

## Normative Study of the Inconsistency of the Supreme Court Circular Letter Number 2 of 2019 with Statutory Regulations in Bankruptcy Filing by Workers

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### ABSTRACT

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*This research is motivated by the dualism of considerations and decisions of judges in addressing bankruptcy applications filed by workers, which prompted the Supreme Court to issue Supreme Court Circular Letter Number 2 of 2019. This study aims to analyze the legal problems in terms of substance in the circular letter as a legal basis for workers filing for bankruptcy. The method used is normative legal research with a statutory and a conceptual approach. The research results indicate that there are several legal problems in the substance of the Supreme Court Circular Letter Number 2 of 2019, including inconsistencies with the concept of bankruptcy in applicable laws and regulations, potential violations of absolute authority between the Commercial Court and the Industrial Relations Court, and the emergence of a legal vacuum that has an impact on legal certainty and protection for workers as creditors. The findings of this study have significant implications for both legal practice and policy. Firstly, the inconsistency in the application of bankruptcy law for workers creates confusion and limits workers' rights, undermining their ability to access timely justice. Furthermore, the legal vacuum caused by the circular letter highlights the need for clearer legislation to align judicial practices with constitutional rights. The study calls for a revision of SEMA Number 2 of 2019 to ensure workers are granted equal legal protections and access to bankruptcy processes, strengthening their bargaining position and guaranteeing their rights as creditors. Additionally, this research could guide lawma.*

### INTRODUCTION

In the Indonesian legal system, bankruptcy is one of the legal mechanisms provided for creditors to obtain a settlement of their receivables if the debtor is unable to pay their debts that have matured (Aprita, 2018). One group that has the potential to become a creditor in this case is laborers or workers who do not receive their rights, such as wages, severance pay, and other benefits. However, in practice, filing a bankruptcy petition by workers often faces various obstacles, both from a legal and policy perspective (Anisah, 2019). This raises complex problems, especially when there are differences in interpretation among judges in deciding bankruptcy cases filed by workers (Directorate General of Water Resources, 2019).

In recent years, the phenomenon of workers filing bankruptcy petitions against their companies has become more frequent, especially when companies experience financial difficulties and fail to fulfill their obligations to pay workers' normative rights, such as wages, severance pay, *holiday allowances (THR)*, and compensation money. Workers, as creditors who have receivables from the company, utilize the bankruptcy legal path as an effort to obtain

legal certainty and execution of the debtor's assets (Hadi, 2019). Normatively, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations does not limit the subjects who can file a bankruptcy petition, as long as they fulfill the elements of two creditors and there is a debt that is due and collectible (Nugroho, 2018). This puts workers in a legitimate legal position to file a bankruptcy petition, although they are often faced with administrative obstacles and resistance from employers and the courts.

Problems arise when the courts respond to bankruptcy petitions by workers differently. In several cases, the Commercial Court accepted and granted the bankruptcy petition filed by workers, for example in the case of PT Istana Kuta Ratu (2015) and PT Cipta Televisi Pendidikan Indonesia (TPI). However, in other cases, workers' applications were rejected because disputes regarding payment of workers' rights should be resolved through the *Industrial Relations Court*, not the Commercial Court (Alam, 2020). This creates dualism in judicial practice: some judges consider workers to be legitimate creditors in the bankruptcy regime, while others argue that workers must first take the path of resolving industrial relations disputes. This inconsistency creates legal confusion and uncertainty in the protection of workers' rights, and encourages the Supreme Court to issue Supreme Court Circular (SEMA) Number 2 of 2019, which adds to the polemic because it is considered to close the opportunity for workers to access the bankruptcy mechanism (Arbendi, 2019).

The background to the issuance of Supreme Court Circular (SEMA) Number 2 of 2019 cannot be separated from the conditions of judicial practice, which show inconsistency in handling bankruptcy applications filed by workers (Gani, 2015). In situations where companies are unable to pay workers' normative rights, some workers choose the bankruptcy legal route as a means to collect the debt. However, due to the absence of regulations that explicitly regulate the position of workers in the bankruptcy regime, there are differences of opinion among judges. Some judges accept the position of workers as creditors in bankruptcy cases, while others consider that labor rights disputes are within the realm of industrial relations that must be resolved in the *Industrial Relations Court* (Fitasari, 2020). This disharmony creates legal uncertainty and the potential for a backlog of cases in the Commercial Court, which encourages the Supreme Court to take normative policies through the issuance of SEMA. SEMA Number 2 of 2019 emphasizes that a petition for a declaration of bankruptcy by workers against a company should not be examined by the Commercial Court. This SEMA emphasizes that the legal relationship between workers and employers is an employment relationship that has a special character and is subject to *employment law* (Kahpi, 2018). Therefore, if workers have a claim for the right to wages or severance pay, the path that should be taken is through the *Industrial Relations Court*, not through the bankruptcy mechanism. In other words, this SEMA substantially limits workers' room for movement in accessing bankruptcy as a form of receivables settlement. In the context of legislation, this SEMA is problematic because it does not have the same legal force as a law, but has an internal binding force on judges as a form of judicial policy (Laheri, 2019).

The main purpose of the Supreme Court in issuing SEMA Number 2 of 2019 seems to be to standardize judicial practices and prevent the abuse of bankruptcy instruments by parties who are considered inappropriate to use the mechanism, including workers. The Supreme Court seems concerned that the bankruptcy mechanism will be used disproportionately as a means of pressure on companies, which has the potential to disrupt the stability of the business

world. In addition, the Supreme Court also seems to want to maintain clarity on the jurisdictional boundaries between the Commercial Court and the *Industrial Relations Court* so that there is no overlapping authority (Shubhan, 2020). However, on the other hand, this goal raises a legal dilemma because it limits workers' legal access without a strong legal basis in the hierarchy of laws and regulations. This can create new legal uncertainty and open up space for discrimination against workers in obtaining protection for their rights as creditors.

Legally, the Supreme Court Circular (SEMA) is an internal policy product that is administrative and organizational in nature, which is intended to provide technical guidelines for judges in responding to problems of judicial practice that do not yet have clear regulations in positive law. Although internal, SEMA often has a significant impact on the judicial process and judges' decisions. However, SEMA is not part of the hierarchy of laws and regulations as regulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. As a result, SEMA cannot be used as a binding legal basis for the wider community, including justice seekers (Sinaga N. A., 2016). In the context of SEMA Number 2 of 2019, this condition raises serious problems because even though it does not have a normative binding force, its substance limits workers' rights to access bankruptcy, thus creating inequality in legal treatment.

The provisions in the SEMA also substantially have the potential to conflict with Law Number 37 of 2004 concerning Bankruptcy and *PKPU*, which does not distinguish which creditors are entitled to file a bankruptcy petition, as long as the formal requirements are met, two creditors and debts are due and collectible. Within the framework of the law, workers who have receivables from the company are included in the category of concurrent creditors and have the same rights to file a bankruptcy petition. In addition, the *Manpower Law* also recognizes the normative rights of workers, which, if not fulfilled, will create receivables for the workers (Simamora, 2021). Therefore, the substance of the SEMA which prohibits workers from accessing bankruptcy has indirectly denied the rights of workers as legal creditors according to positive law. This shows a discrepancy between the contents of the SEMA and the provisions in laws and regulations that have a higher legal degree. Other legal issues relate to violations of the legality principle and the absolute competence of the court. By limiting workers' access to the Commercial Court and implicitly requiring settlement through the Industrial Relations Court, this SEMA has intervened in the realm of the absolute authority of the judicial institution. In fact, determining absolute authority is part of the jurisdictional division system that has been expressly regulated by law. In addition, the existence of SEMA which limits legal rights without a legal basis is contrary to the principle of legality, which states that restrictions on rights can only be carried out by valid laws and regulations. Thus, the application of SEMA in the context of bankruptcy applications by workers not only gives rise to normative inconsistencies but also threatens the basic principles of the rule of law, which uphold certainty, justice, and protection of human rights.

The issuance of SEMA Number 2 of 2019 has substantially limited the room for workers to use the bankruptcy mechanism as a means to claim their rights. By emphasizing that bankruptcy petitions by workers should not be examined by the Commercial Court, this SEMA indirectly closes the door for workers to collect their receivables through bankruptcy. In fact, in many cases, workers are the most affected party when the company is unable to pay its obligations. Bankruptcy is often the only way for workers to obtain payment of their rights

because, in the bankruptcy process, there is a process of debt verification and collective distribution of bankruptcy assets (Sinaga N. A., 2017). With these restrictions, workers lose access to legal mechanisms that are fast, effective, and have direct execution power over the debtor's assets. It gives the impression that workers are positioned as discriminatory compared to other creditors.

The policy born from this SEMA also creates legal uncertainty, both from a normative aspect and judicial practice. On the one hand, workers legally qualify as creditors under the Bankruptcy Law, but on the other hand, they are faced with administrative restrictions that do not have a strong legal basis. This uncertainty is further exacerbated by the fact that not all workers have adequate understanding and access to the *Industrial Relations Court* mechanism, which often takes a long time and does not provide immediate certainty of payment (Sucipto, 2021). In the long term, this situation has the potential to weaken workers' bargaining position before companies, as well as erode the guarantee of legal protection that should be provided by the state. Workers, as economically and structurally weak parties, are increasingly marginalized from access to justice that should be inclusive and equal.

Therefore, it is important to conduct a comprehensive normative study of the existence and substance of SEMA Number 2 of 2019. This study is needed to assess the conformity between the internal policies of the Supreme Court and applicable legal principles, including the principles of bankruptcy law, employment law, and the constitutional rights of citizens to obtain justice. This study is also important to encourage the creation of regulations that are fairer and in line with the hierarchy of laws and regulations, to prevent legal gaps or overlaps that are detrimental to workers. The results of this study are expected to be constructive input for the Supreme Court, lawmakers, as well as academics and legal practitioners in formulating judicial policies that are not only legally consistent but also socially just.

The issuance of the Supreme Court Circular (SEMA) Number 2 of 2019 aimed to address inconsistencies in judicial practices regarding bankruptcy petitions filed by workers. However, this policy has been controversial, as it limits workers' ability to access bankruptcy filings, thus intensifying the legal uncertainty surrounding workers' rights (Arbendi, 2019; Fitasari, 2020). This study examines the legal implications of SEMA Number 2 of 2019, critically assessing its consistency with existing laws and its impact on workers' rights as creditors.

The research gap in this area stems from the absence of comprehensive studies that explore the direct effects of SEMA on the legal framework for workers seeking bankruptcy proceedings. Existing literature has addressed the theoretical underpinnings of bankruptcy law and labor rights, but few have analyzed the practical consequences of SEMA in restricting access to bankruptcy for workers (Shubhan, 2020; Sinaga, 2017). This study fills that gap by providing a normative analysis of the circular's alignment with higher legal principles, such as the principles of legality, equality, and non-discrimination.

The novelty of this research lies in its exploration of the intersection between bankruptcy law, workers' rights, and judicial policies, specifically focusing on SEMA Number 2 of 2019. By investigating this policy, the study contributes to ongoing legal debates about the balance between protecting creditors' rights and maintaining the stability of the business environment. The findings of this research are expected to provide valuable insights for policymakers, legal practitioners, and scholars, offering recommendations to align judicial practices with higher laws to ensure fair and equitable access to justice for workers.

The primary objectives of this research are: (1) to assess the legal validity of SEMA Number 2 of 2019 in the context of bankruptcy law; (2) to analyze the implications of the circular on workers' rights as creditors; and (3) to propose recommendations for reform to safeguard workers' access to bankruptcy filings. The benefits of this research include fostering legal certainty and enhancing the protection of workers' constitutional rights within the framework of Indonesia's bankruptcy laws.

## METHOD

This study uses a normative legal research method, focusing on the study of written legal norms as the main object of study. The approaches used in this study consist of two types: the *statute approach* and the *conceptual approach* (Tan, 2021). The *statutory approach* is used to analyze relevant positive legal provisions, such as Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Law Number 13 of 2003 concerning *Manpower*, and Law Number 12 of 2011 concerning the Formation of Legislation. Meanwhile, the *conceptual approach* is used to explore the doctrines, legal principles, and thoughts of legal scholars regarding the concept of bankruptcy, the authority of the courts, and the position of workers as creditors in the Indonesian legal system. This approach is important to provide a normative framework that can explain and assess the validity of SEMA Number 2 of 2019 from a legal perspective.

The data sources in this study are secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and court decisions related to bankruptcy by workers. Secondary legal materials include literature, journals, scientific articles, and opinions of legal experts discussing similar issues. Tertiary legal materials are used as a complement, in the form of legal dictionaries and legal encyclopedias. Data collection techniques are conducted through *library research* by tracing, identifying, and reviewing legal documents related to the research topic. Furthermore, data analysis techniques are carried out qualitatively by interpreting legal norms, comparing applicable provisions, and linking them to relevant legal concepts to answer the formulation of the problem and draw conclusions argumentatively. The analysis is *descriptive-analytical* and aims to provide a comprehensive picture of the suitability or non-suitability of SEMA Number 2 of 2019 with the national legal system.

## RESULT AND DISCUSSION

### Legal Position of Supreme Court Circular (SEMA) Number 2 of 2019 in the Indonesian Legislative System

The Supreme Court Circular (SEMA) is a legal product issued by the Supreme Court of the Republic of Indonesia as a form of internal policy to provide guidelines or technical instructions in carrying out the duties and functions of the court. SEMA does not have the same legal force as other laws or regulations but rather aims to align and equalize perceptions among judges in handling a case that has certain characteristics or complexities. In other words, SEMA functions as an instruction for judges to maintain consistency and uniformity in the interpretation and application of the law, as well as to resolve cases that do not yet have provisions or experience difficulties in their implementation. In the context of SEMA Number 2 of 2019, this Circular regulates the procedure for filing for bankruptcy by workers and aims

to provide technical guidelines related to the court's authority in handling the case. (Utami, 2015)

Despite its important role in practical arrangements in court, SEMA is different from higher laws and regulations such as laws or government regulations. SEMA has no binding power on the wider community or parties involved in a legal case but is only binding internally for judicial institutions, especially judges handling relevant cases. The difference lies in the normative status, where laws and regulations have a higher position in the regulatory hierarchy and can be applied more widely. In contrast, SEMA only functions as an administrative guideline whose purpose is to direct judges in making decisions by the policies of the Supreme Court. Therefore, although SEMA has a significant influence on judicial practice, it cannot be viewed as a legal product that directly regulates the rights and obligations of the community or other parties outside the judicial system.

According to Law No. 12 of 2011 concerning the Formation of Legislation which was later amended by Law No. 13 of 2022, the hierarchical system of laws and regulations in Indonesia consists of various types of regulations that have different positions and levels of authority. At the top of the hierarchy is the 1945 Constitution of the Republic of Indonesia, which is the main source of law that regulates the entire legal system in Indonesia. Below it, there are laws formed by the DPR together with the President, as well as government regulations issued by the President. At a lower level, there are regional regulations, presidential decrees, and other laws and regulations regulated in implementing regulations. In this hierarchy, the Supreme Court Circular (SEMA) is not included in the category of laws and regulations that are generally binding, because SEMA is only an internal legal product issued by the Supreme Court to provide guidelines for judges in carrying out their duties. SEMA cannot be considered as part of the laws and regulations that have the same legal standing and force as laws or government regulations. As an administrative policy instrument, SEMA only functions as an internal guideline for the Supreme Court and judges in deciding cases faced. Therefore, although SEMA can influence judicial practice by providing technical guidelines, it does not have a strong binding force outside the court environment. This means that SEMA cannot be used as a legal basis that directly regulates the rights and obligations of the community, such as laws or government regulations that apply to all citizens.

The implication of SEMA's position which is not included in the hierarchy of higher laws and regulations is that SEMA only binds judges and judicial institutions in carrying out their duties. For the community or external parties, including those seeking justice, SEMA cannot be used as a binding legal basis. In other words, although SEMA provides direction on the procedures for resolving cases, such as in bankruptcy cases filed by workers, it does not have legal force that can be upheld in court if it conflicts with higher laws. Therefore, SEMA cannot be used to limit or regulate the rights of individuals or groups directly outside the courts, which should still refer to laws and regulations that have a higher position in the Indonesian legal system.

The Circular of the Supreme Court (SEMA) has internal binding power for judges and judicial institutions, which means that SEMA is a guideline or instruction that must be followed by judges in handling certain cases. As a product of the Supreme Court's internal policy, SEMA is designed to ensure consistency and uniformity in court decisions, especially in legal interpretation or application of rules that are not regulated in law. In this case, SEMA functions

as a guide for judges to deal with various legal issues that may not have clear provisions or are new. Therefore, although SEMA does not have an equal standing with statutory regulations, it must still be followed by judges within the scope of the competent court, to achieve uniformity and fairness in decision-making.

However, SEMA does not have external binding power on the public, including applicants or other parties involved in the judicial process. Since SEMA is internal, it cannot be used as a legal basis that directly regulates the rights and obligations of individuals or external parties, as is the case with higher statutory regulations, such as laws or government regulations. This means that although SEMA provides direction for judges in deciding cases, SEMA cannot be used by external parties as a reason or legal basis for their actions. For example, a worker who wants to file a bankruptcy petition cannot refer to SEMA as a legal basis governing his right to file for bankruptcy but must refer to the provisions of a higher law, such as Law No. 37 of 2004 concerning Bankruptcy and PKPU.

In judicial practice, SEMA functions as a judicial guideline or policy that helps judges determine the direction of decisions in cases that do not yet have clear rules or new cases that have not been explicitly regulated. As an internal policy, SEMA does not aim to create substantive legal norms that regulate the rights and obligations of parties in legislation. Therefore, SEMA only applies in implementing court decisions, not to establish binding legal rules outside the court. Despite its critical position in judicial practice, SEMA cannot be considered a legal norm equivalent to laws or government regulations because it has no binding power outside the scope of the court and does not regulate legal relations between individuals and the state or the wider community. SEMA functions more to ensure efficiency, clarity, and uniformity in the judicial process but remains limited in its scope as an internal policy instrument of the Supreme Court.

The Supreme Court Circular (SEMA) Number 2 of 2019, which regulates the procedure for bankruptcy applications by workers, can be analyzed from various legal perspectives to assess whether the substance of this SEMA exceeds its authority as an administrative policy. In general, SEMA is an administrative policy instrument and technical guidelines for judges in handling certain cases, but in practice, SEMA Number 2 of 2019 regulates matters that have the potential to touch on the substantive rights of the parties involved, in this case, workers. One of the important provisions in this SEMA is regarding the limitations for workers to file bankruptcy applications with the Commercial Court, which according to SEMA, cannot be done if the worker's status is only as an ordinary creditor in a bankruptcy case. This raises questions about the extent to which this SEMA has the right to limit workers' rights in filing bankruptcy applications because basically, this authority is regulated by Law Number 37 of 2004 concerning Bankruptcy and PKPU. Article 8 paragraph (1) of the Law states that anyone who has unpaid debts can file for bankruptcy, including workers who have unpaid wage receivables. Thus, the substance in the SEMA that limits workers' access to file for bankruptcy seems to exceed its authority as an administrative guideline.

Then, if we look at whether SEMA Number 2 of 2019 is in line with or contradicts higher laws, we need to refer to the principle of legality and the principle of *lex superior derogat legi inferiori*. Article 8 paragraph (1) of Law No. 37 of 2004 states that a bankruptcy application can be filed by anyone who has unpaid debts. This includes workers who as creditors have the right to demand payment of their wages. Meanwhile, in SEMA 2/2019, there is a limitation

stating that bankruptcy filing by workers can only be done if the worker is not just an ordinary creditor. This limitation contradicts the legal principles contained in the Bankruptcy Law which grants equal rights to all creditors, including workers, to file a bankruptcy petition. Thus, it can be concluded that the substance of SEMA 2/2019 contradicts the provisions in the Bankruptcy Law and the higher PKPU because it limits the constitutional rights of workers to obtain the same legal protection as other creditors.

Furthermore, an evaluation of the norms in SEMA that may limit workers' legal rights can be seen from the perspective of protecting workers' rights as workers. Law No. 13 of 2003 concerning Manpower, especially Article 90, guarantees the rights of workers to receive wage payments by applicable provisions, as well as protection of workers' rights if the company is experiencing difficulties. Article 93 of the Manpower Law also regulates the mechanism for resolving industrial relations disputes which can include wage demands, which can be part of a bankruptcy filing if the company is unable to pay its obligations. With these provisions, it can be understood that workers have the right to demand payment of their receivables, including through bankruptcy. However, SEMA 2/2019, which limits workers' access to file for bankruptcy, may close legitimate channels for workers to demand their rights, especially in fulfilling wage rights. Therefore, this SEMA may violate the principle of protection of workers' rights guaranteed in labor and bankruptcy law.

Supreme Court Circular (SEMA) Number 2 of 2019, although it is critical as an internal technical guideline for judges in carrying out their duties, should not be considered to exceed its authority as an administrative policy. The position of SEMA in the national legal system must be understood as an instrument that is a judicial guideline to maintain consistency and uniformity in court decisions, not as a substantive legal norm that directly regulates the rights and obligations of the community. As a policy product that does not have binding force outside the judicial institution, SEMA must remain in line with higher laws and regulations, such as Law No. 37 of 2004 concerning Bankruptcy and PKPU, and Law No. 13 of 2003 concerning Manpower. Therefore, the restrictions contained in SEMA 2/2019 regarding workers' rights to file bankruptcy applications have the potential to conflict with the principle of protecting workers' rights and with higher laws, and therefore, further review is needed to ensure alignment between the Supreme Court's policies and applicable laws for the sake of legal certainty and protection of workers' constitutional rights.

### **Legal Problems Arising from the Substance of the Supreme Court Circular Letter Number 2 of 2019 Concerning Restrictions on Workers' Rights in Filing Bankruptcy Applications**

The Circular of the Supreme Court (SEMA) Number 2 of 2019 which regulates the procedure for bankruptcy applications filed by workers raises many legal problems, especially related to the limitation of workers' rights to file bankruptcy applications for unpaid wage receivables. The substance of the SEMA limits the access of workers who are only ordinary creditors in bankruptcy cases, which can hinder workers from obtaining their rights through bankruptcy, even though they are entitled to receive unpaid wages. This limitation raises questions regarding the conformity of the SEMA with higher statutory provisions, such as Law Number 37 of 2004 concerning Bankruptcy and PKPU, which gives all creditors, including workers, the right to file bankruptcy applications without discrimination. With this policy that



limits workers' rights, legal uncertainty arises which has the potential to reduce legal protection for workers as the most vulnerable party in industrial relations, thus demanding further evaluation of the substance of this SEMA to ensure justice and protection of workers' constitutional rights.

The substance of the Supreme Court Circular (SEMA) Number 2 of 2019 limits the rights of workers to file for bankruptcy against companies that do not pay their wages. This SEMA stipulates that workers can only file for bankruptcy if they are not just ordinary creditors. This creates restrictions on the rights of workers to obtain legal protection through bankruptcy procedures which should be a channel for them to demand payment of unfulfilled wage rights. As regulated in Article 8 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, anyone who has unpaid debts can file for bankruptcy, regardless of their status as ordinary or special creditors. The restrictions in SEMA 2/2019 prevent workers from accessing their legitimate rights, simply because of their status as ordinary creditors, which is not regulated in higher legal provisions.

The use of the term "regular creditors" in SEMA Number 2 of 2019 creates confusion in its implementation because there is no clear definition of who is meant by "regular creditors" in the context of bankruptcy. In bankruptcy practice, creditors are divided into several categories, such as preferred creditors (for example, creditors who have collateral) and concurrent creditors (regular creditors), who do not have collateral for their receivables. However, in this case, workers' receivables wages should not be considered "regular creditors" who do not have privileges in the payment order. Instead, they should have a stronger position in obtaining delayed wage payments, as regulated in the Manpower Law. The limitation not only creates uncertainty in the application of the law but can also worsen the bargaining position of workers in financial disputes with companies, thereby reducing their access to justice.

This restriction on workers' access to filing bankruptcy petitions is contrary to higher legal principles, such as the principle of non-discrimination and access to justice guaranteed by the 1945 Constitution, and international law, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR). The principle of non-discrimination requires equal treatment of all parties involved in the legal process, regardless of their status. By limiting workers' rights only because of their status as ordinary creditors, this SEMA creates inequality in access to justice, which should not occur in a legal system that upholds social justice. Therefore, the restrictions in SEMA Number 2 of 2019 not only have the potential to harm workers but also violate their fundamental rights to obtain equal legal protection, by the principles contained in higher laws and regulations.

Law Number 37 of 2004 concerning Bankruptcy and PKPU provides clear rights to all creditors, including workers, to file bankruptcy petitions for unpaid debts by debtors, without discrimination. Article 8 paragraph (1) of the Bankruptcy Law states that anyone who has unpaid debts can file for bankruptcy, and this includes workers who have unpaid wage receivables. There are no restrictions on creditor status in bankruptcy law that state that only certain creditors can file for bankruptcy. Therefore, the right of workers to file for bankruptcy for their wage receivables should be recognized without any additional conditions that limit this access. It is in line with the equality principle in legal protection for every harmed creditor.

However, in SEMA Number 2 of 2019, there is a provision that limits the rights of workers to file a bankruptcy petition by stating that workers can only file a petition if they are not just ordinary creditors. This limitation contradicts the provisions of the Bankruptcy Law, which does not recognize discrimination against creditors based on their status in a debt-receivable relationship. Article 8 of the Bankruptcy Law explicitly provides equal rights for all creditors, including workers, to file for bankruptcy against companies that fail to fulfill their obligations. SEMA 2/2019, which limits the rights of workers based on their status as ordinary creditors, contradicts the spirit and substance of higher laws, which seek to provide equal legal protection for all creditors, without exception.

Violations of the principle of legality can also be identified in the provisions of this SEMA. In the Indonesian legal system, all policies, including those issued by the Supreme Court, must be subject to higher laws, by the principle of *lex superior derogat legi inferiori*. As stipulated in Article 1 paragraph (3) of the 1945 Constitution, Indonesia is a country based on law that must guarantee legal certainty for all its citizens, including workers. The restrictions stipulated in SEMA 2/2019 that do not have a legal basis in higher laws and regulations may infringe the principle of legality, where a legal action that limits a person's rights is only valid if there is a clear legal basis in higher laws and regulations. Therefore, the policy in this SEMA that limits workers' access to bankruptcy procedures has the potential to conflict with the principle of legality and the constitutional rights of workers as parties entitled to fair legal protection.

The restrictions contained in SEMA Number 2 of 2019 have the potential to have a negative impact on the protection of workers' rights as creditors, especially regarding the fulfillment of unpaid wages. With the restriction on workers' rights to file a bankruptcy petition, workers who have difficulty obtaining payment of their wage rights cannot utilize bankruptcy procedures as a legitimate legal path to demand company obligations. This creates legal uncertainty, where workers cannot easily obtain payment guarantees for delayed wage receivables, even though the certainty of wage payment is a basic right that must be protected by the state. This uncertainty also reduces workers' trust in the legal system that should provide them with an effective channel to claim their rights.

In addition, restrictions on workers' access to file bankruptcy applications have an impact on reducing workers' bargaining position in resolving disputes with companies experiencing financial difficulties. When companies face bankruptcy and mounting debts, creditors, including workers, should have equal access to fight for their rights through available legal channels. However, with these restrictions, workers are hampered in obtaining their rights through the bankruptcy process, and their position as the most vulnerable party in the employment relationship is further weakened. This leads to injustice, where companies that are entangled in financial problems can still avoid the obligation to pay workers' wages, while workers lose the opportunity to claim their rights fairly and equally.

The danger of imbalance in legal protection becomes increasingly apparent with the provisions that limit workers' rights to file bankruptcy applications. This restriction creates structural injustice in the legal system that leads to the marginalization of workers as parties entitled to legal protection. If workers are not given equal access to bankruptcy procedures, they are forced to accept a situation where their rights are not respected, especially in the context of wage receivables that should be prioritized for payment. This imbalance has the

potential to worsen the social and economic situation of workers, who have become the most vulnerable parties in industrial relations. Therefore, this policy must be evaluated to ensure that workers' rights as creditors remain well protected, and any policy that reduces their rights does not create greater injustice.

The legal uncertainty that arises due to the inconsistency between SEMA Number 2 of 2019 and higher laws and regulations, such as Law Number 37 of 2004 concerning Bankruptcy and PKPU, is a serious problem in the Indonesian legal system. SEMA as an administrative policy that does not have a higher legal basis, regulates restrictions on workers' rights to file for bankruptcy. In fact, the Bankruptcy Law gives the right to all creditors, regardless of their status, to file for bankruptcy. The inconsistency between the provisions in the SEMA and higher laws creates legal uncertainty, where workers who should be able to file for bankruptcy over their wage receivables are hampered by regulations that are not following the hierarchy of applicable laws and regulations. This uncertainty leads to doubts about whether workers can access legal procedures that should give them a way to claim their rights.

The impact of this uncertainty greatly affects workers' rights to access legal procedures to resolve debt payment problems by companies. Without legal certainty, workers who should be able to file for bankruptcy to obtain delayed wage payments are hampered in their efforts to obtain their rights. This uncertainty traps workers in an unfavorable situation, where they do not know whether they can use the bankruptcy route to claim the company's obligations. As a result, workers can have difficulty obtaining justice, because companies that have problems with wage payments can continue to avoid their obligations, while workers do not have a clear and effective mechanism to resolve the problem.

Therefore, there needs to be a review of SEMA Number 2 of 2019 so that the policy does not conflict with the principles of justice and protection of workers' rights. As an initial step, the SEMA needs to be revised or even revoked to ensure that workers' rights in filing for bankruptcy remain protected by higher laws and regulations. This revision or revocation is important to create legal certainty for workers, provide fairer access to legal procedures, and ensure that workers can continue to fight for their rights on an equal basis with other parties. This step can also make a positive contribution to a more inclusive and fair legal system, which protects the interests of companies and provides adequate attention to the rights of workers as vulnerable parties in industrial relations.

### **Legal and Practical Implications of the Implementation of the Supreme Court Circular Letter Number 2 of 2019 Regarding Legal Certainty and Protection for Workers as Creditors**

The implementation of the Supreme Court Circular (SEMA) Number 2 of 2019 has a direct impact on the basic principles of law, especially regarding the protection of workers' rights as creditors. One of the impacts is the obstruction of workers' rights to file a bankruptcy petition, which should be able to be done based on the Bankruptcy and PKPU Laws. With the restrictions stipulated in this SEMA, workers who should be treated equally with other creditors are hindered in their efforts to demand payment of unpaid wages. It is contrary to the principle of justice in the Indonesian legal system, which should provide equal rights to all entitled parties, including workers, in accessing legal protection. In this context, SEMA acts as an

administrative policy that does not consider the position of workers as creditors who are entitled to obtain their rights through legitimate legal channels.

In addition, the implementation of this SEMA has the potential to violate several constitutional principles that have been regulated in the 1945 Constitution of the Republic of Indonesia, especially the principle of legality, the principle of equality, and the principle of non-discrimination. The principle of legality requires that any restriction of rights can only be carried out if there is a clear and higher legal basis. This administrative SEMA, which regulates workers' rights, which should be regulated in law, clearly contradicts this principle. In addition, the principles of equality and non-discrimination are also violated because SEMA imposes unfair restrictions on workers, who should be treated equally with other creditors in the bankruptcy process. This restriction creates differences in treatment that are not based on higher laws and harms workers as the more vulnerable party in industrial relations.

Legal uncertainty is the main problem arising from the enactment of SEMA Number 2 of 2019. As an administrative policy, SEMA does not have equal standing with higher laws and regulations, so the restrictions stipulated in this SEMA create confusion about whether workers still have access to file for bankruptcy. This ambiguity adds to the difficulties for workers who want to fight for their rights through legal channels. In addition, this uncertainty also creates a gap in legal protection, because there is no clarity regarding workers' rights to file for bankruptcy for their wage receivables, which causes the legal system to be less responsive to the needs of workers as the weaker party in the employment relationship. It might damage public trust in the judicial system and worsen the conditions for workers in claiming their rights.

The implementation of SEMA Number 2 of 2019 in judicial practice has a significant direct impact on the daily lives of workers trying to access justice in the bankruptcy process. One of the most noticeable impacts is the limited access for workers to file bankruptcy applications even though they have legitimate receivables, especially related to wages that have not been paid by the company. This limitation creates uncertainty and confusion among workers regarding their rights to obtain legal protection through bankruptcy, which should be a legitimate and effective mechanism for them to demand payment for their rights. As a result, many workers are trapped in a state of uncertainty about whether they can obtain justice, while companies experiencing financial difficulties can still avoid their obligations to pay delayed wages.

Court decisions following this SEMA further worsen workers' ability to claim their rights due to restrictions that are inconsistent with higher regulations. For example, if a worker files for bankruptcy and the court rejects it on the grounds of SEMA, the worker not only loses the opportunity to obtain his rights but also feels that he is not allowed to access justice on an equal basis with other creditors. This has an impact on workers' trust in the judicial system because they feel ignored by policies that prioritize the interests of the company. At a practical level, decisions following SEMA affect many workers, considering that many companies are experiencing financial difficulties and have large debts, including wage debts to workers.

Furthermore, unclear and unfair policies in court practices can result in an increasingly sharp imbalance between workers and employers, especially since workers are often the weaker party financially and in a lower bargaining position. This ambiguity and restriction of workers' rights to access bankruptcy increasingly exacerbate structural injustice in employment relations, where companies that should fulfill their legal obligations to workers can continue to

evade their responsibilities without any clear consequences. It leads to broader social injustice, where workers who are already in difficult financial conditions must accept unfairness in dispute resolution, as well as worsening their already unstable economic situation.

Restrictions on workers' rights to file bankruptcy applications, as stipulated in SEMA Number 2 of 2019, can prevent workers from obtaining equal legal protection with other creditors. This SEMA directly limits workers' access to their rights to demand payment of unpaid wages, which should be done through the bankruptcy process. This restriction adds to legal uncertainty for workers because they no longer have a clear channel to effectively demand their rights. As a result, workers who are already in a vulnerable position, both economically and legally, are trapped in the inability to utilize the available legal mechanisms to obtain the protection they need. This inequality worsens the position of workers in their employment relationship with the company, where they seem to have no legitimate way to fight for their rights that are clearly in arrears.

The long-term implications of this policy have a significant impact on the image and legitimacy of the judicial institution, as well as workers' trust in the existing legal system. If this policy continues to be implemented, workers may lose trust in the judiciary as a fair and independent institution, considering unequal treatment by other parties in the legal process. This distrust can trigger social instability and lead to increased tensions between workers and employers, as workers feel that the legal system is not on their side. In the long term, this can damage the integrity of the justice system itself, as well as worsen working conditions in Indonesia, where workers whose rights should be protected are marginalized in an inadequate legal process.

SEMA Number 2 of 2019 should be re-evaluated and considered for improvement or revoked, considering its detrimental impact on workers' rights to access legal protection, especially regarding their right to file for bankruptcy for wage receivables. The restrictions contained in this SEMA are contrary to basic legal principles that should provide equal rights to all creditors, including workers, in claiming their delayed rights. As an administrative policy that does not have the same standing as the law, this SEMA adds to legal uncertainty and does not provide adequate protection for workers who are already in a weaker position economically and socially. Therefore, there needs to be a review and revision of this policy so that it is more in line with higher regulations and pays attention to the principles of justice and the rights of workers as citizens who have the right to receive equal legal protection.

In addition, to avoid further injustice, it is necessary to adjust policies or make changes to higher laws, such as the Bankruptcy and PKPU Laws and the Manpower Law, to be more in line with the principles of justice and workers' rights. Existing regulations must ensure that workers, as legitimate creditors, can access legal channels that allow them to demand payment of delayed wages without discrimination or unfounded restrictions. These recommendations include the formulation of clearer and fairer regulations, as well as the enforcement of policies that are more in favor of workers' interests so that the legal process in Indonesia remains fair, transparent, and just, while strengthening public trust in the existing justice system.

## CONCLUSION

In conclusion, the Supreme Court Circular (SEMA) Number 2 of 2019 has a significant impact on workers' rights as creditors in bankruptcy proceedings by limiting their access to demand delayed wage payments through legitimate legal channels. This restriction may violate basic legal principles, such as *legality*, *equality*, and *non-discrimination* principles, which should guarantee workers' rights to obtain equal legal protection from other creditors. The legal uncertainty arising from this SEMA creates a gap in the protection of workers' rights, which can ultimately damage workers' trust in the justice system and harm the image of the judicial institution itself. Therefore, this SEMA needs to be evaluated and improved, or even revoked, so that existing policies are more in line with higher laws and regulations and ensure the protection of workers' rights more fairly and equally. Revision or adjustment of higher policies and regulations is urgently needed to ensure that workers can access justice effectively and without discrimination.

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