

Responsibility of Companies Declared Bankrupt for Employee Wages

Adiyata Segara Pradhana*

University of Jember, Indonesia

Iswi Hariyani

University of Jember, Indonesia

Firman Floranta Adonora

University of Jember, Indonesia

*Corresponding Author's Email: adiyatasegarapradhana@gmail.com

Article	Abstract
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bertanggung jawab sebesar modal yang disetorkannya saja. Perseroan terbatas merupakan salah satu badan hukum. Sehingga kelangsungan perusahaan sebagai badan hukum tetap terjamin meskipun pemiliknya telah berganti.

Kata Kunci: *Pertanggungjawaban Perusahaan, Pailit, Upah Karyawan.*

Introduction

Employment or labor problems seem to never end, starting with issues of protection, wages, welfare, industrial relations disputes, guidance and labor inspection. This is more due to the government's systematic weakness in implementing labor law, other issues regarding coordination and performance between government institutions have not been optimal and are still very worrying.¹

Wages play a significant role and describe the unique characteristics of a bond called a work bond, moreover it can be seen that wages are an important goal of a worker carrying out a profession for another person or legal entity. That is why the government is involved in overcoming this wage problem through various policies outlined in statutory regulations. Employers must pay benefits to their workers in a regular manner from the time the employment contract occurs until the end of the employment contract.²

Protection for workers is intended to guarantee workers' basic rights by always monitoring progress in the national and global business world. Employee wages are generally based on a binding work contract between the wage recipient and the wage provider, this must be in line with the legal requirements of the applicable agreement.³ Likewise, it is stated in Article 28D of the 1945 Constitution of the Republic of Indonesia that every person has the right to work and receive wages and equal and appropriate treatment in the employment relationship.⁴

Companies along the way do not always experience stable growth and a company can even experience bankruptcy. Bankruptcy is regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (which was later abbreviated to the 2004 KPKU Law). According to Article 1 number 1 of the 2004 UUKPKU, bankruptcy is defined as a general confiscation (*beslaag*) of all the assets of the bankrupt debtor under management. and the settlement is carried out by the Curator under the supervision of the Supervising Judge.

Article 1 number 7 UUKPKU 2004, for bankruptcy, a special court was formed within the general justice environment, namely the Commercial Court. In general, the authority of the Commercial Court can be seen in the provisions of Article 281 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Payment Obligations which states that The Commercial Court remains authorized to examine and decide cases within the scope of the Commercial Court.⁵ Article 300 paragraph (1) of the 2004 UUKPKU states that "The court as intended in this Law, apart from examining and deciding on applications for declaration of bankruptcy and Postponement of Debt Payment Obligations, has the authority to also examine and decide

¹ Arian Sutedi, *Hukum Perburuhan*, (Jakarta: Sinar Grafika, 2009), 142.

² Lalu Husni, *Hukum ketenagakerjaan Indonesia*, (Jakarta: Raja Rrafindo Persada ,2008), 154.

³ Nury Khoiril Jamil and Rumawi, "Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (Force Majeure) Dalam Hukum Perjanjian Indonesia", *Jurnal Kertha Semaya*, Vol. 8 No. 7, (2020): 1048.

⁴ Yulia Qamariyanti, "Kedudukan Pekerja Untuk Mendapatkan Hak Pada Perusahaan Yang Dinyatakan Pailit," *Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 8, no. 3 (2023): 1889–1900

⁵ Serlika Aprita, "Kewenangan Pengadilan Niaga Dalam Memeriksa Dan Memutus Perkara Permohonan Pernyataan Pailit", Vol. 14, No. 1, (2019): 7.

on other cases in the field of commerce which are determined by Law." Law, Bankruptcy as intended in Article 1 number 1 UUKPKU 2004 that debt payment is a general confiscation of all assets of the Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the supervising Judge. As intended in Article 8 number 4 UUKPKU 2004, the request for bankruptcy declaration must be granted if there are proven facts or circumstances.

Bankruptcy decisions that are submitted for cassation at the Supreme Court are usually based on the discovery of new evidence or facts that can be annulled by the Supreme Court, then the curator is obliged to announce the cassation decision that cancels the bankruptcy decision in the Indonesian State Gazette in at least two daily newspapers as intended. in article 15 paragraph (4) UUKPKU 2004.⁶

The Supreme Court of the Republic of Indonesia in its Decision Number 625 K/Pdt.Sus-Pailit/2021 canceled the decision of the Commercial Court at the Surabaya District Court Number 10/Pdt.Sus-Other Lawsuits/2020/PN Niaga Sby, juncto Number 69/Pdt.Sus-PKPU/2019/PN Niaga Sby., dated 15 December 2020. Based on legal considerations, the supreme court judge stated that the Plaintiffs who are currently Respondents are workers from PT Aditma Raya Farmino, and PT Bank Sahabat Sampoerna only has a legal relationship with Olivia Tantom.

The Surabaya District Court granted the request for postponement of debt payment obligations (PKPU) submitted by the plaintiffs as employees of PT. Aditama Raya Farmino is currently the Respondent. Regarding this matter, it is based on the Commercial Court Decision at the Surabaya District Court Number 69/Pdt.Sus-PKPU/ 2019/PN Niaga Sby., dated 27 February 2020, where in the decision PT Bank Sahabat Sampoerna as the Cassation Petitioner was determined to hand over the right to claim wages Plaintiff for PT Aditama Raya Farmino's debt, Olivia Tantom, DR. Indra Tantom, MBA to the Plaintiff in the amount of IDR 3,932,195,637.00 (three billion nine hundred thirty-two million one hundred ninety-five thousand six hundred thirty-seven rupiah), this is based on the fact that there are assets belonging to Olivia Tantom which have the status of mortgage rights in PT Bank Sahabat Sampoerna.

Research Method

The type of research used in writing this thesis is legal research. Legal research according to Peter Mahmud Marzuki is finding the truth of coherence, namely whether legal rules are in accordance with legal norms and whether there are norms in the form of orders or prohibitions that are in accordance with legal principles, as well as whether a person's actions are in accordance with legal norms (not only according to legal regulations) or legal principles.⁷

The approach used in writing this thesis is a law and case approach. The legislative approach is carried out by examining Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects, Law Number 13 of 2003 concerning Employment, Law Number 37 of 2004 concerning Bankruptcy and Debt Payment Obligations.⁸ Regarding the legal issue that is the topic of discussion, namely the Responsibility of Companies Declared Bankrupt Regarding

⁶ Gunawan Widjaja, *Resiko Hukum dan Bisnis Perusahaan Pailit*, (Jakarta : Forum Sahabat, 2009), 144.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, (Jakarta: Prenadamedia Group, 2016), 47.

⁸ *Ibid*, 110.

Employee Wages (Case Study of Supreme Court Decision Number 625 K/Pdt.Sus-Pailit/2021), a legislative approach is used which is expected to be able to answer this legal issue. After reviewing the regulations related to the legal issue, the results will be used as an argument to solve the legal issue being faced. Case Approach, researchers use Decision Number 625 K/Pdt.Sus-Pailit/2021 in dissecting the responsibilities of companies declared bankrupt regarding employee wages.⁹

Results and Discussion

Employee Wage Status When the Company is Declared Bankrupt

The business world in general is not free from problems, companies do not always run well, but a problem will inevitably arise, which often occurs when the company's cash situation fluctuates so that when a company is profitable, the company's level graph increases, but vice versa. If the situation declines, the company's graph also declines, the existing company will make loans from state finances, banks or others to stabilize the company's condition. In this condition, the company is often unable to pay its debts. It can be said that the company's graph is in a state of decline. In such conditions in the business world, every effort is made by the government to anticipate the tendency of the business world to go bankrupt which results in the failure to fulfill all obligations that are due, where when they fall due a company is said to be bankrupt by the authorities.

Bankruptcy is a situation where the debtor is no longer able to make payments on debts to creditors. Companies experiencing bankruptcy certainly have their own impact, especially the impact on employees. The consequences that will arise for employees from bankruptcy are two possibilities, namely termination of employment (PHK) or not being given employee rights in the form of wages because the assets of the bankruptcy debtor are no longer sufficient to pay employee wages.¹⁰

Fulfilling employee rights is not only when the company is still running as it should, but there are employee rights that must still be fulfilled by the company when the company goes bankrupt. Bankruptcy of a company usually results in Termination of Employment (PHK). Employees who are laid off because the company goes bankrupt have rights that must be fulfilled by the company.¹¹ Termination of employment (PHK) is regulated in Article 156 paragraph 2 of the Manpower Law, which in the event of termination of employment, the entrepreneur is obliged to pay severance pay/wages and gratuity money and compensation for rights that should have been received.¹²

Wages are a receipt as compensation from an Employer to an employee for work or services that have been or will be performed, expressed or valued in the form of money determined according to an agreement, or statutory regulations, and paid on the basis of an employment agreement between the Employer and the Employee. , including benefits for both employees themselves and their families.¹³

⁹ *Ibid*, 115.

¹⁰ Sjahdeini Sutan Remy, *Sejarah, Asas, dan Teori hukum Kepailitan*, (Jakarta: Fajar Interpratama Mandiri, 2016), 55.

¹¹ Henny Saida Flora, et.al, "Akibat Hukum Pemutusan Hubungan Kerja Terhadap Pekerja Karena Perusahaan Pailit", *Jurnal Hukum Justice*, Vol. 1 No. 1, (2023): 66.

¹² Andy Dian Samantha, "Upaya Hukum Pekerja Atas Perusahaan Yang Dinyatakan Pailit Oleh Pengadilan Niaga", *Hukum Bisnis Universitas Narotama Surabaya*, Vol. 4 No. 1, (2020), 390.

¹³ Djumaidi, *Perjanjian Kerja*, (Jakarta: Sinar Grafika, 2008), 26.

Article 95 paragraph (4) of the Manpower Law places employees' wages in the position of preferred creditors, where these creditors have a priority position over other creditors, because they have special rights granted by the Law.

"In the event that a company is declared bankrupt or liquidated based on applicable laws and regulations, wages and other rights of workers or laborers are receivables whose payment takes priority."

The provisions of Article 1134 of the Civil Code explain that creditors holding liens and mortgages have a higher level than creditors holding special rights, unless special laws outside the Civil Code expressly provide otherwise. In Law no. 37 of 2004 concerning bankruptcy and postponement of debt payment obligations explains that there are three types of creditors, namely separate creditors, preferred creditors and concurrent creditors where the position of employee wages is clearly second only to separatist creditors.¹⁴ However, the Employment Law does not explicitly regulate employees as creditors holding privileges whose position is higher than creditors holding lien and mortgage rights. This results in practice, employee wages are at the lowest level, meaning that other debts take priority when the company goes bankrupt.¹⁵ Contradicts the Job Creation Law which prioritizes workers' wage rights. As a result, problems often arise between workers and companies represented by curators who tend to use the rules contained in the Bankruptcy Law..¹⁶

The company's responsibility towards employees is to ensure that they provide salaries that are appropriate and in accordance with what employees want before getting a job. Salaries or work wages have now appeared called UMR (Regional Minimum Wage). Which is considered sufficient to help the welfare of working people. Apart from providing sufficient, appropriate and timely wages, the company is responsible for providing insurance to its workers, insurance in this case such as work accident insurance, sickness insurance, insurance if the worker dies, etc. This insurance can be a boost to improve workers' performance and they can live in peace.

The principles that form the basis of the 2004 UUKPKU if their rights as workers are not fulfilled are:¹⁷

1. The principle of continuity is that one party has provisions that can prevent abuse of bankruptcy institutions and institutions by dishonest debtors, while the other party can prevent abuse of bankruptcy institutions and institutions by creditors who do not have good intentions.
2. The principle of business continuity, namely that there are provisions that allow prospective debtor companies to continue as a going concern.
3. This principle of justice is to prevent arbitrariness by collectors who seek payment of their respective bills against debtors, without taking into account other creditors.
4. The principle of integration implies that the formal legal system and its material law constitute a unified whole of the civil legal system and national civil procedural law.

¹⁴ Edy Sony dan Nugrah Gables Manery, "Perlindungan Hukum Bagi Hak-Hak Tenaga Kerja Dalam Pembagian Hutang Harta Pailit," *PATTIMURA Legal Journal* 2, no. 1 (30 April 2023): 30– 42.

¹⁵ Sutan Remy Sjahdeni, *Hukum Kepailitan Memahami Failissementsveroening Juncto Undang-Undang No.4 Tahun 1998*, (Jakarta: Pustaka Utama Grafiti, 2002), 10.

¹⁶ Fithry Khairiyati, Anisa Fauziah, dan Sugeng Samiyono, "Hak Atas Upah Pekerja Pada Perusahaan Yang Dinyatakan Pailit Dalam Perspektif Hukum Ketenagakerjaan," *Jurnal Kertha Semaya* 11, no. 2 (2023): 48–55.

¹⁷ Dessy Permatasari, *Perlindungan Hukum Bagi Para Pekerja/Nuruh Di Perusahaan Yang Telah Dinyatakan Pailit* (Jakarta : Studi Di PT Asuransi Bumiputera, 2020), 8.

Protection for workers/laborers can be classified into three types, namely:¹⁸

1. Economic protection, where worker protection is in the form of sufficient income.
2. Social protection, which is in the form of occupational health insurance, and freedom to associate and negotiate.
3. Technical protection, namely worker protection in the form of safety and security of workers.
4. Protection of wages. Wage protection is the most important aspect of protection for workers. This form of wage protection is the goal of workers/laborers in carrying out work to earn sufficient income to finance their lives together with their families, namely a decent living for humanity. As long as the worker/laborer does his job, he has the right to wages that guarantee his life with his family. During that time, the employer is obliged to pay the wages.

Wages can be interpreted as one of the rewards received by someone who has carried out activities or work. In relation to the field of employment, the definition of wages is the compensation received by a job for the work services it provides in the process of producing goods or services in the company. Thus, employers and workers are two parties who have an interest in matters relating to wages. To realize an income that fulfills a decent living for humanity, the government establishes a wage policy which includes:¹⁹

- a. Minimum wage
- b. Overtime pay
- c. Wages for not coming to work due to absence
- d. Wages for exercising the right to rest time from work
- e. Form and method of payment of wages
- f. Proportional wage structure and scale
- g. Wages for severance pay.

An employment relationship termination dispute is a dispute that arises due to a lack of agreement regarding the termination of an employment relationship by one of the parties.²⁰ Those who often carry out unilateral terminations are entrepreneurs. To resolve disputes that occur in industrial relations, the government issued Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes (PPHI). This law is a formal law that becomes a reference for the parties (workers, trade unions and employers) in resolving disputed issues. Settlement starts from Bipartite at the company level, submitting a request for Mediation to the local Manpower Service or Consolidation or Arbitration, submitting a lawsuit request to the Industrial Relations Court up to a cassation request to the Supreme Court and submitting a request for Judicial Review (PK).²¹

A company that is declared bankrupt cannot immediately terminate employment without considering the rights of the company's workforce. Disputes related to termination of employment are related to unilateral decisions, in this case often made by employers. Even though a bankrupt company can carry out a layoff process, the rights of workers must be fulfilled to prevent employment termination disputes. The rights of workers in companies with bankruptcy status that carry out layoffs are severance pay of 0.5 times the applicable

¹⁸ Ibid, 9.

¹⁹ Mulyani Kurniasari, *Perlindungan Hukum dan Sosial Terhadap Pekerja Sektor Informal*, (Jakarta Selatan: LIPI Press, Anggota IKAPI, 2016), 89.

²⁰ Pasal 1 Angka 1 Undang-Undang Nomor 2 Tahun 2004 tentang Penyelesaian Perselisihan Hubungan Industrial.

²¹ *Ibid*

severance pay provisions; long service award money ("UPMK") equal to 1 times the applicable UMPK provisions; and compensation for rights ("UPH") as stated in Article 47 of Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations.

If the theory of legal certainty is related to bankruptcy law and Postponement of Debt Payment Obligations, especially in Article 1 of the 2004 UUKPKPU regarding labor rights in order of execution part of the bankruptcy estate, then the Debtor's obligation to pay the debt and the creditor's right to payment is an obligation that must absolutely be fulfilled.²²

Moreover, in 2023, Constitutional Court Decision no. 67/PUU-XI/2013 received legitimacy from the government with the ratification of Law no. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law) which amends Article 95 of the Employment Law to be as follows: "(1) If the Company is declared bankrupt or liquidated based on regulatory provisions legislation, Wages and other rights that have not been received by Workers/Labourers are debts whose payment takes priority; (2) Workers/Labourers' wages as intended in paragraph (1) are paid first before payments to all creditors; (3) Other rights of workers/laborers as intended in paragraph (1) have priority in payment for all creditors except creditors holding material security rights." The new provisions contained in the Job Creation Law have shown the existence of workers' wage rights to be given prior rights over other creditors if the company has been declared bankrupt..²³

The Manpower Law already states that payment of workers' wages must take priority. In addition, Article 165 states "Employers can terminate employment relationships (PHK) for workers because the company goes bankrupt", provided that workers are entitled to one-time severance pay as stipulated in Article 156 paragraph (2), service award money in the amount of one time as stipulated in Article 156 paragraph (3), and compensation money for rights in accordance with the provisions of Article 156 paragraph (4). This means that if bankruptcy occurs, workers are entitled to wages and severance pay as determined.

In fact, most curators in bankruptcy put aside the interests of workers in accordance with the application of the Paritas Creditorum principle and the Pari Passu Prorata Parte principle, where the position of creditors does not stand at the same height and sit at the same low, but must be in accordance with the proportions and Article 1132 of the Civil Code provides an exception, creditors are rights holders. specials, mortgages, pawns are the ones that must take priority.

This increase in rights is permitted based on Article 1134 paragraph (1) of the Civil Code which states as follows: "A special right is a right that is granted by law to a person who is receivable so that the level is higher than that of other people who are receivable, solely based on the nature of the receivable. However, it must be remembered that the granting of priority rights, such as Article 95 paragraph (4) of Law Number 13 of 2003 concerning Employment, cannot be interpreted as a higher right than the rights of separatist creditors, because Article 1134 paragraph (2) of the Civil Code has also been specifically expressly

²² Mochamad Rifki Hidayat, "Kepastian Hukum Pemenuhan Upah Karyawan Dalam Pembagian Harta pailit", *Jurnal IUS Kajian Hukum dan Keadilan*, Vol. 9, No. 1, (2022): 165.

²³ Muhammad Hafizh Izzulhaq, et.al, "Hak Upah Pekerja Atas Perusahaan Pailit: Disharmonisasi Peraturan Undangundang Pasca Undang-Undang Cipta Kerja", *Jurnal Kertha Semaya*, Vol. 12 No. 1 (2023): 3127.

regulates "Pawns and Mortgages are higher than special rights, except in cases where the law provides otherwise."

Efforts can be made to fulfill labor rights in companies declared bankrupt. Workers/laborers have the right to retain the entrepreneur's property which will be used as collateral for the fulfillment of wages and other rights. The holder of retention rights has the right to retain certain objects belonging to the opposing party until his rights are fulfilled by the opposing party. Article 1616 of the Civil Code has a broad meaning that workers/laborers have the right to retain property belonging to the employer or entrepreneur until the workers/laborers' rights are fulfilled. The Manpower Law implicitly provides retention rights to workers/laborers.

Workers/employees in the process of fulfilling their rights cannot be denied that there could be conflicts between the interests of creditors and each other if they do not understand the implementation of existing laws. Fulfilling these rights can also occur considering the possibility of a large number of creditors. The potential for this conflict could occur considering the possibility that the amount of the bankrupt boedel's assets will not be sufficient to meet payments on the debtor's debts to creditors. The Bankruptcy Law was created based on the objectives and foundation of all the articles in the Law explaining the direction, function and benefits of the Law.²⁴

In the event of Bankruptcy, payment of workers'/labourers' wages is made by the Curator who replaces the Company's position. So that workers' rights, in this case wages and other benefits according to the Manpower Law, will change to debts whose payment takes priority and the explanation states that what is meant by priority in payment is that workers/laborers' wages must be paid before other debts. In Article 39 paragraph (2) of the 2004 UUKPKU, it has been determined that workers' wages for the period before and after bankruptcy are included in debts of the bankruptcy estate, meaning that workers' wages must be paid before other debts.²⁵

Objects with collateral rights to third parties can be included as bankruptcy assets

The state is obliged to guarantee the rights, opportunities and is obliged to provide protection for every citizen without discrimination in obtaining income.²⁶ Article 100 of Law Number 37 of 2004 regulates that the Curator must make a record of bankruptcy assets no later than 2 (two) days after receiving the decision letter for appointment as Curator. The condition for the validity of an object or property of the Debtor to be entered as a Bankruptcy Boedel is if the Debtor's object or property which is entered as a Bankruptcy Boedel fulfills the elements of Article 1131 of the Civil Code which determines: All movable and immovable goods belonging to the debtor, both existing and future exists, as collateral for the debtor's individual obligations.²⁷

²⁴ Devi Susanto, Hasnati Hasnati, dan Fahmi Fahmi, "Kewajiban Perusahaan Pailit Dalam Penyelesaian Hak-Hak Karyawan Ditinjau Dari Undang Undang No 37 Tahun 2004 Tentang Kepailitan Dan Undang Undang No 13 Tahun 2003 Tentang Ketenagakerjaan," QISTIE 13, no. 2 (30 November 2020): 242.

²⁵ Fani Martiawan Kumara Putra, "Benturan Antara Kreditur Privilege Dengan Kreditur Preferen Pemegang Hipotek Kapal Laut Terkait Adanya Force Majeure," Perspektif Vol. 18, No. 1 (2013): 32.

²⁶ Adnan Hamid, "Diskursus Perlindungan Hukum Bagi Tenaga Kerja Indonesia Dalam Penempatan di Malaysia", Arena Hukum, Vol. 12 No. 1, (2019): 156.

²⁷ Susilo Andi Darma, "Kedudukan Hubungan Kerja; Berdasarkan Sudut Pandang Ilmu Kaidah Hukum Ketenagakerjaan Dan Sifat Hukum Publik Dan Privat," Mimbar Hukum, Vol. 29, No. 2 (2017): 221.

Article 3 paragraph (1) of the 2004 UUKPKU and the explanation of Article 3 paragraph (1) of the 2004 UUKPKU are the legal basis for filing miscellaneous lawsuits and are also the legal basis for Absolute Competency for the Commercial Court to examine, try and decide Miscellaneous Claims:

"As Article 3 paragraph (1) of the 2004 UUKPKU states that "Decisions on applications for bankruptcy declaration and other matters related to and/or regulated in this Law, are decided by the Court whose jurisdiction includes the area where the Debtor's legal domicile is."

What is meant by "other matters", is, among other things, actio pauliana, third party resistance to confiscation, or cases where the Debtor, Creditor, Curator, or administrator is one of the parties in a case relating to bankruptcy assets including the Curator's lawsuit against the Directors who caused the company to be declared bankrupt due to negligence or error. The procedural law that applies in adjudicating cases which includes "other matters" is the same as the Civil Procedural Law that applies to cases regarding applications for bankruptcy, including regarding limitations on the resolution period.²⁸

Every action carried out by a person or legal entity within the scope of assets will certainly give rise to legal consequences for their assets, for example bankruptcy as a legal consequence. Article 2 UUKPKU 2004 states that bankruptcy is:

1. 1. If the debtor does not pay in full the debt which is the creditor's right and the payment is due and can be collected, the debtor has two or more creditors and has at least one debt. Position of Third Parties in Bankruptcy Cases.
2. 2. The above application is in the public interest submitted by the prosecutor's office.

A person can be said to be a "Third Party" if he has the position of owner of an item controlled by the curator, there has been a sale and purchase carried out by the debtor and a third party where the third party based it on good faith which was carried out before the bankruptcy decision was made. The legal challenge that the third party wants to file is not only based on interests but also on the element of having been harmed by the debtor's legal actions.²⁹ Creditors whose property rights cannot be guaranteed and whose receivables are not guaranteed as privileged receivables can be classified as concurrent creditors. In this case, the concurrent creditor is a creditor who does not have the right to control the collateral and must share it with other creditors equally, the distribution is based on the proceeds from the sale of the debtor's assets.³⁰

A third party is a party who carries out legal actions with the debtor which are canceled by the creditor due to the existence of actio pauliana rights.³¹ In this case, legal protection for third parties who have good intentions depends on the object of agreement whose validity has been canceled by the curator. If it is beneficial to the bankruptcy estate, it will be reimbursed in full, whereas if it is detrimental to the bankruptcy estate, the third party can only appear as a concurrent creditor in accordance with Article 49 paragraph (4) UUKPKU.

What can be said to be actio pauliana are:³²

²⁸ Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan.

²⁹ Undang-Undang No. 37 Tahun 2004 tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang

³⁰ Muhammad Ackbar, "Pertanggungjawaban Debitor Pailit Terhadap Utang Yang Belum Terlunasi Dalam Perkara Kepailitan", Jurnal Kertha Semaya, Vol. 03, No. 01, (2015), 7.

³¹ Jono, *Hukum Kepailitan*, (Jakarta: Sinar Grafika, 2008), 135.

³² Adrian Sutedi, *Hukum Kepailitan*, (Bogor: Ghalia Indonesia, 2009) 46.

1. A right or legal protection that creditors have at any time if they feel disadvantaged.
2. An action taken by a debtor to transfer his rights to assets to the detriment of his creditors if he feels that he is threatened with being declared bankrupt due to having bad faith.
3. One thing that must be proven is that the debtor takes legal action as mentioned above, that the "debtor" knows that the action taken could be detrimental to the creditor.

If a bankruptcy statement is addressed to the debtor, the debtor by law from the day he is declared bankrupt loses the right to control his assets, and in the *actio pauliana* which then takes over the activities and settlement of the debtor's bankrupt assets by the curator, this is the duty and authority of the curator.³³ Based on Article 49 paragraph (3), it states that the rights of third parties must be protected for objects obtained in good faith. Likewise, the Civil Code states in Article 1341 that rights obtained by third parties in good faith over the goods that are the object must be protected. The explanation regarding Article 49 paragraph (3) is that "the rights of third parties to objects as intended in paragraph (1) which were obtained in good faith and not for free must be protected." In connection with the article above, Article 49 paragraph (4) of the 2004 UUKPKU states "Objects received by the debtor or their replacement value must be returned to the extent that the bankruptcy estate benefits, whereas for any shortfall, the person against whom the cancellation is made can appear as a concurrent creditor."

The provisions of Law Number 4 of 1996 concerning Mortgage Rights do not explicitly explain the formulation of parties directly involved in Mortgage Rights, based on Article 1 Paragraph (2), (3), (4) and (6) of the Law. Law Number 4 of 1996 concerning Mortgage Rights cannot mention third parties providing Mortgage Rights, but in fact Article 4 paragraph (4) of Law Number 4 of 1996 concerning Mortgage Rights touches on the issue of whether third parties can be involved in providing guarantees for land rights, Article 4 paragraph (4) of Law Number 4 of 1996 on Mortgage Rights which reads as follows:³⁴

"Mortgage Rights can also be imposed on land rights as well as existing or future buildings, plants and works which are one unit and are the owner of the rights to the land, the encumbrance of which can be expressly stated in the Deed of Granting Mortgage Rights concerned."

If the encumbrance of the Mortgage is on land belonging to a third party, namely as a form of collateral for providing credit to the Debtor, then the third party must first provide power of attorney to the Debtor. Where this aims to guarantee the Debtor in the process of granting credit by the creditor. The granting of power of attorney by a third party to the Debtor is usually stated in the form of an agreement, the legal relationship that occurs therein is only binding between the third party and the Debtor. Where a third party acts as a power of attorney for the Debtor's interests in granting credit to the bank, the Debtor is the recipient of power of attorney over goods belonging to the third party to be used as collateral for granting credit by the creditor, in order to place a mortgage on the land. In this case, the creditor also has a relationship with a third party, where the legal relationship occurs when the third party participates in the signing of the deed of encumbrance of the Mortgage Rights which is carried out in the presence of a notary. By signing the deed of encumbrance of the Mortgage Rights,

³³ Kadek Indra Dewantara, "Kewenangan Kurator Dalam Mengurus Dan Manguasai Aset Debtor Pailit", Jurnal Kertha Semaya, Vol. 7, No. 9, (2019), 2.

³⁴ Undang-undang Nomor 4 Tahun 1996 tentang Hak Tanggungan

the third party is deemed to have handed over ownership of the Mortgage Rights to the Debtor as collateral, so he is automatically considered to be the second Debtor who must also be responsible for the implementation of the credit. Because a third party has voluntarily been involved in providing credit to the first debtor by lending his land as collateral for the mortgage right.³⁵

Conclusion

When Bankruptcy occurs, workers/laborers' wages are paid by the Curator who takes over the position of the Company. So that workers' rights, in this case wages and other benefits according to the Employment Law, will change to debts whose payment takes priority and the explanation states that what is meant by priority payment is that workers/laborers' wages must be paid before other debts. In Article 39 paragraph (2) of the 2004 UUKPKU concerning Bankruptcy, it has been determined that workers' wages for the time before and after bankruptcy are included in debts of the bankruptcy estate, meaning that workers' wages must be paid before other debts.

Legal considerations of Supreme Court Decision Number 625 K/Pdt.Sus-Pailit/2021 in the position of a third party who has good faith depending on the object of agreement whose validity has been canceled by the curator. So in this case there needs to be internal legal protection, namely regarding protection for third parties when making agreements, as well as external legal protection in the form of regulations for the interests of weak parties.

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³⁵ Yunita Krysna Vlayvi dan Djuwitastuti, "Jaminan Hak Tanggungan Atas Tanah Milik Pihak Ketiga Dalam Perjanjian Kredit di Lembaga Keuangan Perbankan Berdasarkan Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan", *Jurnal Privat Law*, Vol. IV, No. 2, (2016), 147.

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