legal entity. With its status as a legal entity, this means that the company is positioned as a legal subject that is able to support its rights and obligations as a person and has its own assets separate from the assets of its founders, shareholders and managers.

Bankruptcy in the context of investment can be defined as a condition in which a company making investments is declared insolvent or bankrupt. This means the company is no longer able to meet its debt obligations to creditors, and all of its assets can be seized and sold to pay off the debts.

In the event of corporate bankruptcy, the Limited Liability Company Law stipulates that each member of the board of directors is jointly and severally liable for any errors or omissions. This provision is set out in the following articles:

Article 97 Paragraph (3) of the Limited Liability Company Law

Each member of the Board of Directors is fully personally responsible for the Company's losses if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions as referred to in paragraph (2).

Article 104 paragraph (2) of the PT Law

In the event that bankruptcy as referred to in paragraph (1) occurs due to the error or negligence of the Board of Directors and the bankruptcy assets are insufficient to pay all of the Company's obligations in the bankruptcy, each member of the Board of Directors is jointly and severally responsible for all obligations not paid from the bankruptcy assets.

Then, in relation to the responsibilities of the board of commissioners, as has been mentioned, the PT Law stipulates that the board of commissioners has full

⁵ Luthvi Febryka Nola, 'Implementasi Putusan Mahkamah Konstitusi Nomor 67/PUU-XI/2013 Terkait Kedudukan Upah Pekerja Dalam Kepailitan', *Jurnal Negara Hukum*, Vol. 10, N, hlm. 150.

⁶ Abdulkadir Muhammad, *Hukum Perusahaan Indonesia*, (Bandung: PT Citra Aditya Bhakti, 2010).

responsibility for supervising management policies, the course of management, and providing advice to the board of directors.

Every individual and company is constantly faced with needs that they strive to fulfill, whether primary, secondary, or tertiary. To meet these needs, they often don't fulfill them with cash, but rather through credit or borrowing, which inevitably gives rise to debt. Therefore, credit is neither new nor unknown to the general public. The general public is already very familiar with this form of borrowing and lending, particularly in the form of money lending, which is considered a necessity to support economic activity.⁷

The amount of loan funds provided by financial institutions to companies is highly dependent on the level of trust in the repayment of the loan and the guarantee (collateral) that can be provided by the company.⁸ Based on Article 8 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, in principle, a bank can only decide to grant credit if it has earned the trust of its customers. This trust is based on a thorough analysis of the customer's good faith and ability and capability (creditworthiness) to repay their debts to the bank in the future.⁹

A company's ability to repay loans, as a basis for bank trust, is determined by its assets, sound management, and consistently improving financial statements. Good and professional management significantly supports business growth and the company's ability to repay loans on time. Poor company management can lead to business decline and an inability to repay loans, potentially leading to the company being declared bankrupt.

A company's bankruptcy petition can be filed by a creditor or by a debtor who has debts by fulfilling the requirements stipulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter abbreviated as the Bankruptcy Law). The requirements for a bankruptcy petition for a debtor can be filed if the debtor has 2 (two) or more debts and one of the debts has matured and can be collected.

Separatist creditors are creditors who hold fiduciary collateral rights who have the right to execute as if bankruptcy had not occurred in order to fulfill their debts, this is stated in Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payments (hereinafter referred to as the Bankruptcy Law). On the other hand, apart from separatist creditors, companies also have to deal with demands for workers' wages as a consequence of

⁷ Sri Redjeki Slamet, 'Perlindungan Hukum Dan Kedudukan Kreditor Separatis Dalam Hal Terjadi Kepailitan Terhadap Debitor', *Jurnal Lex Jurnalica*, Volume 13, hlm. 104.

⁸ Sutan Remi Sjahdeini, *Hukum Kepailitan: Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan* (Jakarta: Pustaka Utama Grafiti, 2010).

⁹ Sri Devi Ayunda Surizki Febrianto, 'The Implementation of Execution Auction by Creditors on Debtor Rights Guarantee in the Office of State Assets and Auction Services (KPKNL) in Indonesia.', *International Journal of Innovation International Journal of Innovation, Creativity and Change*, 10 (5) (2020), 172.

bankruptcy which results in layoffs.

In the context of investment, secured creditors have priority because they hold security interests (such as mortgages) over the debtor's assets. This gives them exclusive rights to enforce those guarantees and obtain priority repayment of their receivables if the debtor goes bankrupt or experiences a suspension of debt payment (PKPU).

A bankruptcy decision against a debtor in the form of a company has a direct impact and consequences for the company's workers. If the bankrupt company has secured loans, the lender will become a secured creditor, entitled to obtain debt repayment from the sale of the company's collateral. The sale of the collateral used to pay the debts held by the secured creditor will have consequences for workers as preferred creditors, namely not receiving their proper and correct rights to wage payments and other rights due to the bankruptcy as stipulated in laws and regulations.

Workers' wages which are part of the company's debt have special rights which are categorized as general special rights in accordance with Article 1149 of the Civil Code (hereinafter referred to as the Civil Code). This special right gives workers' wages a priority position compared to other creditors.

In 2023, Constitutional Court Decision No. 67/PUU-XI/2013 was legitimized by the government with the enactment of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law (Job Creation Law), which amended Article 95 of the Manpower Law. The new provisions contained in the Job Creation Law demonstrate the existence of workers' wage rights to be granted priority over other creditors if a company has been declared bankrupt.

While the Constitutional Court's decision above essentially aims to provide a solution for the implementation of Article 95 paragraph (4) of the Employment Law, on the other hand, the decision has an impact in the form of uncertainty for the holder of collateral rights, so that there is still a conflict between payments for the Workers' Wages Owed and the Separatist Creditors. If the decision is implemented in bankruptcy cases, it violates the rules related to material collateral and the regulations regarding bankruptcy itself.

In addition, if the separatist creditors are after the payment of workers' wages as according to the Constitutional Court Decision No. 67/PUU-XI/2013, it will give rise to potential legal certainty problems related to the implementation of legal guarantee institutions in the bankruptcy process in Indonesia and of course will have a negative impact on the country's economic growth because there will be no capital owners such as banking institutions or financial institutions in Indonesia who are willing to channel capital to entrepreneurs/companies as a step and effort to increase business capacity whose aim is to improve the country's economy, national development and realize a prosperous, just, prosperous and equitable Indonesian society both materially and spiritually based on Pancasila and the 1945

Constitution.

2. Research Method

In order to be able to identify and discuss a problem, an approach is needed using certain scientific methods. The author applies normative legal research, namely legal research carried out by examining library materials or secondary data.¹⁰ Normative legal research methods are also commonly called doctrinal legal research, which is research into laws that are conceptualized and developed based on the doctrines adopted by the conceptualizer or developer.¹¹ Meanwhile, seen from its nature, it is descriptive, namely research that provides a clear and detailed description of the problem being researched.

3. Result and Discussion

3.1. Position of Workers' Wages in the Settlement of Bankruptcy Cases Regarding the Position of Separatist Creditors

A company is any form of business that carries out any type of business that is permanent and continuous in nature to obtain a profit or gain, whether carried out by an individual or a business entity in the form of a legal entity or not a legal entity. Which is established and domiciled in the territory of the Republic of Indonesia in the description above it can be concluded that a company has elements where the company is a form of business, whether run by an individual or a business entity, and also carries out activities permanently and continuously to obtain a profit or gain.¹²

In the business world in general, it is not free from problems, companies do not always run well, but problems will arise which often occur with the company's financial situation fluctuating so that when a company is in a profitable state, the company's level graph will increase, but on the contrary, if the situation declines, the company's graph will also decrease, which will then take out loans from state finances, banks or others to stabilize the company's condition, in that condition the company.

Bankruptcy is a process in which a debtor who has financial difficulties in paying his debts is declared bankrupt by the court, in this case the commercial court, because the debtor is unable to pay his debts. The debtor's assets can be distributed to creditors in accordance with applicable laws and regulations.¹³

The basic principles of bankruptcy law are actually based on the provisions of Article 1131 of the Civil Code. This article states that all assets, both movable and immovable,

¹⁰ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT. Raja Grafindo Persada, 2010).

¹¹ Irwansyah, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Miira Buana Media, 2020).

¹² Zainal Askin & L wira pria Suhartana, *Pengantar Hukum Perusahaan* (Jakarta: PT Kharisma Putra Utara, 2016).

¹³ Dkk Susanto, *Pengantar Hukum Bisnis* (Tangerang Selatan: Unpam Pres, 2019).

owned by the debtor, both existing and future, serve as collateral for the debtor's personal obligations. The debtor's responsibility based on the provisions of Article 1131 of the Civil Code ultimately leads to the bankruptcy institution. This is because the bankruptcy institution actually regulates what happens if a debtor cannot pay their debts, and how the debtor is responsible, within its authority, for the assets they still own or will own.¹⁴

In principle, there is no debt without collateral (guarantee), as stated in Article 1131 of the Civil Code, which states that all objects, whether movable or immovable, existing or future, can be used as collateral for the repayment of a person's obligation. The collateral object can be encumbered with a Mortgage, Fiduciary, Lien, or Mortgage as collateral for the debt or as a source of debt repayment for the debtor. Therefore, even though there is a principal agreement regarding debts that contains the rights and obligations of each party, both for the creditor whose obligation is to provide receivables to the debtor in the specified nominal amount and the debtor's obligation to repay his debt to the creditor within a period agreed upon by the parties. However, there must be an additional agreement or *accessoir* agreement that contains who will be the guarantor of the debt or what object will be the guarantee for the debtor's debt repayment to the creditor.

Bankruptcy is a commercial way out of the debt problem that is pressing a debtor, where the debtor no longer has the ability to pay the debts to his creditors. The reason for filing a bankruptcy petition against the debtor is more efficient because it must be granted no later than 60 (sixty) days from the bankruptcy petition if it is proven simply according to Article 8 of Law Number 37 of 2004 concerning Bankruptcy and the Obligation to Postpone Debt Payments (hereinafter referred to as UUKPKPU) compared to having to go through a default lawsuit which takes years to get a judge's decision.

In the bankruptcy process there are 3 types of creditors, namely Concurrent Creditors, Preferred Creditors and Separatist Creditors. Concurrent Creditors are creditors who do not have any collateral so that in repayment they will compete with other concurrent creditors and are divided based on the size of the debt, while Preferred Creditors are creditors who have the privilege of having their debts paid first because they are regulated by laws and regulations, and for Separatist Creditors are creditors who get advance payment of debts because they have property rights characterized by *droit de preference*.¹⁵

Bankruptcy law recognizes the term "separated creditors" which is said to be "separated" which connotes "separation" because the position of the creditor is indeed separated from other creditors, in the sense that the creditor can sell himself and take his own from the sale proceeds, which are separate from the general bankruptcy assets. This is what distinguishes between separatist creditors and creditors holding material

¹⁴ Adilah Dea Sentika, 'Kedudukan Kreditor Separatis Dalam Mengeksekusi Objek Jaminan Saat Terjadi Kepailitan', *Jurnal Perspektif*, Volume 25 (2020), Edisi Januari, hlm. 64.

¹⁵ Hadi Subhan, *Hukum Kepailitan : Prinsip, Norma, Dan Praktik Di Peradilan* (Jakarta: Kencana, 2019).

collateral in security law, where creditors holding material collateral in security law have a higher position than other creditors. Creditors who are classified as separatist creditors who can still exercise their rights even though the debtor is declared bankrupt are creditors holding collateral rights, fiduciary guarantees, pledges and mortgages.¹⁶

A crucial issue is what happens when a company is declared bankrupt and unable to pay its entire debt. This means that the bankrupt company's assets are insufficient to pay all its debts, while no avenue for debt restructuring through reconciliation is available. In such circumstances, the legal sector plays a key role in aligning the interests, rights, and positions of each creditor, thereby achieving justice by giving each creditor their due share.¹⁷

One of the creditors whose interests, rights, and status are guaranteed is the separatist creditor. Separatist creditors are creditors who hold collateral rights to property and can act independently. They are a group of creditors who are not affected by the debtor's bankruptcy declaration decision, meaning their execution rights can still be exercised as if the debtor had not filed for bankruptcy. For separatist creditors, payment in bankruptcy is guaranteed by a pledge, fiduciary guarantee, security interest, mortgage, or other collateral rights on property. In bankruptcy, the position of separatist creditors is quite unique, with rights and obligations that differ from those of other creditor groups.

According to Sudargo Gautama, these secured creditors, because they hold super-preferential rights, can exercise their rights as if bankruptcy had not occurred. Therefore, they are considered separatists (independent). Similarly, according to Munir Fuady, the status of secured creditors is very high, higher than that of other privileged creditors.

Article 55 paragraph (1) of the Bankruptcy Law states, "While still paying attention to the provisions as referred to in Article 56, Article 57, and Article 58, every creditor holding a pledge, fiduciary guarantee, security right, mortgage, or collateral right on other property, can execute his rights as if there had been no bankruptcy.

Provisions of Article 55 paragraph (1) of the Bankruptcy Law emphasize that separatist creditors have a more important position in the bankruptcy process compared to other creditors, so that according to the Bankruptcy Law, the position of the holder of collateral rights is prioritized or higher than other creditors. And Article 95 paragraph (4) of the Employment Law also emphasizes that if bankruptcy occurs, wages and other rights of workers/laborers are debts that are paid first. This conflict of interest has a significant influence on efforts to resolve bankruptcy, especially if in the event of bankruptcy, separatist creditors meet with workers' wages. This problem often sparks debate when bankruptcy occurs.

¹⁶ Susanti Adi Nugroho, *Hukum Kepailitan Di Indonesia* (Jakarta: Perdana Media, 2018).

¹⁷ Riyanda Kiransyah, 'Analisis Yuridis Kedudukan Kreditor Separatis Terkait Upah Pekerja Dari Debitor Pailit (Studi Kasus Putusan Mahkamah Konstitusi Nomor 67/PUU-XI/2013)', *Jurnal Garuda Kemendikbud*, 2020, hlm. 2.

Based on the Constitutional Court's decision, it can be concluded that workers' wages are prioritized in the event of bankruptcy against the claims of separatist creditors, claims of state rights, auction offices, and public bodies established by the government. This can create legal uncertainty in the provisions of the Bankruptcy Law and the existing guarantee law, and perhaps one day investors (especially banks) as separatist creditors will be reluctant to provide loans to their customers to obtain business capital in order to earn income and a good standard of living due to the reduced guarantee of the return of funds owned due to having a very weak position.

3.2. Judges' Considerations in Determining Workers' Wages in the Position of Separatist Creditors in Indonesia

The advancement of the Indonesian nation also impacts the growth of the workforce. These factors are inseparable, particularly in the realization of development based on "Pancasila and the 1945 Constitution of the Republic of Indonesia." This development is carried out to ensure the well-being of all citizens and to create a comprehensive environment that improves the lives of every worker and laborer, ensuring prosperity, justice, and equality in society.¹⁸

Therefore, to realize this development, the government has a very important obligation, especially in terms of employment. As mandated in "Article 27 paragraph 2 states: every citizen has the right to work and a decent living for humanity." This provision is a form of guarantee provided by the government to all its citizens in fulfilling employment. In addition to this, the government with its policies, especially in "Article 5 of Law Number 13 of 2003 concerning employment, states: every worker has the same opportunity without discrimination to obtain employment."

National law, particularly fair and orderly labor law, can be a definitive measure in society, especially for workers. However, in reality, existing laws are still unable to accommodate and lag far behind current developments. This has led to confusion in society regarding what rules should be used or applied, resulting in a lack of certainty about the rules applied to regulate events or situations. Therefore, a stable and flexible law is needed that can adapt to developments without eliminating noble national values.

The Constitutional Court in Decision No. 67/PUU-XI/2013, has issued a decision regarding the conflict of interest between creditors in the bankruptcy process, namely the Constitutional Court stated that in the case of a company going bankrupt, the payment of workers' wages owed will be prioritized over the claims of separatist creditors and claims of state rights, while other rights of workers will be prioritized over claims of state rights, auction offices and other government bodies except claims of separatist creditors.

Based on the considerations in Decision No. 67/PUU-XI/2013, the Constitutional

¹⁸ Sri Subiandini Gultom, *Aspek Hukum Hubungan Industrial* (Jakarta: Inti Prima Promosindo, 2008).

Court Judge is of the view that the legal basis for the right to collect for each creditor in bankruptcy is the same except for the right to collect for the state, namely the legal basis for separatist and labor creditors is the agreement made with the bankrupt debtor, while the legal basis for the state's claims is the provisions of statutory regulations.

In its considerations, the Court differentiates other worker/labor rights from worker/labor wages. Wages are constitutionally based on Article 28D paragraph (2) of the 1945 Constitution, which is a constitutional right that requires fair treatment during the employment relationship. Therefore, in its considerations, the Court places the position of worker/labor wages as the main priority on the basis that workers and capitalists cannot be equated in status, workers are seen as the weaker party and their compensation is protected in the state constitution. Meanwhile, compared to the state, the position of worker wages must be prioritized on the consideration that the state has other income. However, with other rights owned by workers/laborers, such as severance pay, they remain in the position after the payment of state bills and separatist creditors. This is because wages are the hard work of workers/laborers which should indeed be paid before their sweat dries, but unlike other rights owned by workers/laborers, these rights arise at the time of layoffs, so the Court views that these rights must still await payment of state bills and separatist creditors.¹⁹

4. Conclusion

The Position of Workers' Wages in the Settlement of Bankruptcy Cases Regarding the Position of Separatist Creditors should still be prioritized for payment over separatist creditors because wages are a basic right of workers to meet their living needs and as a form of protection for workers who lose their jobs due to company bankruptcy, this is in accordance with Law 13 of 2003 concerning employment which has provided protection for workers'/laborers' rights to wages in the bankruptcy process, namely in Article 95 paragraph 4, which states that in the event that a company is declared bankrupt or liquidated, workers'/laborers' wages are debts that are prioritized for payment. Law 37 of 2004 concerning bankruptcy has also regulated the protection of workers'/laborers' wages, namely in Article 39 paragraph 2 which regulates that wages owed before or after the bankruptcy declaration decision are debts of the bankruptcy estate.

The Judge's Consideration in Determining Workers' Wages in the Position of Separatist Creditors in Indonesia is that with the issuance of Constitutional Court Decision Number 67/PUU-XI/2013, the position of separatist creditors, which previously had a higher position than workers' wages, now has a position below workers' wages. In obtaining payment of their receivables in the form of wages, workers now have priority over separatist creditors. The basis of the Constitutional

¹⁹ Raden Roro Nymphyra Jasmine Sulistyو dan Sri Harini Dwiyatmi, 'Upah Pekerja Dalam Perusahaan Pailit (Kajian Atas Putusan Mahkamah Konstitusi Nomor 02/PUU-VI/2008; 018/PUU-VI/2008 DAN 67/PUU-XI/2013)', *Jurnal Ilmu Hukum Alethea*, Volume 2 N, hlm. 127.

Court Panel of Judges granting part of the applicant's request is based on the values of humanity and justice, because workers are a weaker party compared to separatist creditors, and workers' wages are a constitutional right that has been guaranteed based on the provisions of Article 28D paragraph (2) of the 1945 Constitution. However, the Constitutional Court Decision has created legal uncertainty regarding the position of separatist creditors who have been guaranteed based on the provisions of Article 55 paragraph (1) of the Bankruptcy Law and existing guarantee laws to be able to exercise their execution rights as if bankruptcy had not occurred, and who have priority rights in obtaining payment of their receivables compared to other creditors.

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