

The Impact of Constitutionalism and Social Justice on Protection Employment: A Lesson from Asean Country

Abdul Kadir Jaelani

Faculty of Law, Universitas Sebelas Maret,
Surakarta, Indonesia
jaelaniabdulkadir@staff.uns.ac.id

Reza Octavia Kusumaningtyas

Faculty of Law, Universitas Negeri Semarang,
Semarang, Indonesia
rezaoctavia2001@gmail.com

Willy Naresta Hanum

Faculty of Law, Universitas Diponegoro, Semarang,
Indonesia
willynaresta@gmail.com

DOI: <https://doi.org/10.55292/wx4a0h35>

Abstract

In Indonesia, numerous laws and regulations regulate laborers' rights to wages in bankrupt companies. However, the rules and regulations governing these still need to be harmonized. Consequently, this research analyzes the effects of bankruptcy and worker protection based on social justice. This research employs normative juridical research incorporating conceptual, legislative, and comparative approaches with other countries. The



@ 2024 **Proceeding APHTN-HAN**, All rights reserved.

This is an open-access article distributed under the terms of the [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-nc-sa/4.0/).

research results reveal that, first, bankruptcy significantly impacts employees, often pushing them to the back of the creditor queue when the curator distributes bankruptcy assets. Various laws and regulations have regulated safeguarding laborers' rights, but some overlap exists. Consequently, it is crucial to re-establish the status of employees in insolvent companies and harmonize the corresponding regulations to guarantee workers' rights to socially just compensation. Second, despite sharing the same concept as Indonesia, Singapore and Thailand have more sophisticated and effective rules to protect workers' rights. Consequently, to achieve social justice and dignity, Indonesia must adopt regulations in both countries to protect workers' rights in insolvent companies.

Keywords

Employment, Insolvency, Social Justice.

I. Introduction

Companies and workers have rights and obligations that are applied equally. Employees have the right to receive wages or salaries and must align their work with their field, expertise, and abilities. In reality, companies only sometimes demonstrate growth and profitability as they conduct their operations due to the risks associated with the business, such as operational risk, financing risk, and investment risk. Various risks can jeopardize the company's financial sustainability, with bankruptcy being the most catastrophic

outcome when it fails to meet its debt obligations. Even though the curator has assumed responsibility for administrating the company's assets, the company retains its legal status due to a commercial court decision declaring it bankrupt.¹

Article 39, paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations classifies wages owed before or after the declaration of bankruptcy as debts of the bankruptcy estate from the date of the statement. This implies that if the bankrupt company's debtor cannot fulfill the wages, severance pay, and other rights owed to workers or laborers under the Employment Law, these obligations become debts of the bankruptcy estate, with the workers or laborers acting as creditors. Bankrupt. However, Article 39, Paragraph 2 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations does not clarify the position of workers and laborers as creditors. Consequently, Article 39, Paragraph 2 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations needs to clarify further the priority order for settling the receivables of workers or laborers, especially regarding the payment of their rights.²

One of the primary objectives of the bankruptcy process is to resolve the collective action issues that creditors encounter when their debtor declares bankruptcy. First, a

¹ Anom Wahyu Asmorojati et al., "The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights," *Bestuur* 10, no. 1 (2022): 43, <https://doi.org/10.20961/bestuur.v10i1.60179>.

² Abdul Kadir Jaelani et al., "Legal Protection of Employee Wage Rights in Bankrupt Companies: Evidence from China," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023): 202-23, <https://doi.org/https://doi.org/10.22219/ljih.v31i2.25874>.

frequently employed approach is to grant a general suspension of each creditor's claims to prevent creditors from seizing the assets of individual debtors.³ Second, to mitigate the risk of creditors rejecting the restructuring plan in anticipation of receiving full payment upon its success (the holdout problem), restructuring regulations mandate that the rescue plan be binding on all creditors upon approval by a majority of creditors. For the benefit of all creditors, bankruptcy regulations should exclusively aim to facilitate the efficient liquidation of the debtor's assets or the most value-enhancing restructuring plan, according to the broad view.⁴ This should be achieved without modifying pre-insolvency rights from private bargaining, such as pledges, mortgages, and other security interests. Within this conceptual framework, the asset distribution must undoubtedly follow the pari passu principle, granting secured creditors a higher priority than unsecured creditors and placing all unsecured creditors in the same position.⁵

Article 1134 of the Civil Code grants a superior status to creditors who possess special privileges compared to other individuals who are indebted. Article 1149 of the Civil Code is a legal opportunity that can serve as the foundation for the

³ M. Dachyar, Teuku Yuri M. Zagloel, and L. Ranjaliba Saragih, "Enterprise Architecture Breakthrough for Telecommunications Transformation: A Reconciliation Model to Solve Bankruptcy," *Heliyon* 6, no. 10 (2020): e05273, <https://doi.org/10.1016/j.heliyon.2020.e05273>.

⁴ Ankitkumar Kariya, "Borrowing from Government Owned Banks & Firm's Liquidation Risk," *Journal of Corporate Finance* 69 (August 2021): 101982, <https://doi.org/10.1016/j.jcorpfin.2021.101982>.

⁵ Federico M. Mucciarelli, "Employee Insolvency Priorities and Employment Protection in France, Germany, and the United Kingdom," *Journal of Law and Society* 44, no. 2 (June 2017): 255-82, <https://doi.org/10.1111/jols.12025>.

special rights of workers and laborers. Article 1149 of article 1149 of the Civil Code clarifies that workers' and laborers' compensation is a general privilege, with priority for their repayment. Article 95, paragraph 4 of Law Number 13 of 2003 concerning Employment states that when a company declares insolvency, wages and other rights of workers and laborers are considered debts that have the explanation clarifies that the term "priority in payment" refers to the obligation to pay workers' wages before fulfilling other commitments. Order or laborer is specified in these provisions as the priority in fulfilling their receivables.⁶

The position of the privilege bearer, despite the nature of the privilege taking precedence, remains inferior to that of the lien and mortgage rights holder. The hierarchy of creditors who hold privileges ranks workers and laborers fifth, after tax bills, court fees, auction fees, and curator fees. This hierarchy is a key factor in understanding the power dynamics in bankruptcy cases. Separatist creditors still take precedence over the provisions concerning worker and labor privileges.⁷ This is evident in Article 55, paragraph 1, of Law Number 37 of 2004 regarding bankruptcy and postponement of debt payment obligations. Separatist creditors and tax costs both weaken the position of workers. Workers who are in fifth place in bankruptcy cases are considered to be vulnerable. Nevertheless, the bankruptcy law and PKPU continue to

⁶ Dian Rahmawati and Deden Rukmana, "The Financialization of Housing in Indonesia: Actors and Their Roles in the Transformation of Housing Production," *Cities* 131, no. May 2021 (2022): 103918, <https://doi.org/10.1016/j.cities.2022.103918>.

⁷ Peng Gao et al., "Double-Edged Sword: Does Strong Creditor Protection in the Bankruptcy Process Affect Firm Productivity," *International Review of Financial Analysis* 95 (October 2024): 103352, <https://doi.org/10.1016/j.irfa.2024.103352>.

exacerbate this precarious position. Given the additional regulatory powers of the Bankruptcy Law and PKPU, the law specifically strengthens congruent creditors, including those with material collateral like pawns, mortgages, fiduciaries, and mortgage rights. This renders them a preferred creditor.⁸

The disharmony between bankruptcy and employment laws also contributes to the inadequate legal protection of workers' wage rights in insolvent companies. The Law of the Republic of Indonesia Number 37 of 2004 concerning bankruptcy frequently justifies insolvent companies' wage payment delays, disregarding the Law of the Republic of Indonesia Number 13 of 2003 concerning Employment, which safeguards employees' rights during a company's bankruptcy. This results in a conflict between the fulfillment of workers' rights and the precedence of the Employment Law or the Bankruptcy Law. Therefore, there needs to be further clarity between prioritizing workers' rights in labor law and bankruptcy law so that social justice for workers is not disturbed.⁹

In this context, the Constitutional Court issued Decision Number 67/PUU-XI/2013 regarding the status of laborers' wage rights. The decision is based on the fact that Article 95, paragraph 4, of Law Number 13 of 2003 concerning Manpower stipulates that wages and other rights of workers and laborers are considered debts that must be paid in the event that a

⁸ Francisco González, "Creditor Rights, Financial Health, and Corporate Investment Efficiency," *The North American Journal of Economics and Finance* 51 (January 2020): 100873, <https://doi.org/10.1016/j.najef.2018.11.002>.

⁹ Effnu Subiyanto, "Excessive Investment Failure Corporate Strategy: A Case Study of the Bankruptcy of the State-Owned Indonesia Airline Garuda Indonesia," *Case Studies on Transport Policy* 10, no. 2 (2022): 1401–6, <https://doi.org/10.1016/j.cstp.2022.05.005>.

company is declared insolvent or liquidated in accordance with the relevant laws and regulations. However, the court still faces significant challenges in paying wages to declared bankrupt enterprises. The issue of overlapping regulations regarding debt payment priority for debtors in Indonesia has the consequence of failing to provide fair guarantees, protection, and legal certainty for employees of bankrupt companies. The order in which bankrupt companies must fulfill debt payments has resulted in significant debate, highlighting the challenges faced by workers in bankrupt companies.¹⁰

All insolvency regimes adhere to the principle of prioritizing secured creditors over other creditors while treating unsecured creditors equally. However, certain jurisdictions grant preferential treatment to specific categories of unsecured claims, especially employee claims for unpaid wages and contributions.¹¹ Comparative studies have classified worker priorities worldwide and addressed the intricate issue of creditor legal priorities. Social justice schemes, established to compensate for unpaid wages and contributions by insolvent employers, can also safeguard workers.¹²

Jurisdictions such as Singapore have protected their employees' rights by establishing a higher priority for

¹⁰ Bo Li and Jacopo Ponticelli, "Going Bankrupt in China," *Review of Finance* 26, no. 3 (May 2022): 449-86, <https://doi.org/10.1093/rof/rfab023>.

¹¹ Satish Kumar, "Bankruptcy Law and the Leverage Speed of Adjustment," *Finance Research Letters* 66 (August 2024): 105673, <https://doi.org/10.1016/j.frl.2024.105673>.

¹² Frédéric Closset and Daniel Urban, "The Balance of Power between Creditors and the Firm: Evidence from German Insolvency Law," *Journal of Corporate Finance* 58 (October 2019): 454-77, <https://doi.org/10.1016/j.jcorpfin.2019.06.004>.

payment. This enables the payment of employees' rights either before secured creditors under the term "absolute priority" or after secured creditors and before other creditors under the term "depicted." In Thailand, the bankruptcy procedure views secured debt as more advantageous than unsecured debt, as it guarantees the creditor's right to security. The system places wage claims on the same level as taxes and prioritizes them over unsecured creditors but does not prioritize them over secured creditors. This suggests that, unlike in Indonesia, where taxes come before employee salaries, employees receive priority as unsecured creditors.¹³

Previous research by Andrew and Marco shows that corporate leverage responds differently to employee rights in bankruptcy, depending on whether strategic interests in wage bargaining or credit constraints drive it.¹⁴ Previous research by Donald showed that bankruptcy allows an insolvent company to reorganize while being protected from its creditors or cease operations by selling its assets to pay off all or part of the company's debts.¹⁵ Previous research by Aloisio Araujo et.al shows that firms facing courts with higher levels of pro-continuity experience more significant wage declines in the

¹³ Choirul Nikmah and Rern-Jay Hung, "The Impact of ASEAN Economic Community, Firm Characteristics and Macroeconomics on Firm Performance and Firm Value: An Investigation of Shariah-Compliant Firms in Indonesia," *Heliyon* 10, no. 11 (June 2024): e32740, <https://doi.org/10.1016/j.heliyon.2024.e32740>.

¹⁴ Andrew Ellul and Marco Pagano, "Corporate Leverage and Employees' Rights in Bankruptcy," *Journal of Financial Economics* 133, no. 3 (September 2019): 685-707, <https://doi.org/10.1016/j.jfineco.2019.05.002>.

¹⁵ Donald M. DePamphilis, "Alternative Exit and Restructuring Strategies," in *Mergers, Acquisitions, and Other Restructuring Activities* (Elsevier, 2022), 485-505, <https://doi.org/10.1016/B978-0-12-819782-0.00018-6>.

post-bankruptcy period compared with employees of companies with lower levels of pro-continuity in the same judicial jurisdiction.¹⁶

Consequently, to comprehend how workers are safeguarded from these hazards, examining the connections between worker priorities (if any) and social security schemes in various jurisdictions is imperative to identify any shared patterns or distinctions. The notion that these variations are closely associated with specific national production regimes or historical legal contexts is a common explanation for the variations in the combination of institutional strategies among jurisdictions.¹⁷ Therefore, it is crucial to conduct this research, specifically focusing on the impact of social justice on protection of insolvency and employment comparing ASEAN countries such as Singapore and Thailand.

¹⁶ Aloisio Araujo et al., "The Labor Effects of Judicial Bias in Bankruptcy," *Journal of Financial Economics* 150, no. 2 (November 2023): 103720, <https://doi.org/10.1016/j.jfineco.2023.103720>.

¹⁷ Jibin Jose et al., "Does Greater Creditor Protection Affect Firm Borrowings? Evidence from IBC," *Margin: The Journal of Applied Economic Research* 14, no. 2 (May 2020): 212–25, <https://doi.org/10.1177/0973801020904484>.

II. Method

Normative juridical studies employ a legal research approach. This research will include normative, doctrinal, literature, or document analysis. Research necessitates the examination of secondary data or literary sources, including tertiary legal sources, secondary legal sources, and original legal documents.¹⁸ To obtain comprehensive research results, this study employs a variety of methodologies. An approach used to analyze statutory regulations regarding employment arrangements in insolvent companies is the statutory and regulatory approach, which is a conceptual and comparative approach.¹⁹ Legal research serves as the methodology for normative legal studies.²⁰

¹⁸ Ahmad Dwi Nuryanto and Abdul Kadir Jaelani, "The Role of State Official Wealth Report in Realizing the Principles of Maqashid Sharia," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (2024): 155–81, <https://doi.org/https://doi.org/10.22219/ljih.v32i1.32879>.

¹⁹ Asianto Nugroho et al., "Implementation of Worker Rights Protection for Government Employees with Employment Agreements," *Proceedings of the International Conference on Environmental and Energy Policy (ICEEP 2021)* 583, no. 8 (2021): 102–4, <https://doi.org/10.2991/assehr.k.211014.023>.

²⁰ Abdul Kadir Jaelani et al., "Indonesia Carbon Tax Policy: A Key Role in Sustainable Development Goals," 2024, 020040, <https://doi.org/10.1063/5.0202042>.

III. DISCUSSION

The Impact of Insolvency and Employment Protection Based on Constitutionalism and Social Justice in Indonesia

The justification for the Employment Law stems from the belief that its purpose is to safeguard workers' fundamental rights, promote equal opportunities and treatment without discrimination, and enhance the well-being of workers and their families, all while considering the business world's progress. These factors establish a correlation between a reasonable standard of living for the worker and their family. Not only does the protection of workers' rights ensure the well-being of an individual, but it also benefits a family, so that social justice continues to be realized.²¹

Wages, a significant aspect of an employment relationship, serve a crucial social function. They provide the necessities of life for both employees and their families, act as an incentive to increase productivity, and acknowledge the contributions of laborers as human beings in the face of adverse circumstances.²² Policy settings that are unfavorable to workers or laborers can lead to social and economic inequality. As previously explained, the amendment to Article 81 Number 24 of Law No. 11/2020 does not explicitly regulate

²¹ Anurag K. Agarwal et al., "Introduction to the Special Issue on 'Financial Distress, Bankruptcy, and Corporate Finance,'" *Vikalpa: The Journal for Decision Makers* 45, no. 2 (June 2020): 61–68, <https://doi.org/10.1177/0256090920953995>.

²² DANIEL COOPER, MARÍA JOSÉ LUENGO-PRADO, and JONATHAN A. PARKER, "The Local Aggregate Effects of Minimum Wage Increases," *Journal of Money, Credit and Banking* 52, no. 1 (February 2020): 5–35, <https://doi.org/10.1111/jmcb.12684>.

the wage policies originally regulated in Article 88 of Law No. 13/2003. Without explicit regulation, the work agreement or collective work agreement provides the highest level of wage protection. However, workers' bargaining position is often inferior to that of entrepreneurs, leading to a lack of protection for their compensation rights.²³

In the event of bankruptcy, the Manpower Law's Article 95, paragraph 4, regulates the provisions regarding workers' priority in receiving their salaries. Law Number 37 of 2004 governs the existence of creditor levels and the postponement of debt payment obligations, potentially causing one of the parties to incur a loss. This is because the lowest party will receive a portion of property asset sales proceeds. The interests of bankruptcy debtors are not aligned. This scenario is plausible because the new curator will distribute a portion of the proceeds from the sale of the insolvent debtor's assets to concurrent creditors, following the distribution of funds to creditors at a higher level, particularly separatist and preferred creditors.²⁴ The problem is that workers or laborers often need help to assert their rights under applicable legislation. There are various methods of debt resolutely resolution methods, including bankruptcy institutions.²⁵

²³ Le Duc Hoang et al., "Creditor Rights, Corruption and Capital Structure: Evidence from Emerging Markets," *Corporate Governance and Organizational Behavior Review* 8, no. 1 (February 2024): 213–21, <https://doi.org/10.22495/cgobrv8i1p18>.

²⁴ Balagopal Gopalakrishnan and Sanket Mohapatra, "Insolvency Regimes and Firms' Default Risk under Economic Uncertainty and Shocks," *Economic Modelling* 91 (September 2020): 180–97, <https://doi.org/10.1016/j.econmod.2020.06.005>.

²⁵ Diego Legal and Eric R. Young, "The Effect of Minimum Wages on Consumer Bankruptcy," *Journal of Economics and Business* 129 (March 2024): 106171, <https://doi.org/10.1016/j.jeconbus.2024.106171>.

However, the curator frequently places employees behind the creditor queue when distributing bankruptcy assets. This is because the Bankruptcy, Mortgage, and Civil Code prioritize certain creditors and owners of mortgage rights, giving them a more significant advantage than the company's employees. The existence of these diverse laws does not result in legal certainty that benefits laborers; instead, it establishes an unclear hierarchy of interests. It is accurate that the *pari passu pro rata parte* principle is applicable in bankruptcy; however, each legal circumstance is distinct.²⁶

The next step society can take is to initiate a judicial review of the Constitutional Court, as stipulated in Article 81 Number 24 of Law No. 11/2020. This provision directly challenges the 1945 Constitution of the Republic of Indonesia articles. Another avenue for change is to enhance the government's role in protecting laborers' rights, particularly in wages. The Constitutional Court, in Decision Number 67/PUU-XI/2013, has already provided legal protection to the non-wage rights of workers and laborers. However, this protection is not comprehensive, as it prevents separatist creditors from settling these rights. In other words, decision Number 67/PUU-XI/2013 does not fully safeguard the non-wage rights of workers or laborers, as the explicitly stated fundamental wages of the workers or laborers take precedence over all bills.

As is well known, the Constitutional Court's Decision Number 67/PUU-XI/2013 states, "Payment of workers laborers' wages owed takes priority over all types of creditors, including separatist creditors' claims, state rights bills, auction

²⁶ Viet Anh Dang et al., "The Dynamics of Informed Trading around Corporate Bankruptcies," *Finance Research Letters* 63 (May 2024): 105385, <https://doi.org/10.1016/j.frl.2024.105385>.

offices, and public bodies established by the government, while payments of the rights of workers or other laborers take precedence over all claims, including state rights bills, auction offices, and public bodies established by the government, except claims from separatist creditors." The author of Constitutional Court Decision Number 67/PUU-XI/2013 asserts that the legal fulfillment of separatist creditors' rights surpasses the protection of workers' and laborers' interests. The Constitutional Court Decision Number 67/PUU-XI/2013 has yet to entirely implement legal protections for the non-wage rights of workers and laborers. This once again demonstrates that the government's protection of the position of workers and laborers is exceptionally feeble.²⁷

The position of laborers in this vulnerable group closely correlates with their status during bankruptcy. Companies and employees apply their rights and obligations equally. The Employment Law, Company Regulations, and employment contracts regulate workers' wages and other rights, requiring them to work by profession.²⁸ Similarly, companies must uphold the rights of their employees, provided that the workers have fulfilled their obligations. However, restoring the workers' rights, particularly their wages, becomes necessary when a company declares bankruptcy.²⁹

²⁷ Nahiyah Jaidi et al., "Ambidexterity Behavior of Creative SMEs for Disruptive Flows of Innovation: A Comparative Study of Indonesia and Taiwan," *Journal of Open Innovation: Technology, Market, and Complexity* 8, no. 3 (2022): 141, <https://doi.org/10.3390/joitmc8030141>.

²⁸ Shivangi Agarwal and Bhavya Singhvi, "Creditor-Controlled Insolvency and Firm Financing- Evidence from India," *Finance Research Letters* 54 (June 2023): 103813, <https://doi.org/10.1016/j.frl.2023.103813>.

²⁹ Frédéric Closset et al., "Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms," *Journal*

To prevent these practices, it is imperative to establish arrangements that safeguard the rights of laborers. The existence of a person's rights implies that they have a privilege, which allows for the prospect of treatment by that privilege. Thus, it is imperative to restructure worker wage regulations and policies to reflect a sense of justice more accurately and ensure that workers and their families have a respectable quality of life. The synchronization of worker/laborer rights in the Bankruptcy Law, PKPU, and the Third Amendment Law concerning General Provisions and Tax Procedures stems from the fact that these laws do not align with the Employment Law and the Job Creation Law, which govern workers' rights in the event of a company's bankruptcy. The objective of synchronization is to establish legal certainty regarding the regulation of a legal field to establish a law that is both uniform and sufficient.³⁰ From a philosophical perspective, we can evaluate the moral importance of safeguarding workers' wages by examining the perception of fair values as equity and equality. Employment development must be regulated to ensure the fundamental rights and protection of workers while fostering the development of a socially just business environment.

of Banking & Finance 149 (April 2023): 106756, <https://doi.org/10.1016/j.jbankfin.2022.106756>.

³⁰ Syahlan Syahlan, "Effective and Efficient Synchronization in Harmonization of Regulations Indonesia," *Journal of Human Rights, Culture and Legal System* 1, no. 1 (2021): 2807-12, <https://doi.org/10.53955/jhcls.v1i1.7>.

Regulation of Employment Protection for Bankrupt Companies in Singapore and Thailand

It is undeniable that Singapore's labor policy has evolved into a more social justice-oriented trajectory, which is a positive development on the long-term journey. Over the years, labor laws in Singapore have substantially altered the balance between protecting human dignity, social justice in employment relationships, and producing economic growth through the division of labor.

The Employment Act 1968–2020 Revised Edition is a comprehensive guide to employment law in Singapore. It is the primary employment law in the country, delineating the rights and responsibilities of employers and contract employees under employment, as well as the severe terms and conditions of employment. The Act provides all private sector employees in Singapore with the same legal basis, irrespective of their position or salary level. However, it's important to note that the Act does not cover domestic laborers, seafarers, and employees of the Singaporean government or legal entities.³¹

Singapore has not ratified the 1949 Convention, but it has implemented a relative priority option for employee rights. This arrangement guarantees the payment of rights following the recovery of secured creditors prior to unsecured creditors. Article 352 of the Insolvency, Restructuring and Dissolution Act 2018 (No. 40 of 2018) regulates the priority of debts. Specific obligations take precedence over all other unsecured debts. The subsequent payment is wages, remuneration,

³¹ Jason J. Kilborn, "Tightening Up Loose Credit and Loosening Up Tight Bankruptcy in Singapore: An Asian Paradigm For Personal Debt and Insolvency Reform," *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3865670>.

benefits, or compensation that must be provided to employees after dissolution costs (such as liquidator fees) have been paid. The benefits of ex gratia payments or employee reductions will be discussed in the following section. Article 352 stipulates that employee rights must be paid before all other unsecured creditors. In most cases, this form of priority provides minimal relief to employees. Once proven, recognized, and paid, the insolvent company's assets are insufficient to satisfy the employee's outstanding rights. All creditors and employees will receive a pro-rata distribution of the employee's assets and rights if they cannot fully cover their debts.³²

Unless the company's assets cannot cover the amount, the Insolvency, Restructuring, and Dissolution Act 2018 (No. 40 of 2018) mandates the full payment of debts in each class, arranged in the order above. As a result, secured creditors continue to have the "first bite of the cherry," once they have taken their share of the security, there may be nothing remaining for even preferred creditors. Therefore, even though these employees receive priority over unsecured creditors, their ultimate compensation still needs to be determined. However, Article 352 prioritizes most of the above-mentioned preferred obligations (excluding workers' compensation, taxes, and retirement benefits) over floating charges, providing employees with solace. This implies that there is still a possibility of the employee experiencing some recovery.³³

³² SHAI BERNSTEIN, EMANUELE COLONNELLI, and BENJAMIN IVERSON, "Asset Allocation in Bankruptcy," *The Journal of Finance* 74, no. 1 (February 2019): 5-53, <https://doi.org/10.1111/jofi.12740>.

³³ Gerard McCormack and Wai Yee Wan, "Transplanting Chapter 11 of the US Bankruptcy Code into Singapore's Restructuring and Insolvency Laws: Opportunities and Challenges," *Journal of*

The Thai government's application of the principle of wage protection is a clear demonstration of its commitment to justice. This principle, which aligns with John Rawls' theory, advocates for the regulation of social and economic inequality to ensure mutual benefit.³⁴ Thailand's wage regulations, which follow the 'no work, no pay' principle, further underscore the government's role in regulating employment and ensuring fairness for both employers and laborers. Thailand's advantage in wage setting lies in its collaborative approach. The country has a wage committee that includes representatives from the government, companies, and laborers, which is responsible for establishing the minimum wage level. However, the Thai insolvency law (No. 6) of 2000 does not include a role for shareholders or employers in the decision-making process during the debtor company's insolvency, aligning with the customs of other nations.³⁵

During the bankruptcy process, Thailand views secured debt as more advantageous than unsecured debt, as it guarantees the maintenance of the creditor's security rights. Article 130 of the Bankruptcy Law (BE2483 (AD1940), (BA)) outlines that if the funds are insufficient to satisfy the debts of one of the categories above fully, they will pay creditors in that category *pari passu*, proportionally, without preference. When

Corporate Law Studies 19, no. 1 (January 2019): 69–104, <https://doi.org/10.1080/14735970.2018.1491680>.

³⁴ Johan Van Rooyen, Prajip Shrestha, and Elsabe De Beer, "Crisis on Human Resources: Airline Companies in Thailand," *Journal of Human Resource Management* 9, no. 2 (2021): 39, <https://doi.org/10.11648/j.jhrm.20210902.12>.

³⁵ Voraprapa Nakavachara et al., "Do People Gamble or Invest in the Cryptocurrency Market? Transactional-Level Evidence from Thailand," *Journal of Behavioral and Experimental Finance* 41 (March 2024): 100895, <https://doi.org/10.1016/j.jbef.2024.100895>.

referring to Thai Law, the provisions regarding workers' pension funds during the bankruptcy process do not have a unique recovery mechanism, whereas the provisions regarding insolvency in Thailand for congruent creditors or unsecured debts have priority under workers' rights. Furthermore, the labor court has the authority to order the reinstatement of dismissed workers at their previous wage level or to pay compensation if the court deems collaboration between the dismissed worker and the employer impossible. When determining the compensation amount, the court considers various factors, including the worker's age, length of service, challenges, the reason for the dismissal, and the entitlement to compensation.³⁶

The comparison above demonstrates that the concept of remuneration for bankrupt companies in Singapore and Thailand is essentially the same as in Indonesia. Although the law mandates that payments for employee rights must come after those for secured creditors, it remains possible to pay them first. Singapore demonstrates that it is significantly more mature and courageous in safeguarding its employees' rights in case of a company's bankruptcy. Laws strictly regulate payment priorities, including allowances, insurance, remuneration, and wage payments. At the same time, during the bankruptcy procedure, Thailand views secured debt as more advantageous than unsecured debt, as it guarantees the creditor's right to security. This suggests that Thailand

³⁶ Thitima Chaiyakul, "Bankruptcy Risk and Financial Performance of Companies Listed on the Stock Exchange of Thailand," *International Journal of Financial Research* 12, no. 4 (March 2021): 78, <https://doi.org/10.5430/ijfr.v12n4p78>.

prioritizes employees as unsecured creditors, unlike Indonesia, where taxes precede employee compensation.

IV. Conclusion

The research yields the following conclusions: *First*, the Bankruptcy Law, the Mortgage Law, and the Civil Code prioritize numerous creditors who possess mortgage rights and are in a more advantageous position than the company's employees. The existence of these diverse laws does not result in legal certainty that benefits laborers; instead, it establishes an unclear hierarchy of interests. Constitutional Court Decision Number 67/PUU-XI/2013 has yet to completely implement legal protection for the non-wage rights of workers and laborers. Consequently, it is crucial to re-establish the status of employees in insolvent companies and harmonize the corresponding regulations to guarantee workers' rights to socially just compensation. *Secondly*, Singapore is significantly more mature and courageous in its approach to protecting the rights of its employees in the event of a company's bankruptcy. Laws strictly regulate payment priorities, including allowances, insurance, remuneration, and wage payments. Whereas, during the bankruptcy procedure, Thailand views secured debt as more advantageous than unsecured debt, as it guarantees the creditor's right to security. This suggests that Thailand prioritizes employees as unsecured creditors, unlike Indonesia, where taxes precede employee salaries. Consequently, to achieve social justice and dignity, Indonesia must adopt regulations in both countries to protect workers' rights in insolvent companies.

V. References

- Agarwal, Anurag K., Abhiman Das, Joshy Jacob, and Sanket Mohapatra. "Introduction to the Special Issue on 'Financial Distress, Bankruptcy, and Corporate Finance.'" *Vikalpa: The Journal for Decision Makers* 45, no. 2 (June 2020): 61–68. <https://doi.org/10.1177/0256090920953995>.
- Agarwal, Shivangi, and Bhavya Singhvi. "Creditor-Controlled Insolvency and Firm Financing– Evidence from India." *Finance Research Letters* 54 (June 2023): 103813. <https://doi.org/10.1016/j.frl.2023.103813>.
- Araujo, Aloisio, Rafael Ferreira, Spyridon Lagaras, Flavio Moraes, Jacopo Ponticelli, and Margarita Tsoutsoura. "The Labor Effects of Judicial Bias in Bankruptcy." *Journal of Financial Economics* 150, no. 2 (November 2023): 103720. <https://doi.org/10.1016/j.jfineco.2023.103720>.
- Asmorojati, Anom Wahyu, Muhammad Nur, Indah Kusuma Dewi, and Hezlina Hashim. "The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights." *Bestuur* 10, no. 1 (2022): 43. <https://doi.org/10.20961/bestuur.v10i1.60179>.
- BERNSTEIN, SHAI, EMANUELE COLONNELLI, and BENJAMIN IVERSON. "Asset Allocation in Bankruptcy." *The Journal of Finance* 74, no. 1 (February 2019): 5–53. <https://doi.org/10.1111/jofi.12740>.
- Chaiyakul, Thitima. "Bankruptcy Risk and Financial Performance of Companies Listed on the Stock Exchange of Thailand." *International Journal of Financial Research* 12, no. 4 (March 2021): 78. <https://doi.org/10.5430/ijfr.v12n4p78>.

-
- Closset, Frédéric, Christoph Großmann, Christoph Kaserer, and Daniel Urban. "Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms." *Journal of Banking & Finance* 149 (April 2023): 106756.
<https://doi.org/10.1016/j.jbankfin.2022.106756>.
- Closset, Frédéric, and Daniel Urban. "The Balance of Power between Creditors and the Firm: Evidence from German Insolvency Law." *Journal of Corporate Finance* 58 (October 2019): 454-77.
<https://doi.org/10.1016/j.jcorpfin.2019.06.004>.
- COOPER, DANIEL, MARÍA JOSÉ LUENGO-PRADO, and JONATHAN A. PARKER. "The Local Aggregate Effects of Minimum Wage Increases." *Journal of Money, Credit and Banking* 52, no. 1 (February 2020): 5-35.
<https://doi.org/10.1111/jmcb.12684>.
- Dachyar, M., Teuku Yuri M. Zagloel, and L. Ranjaliba Saragih. "Enterprise Architecture Breakthrough for Telecommunications Transformation: A Reconciliation Model to Solve Bankruptcy." *Heliyon* 6, no. 10 (2020): e05273.
<https://doi.org/10.1016/j.heliyon.2020.e05273>.
- Dang, Viet Anh, Dinh Trung Nguyen, Thu Phuong Pham, and Ralf Zurbruegg. "The Dynamics of Informed Trading around Corporate Bankruptcies." *Finance Research Letters* 63 (May 2024): 105385.
<https://doi.org/10.1016/j.frl.2024.105385>.
- DePamphilis, Donald M. "Alternative Exit and Restructuring Strategies." In *Mergers, Acquisitions, and Other Restructuring Activities*, 485-505. Elsevier, 2022.
<https://doi.org/10.1016/B978-0-12-819782-0.00018-6>.
- Ellul, Andrew, and Marco Pagano. "Corporate Leverage and Employees' Rights in Bankruptcy." *Journal of Financial*

-
- Economics* 133, no. 3 (September 2019): 685–707.
<https://doi.org/10.1016/j.jfineco.2019.05.002>.
- Gao, Peng, Ling He, Shiyang Hu, and Qingquan Xin. “Double-Edged Sword: Does Strong Creditor Protection in the Bankruptcy Process Affect Firm Productivity.” *International Review of Financial Analysis* 95 (October 2024): 103352.
<https://doi.org/10.1016/j.irfa.2024.103352>.
- González, Francisco. “Creditor Rights, Financial Health, and Corporate Investment Efficiency.” *The North American Journal of Economics and Finance* 51 (January 2020): 100873. <https://doi.org/10.1016/j.najef.2018.11.002>.
- Gopalakrishnan, Balagopal, and Sanket Mohapatra. “Insolvency Regimes and Firms’ Default Risk under Economic Uncertainty and Shocks.” *Economic Modelling* 91 (September 2020): 180–97.
<https://doi.org/10.1016/j.econmod.2020.06.005>.
- Hoang, Le Duc, Mai Quynh Ha, Long Phi Tran, Hang Thi Thuy Le, Trinh Mai Van, and Pham Van Tue Nha. “Creditor Rights, Corruption and Capital Structure: Evidence from Emerging Markets.” *Corporate Governance and Organizational Behavior Review* 8, no. 1 (February 2024): 213–21. <https://doi.org/10.22495/cgobrv8i1p18>.
- Jaelani, Abdul Kadir, Resti Dian Luthviati, Muhammad Jihadul Hayat, Reza Octavia Kusumaningtyas, and Fitri Nur Aini. “Indonesia Carbon Tax Policy: A Key Role in Sustainable Development Goals,” 020040, 2024.
<https://doi.org/10.1063/5.0202042>.
- Jaelani, Abdul Kadir, Ahmad Dwi Nuryanto, Rakotoarisoa Maminirina, M Misbahul Mujib, and Resti Dian Luthviati. “Legal Protection of Employee Wage Rights in Bankrupt Companies: Evidence from China.” *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023): 202–23.

<https://doi.org/https://doi.org/10.22219/ljih.v31i2.25874>.

- Jaidi, Nahiyah, Siswantoyo, Jane Liu, Zahrotush Sholikhah, and Mega Murti Andhini. "Ambidexterity Behavior of Creative SMEs for Disruptive Flows of Innovation: A Comparative Study of Indonesia and Taiwan." *Journal of Open Innovation: Technology, Market, and Complexity* 8, no. 3 (2022): 141. <https://doi.org/10.3390/joitmc8030141>.
- Jose, Jibin, Snehal S. Herwadkar, Prabal Bilantu, and Shihas Abdul Razak. "Does Greater Creditor Protection Affect Firm Borrowings? Evidence from IBC." *Margin: The Journal of Applied Economic Research* 14, no. 2 (May 2020): 212–25. <https://doi.org/10.1177/0973801020904484>.
- Kariya, Ankitkumar. "Borrowing from Government Owned Banks & Firm's Liquidation Risk." *Journal of Corporate Finance* 69 (August 2021): 101982. <https://doi.org/10.1016/j.jcorpfin.2021.101982>.
- Kilborn, Jason J. "Tightening Up Loose Credit and Loosening Up Tight Bankruptcy in Singapore: An Asian Paradigm For Personal Debt and Insolvency Reform." *SSRN Electronic Journal*, 2021. <https://doi.org/10.2139/ssrn.3865670>.
- Kumar, Satish. "Bankruptcy Law and the Leverage Speed of Adjustment." *Finance Research Letters* 66 (August 2024): 105673. <https://doi.org/10.1016/j.frl.2024.105673>.
- Legal, Diego, and Eric R. Young. "The Effect of Minimum Wages on Consumer Bankruptcy." *Journal of Economics and Business* 129 (March 2024): 106171. <https://doi.org/10.1016/j.jeconbus.2024.106171>.

-
- Li, Bo, and Jacopo Ponticelli. "Going Bankrupt in China." *Review of Finance* 26, no. 3 (May 2022): 449–86. <https://doi.org/10.1093/rof/rfab023>.
- McCormack, Gerard, and Wai Yee Wan. "Transplanting Chapter 11 of the US Bankruptcy Code into Singapore's Restructuring and Insolvency Laws: Opportunities and Challenges." *Journal of Corporate Law Studies* 19, no. 1 (January 2019): 69–104. <https://doi.org/10.1080/14735970.2018.1491680>.
- Mucciarelli, Federico M. "Employee Insolvency Priorities and Employment Protection in France, Germany, and the United Kingdom." *Journal of Law and Society* 44, no. 2 (June 2017): 255–82. <https://doi.org/10.1111/jols.12025>.
- Nakavachara, Voraprapa, Roongkiat Ratanabanchuen, Kanis Saengchote, Thitiphong Amonthumnyom, Pongsathon Parinyavuttichai, and Polpatt Vinaibodee. "Do People Gamble or Invest in the Cryptocurrency Market? Transactional-Level Evidence from Thailand." *Journal of Behavioral and Experimental Finance* 41 (March 2024): 100895. <https://doi.org/10.1016/j.jbef.2024.100895>.
- Nikmah, Choirul, and Rern-Jay Hung. "The Impact of ASEAN Economic Community, Firm Characteristics and Macroeconomics on Firm Performance and Firm Value: An Investigation of Shariah-Compliant Firms in Indonesia." *Heliyon* 10, no. 11 (June 2024): e32740. <https://doi.org/10.1016/j.heliyon.2024.e32740>.
- Nugroho, Asianto, Reza Octavia Kusumaningtyas, Ravi Danendra, Gusti Faza Aliya, and Fatma Ulfatun Najicha. "Implementation of Worker Rights Protection for Government Employees with Employment Agreements." *Proceedings of the International Conference*

- on Environmental and Energy Policy (ICEEP 2021)* 583, no. 8 (2021): 102–4. <https://doi.org/10.2991/assehr.k.211014.023>.
- Nuryanto, Ahmad Dwi, and Abdul Kadir Jaelani. “The Role of State Official Wealth Report in Realizing the Principles of Maqashid Sharia.” *Legality : Jurnal Ilmiah Hukum* 32, no. 1 (2024): 155–81. <https://doi.org/https://doi.org/10.22219/ljih.v32i1.32879>.
- Rahmawati, Dian, and Deden Rukmana. “The Financialization of Housing in Indonesia: Actors and Their Roles in the Transformation of Housing Production.” *Cities* 131, no. May 2021 (2022): 103918. <https://doi.org/10.1016/j.cities.2022.103918>.
- Rooyen, Johan Van, Prajip Shrestha, and Elsabe De Beer. “Crisis on Human Resources: Airline Companies in Thailand.” *Journal of Human Resource Management* 9, no. 2 (2021): 39. <https://doi.org/10.11648/j.jhrm.20210902.12>.
- Subiyanto, Effnu. “Excessive Investment Failure Corporate Strategy: A Case Study of the Bankruptcy of the State-Owned Indonesia Airline Garuda Indonesia.” *Case Studies on Transport Policy* 10, no. 2 (2022): 1401–6. <https://doi.org/10.1016/j.cstp.2022.05.005>.
- Syahlan, Syahlan. “Effective and Efficient Synchronization in Harmonization of Regulations Indonesia.” *Journal of Human Rights, Culture and Legal System* 1, no. 1 (2021): 2807–12. <https://doi.org/10.53955/jhcls.v1i1.7>.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

Write if there is a source of funding

ACKNOWLEDGMENT

The authors thank to the anonymous reviewer of this article for their valuable comment and highlights

This page intentionally left
blank