

Employee's Position as Privileged Creditors When Debt of Bankruptcy is Larger Than Bankruptcy Assets

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Abstract—When the company is declared bankrupt, workers' rights are fulfilled through the Curator's bankruptcy assets sale. Even though employees have a unique position as creditors, if the bankruptcy debtor's liabilities are much greater than the debt, these privileges do not directly make the employee the first party to be paid for their obligations. Separatist creditors are put first so that employees do not get full rights. This study aims to determine the fulfillment of workers' rights when the company is declared bankrupt. This study uses a normative juridical approach. Data in the form of regulations, decisions of the commercial court and the Supreme Court, and journal articles are obtained through internet searches. The supporting data in the form of interviews and questionnaires obtained directly from employee representatives will be used as a comparison. The data obtained were then analyzed descriptively, qualitatively, and deductively. Although the Law regulates employee's rights to get wages and severance pay, when the company is declared bankrupt, workers do not get full rights or do not provide a sense of justice for workers, which is constitutionally guaranteed in Article 28 D of the 1945 Constitution.

Keywords—*employee rights, wages, and severance pay, bankruptcy*

I. INTRODUCTION

Problems that often arise related to employees' rights if the company is declared bankrupt, which is the company's difficulty is paying workers' normative rights. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt have explicitly regulated the wages owed before or after the bankruptcy statement has pronounced the debt of bankruptcy assets. Budiono [1] stated that many employees have worked for decades and have the right to receive wages and severance pay, but many workers have not received their bankrupt company's rights. Employees have the hope of getting a salary and other rights when the company goes bankrupt.

In connection with employee problems, the bankruptcy case at Nyonya Meneer Ltd., in 2017 resulted in employee layoffs,

and the fulfillment of employee rights was hampered. The same thing happened to Tranka Kabel Ltd. in 2014. Based on the results of an interview with Alain Milliar, chair of the Workers' Union at Tranka Kabel Ltd., that all employee salaries were paid after one year of the bankruptcy decision, and that was not full. Meanwhile, the right to severance pay has not been paid to date.

In this research article, the problem's focus is on how laws and regulations regulate employees' positions whose salaries and severance pay have not been paid by the company that was declared bankrupt? And how is legal protection for employees to get wage and severance pay related to the principle of justice?

II. METHODS

This study uses a normative juridical approach, which tries to analyze the adequacy of regulations in the field of bankruptcy and employment in regulating the position of employees in obtaining their rights in the form of salaries and severance pay from the bankrupt company. This research is using descriptive analytical methods that serve to describe the object through data or samples that have been collected. The data analysis method uses qualitative analytical methods, namely using a systematic interpretation by linking articles in the bankruptcy laws and regulations with other articles in a series of human resources regulations, including decisions of the constitutional court relating to the rights of employees of the bankrupt company.

III. DISCUSSION

A. *Legislation Regulating the Position of Employees whose Salaries and Severance Pay has not been Paid by the Bankrupt Company*

Legislations that regulate the position of employees whose wages and severance pay have not been paid when the company goes bankrupt are Law on Bankruptcy and

Suspension of Obligations for Payment of Debt, Law on Employment, Government Regulations on Wages. In the presentation of this first identification, we will first analyze the Law on Employment, which is connected with the constitutional court's decision. According to Article 95 paragraph (4) of the Law on Employment, it is stated that the wages and other rights of workers or laborers constitute a debt with priority payment in the event the company is declared bankrupt or liquidated. This article raises various interpretations because the meaning of "payment first" does not reflect legal certainty. The payment is prioritized, from whom creditors are not regulated in the Law on Employment and in its explanation. A bright spot emerged when the constitutional court, through its decision Number: 67/PUUXI/2013, stated that wages are creditors that take precedence over other creditors, including separatist creditors, state claims bills, auction offices, and bodies formed within the Government. Meanwhile, for severance pay and other rights, his position takes precedence after the separatist creditors. For severance pay and other rights for workers for a bankrupt company, payment is prioritized too (in order) separatist creditors, severance pay and other rights of workers or laborers, state claims bills, auction offices, and public bodies in the form of Government.

Thus, the Employment Law and the Constitutional Court Decision make workers or laborers' wages different from severance pay and other rights of workers or laborers. The right to fair wages is a legal right that a person receives and demands since he finds himself to work for a company. Therefore, the company concerned must provide fair wages. Law Number 13 of 2003 concerning Employment emphasizes that workers have the right to obtain decent income for humanity.

The wages of workers or laborers are constitutionally based on Article 28D paragraph (2) of the 1945 Constitution is a constitutional right so that constitutionally it must get fair treatment in work relations, while unemployment and others are not included in constitutional rights. So that the legal implication is that there is a difference in the ranking of the initial payment. Wages are above separatist creditors, while severance pay and other workers' rights and workers are below separatist creditors' rank. The Constitutional Court's argument upholds a sense of justice considering that for creditors who are prioritized, namely state rights claims, auction offices, and public bodies whose positions in the form of Government are ranked after workers wages that the country has other sources of financing. While for workers or laborers, wages are the only source of self-defense for themselves and their families. It is strengthened again by Husni's opinion in Asikin [2], which states that a working relationship is a relationship between a worker and an employer after a work agreement is made, namely an agreement in which the party laborer binds himself to the employer to work for wages. With this, the employer's agreement to pay salaries. In connection with the work agreement, Khakim [3] states that there are four essential elements in a working relationship, work, orders from others, the presence of wages, and a specific time limit. This wage is a consequence of the emergence of an agreement whose criteria

are assessed materially, namely that it can be valued in money. Subekti [4] also stated that the consequence of the promised wage marks the work agreement between worker and employer after the employee carries out orders from the employer.

Referring to these experts' opinions, the Constitutional Court's decision is very appropriate for placing workers' wages or labor above other creditors when the company goes bankrupt. Wages of workers or laborers have become a constitutional right from workers or laborers' rights to get fair treatment from a working relationship based on a work agreement.

Other articles in the Employment Law related to bankruptcy apart from Article 95 Paragraph (3) are also contained in Article 165 of the Employment Law, which states that employers can terminate workers due to bankruptcy. The content of Article 165 of the Employment Law clearly states that employers can terminate the Employment of workers or laborers because the company is bankrupt, provided that workers or laborers are entitled to severance pay of one time the provisions of Article 156 paragraph (2) of the Employment Law, the work period award money is one time the provisions of Article 156 paragraph (3) of the Employment Law and compensation for rights by the provisions of Article 156 paragraph (4) of the Employment Law.

As also stated by Asyhadie [5] that whenever termination of Employment is carried out because the company is bankrupt, the company conducting the Termination of Employment Relationship is required to pay severance pay, a period of service pay, and compensation for rights by the provisions of the Employment Law. The Employment Law provides a suitable position to workers or laborers that when a bankrupt company carries out the termination of Employment, all rights of the worker or laborer must be given, especially wages resulting from a working relationship between the employer and the worker or laborer. The same thing was expressed by Rusli [6] that the fundamental rights of workers or laborers and equal opportunity and treatment without discrimination on any basis to realize the welfare of workers or laborers and their families are guaranteed by the Employment Law while still paying attention to the progress of the business world

Apart from Article 165 of the Employment Law, employment termination types can refer to Articles 150 to 172 of the Employment Law. In essence, layoffs can be done by the employer or voluntarily from the workers or laborers themselves. If an entrepreneur carries out the termination of Employment, the reasons for termination of Employment may occur because:

- The worker has made a severe mistake.
- Workers violate the provisions of the work agreement and company regulations or collective bargaining agreements.
- There was a change in status, merger, burial, and or company ownership.

- Entrepreneurs close down because they experience continuous losses for two years or are in a state of force (force majeure).
- The company went bankrupt.
- The worker enters the age of retirement.
- Workers or laborers are absent for 5 (five) working days or more consecutively without written information accompanied by valid evidence, categorized as a disqualification to resign.

Suppose the employment termination is carried out voluntarily. In that case, the worker or laborers can submit an application for employment termination to the Industrial Relations Dispute Settlement Institution when the employer commits an act stated in Article 169 of the Employment Law. Especially for employment termination due to a bankrupt company, the provisions are regulated in Article 165 of the Employment Law. The Curator takes over the company's management under the supervisory judge's supervision to terminate Employment when the company goes bankrupt. The Curator has the authority to manage the bankrupt debtor's assets because immediately after the commercial court decides to be bankrupt, the bankrupt debtor no longer has the authority to manage his assets and the company's management after the debtor's bankruptcy is handed over to the Curator. Refer to the Employment Law, especially Article 165, the worker or laborers can be terminated by the Curator, of course, under the supervisory judge's supervision.

When connected with the provisions in Article 39 Paragraph (1) of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt, the worker is given the option to terminate the employment relationship with the bankrupt company. In addition to curators who end the employment relationship first issue a notification to the worker or laborers. Therefore, the Constitutional Court's decision in 2013 and examining the material of Article 95 Paragraph (4) of the Employment Law has been ideal in providing a sense of justice to workers or laborers. However, the Constitutional Court Decision provisions that are accommodative and provided a sense of justice for laborers or workers are not accommodated in the Government Regulation on Wages issued after the Constitutional Court Decision.

The Constitutional Court Decision was issued in 2013, while the Government Regulation on Wages was published in 2015 through Government Regulation Number 78 of 2015. The non accommodative side of the Government Regulation on Wages is contained in Article 37, where the meaning of "payment takes precedence," which has been interpreted and decided by the Court Constitution, overturned. Article 37 Paragraph (2) stated that the Government Regulation on Wages states that workers or laborers' payment takes precedence following the provisions of statutory regulations. Meanwhile, when referring to laws and regulations, starting from Article 1134, 1137, and the related Articles of the Civil Code, it gives a position of a tax position as one of the bankruptcy creditors in

the role of the preferred creditor who has privileged precedence. This right is the same as the bankruptcy fee taken from the bankruptcy budget so that the position is paid before fulfillment before the separatist creditor. Besides, in the Insurance Law, insurance company policyholders also have the right to proceed. Furthermore, Article 55 of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt states that separatist creditors are creditors who seem to be separated from the debtor's bankruptcy separatist creditors are holders of property rights. Government Regulation Number 78 of 2015 concerning Wages still places the wages of workers or laborers after other creditors, in this case, separatist creditors, state rights claims, curator fees, and finally wages of workers or laborers, although both are included in creditors whose payment is prioritized

How much better, government regulations to regulate technically and accommodate the sense of justice given to laborers or workers based on the Constitutional Court's decision. The order of wages in which payment is expressly stated should be:

- Wages of workers or laborers;
- Separatist Creditors;
- State Rights Bill;
- Auction Office;
- Public Agency (established by the Government)

For severance pay and rights of workers or other laborers, the order is:

- Separatist creditors;
- Severance pays and rights of workers or other laborers;
- State Rights Bill;
- Auction Office;
- Public Agency (established by the Government)

In the perspective of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt, the position of workers or laborers whose company is bankrupt is regulated in Article 39 of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt. In essence, the Law on Bankruptcy and Suspension of Obligations for Payment of Debt refers to the articles in the Civil Code starting from Articles 1131 to 1149. Likewise, Sjahdeini [7] stated that creditors consist of preferred creditors, separatist creditors, and concurrent creditors. In Article 36 Paragraph (2), since the date of pronouncement of the bankruptcy decision, the wages payable before and after the bankruptcy decision are pronounced as debts of bankruptcy assets. According to Ginting [8], Article 39 Paragraph (2) of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt does not explicitly state workers' wages preferential bankruptcy debt. The editorial stated that workers' wages are debts of assets refer to provisions in Article 1149 Civil Code that classify workers'

salaries as an extraordinary claim whose payment is prioritized in fourth place after court fees, burial expenses, and debtor medical expenses.

A preferred creditor or unique creditor is a creditor who has a unique position and has the right to obtain pre settlement from the sale of the bankruptcy estate because of the loan's nature. The role of this unique creditor is under the mortgage and lien rights holder. Therefore, the position of workers in company bankruptcy refers to their opinion that Nugroho [9] and Sejahdeini [7] are among the preferred creditors. Still, their order is below the state rights bill, the auction office for public bodies formed by the Government. Meanwhile, separatist creditors are separate or separatist creditors and precede other creditors, including privileged creditors and concurrent creditors. The separatist creditors are above the preferred creditors. Article 55 of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt separatist creditors can exercise their rights as if there was no bankruptcy.

From the two types of legislation, namely the scope of the Employment Law and the Law on Bankruptcy and Suspension of Obligations for Payment of Debt, it is concluded that there is a position of wages for workers or laborers in company bankruptcy that is not synchronous. The Law on Bankruptcy and Suspension of Obligations for Payment of Debt emphasizes the separatist creditors who have the highest grief. Meanwhile, labor wages, as preferred creditors, are placed after separatist creditors. In the creditor system, labor wage preference is in the fourth position after court fees, burial costs, and debtor medical expenses. Budiono [1] expressed a similar opinion that in the case of a bankrupt company, the separatist creditors are special creditors (preferred) who have the right to execute collateral as if there was no bankruptcy. This is also a concern of workers or laborers so that their rights are not fulfilled. Saija's opinion is right that there is still fear if the possibility that the company's assets go bankrupt is not sufficient to be distributed to creditors and the time that workers have to wait for all of their rights [10]. Their rights are fulfilled. This fear has resulted in the pressure of workers to get their rights as soon as possible. If the application of Article 95 Paragraph (4) of the Employment Law is implemented in a bankruptcy case in determining the worker as one of the creditors, workers' rights in the bankrupt company should not be a big problem. Workers go directly to the Curator appointed by the court if there are problems in fulfilling their rights.

In the opinion of the author, the position of wages of workers or laborers as preferred creditors refers to the Constitutional Court Decision issued in 2013 where the wages of workers or laborers took first priority before other creditors, including separatist creditors.

B. Legal Protection for Employees to Get Salary and Severance Pay Following the Principle of Justice

Legal protection for employees to get salary or severance pay refers to the Law on Bankruptcy and Suspension of Obligations for Payment of Debt, does not yet reflect the principles of justice, as stipulated in the Employment Law and

the Constitutional Court Decision s. The Constitutional Court's consideration states that although the separatist creditors and workers have the same basic legal relationship, when viewed from other aspects, namely aspects of the legal subject who undertakes the agreement, on object, and risk, between the two, there are constitutionally significant differences. From the aspect of a legal subject, a mortgage pawning agreement, fiduciary, and the mortgage is an agreement made by a legal subject, namely entrepreneurs and investors, socially and economically constructed. On the other hand, a work agreement is an agreement made by different legal subjects, namely employers and laborers who are socially and economically unequal. One party has a more powerful and higher position than the other. A worker is socially and financially less likely than an entrepreneur, even though they both need each other. According to the Constitutional Court, because workers are socially or economically lower than employers, the rights of workers have been guaranteed by Article 28A of the 1945 Constitution, the Employment Law, and the Law on Bankruptcy and Suspension of Obligations. Payment of Debt must provide guaranteed protection for the fulfillment of workers' rights.

From the object's aspect, the pledge, mortgage, fiduciary, or other mortgage agreement, the object is property. Meanwhile, in a work agreement, the object is labor or service skills in exchange for services to meet the basic needs of life for themselves and the worker or laborer's family. So that from the aspect of the object, both have fundamental differences. The actual formation of Law must be to protect humans.

This is in line with Sidarta [11], who stated that the Law imposes moral principles of justice. Thus, the Law can be identified with morality, namely civilized human morality. All human beings who claim to be civilized are assumed to have the same moral principles regarding what they see as right and justice. Referring to Sidarta's opinion, the Constitutional Court is right to state that the Law is to protect humans [11]. Humans towards themselves and their lives must be a priority, must be ranked first before separatist creditors.

From a risk aspect, for entrepreneurs, risk is a natural part of business management. Meanwhile, for workers, wages are a means of fulfilling the necessities of life for themselves and their families, so it is not appropriate for workers or laborers' salaries to be ranked low with arguments related to risks that are not the scope of their consideration. It is unfair to insure something against something that he does not participate in the business. Apart from that, living and defending life based on Article 28A of the 1945 Constitution are constitutional rights, namely rights that cannot be reduced under any circumstances. Therefore, justice for workers or laborers has been expressly regulated in the Employment Law and the Constitutional Court Decision.

However, in practice, the Constitutional Court Decision s have not significantly provided justice to workers or laborers in obtaining their rights in the form of wages and severance pay, and other rights. In practice, the fulfillment of workers' or

laborers' rights to wages or severance pay or other rights still refers to the Law on Bankruptcy and Suspension of Obligations for Payment of Debt, where the position of the separatist creditor takes precedence, while workers or laborers as preferred creditors are placed in priority after other preferred creditors as stated in Article 39, Paragraph (2) of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt, which classifies workers' wages owed before and after the bankruptcy decision as bankruptcy assets. This can be seen in the bankruptcy cases of Nyonya Meneer Ltd. and Tranka Kabel Ltd.

In settlement of the bankruptcy of Tranka Kabel Ltd., the separatist creditor has the right to preempt auctioning the assets of Tranka Kabel Ltd., in this case, Bank Panin Ltd., to sell land with an area of 56,739 m² (lot A) and an area of 88,272 m² (lot B) located in Mekarsari Urban Village, Cimanggis District, Depok, along with the building that stands on it and machinery, with a security deposit of 300 billion (lot A) and 55 billion (lot B). From the sales of these assets, which were quite high, Bank Panin Ltd. is committed to paying attention to Tranka Kabel Ltd. employees' guidance. Based on the results of an interview with one of Tranka Kabel Ltd.'s curators, Mr. Rusman, that the settlement of bankruptcy assets is indeed an asset of Tranka Kabel Ltd., the amount is far less than the liabilities of its creditors. Therefore, the remaining proceeds from the sale of assets that exceed Bank Panin Ltd.'s rights are returned to the Curator. By the Curator, because workers or laborers' wages are preferred creditors who must take precedence, they must pay at least three months of wages for workers or laborers, even though not entirely. Tranka Kabel Ltd. workers' salaries for three months are only valued at IDR 1,500,000 (one million five hundred thousand rupiahs). Meanwhile, claims to other preferred creditors, namely claims for state rights, auction offices, including curator fees, are only given half. Considering that Tranka Kabel Ltd.'s obligations are greater than the bankruptcy assets, workers or laborers' right in the form of severance pay cannot be paid.

The fact conveyed by the Curator Tranka Kabel Ltd. is in line with that described by Allain M (chair of the Tranka Kabel Workers' Union Ltd.) that a salary of IDR 1.500.000 (one million five hundred thousand rupiahs) has been submitted to all 298 workers. However, all employees have not received severance pay until now, even though if you look at the existing assets, salaries and severance pay should be paid to all employees. When referring to the number of wages paid for three months, of course, the value of wages payments is not commensurate with the wages that workers or laborers should receive.

Reflecting on the Tranka Kabel Ltd. case, the settlement of bankruptcy assets still does not refer to the Constitutional Court Decision, which places workers or laborers on separatist credentials. In reality, the separatist creditor controls the certificate of asset ownership of the bankruptcy company, which is guaranteed to the separatist creditor. Thus, it will be challenging to implement the Constitutional Court to pay workers 'or laborers' wages in advance.

The second case is the bankruptcy of Nyonya Meneer Ltd., in 2017. Workers or laborers at Nyonya Meneer Ltd. have not received a salary or wages since November 2015. Nyonya Meneer Ltd. should have paid workers wages that reached IDR 161 billion.

The details of the debt began in arrears in Social Security Administrator for employment insurance payments since November 2011 amounting to IDR 12.589 billion, salary arrears of IDR 35.364 billion, then arrears of workers' health claims worth IDR 75 million. The total active employees of Nyonya Meneer Ltd. are 921 people. They have not received wages starting November 2015, January 2016, and July 2017. Apart from engaged employees, there are still arrears in wages for pension workers reaching IDR 41.473 billion. The company is also assessed as having not paid severance pay for the 183 workers affected by employment termination, which reached IDR 8,717 billion.

Nyonya Meneer Ltd's bankruptcy's legal consequences, for its employee, Nyonya Meneer Ltd, had to pay debts of up to IDR 98 billion. Based on an interview with the Curator (Ade Liansah), who handled the case on September 22, 2020, there were only two stages of employee salary payments. However, not all employees have received wages considering the proceeds from the sale of assets of Nyonya Meneer Ltd. The proceeds from the sale of the IDR 71 billion bankruptcy assets were paid to Bank Papua and paid off.

Based on interviews with employees of Nyonya Meneer Ltd.'s attorney, on September 22, 2020, all assets had been sold, and the last asset that was sold was the Nyonya Meneer Brand valued at IDR 10.25 billion. The proceeds from the sale of these assets have been paid to all employees of Nyonya Meneer Ltd.

However, based on an interview with the Curator (Ade Liansah), the salary and severance pay have been paid, regardless of whether they are sufficient or not, and transferred to the workers' legal accounts. This is different from the opinion of workers' legal counsel, who stated that severance pay was not paid to workers at all.

From the case of Nyonya Meneer Ltd, it can be seen that Nyonya Meneer Ltd.'s financial condition is almost the same as Tranka Kabel Ltd., where the liability value is greater than the bankruptcy budget. In Nyonya Meneer Ltd., the payment of the debt was first submitted to the separatist creditor, namely Bank Papua. The remaining sales of assets controlled by Bank Papua will then be distributed to other preferred creditors. The only hope that workers or laborers can get their rights to wages and severance pay and other rights is from the sale of the trademark Jamu Nyonya Meneer established in 1919.

The auction bid's appraisal value at the Semarang Auction and State Property Service Office is worth IDR 200 billion. However, along the way, he could only penetrate the highest auction value of IDR 10.25 billion. Nyonya Meneer Ltd. has debts to creditors (employees) amounting to IDR 160 billion. The sale of the substandard value of trademark assets is

detrimental to former employees. According to the Curator (Ade Liansah), who stated that if the assets were sold for IDR 10 billion, then, for example, other assets were sold for IDR 9 billion, only IDR 19 billion was obtained. The debt is IDR 160 billion; then the employees will not get anything, not to mention tax arrears.

Yeti, a lawyer for Nyonya Meneer Ltd.'s former employee, also considered the substandard trademark asset sales because in a copy letter to the Curatorial Team of Nyonya Meneer Ltd., a letter from the Ministry of Law and Human Rights of the Director General of Intellectual Property with No.HK1.4-UM.01.01-378, dated October 28, 2028, regarding information related to Nyonya Meneer's trademark, it stated that the bankruptcy assets could be traded or transferred to another party provided that the protection period for the registered marks was still valid and was not subject to dispute in court. Assets from trademark licenses sold were only sold for IDR 10.2 billion, whereas the obligations to workers or laborers were IDR 160 billion.

Thus, it can be ascertained that workers or laborers' rights in the form of wages whose position as preferred or prioritized creditors will not be fully fulfilled, let alone severance pay and other rights.

Referring to Hadjon's [12] opinion, legal protection for workers or laborers in obtaining their rights in the form of wages, severance pay, and other rights, including repressive legal protection, namely protection directed at efforts to resolve disputes in the commercial court to obtain their basic rights. However, this repressive protection is still not obtained by workers considering that the company's bankruptcy assets' value is not sufficient to pay all of its obligations to its creditors, especially preferred and concurrent creditors. The form of legal protection provided by Law has not fulfilled the sense of justice of workers or labor.

Alfarizi [13] stated that employees are entitled to severance pay, service pay, and rights compensation. Also, employees are entitled to wages owed before and after the bankruptcy decision. Based on Article 39 paragraph (2) of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt, it is explained that since the date of the pronouncement of the bankruptcy declaration, the wages payable before and after the pronouncement of bankruptcy are due to bankruptcy assets. This provision is then strengthened by another provision, namely Article 95 paragraph (4) of the Employment Law, which states that when a company is declared bankrupt, the worker or laborer's wages and other rights are a debt that the payment is prioritized.

Based on this opinion, not only should the wages received by employees after the company they work for is declared bankrupt, but the right to severance pay must also be given. Not receiving full wages or even employees who have not received their wages, and employees not receiving severance pay in both cases above, constitute a debt of bankruptcy that must be paid. However, with insufficient proceeds from the Curator's sale of assets, because the Curator is also obliged to

pay the proceeds from the sale of assets to other creditors, the Constitutional Court Decision Number: 67/PUU-XI/2013 cannot be implemented by the Curator.

The uncertainty of the position of workers' wage debt in obtaining guarantees for protecting their rights in the event of bankruptcy certainly creates unrest for workers. These problems will have implications for neglecting workers' rights to obtain a decent living. However, workers' restlessness in obtaining their rights as preferred creditors with debts that must be paid first has been guaranteed after the Constitutional Court decision Number: 67/PUU-XI/2013.

Regarding the theory of justice, what the Curator considers right and fair in managing Nyonya Meneer Ltd.'s assets, of course, not only thinks about the rights of its employees, given the limited assets owned by Nyonya Meneer Ltd. In this case, it is impossible to fulfill all the workers' demands in the form of wages and severance pay, and the workers must accept that the efforts made through the trial process have been maximized. Therefore, this does not fulfill a sense of justice on the workers' side, considering that based on statutory regulations, salaries and severance pay should be paid in full.

Furthermore, if the bankruptcy process is carried out following statutory regulations, it should predict the impact, especially liabilities on all creditors, based on positive Law. Suppose the issue of asset distribution is fully left to the Curator. In that case, it is not certain that the principle of justice can be applied in all bankruptcy cases as experienced by Nyonya Meneer Ltd.

The bankruptcy experienced by Nyonya Meneer Ltd. was very complicated. The shareholders did not have sufficient assets to distribute according to positive Law. Therefore, it is not the Curator's fault in managing assets, but company management's weakness who cannot think about preventive measures. Through preventive legal protection, a corporate rescue can be carried out. This was not done by Nyonya Meneer Ltd. when the company was progressing. Preventive efforts must be maximized if you have good intentions to pay debts to creditors, such as improving management, improving marketing, not using company money for personal gain, and so on.

Legal protection is carried out so that workers are prosperous. Where the form of legal protection is a work norm that includes the protection of workers concerning working hours, a wage system following regulations established by the Government so that it is following dignity and morale

IV. CONCLUSION

The laws and regulations regulating the position of workers or laborers whose wages and severance pay have not been paid by companies that are declared bankrupt are contained in the Law on Bankruptcy and Suspension of Obligations for Payment of Debt, Law on Employment, Government Regulations on Wages, and the Decision of the Constitutional Court Number: 67/PUU-XI/2013, but between laws These laws

do not synchronously regulate the position of wages and severance pay of workers or laborers, so that the legal protection given by Law to workers or laborers to obtain rights in the form of wages, severance pay and other rights from companies that are declared bankrupt is not optimal.

Legal protection for workers or laborers to get salary or severance pay and other rights from companies that are declared bankrupt in its implementation does not provide a sense of justice for workers, which is constitutionally guaranteed in Article 28D of the 1945 Constitution.

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