

Legal Protection of Employee Rights in Bankrupt Limited Liability Companies

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Abstract

Constitutional Court Decision No. 67/PUU-XI/2013 states that particular creditors whose position is higher than separatist creditors, as referred to in Article 60 paragraph (2), are wages from unpaid workers. So, legally, protecting the employees of a limited liability company that has been bankrupt has greater power. This research is intended to answer the questions: 1). What is the legal protection for employees of a limited liability company that has gone bankrupt?; and 2). What are the Implications of the Decision of the Constitutional Court Number: 67/PUU-XI/2013?

The research methodology used is a qualitative method through the study of legislation. Thus, it is known that the position of separatist creditors on workers' wages after the Constitutional Court's Decision Number 67/PUU-XI/2013 has a position below the workers' wages. This is a legal breakthrough from the provisions stipulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and the applicable guarantee law. So it is clear that if there is bankruptcy, workers' wages now have a higher position than the separatist creditors. Thus, the decision of Constitutional Court Number: 67/PUU-XI/2013 can protect the rights of Limited Liability Company Employees.

Keywords: Legal Protection, Limited Liability Company, and Bankruptcy.

INTRODUCTION

The strategic existence of Manpower in Indonesia cannot be separated from national development, which has a philosophical basis of Pancasila and the Constitution of the Indonesian nation, namely, the 1945 Constitution of the Republic of Indonesia. Human resources have a vital role and position as an actor and a national development target. Meanwhile, the rights of workers, as regulated in the Indonesian human resources law, which includes labor protection, must be enforced to maintain the dignity and humanity of Indonesian workers.

Protection of workers is intended to guarantee the fundamental rights of employees/employees/workers/laborers and equal opportunities and treatment without discrimination on any basis, to realize the welfare of workers/laborers and their families while still paying attention to the development of business progress (F. Winarni, 2006). The 1945 Constitution of the Republic of Indonesia has regulated the protection of employees/labor/laborers in Article 28D, paragraph (1) and paragraph (2), which reads:

- (1). *Every person has the right to recognition, guarantees, protection, and legal certainty that is just and equal treatment before the law.*

- (2). *Everyone has the right to work and receive fair and proper compensation and treatment in a working relationship (Article 28D, paragraph (1) and paragraph (2) of the 1945 Constitution.) (Article 28D, paragraph (1) and paragraph (2) of the 1945 Constitution).*

Companies where employees/workers/labor work does not always experience stability in their business operations, or other words, companies do not always generate increased profits. Many risks will be faced by every company, both in terms of investment and financing. Meanwhile, the company will never be free from debts. When a company experiences a decrease in income and profits, it is sure that it will experience difficulties carrying out its obligations to pay its debts to its creditors. When the debt is due and collectible, creditors can collect it from the company and have the right to apply for bankruptcy to the Commercial Court. The above, based on Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (UUK-PKPU) which states:

A debtor who has two or more Creditors and does not pay off at least one debt that has matured and is payable is declared bankrupt by a Court decision, either at his request or at the request of one or more of his Creditors. (Elucidation of Article 2 paragraph (1) of Law Number 37 of 2004)

In this paragraph, what is meant by a Director is either a Concurrent Director, a Separatist Director or a Preferred Director. The creditor holding a pledge, fiduciary guarantee, mortgage, or collateral rights to other materials or the creditor with collateral is a separatist director. This creditor, confirmed by Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU), which reads:

By continuing to pay attention to the provisions referred to in Article 56, Article 57, and Article 58, every Creditor holding a pledge, fiduciary guarantee, mortgage, or collateral rights over other assets, can exercise his rights as if no bankruptcy had occurred .

The article above statement confirms that the Director of the Sparatis has the authority to execute his rights as if there was no bankruptcy. Separatist means separating the right of execution of the guaranteed objects from the assets owned by the bankrupt Debtor. Thus, the separatist directorate has the most critical position in the bankruptcy process concerning the property rights pledged as receivables.

Furthermore, a Preferred Creditor is a Creditor who has privileges or priority rights. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (UUK-PKPU) uses the term special rights, as regulated in the Civil Code. Privileges contain the meaning of 'rights,' which are given by law to a person with debt so that the level is higher than other creditors. In this context, the Civil Code divides the privileges it regulates, namely special privileges in Article 1139 paragraph (1) of the Civil Code and general privileges in Article 1149 paragraph (1) of the Civil Code.

Special privileges mean privileges relating to particular objects, while general privileges include all objects. Based on the provisions of the Civil Code, special privileges take precedence over general privileges, as stated in Article 1138 of the Civil Code. Even though it has privileges compared to the rights of debtors in general, the position of the holder of the privilege is still

basically that of the holder of a lien or mortgage concerning the objects pledged as collateral. There are some exceptions to the sequence, such as court fees or tax bills (LegalOnline.com. Payment of Labor Wages in the Bankruptcy Process. Accessed from the internet <http://www.Hukumonline.com>, on 07 January 2018). Concurrent or ordinary Creditors are general Creditors (without material security rights or special rights). Based on the Civil Code, Concurrent Creditors have an equal position and have equal (proportional) rights to their receivables. This provision is also called the principle of "parity crematorium."

Meanwhile, according to Rahayu Hartini, there are 3 (three) categories of directors, namely: (Rahayu Hartini, 2012)

1. Special Group.
2. Special Group (*privileges*)
3. The Concurrent Group, or Concurrent Creditors

When the company where the worker/laborer/employee works is declared bankrupt by the Commercial Court, the worker/laborer/employee can ask for their rights, namely: wages. Based on Article 39 paragraph (2) Law no. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (UUK-PKPU), it is stated that:

From the date the bankruptcy declaration decision was pronounced, wages owed before and after the bankruptcy declaration decision was pronounced constitute bankruptcy estate debt

The wage statement above is a worker's right that is received and expressed in the form of money as compensation from the employer to the worker for services that have been or will be performed, determined, and paid by work agreements, agreements, or laws and regulations, including benefits for workers and his family. The position of employees/workers/laborers in a company bankruptcy is a class in which wage bills are categorized as general privileges, according to Article 1149 point (4) of the Civil Code. Even though employees/workers/laborers have the right to prepayment on the sale of bankruptcy assets, the position of the holder of the privilege is still under the holder of the security right. Even Creditors who hold privileges, such as employees/workers/laborers, are in fifth place after tax bills, court fees, auction fees, and curator fees. (Susilo Andi Darma, 2013). This condition then became a debate when compared with Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower, which states:

If a company is declared bankrupt or liquidated based on applicable laws and regulations, wages and other rights of workers/laborers are debts that take priority over payments. (Article 95 paragraph (4) of Law Number 13 of 2003)

The meaning of the phrase 'payment first' is considered to have multiple interpretations. 'Payment precedence' is defined as the settlement of employee/worker/laborer's bill of lading prior to payment before the Separatist Director, State rights, tax bills, court fees, auction fees, and curator fees. However, in reality, or practice, it does not happen.

The above facts have led to legal efforts, so in Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower, a Judicial Review application was submitted to the Constitutional Court on June 17, 2013, with case number 67/PUU-XI/ 2013. 9 (nine) employees led the

submission of this Judicial Review from PT. PERTAMINA, as applicants, each named: Ir. Otto Geo Diwara Purba as Petitioner I; Ir. Syamsul Bahri Hasibuan SH, MH as Petitioner II; Eiman as Petitioner III; Robby Prijatmodjo as Petitioner IV; Macky Ricky Avianto as Petitioner V; Yuli Santoso as Petitioner VI; Joni Nazarudin as Petitioner VII; Piere J Wauran as Petitioner VIII; and Maison Des Arnoldi as Petitioner IX.

The applicants have concerns about the protection of the employees of PT. PERTAMINA, in particular, and workers who work for other companies in general, which do not rule out the potential to be subject to the application of Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower when the company where they work goes bankrupt. Bankruptcy in this company is feared to make it difficult for employees/workers/laborers to claim their rights when faced with other creditors. This application is submitted to provide protection, defense of rights and interests, and improve proper welfare for employees/workers/laborers and their families.

This is what is considered by the applicants that the phrase 'Payment comes first' does not have a strict interpretation by the provisions of Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower, thus potentially creating legal uncertainty and denying the rights of the applicants. as employees/workers/laborers and other workers working in the company where they work that is experiencing bankruptcy based on the decision of the Commercial Court.

When viewed from the history, philosophy, and principles of bankruptcy law, bankruptcy law itself exists because of a debt agreement between the Debtor and the creditor, where the settlement is problematic, resulting in the need for arrangements for the settlement of debt payments to protect the Debtor and the creditor himself. Therefore bankruptcy adheres to several main principles of debt settlement of debtors to their creditors evenly to create justice.

In addition, several principles should be contained in the Bankruptcy Law, namely: The Bankruptcy Law must be able to encourage enthusiasm for Foreign Investment, encourage the Capital Market, and make it easier for Indonesian companies to obtain foreign credit; The Bankruptcy Law must provide balanced protection for creditors and debtors. (Sutan Remy Sjahdeini, 2002)

Furthermore, the legal theory that underlies this article is the theory of rights, in which Aristotle said that humans are "zoon politicon," social beings or social beings; therefore, every member of society has a relationship with one another. As social beings, consciously or unconsciously, humans always carry out legal actions (*rechtshandeling*) and legal relations (*rechtsbetrekkingen*). (R. Soeroso, 2006). In everyday life, humans are confronted by their interests in fulfilling their life needs. In this, human value is said to be carrying out legal actions. According to Chancellor, *Legal actions are all human actions intentionally carried out by someone to give rise to rights and obligations (for example, making wills and agreements)* (CST Kansil and Christine ST Kansil, 2014)

A legal relationship (*rechtsbetrekkingen*) is a relationship between two or more legal subjects, consisting of bonds between individuals and individuals, between individuals and communities, or between one community and another. In this legal relationship, one party's rights and obligations conflict with the other party's rights and obligations (R. Soeroso, 2006) According to Van

Apeldoorn, a "Legal event is an event which by law gives rise to or abolishes rights." Based on legal events, legal relations are divided into 3 (three) types, namely:

- a. One-sided legal relationship (*eenzijdige rechtsbetrekkingen*), where only one party can give something, do something or not do something (Article 1234 of the Civil Code) while the other party only has obligations.
- b. The legal relationship is two-sided (*tweezijdige rechtsbetrekkingen*), namely the legal relationship of two parties accompanied by rights and obligations on each party. Both parties have the authority/right to request something from the other party. On the other hand, each party is obliged to give something to the other party, for example, a working relationship between entrepreneur and worker/laborer.
- c. The relationship between one legal subject and all other legal subjects is in terms of property rights (*eigendomrecht*). Logemann, as quoted by Soeroso, argues that in every legal relationship, there are parties who have the authority/right to request achievements called "prestige subjects" and parties who are obliged to perform achievements called "plicht subjects." Thus, every legal relationship has two aspects: power/authority or rights (*bevoegdheid*) and obligations (*plicht*).

Legal protection means protection by using legal means or protection provided by law aimed at protecting specific interests, namely by turning the interests that need to be protected into a legal right. In the science of law, "Rights" are also called subjective law. Subjective law is a functional aspect of the legal relationship given by objective law (norms, rules, *Recht*). Legal protection is always related to the role and function of law as a regulator and protector of the public interest. In his book entitled *Crime and Custom in Savage*, Bronislaw Malinowski says "that the law does not only play a role in situations full of violence and conflict but also daily activities (R. Soeroso, 2006) .

The law determines the interests of the community, which can be increased into legal rights that can be enforced. Rights are given to rights advocates who are often known as legal entities (legal entities, *rechtspersoon*), which can be natural individuals (naturalize) and non-natural legal entities, namely legal entities based on legal inventions (Harjono, 2008) Supporters of rights (legal entities) have an interest in the objects of rights, which can be in the form of objects (*ius ad rem*) or natural legal entities (*ius in persona*) - granting rights to legal entities because of the entity's interest in certain rights objects.

According to Roscoe Pound, in the theory of interest, there are 3 (three) classifications of interests must be protected by law: *First*, concerning personal interests. *Second*, concerning the interests of society, and *third*, concerning the public interest (Marmi Emmy Mustafa, 2007). Regarding the role of law as a tool to provide protection and a legal function to regulate relationships and resolve problems that arise in society, Bohannan, who is famous for his conception of reinstitutionalization of norms, states that:

"A legal institution is a tool used by members of a society to resolve disputes that occur and to prevent abuse of the rules that are collected in various social institutions. Every society has legal institutions in this sense and other non-legal institutions." (Soerjono Soekanto, 1983)

Legal remedies are known in two types, namely non-judicial legal remedies (outside the Court) and judicial legal remedies (judicial). Non-judicial legal remedies are preventive before violations occur (preventive) in the form of actions such as warnings, reprimands, subpoenas, objections, and complaints. Meanwhile, judicial legal remedies are repressive/corrective, meaning they have entered the law enforcement process. These efforts are made after a violation to return or restore the situation. The estuary of legal remedies is so that the rights owned by a person are avoided from interference, or if these rights have been violated, these rights can be restored. However, this does not mean that the situation can be fully restored with legal action (Harjono, 2008).

In order to avoid misunderstanding, it is necessary to put forward several theories about rights. In the 19th century in Germany, 2 (two) theories about rights were fundamental and very influential, namely:

1. The theory considers rights as protected interests (*belangen theory from Rudolph von Jhering*).
2. The theory considers rights as wills equipped with power (*wilsmacht theory from Bernhard Windscheid*). This theory says that the right is a will that is equipped with the power given by the legal order to the person concerned. (R. Soeroso, 2006)

Besides these two theories, there is still a combined theory trying to unite the elements of will and interest in the sense of rights. In his book *Inleiding tot de studie het Nederlandse Recht*, Apeldoorn states that a right is a law related to a human being or a particular legal subject and thus transformed into a power, and a right arises when it starts to move.

So the right is a force (Macht) regulated by law, and this power is based on morality (morals) and not only physical strength. Rights must be exercised according to their objectives, namely in accordance with social or public interests. Exercising rights that are not by their objectives is called abuse of rights (e.g., van Utrecht, Abus de Droit). According to Utrecht, as quoted by Chainur Arrasjid, (Chainur Arrasjid, 2005). exercising a right not according to its purpose is to deviate from the purpose of the law, namely to deviate from guaranteeing legal certainty. Therefore, the person concerned must exercise his rights by the purpose of the law.

Because the purpose of the law is to protect interests, the use of rights without a proper interest is declared as an abuse of rights. In general, rights are divided into two groups: absolute rights or absolute rights (absolute Rechten, onpersoonlijke rechten) and relative rights (relative, relative Rechten, persoonlijke rechten).

Absolute rights or absolute rights are any powers granted by law to legal subjects to do something or act in their interests. This right applies to other legal subjects and must be respected by every legal subject. Absolute Rights or Absolute Rights consist of Human Rights, Absolute Public Rights, and part of Private Rights. While Relative Rights (relative) are any powers/authorities given by law to other/certain legal subjects so that they do something, not do something or give something, this right arises as a result of an engagement. Relative (relative) rights consist of relative public, family, and wealth rights.

Relative Property Rights are all property rights that are not material rights or goods created by humans. These rights can only be exercised against certain people (not *droit de suite*) or also known as *bellows* (*verbintenis*), according to Hofman van Opstal as quoted by Chainur Arrasjid:

"The debt must be formulated as a relationship according to the law of wealth between two parties which gives the power/authority of one party to charge the other party to do something, not do something or give something, while the other party is obliged to do and be responsible for what owed to him." (Chainur Arrasjid, 2005).

This right is attached to workers/laborers and employers in employment relations, where both parties are bound to do something, not do something and give something by the Employment Agreement. From the description above, this article will answer the following questions: a). What is the legal protection for employees of a Limited Liability Company (PT) who has been bankrupt? b). What are the Implications of the Constitutional Court Decision Number: 67/PUU-XI/2013 for Employees and other Creditors in Limited Liability Companies (PT) that have been bankrupt?

METHODOLOGY

The data in this article were obtained using library research methods (Library Research). This method is carried out by examining library materials or secondary data: a). Primary materials, namely materials that are binding and consist of books, journals, etc., are related to the issues discussed; b). Secondary materials, namely materials that explain the primary materials in the form of research articles or opinions of other legal experts.

Furthermore, to obtain data relevant to this paper's problems, reference materials are collected to obtain secondary data. The first step is to take an inventory of sources as references, then write them down systematically. Lastly is descriptive-qualitative analysis, by way of systematizing, where the primary and secondary materials above are classified to facilitate analysis and formulate constructs or concepts (Soerjono Soekanto and Sri Mamudji. 2001)

RESULTS AND DISCUSSION

Legal Protection of Employee Rights

Law no. 13 of 2003 concerning Manpower distinguished between workers and workers/laborers. Workers are those who have the potential to work, meaning that they may not yet work. Meanwhile, workers/laborers are potential workers who are already bound by an employment relationship with the employer by receiving wages or other forms of compensation (Koesparmono Irsan and, 2016) The workforce is everyone who can do work to produce goods and services to meet their own needs and those of the community (Article 1 number 2 of Law Number 13 of 2003). While the definition of worker or laborer is every person who works by receiving wages or other forms of compensation (Article 1 point 3 of Law Number 13 of 2003). An employer is an individual, entrepreneur, legal entity, or other entity that employs workers by paying them wages or other forms of compensation (Article 1 point 4 of Law Number 13 of 2003). While the definition of an entrepreneur is as follows (Article 1 point 5 of Law Number 13 of 2003).

1. An individual, a partnership, or a legal entity that operates a self-owned company.
2. Individuals, partnerships, or legal entities that independently run a company that is not theirs.
3. Individuals, partnerships, or legal entities located in Indonesia representing companies as referred to in letters a and b domiciled outside the territory of Indonesia.

Meanwhile, what is meant by the Company is: (Article 1 point 6 of Law Number 13 of 2003)

1. Every form of business that is a legal entity or not, owned by an individual, owned by a partnership, or owned by a legal entity, whether privately owned or owned by the State that employs workers or laborers by paying wages or other forms of remuneration.
2. Social enterprises and other businesses that have administrators employ other people by paying wages or other forms of compensation.

A labor agreement is a regulation made by a person or several employers or associations of employers with a legal entity and one or several trade unions with a legal entity regarding work conditions that are complied with when making a work agreement (Koko Kosidin, 1999). A work agreement is an agreement between a worker or laborer and an entrepreneur or employer, which contains the terms of work, rights, and obligations of the parties (Article 1 number 14 of Law Number 13 of 2003). Like agreements in general, by making a labor agreement, rights and obligations will arise for each party. Workers have the right to receive wages, while companies or employers are obliged to pay wages in other forms.

Disputes or disputes often occur in labor agreements between workers or laborers and employers. Where one of the parties does not carry out the contents of the labor agreement, resulting in default and open to the prosecution of obligations (Koko Kosidin). Within the dispute resolution framework, Law Number 13 of 2003 concerning Manpower and Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes serve as legal umbrellas for resolving disputes in industrial relations. So that the rights of workers or laborers will be guaranteed. This is expressly stated in Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (Article 1 point 1 of Law Number 2 of 2004). From Article 1 point 1 Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, thus there are 4 (four) types of industrial relations disputes, namely:

1. Rights Dispute.
2. Disputes about layoffs.
3. Disputes of Interest.
4. Disputes between Trade Unions/Labour Unions in one company. (Koesparmono Irsan and Armansyah, 2016).

Bankruptcy Process in Limited Liability Company (PT)

The definition outlined in Article 1 Number 1 of Law Number 40 of 2007 Concerning Limited Liability Companies, Some give the meaning of a limited liability company as an association of shareholders (or even a shareholder if it is possible for that to be done by law in certain countries) created by law and treated as an artificial person by the Court, which is a legal entity, therefore the same. Once separated from the people who founded it, with the capacity for continuous existence, and as a legal entity, a limited liability company has the authority to receive and exercise other authorities granted by applicable law (Munir Fuady, 2003). The term Limited Liability Company (PT) used today was formerly known as Naamloze Vennotschap, abbreviated as NV. The name Naamloos in the meaning of nameless because the NV does not have a name like a firm in general,

nor does it use one of the names of the members of the company. Its identification is in the company object (Ahmad Ichsan, 1986).

A limited Liability Company is a legal entity, meaning it can bind itself and carry out legal actions like an individual (*natuurlijk persoon*) and have wealth or debt (Soemitro Rochmat, 1993). The provisions in Article 36, Article 40, Article 42, and Article 45 of the Commercial Code (KUHD) will contain elements that can form a business entity into a limited liability company as follows (CST Kansil and Christine ST Kansil, 1997):

1. There is separate wealth from the personal wealth of each shareholder (shareholder) to form several funds as collateral for all company engagements;
2. There are partners whose responsibility is limited to the nominal number of shares they own. While all of them at the General Meeting of Shareholders (GMS) are the highest authority in the company organization, which has the authority to appoint and dismiss Directors and Commissioners, has the right to determine the outlines of policies for running the company, determine matters that have not been stipulated in the Articles of Association and others
3. There is management (Board of Directors) and Commissioners who are a unit of management and supervision of the company, and their responsibilities are limited to their duties, which must be by the Articles of Association and the resolutions of the GMS.

A Limited Liability Company is a legal entity (legal entity), namely an "independent" legal entity (*persona standi in iudicio*) which has different qualities and characteristics from other forms of business, known as "characteristics of a PT," namely (IG Rai Wijayacorporate Law, 2006):

1. As a capital association;
2. The assets and debts of the PT are separate from the assets and debts of the Shareholders;
3. Shareholders: responsible only for what is deposited, or limited liability (*limited liability*), is not responsible for the loss of the company (PT) exceeding the value of the shares it has taken, not personally responsible for the engagement made on behalf of the company;
4. There is a separation of functions between Shareholders and Management or Directors;
5. Have a Commissioner who functions as a supervisor;
6. The highest power rests with the General Meeting of Shareholders (GMS).

The use of the term "Limited Liability Company," abbreviated as "PT," has become standard in society and even standardized in various laws and regulations, for example, the Limited Liability Company Law (UUPT) number 40 of 2007 concerning Limited Liability Companies and Law number 8 1995 concerning the Capital Market. In its journey, it turns out that the company does not always experience stable growth, and even a company can experience bankruptcy or bankruptcy. Bankruptcy, according to Article 1 of Law No. 37 of 2004 concerning bankruptcy and postponement of debt payment obligations (UUK-PKPU). Bankruptcy is a condition where the Debtor cannot make payments on the debts of his creditors. The inability to pay is usually caused by financial distress from the Debtor's business, which has experienced setbacks. In this condition, apart from having difficulty repaying debts to creditors, the company also experienced difficulties fulfilling employee rights (Gatot Supramono, 2009).

Furthermore, regarding the bankruptcy defined above, in the process of applying a bankruptcy statement made by a creditor, some conditions must be met in order for the application to be submitted, namely:

1. The Debtor has two or more creditors.
2. Not paying at least one debt that is due and collectible.
3. At his request or the request of one or more creditors. (Rahayu Hartini, 2008)

In Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligation for Payment of Debts of UUK-PKPU), there are 6 (six) parties who can apply for bankruptcy, namely (Rahayu Hartini, 2008):

1. The Debtor himself.
2. One or more directors.
3. Prosecutor's office for the public interest.
4. Bank Indonesia (BI) if the Debtor is a bank.
5. Capital Market Supervisory Agency (Bapepam), in the case that the creditors are Securities Companies, Stock Exchanges, Clearing Guarantee Institutions, Depository and Settlement Institutions.
6. The Minister of Finance, if the Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise operating in the field of public interest.

As a result of the declaration of bankruptcy against the Debtor, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) Article 24 paragraph (1) stipulates that the bankrupt Debtor by law loses the right to manage and control his wealth which includes bankruptcy assets, since the day the bankruptcy decision is pronounced. It must also be observed that the decision to become a bankrupt debtor does not mean that the Debtor loses his civil rights (*volkomen handelings bevoegdheid*) to be able to carry out all legal actions in the civil sector.

The bankrupt Debtor only loses his civil rights to manage and control his wealth. Meanwhile, to carry out other civil acts, for example, marrying himself, marrying off his child as a guardian, making marriage agreements, receiving grants, managing the assets of other parties, and becoming the attorney of other parties to carry out legal actions for and on behalf of a power of attorney, the Debtor still authorized (still has the legal capacity) to commit these civil acts. Thus, since the bankruptcy decision was pronounced, only the bankrupt Debtor's assets are under guardianship. At the same time, the bankrupt Debtor is not under guardianship (Sutan Remy Sjahdeini, 2009). The lawsuit concerning the rights and obligations of the bankrupt Debtor's assets must be filed against or by the Curator (Rahayu Hartini, 2008).

As a result of the bankruptcy declaration, the Debtor's assets included in the bankruptcy assets are under general confiscation (general confiscation). This means that confiscation applies to anyone, not only to certain parties, such as collateral confiscation, that a civil judge decides regarding the plaintiff's application in a civil dispute. For this reason, in this bankruptcy event,

many interests are involved, namely in addition to the interests of the creditors and other stakeholders from the Debtor. UU no. 40 of 2007 concerning Limited Liability Companies (PT) acknowledges that what is related to the life of a company is:

1. The interests of the company.
2. Interests of shareholders.
3. The interests of company employees and workers.
4. Public interest, including suppliers, distributors, and consumers.
5. The importance of fair competition in doing business (Sutan Remy Sjahdeini, , 2016).

Bankruptcy is the distribution of the assets of the bankrupt Debtor among the creditors. Judging from the distribution of creditors' rights, there are several levels of creditors in the distribution of bankrupt assets, namely:

1. *Separatist creditors*
2. *preferred creditors*
3. *Concurrent creditors*

Implications of the Decision of the Constitutional Court Number: 67/PUU-XI/2013 for employees and other creditors in a limited liability company (PT) that has been bankrupt.

The application for a judicial review of Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower by the applicants, which is deemed to be contrary to Article 28D paragraph (1) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, is as follows :

1. *Considered contrary to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia because it has the potential to cause legal uncertainty for workers.*

In practice and considering the applicable legal provisions, both in Article 1134 paragraph (2) in conjunction with Article 1137 of the Civil Code and Article 21 of Law Number 16 of 2000 concerning General Provisions and Tax Procedures as last amended by Law Number 28 In 2007 regarding the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, there is a ranking order of the settlement of the Keditur bill after the completion of the separatist Keditur, where workers' wages still have to wait for the order after the bill of state rights, auction offices, and agencies general government established to take precedence. In addition, the application of Article 20 paragraph (2) of Law Number 2 of 1992 concerning Insurance Business, both the Tax Law, the Insurance Law, and the Labor Law all state priority/priority. In practice, this will lead to legal uncertainty for workers/laborers.

2. *Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower is considered contrary to Article 28D paragraph (2) because it has the potential to cause a violation of workers' rights to receive fair and legal treatment.*

Even though wages and labor rights are guaranteed in the event of a company bankruptcy or liquidation, the position of the employee/worker/ laborer as the particularly preferred

creditor becomes vulnerable because they are still waiting for payment for the Separatist Directorate in the event of bankruptcy. Thus, one of the parties whose rights are guaranteed during the bankruptcy process, namely employees/workers/laborers, is neglected by their human rights to obtain a decent living and compensation according to their work.

After submitting an application for judicial review accompanied by the existence of legal facts, witnesses, and matters related to the application for judicial review, the Constitutional Court partially granted the petition of the Petitioners filed on September 11, 2014. The Ruling of the Constitutional Court Number 67/PUU- XI/2013 Stating:

1. Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower is contrary to the 1945 Constitution of the Republic of Indonesia *as long as it does not make sense*: 'Payment of wages owed by workers/laborers takes priority over all types of creditors including bills from separatist directors, bills on State rights, auction offices and public bodies established by the Government, while payment of rights of workers/other laborers takes priority over all bills including bills rights of the State, auction office, and public bodies formed by the Government, except for claims from the separatist Director.'
2. Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower does not have binding legal force *as long as it is not interpreted*: 'Payment of wages owed by workers/laborers takes priority over all types of creditors including bills from separatist directors, bills on State rights, auction offices and public bodies established by the Government, while payment of rights of workers/other laborers takes priority over all bills including bills rights of the State, auction office, and public bodies formed by the Government, except for claims from the separatist Director (Constitutional Court Decision No. 67/PUU- XI/2013, 2014)

The Constitutional Court's decision to grant the request has created two new norms. If the company is declared bankrupt, the Constitutional Court says that the payment of workers' wages takes precedence over all types of claims and other creditors, including separatist creditors and state tax claims. The Constitutional Court gives a different position on wages and other workers' rights. Wages are placed in a more critical position than other rights.

After the Constitutional Court Decision Number 67/PUU-XI/2013, the provisions regarding the position of separatist creditors with workers' wages are now different from the previously regulated provisions. This has changed the practice of bankruptcy so far. Where before the issuance of the decision of the Constitutional Court Number 67/PUU-XI/2013 in the event of bankruptcy, where the separatist creditors in obtaining repayment of their receivables took precedence over the wages of workers. However, the Constitutional Court's decision Number 67/PUU-XI/2013 has made a legal breakthrough (*rule-breaking through*) (Tejaningsih Point, 2015). In this case, the provisions which have been limitedly regulated under the Bankruptcy Law are now different from the applicable provisions.

Based on the Decision of the Constitutional Court Number 67/PUU-XI/2013, in the event of bankruptcy, workers' wages now have a higher position than separatist creditors. However, this only applies to workers' wages. Regarding bills of waged workers, other rights, such as severance pay for separatist creditors, still have a higher position than workers' wages. This is as contained in the ruling, which has made two new norms stating that the payment of wages owed by laborers takes precedence over all types of creditors, including bills from separatist creditors, state bills, auction offices, and public bodies formed by the government. Meanwhile, the payment of other workers' rights takes precedence over all types of claims,

including bills on State rights, In Article 10, paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court states:

"The Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to examine the Act against the 1945 Constitution of the Republic of Indonesia"
(See Article 10 paragraph (1) a Law no. 8 of 2011)

Thus, the explanation of Article 10 paragraph (1) letter a of Law no. 8 of 2011 concerning the Constitutional Court for changes to Law no. 24 of 2003 states that the decision of the Constitutional Court is final, that is, the decision of the Constitutional Court immediately obtains permanent legal force from the moment it is pronounced and there are no legal remedies that can be taken. The nature of the finality in the decisions of the Constitutional Court in this law also includes binding legal force (final and binding). Thus it can be seen that arrangements concerning the position of separatist creditors and workers' wages must proceed by the provisions of the Constitutional Court decision.

The decision of Constitutional Court Number 67/PUU-XI/2013 has had both positive and negative impacts. When viewed from the side of the interests of the separatist creditors, if the decision is implemented absolutely, it will hurt them. This is because the rights of the separatist creditors to get their receivables repaid based on Article 55 paragraph (1) provisions are now different from the previous provisions. In this case, workers' wages have the right to precede the separatist creditors.

Separatist creditors have collateral for material debt (collateral rights), such as holders of mortgages, mortgages, fiduciaries, and others (Munir Fuady, 2014) The guarantee rights owned by the separatist creditors are intended to protect them when the Debtor becomes bankrupt so that the separatist creditors can easily collect the settlement of their receivables from the collateral owned under Article 55 paragraph (1) of the Bankruptcy Law. However, the Constitutional Court's decision has reduced the protection of separatist creditors. In this case, the separatist creditor is the party that suffers the most from the Constitutional Court Decision.

When viewed from the perspective of the Curator's interests, the Constitutional Court's decision has had a positive impact on the Curator. The decision makes it easier for the Curator to carry out his duties. In this case, the Curator no longer needs to argue with workers, separatist creditors, or tax officials. However, the Constitutional Court's decision has had a positive impact when viewed from the perspective of workers' interests.

From the explanation above, it can be concluded that after the issuance of the Constitutional Court decision Number 67/PUU-XI/2013, even though the position of the separatist creditor has been guaranteed under the provisions of Article 55 paragraph (1) of the Bankruptcy Law which has the right to precede other creditors, however, if the separatist creditor meets with salary workers, this provision does not apply to workers' wages. In this case, the separatist creditor has a position below the worker's wages. In obtaining the settlement of their receivables after the issuance of a Constitutional Court decision, workers' wages now have the right to precede separatist creditors.

Even though workers' wages have received legal certainty and obtained a higher position than any creditor, the next problem is which wages are referred to in the decision. When a company experiences financial problems and has the potential to go bankrupt, employees (workers/laborers) are most likely not aware of the situation because workers only think that they have to do their duty to earn wages and survive. Employees (workers/laborers) will understand that their company begins to experience financial difficulties when their wages are several months in arrears.

Based on the decision of Constitutional Court Number 67/PUU-XI/2013, the judges of the Constitutional Court argued that wages are a debt that takes precedence over any creditor,

including separatist creditors, on the basis that workers are parties with low economic status. The author thinks that judges' judgments are less objective. A judge should not judge based on pity because workers are always synonymous with parties whose position is weak. Previously, the constitutional court judges did not explain in their considerations which wages were meant in this decision. Bankruptcy law regulates wages recognized by the Curator in Article 39 Paragraph (2) of Law no. 37 of 2004 concerning UUK-PKPU, Based on the article, there are two conditions regarding the existence of an employee wage debt (worker/labor), namely before the bankruptcy declaration decision and after the bankruptcy declaration decision from the Court. The author thinks that the wages owed to workers who were in arrears before the bankruptcy declaration decision are bankrupt property debts. In contrast, the author disagrees if the wages payable after the bankruptcy declaration decision, including part of the debt that has priority in payment and the bankruptcy estate debt.

What is meant by workers' wages before the bankruptcy declaration is waged when a company experiences financial difficulties and is in arrears in paying workers until the bankruptcy declaration decision is issued. When the company does not lay off employees until the Court issues a bankruptcy decision, the author thinks that workers are still entitled to their wages because of their status as employees. Based on Article 93 paragraph (2) letter f of Law Number 13 of 2003 concerning Manpower, it states that one of the conditions in which employers must pay wages is:

The worker/laborer is willing to do the work promised, but the entrepreneur does not employ him, either because of his fault or an obstacle the entrepreneur should be able to avoid (Article 93 paragraph (2) letter f of Law Number 13 of 2003)

Employees (workers/laborers) who do not do their jobs because the company is experiencing financial problems and are waiting for the results of a bankruptcy decision, the workers/laborers have the right to their wages because, in this case, the workers/laborers are willing to do their jobs. However, due to obstacles employers should have avoided, employees (workers/laborers) cannot do their job. In this case, the author thinks that the obstacle referred to in this situation is the company's attitude towards its workers. When the company has experienced financial difficulties and has even been submitted for bankruptcy and has not carried out layoffs, workers are entitled to the rights as stipulated in Article 165 of Law Number 13 of 2003. If a company in the circumstances mentioned above continues to employ its employees (workers/laborers) because the Court's decision may be canceled due to certain efforts, then normatively, the right to wages still exists based on the wage concept. The wages that appear before the bankruptcy declaration by the Court is included in the debt referred to in the Constitutional Court Decision Number 67/PUU-XI/2013.

Wages recognized as debt for bankruptcy assets in Article 39 paragraph (2) of the UUK-PKPU are other wages that appear after the bankruptcy declaration decision is pronounced. It has been mentioned that as long as the company does not take any layoffs, the workers' right to wages still exists even though they are not doing their jobs. Article 39 paragraph (1) UUK-PPPU, Based on this article, after a declaration of bankruptcy by the Court, termination of employment can indeed be carried out on the initiative of the worker himself. However, this is rarely done by workers, bearing in mind that if the termination of employment by workers is carried out before the decision

to declare bankruptcy, then the employee (worker/laborer) is considered to have resigned or what is commonly called termination of employment by workers.

The consequences of termination of employment by workers are also considered unfavorable when compared to termination of employment because the company is bankrupt by the Curator. When the layoff is carried out by the worker himself, the other rights that arise as a result of the layoff based on Article 162 paragraph (1) of the Law on Manpower, Based on this article, the right obtained if the worker terminates the employment relationship is limited to compensation for rights by Article 156 paragraph (4) of the Manpower Law. In contrast to when the layoff is due to company bankruptcy, the rights obtained by workers under Article 165 of the Labor Law are severance pay of 1 (one) time the provisions of Article 156 paragraph (2), long service pay of 1 (one) time the stipulation Article 156 paragraph (3) and compensation for rights according to the provisions of Article 156 paragraph (4). So that when the Curator makes a layoff, the rights that arise are the same as those when a layoff is due to bankruptcy.

On the other hand, based on Article 39 paragraph (1) of the UUK-PKPU mentioned above, layoffs can also be carried out by a curator appointed in a bankruptcy declaration decision. Article 15, paragraph (1) of Law Number 37 of 2004 concerning UUK-PKPU states that: *In the decision to declare bankruptcy, a Curator and a Supervisory Judge must be appointed from the judges of the Court.*

So that when the bankruptcy decision is issued, a curator is appointed who is tasked with settling the bankruptcy estate, including terminating the employment relationship with the company. Before the Curator terminates the employment relationship, until then, the workers in the company declared bankrupt are still entitled to their rights, namely wages.

Even though there is a principle of "no work, no pay" in the wage system, for certain reasons, workers/laborers are still entitled to receive wages from employers (Abdul Khakim, 2009) As long as the company wants not to work, the company is not included in the worker's fault. Moreover, the risk of profit and loss of a business is not the scope of the worker's risk. Then the worker can still receive his right to get wages as long as his status is still a worker. Based on the explanation above, starting from the date of the bankruptcy declaration decision until one of the parties, namely the worker or Curator, terminates the employment relationship (PHK), until that period, there are still wages that arise as a result of the status of the worker.

When a company is declared bankrupt, two types of workers' wages arise, namely wages that appear before the bankruptcy decision is declared and after the bankruptcy decision is declared. The decision of the Constitutional Court Number 67/PUU-XI/2013 states that workers' wages have the right to precede separatist creditors, so the problem that arises next is which wages can precede separatist creditors, bearing in mind that two types of wages arise in bankruptcy. The Constitutional Court Decision No. 67/PUU-XI/2013 does not state which wages are entitled to precede separatist creditors, but of course, the Curator, as the party who settles the bankrupt assets, will carry out their duties by the Bankruptcy Law.

In the previous explanation, it has been explained that in Bankruptcy Law, the wages recognized in bankruptcy are debts that are in arrears before and after the declaration of bankruptcy, so it can also be concluded that the debts recognized in the Constitutional Court Decision Number 67/PUU-

XI/2013 are as stated in law No. Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU).

CONCLUSION

Legal protection for the rights of employees in the event of a company bankruptcy is contained in Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower, Based on the Constitutional Court Decision No. 67/PUU-XI/2013, which includes privileged creditors whose position is higher than the separatist creditors as referred to in Article 60 paragraph (2) of the UUK-PKPU, are Labor wages owed (Constitutional Court Decision 67/PUUXI/2013 dated 11 September 2014). So legally, protecting employees of a limited liability company (PT) bankrupt has more power.

Regarding employee implications, separatist creditors are related to workers' wages. After the Constitutional Court's decision, Number 67/PUU-XI/2013 has a position below workers' wages. Regarding wages, workers pay their receivables off first, then the separatist creditors. This is a legal breakthrough (rule-breaking through) of the provisions regulated by the Bankruptcy Law and the applicable guarantee law. So it is clear that in the event of bankruptcy, workers' wages now have a higher position than that of separatist creditors. However, if there are objections to the number of claims obtained by the separatist creditors and workers,

Furthermore, regarding the implications for other creditors, the legal basis for judges' legal considerations in the decision of the Constitutional Court Number 67/PUU-XI/2013 confirms that between separatist creditors and workers, the legal basis is the same in the form of an agreement, but when viewed from other aspects in the form of there are significant differences in the legal subject aspect, object aspect and risk aspect between separatist creditors and workers' wages. In terms of the legal subject aspect, in this case, the Court thinks that socially and economically, the position of workers is weaker than that of entrepreneurs/separatist creditors.

In terms of the object of the material guarantee agreement, the object is property, while the work agreement, which is the object, is energy, so it has a fundamental difference. According to the Court, human interests in themselves and their lives are more important and priority than human interests in property. Regarding the risk aspect, the Court thinks that risk is natural for separatist entrepreneurs/creditors in business management. Workers have the right to receive fair and proper remuneration and treatment in an employment relationship as stipulated in Article 28D paragraph 2 of the 1945 Constitution. Receiving wages must be protected, and the Constitutional Court partially granted the petitioners' petition on these legal considerations. Therefore, the decision of the Constitutional Court Number:

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