

The Legal Vacuum and Normative Conflicts in Bankruptcy Applications by Workers

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ABSTRACT

This study investigates the legal issues arising from Supreme Court Circular Letter Number 2 of 2019 concerning bankruptcy applications by workers, focusing on the legal vacuum and lack of clarity regarding the rights that can form the basis of such applications. The research employs a normative legal method, analyzing legal norms, legislation, and judicial decisions to assess the challenges faced by workers in filing bankruptcy applications. The findings reveal significant gaps, including the requirement for a legally binding decision from the Industrial Relations Court (PHI) prior to filing, which creates procedural delays and confusion. The lack of clarity on the scope of workers' rights, especially regarding non-wage entitlements such as bonuses and allowances, further exacerbates legal uncertainty. The study recommends revising the circular to address these gaps, enhancing coordination between PHI and the Commercial Court, and improving legal awareness among workers. These steps aim to create a more robust framework for protecting workers' rights and ensuring legal certainty in bankruptcy applications. The study highlights the urgent need for reform to strengthen legal protections for workers in Indonesia.

Keywords : bankruptcy, workers' rights, legal vacuum

INTRODUCTION

The issue of bankruptcy concerning workers is one of the complex legal problems that often creates uncertainty and losses for employees. In situations where companies face financial difficulties and must file for bankruptcy, workers, who are directly dependent on the company, often become the first victims of the process. They risk losing their jobs and sources of income without adequate protection guarantees, especially concerning unpaid wages, allowances, and severance pay (Jacoby, 2018; Pham, 2016). Moreover, existing laws often contain legal vacuums that regulate workers' rights in bankruptcy processes, where the applicable regulations do not explicitly encompass or protect workers' interests, leading to normative conflicts between bankruptcy law and labor law. This situation causes workers to be caught in an unfavorable position, where their rights are not recognized fairly, while at the same time, they face the harsh reality of job loss and uncertainty about their future (Dalimunthe, 2023; Pratama, 2021).

The fourth paragraph of the Preamble to the Constitution of the Republic of Indonesia 1945 asserts that the main purpose of the Indonesian state is to provide welfare for all its people. This welfare, as one of the mandates of the 1945 Constitution, can be achieved through sustainable development carried out by the government (Setiyono, 2018). In the process of development, there are three main factors that need to be considered: natural resources, capital, and human resources. Human resources, in this case referring to the workforce, play a very important role and are on par with the other factors, especially considering the large population in Indonesia that generates an abundant labor force (Arifin, 2023).

Law Number 13 of 2003 on Manpower, which has been revised by Law Number 6 of 2023 on Job Creation, provides a clear explanation of the definition of labor. According to Article 1, paragraph 2, labor is defined as an individual who has the ability to perform work that produces goods or services, aimed at fulfilling personal as well as societal needs. Additionally, in the same article but in a different paragraph (Article 1, paragraph 3), the law also defines a worker or laborer as anyone who performs work in exchange for wages or compensation in other forms. In society, the terms laborer and worker are often perceived differently, while formally, both terms have similar meanings (Prints, 2020).

Through the clear definition provided in the legislation concerning manpower, it can be concluded that labor, as a primary subject in this sector, has a broader meaning. On the other hand, a laborer has a more specific definition. A laborer is not merely an individual capable of performing work, but must also be bound by an employment relationship, in which they truly carry out tasks and receive compensation or wages for the work performed (Husni, 2010). Therefore, the employment relationship becomes an essential element in the structure of industrial relations, which fundamentally is an agreement between two parties: the laborer and the employer, in this case, the company or entrepreneur. Within this employment relationship, there is a possibility of disputes arising between the employer and the laborer, which can be triggered by various factors from both the employer's side and the laborer themselves (Manulang, 2003). These disputes highlight the need for a strategic legal role in resolving arising issues. One crucial issue in the field of labor that requires legal intervention is the phenomenon of bankruptcy filings against companies by workers in the Commercial Court, particularly concerning the payment of workers' rights, such as wages and benefits.

In practice, bankruptcy filings by workers often evoke various views and different approaches among judges. There is a duality of opinions evident in numerous previous rulings regarding bankruptcy cases. For example, in the case of PT GPL, decided under number 501/K/Pdt.Sus/2010, the judge stated that the bankruptcy petition submitted by five workers of PT GPL regarding the delay in wage payments from December 2008 to January 2010 was premature. This was due to the fact that the workers had not sought resolution through the Industrial Relations Court (PHI) first. Conversely, in another case, such as the decision number 2/Pdt.Sus-PKPU/2019/PN.Niaga.Sby concerning PT STAR, the judge accepted the workers' request for a Suspension of Debt Payment Obligations (PKPU) and declared the company bankrupt without requiring prior proceedings in the PHI (Arliman, 2017; Telaumbanua, 2019).

From these various rulings, it can be observed that the approaches taken by judges are highly diverse, depending on the specific circumstances and accompanying factors. This creates legal uncertainty for workers striving to obtain their rights through bankruptcy proceedings (Indra Afrita, 2021). The differences in law enforcement underscore the need for deeper examination of existing legal procedures to provide clarity and justice for workers facing difficult situations in the workplace, especially when dealing with issues of wage payments and the bankruptcy status of companies. The limitations of legal protection for workers in this regard emphasize the importance of reforming and developing more comprehensive regulations in the field of labor (Arief, 2021).

The differences of opinion among judges regarding bankruptcy filings by workers have become an important concern, which has been addressed through legal provisions in the Supreme Court Circular (SEMA) Number 2 of 2019. One of the focuses of this

circular is to bridge the disputes occurring in industrial relations with bankruptcy issues. In the circular, the Supreme Court emphasizes that workers filing for bankruptcy against companies that fail to meet their obligations to pay their rights must follow several clear legal procedures. According to the provisions in this circular, a bankruptcy petition by workers can only be submitted after their rights have been confirmed through a ruling from the Industrial Relations Court (PHI) that has legal force. This means that before workers can seek bankruptcy, they must first take legal action in the PHI to obtain a decision recognizing their rights. Additionally, the execution of that decision must be carried out at least up to the second stage (second *aanmaning*). This indicates that the Supreme Court aims to ensure that all legal procedures have been followed before workers can file for bankruptcy (Asyhadie, Sh, & Rahmawati Kusuma, 2019).

In this context, unpaid rights owed to workers are considered a debt that must be settled in accordance with the applicable laws and regulations. This reaffirmation provides clarity for workers and employers regarding the steps that need to be taken to resolve payment issues related to workers' rights. Thus, the SEMA not only serves as a guideline for judges in handling bankruptcy cases filed by workers but also creates a more systematic legal framework for resolving disputes between workers and employers. The issuance of the Supreme Court Circular (SEMA) as a legal basis to address the differences of opinion and resolutions faced by judges concerning workers' bankruptcy filings has drawn attention for further research. This research aims to explore whether there are still legal issues remaining in the substance of SEMA Number 2 of 2019, which serves as a reference in bankruptcy filings by workers (Hidayat Muharam, 2006).

The interest in investigating this SEMA arises from the desire to understand the extent to which the provisions outlined can address the previous issues. It is hoped that this SEMA can provide clear and consistent guidance for judges in handling bankruptcy cases filed by workers. However, despite the publication of SEMA, it is important to analyze whether the provisions are truly effective and if there are any legal loopholes that certain parties can exploit to disregard the rights of workers. In this study, the main focus is to identify and evaluate the legal aspects in the SEMA that may not fully address the problems faced by workers when submitting bankruptcy petitions. For instance, whether the stipulations regarding the requirements for filing bankruptcy outlined in the SEMA are sufficiently clear and understandable for workers who may not have a legal background. Furthermore, it is also necessary to investigate whether the procedures outlined can be practically and fairly implemented within the dynamic context of the workplace.

The legal framework governing bankruptcy applications by workers is riddled with ambiguities, particularly in defining the rights that can serve as a basis for such applications. With Indonesia's workforce heavily reliant on wage income, any procedural hurdles or unclear regulations can jeopardize workers' financial stability. Addressing these legal gaps is crucial to ensure timely and fair access to justice for workers, safeguarding their livelihoods and upholding labor rights amidst company insolvencies.

Existing studies largely focus on broader labor and bankruptcy laws but fail to address the specific procedural and substantive challenges workers face under Supreme Court Circular Letter No. 2 of 2019. There is limited exploration of how this regulation interacts with industrial relations laws and the practical implications of requiring a PHI ruling before filing for bankruptcy. This gap necessitates a focused evaluation of the circular's effectiveness and its impact on workers' ability to claim their rights.

This research offers a fresh perspective by critically examining the procedural and substantive conflicts in the bankruptcy process under Supreme Court Circular No. 2 of 2019. It uniquely highlights the interplay between labor and bankruptcy laws, providing actionable recommendations to bridge regulatory gaps and improve workers' access to justice in insolvency cases.

Objectives to analyze the procedural requirements and substantive provisions of Supreme Court Circular No. 2 of 2019.

To identify legal vacuums and ambiguities that hinder workers' ability to file for bankruptcy. To propose solutions for improving the regulation to better protect workers' rights.

The study benefits legal practitioners, policymakers, and workers by providing a comprehensive evaluation of existing regulations and proposing reforms to enhance legal clarity and procedural efficiency. Improved legal frameworks will empower workers, reduce litigation barriers, and create a more equitable system for resolving labor-related bankruptcy cases.

The findings underline the need for regulatory alignment between labor and bankruptcy laws, emphasizing the importance of protecting workers as preferential creditors. Addressing procedural delays and legal ambiguities will enhance the justice system's credibility, ensure timely resolution of disputes, and contribute to a fairer labor market in Indonesia.

RESEARCH METHOD

The normative legal research method is an approach that focuses on the analysis of legal norms found in legislation, doctrines, and court decisions. [7] In this research, a normative legal approach is used to explore and understand the provisions contained in the Supreme Court Circular (SEMA) Number 2 of 2019, which serves as the legal basis for bankruptcy petitions by workers. This study will identify various relevant articles within the legislation, as well as examine how these provisions interact with existing legal practices. Through this method, the researcher can evaluate the consistency and clarity of the established norms, as well as how these norms are applied in real contexts, in order to uncover potential issues or legal loopholes that still exist within the SEMA.

A legislative approach will also be applied to examine existing regulations, including laws and other legal provisions related to labor and bankruptcy. This approach will assist the researcher in understanding the broader legal context and the interactions among various regulations that may influence bankruptcy petitions filed by workers. Additionally, an analytical approach will be used to delve into each legal provision and existing practices, emphasizing a critical analysis of the substance and legal implications of the SEMA. Consequently, this research will not only provide an overview of the current application of the law but also identify potential improvements that can be made to enhance the protection of workers' rights in the bankruptcy process. The combination of normative legal methods and legislative as well as analytical approaches is expected to yield comprehensive and applicable findings for the development of labor law in Indonesia.

RESULT AND DISCUSSION

Substance of the Provisions in Supreme Court Circular Number 2 of 2019 Influencing Bankruptcy Petitions by Workers Against Companies Failing to Meet Payment Obligations for Workers' Rights

The issuance of Supreme Court Circular (SEMA) Number 2 of 2019 serves a significant purpose and urgency within the context of labor law and bankruptcy. This SEMA was published to provide clear guidelines for judges in handling bankruptcy cases filed by workers, particularly concerning companies that fail to meet their obligations to pay workers' rights. Previously, there were numerous issues within court practices, where workers seeking to file for bankruptcy against a company faced legal uncertainties due to differing opinions among judges. With the issuance of SEMA, it is hoped that consistency in law enforcement and better protection of workers' rights will be created. This SEMA also functions as an instrument to bridge the two overlapping areas of law, namely labor law and bankruptcy law, thus enabling workers to more easily exercise their rights when companies fail to fulfill their obligations.

Before the issuance of SEMA, workers encountered many legal issues in the bankruptcy petition process, primarily due to the duality of judicial opinions. In practice, some judges adhered to the principle that workers must first resolve disputes through the Industrial Relations Court (PHI) before filing for bankruptcy, while other judges accepted bankruptcy applications without requiring that process. This differing interpretation created confusion and uncertainty for workers, potentially hindering them from obtaining their rights fairly. In this context, SEMA is expected to address these issues by providing clear guidelines regarding the procedures to be followed, so that workers are no longer trapped in legal complexities and can firmly demand their rights when companies fail to pay wages and other compensations.

In the context of labor, there exists a legal relationship between workers and employers tied to a work agreement. This relationship involves several key elements, such as the type of work, orders from the employer, the timing of work execution, and compensation in the form of wages. Essentially, the work performed by workers cannot be delegated to others, as workers are required to carry out tasks directly. Meanwhile, the element of orders emphasizes that the relationship between workers and employers is subordinate, wherein workers must follow the instructions given by the employer, even if they possess certain skills. Furthermore, the aspect of time encompasses the duration that workers must undertake their jobs, and wages are the compensation received by workers for the work performed. As an integral part of the employment relationship, wages are rights that must be received by workers and obligations that employers must fulfill. Although in practice wages can take the form of goods other than money, legal provisions in Indonesia stipulate that wages should be paid in monetary form, including allowances intended for workers and their families.

In addition to wages, workers are also entitled to non-wage income categorized as other rights. This non-wage income can consist of two categories: normative rights regulated by legislation and non-normative rights dependent on agreements between employers and workers in work agreements or company regulations. For instance, Holiday Allowance (THR) is a normative right regulated by law, while bonuses and incentives are examples of non-normative rights that may be provided based on company policies. In this regard, non-wage income is not mandatory, but rather granted at the employer's discretion. Although wages and non-wage income are crucial for workers in meeting their living needs, various problems related to wages remain, including employer

non-compliance with paying wages in accordance with regulations, delays in payment, or even total failure to pay wages. This situation prompts workers to seek legal solutions to these problems, including through bankruptcy petitions against companies in commercial courts.

Bankruptcy is a legal process involving the seizure of all assets of the bankrupt debtor and the management of those assets by a curator under the supervision of a judge. Within the framework of bankruptcy law in Indonesia, regulated by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, this process mainly focuses on the debtor's failure to meet debt obligations, not just based on asset solvency. This implies that even companies with more assets than debts can be petitioned for bankruptcy. This approach differs from practices in other countries that tie bankruptcy to insolvency, where debts exceed assets. In industrial relations, Indonesian labor law recognizes workers as preferential creditors, meaning they have the right to be paid first when a company experiences bankruptcy. Although the legal provisions do not explicitly state that workers can file for bankruptcy, their position as preferential creditors legitimizes them to file for bankruptcy petitions if their rights, whether in the form of wages or non-wage income, have not been paid.

The position of workers as preferential creditors in the bankruptcy process indicates that wages and non-wage income can be deemed as collectible debts. This aligns with legal provisions acknowledging that debts arise from valid work agreements, and if wages and non-wage income have not been paid as agreed, this serves as the basis for workers to demand payment through bankruptcy legal proceedings. Thus, workers have the rights and legal grounds to petition for bankruptcy against companies that fail to meet their obligations. In this regard, the regulations in existing laws and the fact that workers are preferential creditors underscore the importance of protecting workers' rights in bankruptcy while also providing them access to legal channels to seek justice and fulfillment of their entitlements.

Supreme Court Circular (SEMA) Number 2 of 2019 was issued in response to the need for guidelines in bankruptcy petitions involving workers. The legal basis for the issuance of this SEMA refers to various applicable regulations, such as Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) and other related regulations. This SEMA also considers labor law aspects, particularly Law Number 13 of 2003 concerning Labor, which regulates workers' rights, including wages and non-wage income. In this context, SEMA serves as a bridge between bankruptcy law and labor law, ensuring that workers' rights as creditors can be effectively protected. The norms established in the SEMA include affirmations regarding the position of workers as preferential creditors in the bankruptcy process. The SEMA emphasizes that workers have the right to petition for bankruptcy if their rights, especially related to wages and non-wage income, have not been paid by the employer. This is in line with the provisions of Article 95 of the Labor Law, which acknowledges the right of workers to receive priority in debt payments from the company. The SEMA provides guidelines concerning how workers can file for bankruptcy, along with the requirements and procedures that must be followed, thus reducing the legal uncertainties workers may face when claiming their rights.

To file for bankruptcy under SEMA Number 2 of 2019, workers must meet several established requirements:

1. Workers must have valid evidence of the employment relationship indicating the employer's obligation to pay wages or non-wage income.

2. Workers must demonstrate that the employer has failed to meet this payment obligation, either in full or in part, and that the debts are due and collectible.
3. The bankruptcy petition must also be based on at least two creditors that submit the application, as stipulated in Article 2 paragraph (1) of the Bankruptcy Law.

Before filing for bankruptcy, workers are required to go through procedures established in the Industrial Relations Court (PHI). This process typically involves mediation and conciliation, where workers and employers attempt to resolve their disputes before entering the litigation stage. If attempts at resolution in the PHI are unsuccessful, only then can workers proceed to file for bankruptcy in the commercial court. This indicates that the SEMA not only facilitates workers' access to the courts but also encourages dispute resolution through peaceful channels first.

SEMA Number 2 of 2019 has significant implications for the protection of workers' rights, particularly in the context of bankruptcy petitions. By recognizing the position of workers as preferential creditors, the SEMA provides legal certainty for workers to claim their rights, especially in situations where companies face financial difficulties. The affirmation that workers' rights, including unpaid wages, must be prioritized in the bankruptcy process guarantees that workers will receive compensation for their labor, even when companies are in bankruptcy. However, the effectiveness of the SEMA in providing legal protection for workers remains subject to evaluation. While the SEMA has created a clearer legal framework, challenges in implementation on the ground still exist. For instance, workers may struggle to gather necessary evidence to support their claims, or in navigating the lengthy and complex litigation process. Therefore, although the SEMA aims to strengthen workers' rights, effective implementation requires support from various parties, including the government, employers, and legal institutions.

Despite SEMA Number 2 of 2019 providing clear guidance, several challenges and issues persist for workers in its application. One of the main problems is the lack of understanding among workers regarding the bankruptcy petition process, which may result in many workers not fully exercising their rights. Lack of access to information and legal resources also poses an obstacle, particularly for workers from economically disadvantaged backgrounds. In many cases, workers may not have access to lawyers or legal advisors who can assist them in this process. Additionally, there are potential legal loopholes and varying interpretations among judges in applying the SEMA. Diverging interpretations regarding the requirements and procedures outlined in the SEMA can lead to legal uncertainties, where some workers may succeed in their bankruptcy applications while others do not. This situation creates disparities in the protection of workers' rights and may undermine trust in the legal system. Therefore, efforts are needed to enhance legal understanding among workers and harmonize legal interpretations in courts so that the SEMA can be implemented more consistently and effectively.

Legal Issues Still Present in Supreme Court Circular Number 2 of 2019 as a Legal Basis for Bankruptcy Petitions by Workers and Efforts to Address Them

In Indonesian labor law, Supreme Court Circular (SEMA) Number 2 of 2019 serves as an important regulation providing guidelines for bankruptcy petitions by workers. The existence of this SEMA is expected to offer better legal protection for workers experiencing delays in the payment of their rights, including wages and allowances. However, despite the establishment of the SEMA, several legal issues remain that hinder the effectiveness of its implementation. Various challenges, ranging from a lack of understanding among workers concerning their rights, access to legal assistance, to

divergent interpretations that arise in courts, become significant obstacles to realizing the objectives of the SEMA.

The issues arising from legal practice in the courts related to bankruptcy petitions by workers are quite complex. As previously outlined, there exists a duality of opinions among judges regarding whether bankruptcy petitions must be based on a decision from the Industrial Relations Court (PHI) beforehand. Some judges argue that workers' bankruptcy petitions should be grounded in a PHI decision to avoid being deemed premature. On the other hand, there are also judges who accept and even grant workers' bankruptcy petitions without a prior PHI ruling.

This duality of conditions led to the issuance of SEMA Number 2 of 2019, which aimed to regulate the intersection between industrial relations disputes and bankruptcy. The SEMA states that a bankruptcy petition by workers against a company that has not paid their rights can only be submitted after those rights have been established in a legally binding PHI decision and following at least two execution processes through warnings. The unpaid rights of workers are considered debts in accordance with legal provisions. However, this regulation entails several legal issues that deserve further attention. There exists a fundamental difference between the bankruptcy concept regulated in SEMA Number 2 of 2019 and the provisions in the Bankruptcy Law and PKPU. In the SEMA, workers' bankruptcy petitions are directly linked to the non-payment of their rights. Meanwhile, the provisions in the Bankruptcy Law and PKPU, especially Article 2 paragraph (1), establish that the conditions for filing for bankruptcy are not solely based on the non-payment of debts but rather on the condition of insolvency, where the debtor's assets are less than their debts. This aims to prevent debtors from acting in bad faith, by only making partial payments to escape bankruptcy proceedings. In this context, the SEMA provision requiring the condition of non-payment of workers' rights is in contradiction with the requirements for filing bankruptcy regulated in the law, where the debts that can be submitted for bankruptcy are those that are due and collectible.

Another legal issue related to SEMA Number 2 of 2019 is the stipulation requiring workers to wait for a legally binding PHI ruling before filing for bankruptcy. This has the potential to create confusion, given that PHI and the Commercial Court have separate and distinct absolute jurisdiction. PHI, according to Article 1 number 17 of the Industrial Relations Dispute Settlement Law (UU PPHI), has jurisdiction to adjudicate industrial relations disputes, while the Commercial Court, under Article 300 of the Bankruptcy Law and PKPU, has jurisdiction to examine and rule on bankruptcy and PKPU petitions. Due to this jurisdiction difference, it appears that workers do not actually need to await a PHI decision before filing a bankruptcy petition against a company. Nevertheless, there are exceptions in cases where wage payments have not been made due to disagreements concerning the employment agreement, which may require resolution through the PHI. In situations where there is no significant dispute or differing interpretations regarding workers' rights, those rights should be directly recognized so that workers can file for bankruptcy more swiftly. Workers can be deemed creditors with the right to petition for bankruptcy without having to wait for a PHI ruling, provided they can substantiate their rights, such as through calculations conducted by Labor Supervisors. Thus, in the bankruptcy process brought before the Commercial Court, there would be an agenda to match liabilities owed to workers.

One substantive issue arising from SEMA Number 2 of 2019 is the legal vacuum present in its provisions. This vacuum lies in the stipulation that the bankruptcy petition by workers can only be made after a legally binding decision from the Industrial Relations

Court (PHI). In this context, it is essential to understand that the UU PPHI governs various stages of resolving industrial relations disputes, including attempts at bipartite resolution between workers and employers first. If this step does not yield an agreement, mediation processes at the Labor Office (Disnaker) can be pursued. Only after all these alternative resolutions fail can the case be submitted to PHI. In the UU PPHI, there exists a possibility of reaching an agreement through a collective agreement (PB) resulting from the dispute resolution process. If a PB is achieved, it becomes registered with the PHI and possesses binding legal force. If one party fails to comply with the terms of the agreement, the aggrieved party can file for enforcement in the PHI. However, the existence of a PB arising from the dispute resolution process is not recognized in SEMA Number 2 of 2019. This creates a legal problem because if a rights dispute is resolved through a PB in either the bipartite stage or via mediation at Disnaker, and if the employer still fails to fulfill their obligations, workers lose their legal right to file for bankruptcy. In other words, SEMA's stipulations do not accommodate situations where disputes have been resolved through PB, leaving workers in a legal vacuum when trying to assert their rights.

Another legal vacuum in SEMA Number 2 of 2019 is the lack of provisions regarding bankruptcy petitions based on unpaid non-wage rights of workers. This SEMA only regulates bankruptcy petitions by workers due to unpaid workers' rights without providing a detailed explanation of the term "workers' rights" in question. If we refer to the provisions in the Labor Law and the Job Creation Law, workers' rights are usually limited to wages. However, in practice, workers are also entitled to receive other rights such as Holiday Allowance (THR), bonuses, and incentives that may be agreed upon between workers and employers. The absence of clarification regarding these rights in the SEMA creates potential losses for workers, as unpaid non-wage rights could also be viewed as debts under the provisions of the Bankruptcy Law and PKPU. If workers wish to file for bankruptcy based on unpaid non-wage income, the author argues that for normative rights such as THR, the bankruptcy petition should not require a prior PHI ruling. THR is clearly regulated by legislative provisions, including grounds for calculation and time of payment that must be adhered to by employers. Therefore, workers should be able to file for bankruptcy if employers fail to pay THR according to legal stipulations. Conversely, if the unpaid rights pertain to non-normative rights, such as bonuses and incentives established by agreement, the resolution of disputes regarding these rights must be handled via PHI. This is because there often exist differing interpretations in the employment agreement regarding bonuses and incentives, thus they need to be resolved at PHI to clarify legal obligations.

In this case, it is clear that the legal vacuum within SEMA Number 2 of 2019 can be detrimental to workers. The lack of clarity surrounding the regulation of workers' rights and the bankruptcy application procedure creates legal uncertainty, which, in turn, can undermine the credibility of the SEMA as a legal basis for resolving the bankruptcy issues faced by workers. In other words, SEMA Number 2 of 2019 still presents various substantive problems that need to be resolved to provide better protection for workers in cases of bankruptcy.

To address the legal issues arising from SEMA Number 2 of 2019 regarding bankruptcy petitions by workers, several efforts need to be undertaken. These efforts include revising existing regulations, strengthening coordination among relevant agencies, and providing education to workers about their rights and applicable legal procedures.

The first step that can be taken is to revise SEMA Number 2 of 2019 to accommodate a broader legal need for workers. The SEMA should include provisions that clarify the definition of "workers' rights" and encompass various types of rights that should be received, not limited to wages only. This revision should prioritize the interests of workers by allowing the filing of bankruptcy petitions based on the non-payment of other rights such as THR, bonuses, and incentives. Furthermore, it is also essential to establish clear guidelines regarding bankruptcy petition procedures without mandating a prior ruling from the PHI in certain conditions. This will reduce legal uncertainty and provide workers with better access to justice.

The next effort is to strengthen coordination between the PHI and the Commercial Court. These two institutions have different jurisdictions, but synergy is necessary in handling cases involving workers and bankruptcy. For example, the Commercial Court can collaborate with the PHI to address cases where there are differences in interpretations between workers' rights as regulated in employment agreements and employers' obligations. This coordination is vital to ensuring that workers' rights are well protected in every legal process that takes place. Additionally, creating a communication forum between the PHI and the Commercial Court could serve as a means for sharing information and experiences, leading to more harmonious solutions for disputes involving workers.

CONCLUSION

In Supreme Court Circular Number 2 of 2019, the legal issues faced regarding bankruptcy petitions by workers include legal vacuums and ambiguities in the regulation of workers' rights that can serve as a basis for filing. First, the provision requiring a decision from the Industrial Relations Court (PHI) before workers can file for bankruptcy creates confusion, especially when disputes between workers and companies can be resolved outside of litigation channels. Additionally, the unclear definition of "workers' rights," which is limited only to wages, overlooks other rights that may go unpaid, such as Holiday Allowance (THR) and bonuses. This can disadvantage workers who miss the opportunity to file for bankruptcy when such rights are not paid. With the duality of decisions from judges in the Commercial Court leading to different treatments of bankruptcy petitions, this situation exacerbates legal uncertainty and weakens the protection that should be afforded to workers.

To address these issues, efforts can include revising and adjusting the SEMA regulations, strengthening coordination between the PHI and the Commercial Court, and providing legal education for workers. The revision of the SEMA should include a clearer definition of workers' rights that can serve as the basis for bankruptcy petitions, as well as allow for submissions without needing to wait for a PHI decision in certain conditions. Furthermore, enhancing cooperation between the PHI and the Commercial Court will assist in harmonizing the handling of cases involving workers and bankruptcy. Legal education is also essential to ensure that workers understand their rights and the existing legal procedures. By implementing these steps, it is hoped that the legal protection for workers in bankruptcy can be strengthened, creating better justice and legal certainty in Indonesia.

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