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Legal Protection for Preferred Creditors in Bankruptcy Proceedings Reviewed Based on Justice

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Abstract

As stated in Articles 1134, 1139, and 1149 of the Indonesian Criminal Code and Law No. 37 of 2004 concerning Bankruptcy and PKPU, priority creditors are parties entitled to demand full payment from the heart of the bankrupt based on the nature of their claims. Legal protection for priority creditors in practice often causes problems, even though it appears to be a normative position. This occurred in the case of PT Swissindo Marine, where KPP Pratama Jakarta Tanah Abang I, as a priority creditor with a tax bill of Rp14,134,021,435, did not receive a proper response from the curator. As a result, its application was rejected by the Commercial Court due to procedural issues, and only received a response through a Judicial Review at the Supreme Court. This study aims to analyze the bankruptcy process under Indonesian positive law, determine the types of legal protection for priority creditors, and assess compliance with the principle of justice. The methods used in this study include normative juridical with statutory regulations and descriptive-qualitative analysis using John Rawls's theory of justice. The methods used in this study include normative juridical with statutory regulations and descriptive-qualitative analysis using John Rawls's theory of justice. The results of the study indicate that although the protection mechanism for priority creditors has been formally regulated, its implementation has not fully reflected Rawls's Principle of Liberty and Difference Principle. There is a gap between normative protection and practice, weak oversight mechanisms for curators, and the dominance of procedural formalism that contains substantive justice.

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1. INTRODUCTION

In times of globalization and rapid economic growth, commercial and trade activities have experienced significant growth. This has led to increased complexity in legal relationships between business actors, particularly regarding credit and collateral applications. However, economic activity often encounters obstacles in the form of debtors' inability to fulfill their debt repayment obligations, which can ultimately lead to bankruptcy. Bankruptcy is an event that can affect anyone, both individuals and legal entities. Bankruptcy recognizes no one's financial status. In everyday practice, we find that even millionaires or large companies can experience bankruptcy [1].

According to Article 1 of Law Number 37 of 2004, bankruptcy is the general supervision of all debtors experiencing bankruptcy, which is managed and resolved by a curator at dawn. The law is the source of this supervision. This refers to a situation where a debtor is unable to repay all of their debts and creditors or the debtor themselves have declared bankruptcy.

Historically, the concept of ba kruptcy has existed since Roman times. The English term "bankrupt," known as "bankrupt," originates from the Italian law banca rupta. The phenomenon of bankruptcy emerged in medieval Europe when many bankers and merchants fled secretly, taking their creditors' wealth with them. According to Poerwadarminta, the term "bankrupt" means "bankrupt," and "bankrupt" describes the condition of experiencing significant losses to the point of collapse. According to John M. Echols and Hassan Shadily, "bankrupt" refers to insolvency or the state of being insolvent, while "bankruptcy" is related to insolvency. In French, the word "faillite" reflects a state in which payments are stopped or failed. On the other hand, in English there is the expression "to fail," and in its administration, the Latin term "fallire" is also used. Dutch calls it "failliet." In Anglo-American law, the existing regulations are understood as the Bankruptcy Act. Grammatically, bankruptcy refers to everything related to bankruptcy. Because declaring a debtor bankrupt requires a court process involving several stages of examination, everything related to this bankruptcy event is referred to as insolvency. According to the original definition presented in Henry Campbell Black's Law Dictionary, referenced by Munir Fuady, the original meaning of bankrupt or insolvent is a trader who hides himself or carries out certain actions aimed at defrauding his creditors. [2].

The history of bankruptcy law in Indonesia has a long history, from the colonial era to the present day. Initially, provisions regarding bankruptcy were regulated in the Wetboek van Koophandel (WvK) of 1838 for merchants and the Reglement op de Rechtsvordering (RV) of 1847 for non-merchants, but both regulations were considered complex, expensive, and time-consuming. To simplify the process, the Dutch government implemented the Faillisementsverordening (FV) of 1905, which also came into effect in 1906. This became effective on November 1, 1906, and continued to be used in Indonesia after independence in accordance with Article II of the Transitional Provisions of the 1945 Constitution. However, this regulation was only limitedly known and ineffective, so that during the 1998 financial crisis, the government issued Government Regulation in Lieu of Law No. 1 of 1998, which was later ratified as Law No. 4 of 1998. This law clarified bankruptcy procedures, provided certainty of time, and established the Commercial Court. Subsequent developments resulted in Law No. 37 of 2004 concerning Bankruptcy and PKPU, which remains in effect today, with a broader scope to balance the interests of creditors and debtors, provide legal certainty, and adapt to economic progress and globalization. [2].

The Bankruptcy Law was originally designed to provide protection to creditors by offering a clear and definitive solution to resolve unpayable debts. Changes have occurred in the bankruptcy filing procedure and the laws governing it. The most significant change is that bankruptcy cases are no longer processed and tried in district courts, but rather in the Commercial Court, a specialized court within the general court system. This court is designed for judges with specialized expertise, and the only legal remedy is to directly file an appeal with the Supreme Court (MA). In other words, an appeal to the high court is not necessary. However, in the interest of achieving justice, the cassation decision can still be submitted for judicial review [2].

Bankruptcy is also known as general confiscation, because when a debtor obtains bankrupt status, the debtor will immediately lose the authority to manage and control all of his assets, both those owned at the time of the bankruptcy declaration and those obtained during the bankruptcy period, where these assets will be used to pay off his debts to creditors [2].

Bankruptcy law practiced in Indonesia is essentially an implementation of Articles 1131 and 1132 of the Indonesian Criminal Code, which outline the debtor's obligations to creditors and establish all of the debtor's assets as a means of assisting in the payment of these obligations, so that they can be provided to creditors if the debtor fails to pay. While Article 1132 of the Indonesian Criminal Code outlines the principle of Pari Passu Pro Rate Parte, Article 1131 of the Indonesian Criminal Code outlines the principle of Paritas Creditorium (Subhan, 2008). More specifically, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations contains specific regulations related to bankruptcy. There are several other regulations also related to Bankruptcy Law, such as [3] :

1. Law Number 40 of 2007 concerning Limited Liability Companies
2. Law Number 4 of 1996 concerning Mortgage Rights on Land and Land-Related Objects
3. Law Number 42 of 1999 concerning Fiduciary Guarantees
4. Law Number 19 of 2003 concerning State-Owned Enterprises
5. Law Number 8 of 1995 concerning Capital Markets
6. Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations
7. Government Regulation Number 7 of 2021 concerning Facilitation, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises [3]

Regarding the function of bankruptcy law, this regulation essentially aims to safeguard the rights of creditors so that their debts to debtors can be settled promptly. However, bankruptcy legal protection does not only favor creditors but also provides debtors with the opportunity to seek resolution through various mechanisms such as peace offerings, legal remedies, and other instruments.

Referring to the provisions of Law Number 37 of 2004 concerning Bankruptc and Suspension of Debt Payment Obligations, the general explanation section emphasizes that the essence of bankruptcy law is to achieve balanced protection for all interested parties. These parties include creditors as holders of collection rights and debtors as parties with debt obligations. The protection provided must be based on the principle of justice and must not favor one party over the other, particularly regarding the fulfillment of rights that are obligations to the debtor. [4].

The most important goal of bankruptcy is to distribute the debtor's assets to all creditors through the role of the receiver. Bankruptcy is designed to prevent separate executions or seizures by individual creditors and replace them with collective seizure procedures. This way, the debtor's assets can be distributed to all creditors based on the rights of each party. This is because bankruptcy exists to protect the rights of creditors so they can receive their share of the debtor's assets in bankruptcy [2].

If a number of creditors experience losses, this has the potential to impact financial institutions and a country's economy. Creditors, who provide loans or credit facilities to debtors, face the risk of default or breach of contract, which can significantly impact their financial and operational stability. Therefore, legal protection is needed to ensure certainty, balance, and fairness between the interests of creditors and debtors. Creditors also require assurance of their right to receive repayment, which must be protected if the debtor is unable to fulfill its obligations. Creditors are likely to be more willing to lend if the law effectively protects their rights in the event of disputes or breaches of contract. Legal protection for creditors can also prevent fraudulent practices, such as the diversion of assets by debtors. A legal system that protects creditors can attract more investment. Without adequate legal protection, creditors risk bearing significant losses due to debtors' default [4].

The definition of a creditor in this context is still limited to individuals and does not include business entities or institutions. However, the concept already refers to a legal subject that provides loan facilities to debtors. In this case, a creditor can be understood as a part that has the right to collect or claim. Legally, the concept of a creditor is formulated in Article 1 number 2 of the Bankruptcy and PKPU Law which states: "A creditor is a person who has receivables due to an agreement or law that can be collected in court." The legal basis for the classification of creditors is contained in Articles 1131 to 1149 of the Burgerlijk Wetboek (Civil Code). Referring to the applicable regulations, creditors can be classified into 3 (three) groups, namely [4]:

1. As regulated in Article 1134 paragraph (2) of the Civil Code, namely in the form of Pawns and Mortgages.
2. Preferred Creditors are Creditors who have the right to priority in the settlement of receivables based on the characteristics of their receivables, which are given a special position by statutory regulations.
3. Concurrent Creditors are Creditors who are not classified as Separatist Creditors or Preferred Creditors (as regulated in Article 1131 in conjunction with Article 1132 of the Civil Code)..[4].

Specifically, what will be the focus of this research is the protection of preferred creditors.

In the bankruptcy legal system, preferred creditors are creditors who receive special treatment and priority for payment, as stipulated by law. Consequently, this category of creditors has the right to receive payment prior to other creditors from the proceeds of the bankruptcy's assets. The provisions regarding this priority right are contained in Article 1134 of the Civil Code, which substantially emphasizes that this privilege is granted to the holder of the right to collect (creditor) to place them in a position of priority over other creditors, the determination of which priority depends entirely on the type of receivable held.

Furthermore, the distribution procedures for preferred creditors are discussed and regulated in Articles 1139 and 1149 of the Civil Code, which regulate the distribution for special and general preferred creditors, respectively. In addition to the provisions in the Civil Code above, the term preferred creditor is also found in Article 95 paragraph (4) of the Manpower Law, which deals with unpaid wages. Furthermore, preferred creditors are also regulated in the Taxation Law in Article 21 paragraphs 1, 2, 3, 3a, 4, and 5. In fact, recognizing tax debts and workers' wage debts in the preferred creditor category aims to provide protection to workers regarding legal uncertainty regarding their salaries. If examined more deeply, this also provides protection for companies from the negative impact of possible strikes, considering that the impact can create instability in companies hat have been declared bankrupt, so that companies can continue their operations. [4].

Preferred creditors, according to the provisions of Law No. 37 of 2004, have the privilege of receiving payment first from the proceeds of the liquidation of bankruptcy assets. This privileged status stems from the special characteristics of their debts, such as tax debts, labor-related debts, or debts secured by property rights. However, in practice, the application of legal protection for preferred creditors often raises fairness issues. On the one hand, preferred creditors require special protection due to the strategic nature of their debts, which are of public or social importance. On the other hand, granting excessive priority can harm other creditors and disrupt the principle of distributive justice in the distribution of bankruptcy assets [4]. Problems arise when the bankruptcy estate distribution mechanism does not guarantee the fair fulfillment of the rights of preferred creditors. Law No. 37 of 2004 does regulate the hierarchical order of debt repayment, but it is not uncommon for preferred creditors to receive only a small portion or even no repayment at all due to the imbalance of power between the types of creditors [4]. This raises questions about the extent to which the Indonesian bankruptcy legal system is able to provide fair legal protection for preferred creditors. Injustices against preferred creditors in Law no. 37 of 2004 include: First, structural injustice in the creditor hierarchy. Inferior Position to Secured Creditors. Although preferred creditors have privileges, they remain below secured creditors in the payment hierarchy. In the context of bankruptcy, hierarchically, the highest position is filled by secured creditors, followed by preferred and privileged creditors. If there is still a remainder after that, only then is the right to payment granted to concurrent creditors. Second, limited voting rights in the bankruptcy process where minimal participation in decision-making; preferred creditors are usually paid more but have little say in approving the reconciliation plan. Third, there is injustice in the management of bankrupt assets, which is a problem caused by the lack of professionalism of the curator. The unprofessionalism of the curator in handling the assets of the debtor's children who have been declared bankrupt is a significant problem. Fourth, unfairness in access to information and transparency. Due to the lack of transparency in the process, preferred creditors often have difficulty obtaining adequate information about the status of the bankruptcy estate and the calculation of distributions. Preferred creditors experience many unfairnesses in bankruptcy [4].

An example of a preferred creditor is the case of PT Swissindo Marine where PT Swissindo Marine experienced a significant tax payment obligation to the Jakarta Tanah Abang I Tax Office, recorded at Rp14,134,021,435 as tax debt—this position makes the state a preferred creditor in bankruptcy. The curator compiled a list of temporary bills, but the official recognition of tax receivables by the curator did not match the amount submitted by the Tax Office, so the tax bill was considered inaccurate or incomplete. The Tax Office filed an objection (renvoi) with the Central Jakarta District Court Commercial Court, but on February 13, 2019 the objection was rejected because it was considered to have exceeded the verification process limit at the creditor meeting. The Tax Office then filed a Judicial Review (PK) with the Supreme Court. On September 10, 2019, the Supreme Court finally put the tax debt back as a bill that must be paid first, ordering the curator to prioritize the payment of the tax debt. From the case above, it can be seen that there are still many unfair actions that are not received by preferred creditors [5].

The issue of protecting preferred creditors cannot be separated from the philosophical aspect of justice in law. The theory of justice, both developed by John Rawls [6].

John Rawls formulated two fundamental principles that emerge from the original position. The first principle states that everyone has the right to the broadest basic liberty, provided that such liberty is compatible with a similar liberty for others. This principle is known as the greatest equalliberty principle. The second principle states that socio-economic inequalities are only acceptable if they are organized in such a way that, first, they can be reasonably expected to be to everyone's advantage, and second, they are associated with positions and offices that are accessible to everyone.

This second principle encompasses the difference principle and the equal opportunity principle.

After society has bound itself to a social contract and established a basic social structure, these two principles are applied in different domains. The first principle regulates the fulfillment of fundamental rights related to liberty and political rights, such as freedom of expression and association (freedom of speech and assembly), political freedoms, including the right to vote and be eligible for public office, freedom of thought, and other freedoms understood within the context of the rule of law. All these freedoms must be granted equally to everyone, as every citizen has an equal fundamental right to freedom.

Conversely, the allocation of income and wealth is regulated by the second principle, with the aim of ensuring that any inequalities actually benefit all individuals. The distribution of income and wealth is not carried out evenly, but based on the level of individual disadvantage (the least advantaged). Those in disadvantaged positions, whether due to natural disadvantages such as birth defects or social disadvantages such as poverty, are entitled to greater benefits. This provision is implemented simultaneously with the guarantee that access to positions and positions within the authority structure remains open to all (fair equality of opportunity).

Therefore, to increase socioeconomic benefits, the equal rights protected by the first principle must not be diminished, restricted, or traded off. These two principles—equal citizenship and equal opportunity—must always guide the allocation of wealth and income and the structure of power. Thus, according to Rawls, "injustice is only inequality that benefits everyone"[6].

2. METHOD

This study uses yuridis normatif pendekatan, which is a pendekatan that recognizes law as a normative system. Because of this, the study's subject is the law's principles, doktrin hukum, and perundang-undangan (pendekatan undang-undang) regulations. The primary goal of this research is to examine laws and regulations that govern the protection and adherence to the law for priority creditors, particularly in relation to the principles of keadilan.

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the Criminal Code, and other regulations have a direct connection to the normative law that is the subject of this study. Because of this, the study does not present detailed data, indicating the use of written material law.

This study's nature is descriptive-analytical. The goal of descriptive research is to present accurate, factual, and organized examples of law, science, and legal practice related to the protection of priority credit. On the other hand, the analytical nature indicates that this research does not only explain existing legal requirements but also analyzes, compares, and critiques the relevant laws based on justice theory.

3. RESULTS AND DISCUSSION

a. Aur Proses Pengajuan Kepailitan

1) Syarat Kepailitan

The party wishing to grant bankruptcy permission to the Commercial Court must ensure that the bankruptcy requirements as referred to in Article 2 paragraph (1) of the UUK-PKPU have been met. This provision states that a debtor can be declared bankrupt by a decision of the authorized institution if he has two creditors and the interest payments are at least one due date and can be collected. This bankruptcy application can be made by the debtor directly or by one or more creditors. [2].

The criteria for filing for bankruptcy as stipulated in Article 2 paragraph 1 of Bankruptcy Law Number 37 of 2004 can be described as follows [2]:

a) The requirement of Concursus Creditorum (Minimum Two Creditors). The requirement that a debtor must have at least two creditors is not without reason, but is closely related to the philosophical basis of bankruptcy law itself. Bankruptcy law is essentially an application of the principles contained in Article 1132 of the Civil Code. The existence of this bankruptcy system is intended to realize a fair and balanced debt settlement, namely providing an equal opportunity to all creditors to obtain repayment from the debtor's assets. If the debtor is only dealing with one creditor, then all of the debtor's assets directly become collateral for that single creditor, so that the bankruptcy process becomes meaningless. [2].
b) Debt Existence Requirements, One of the requirements that must be met in the bankruptcy filing process is the existence of debt. Sutan Remy Sjahdeini argues that the definition of debt should not only be limited to payment obligations arising from debt agreements, but should be understood more broadly as the debtor's obligation to provide a certain amount of money to creditors, including those originating from various types of agreements, legal regulations, or court decisions that have permanent legal force. Kartini and Gunawan Widjaja explain that debt is an obligation that reflects the responsibility or economic obligation that must be fulfilled by the debtor; if this obligation is not carried out, the creditor has the right to obtainfulfillment from the debtor's assets. Article 1 number 6 of Bankruptcy Law No. 37 of 2004 defines debt as an obligation that can be measured in the form of money, both in domestic and foreign currencies, whether due or that may arise in the future due to agreements or legal provisions and must be carried out by the debtor, and gives the creditor the right to receive payment from the debtor's assets if it is not fulfilled. This definition emphasizes that in the context of bankruptcy, debt must be interpreted comprehensively, not only limited to debt originating from loan agreements, but also includes debt caused by applicable legal provisions. [2].
c) Minimum Requirement of One Debt That Is Due and Collectible. The requirement that a debt must be due and collectible indicates that the creditor has the right to demand that the debtor fulfill the agreed-upon obligation. The term "due" refers to the end of the agreed-upon time for payment, while "collectible" indicates that the creditor legally has the right to collect the debt. Therefore, debts arising from natural obligations (natuurlijke verbintenis) cannot be used as grounds for filing for bankruptcy. As an illustration, debts arising from gambling—even though the payment deadline has passed—do not give the creditor the right to collect, because they are not legally binding obligations. This is due to the fact that although the debtor has a moral obligation to pay, the creditor does not have a valid legal basis to demand fulfillment of this obligation, as stipulated in Article 1788 of the Civil Code, which state that the law does not provide legal claims for debts arising from gambling or betting. Therefore, creditors do not have the authority to file a bankruptcy petition based on debts arising from

agreements that violate public order or moral norms. Furthermore, debts that are still contingent or conditional cannot be used as a basis for filing a bankruptcy petition, as they do not meet the definitive criteria for "collectibility.".

d) Before the enactment of Law Number 4 of 1998, based on Article 1 paragraph (2) of the Faillissement Verordening, there were only three parties who had the authority to submit a bankruptcy application to the District Court, namely: (1) the debtor concerned; (2) one or more creditors; and (3) the Public Prosecutor. However, through Law Number 4 of 1998, the scope of this authority was expanded to six parties as stated in Article 2 of Bankruptcy Law Number 37 of 2004 :
   - Debtor Himself (Article 2 paragraph 1)
     A debtor has the right to file for bankruptcy against himself. If the debtor is legally married, the application requires the consent of his or her spouse (Article 4 paragraph 1) [2].
   - One or More Creditors (Article 2 paragraph 1)
     All creditors, including joint creditors, priority creditors, and separate creditors, are liable for the debtor's bankruptcy. Although this paragraph explicitly states that there is only one creditor, in practice, it indicates that there are actually two creditors to uphold the principle of concursus creditorum. [2].
   - Prosecutor's Office for the Public Interest (Article 2 paragraph 2)
     Protecting the public interest, namely the interests of the state, state, and/or the wider community, is something that the Prosecutor's Office has the ability to achieve. Article 2 paragraph (2) of Bankruptcy Law No. 37 of 2004 and Government Regulation No. 17 of 2000 guarantee various indicators of general needs, such as: the debtor does not make debt payments; has assets; has obligations to national government companies or public sector organizations; debts originating from within the country; does not show good faith in debt settlement; or other circumstances that the Prosecutor's Office deems to be a general need. If no other entity supports the application, the Prosecutor's Office can act [2].
   - Bank Indonesia (Article 2 paragraph 3)
     Only Bank Indonesia has the authority to declare a bank bankrupt based on a comprehensive assessment of the bank's financial condition and circumstances. This relates to Bank Indonesia's role as a responsible monetary supervisor and is committed to maintaining the stability of the rupiah, adjusting the payment system, and conducting bank supervision in accordance with Law No. 7 of 1992 [2] issued by Bank Indonesia and the Banking.
   - Capital Market/Bapepam Supervisory Agency (Article 2, paragraph 4)
     Bapepam can only grant bankruptcy petitions against securities companies, stock exchanges, clearing and guarantee institutions, or depository and settlement institutions. Trading cannot be proven true without Bapepam's intention to guarantee the protection of public investors in accordance with Law No. 8 of 1995 concerning Capital Markets. [2].
   - Minister of Finance (Article 5, Article 2)
     In general, only the Ministry of Finance has the authority to declare bankruptcy for companies operating in the public interest sector, such as

insurance companies, reinsurance companies, pension funds, or state-owned enterprises. Following the case of PT Asuransi Jiwa Manulife Indonesia (PT AJMI), it is stated that these organizations are under the supervision and management of the Minister of Finance and provide critical public data related to public needs [2].

e) The expansion from three to six authorized parties reflects a paradigm shift that bankruptcy is not only a private matter of debtors and creditors, but also concerns the public interest and the stability of the financial system, especially for strategic institutions that have the potential to pose systemic risks.

f) The provisions regarding bankruptcy requirements in Bankruptcy Law No. 4 of 1998 (Article 1) and Bankruptcy Law No. 37 of 2004 (Article 2 paragraph 1) are essentially identical in substance, the only difference being the systematic placement of the articles. Referring to the provisions of Article 2 of Bankruptcy Law No. 37 of 2004, seven legal requirements can be identified that must be met in order for a company to be declared bankrupt, namely: (1) there is a debt-receivable relationship; (2) at least one debt has entered its due date; (3) at least one debt meets the criteria for being collectible; (4) there is a debtor; (5) there is a creditor; (6) there is more than one creditor; and (7) the determination of bankruptcy is the authority of the Commercial Court as a special court [2].

g) Based on the provisions of Article 2 of Bankruptcy Law No. 37 of 2004, the parties who have the authority to submit a bankruptcy declaration application are :
   1. The debtor himself as regulated in Article 2 paragraph (1) of Bankruptcy Law No. 37 of 2004
   2. One or more creditors based on Article 2 paragraph (1) of Bankruptcy Law No. 37 of 2004
   3. The Prosecutor's Office according to Article 1 paragraph (2) of Law No. 4 of 1998 in conjunction with Article 2 paragraph (2) of Law No. 37 of 2004
   4. Bank Indonesia according to Article 2 paragraph (3) of Bankruptcy Law No. 37 of 2004
   5. The Capital Market Supervisory Agency as stated in Article 2 paragraph (4) of Bankruptcy Law No. 37 of 2004 [2]

2) Bankruptcy Registration

Article 6 of the Bankruptcy and PKPU Law outlines the mechanism for the initial bankruptcy process. After the Chief Justice of the Commercial Court receives the bankruptcy petition from the applicant, the clerk is required to provide the petition on the same day as it is received and provide the applicant with a written report. The clerk is required to submit the petition to the Chief Justice within a minimm of two days after registration, and the Court has a maximum of three days from the time the petition is completed to review the petition and determine the trial schedule. The important point to note is that the provisions of Article 6 paragraph (3), which previously gave the Registrar the opportunity to approve the bankruptcy for the aforementioned organization, has been declared to be unconstitutional and to lack the legal capacity that the Constitutional Court outlined in Decision Number 071/PUU-II/2004 and Number 001-002/PUU-III/2005. The basis for the cancellation is posits that the difficulty in obtaining or obtaining permission is a judicial function (the judge's domain) rather than an administrative function, which is the Registrar's responsibility. As a result, the Registrar has difficulties in obtaining permission to obtain a case that entered. [7].

According to Article 2 of the Bankruptcy and PKPU Law, the parties seeking to change the bankruptcy policy are based on the type of debtor concerned. If the debtor is a limited liability company, then the following parties may submit a petition: the debtor concerned (with a statement that they must follow their own objectives if they are married and their assets are joint property), one or more creditors (whether joint, priority, or separate), or the Prosecutor's Office acting in the public interest, and this does not require the assistance of a lawyer. Conversely, if the debtor is a financial institution, they are entitled to a loan from Bank Indonesia. Exclusive authority is overseen by the Capital Market Supervisory Agency (Bapepam-LK) and applies to debtors operating as securities companies, stock exchanges, clearing and guarantee organizations, or depositories and settlement organizations. If the debtor is a company with lower-than-average performance, the Board of Directors must make decisions based on the conclusions drawn from the majority of stock investors. For example, whether a company is an insurance company, reinsurance company, pension fund, or state-owned enterprise engaged in activities in the public interest, the authority to support a bankruptcy petition falls under the prerogative of the Minister of Finance. [7].

The Commercial Court's authority in resolving a bankruptcy petition is determined by the debtor's legal location, as stipulated in Article 3 of the Bankruptcy Law. The competent court is the Commercial Court covering the debtor's jurisdiction, or the last legal location if the debtor has left Indonesia, or the firm's location for a debtor with a legal entity, or the location where the debtor operates if they do not reside in Indonesia but conduct business there, or the place stipulated in the deed of establishment for a debtor with a legal entity. If there are different decisions from various Commercial Courts regarding the same debtor, the decision submitted earliest will prevail, or if issued on the same date, the decision from the Commercial Court covering the debtor's legal location applies. The bankruptcy decision must be made within a maximum of 60 days after the petition is registered, announced in a public hearing, and can be implemented immediately despite legal remedies [7].

The bankruptcy applicant submits his/her application to the Chairman of the Commercial Court, and the Clerk is required to record it on the same day the application is received, while also providing a written receipt with the same date to the applicant. Initially, Article 6 paragraph (3) of Law Number 37 of 2004 gave the Clerk the authority to refuse to register a bankruptcy application against certain institutions (banks, securities companies, insurance companies, pension funds, and state-owned enterprises) as referred to in Article 2 paragraphs (3), (4), and (5) if the required procedures were not met. However, the Constitutional Court through Decisions Number 071/PUU-II/2004 and Number 001-002/PUU-III/2005 has annulled this provision and declared it to have no binding legal force, so that the Clerk loses the legitimacy to refuse to register any incoming bankruptcy case. After the recording process, the Clerk is required to transfer the application to the Chairman of the Commercial Court no later than within 2 (two) days [2].

3) Summons of the Parties

Before the hearing is held, it is mandatory to send a summons to the relevant parties through a bailiff. This summons covers two categories: (1) the obligation to pay to the debtor if the debtor, the Prosecutor's Office, Bank Indonesia, Bapepam, or the Minister of Finance, requests payment of the debt; and (2) the obligation to pay to the debtor if the request is made directly by the debtor, taking into account the terms of the agreement as stipulated in Article 2 paragraph (1) of the Bankruptcy Law. The summons procedure by the bailiff is carried out by sending a registered letter, which must be completed no later than seven (seven) days before the first hearing. [2].

Before the conference begins, the court, through a spokesperson, identifies the relevant parties, as follows:

1. The obligation to notify the debtor if the creditor, the Attorney General's Office, Bank Indonesia, Bapepam, or the Minister of Finance issues a bankruptcy petition.
2. As stated in Article 2 paragraph (1) of the Bankruptcy Law, the authority to summon creditors if the bankruptcy petition is filed voluntarily by the debtor (a voluntary petition), subject to specifications regarding the specified requirements. [7].

The bailiff is required to issue a summons, which must be done on the seventh day before the first hearing. No later than 3 (three) hours after the date of the bankruptcy petition is completed, the court is required to review the petition and record each hearing date. The hearing for this petition must be completed no later than 20 (twenty) days after the petition is completed. Regarding the Debtor's request, such as a doctor's note, the court is hesitant to grant a period of more than 25 (twenty-five) days from the date of the petition. [7].

4) Hearing on Application for Declaration of Bankruptcy

The court is required to review the bankruptcy documents and hold a hearing within a maximum of three days from the date of the petition. The bankruptcy petition hearing must be completed no later than 20 days after the petition is filed. However, if the debtor has strict grounds for the petition, it is difficult to limit the number of days to no later than 25 days from the date of the petition. [2].

As stated in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the judge will examine the validity of the application that is available, whether from a formal or material perspective. This includes verifying whether all of the bankruptcy procedures have been completed. The examination is carried out quickly, indicating that the bankruptcy case requires adherence to the law for all parties involved. Following the conclusion of the study, the mandatory task is to complete the assignment within a maximum of 60 (sixty) hours after the completion of the test application. [2].

According to Articles 5 to 7 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), the judge is required to determine the third day after the completion of the bankruptcy application. The maximum period is 20 (twenty) days from the date the application is registered, and if the debtor submits a postponement of the application for a justifiable reason, the period can be reduced to a maximum of 25 (twenty-five) days. This study provides insight into time limits while offering researchers flexibility in handling bankruptcy cases. [8].

Bankruptcy proceedings are held in the Commercial Court, which is part of theGeneral Courts. This judicial institution has absolute competence to examine and decide bankruptcy cases, PKPU (Deferred Payment for Debts), and various other cases in the trade sector, including intellectual property rights, the banking sector, and the insurance industry. To date, Commercial Courts have been established in Central Jakarta, Medan, Surabaya, Semarang, and Makassar, each with its own jurisdiction as stipulated in Presidential Decree No. 97 of 1999 [8].

In practice, bankruptcy petition hearings are conducted by a panel of judges assisted by a court clerk and a bailiff. The trial process in the Commercial Court is guided by applicable civil procedure law (HIR), implementing a sciftelijke procedural system, or written procedure. If the applicant fails to attend the first hearing without justifiable reason, the petition is dismissed. Conversely, if the respondent fails to attend, the court is obliged to issue a repeat summons to ensure that the summons was served legally and properly.

Before a verdict is pronounced, parties such as creditors, the Prosecutor's Office, Bank Indonesia, or the Minister of Finance have the authority to submit a equest for collateral seizure or the appointment of a temporary curator to secure the debtor's assets. The evidentiary mechanism in bankruptcy disputes is carried out in a simple manner, as regulated in Article 8 paragraph (4) of the Bankruptcy Law. Thus, a bankruptcy petition can be granted if it is simply proven that the debto has more than one creditor, has debts that are due and collectible, and is unable to pay off his obligations [8].

With this simple evidentiary system, the process of examining cases in the Commercial Court can take place more quickly, efficiently, and provide legal certainty for the parties in resolving bankruptcy cases [8].

5) Decision on Bankruptcy Application

The Commercial Court's ruling on the bankruptcy petition must be at least sixty (60) days from the date of the filing. In addition to covering all pertinent legal developments, including the law applied, whether it is based on written or unwritten legal sources, and any dissenting opinions from the judge or panel chairman, if any, the decision must be presented in a way that is easily understood by the general public. [2].

The bailiff is required to send a copy of the resolution to the debtor, applicant, curator, and supervising judge no later than three days after the court decision. Once the bankruptcy is finalized, the next step is to verify the collection. Article 178 of Law Number 37 of 2004 states that if no proposal or agreement on a reconciliation plan is discussed, the underlying issue is the debtor's inability to pay all of their debts. [2].

In an insolvency situation, the curator carries out a liquidation process by selling all assets and distributing the proceeds to creditors based on a predetermined threshold. Every action taken by the curator must be reported to the supervisory judge no later than 30 (thirty) days after the completion of the bankruptcy, as regulated in Article 202 paragraph (3) of Law Number 37 of 2004. If there are bankruptcy issues that have not been resolved after the distribution, the curator must carry out further analysis in accordance with Article 203 of the Law. [2].

- Decision to dismiss a case, In principle, the examination of a bankruptcy case begins after the court, through a bailiff, issues a summons to the interested parties. The summons is mandatory if the bankruptcy petition is filed by a creditor, On the other hand, if done by the debtor, it can be used to verify the accuracy of the information in Article 2 paragraph (1) of Law No. 37 of 2004.

Before the first hearing is held, a summons is made using registered express mail no later than 7 (seven) days. The court can submit a new summons in accordance with Article 126 HIR if the first hearing is not present, even though it has been clearly and concisely briefed. Article 150 RV. However, if not present, the bankruptcy petition does not eliminate the requirements, and the mandatory payment of court costs is as stated in Article 124 HIR and Article 148 RBg.However, theapplicant still hasthe opportunity to submit a new petition provided that he pays court costs [8].

- Decision on theexamination of the case without thepresence of the defendant in bankruptcy. In addition to the applicant, the party who is the debtor in bankruptcy is also obliged to comply with the court summons through the bailiff, especially if theapplication is submitted byacreditor. In practice, if the respondent does not appear even though he has been legally and properly summoned, the court will provide an opportunity for a re-summons in accordance with Article 126 HIR or Article 150 RBg. If the respondent still does not appear, the trial can continue without his presence (default). However, the court does not immediately grant the bankruptcy application. The judge is still required to determine whether the bankruptcy requirements as stated in Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) of Law Number 37 of 2004 have been concluded. If these requirements are deemed valid, they will be stated in full along with all their legal consequences; if not, they will be rejected. Regarding default, only legal action can be taken (Article 11 paragraph (1) of Law Number 37 of 2004), and if a person has legal standing, only legal action can be taken.[8].
- **Final Decision Regarding the Main Case.** The final decision on the merits of the case is The final step in the Commercial Court bankruptcy process, such as a cassation appeal or judicial review at the Supreme Court, is the decision. The decision is a public statement made by an individual with the aim of fostering harmony among the participants. According to Sudikno Mertokusumo, the decision consists of three parts:
  (1) The main points of the decision are "For the Sake of Justice Based on God Almighty," as stated in Article 2 paragraph (1) of Law Number 48 of 2009.;
  (2) All individuals, including the obligations of attorneys for bankruptcy, in accordance with Article 7 paragraph (1) of Law Number 37 of 2004;
  (3) Legal considerations containing factual and legal bases, in accordance with Article 50 paragraph (1) of Law Number 48 of 2009 and Article 8 paragraph (6) of Law Number 37 of 2004; and
  (4) The verdict containing the response to the lawsuit, in accordance with Article 178 HIR or Article 189 RBg.

According to Article 15 of Law Number 37 of 2004, the court is required to appoint a curator and a supervisory judge in a bankruptcy decision. The Inheritance Office will act as curator if there is no proposal to appoint a curator. The curator must be independent and not have any conflict with creditors or debtors. The bankruptcy declaration must be made in a manner that is clear to everyone and can be done more quickly even if there are legal requirements that must be met (Article 8 paragraph (7) of Law Number 37 of 2004).

b. Legal Regulations Regarding Preferred Creditors in Bankruptcy

According to Article 1 paragraph 2 of Law Number 37 of 2004, the definition of a creditor is "a person who has a collection based on an agreement or law that can be collected in court." According to the definition of a creditor given in Article 1 paragraph 2 of the Bankruptcy Law, it can be seen that a creditor is a legal subject who, based on a relationship, has subjective rights, namely the ability to guarantee that the debtor fulfills his obligations and pays off the debtor's debt. [4].

A debtor is a person obligated to pay another debtor. In the context of bankruptcy, the protection of creditors' rights is regulated by Articles 1131 and 1132 of the Civil Code, which classify them as competing creditors. The purpose of bankruptcy regulations is to distribute the debtor's share equitably among all creditors through the general bankruptcy mechanism. This principle is known as paritas creditorium, unless the law stipulates that creditors have priority. Before a company is declared bankrupt and its assets liquidated, Indonesian law provides an alternative to the PKPU (Seizure of Payment for Compensation). Through PKPU, companies are given the opportunity to restructure their obligations to reach a peace agreement. This restructuring allows companies to continue operating, protect their assets, and ensure repayment of debts to creditors [9].

Unstable company conditions can impact workers, such as wage cuts, salary delays, and even layoffs to meet debt repayment obligations. Therefore, legal protection for workers is necessary. Law No. 13 of 2003 guarantees workers' rights, including a living wage, occupational safety, rest breaks, and the right to strike. The principles of wages include: (a) the right to wages exists throughout the employment relationship, (b) the prohibition of wage discrimination, (c) no work no pay, (d) wages consist of basic wages and fixed allowances, and (e) wage claims expire after two years [9].

Types of creditors are regulated in Articles 1131, 1132, 1134, and 1135 of the Civil Code and are divided into three :

a. Secured Creditors
b. Preferred Creditors
c. Concurrent Creditors

Specifically, the focus of the study in this research will be preferred creditors, where creditors whohave priority have the right to receive debt payments first from the debtor when bankruptcy occurs. Preferred creditors' receivables have a higher priority than other creditors, but are still below pawn and mortgage holders. Preferential rights are rights regulated by law, which provide the possibility for preferred creditors to have higher priority in obtaining debt payments. Workers who have not received their wages in a state of bankruptcy are included in the creditors who have priority. After the Constitutional Court decision number 67/PUU-XI/2013, the position of workers has become stronger: workers' wages are prioritized over all parties entitled to claims, including separatist groups and parties collecting taxes; while other workers' rights remain prioritized, except for separatist parties [9].

Creditors have the right to receive payment of their receivables prior to the sale of assets included in the bankruptcy process. The explanation of privileges as stipulated in Article 1134 of the Civil Code states that privileges are rights held by the debtor (creditor), so that the creditor's position is higher than other creditors, based solely on the characteristics of the receivables they hold. More detailed regulations regarding preferred creditors can be found in Articles139 and 1149 of the Civil Code. Article 1139 regulates special preferred creditors, while Article 1149 regulates general preferred creditors.

In addition to the classifications stipulated in the Civil Code, the term preferred creditor is also found in Article 95 paragraph (4) of the Manpower Law, which regulates workers' wages in arrears. In addition, preferred creditors are also regulated in the Taxation Law, Article 21, paragraphs 1, 2, 3, 3a, 4, and 5. Categorizing workers' tax and wage debts as preferred creditors is intended to protect workers' rights in the face of legal uncertainty related to the payment of wages or salaries. Upon closer examination, this regulation also provides protection to companies from the possibility of massive strikes and labor demonstrations, considering that these will certainly impact companies declared bankrupt. Thus, the company's operational stability can be maintained while the company continues its activities [4].

Law No. 37 of 2004 was partially revoked by Law No. 4 of 2023, which also regulates the bankruptcy process but does not neglect the mechanisms of Law No. 37 of 2004. Law No. 37 of 2004 substantively regulates the rights of preferred creditors regarding the order of payment, legal status, and collection rights in bankruptcy. Meanwhile, Law No. 4 of 2023 Does not change the content of preferential rights but the mechanism in the application of financial institutions [4].

c. Legal Protection Provided to Preferred Creditors in Bankruptcy Proceedings

Legal protection for preferred creditors in the context of bankruptcy is a form of normative guarantee stipulated in legislation so that creditors with priority rights receive payment before other creditors. The position of preferred creditors in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) is strengthened through provisions on privileges referred to in Articles 1139 and 1149 of th Civil Code (KUHPerdata), which still apply as the legal basis for determining the order of claims in the bankruptcy estate settlement process [10].

Preferred creditors are granted legal protection in the form of the right to payment that takes precedence over the bankruptcy estate. This right is inherent due to the direct appointment by law that grants priority to certain creditor groups, such as the state with tax receivables, workers with wage rights, and parties who receive privileges based on the nature of their receivables. With this position, preferred creditors are in a stronger position than concurrent creditors who only receive proportional repayment from the remaining bankrupt estate [4].

Normatively, the regulation regarding preferred creditors demonstrates the state's efforts to provide protection to creditors deemed to have strategic interests, such as workers and the state as the owner of tax receivables. This regulation is also in line with the principle of justice in bankruptcy, which emphasizes a balance between the protection of debtors and creditors, as well as the principle of pari passu prorata parte, which forms the basis for the distribution of assets but provides special exceptions for creditors with special rights. Thus, the legal protection of preferred creditors reflects a combination of substantive regulations, procedural mechanisms, and judicial oversight in the Indonesian bankruptcy system [4].

d. Analysis of the Case of PT Swissindo Marine Based on Rawls' Principles of Justice

The case of PT Swissindo Marine provides a clear illustration of the normative justice and substantive justice in the Indonesian bankruptcy system when analyzed using John Rawls's theory of justice. This analysis focuses on two of Rawls's fundamental principles: the first principle of justice and the difference principle, both of which reveal systemic problems in protecting the rights of preferred creditors, particularly the state as a tax creditor. From a liberty principle perspective, this case demonstrates that formal access to the bankruptcy legal system does not automatically guarantee substantive access to justice. The Tax Office (KPP) had the legal right to file a claim for Rp 14,134,021,435 and to object to the curator's rejection, but these rights were not effectively realized in practice. The curator refused to recognize the tax receivables in accordance with the amount submitted without providing adequate explanation, while the KPP's objection was rejected by the Central Jakarta Commercial Court not for substantial reasons, but solely for technical procedural reasons, namely missing the filing deadline. The KPP ultimately had to resort to judicial review all the way to the Supreme Court and only received justice on September 10, 2019. This situation proves that formal access is not the same as substantive access, and preferred creditors had to fight through various levels of the courts to obtain rights that should have been automatically recognized based on the creditor hierarchy in bankruptcy law.

Violations of procedural freedom are also evident in this case. The receiver has the power to ignore creditors' claims without adequate transparency, while the Commercial Court applies excessive procedural formalism by rejecting creditors' objections based on administrative without considering the substance of justice. The absence of an effective check and balance mechanism on the receiver's power creates a situation where preferred creditors, despite having a strong legal basis, remain vulnerable to arbitrary treatment. The preferred creditors' procedural freedom, therefore, exists only on paper. The receiver has very broad discretionary powers and can ignore the rights of preferred creditors without adequate accountability, thereby neglecting the principle of equal freedom that should be enjoyed by all parties in the legal system. Analysis based on the difference principle reveals a deeper complexity. Normatively, the priority given to preferred tax creditors can be justified within the framework of Rawls' difference principle for several fundamental reasons. First, tax debt serves to fund public welfare and basic services that benefit the entire community, especially the most vulnerable groups. Second, this priority compensates for the state's involuntary position as a creditor, since tax obligations arise from public law, not from contractual agreements like other creditors. This inequality, in Rawls's view, can be justified because it benefits the least advantaged through redistribution to public services such as education, health care, and infrastructure.

However, the case of PT Swissindo Marine demonstrates an unjustified inequality that contradicts the difference principle. There is a fundamental irony in that preferred creditors, who should receive the highest protection, are treated unfairly in practice. The country with the highest preferential status under the law has to fight hard to secure its rights, demonstrating that bankruptcy system fails to protect even creditors with the strongest legal basis. The excessive power of the receiver without adequate oversight creates an inequality that cannot be justified under Rawls's framework, because this inequality does not benefit the weaker party—in this case, the neglected creditors—but rather harms them. The receiver can unilaterally reject claims without accountability, creating moral hazard and systemic legal uncertainty. Furthermore, excessive procedural formalism trumps substantive justice when a legitimate claim worth Rp 14 billion is ignored purely for technical reasons, demonstrating the system's failure to balance procedural efficiency with substantive justice. This analysis reveals the key finding that the case of PT Swissindo Marine demonstrates a significant gap between law and practice in the Indonesian bankruptcy system. Preferred creditors have strong normative protections under the law, but these protections are ineffective in practice because curators have excessive powers without adequate oversight. To address this problem, comprehensive reform is needed.

e. Analysis of preferred creditor protection basedxonxthx principle of freedom (first principle of justice)

1) 1) Right of Access to the Bankruptcy Law System. According to Law Number 37 of 2004 concerning PKPU and Bankruptcy (also known as Law 37/2004), a bankruptcy petition can be filed by a "creditor" if the debtor has two or more creditors and the debtor has not paid all bills on time. However, the clause also highlights the following: if the debtor is a financial institution, the only party that can file for bankruptcy is Bank Indonesia (BI), not creditors in general. Furthermore, if the debtor is not a bank or other specific business entity, creditors—including creditors with collateral and creditors with priority—still have the right to file for bankruptcy. In light of this, even while creditors have the right to enforce the law, their access might vary depending on their position and creditor category, therefore not all creditors have the same access. Procedure for Claim Verification in Kebangkrutan, Mechanism for Claim Verification in Kebangkrutan outlined in Undang-Undang No. 37 Tahun 2004 concerning Kebangkrutan and PKPU (UU 37/2004), especially in Article 100 and Article 101. This mechanism is implemented by the curator to examine and verify claims submitted by all creditors, both concurrent, preferred, and separated creditors. Each creditor is obliged to submit proof of claims along with supporting documents to the court and the curator, and has the right to file an objection if their claim is rejected. Through this mechanism, basically all creditors have an equal opportunity to claim their rights, although certain priority rights still apply to separated creditorsand preferred creditors in accordance with the provisions of Law 37/2004.
2) Procedural freedom in the bankruptcy process. In the bankruptcy system in Indonesia, preferred creditors have a special position in the order of debt repayment after secured creditors, as described in the literature. In the study of Legal Protection for Preferred Creditors in the Settlement of Bankruptcy Processes, it is stated that since the bankruptcy decision, the debtor's assets become a bankruptcy estate and all creditors, including preferred creditors, have the right to submit claims and participate in the verification and verification process of receivables. Therefore, preferred creditors have the right to be heard (both when submitting claims and in verification meetings), so that normatively there is procedural freedom for them to ensure that their claims are recognized [12]. Furthermore, preferred creditors also have the right to clarity and transparency in the mechanism for settling bankrupt assets. According to the same study, bankruptcy laws and practices require that the settlement process be carried out in an orderly, fair, and accountable manner. The curator is assigned to manage the bankruptcy estate and distribute the proceeds based on priority order (separate, preferred, and concurrent). This transparency is essential so that preferred creditors can monitor that their privileges are being respected and understand their position in the register of receivables and the distribution of bankruptcy assets, thus enabling control and protection against potential abuse. However, the procedural freedom and rights of preferred creditors are not free from practical challenges. Several literatures indicate that although preferred creditors are recognized normatively, in practice, there are often conflicting claims, overlapping preferential and separatist rights, and potential uncertainty if the verification or register of receivables is not conducted transparently or fairly. This situation demonstrates that the protection of preferred creditors' rights is not automatic—the success of the right to be heard, the right to transparency, and access to participate in decisions depends heavily on the curator's implementation of procedures and court oversight [13].

f. Analysis of preferred creditor protection based on the difference principle

1) Justified inequality (fulfills the difference principle)

In the context of bankruptcy, preferred creditors have the privilege of receiving payment before concurrent creditors, including the right to collect bankruptcy costs and preferential rights over recognized receivables. Based on the principle of procedural freedom, preferred creditors have the right to be heard, to reject plans, and to monitor the transparency of the settlement of bankruptcy assets, so that their rights are not ignored during the bankruptcy process [4]. Analysis using John Rawls' Difference Principle shows that this inequality can be justified because preferential rights work, such as receiving bankruptcy costs or compensation for asset management services, serve to strengthen the position of creditors who have a greater risk or contribution in the settlement of bankruptcy assets [12].

However, the resulting inequality must be maintained to ensure it is proportional and does not arbitrarily disadvantage other creditors. Under Rawls's principles, preferred creditors' access to bankruptcy fees and other privileges is considered "justified inequality" because it compensates for the contribution or risk inherent in the preferential right, while the claim verification mechanism and oversight by the supervisory judge ensure transparency and the opportunity for all creditors to be heard. This emphasizes that despite the privileges, the bankruptcy process still follows the principle of procedural fairness, which guarantees a balance of rights and obligations among creditors. [13].

2) Ketimpangan yang QUESTIONABLE (perlu dikaji ulang)

In the Indonesian bankruptcy system, tax debts to the state are classified as preferred receivables, so the Directorate General of Taxes has priority rights to repayment from the bankrupt estate compared to many other creditors, including secured creditors [14]. This status is regulated in the Law on General Provisions and Tax Procedures (UU KUP) and is reinforced by Law Number 37 of 2004 concerning Bankruptcy and PKPU [15]. Although normatively preferred tax creditors are considered legitimate, this inequality needs to be re-examined because the state has much greater coercive power than other creditors, and tax preferential rights do not automatically benefit the least advantaged in the distribution of estates. From the perspective of John Rawls' Difference Principle, this inequality can only be justified if tax priorities are directed towards real legal or public welfare, so that the benefits return to the weakest groups. [12].

4. CONCLUSION

Based on the analysis conducted in this study, it can be concluded that John Rawls's theory of justice, legal protection for preferred creditors in the Indonesian bankruptcy system has been normatively designed according to the principle of justice, but has not been substantively realized in practice. The principle of equal basic liberties demands equal, transparent, and accountable legal access for every creditor in the bankruptcy process. However, research findings indicate that the procedural freedom of preferred creditors is often only formal due to the dominance of curator authority, weak oversight mechanisms, and procedural formalism that defeats substantive justice. From the perspective of the Difference Principle, the special position of preferred creditors is essentially a form of justifiable inequality because it is intended to protect strategic interests such as workers and the state for the sake of public welfare. However, in practice, as in the case of PT Swissindo Marine, this inequality does not provide benefits to the parties that should be protected, thus turning into an injustice that cannot be justified according to Rawls. Thus, there is a real gap between normative legal protection and the effectiveness of protection in practice, which shows that the bankruptcy system does not fully reflect the principle of justice both in terms of basic freedoms and in terms of fair distribution of benefits.

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6. BIBLIOGRAPHY

E. R. Ginting, *Hukum Kepailitan : Teori Kepailitan*. Jakarta: Sinar Grafika, 2018.

J. Sriwidodo and M.S.Tumanggor, "PERKEMBANGAN HUKUM KEPAILITAN DAN PKPU DI INDONESIA," Yogyakarta: Kepel press, 2024, pp. 9–10.

A. Damanik, *Modul Hukum Kepailitan Dan Pkpu*. Samarinda, 2021.

Nazhif Ali Murtadho, "Perlindungan Hukum terhadap Kreditor Preferen dalam Pemberesan Proses Kepailitan," *J. Contemp. Law Stud.*, vol. 2, no. Vol. 1 No. 4 (2024): AgustusVol. 1 No. 4 (2024): Agustus, pp. 207–226, 2024, doi: https://doi.org/10.47134/lawstudies.v2i3.2499.

A. R. Putri, A. Machmud, and S. Sadino, "Analisis Hukum Terhadap Penolakan Tagihan Pajak dalam Proses Kepailitan PT Swissindo Marine," *Binamulia Huk.*, vol. 14 (1), no. Vol. 14 No. 1 (2025): Binamulia Hukum, pp. 131–140, 2025, doi: https://doi.org/10.37893/jbh.v14i1.942.

V. Prahassacitta, "Makna Keadilan Dalam Pandangan John Rawls," 2018, [Online]. Available: https://business-law.binus.ac.id/2018/10/17/makna-keadilan-dalam-pandangan-john-rawls/

Yuhelson, *Hukum Kepailitan di Indonesia*. Gorontalo: Gorontalo: Ideas Publishing, 2019.

H. Jayadi, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*. Yogyakarta: Publika Global Media, 2021.

M. T. Saragih and W. Ramadhana, "Analisis Yuridis Kedudukan Hukum Karyawan dalam Mengajukan Permohonan PKPU terhadap Debitor di Pengadilan Niaga," *Rewang Rencang J. Huk. Lex Gen.*, vol. 5 (4), 2024.

Kitab Undang-Undang Hukum Perdata. Indonesia.

Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang. Indonesia: Pasal 100–101, 2004. [Online]. Available: https://www.flevin.com/id/lgso/legislation/Mirror/czoyNzoiZD0yMDAwKzQmZj11dTM3LTIwMDRwamwuaHRtIjs%3D.html%0A

J. Rawls, *A Theory of Justice*. Cambridge: Harvard University Press, 1971.

M. A. Ababil, Hartanto, and J. T. N. H. Tombi, "Perlindungan Kreditur dalam Sistem Kepailitan Indonesia: Antara Norma Hukum dan Kenyataan," *Juris Humanit. J. Ris. dan Kaji. Huk. HAM*, vol. 4 (1), no. Vol. 4 No. 1 (2025), 2025, doi: https://doi.org/10.37631/jrkhm.v4i1.69.

S. Hijriya, "Kedudukan Negara Sebagai Kreditur Preferen dalam Piutang Pajak dalam Kasus Kepailitan," *Nagari Law Rev.*, vol. 1, pp. 33–55, 2017, [Online]. Available: https://ejournal.warunayama.org/index.php/causa/article/view/11385%0A

J. M. Putri, "Kedudukan Kreditur Pajak dalam Kepailitan: Analisis Yuridis terhadap Hak Preferensi dalam Sistem Hukum Indonesia," *Causa J. Huk. dan Kewarganegaraan*, vol. 10, no. 11, pp. 51–60, 2025, [Online]. Available:

https://paperity.org/p/363192167/kedudukan-kreditur-pajak-dalam-kepailitan-analisis-yuridis-terhadap-hak-preferensi-dalam%0A