

Legal Protection in Terminating Employment for Workers in Bankrupt Companies

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Abstract. *Termination of employment (PHK) in the context of corporate bankruptcy in Indonesia poses significant legal and social challenges, exacerbated by inconsistencies between Article 39(1) of the Bankruptcy Law and Article 154A(1)(f) of the Manpower Law, as amended by the Job Creation Law. This study employs a normative-empirical research method, integrating doctrinal analysis with field observations, to examine the adequacy of legal protections for workers affected by bankruptcy-induced layoffs. Findings reveal critical gaps in harmonization, particularly the need for a unified notification period and consistent prioritization of workers' rights as preferred creditors. Comparative insights from Germany, France, and Japan underscore the importance of procedural safeguards, compensation mechanisms, and judicial oversight in mitigating bankruptcy's adverse effects on workers. The study recommends legislative revisions to standardize a mandatory 45-day notification period, establish a compensation guarantee fund, and ensure seamless integration between bankruptcy and labor laws. These reforms aim to enhance legal certainty, justice, and efficiency in managing bankruptcy-related employment disputes. The research contributes to the legal discourse by addressing systemic gaps in Indonesia's regulatory framework and proposing reforms aligned with international best practices, ensuring equitable protection for workers while balancing corporate and creditor interests.*

Keywords: Bankruptcy; Legal; Protection; Termination.

1. Introduction

The termination of employment (PHK) for workers in bankrupt companies has become a critical issue within the intersection of labor and bankruptcy law.¹ This

¹ Pramana, RT, & Baskoro, BD The Board Of Directors' Criminal Liability For Companies Which Declared On Bankruptcy. Journal of Legal Sovereignty, 4(4), 239-248.

issue has profound implications for the livelihoods of workers and poses challenges to economic stability and public trust in the legal system. Workers often find themselves in a vulnerable position, with weaker bargaining power compared to creditors and other claimants.² Research by Finch highlights how legal uncertainties and conflicts between regulations exacerbate this vulnerability, leading to inadequate protection of workers' rights during corporate insolvency.³

Legal disharmony between Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) and Law Number 13 of 2003 on Manpower, as amended by Law Number 6 of 2023 (Job Creation Law), exemplifies this issue. Article 39(1) of the Bankruptcy Law mandates a 45-day notice before implementing layoffs, while Article 154A(1)(f) of the Manpower Law lacks a similar provision. Research by Muchsin has identified this gap as a significant factor contributing to the inconsistent application of layoff procedures, which creates uncertainty for workers and curators alike.⁴

The conflict between these laws undermines legal certainty and fairness, which are fundamental to a just legal system.⁵ Workers frequently lose their jobs without adequate notice, while their rights—such as severance pay, long service awards, and unpaid wages—are neglected.⁶ This was evident in Supreme Court Decision No. 049 PK/Pdt.Sus/2011, where workers challenged the prioritization of creditor claims over their entitlements. Despite the court affirming the curator's compliance with the Bankruptcy Law, workers expressed dissatisfaction with the lack of transparency and prioritization of their claims.⁷

Previous studies, such as those by Leuz, have explained the importance of harmonizing labor and bankruptcy laws to address these conflicts.⁸ Comparative studies in jurisdictions such as Germany, France, and Japan show that unified

(2021)<https://jurnal.unissula.ac.id/index.php/RH/article/view/17784>. Accessed December 10, 2024

²Colonnello, S., Efung, M., & Zucchi, F. Shareholder bargaining power and the emergence of empty creditors. *Journal of Financial Economics*, 134(2), 297-317. (2019).<https://doi.org/10.1016/j.jfineco.2019.04.001>. Accessed December 10, 2024

³Stiglitz, J.E. Bankruptcy laws: Basic economic principles. *Resolution of Financial Distress: An International Perspective on the Design of Bankruptcy Laws*, ed. by Stijn Claessens, Simeon Djankov, and Ashoka Mody, WBI Development Studies (Washington: World Bank), 1-23. (2001).

⁴Muchsin. (2013). *Protection and Legal Certainty for Investors in Indonesia*. Master of Law, Postgraduate Program, Sebelas Maret University. Surakarta, p. 30

⁵Hutahayan, B., Fadli, M., Amimakmur, SA, & Dewantara, R.. Legal uncertainty of municipal bond issuance: a case study of Indonesia and Vietnam. *International Journal of Law and Management*. (2024).<https://doi.org/10.1108/IJLMA-12-2023-0272>. Accessed December 10, 2024

⁶Ting, Y. Workforce reductions and termination benefits in governments: the case of advance notice. *Public Personnel Management*, 25(2), 183-198. (1996).<https://doi.org/10.1177/009102609602500205>. Accessed December 10, 2024

⁷Supreme Court Decision No. 049 PK/Pdt.Sus/2011.

⁸Leuz, C., & Wysocki, PD The economics of disclosure and financial reporting regulation: Evidence and suggestions for future research. *Journal of accounting research*, 54(2), 525-622. (2016).<https://doi.org/10.1111/1475-679X.12115>. Accessed December 09, 2024

notification standards and prioritization of workers' claims can significantly enhance legal protections during insolvency. However, Indonesia still lacks a coherent framework to bridge these regulatory gaps, creating inequities for workers and operational challenges for curators.⁹

This research aims to fill the gap by analyzing the normative conflicts between the Bankruptcy Law and the Manpower Law and proposing a harmonized framework that aligns with international best practices. Building on prior research, this study seeks to provide practical recommendations to improve legal certainty and worker protections during bankruptcy. This study aims to identify and analyze the conflicts between labor and bankruptcy laws in Indonesia and propose harmonized solutions to enhance legal protections for workers during bankruptcy.

2. Research Methods

a. Legal Protection for Workers Terminated Due to Bankruptcy

The termination of employment (PHK) during a company's bankruptcy process represents a multifaceted legal issue, particularly in balancing the interests of vulnerable workers against the demands of creditors.¹⁰The Indonesian legal framework, primarily rooted in Law No. 13 of 2003 on Manpower, as amended by Law No. 6 of 2023 (Job Creation Law), and Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), recognizes workers as preferred creditors.¹¹Despite this recognition, the implementation of protective measures often faces procedural and normative challenges, leaving workers exposed to financial and psychological hardship during bankruptcy proceedings.¹²

b. Legal Framework for Worker Protection

Workers are classified as preferred creditors under Article 95(4) of Law No. 13 of 2003. This provision mandates prioritization of workers' claims, such as unpaid wages and severality pay, over unsecured creditors. This legal safeguard aims to mitigate workers' vulnerability during the liquidation of a company's assets.

⁹Wadipalapa, RP, Katharina, R., Nainggolan, PP, Aminah, S., Apriani, T., Ma'rifah, D., & Anisah, AL An Ambitious Artificial Intelligence Policy in a Decentralized Governance System: Evidence From Indonesia. *Journal of Current Southeast Asian Affairs*, 43(1), 65-93. (2024). <https://doi.org/10.1177/18681034231226393>. Accessed December 09, 2024

¹⁰Yasid, M., Devi, RS, & Siregar, SA The Legal Protection for Concurrent Creditors in the Context of Enforcing Bankruptcy Cases. *Journal of Legal Sovereignty*, 5(4), 379-392.. (2022). <https://jurnal.unissula.ac.id/index.php/RH/article/view/28922>. Accessed December 12, 2024

¹¹Pramana, RT, & Baskoro, BD The Board of Directors' Criminal Liability for Companies Which Declared On Bankruptcy. *Journal of Legal Sovereignty*, 4(4), 239-248. (2021). <https://jurnal.unissula.ac.id/index.php/RH>. Accessed December 12, 2024

¹² Moh. Kurniawan. (2018). Duties and Functions of the Semarang Estates and Inheritance Office as a Bankruptcy Curator Based on Law Number 37 of 2004 Concerning Bankruptcy and Postponement of Debt Payment Obligations. Kurniawan M. Duties and Functions of the Semarang Estates and Inheritance Office as a Bankruptcy Curator Based on Law Number 37 of 2004 Concerning Bankruptcy and Postponement of Debt Payment Obligations. *Jurnal Daulat Hukum*. 2018;1(1).Page 62-67

However, practical challenges, such as insufficient assets after satisfying secured creditors, often render this protection ineffective.¹³ Under Article 1(5) of the Bankruptcy Law, curators are tasked with administering and liquidating a bankrupt company's assets. Their responsibilities include ensuring compliance with legal obligations to workers, which encompasses the timely payment of their claims.

Nevertheless, curators frequently encounter difficulties in balancing competing priorities, such as fulfilling obligations to secured creditors, while also addressing the rights of workers.¹⁴ Article 39(1) of the Bankruptcy Law requires a minimum notice period of 45 days before workers can be terminated. This procedural requirement underscores the principle of due process, allowing workers adequate time to prepare for unemployment. However, inconsistent enforcement and lack of oversight have often resulted in abrupt terminations, undermining the legislative intent of the provisions.¹⁵

c. Challenges in Implementing Legal Protections

Discrepancies between Article 39(1) of the Bankruptcy Law and Article 154A(1)(f) of the Manpower Law (as amended by the Job Creation Law) create a regulatory gap. While the Bankruptcy Law prescribes a 45-day notice period, the Manpower Law allows termination without specifying a timeline, causing uncertainty for both curators and workers.¹⁶ Workers' access to severance pay and other benefits is often delayed due to prolonged asset liquidation processes and disputes over claim prioritization. This delay exacerbates the financial distress faced by workers who are already vulnerable due to job loss.¹⁷ Termination during bankruptcy leaves workers with limited financial resources and job prospects. The absence of clear procedural safeguards compounds their vulnerability, leading to severe economic and psychological consequences.¹⁸

d. Legal Certainty in Worker Protection During Bankruptcy

The legal inconsistency between Article 39(1) of the Bankruptcy Law and Article 154A(1)(f) of the Manpower Law, as amended by the Job Creation Law, directly contravenes Gustav Radbruch's principles of legal certainty and justice. Radbruch asserts that for the law to function effectively, it must exhibit clarity, consistency, and stability—qualities disrupted by the conflicting requirements of these

¹³ Law Number 13 of 2003 concerning Manpower.

¹⁴ Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

¹⁵ Sri Redjeki Hartono. (2020) Bankruptcy Law and Worker Protection. Bandung: Alumni. p. 97.

¹⁶ Hakim, L., & Saputra, ND The Legal Politics of Insolvency Test in Bankruptcy Law Reform in Indonesia. Madani: Multidisciplinary Scientific Journal, 1(8). (2023). <https://jurnal.penerbitdaarulhuda.my.id/index.php/MAJIM/article/view/899>. Accessed December 12, 2024

¹⁷ Philipus M. Hadjon, (1987), Legal Protection for the People in Indonesia. Surabaya: Bina Ilmu, p. 112.

¹⁸ Muchsin, (2003). Legal Protection for Weak Legal Subjects (Yogyakarta: Liberty. p. 45.

provisions.¹⁹Article 39(1)'s 45-day notice period upholds legal certainty by giving workers time to prepare for termination, embodying substantive justice by prioritizing their rights as a vulnerable group. Conversely, Article 154A(1)(f) omits any such procedural safeguards, introducing legal ambiguity that undermines the workers' ability to assert their rights and prepare for termination. This conflict not only weakens the legal protection afforded to workers but also disrupts the functional stability required for curators to manage asset liquidation effectively. Radbruch's framework highlights the urgency of harmonizing these laws to restore legal coherence, ensuring that justice for workers is not merely formalistic but substantive, balancing their rights with the operational needs of bankruptcy procedures.²⁰Only through such harmonization can the law achieve its dual aims of justice and practical application in protecting the most vulnerable while maintaining economic order.²¹

e. Implications of Current Practices

The lack of consistent enforcement of notice periods in bankruptcy-related terminations undermines the principle of legal protection as defined by Philipus M. Hadjon, which emphasizes preventive and repressive measures to safeguard individual rights.²²The absence of clear and consistent notice periods denies workers the preventive protection necessary to prepare for termination and adapt to economic uncertainty, thereby infringing on the due process of law.²³

The normative conflict between Article 39(1) of the Bankruptcy Law and Article 154A(1)(f) of the Employment Law, as amended by the Job Creation Law, exemplifies the lack of legal certainty, a cornerstone of effective legal protection as articulated by Gustav Radbruch.²⁴Workers are left vulnerable due to ambiguities in the prioritization of their claims and procedural inconsistencies. These gaps lead to fragmented enforcement, where curators often prioritize

¹⁹Demin, AV Certainty and Uncertainty in Tax Law: Do Opposites Attract?. *Laws*, 9(4), 30. (2020).<https://doi.org/10.3390/laws9040030>. Accessed December 10, 2024

²⁰Pratama, D. Securing Social Well-Being in the Quantum Age: Legal Roadmaps for PQC in Banking to Healthcare. *International Journal of Social Health*, 2(12), 969-975. (2023).<https://doi.org/10.58860/ijsh.v2i12.136>. Accessed December 11, 2024

²¹Kim, RE, & Bosselmann, K. Operationalizing sustainable development: ecological integrity as a fundamental norm of international law. *Review of European, Comparative & International Environmental Law*, 24(2), 194-208. (2015).<https://doi.org/10.1111/reel.12109>. Accessed December 12, 2024

²² Philipus M. Hadjon, (1987). *Legal Protection for the People in Indonesia* Surabaya: Bina Ilmu, p 2.

²³ Andiani, TN, & Riwanto, A. Protection Of Journalists' Right To Justice From Violence In The Performance Of Their Duties: A Human Rights Perspective. *International Journal of Educational Research & Social Sciences*, 5(1), 71-78. (2024). <https://doi.org/10.51601/ijersc.v5i1.762>. Accessed December 12, 2024

²⁴ Künzler, A. Judicial legitimacy and the role of courts: explaining the transitional context of the german border guard cases. *Oxford journal of legal studies*, 32(2), 349-381. (2012).<https://doi.org/10.1093/ojls/gqs005>. Accessed December 10, 2024

creditors over workers despite the latter's preferred creditor status under the law.²⁵

Additionally, the limited role of the judiciary in supervising curators weakens the repressive protection mechanisms necessary to enforce labor rights. Without judicial oversight, curators may fail to comply with procedural requirements or ensure that workers' claims, such as severity pay and unpaid wages, are prioritized.²⁶ This diminishes trust in the legal system and creates systemic inequities.²⁷

Although Indonesian laws theoretically provide safeguards, their practical implementation reveals significant gaps. As Hadjon emphasizes, legal protection must balance normative clarity with practical enforceability.²⁸ Addressing these deficiencies requires harmonization of conflicting regulations, enhanced judicial oversight, and procedural reforms to uphold workers' rights effectively in bankruptcy proceedings.²⁹ Without these reforms, the preventive and repressive legal protection mechanisms fail to function as intended, leaving workers unprotected and eroding trust in the legal system.³⁰

f. Harmonization Between Article 39(1) of the Bankruptcy Law and Article 154A(1)(f) of the Employment Law as Amended by Article 81 Number 45 of Law No. 6 of 2023 on Job Creation

The legal framework governing the termination of employment (PHK) due to bankruptcy in Indonesia reveals significant inconsistencies, particularly between Article 39(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU) and Article 154A(1)(f) of Law No. 13 of 2003 on Employment, as amended by Law No. 6 of 2023 on Job Creation. These discrepancies create legal uncertainty that disproportionately affects workers, who are already in a vulnerable position during corporate insolvency. While both

²⁵ Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations

²⁶ Claus-Wilhelm Canaris, *Systemdenken und Systembegriff in der Jurisprudenz* (Berlin: Springer, 1983), 84.

²⁷ Kurniawan, M. Duties and Functions of the Semarang Estate Management Office as a Bankruptcy Curator Based on Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations. *Jurnal Daulat Hukum*, 1(1).. (2018). <https://jurnal.unissula.ac.id/index.php/RH/article/view/2565>. Accessed December 12, 2024.

²⁸ Doing, M., Ali, B., & Yamin, D. Discretion and management of the covid-19 pandemic: Indonesia's experience in facing the health crisis. *Journal of Law Science*, 6(1), 50-59. (2024). <https://doi.org/10.35335/jls.v6i1.4454>. Accessed December 12, 2024

²⁹ Garcia, GG, Lastra, RM, & Nieto, MJ Bankruptcy and reorganization procedures for cross-border banks in the EU: Towards an integrated approach to the reform of the EU safety net. *Journal of Financial Regulation and Compliance*, 17(3), 240-276. (2009). <https://doi.org/10.1108/13581980910972223>. Accessed December 12, 2024

³⁰ Carloni, E., & Cantone, R. (2022). Limits of corruption repression and new prevention policies. In *Understanding and Fighting Corruption in Europe: From Repression to Prevention* (pp. 5-23). Cham: Springer International Publishing.

provisions regulate layoffs during bankruptcy, they differ significantly in their requirements, particularly concerning notification periods, leading to ambiguity in practice.³¹

g. Key Issues in the Legal Framework

Article 39(1) of the Bankruptcy Law requires curators to provide a 45-day notice before terminating workers. This period is intended to allow workers adequate time to prepare financially and emotionally for unemployment.³²In contrast, Article 154A(1)(f) of the Employment Law recognizes bankruptcy as a legitimate reason for termination without specifying any notice period. This omission introduces uncertainty for workers and curators alike, as it leaves room for varied interpretations in its application.³³

The lack of harmonization in these provisions directly impacts workers' ability to anticipate and prepare for job loss. Workers, as preferred creditors, are entitled to priority in receiving unpaid wages and severance under Article 95(4) of the Employment Law. However, inconsistencies between the Bankruptcy Law and the Employment Law can delay or obstruct the fulfillment of these rights, as curators may face conflicting obligations.³⁴

Curators are tasked with balancing the competing interests of creditors and workers while adhering to procedural and substantive legal requirements. The absence of clear guidance on notification periods complicates their ability to ensure compliance with both sets of regulations, potentially leading to disputes and inefficiencies in the bankruptcy process.³⁵

h. Analysis of Normative Discrepancies

a) Article 39(1) of the Bankruptcy Law. This provision emphasizes procedural protection for workers by mandating a 45-day notice period for terminations.³⁶The intent is to provide workers with sufficient time to adjust and to uphold the principles of legal certainty and fairness.³⁷However, its practical implementation often collides with the financial urgency faced by insolvent companies, where curators are under pressure to accelerate asset liquidation to satisfy creditors.

b) Article 154A(1)(f) of the Employment Law. The amendment introduced by the Job Creation Law allows termination due to bankruptcy but does not specify

³¹ Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

³² Law Number 13 of 2003 concerning Manpower.

³³ Supreme Court Decision No. 049 PK/Pdt.Sus/2011.

³⁴Sri Redjeki Hartono, *Bankruptcy Law in Indonesia* (Bandung: Alumni, 2018), p. 145.

³⁵Hakim, L., & Saputra, ND *The Legal Politics of Insolvency Test in Bankruptcy Law Reform in Indonesia*. Madani: Multidisciplinary Scientific Journal, 1(8). (2023). <https://jurnal.penerbitdaarulhuda.my.id/index.php/MAJIM/article/view/899>. Accessed December 12, 2024.

³⁶Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

³⁷ Gustav Radbruch, (1947), *Legal Philosophy* (Oxford: Clarendon Press, p. 74.

procedural safeguards such as notice periods.³⁸This omission not only undermines the procedural protections outlined in the bankruptcy law but also needs to be clarified regarding the timing and process of layoffs. Workers may be abruptly terminated without adequate notice, exacerbating their economic insecurity.³⁹

c) Legal Uncertainty and Its Impact. The absence of harmonized standards between these two provisions exposes workers to inconsistent practices.⁴⁰While the Bankruptcy Law prioritizes procedural safeguards, the Employment Law, as amended, leans toward operational flexibility for employers.⁴¹This divergence results in unclear obligations for curators, undermining workers' confidence in the legal system.⁴²

i. Judicial Insight: Supreme Court Decision No.049 PK/Pdt.Sus/2011

The Supreme Court's decision in Case No. 049 PK/Pdt.Sus/2011 highlights the practical implications of these normative conflicts—workers from PT. FIT-U Garment Industry, which was declared bankrupt, challenged the failure to prioritize their claims as preferred creditors. Despite the court ruling in favor of the curator's adherence to the 45-day notice requirement under the Bankruptcy Law, workers' dissatisfaction with the lack of transparency and prioritization underscored the systemic deficiencies in protecting their rights.⁴³This case exemplifies how the absence of explicit harmonization can leave workers without clear remedies, particularly in cases where curators prioritize creditor claims over unpaid wages and severity.⁴⁴The ruling underscores the need for legislative clarity to align these conflicting provisions and provide effective protection for workers.

j. Best Practices from Comparative Jurisdictions

a) Germany

Germany's Insolvency Act (Insolvenzordnung) establishes robust protections for workers in insolvency situations.⁴⁵Section 183 InsO mandates that workers' claims, including unpaid wages, severity, and other compensation, are categorized as preferential, ensuring their priority over general unsecured

³⁸ Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation.

³⁹Field interviews conducted with curators and employees affected by bankruptcy, 2023

⁴⁰Lawrence M. Friedman, (1975). *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation, p. 89.

⁴¹German Insolvency Act (Insolvenzordnung), Section 123, accessed 2023.

⁴²Laus-Wilhelm Canaris. (2009), *Legal Certainty in Modern Legal Theory*, in *German Legal Doctrine*, edited by Mathias Reimann. Berlin: Springer, p. 67.

⁴³Supreme Court Decision No. 049 PK/Pdt.Sus/2011

⁴⁴Ibid.

⁴⁵Federico M. Mucciarelli. "Employee Insolvency Priorities and Employment Protection in France, Germany, and the United Kingdom". *Journal of Law and Society* Vol 44, No 2 (2017). p. 255-282. url:<https://onlinelibrary.wiley.com/doi/10.1111/jols.12025>. Accessed December 12, 2024

creditors.^{46,47,48} Workers are entitled to compensation through social insurance schemes under the Social Security Code (Sozialgesetzbuch) if corporate assets are insufficient.^{49,50,51} Additionally, Section 113 InsO provides that workers can be terminated with a reduced notice period, but this process is supervised by labor courts to ensure fairness and compliance with the statutory framework.^{52,53}

b) **France** In France, the Labor Code (Code du Travail) and Commercial Code (Code de Commerce) require court approval before terminating workers during insolvency proceedings. Article L1233-3 of the Labor Code mandates that all terminations for economic reasons, including those in insolvency, adhere to a consultation process with employee representatives and judicial oversight.^{54,55} Article L631-15 of the Commercial Code complements this by empowering courts to assess whether the employer has exhausted all options to preserve jobs before approving layoffs.^{56,57} This framework guarantees transparency, ensures adherence to notice periods based on tenure, and enforces comprehensive compensation, including unpaid wages and severity, even when corporate resources are constrained.

c) **Japan**

Japan's insolvency framework, governed by the Corporate Reorganization Act and the Civil Rehabilitation Act, integrates worker protection measures. Article 20 of the Civil Rehabilitation Act mandates a 30-day notice for worker terminations, aligning with the Labor Standards Act, which also requires prioritizing unpaid

⁴⁶Insolvenzordnung (German Insolvency Act), Section 183,

⁴⁷Reinhard Bork. "Arbitration in Insolvency". *European Insolvency and Restructuring Journal*, (2023). url: <https://eirjournal.com/article/view/14826>. Accessed December 12, 2024

⁴⁸Federal Law Gazette. (2013). German Insolvency Code. Germany: Schultze & Braun GmbH, p. 92

⁴⁹ *Social and Cultural Book*(Social Security Code), Section 175,

⁵⁰Mohammed Al Bhadiy & Robert Guthrie. "Insolvency Protection for Employee Entitlements: International Alternatives to GEER Scheme". *Journal of Applied Law and Policy*, (2010). p. 33-49, url: <https://search.informit.org/doi/abs/10.3316/informit.498675191397227>. Accessed December 12, 2024

⁵¹Bea Cantillon, Martin Seeleib-Kaiser, & Romke Van der Veen, "The COVID-19 Crisis and Policy Responses by Continental European Welfare States." *Social Policy & Administration*, Vol 55, No 2 (2021). p. 326-338, url: <https://onlinelibrary.wiley.com/doi/abs/10.1111/spol.12715>. Accessed December 12, 2024

⁵² *Insolvency*, Section 113

⁵³Federal Law Gazette. (2013). Op. Cit., p. 80

⁵⁴Code du Travail (Labor Code), Article L1233-3,

⁵⁵Sylvaine Laulom. (2016). Reconsidering the Notion of Employer in the Era of the Fissured Workplace: Responses to Fissuring in French Labor Law, In *Reconsidering the Notion of "Employer" in the Era of the Fissured Workplace: Should Labor Law Responsibilities Exceed the Boundaries of the Legal Entity?*. Japan: The Japan Institute for Labor Policy and Training 2016.

⁵⁶Code de Commerce (Commercial Code), Article L631-15

⁵⁷Louis Noirault. "Complicating the Comparative Taxonomy: The Dynamic Interaction of Creditors and Shareholders and Its Impact on Corporate Governance". *LSE LR Vol 9*, (2023). p. 293. url: <https://lawreview.lse.ac.uk/articles/614/files/65f41f043e862.pdf>. Accessed December 12, 2024

wages and severity as preferential claims.^{58,59} Moreover, the Employment Insurance Act provides a safety net, ensuring workers receive unemployment benefits when corporate assets are insufficient to cover their claims. Courts oversee the process to ensure workers' rights are upheld and prioritize payouts to prevent undue hardship.^{60,61}

The practices in Germany, France, and Japan illustrate a clear commitment to balancing insolvency efficiency with robust worker protections. Germany's prioritization of workers as preferential creditors under Section 183 InsO ensures their financial security even during asset shortfalls. France's integration of labor and commercial codes emphasizes judicial oversight and worker consultations, setting a high standard for fairness and transparency. Japan's emphasis on statutory notice periods and compensation mechanisms, supported by government-backed insurance schemes, provides a practical safeguard for workers. These comparative frameworks highlight the need for Indonesia to integrate similar mechanisms—such as mandatory notice periods, prioritization of workers' claims, and judicial oversight—within its insolvency laws to align with international best practices.

k. Proposed Harmonization

Addressing inconsistencies between Article 39(1) of the Bankruptcy Law and Article 154A(1)(f) of the Employment Law, as amended by the Job Creation Law, requires harmonization grounded in the Legal System Theory by Lawrence M. Friedman. This theory emphasizes the interplay between structure, substance, and legal culture and provides a comprehensive framework for resolving normative conflicts.⁶²

a) Unified Notification Standards.

A standardized notification period of at least 45 days should be integrated into both the Bankruptcy Law and the Employment Law. Currently, the absence of a uniform standard creates gaps in procedural fairness, leaving workers unprepared for abrupt terminations. Harmonizing these laws enhances the substance of the legal system, ensuring clarity in procedural requirements while protecting

⁵⁸Civil Rehabilitation Act (Japan), Article 20

⁵⁹Toshiharu Suzuki. "The Law on Dismissal for Economic Reasons in Japan". *Revue de droit comparé du travail et de la sécurité sociale* Vol 4, (2017). p. 162-169. url:<https://journals.openedition.org/rdctss/2312>. Accessed December 12, 2024

⁶⁰Steele, S. (2016). *Insolvency law in Japan*. In *Insolvency Law in East Asia* (pp. 13-62). Routledge.

⁶¹Michihito Ando, Chishio Furukawa, Daigo Nakata, & Kazuhiko Sumiya. "Fiscal responses to the COVID-19 crisis in Japan: the first six months". *National Tax Journal* Vol 73, No 3 (2020). p. 901-926. Accessed December 12, 2024

⁶² Lawrence M. Friedman, (1975), *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation, p15.

workers' rights.⁶³This is consistent with the principle of due process of law, which demands procedural fairness and equitable treatment.⁶⁴

b) Clarified Priority of Worker Claims.

Explicitly prioritizing workers' claims for unpaid wages, severity pay, and related entitlements aligns with the structure of the legal system by establishing clear directives for curators during asset distribution.⁶⁵The ambiguity in implementing Article 95(4) of the Employment Law, which recognizes workers as preferred creditors, undermines legal certainty and justice. To resolve this, both laws should mandate that workers' claims are addressed before those of unsecured creditors.⁶⁶This reflects Gustav Radbruch's principle of justice, advocating for laws to protect those in vulnerable positions, particularly in the face of economic insecurity.⁶⁷

c) Enhanced Judicial Oversight.

Strengthening the role of commercial courts is critical for enforcing harmonized provisions. Courts must ensure curators comply with notification standards and prioritize workers' claims, thereby upholding procedural integrity.⁶⁸Enhanced judicial oversight reinforces the structure of the legal system by ensuring that rules are applied consistently and fairly.⁶⁹This aligns with Claus-Wilhelm Canaris's emphasis on legal stability, minimizing ambiguities, and fostering public trust in the system's efficacy.⁷⁰

The harmonization of Article 39(1) of the Bankruptcy Law and Article 154A(1)(f) of the Employment Law is not merely a procedural update but a fundamental

⁶³Cahoy, DR, & Oswald, LJ). Is Legal Harmonization Always Better? The Counter-Case of Utility Models. *American Business Law Journal*, 58(3), 525-578. (2021)<https://doi.org/10.1111/ablj.12190>. Accessed December 12, 2024

⁶⁴ Philipus M. Hadjon, (1987). *Legal Protection for the People in Indonesia*. Surabaya: Bina Ilmu, p 6.

⁶⁵Symbolon, MM, & Sitorus, YF Ratio Legis of Bankruptcy and Suspension of Debt Payment Obligations to Fulfil Creditors' Rights. *Journal of Legal Reform Studies*, 4(1), 121-150. (2024).<https://jurnal.unej.ac.id/index.php/jkph/article/view/46303>. Accessed December 12, 2024

⁶⁶Anderson, H.. Corporate Social Responsibility—The Case for Unsecured Creditors. *Oxford University Commonwealth Law Journal*, 7(1), 93-124. (1987).<https://doi.org/10.1080/14729342.2007.11421479>. Accessed December 10, 2024

⁶⁷ Gustav Radbruch, (1950) *Legal Philosophy* (Oxford: Clarendon Press. p 134.

⁶⁸Saccani, R.R. (2024). Compliance programs “swabbing” in Argentina: How to achieve consistency with the new standards. In *Organizational Corruption, Crime and Covid-19* (pp. 44-68). Routledge.

⁶⁹Dessani, Y., Afrilia, B., & Nelwati, S. Building Pillars of Justice and Order: Uncovering the Challenges and Solutions of Equitable Law Enforcement in Indonesia. *Hakamain: Journal of Sharia and Law Studies*, 2(1), 117-128.

(2023).<https://journal.makwafoundation.org/index.php/hakamain/article/view/319>. Accessed December 12, 2024

⁷⁰Claus-Wilhelm Canaris, *Systemdenken und Systembegriff in der Jurisprudenz* (Berlin: Springer, 1983), 102.

structural reform. It addresses gaps in the substance of the legal system by codifying clear rights and procedures, strengthens the structure by aligning judicial and administrative processes, and nurtures a legal culture of fairness and trust. By implementing these measures, Indonesia can create a more balanced and just framework, ensuring equitable protection for workers while enhancing the efficiency and transparency of insolvency proceedings.

3. Results and Discussion

3.1. Recommendations:

1. **Legislative Harmonization:** The Indonesian government should amend Article 154A(1)(f) of the Employment Law to explicitly include a 45-day notification period for layoffs due to insolvency, aligning it with Article 39(1) of the Bankruptcy Law. This amendment would resolve the normative conflict and provide legal clarity for both workers and curators. The Ministry of Manpower should lead the initiative to propose this amendment, ensuring the incorporation of the 45-day notification period for layoffs during bankruptcy. Collaboration with the House of Representatives (DPR RI) is essential to facilitate the legislative process and ensure its enactment. Additionally, the Ministry of Law and Human Rights should take an active role in harmonizing the Bankruptcy Law and Employment Law, particularly by codifying workers' rights as preferred creditors. To ensure consistent implementation, the Judiciary must enforce the amended provisions effectively. At the same time, National Labor Union Federations can serve as advocacy bodies to safeguard and represent workers' interests during insolvency proceedings.

2. **Strengthening Judicial Oversight:** The role of commercial courts should be enhanced to ensure curators adhere to both procedural requirements and workers' preferential status. Courts should be empowered to impose penalties for non-compliance and prioritize workers' claims in asset distribution.

3. **Codification of Workers' Rights:** Legislators should explicitly codify the priority of workers' claims as preferred creditors, including unpaid wages, severity pay, and compensation, to ensure practical enforcement during insolvency proceedings.

4. **Learning from Comparative Jurisdictions:** Indonesia should adopt best practices from countries like Germany, France, and Japan by integrating social insurance mechanisms or guaranteeing funds to protect workers' rights when company assets are insufficient.

5. **Public Awareness Campaigns:** Efforts to educate workers, curators, and employers about their rights and obligations under the harmonized laws are essential for effective implementation and compliance.

a. Research Contribution

1. **Theoretical Contribution:** This research contributes to the discourse on legal harmonization by highlighting the conflict between bankruptcy and labor

regulations in Indonesia and offering a nuanced approach to resolving it through legislative and procedural alignment.

2. **Policy Development:**The study provides a detailed framework for policymakers to address gaps in Indonesia's legal system, ensuring a balanced approach between protecting workers' rights and facilitating efficient insolvency proceedings.

3. **Practical Implications:**By offering a comparative analysis with other jurisdictions, the research provides practical insights into developing a more equitable and operationally effective framework for handling layoffs during insolvency.

4. **Future Research Directions:**The study opens avenues for further empirical research to evaluate the effectiveness of proposed reforms, the role of judicial oversight, and the socio-economic impact of harmonized regulations on workers and curators.

5. **Advancing Workers' Rights:**The research emphasizes the importance of safeguarding vulnerable groups, particularly workers, by embedding stronger legal protections in Indonesia's insolvency framework. This would thereby contribute to the broader goals of social justice and economic stability.

4. Conclusion

This study highlights the urgent need for robust legal protection for workers terminated due to bankruptcy, focusing on resolving inconsistencies between Article 39(1) of the Bankruptcy Law and Article 154A(1)(f) of the Employment Law, as amended by Law No . 6 of 2023 on Job Creation. The lack of alignment, particularly regarding notification periods and prioritization of workers' claims, exposes employees to abrupt terminations and diminished rights while complicating curators' duties. Harmonization of these provisions is crucial to establishing legal certainty, ensuring procedural consistency, and explicitly prioritizing workers' claims as preferred creditors. Drawing on best practices from Germany, France, and Japan, this study underscores the value of unified notification standards, clear asset distribution priorities, and judicial oversight to create a balanced and equitable framework that protects workers' rights while facilitating efficient insolvency proceedings.

5. References

Books:

Claus-Wilhelm Canaris, 1983, *Systemdenken und Systembegriff in der Jurisprudenz*, Springer, Berlin;

Claus-Wilhelm Canaris, 2009, *Legal Certainty in Modern Legal Theory*, In *German Legal Doctrine*, edited by Mathias Reimann, Springer, Berlin;

- Enrico Carloni, & Raffaele Cantone, 2022, Limits of Corruption Repression and New Prevention Policies, In Understanding and Fighting Corruption in Europe: From Repression to Prevention, Springer Cham, Switzerland;
- Gustav Radbruch, 1947, Legal Philosophy, Clarendon Press, Oxford;
- Joseph E. Stiglitz, 2001, Bankruptcy Laws: Basic Economic Principles, In Resolution of Financial Distress: An International Perspective on the Design of Bankruptcy Laws, ed. by Stijn Claessens, Simeon Djankov, and Ashoka Mody, World Bank, Washington.
- Lawrence M. Friedman, 1975, The Legal System: A Social Science Perspective, Russell Sage Foundation, New York;
- Muchsin, 2003, Legal Protection for Weak Legal Subjects, Liberty, Yogyakarta;
- Muchsin, 2013, Protection and Legal Certainty for Investors in Indonesia, Master of Law, Postgraduate Program, Sebelas Maret University, Surakarta;
- Philipus M Hadjon, 1987, Legal Protection for the People in Indonesia, Bina Ilmu, Surabaya;
- Raul R. Saccani, 2024, Compliance programs 'swabbing' in Argentina: How to achieve consistency with the new standards, In Organizational Corruption, Crime and Covid-19, Routledge, London;
- Sri Redjeki Hartono, 2020, Bankruptcy Law and Worker Protection, Alumni, Bandung;
- Stacey Steele, 2016, Insolvency Law in Japan, In Insolvency Law in East Asia, Routledge, London;
- Sylvaine Laulom, 2016, Reconsidering the Notion of Employer in the Era of the Fissured Workplace: Responses to Fissuring in French Labor Law, In Reconsidering the Notion of "Employer" in the Era of the Fissured Workplace: Should Labor Law Responsibilities Exceed the Boundary of the Legal Entity, The Japan Institute for Labor Policy and Training 2016, Japan;

Journals:

- Adrian Künzler, Judicial Legitimacy and the Role of Courts: Explaining the Transitional Context of the German Border Guard Cases, Oxford Journal Of Legal Studies, Vol 32, No 2 (2012);
- Alexander V. Demin, Certainty and Uncertainty in Tax Law: Do Opposites Attract?, Laws, Vol 9, No 4 (2020);
- Bea Cantillon, Martin Seeleib-Kaiser, & Romke Van der Veen, The COVID-19 Crisis and Policy Responses by Continental European Welfare States, Social Policy & Administration, Vol 55, No 2 (2021);
- Benny Hutahayan, Mohamad Fadli, Satria Amiputra Amimakmur, & Reka Dewantara, Legal Uncertainty of Municipal Bond Issuance: A Case Study

- of Indonesia and Vietnam, *International Journal of Law and Management*, (2024);
- Christian Leuz & Peter D. Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research*, *Journal of Accounting Research*, Vol 54, No 2 (2016);
- Daffa Pratama, *Securing Social Well-Being in the Quantum Age: Legal Roadmaps for PQC in Banking to Healthcare*, *International Journal of Social Health*, Vol 2, No 12 (2023);
- Daniel R. Cahoy, & Lynda J. Oswald, *Is Legal Harmonization Always Better? The Counter-Case of Utility Models*, *American Business Law Journal*, Vol 58, No 3 (2021);
- Federico M. Mucciarelli, *Employee Insolvency Priorities and Employment Protection in France, Germany, and the United Kingdom*, *Journal of Law and Society*, Vol 44, No 2 (2017);
- Gillian GH Garcia, Rosa M. Lastra, & María J. Nieto, *Bankruptcy and Reorganization Procedures for Cross-Border Banks in the EU: Towards an Integrated Approach to the Reform of the EU Safety Net*, *Journal of Financial Regulation and Compliance*, Vol 17 , No. 3 (2009);
- Helen Anderson, *Corporate Social Responsibility—The Case for Unsecured Creditors*, *Oxford University Commonwealth Law Journal*, Vol 7, No 1, (2007);
- Louis Noirault, *Complicating the Comparative Taxonomy: The Dynamic Interaction of Creditors and Shareholders and Its Impact on Corporate Governance*, *LSE LR*, Vol 9 (2023);
- Luqman Hakim & Nanda Diyan Saputra, *Legal Politics of Insolvency Test in Bankruptcy Law Reform in Indonesia*, *Madani: Multidisciplinary Scientific Journal*, Vol 1, No 8 (2023);
- Meha Middlyne Simbolon & Yosef Felix Sitorus, *Ratio Legis of Bankruptcy and Suspension of Debt Payment Obligations to Fulfil Creditors' Rights*, *Journal of Legal Reform Studies*, Vol 4, No 1 (2024);
- Michihito Ando, Chishio Furukawa, Daigo Nakata, & Kazuhiko Sumiya, *Fiscal responses to the COVID-19 crisis in Japan: the first six months*, *National Tax Journal*, Vol 73, No 3 (2020);
- Moh Kurniawan, *Duties and Functions of the Semarang Estate Management Office as Bankruptcy Curator Based on Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations*, *Jurnal Daulat Hukum*, Vol 1, No 1 (2018);
- Mohammed Al Bhadily & Robert Guthrie, *Insolvency Protection for Employee Entitlements: International Alternatives to GEER Scheme*, *Journal Of Applied Law And Policy*, (2010);

- Muhammad Doing, Bujang Ali, & Dedi Yamin, Discretion and Management of the Covid-19 Pandemic: Indonesia's Experience in Facing the Health Crisis, *Journal of Law Science*, Vol 6, No 1 (2024);
- Muhammad Yasid, Ria Sintha Devi, & Syawal Amry Siregar, The Legal Protection for Concurrent Creditors in the Context of Enforcing Bankruptcy Cases, *Jurnal Daulat Hukum*, Vol 5, No 4 (2022).
- Raditya Triatmaji Pramana & Bambang Dwi Baskoro, The Board of Directors' Criminal Liability for Companies Which Declared On Bankruptcy, *Jurnal Daulat Hukum*, Vol 4, No 4 (2021);
- Rakhyun E. Kim & Klaus Bosselmann, Operationalizing Sustainable Development: Ecological Integrity as a Grundnorm of International Law, *Review of European, Comparative & International Environmental Law*, Vol 24, No 2 (2015);
- Reinhard Bork, Arbitration in Insolvency, *European Insolvency and Restructuring Journal*, (2023);
- Rendy Pahrun Wadipalapa, Riris Katharina, Poltak Partogi Nainggolan, Sitti Aminah, Tini Apriani, Diana Ma'rifah, & Azmi Listya Anisah, An Ambitious Artificial Intelligence Policy in a Decentralised Governance System: Evidence from Indonesia, *Journal of Current Southeast Asian Affairs*, Vol 43, No 1 (2024);
- Stefano Colonnello, Matthias Efung, & Francesca Zucchi, Shareholder Bargaining Power and the Emergence of Empty Creditors, *Journal of Financial Economics*, Vol 134, No 2 (2019);
- Tara Nadya Andiani & Agus Riwanto, Protection Of Journalists' Right To Justice From Violence In The Performance Of Their Duties: A Human Rights Perspective, *International Journal of Educational Research & Social Sciences*, Vol 5, No 1 (2024);
- Toshiharu Suzuki, The Law on Dismissal for Economic Reasons in Japan, *Revue de droit comparé du travail et de la sécurité sociale*. Vol 4, (2017);
- Yuan Ting, Workforce Reductions and Termination Benefits in Governments: The Case of Advance Notice, *Public Personnel Management*, Vol 25, No 2 (1996);
- Yulia Dessani, Bella Afrilia, & Sasmi Nelwati, Building Pillars of Justice and Order: Uncovering the Challenges and Solutions of Equitable Law Enforcement in Indonesia, *Hakamain: Journal of Sharia and Law Studies*, Vol 2, No 1 (2023);

Legislation:

Civil Rehabilitation Act. Japan.

Code de Commerce (Commercial Code). France.

Code du Travail (Labor Code). France.

Federal Law Gazette. (2013). German Insolvency Code. German: Schultze & Braun GmbH.

Insolvenzordnung (Insolvency Act). Germany.

Law Number 13 of 2003 concerning Manpower.

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation.

Sozialgesetzbuch (Social Security Code). Germany.

Supreme Court Decision No. 049 PK/Pdt.Sus/2011.