ARRANGEMENT OF BANKRUPTCY DEBT REPAYMENT TOWARD EMPLOYEES IN INDONESIA AND GERMANY

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Submitted: May 13, 2022; Reviewed: Jun 19, 2022; Accepted: Jun 26, 2022
DOI: 10.25041/iplr.v3i1.2598

Abstract
Employees have special rights in the settlement of bankrupt debts to obtain their rights as regulated in the Indonesian Bankruptcy Law. However, employees must compete with other creditors who also have privileges under bankruptcy law, such as the tax office, insurance policy holder, and bankruptcy fees. Due to the existence of several special creditors, employees do not get their rights in the first order as regulated in the labor law. This study aims to determine the mechanism for filing bankruptcy against debtors in terms of legal entities and the position of employees in paying bankruptcy debts compared to other creditors in the Indonesian and German legal systems. This type of research is normative legal research conducted by examining library materials or secondary data. This study analyzes the mechanism for filing bankruptcy against debtors as legal entities according to the Indonesian and German legal systems which are divided into 3 (three) stages, namely registration, trial, and implementation of the bankruptcy decision. The position of employees in the settlement of bankrupt debts differs between Indonesia and Germany. In Indonesia, for the payment of "wages", the position of employees has a "privilege" which takes precedence over other creditors. However, for the settlement of "other rights" owned by employees, they do not have a privileged position as wages, so they are not included in priority payments. Whereas in Germany, there is a special feature called “bankruptcy money” where the payment of three months' wages will be paid at the preliminary stage of the bankruptcy proceedings. In addition, the position of rights to the social plan, the position of employee receivables are payments that are prioritized over other creditors. Finally, rights that are not included in the bankruptcy money, whose position in a settlement is after the demands of the creditor whose position is higher than the unsecured creditor have been fully fulfilled.

Keywords: Bankruptcy, Insolvency, Repayment, Debt, Position, Rights.

A. Introduction
The 1945 Constitution of the Republic of Indonesia guarantees that every citizen has the same rights and treatment before the law and fair treatment in employment relations. This is stated in Article 28D paragraphs (1) and (2) of the Republic of Indonesia's 1945 Constitution, which states that "everyone has the right to recognition, guarantees, protection, and fair legal certainty,
as well as equal treatment before the law” and "everyone has the right to work and to be paid and treated fairly in an employment relationship."

Employees have a vulnerable position in guaranteeing their fundamental rights because they are bound by an employment relationship with their employers, who have a higher economic position than employees. Almost all employees are very dependent on the economic life in which they work, but sometimes their rights to wages and other rights are often ignored, even though they are also individuals guaranteed by the constitution. Employees even have a particular position in settling bankrupt debts to obtain their rights as regulated in the Bankruptcy Law in Indonesia. However, this unique position is often ruled out in settling bankrupt debts because several creditors also have special rights. Employees must compete with other creditors who also have special rights under the bankruptcy laws and other laws related to debtor bankruptcy, including the tax office, insurance policyholders, and bankruptcy fees. Due to several particular creditors, employees do not get their rights in the first order as stipulated in the labor law.

In this regard, the purpose of this study was to compare the arrangement of employee privileges with the German bankruptcy legal system. The reason for choosing German law over Indonesian law is that, according to the 2016 European Commission, Germany is ranked second among European Union member states in terms of the effectiveness of its bankruptcy proceedings. This effectiveness is measured in terms of reducing the number of jobs lost due to bankruptcy, providing more legal certainty to cross-border investors, converting bad loans into performing loans to facilitate loans, and resolving employee rights. Germany's effectiveness in regulating and enforcing bankruptcy laws serves as an excellent model for comparison. Employees are one of the issues that must receive special attention in bankruptcy law. Therefore, to find out the position of employees in paying off debts in bankruptcy, a comparison of the two legal systems is carried out to analyze how the mechanism for filing bankruptcy against debtors as legal entities in the Indonesian and German legal systems and how the position of employees in payment of bankrupt debts is compared to creditors in the Indonesian and the German legal system?

Based on this background, the author tries to analyze the debt payment arrangements for employees in Indonesia using the German system. This research is expected to contribute to the mechanism for filing for bankruptcy. The novelty of this research will contribute to the mechanism for filing for bankruptcy, the position of employees in paying debts and the comparison of the legal system in Indonesia with the German legal system.

This research is normative. It is carried out by reviewing primary legal materials in the form of regulations relating to the problem formulation, then explained by using primary legal materials, either in the form of books, articles, or other previous research. The focus of the research is to analyze the weakness of the regulation of employees' rights in the bankruptcy law in Indonesia, then compare it with the regulation of employees' rights in the bankruptcy law in Germany. The statutory approach is carried out to analyze whether there is a match between several applicable regulations regulating employees' rights in the event a company goes bankrupt. For this reason, in addition to the statutory approach, this study uses a comparative approach. Meanwhile, a comparative approach is carried out to examine how different legal systems deal with some legal issues and is intended to obtain conclusions regarding the different arrangements in each legal system and or how to deal with specific issues in the two legal systems.

B. Discussion

1. Mechanism to File Bankruptcy against the Debtor in Terms of a Legal Entity between Indonesian and German Legal System

This section is important to provide an overview that there are differences in the treatment of employees' rights in bankruptcy law in Indonesia and Germany, especially at the stage of the
bankruptcy process. In Indonesia, the payment of creditors’ receivables is conducted after the bankruptcy decision, especially during the settlement of bankruptcy assets, including employees’ rights. Meanwhile, under German bankruptcy law, employees’ rights are granted at an early stage of the bankruptcy process and a special mechanism protects employees’ rights if the company is declared bankrupt.

a. **Mechanism to File Bankruptcy against Debtor in Terms of a Legal Entity According to the Indonesian Legal System**

In Indonesia, a bankruptcy petition can be filed by either the debtor or the creditor. However, before filing for bankruptcy, creditors or debtors must first consider whether they have met the requirements outlined in Article 2 paragraph (1) of the Bankruptcy Law and Suspension of Debt Payment Obligations. If the requirements are met, the applicant may file for bankruptcy in the commercial court, either through a written application to the Commercial Court or through online administration/electronic administration, as specified in Article 1 paragraph (6) of Supreme Court Regulation Number 1 of 2019 on Case Administration and Trial in Court Electronically. After registration, according to Article 6 Paragraph (4) of Bankruptcy Law, the clerk will submit the petition for bankruptcy to the Chief Court no later than 2 (two) days after the application is registered, then it will set a trial day.¹ Before the trial begins, the court will issue a summons by registered express letter no later than 7 (seven) days before the first examination hearing, and the hearing will be held no later than 20 (twenty) days after the date of application was registered, according to Article 6 Paragraph (6) of Bankruptcy Law.

When it comes to the Trial of Application for a Statement of Bankruptcy Stages, article 299 of the Bankruptcy Law states that “unless otherwise specified in this law, the applicable procedural law is civil procedural law,” which means that if the Indonesian Bankruptcy Law does not specify otherwise, the Civil Procedural Law of Indonesia applies as the procedural law in handling bankruptcy cases. To protect the interests of creditors, each creditor, prosecutor, Financial Services Authority, or Minister of Finance may apply to the court to place a seizure (Conservatoire Beslag) on part or all of the debtor’s assets, or appoint a temporary curator, as long as the decision on the application for a declaration of bankruptcy has not been pronounced.

The Commercial Court issues implementation of Bankruptcy Decisions on Debt Repayment to Creditors; one of the contents of the bankruptcy declaration decision is that a curator and a supervisory judge must be appointed. Based on Article 15 Paragraph (2) of the Bankruptcy Law, the orphan chamber is also possible to act as the management of the bankrupt assets if the applicant does not propose who should be appointed as curator. In addition to the appointment of a curator, in a bankruptcy decision or with a later determination, the court may form a temporary creditors committee consisting of 3 creditors in the bankruptcy case to provide advice to the curator.² Within no later than 2 (two) days after the appointment of a curator, the curator must make a record of bankruptcy assets, and the temporary creditors’ committee member has the right to attend the registration. Before the debt adjustment verification meeting, the first creditors meeting (pre-verification meeting) must be held chaired by a supervisory judge and attended by the debtor accompanied by their advocate, all creditors, applicants for bankruptcy, employees, or the national labor union, and curator.³ The agenda of the first

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¹ Article 6 Paragraph (4) and (5) Law No. 37 of 2004 of regarding Bankruptcy and Suspension of Payment.
meeting is to discuss the preparations that must be made and discuss other technical matters for the agenda of the debt adjustment meeting to be held next. The supervisory judge, based on Article 113 of the Bankruptcy Law, within a period of no later than 14 days after the verdict is pronounced, must determine:

- **a. the deadline for submitting invoices/claims;**
- **b. the deadline for tax verification to determine the amount of tax liability in accordance with the statute in the field of taxation;**
- **c. day, date, time, and place of the creditor's meeting to conduct the verification of receivables.**

The submission of the invoices/claims as referred to in letter (a) is submitted to the curator accompanied by several written statements as proof as contained in Article 115 Paragraph (1) of Bankruptcy Law. In the debt adjustment meeting (verification meeting), the debtors' debts that the curator has recorded will be matched in how much the amount is and the verification of information related to the creditor's position in the bankruptcy based on the debtor's information. At this meeting, a list of temporarily recognized receivables and a list of disputed receivables will be determined, as well as the status of the classification of the type of creditor, whether it is a concurrent creditor, a separatist creditor, or a preferential creditor.

If the final list of claims and classification of creditor types from the results of the adjustment of debt has been completed, the curator will provide a report on the state of the bankruptcy estate, which then the supervisory judge will approve the distribution list that the curator has made. Based on Article 202 Paragraphs (1) and (2) of Bankruptcy Law, creditors whose distribution lists have been matched will be paid in a total amount of their debt, or as soon as the closing distribution list becomes binding, the curator makes an announcement regarding the end of the bankruptcy in the state gazette of the Republic of Indonesia and also in the newspaper.

### b. Mechanism to File Insolvency against Debtor in Term of a Legal Entity According to Germany Legal System

1. **Stages of Registration of Application for a Statement of Insolvency**

The application of insolvency in Germany is the same as in Indonesia. Either debtor or creditors can propose the application, but there is an exception in regards to proposing for the ground based on imminent illiquidity; creditors cannot propose the application based on this ground because the ground/requirement of imminent illiquidity is only valid to a debtor who not able to meet its due payment obligations in the near future. Before submitting an application for insolvency, the debtor or creditors must pay attention to which conditions must be used to file insolvency in Germany, because in Germany, there are 3 (three) different conditions for the requirements that can be used in terms of the debtor is in the form of a legal entity, the three conditions are:

- **a) Illiquidity, according to Section 17 Paragraph (2) of the Germany Insolvency Code stated that** “the debtor is deemed illiquid if it debtor is unable to meet its due payment obligations. Illiquidity shall generally be presumed if the debtor has stopped making payments.”

- **b) Over-indebtedness, according to Section 19 Paragraph (2) of the Germany Insolvency Code stated that** “over-indebtedness exists if the debtor’s assets no longer cover its existing debts.”

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5 Article 113 of Law No. 37 of 2004.
8 Section 17 Paragraph (2) of Germany Insolvency Code.
liabilities unless the continued operation of the enterprise is substantially likely in the circumstances.”

c) Imminent Illiquidity, according to Section 18 Paragraph (2) of the Germany Insolvency Code stated “the debtor faces imminent Illiquidity if it is likely to be unable to meet existing payment obligations when they fall due.”

When the debtor or creditor feels that they have fulfilled one of the above conditions to file for insolvency, the applicant can submit the application either through a written application submitted directly to the Insolvency Court or electronically as stated in Section 5 Paragraph (4) of Germany Insolvency Code. After submitting the application of insolvency, once the date for hearing for oral argument has been determined, the court registry will summon the parties in at least two weeks from the time at which the statement of claim is served and the date of the hearing.

2. Stage of Preliminary Insolvency Proceedings

The procedural law applied in settling the insolvency cases is mentioned in Section 4 of the Germany Insolvency Code, which states that “unless otherwise specified in the present code, the provisions of the code of civil procedure apply with the necessary modifications to insolvency proceedings.” Talking about the comparison to the individual insolvency proceedings in Germany, in principle the rules governed is the same as what is set out on insolvencies of legal entities, but with some substantial modifications such as the individual may apply for a discharge of residual debt after the completion of insolvency proceedings, etc.

To handle the insolvency case in the proceedings, the number of judges in Insolvency Court because it is a part of Local Court, according to Section 22 Paragraph (1) of Germany Court Constitution Act the Insolvency Court shall be presided over by judges sitting alone.

In regards to avoiding any detrimental to the financial status of the debtor for the creditors until the insolvency court decides on the application, the Insolvency Court shall take the decision ordering provisional measure as stated in Section 21 Paragraph (2) of Insolvency Code, two of the decision ordering provisional measure is the appointment of preliminary creditor’s committee and preliminary insolvency administrator. For the preliminary creditor’s committee, the insolvency court will be required to set up a this if the debtor has an ongoing business operation and has satisfied at least two of the following requirement in the proceedings business years, such as a balance sheet sum of at least EUR 4,840,000 within the meaning of Section 268 Paragraph (3) of the German Commercial Code (Handelsgesetzbuch-HGB), the revenue of at least EUR 9,680,000 and at least 50 employees. To protect the debtor’s assets during the preliminary phase, the insolvency court, with the recommendation of the preliminary creditor’s committee, will appoint a preliminary insolvency administrator, which subjects under the supervision of the Insolvency Court.

In Germany’s insolvency, it’s also possible to carry out preliminary insolvency proceedings in self-administration. Pre-condition for self-administration is debtor applies for the order at the insolvency court, and there are no circumstances that lead to the expectation that self-administration could negatively affect the creditors. The main difference is that by self-administration, the rights to manage and dispose of the debtor’s assets remain with the debtor; in this stage, the debtor may use the instrument of a protective shield (Schutzschirmverfahren),

9 Section 19 Paragraph (2) of Germany Insolvency Code.
10 Section 18 Paragraph (2) of Germany Insolvency Code.
11 Section 4 of Germany Insolvency Code.
which means this instrument is the main reorganization that can be used by the debtor during the stage of preliminary insolvency proceedings.\textsuperscript{13}

The period of preliminary insolvency proceedings usually takes 6 to 12 weeks and results in the opening of insolvency proceedings.\textsuperscript{14} During the period of this phase, the preliminary insolvency administrator prepares a report to the court that states whether there is sufficient ground as the basis for filing insolvency or not and whether the debtor has sufficient assets or not to cover the cost of proceedings. At the end of the results, the report will be given to the court and propose either that insolvency proceeding will be opened or not.\textsuperscript{15}

The first agenda of the trial is Reading a Statement of Application (Klagesschrift); the applicant will read the statement of the application for insolvency. The second agenda is Response (Klageerwiderung); according to Section 277 Paragraph (1) of the Germany Civil Procedure Code, the defendant will defend in the statement of defense provided that based on the circumstances of the proceedings, the statement of defense is to address any reasons that would prevent the matter from being ruled on by a judge. The third agenda is Replication (Replik); the turns of the applicant to respond to the argument of the defendant toward his/her answer. The fourth agenda is Rejoinder (Duplik), which means the turns of the defendant to give the response back to the replik of the applicant.

The fifth agenda is the Examination of Testimony by Witnesses and Experts; in this phase, the preliminary insolvency administrator will present his report about whether the valid reason to declare insolvent for a debtor met the requirement or not, whether the cost of proceedings is sufficient or not, as stated in Section 22 Paragraph (1) Point (3) of Germany Insolvency Code. The sixth agenda is the Conclusion. And the last agenda is a Decision; in this agenda, if the ground for insolvency exists and the debtor assets are likely to cover the costs of the proceedings, so the insolvency court issues a decision to initiate open insolvency proceedings.

3. **Stage of Open Insolvency Proceedings**

Once the open insolvency proceeding is open, the court will appoint the insolvency administrator. The preliminary insolvency administrator is generally re-appointed to be the insolvency administrator to continue and manage the assets of the debtor. In this phase, the right to manage the asset also can be through the self-administration in which the managing director will assume the tasks of insolvency administrator and thus set out the restructuring course by himself while taking into account the creditor interest whose tasks will be supervised under the supervision of custodian or insolvency monitor (sachwalter), but at the end, the choices to apply the self-administration will depend on the decision of Insolvency court based on the consideration of the recommendation of creditors meetings.\textsuperscript{16} Talking about the formation of the creditor committee in Germany Insolvency, the establishment will be conducted before the first creditor’s meeting.\textsuperscript{17}

The creditors must file their claim with the insolvency administrator, and the insolvency administrator shall register each filled claim in an insolvency schedule (insolvenztabelle) together with the information of content and attachments of the claim filling form such copies of documents evidencing the claim like what stated in Section 174 Paragraph (1) and (2) of Germany Insolvency Code. Insolvency administrators, in accepting the claim, first must review...

\textsuperscript{13}Torsten Schwarze and Ulrich Korth, “‘Germany’s Chapter 11’: Protective Shield Proceedings Increase with COVID-19 Insolvencies,” LEXOLOGY, 2020.


\textsuperscript{15}Dla Piper, op. cit., 8.


\textsuperscript{17}Baker Mckenzie, op. cit, 7.
all lodge claims and must determine whether the creditor claim intends to dispute any of them at the forthcoming verification meeting. The agenda of the verification meeting, according to Section 29 Paragraph (2) of the Germany Insolvency Code must be conducted between the expiry of the period to file a claim, and the verification meeting shall extend over not less than one week and not more than two months.

In frame to the insolvency schedule, a meeting will take place, and all insolvency creditors are entitled to present in the verification meeting. During the verification meeting, based on Section 176 of the Germany Insolvency code, the filled claims shall be verified in accordance with their amount and rank, and also each claim will be considered, for the claim disputed will be separated from the claim which is to be approved. And the last, the fixed claim will be confirmed in regards to the amount of the claim and their rank in the distribution, and regarding the claim shall be deemed to have been determined according to Section 178 Paragraph (1) of the Germany Insolvency Code, if no objection is raised by the insolvency administrator or by insolvency creditor during the verification meeting if any objection raised by a party is removed. In this verification meeting, the insolvency administrator will record the amount to be paid to creditors in a distribution register (verteilungsverzeichnis).

The final distribution of the insolvent estate can be distributed as soon as all assets have been released; even at that time, the insolvent estate may continue to receive income, but the important thing is that before making the final distributions, the insolvency administrator must obtain the court consent, and once all of the repayments of the debt have been distributed, the court will declare the insolvency proceedings to be at an end.

c. Similarities and Differences in the Mechanism to File Bankruptcy against the Debtor in Term of a Legal Entity between Indonesian and German Legal System

a. In Stage of Registration of Application for A Statement of Bankruptcy/Insolvency

Regarding the mechanism in submitting the application, either Indonesia or Germany can submit the application for bankruptcy/insolvency by written application submitted directly to the court or electronically. In Indonesia, if the applicant wants to submit the application directly, the applicant may submit a bankruptcy application to the head of the Commercial Court, which has relative competence in adjudicating bankruptcy cases. If electronically, the applicant, through his/her lawyer can register the application through online submission as mentioned in Article 1 Paragraph (6) of Supreme Court Regulation Number 1 of 2019 about the Case Administration and Trial in Court Electronically. In Germany also, the applicant can submit the insolvency application directly to the Insolvency Court either through a written application submitted directly to the court or electronically based on Section 5 Paragraph (4) of the Insolvency Code.

### The Differences are seen below:

<table>
<thead>
<tr>
<th>No.</th>
<th>Material</th>
<th>Indonesian Law</th>
<th>Germany Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Requirements</td>
<td>Has at least two creditors, and there is at least one debt that has matured and can be collectible.</td>
<td>Consist of 3 (three) different requirements, namely Illiquidity, Imminent Illiquidity, and Over-indebtedness, which will be determined by the debtor’s condition and who the debtor is.</td>
</tr>
<tr>
<td>2</td>
<td>Applicant</td>
<td>Can be submitted by its debtor or either at the request of one or more creditors.</td>
<td>Can be submitted by the debtor itself or by one or more creditors. But special for the requirement of</td>
</tr>
</tbody>
</table>

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18 Section 270b Paragraph (4) of Germany Insolvency Code.
19 Dla Piper, op. cit., 9.
3. Who is debtor

The debtor can be an individual or a legal entity. For the requirement of *Illiquidity* and *Imminent Illiquidity*, the debtor can be an individual or a legal entity. But based on *Over-indebtedness*, the debtor must be in the form of a legal entity.

4. Time to summons the parties to hold a hearing in court

No later than 7 days before the first examination hearing is held. At least two weeks must elapse from the time at which the statement of application is served and the date of the hearing.

**b. On Stages of the Trial of Application for A Statement of Bankruptcy/Stage of Preliminary Insolvency Proceedings**

*First*, regarding the procedural law applied in the trial, both Indonesia and Germany, as long as it is not specifically regulated in the bankruptcy/insolvency act, use the civil procedural law in handling the cases. In Indonesia, the procedural law applied in settling the bankruptcy case is mentioned in Article 299 of Bankruptcy Law. Further, Germany’s insolvency law regulates it in Section 4 of the Germany Insolvency Code. *Second*, basically, regarding protecting the interest of creditors, in both Indonesia and Germany’s bankruptcy law, the competent court may take such kind of a preventive decision before the declaration of bankruptcy/insolvency against the debtor. *Third*, regarding the agenda of the bankruptcy/insolvency proceedings, both Indonesia and Germany have a similar agenda of the trial as regulated in their civil procedural law. In Indonesia, the agenda of a trial starts with the reading of the bankruptcy application, answer, replik, duplik, examination of the evidence of letters and/or witnesses, conclusion, and decision.²⁰ In Germany, the agenda of a trial starts also from reading a statement of application (klageschrift), response (klageerwiderung), replication (replik), rejoinder (duplik), examination of the evidence of letters and/or witnesses, conclusion, and decision.²¹

**The Differences are seen below.**

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<tbody>
<tr>
<td>1</td>
<td>The limitation period of the trial</td>
<td>No later than 60 (sixty) days after the date the application for bankruptcy is registered.</td>
<td>No later than the period of 12 weeks or 3 months.</td>
</tr>
<tr>
<td>2</td>
<td>Number of judges</td>
<td>In the form of a panel with a total of 3 (three) judges consist 1 of the presiding judge and 2 (two) members judges.</td>
<td>Presided over by judges sitting alone.</td>
</tr>
<tr>
<td>3</td>
<td>Preliminary creditor’s committee</td>
<td>The formation of a temporary creditor committee is not a necessity; the formation in the stage implementation of bankruptcy</td>
<td>Conducted in the stage of preliminary insolvency proceedings and the appointment of this committee will be required if fulfilled the Section 22a</td>
</tr>
</tbody>
</table>


decision specifically, before the verification meeting is held. Paragraph (1) of the Germany Insolvency Code.

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<tbody>
<tr>
<td>4</td>
<td>Role of the preliminary insolvency administrator (PIA) / temporary curator</td>
<td>Only limited to supervising the debtor business management and payments to debtors and transfer of use of assets as stated in Article 10 Paragraph (1) Point (b) of Bankruptcy Law.</td>
<td>Not only limited to securing, supervising, and continuing the enterprise operated by the debtors, but the PIA will investigate and act as an expert in preliminary insolvency proceedings.</td>
</tr>
<tr>
<td>5</td>
<td>Instrument of a protective shield (Schutzschirmverfahren)</td>
<td>Concerning the main reorganization, regulations regarding the company reorganization have not been firmly and regulated under Indonesian Bankruptcy Law.</td>
<td>A debtor may submit an application for self-administration together with a protective shield as the main reorganization during the stage of preliminary insolvency proceedings.</td>
</tr>
<tr>
<td>6</td>
<td>System of Proof</td>
<td>The system of proof applies using the simple evidentiary principle which has at least two creditors and at least one debt that has matured and can be collectible.</td>
<td>Depends on the condition of the debtor associated with the requirement of insolvency, namely Illiquidity or Imminent Illiquidity or Over-indebtedness.</td>
</tr>
</tbody>
</table>

c. In Stages of Implementation of Bankruptcy Decision on Repayment of Debts to Creditors/ Stages of Open Insolvency Proceedings

*First,* regarding the appointment of a curator or insolvency administrator, both in Indonesia and German, at the beginning of this stage, there is an appointment of a curator or insolvency administrator, and both regulations similarly regulate that if the preliminary insolvency administrator/ temporary curator can be appointed again to be the insolvency administrator or curator as a person who will manage the bankrupt/insolvent estate. *Second,* regarding the agenda of the verification meeting, both Indonesia and Germany in the agenda of verification meeting discuss the adjustment of the amount of the debtor’s debt and the adjustment of the creditor’s position in the bankruptcy/insolvency. In this verification meeting also for each claim will be considered, and the claims that are disputed will be separated from the claim which is to be approved.

The Differences are seen below.

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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The person who will manage the bankrupt/insolvent assets</td>
<td>Only by curator/orphan chamber.</td>
<td>Not only is an insolvency administrator, but it’s also possible for the debtor called self-administration.</td>
</tr>
<tr>
<td>2</td>
<td>The time for rights to manage and transfer the insolvency estate to the curator/Insolvency Administration</td>
<td>Effective starting at 00.00.</td>
<td>Upon the opening of the open insolvency proceedings stage.</td>
</tr>
<tr>
<td>3</td>
<td>Establishment of a temporary creditor committee and creditor committee</td>
<td>The establishment of temporary creditor is formed before the verification meeting is</td>
<td>The establishment of a temporary/preliminary creditors committee is formed in the stage of preliminary insolvency proceedings, while the establishment of a creditor’s committee is</td>
</tr>
</tbody>
</table>

2. The Position of Employees on the Repayment of Bankruptcy Debt Compared with Other Creditors between Indonesian and The German Legal System

a. The Position of Employees on the Repayment of Bankruptcy Debt According to the Indonesian Legal System

The position of employees in Indonesian Bankruptcy before Law No. 11 of 2020 concerning Job Creation was based on the Decision of the Constitutional Court Number 67/PUU-XI/2013 as a result of the discovery of a clash of “privilege provisions” against the distribution of bankruptcy assets between employee and separatist creditors in the provisions of Law No. 13 of 2003 concerning Manpower and Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. However, in 2020, the legislator ratified Law No. 11 of 2020 concerning Job Creation, and in that Job Creation Law, there are provisions governing employees’ positions in bankruptcy. If there is a condition where a new legal norm has an equal or even higher position than the old legal norm, to determine which legal norm that will be prevailed, we can apply the principle of ‘lex posterior derogate legi priori’. So means, that here the position of employees in bankruptcy. First, the Article 95 Paragraph (1) of Chapter IV Manpower of Law No. 11 of 2020 concerning Job Creation stated that:

“In the event that the company is declared bankrupt or liquidated based on the provisions of laws and regulations, wages and other rights that have not been received by the worker/employees are debts whose payment takes precedence.”

Based on the article above, the position of employees with respect to payment of wages is a position that has "privileged rights," which makes employees in bankruptcy classified as one of the preferential creditors whose wages are paid prior to other creditors. The classification of employees as preferential creditors put their wages as a privilege in the repayment of debt. In this matter, the employees have a right to propose an application for bankruptcy if they feel their rights are not being fulfilled or it is too late to fulfill them. As for what components of wages are paid priority, refer to Circular Letter of Minister of Manpower No.07/MEN/1990 about the grouping of components of wages and non-wages, means by wages are the basic wages, fixed allowance (health benefits, housing allowance, etc.) and non-permanent allowance. After payment of employee’s wages which is the preferred payment as stated in the Job Creation Law, there are other "privileges" that are also granted to preferred creditors whose payments must also take precedence over other types of creditors after payment of employee's wages namely: taxes, auction fees, court fees (Article 1139 Paragraph (1) and Article 1149 Paragraph (1) Indonesian Civil Code), billing rights against the state and of public

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24 Article 95 Paragraph (1) of Chapter IV Manpower of Law No. 11 of 2020.
legal entities (Article 1137 Indonesian Civil Code), costs incurred for salvaging objects (Article 1139 paragraph (4) in conjunction with Article 1150 Indonesian Civil Code).

Furthermore, before discussing the position of repayment of the debts of “other employee rights,” while comparing the position of employees with other creditors in bankruptcy, there is a separatist creditor or what is often referred to as a creditor holding material guarantees whose position in the payment of bankrupt debts has executive rights as described in Article 55 Paragraph (1) of Bankruptcy Law.

Second, The position of “other rights” received by employees in the repayment of debt according to Article 95 Paragraph (3) of Chapter IV Manpower Law No. 11 of 2020 concerning Job Creation states: “Other rights of workers/employees as referred to in paragraph (1) are paid first for all creditors except creditors who hold material security rights.”

So it can be concluded that the position to other normative rights of employees is not the same or not equal to the position in the payment of wages as stated in Article 95 Paragraph (1) of the Job Creation Law. Therefore, based on Article 95 Paragraph (3) from Chapter IV Manpower Law No. 11 of 2020 concerning Job Creation, the position of the repayment of other rights of employees is after a separatist creditor. However, regard to "other rights" received by employees can be related to the situation of termination of employment. The substitution of rights to be granted by the employer as contained in Article 156 Paragraph (1) Chapter IV Manpower Law of the Job Creation Law states: “In the event of termination of employment, the entrepreneur is obliged to pay severance pay and/or service award money and compensation for entitlements that should have been received.”

Article 156 Paragraph (4) Chapter IV Manpower Law of the Job Creation Law further explains what is meant by compensation money that should be received as referred to in paragraph (1), which can be concluded that the “other rights” that employees receive in the event of bankruptcy include right on severance pay, the right to award money, the right to paid leave of absence that has not been taken and canceled, costs or fees for returning of workers/employees, and other right stipulated in work agreements, company regulations or cooperation agreements.

Last, the position of the concurrent creditors in the settlement of debts is carried out after the repayment to all creditors, in which the provisions in making repayments are based on Article 1132 of the Indonesian Civil Code, which states that concurrent creditors are creditors with rights pari passu and pro-rata, which means that each concurrent creditor has the same position in paying off the debtor's debt without anyone taking precedence. So can be concluded that the position of employees in the repayment of debt in bankruptcy matters under the provision of Job Creation Law is still categorized as preferred creditors in which the payment is paid before other creditors.

b. The Position of Employees on the Repayment of Insolvency Debt Compared with Other Creditors According to the Germany Legal System

Special features Insolvency protection for employees in Germany has a wages protection fund which entitled to insolvency benefit for three months in the receivable duration of wages starting in the stage of filling the insolvency application has taken place until the end of the stage preliminary insolvency proceedings called as “Insolvency Money” (Insolvenzgeld).

28 Article 95 Paragraph (3) of Chapter IV Manpower Law No. 11 of 2020.
30 Ibid, p.159.
31 Article 156 Paragraph (1) Chapter IV Manpower Law No. 11 of 2020.
Means by this insolvency money is a wage replacement payment from the Employment Agency in which according to Section 358 Paragraph (1) of Social Security Code (SGB) Third Book (III) of German is the sources is coming from the monthly contribution raised by the employers. According to Section 165 Paragraph (1) of Social Security Code (SGB) Third Book (III) of German, the requirement to be entitled to receive this *Insolvenzgeld* are the employees were employed in German and follow with there is an insolvency event, or if the condition to open the stage of opening insolvency proceedings do not take place for insufficient assets or in case of complete termination of business activities due to there are no assets. Section 165 Paragraph (2) of Social Security Code (SGB) Third Book (III) of German, mentioned that “claim to wages include all claims to remuneration from employment relationship.” So it means that the repayment of the insolvency money to employees is not only limited to the fixed wages but also includes the right of the other fixed wages such as private health, nursing care, holiday pay, bonuses, and pension contribution based on the rights of this employee are stated under employment relationships between employee and the employer (the debtor). Along with this section, the payment of the insolvency money to employees based on Section 167 Paragraph (1) of Social Security Code (SGB) Third Book (III) of German is paid in the amount of the net remuneration, which means that by the amount of monthly receive after all taxes, social security contribution, and other cost have been deducted. To obtain this insolvency money, the claim is not registered with the insolvency administrator but rather directly to the Federal Employment Agency.

Besides the insolvency money given as the repayment of the wages and other rights of employees in German, there is a term “social plan.” The meaning of the social plan is the compensation or mitigation of the economic disadvantages suffered by employees as a result of a change in business plans. According to Section 123 Paragraph (1) of the Germany Insolvency Code, there are two conditions for employees who have the right to receive a social plan from their employers. First, because there is a condition of termination of employees and because there are disadvantages of the changing plan or business that impact on the employee such as restructuring, creating a new business production, transferring operation, and both of them caused as a result of the insolvency matters. The amount of social plan will be provided for up to two and a half months of wages. Discussing the burden of the social plan, Section 123 Paragraph (2) mentioned that the burden of the social plan is included in obligations incumbent on the insolvency estate, so it means the social plan gives rise to direct claim against the insolvency administrator.

Talking about the preferential creditors in the repayment of insolvency debt, the position of the repayment is settled in advance compared with the other creditors; this is mentioned in Section 53 of the Insolvency Code about the preferential creditors stating that: “The insolvency estate shall be used to settle in advance the cost of the insolvency proceedings and the other debts incumbent on the estate.”

Means by this section is the cost of insolvency proceedings and the other debts incumbent on the estate are rank in higher priority to all other debts, for the specification of what its mean by the cost of insolvency proceedings are mention in Section 54 of Germany Insolvency Code.

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33 Section 165 Paragraph (1) of Social Security Code (SGB) Third Book (III) of German.
34 Section 165 Paragraph (2) of Social Security Code (SGB) Third Book (III) of German.
36 Ibid., p. 22.
38 Section 53 of Germany Insolvency Code.
which are the court fees in respect of the insolvency proceeding and the remuneration earned and the expenses incurred by the preliminary insolvency administrator, the insolvency administrator and the members of the creditors’ committee, and for what its mean by the other debts incumbent on the estate are mention in Section 55 of Germany Insolvency Code such as the debt created by the activities of the insolvency administrator or in another way by administration, disposition (section 55 Paragraph (1) Germany Insolvency Code, obligation under mutual contract claimed credit of the insolvency estate or the be settled after the opening of the insolvency proceedings (Section 55 Paragraph (2) Germany Insolvency Code), obligation due to restitution for unjust enrichment of the insolvency estate (Section 55 Paragraph (3) Germany Insolvency Code), etc.

Companies experiencing financial difficulties often try to reduce operating expenses by decreasing labour costs.\(^{39}\) Discuss again regarding the Social plan received by employees; the payment is also categorized as ranked in higher priority than all other debts because the social plan, according to Section 123 Paragraph (2) of the Insolvency Code, is categorized as the obligation incumbent on the insolvency estate which makes the position in higher priority.

After discussing the position of the preferential creditors as the priority payment in insolvency, for secured creditors, the position of repayment is entitled to preferential treatment that has a right priority in satisfaction of collateral because of the nature of its security rights in here the secured creditor can execute the collateral by their own or by the insolvency administrator. If there are proceeds or the surplus of the collateral will be realized to the unsecured creditors.

Position of unsecured creditors (insolvenzgläubiger) in the repayment of insolvency debt will be distributed on a pro-rata basis among all unsecured creditors, which are the source coming from the remained insolvency assets after the claim of the creditors whose position is higher than unsecured creditors have been completely satisfied.\(^{40}\) Along with the special treatment of employees by insolvency money in advance, in regard to some of the employees’ rights which earn after the period of insolvency money has run out, the employees must register the claim to the insolvency administrator, which puts their position as an unsecured creditor. The claim submitted by the employees in this section is usually as non-preferential compensation, which does not include in the insolvency money, such as the claim of remuneration after the insolvency money period, claim of severance payment, or claim of vacation pay, etc.\(^{41}\) The last is the subordinated creditors such as shareholders, the position of this creditor in the repayment of debt has the lowest priority among all claims in the insolvency proceedings. Consequently, this creditor received the repayment based on their claim after all other creditors’ claims have been paid up if there are sufficient assets available.

c. Differences in the Position of Employees in the Repayment of Bankruptcy Debt between Indonesia and the German Legal System

The law of bankruptcy/insolvency, which regulated the position of employees on the repayment of debt between Indonesia and German, has a very different character; it comes from the unique feature of the Germany Insolvency Code, namely Insolvenzgeld which was given in 3 months in the stages of preliminary insolvency proceedings. In Indonesia, the claim toward wages is directly submitted to the curator after the declaration of bankruptcy, while in Germany, the claim in the form of Insolvenzgeld is directly submitted to the Federal Employment Agency.


However, based on the above differences, if it is adjusted to their position in bankruptcy between Indonesia and Germany, the payment of employees' wages in both countries is categorized as a preferential creditor whose payment takes precedence over other creditors.

In regards to "the other rights" of employees in terms of bankruptcy/insolvency between Indonesia and Germany, the difference is if, in Indonesia, the position of repayment does not have the privileged right as the wages, so in terms of repayment, "the others right" of employee is not categorized in the priority payment. While in Germany, for the social plan for the employee which causes termination of employees and because there are disadvantages of the changing plan or business that impact on the employee for the position of employee claim is categorized as a priority payment over the other creditor. For the rights which do not include in the insolvency money, the position of employee claim such in the repayment after the claim of the creditors whose position is higher than unsecured creditors has been delighted.

When comparing the two regulations, Indonesia cannot be denied, even though the regulation already classifies employees as preference creditors whose payments are prioritized over those of other creditors. However, compared to Germany, Indonesia has weaknesses in the repayment of employee wages because the repayment of wages is distributed in the stage following the declaration of bankruptcy against the debtor, in which their rights are sometimes ignored. So, applying the Germany Insolvency Code mechanism in Indonesia through the scheme of Insolvenzgeld will bring more benefits because the employee can continue to work for up to three months in the stage of preliminary insolvency proceedings, which benefit the company and will make the restructuring of the company possible and earlier, for the employee will bring the benefit as the security for them due to the unpaid wages due to the company's condition.

C. Conclusion
Basically, the mechanism to file a bankruptcy against the debtor in terms of a legal entity, according to Indonesia and Germany's legal system, is divided into 3 (three) stages, namely the stage of registration, the stage of a trial, and the stage of implementation of bankruptcy decision. The most notable difference in Germany’s mechanism compared to Indonesia is related to the requirement to submit the application, and the possibility of applying the concept of self-administration, and the protective shield (schutzschirmverfahren) instrument. German recognizes Insolvenzgeld as the special right of an employee which was given in 3 months in the stages of preliminary insolvency proceedings.

The rights of employees on the repayment of debt between Indonesia and German, have a very different character. through The German Insolvency Code, which regulates Insolvenzgeld which was given in 3 months in the stages of preliminary insolvency proceedings. In Indonesia, the claim toward wages is directly submitted to the curator during the management of bankruptcy assets. while in Germany, the claim in the form of Insolvenzgeld is directly submitted to the Federal Employment Agency. However, the position of employees in Indonesia and Germany bankruptcy law is categorized as a preferential creditor whose payment takes precedence over other creditors. The differences between “the other rights” of employees in Indonesia and German bankruptcy law, stated that in Indonesia the position of repayment does not have the privileged right, so repayment is not categorized as a priority. Meanwhile, Germany recognizes the social plan for the employee which causes termination of employees.

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