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# STATE'S LEGAL PRIORITY AS A CREDITOR IN ENVIRONMENTAL BANKRUPTCY PROCEEDINGS

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***ABSTRACT***

*This study analyzes the legal protection of the state as a preferred creditor in corporate bankruptcy cases arising from environmental damage, using the bankruptcy of PT Ricky Kurniawan Kertapersada as a case study. The research employs a normative juridical method with statutory, case, and comparative approaches to assess the adequacy of Indonesia's bankruptcy law in safeguarding state claims for environmental restoration. The findings reveal that the current bankruptcy regime, as regulated under Law No. 37 of 2004 on Bankruptcy and PKPU, remains privatistic and prioritizes commercial creditors, thereby creating legal uncertainty for state environmental claims. Environmental debts resulting from court-ordered ecological restoration are not explicitly categorized as preferred claims, allowing corporations to evade liability through bankruptcy proceedings. Comparative analysis shows that other jurisdictions, such as the United States and China, recognize ecological obligations through mechanisms that preserve environmental claims despite insolvency. This study concludes that Indonesia urgently requires legal reform to integrate ecological justice into bankruptcy law by recognizing environmental debts as "ecological preferred claims" and strengthening the role of state attorneys in bankruptcy proceedings.*

***Keywords: Bankruptcy, Preferred Creditor, Environmental Liability, Ecological Claims, State Protection.***

**ABSTRAK**

Penelitian ini menganalisis perlindungan hukum bagi negara sebagai kreditor preferen dalam kasus kepailitan perusahaan yang disebabkan oleh kerusakan lingkungan, dengan studi kasus pada kepailitan PT Ricky Kurniawan Kertapersada. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan, kasus, dan perbandingan untuk menilai kecukupan regulasi hukum kepailitan Indonesia dalam melindungi klaim negara untuk pemulihan lingkungan. Hasil penelitian menunjukkan bahwa sistem kepailitan Indonesia, sebagaimana diatur dalam Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan PKPU, masih bersifat privatistik dan lebih mengutamakan kreditor komersial, sehingga menciptakan ketidakpastian hukum terhadap klaim negara yang berkaitan dengan kerusakan lingkungan. Piutang lingkungan yang dihasilkan dari putusan pengadilan pemulihan ekologis tidak secara eksplisit dikategorikan sebagai piutang preferen, memungkinkan perusahaan menghindari tanggung jawab melalui mekanisme

kepailitan. Analisis perbandingan menunjukkan bahwa beberapa yurisdiksi lain, seperti Amerika Serikat dan China, mengakui kewajiban ekologis melalui mekanisme yang menjaga klaim lingkungan meskipun terjadi kebangkrutan. Penelitian ini menyimpulkan bahwa Indonesia memerlukan reformasi hukum yang mendesak untuk mengintegrasikan keadilan ekologis dalam hukum kepailitan dengan mengakui piutang lingkungan sebagai "piutang preferen ekologis" dan memperkuat peran jaksa negara dalam proses kepailitan.
**Kata Kunci: Kepailitan, Kreditor Preferen, Tanggung Jawab Lingkungan, Piutang Ekologis, Perlindungan Negara.**

## INTRODUCTION

In the discourse on law and sustainability in Indonesia, the issue of environmental bankruptcy has become increasingly relevant when corporations fail to fulfill their environmental responsibilities. Bankruptcy proceedings are often used as a strategy to evade compensation obligations for environmental damage that have been affirmed by the courts.[1] This situation raises philosophical concerns related to the principle of ecological justice and the constitutional right to a good and healthy environment as guaranteed in Article 28H paragraph (1) of the 1945 Constitution. Juridically, Law No. 32 of 2009 emphasizes the strict liability of corporations, while Law No. 37 of 2004 remains privatistic in orientation and does not explicitly accommodate environmental claims. Therefore, strengthening the legal framework is essential to ensure that the state retains a strong position in enforcing environmental restoration within bankruptcy mechanisms.[2]

The state of the art on the intersection of bankruptcy and environmental claims has been further developed in recent scholarship. Marpi, Wiwoho, and Pujiyono (2024) emphasize the constitutional dimension of creditors' rights in insolvency, offering novelty in recognizing that ecological claims should be integrated as part of citizens' fundamental rights.[3] Shen (2024) analyzes China's constitution-based ecological compensation regime, with novelty in designing a state-centered model that ensures absolute state authority over environmental

[1]Fanny Gresta Nova, "Keabsahan Permohonan Pailit Dan Pkpu Oleh Pekerja Sebagai Alternatif Penyelesaian Kegagalan Pembayaran Upah," *Jurnal Yustika: Media Hukum Dan Keadilan* 27, No. 01 (Januari 2025): 42–53, Https://Doi.Org/10.24123/Yustika.V27i01.6362.

[2]Arini Nur Annisa Dkk., "Employment Migration Service Protection: Formulasi Peraturan Kebijakan Dalam Penempatan Dan Pelindungan Pekerja Migran Indonesia," *Paulus Law Journal* 6, No. 1 (2024): 44–63.

[3] Yapiter Marpi, Jamal Wiwoho, Dan . Pujiyono, "Legal Protection Of Creditors Constitutional Rights As Citizens Due To Debtor Insolvency," *Kne Social Sciences*, Advance Online Publication, 5 Januari 2024, Https://Doi.Org/10.18502/Kss.V8i21.14776.

recovery.[4] Putrijanti et al. (2025) contribute by highlighting the role of citizen lawsuits in strengthening environmental law enforcement through administrative courts, providing novelty in advancing participatory mechanisms that may reinforce ecological claims in bankruptcy contexts.[5] Building on these studies, the gap lies in Indonesia's lack of normative recognition for environmental claims in bankruptcy law, where this research contributes novelty by proposing the recognition of "ecological preferred claims" to integrate ecological justice into Indonesia's privatistic bankruptcy framework.

Existing scholarship has examined various aspects of bankruptcy and environmental law; however, it remains fragmented and predominantly privatistic in approach. Prior studies have focused on constitutional dimensions of creditor protection (Marpi, Wiwoho & Pujiyono, 2024), ecological compensation regimes (Shen, 2024), and comparative environmental liability enforcement (Mackie & Fogleman, 2013), yet none have addressed the normative position of the state as a creditor in environmental bankruptcy. This reveals a significant research gap in the integration of ecological justice into insolvency law, particularly regarding the legal status of environmental restoration claims within creditor hierarchies. The problem becomes evident in the PT Ricky Kurniawan Kertapersada case, where the state's ecological claim, despite being based on a binding court decision, was excluded from the verified creditor list by the curator. Therefore, this study introduces the concept of Ecological Preferred Claims as a new doctrinal construction to classify environmental debts as priority claims in bankruptcy proceedings. This constitutes the novelty of the research, offering a theoretical integration of public environmental obligations into insolvency law, a normative reconstruction of creditor hierarchy, and a practical model to prevent corporations from escaping ecological liability through bankruptcy.

The urgency of this research arises from the growing tendency of corporations to invoke bankruptcy as a mechanism to circumvent environmental accountability. The PT RKK case, in which the company filed for bankruptcy following a binding order to pay Rp191.8 billion in restoration costs, exemplifies

[4] Hao Shen, "Crafting The Legal Regime For Ecological Environmental Damage Compensation: An Analysis Of China's Approach," *Asia Pacific Journal Of Environmental Law* 27, No. 2 (Desember 2024): 168–84, Https://Doi.Org/10.4337/Apjel.2024.02.01.

[5] Aju Putrijanti Dkk., "Enforcement Of Environmental Law Through Citizen Lawsuit In Administrative Court," *E3s Web Of Conferences* 605 (2025): 03008, Https://Doi.Org/10.1051/E3sconf/202560503008.

how deficiencies in regulatory oversight and curatorial practice can undermine the enforcement of state claims.[6] If left unaddressed, such practices risk creating jurisprudential precedents that weaken environmental governance and jeopardize ecological justice. It is therefore imperative to develop a legal framework that secures the state's environmental claims within bankruptcy proceedings.[7]

The principal legal issue examined in this study is whether the state, in its capacity as a creditor with environmental restoration claims, ought to be afforded preferential treatment in bankruptcy proceedings. This issue highlights the inherent tension between the rights of commercial creditors and the state's imperative to recover damages for ecological harm. The absence of explicit statutory provisions prioritizing environmental claims has generated legal uncertainty and the potential subordination of state interests. Consequently, this research interrogates how Indonesia's bankruptcy system can reconcile the demands of legal certainty, creditor equality, and the imperative of environmental protection.

This research seeks to analyze the extent of legal protection afforded to the state as a preferred creditor in bankruptcy cases arising from environmental damage. It aims to construct a normative and procedural framework that guarantees the prioritization of environmental restoration claims over private creditor interests. More broadly, the study endeavors to contribute to the reform of Indonesia's bankruptcy regime so that it not only upholds legal certainty and commercial fairness, but also advances ecological justice in alignment with the principles of sustainable development.

## RESEARCH METHODS

This research employs a normative juridical method supported by statutory, case, and comparative approaches. The primary legal materials consist of the 1945 Constitution, Law No. 37 of 2004 on Bankruptcy and PKPU, Law No. 32 of 2009 on Environmental Protection and Management, PERMA No. 1 of 2023, and binding court decisions related to the PT Ricky Kurniawan Kertapersada

[6] Razhez Akbar Wildan Utama Dan Budi Santoso, "Analisis Yuridis Tanggung Jawab Direksi Terhadap Kepailitan Perseroan Terbatas Menurut Undang-Undang Nomor 40 Tahun 2007," *Notarius* 15, No. 2 (Desember 2022): 1002–11, Https://Doi.Org/10.14710/Nts.V15i2.37014.

[7] Moh Saleh, "Kurator Sebagai Eksekutor Dalam Penyelesaian Kasus Kepailitan," *Jurnal Kompilasi Hukum* 9, No. 1 (2024): 42–53.

case, as well as bankruptcy decision documents and trustee reports. Secondary legal materials include books, journal articles, previous research, and legal doctrines on creditor hierarchy, environmental liability, and insolvency theory, while tertiary materials consist of legal dictionaries and encyclopedias used to clarify concepts. Legal materials were collected through document study and analyzed using deductive legal reasoning supported by grammatical, systematic, and teleological interpretation to identify the legal position of state claims in bankruptcy. A comparative approach with the United States' CERCLA regime and China's ecological compensation system was used to strengthen the analysis. The legal arguments produced were then synthetized to formulate the doctrinal construction of Ecological Preferred Claims as a model to prioritize state environmental restoration claims in bankruptcy settlement.

## RESULTS AND DISCUSSION

### State Legal Challenges in Claiming Rights as Preferred Creditors in Environmental Bankruptcy Cases

Legal protection of the environment in Indonesia has made significant progress in recent years. Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) is the main foothold in maintaining environmental sustainability. This regulation emphasizes the importance of community involvement in supervising and preserving the environment. Despite the various rules that have been established, the implementation and enforcement of laws in the environmental field still face a number of challenges. Various studies reveal that limited resources and bureaucratic complexity are often inhibiting factors in enforcing environmental laws effectively.[8]

Legal protection of the environment must also include preventive aspects. Preventive efforts are more effective than recovery efforts after damage has occurred. Therefore, the government needs to implement policies that emphasize the prevention of pollution and environmental damage through strict regulation of industrial and development activities. For example, the implementation of stricter environmental impact assessments (EIAs) can help identify potential negative impacts of development projects before permits are granted. Thus,

[8] Evi Purnama Wati, "Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Pembangunan Yang Berkelanjutan," *Bina Hukum Lingkungan* 3, No. 1 (Oktober 2018): 119–26, Https://Doi.Org/10.24970/Jbhl.V3n1.9.

environmental damage can be minimized from the start.[9]

One of the important aspects of civil lawsuits is the right to sue owned by citizens, known as *citizen lawsuit* or *action popularis*. This allows the public to file lawsuits on behalf of the public interest, not just personal interests.[10] In practice, civil law enforcement faces several challenges. One of them is the litigation process that often drags on in court, making many parties reluctant to use this route. In addition, although there are rulings in favor of environmental restoration, not all rulings are followed by concrete actions to remedy the damage caused.

The concept of strict liability is also part of the civil law framework in the context of the environment. Based on Article 88 of the UUPPLH, every person or entity that carries out activities that have the potential to damage the environment is responsible for the losses caused without the need to prove elements of fault. This provides more protection for victims of pollution or environmental damage.

The Supreme Court (MA) has responded to this challenge by issuing Supreme Court Regulation (PERMA) No. 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases. This Perma provides guidance for judges to adjudicate environmental cases, including regulating the execution of civil judgments related to environmental restoration. This step is considered a major advance in the environmental justice system in Indonesia, as it provides clearer standards for judges in handling environmental cases. However, one of the main challenges still faced is the low level of implementation of environmental civil judgments. For example, in the case of forest and land fires, only a small portion of the value of the damages is successfully executed, so the recovery of environmental damage is often not optimally achieved.[11]

The litigation process in court is also often protracted and time-consuming, making many parties reluctant to use this legal route. In addition, the high cost of litigation is an obstacle for people to fight for their rights to a

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[9] Kania Octavia Parnika Dkk., "Evaluasi Efektivitas Amdal Dalam Mencegah Kerusakan Lingkungan Di Indonesia," *Jurnal Pendidikan Tambusai* 8, No. 3 (2024): 50727–35.

[10] Prim Haryadi, "Pengembangan Hukum Lingkungan Hidup Melalui Penegakan Hukum Perdata Di Indonesia," *Jurnal Konstitusi* 14, No. 1 (Juli 2017): 124, Https://Doi.Org/10.31078/Jk1416.

[11] Nina Herlina Dan Rima Duana, "Penegakan Hukum Lingkungan Melalui Upaya Hukum Non Penal Menurut Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Ilmiah Galuh Justisi* 10, No. 2 (September 2022): 305, Https://Doi.Org/10.25157/Justisi.V10i2.8722.

good and healthy environment. Therefore, alternative dispute resolution such as mediation and arbitration began to be introduced as solutions to overcome the lengthy litigation process. This mechanism allows the parties to reach an agreement peacefully without going through formal court proceedings. However, the effectiveness of these alternative mechanisms is highly dependent on the willingness of the parties to cooperate as well as the support of the government and relevant institutions[12].

In addition, education and training for law enforcement officials are an urgent need to increase their capacity to handle environmental issues. The environmental judge certification program, which has been initiated by the Supreme Court since 2011, is a positive step to ensure that judges have a deep understanding of environmental issues.[13] However, the scope of this program needs to be expanded to include more judges throughout Indonesia.

Community participation is also an important element in legal protection of the environment. Through active involvement, the community can act as a supervisor of activities that have the potential to damage the environment. This is in line with the principles of transparency and accountability that must be applied in every decision-making process related to environmental policy. However, protection for environmental fighters also needs to be strengthened. Regulation of the Minister of Environment and Forestry Number 10 of 2024 provides legal guarantees for individuals or groups who fight for environmental rights from the threat of criminalization or intimidation.

Bankruptcy is a legal condition regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (KPKPU Law), where a debtor, both an individual and a legal entity, is declared unable to pay due debts. According to Article 1 number 1 of the Law, bankruptcy functions as a general confiscation of all assets of a bankrupt debtor whose management is carried out by the curator under the supervision of a supervisory judge. To declare someone bankrupt, there are several elements that must be met. First, the debtor must have two or more creditors, and second, the debtor cannot pay in full at least one debt that is due and collectible. If these conditions are met,

[12] Genoveva Puspitasari Larasati Dan Elly Kristiani Purwendah, "Penerapan Prinsip Pencemar Membayar Terhadap Pencemaran Limbah Bahan Berbahaya Dan Beracun (B3)," *Jurnal Locus Delicti* 3, No. 2 (Desember 2022): 150–66, Https://Doi.Org/10.23887/Jld.V3i2.1611.

[13] Josua Navirio Pardede Dan Yun Santoso, "Refleksi Kritis Terhadap Konsep Keadilan Restoratif Dalam Penanganan Tindak Pidana Lingkungan Hidup Di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 8, No. 2 (2022).

a bankruptcy application can be filed with the commercial court by the debtor himself or by one or more of his creditors.[14]

One of the main elements of bankruptcy is the existence of unpayable debts. According to Article 2 paragraph (1) of the KPKPU Law, a debtor can be declared bankrupt if it has two or more creditors and does not pay at least one debt that has matured. This shows that bankruptcy does not only depend on the debtor's incapacity, but also on the number of creditors involved.[15]

Parties involved in the bankruptcy process include debtors, creditors, and curators. The debtor is the debtor, while the creditor is the party who provides the loan or debt to the debtor. The curator has an important role in managing and settling the assets of the bankruptcy debtor in accordance with the applicable legal provisions. In some cases, other parties such as the prosecutor's office may also be involved in filing a bankruptcy application in the public interest. The legal consequences of bankruptcy are significant; Once declared bankrupt, the debtor loses the right to manage his assets and all his assets will be confiscated to be distributed to creditors according to the priority determined by law. This aims to ensure a fair distribution for all creditors and prevent fraudulent actions from debtors.[16]

The bankruptcy process cannot be separated from various challenges and problems that arise during the legal process. One of the main challenges is the struggle for assets between creditors, where there are often creditors who feel aggrieved and seek to obtain their rights in a way that is not in accordance with the provisions of the law. This can lead to conflicts between creditors and hinder the process of distributing the assets of the bankruptcy debtor.[17] In addition, the potential for fraud on the part of the debtor is also a serious problem, where the debtor may attempt to hide assets or commit actions that are detrimental to other

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[14] Halida Rahardhini, "Efektivitas Pelaksanaan Wewenang Jaksa Sebagai Pengacara Negara Dalam Kasus Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Di Indonesia," *Yustitia* 10, No. 1 (April 2024): 60–74, Https://Doi.Org/10.31943/Yustitia.V10i1.226.

[15] Viqi Anugraha Dan Adlin Budhiawan, "Prinsip Pembuktian Sederhana Sebagai Syarat Penundaan Kewajiban Pembayaran Hutang," *Journal Of Education Research* 4, No. 2 (Juni 2023): 742–51, Https://Doi.Org/10.37985/Jer.V4i2.201.

[16] Dimitria Pawestri Kusumadewi, "Peranan Kurator Dalam Permasalahan Kepailitan Perseroan Terbata (Studi Kasus Pt Ny.Meneer)," *Jurnal Hukum Statuta* 3, No. 3 (Agustus 2024): 175–85, Https://Doi.Org/10.35586/Jhs.V3i3.9449.

[17] Muhammad Ali Adnan, Sanjaya Gideon Gultom, Dan Atika Sunarto, "Perlindungan Hukum Bagi Kreditur Dalam Sengketa Hutang Piutang Yang Berakhir Dengan Kepailitan Di Kota Medan," *Unes Journal Of Swara Justisia* 8, No. 3 (November 2024): 643–54, Https://Doi.Org/10.31933/5nbezc11.

creditors. Therefore, strict supervision by the supervising judge and curator is essential to ensure that the bankruptcy process runs transparently and fairly.

Trustees have a very vital role in the bankruptcy process, as they are responsible for managing and settling the debtor's bankruptcy assets. The duties of a curator include identifying and assessing the debtor's assets, as well as conducting effective management to maximize the value of these assets for the benefit of all creditors. In carrying out their duties, curators must adhere to the principles of transparency and accountability, so that all actions taken can be accounted for to the supervisory judge and creditors. The trustee must also ensure that all legal obligations are complied with during the bankruptcy proceedings, including in terms of financial reporting and asset distribution.[18]

Creditors in the context of bankruptcy in Indonesia can be grouped into three main types, namely preferred creditors, separatist creditors, and concurrent creditors. Preferred creditors are parties who have privileges or priority in debt repayment. They usually consist of workers who are entitled to wage payments and the government as tax collectors. In this case, the law gives them the special right to get payment before other creditors, as stipulated in Article 1134 of the Civil Code (KUHPer) and Article 21 of Law Number 6 of 1983 concerning General Provisions and Tax Procedures (KUP Law).[19]

Separatist creditors are those who have material security rights to debtors. These types of creditors include pawnholders, dependents, and mortgages. Separatist creditors have the right to collect their debts in a preferential manner compared to concurrent creditors. They can claim the rights they have to the collateral without prejudice to the right to get repayment from the proceeds of the liquidation of the bankruptcy debtor's assets. This is regulated in Article 138 of the KPKPU Law which states that separatist creditors have the right to get repayment from the collateral objects they hold.[20]

Concurrent creditors are parties who do not have material guarantees but

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[18] M. Arif Syahputra Dan Arifin Hoesein Zainal, "Optimalisasi Tanggung Jawab Kurator Dalam Pegelolaan Harta Pailit Berdasarkan Undang-Undang Nomor 37 Tahun 2004," *Jurnal Retentum* 7, No. 1 (2025): 81–92.

[19] Benyamin Purba, John Pieries, Dan Wiwik Sri Widiarty, "Kedudukan Karyawan Sebagai Kreditur Preferen Akibat Penetapan Penundaan Kewajiban Pembayaran Utang Suatu Perusahaan," *Action Research Literate* 8, No. 12 (Desember 2024): 3436–51, Https://Doi.Org/10.46799/Arl.V8i12.2529.

[20] Edo Adithama, Sihabudin, Dan Ranitya Ganindha, "Perlindungan Hukum Terhadap Kreditor Dalam Hal Tagihan Piutangnya Tertolak Pada Tahap Verifikasi Piutang Dalam Proses Penundaan Kewajiban Pembayaran Utang (Pkpu)" (Universitas Brawijaya, 2022).

have the right to collect debts based on agreements. In the debt repayment process, concurrent creditors rank last after preferred and separatist creditors. Therefore, they are at higher risk in a bankruptcy situation because it is likely that not all of their receivables can be paid off if the debtor's assets are insufficient. Understanding these types of creditors is very important for business actors and investors to be able to anticipate risks and determine the right strategy in dealing with potential bankruptcy.[21]

The state's position as a preferred creditor faces many legal challenges in the context of bankruptcy related to environmental damage. The problem arises when Indonesia's bankruptcy legal system has not explicitly recognized the role of the state as a party that has priority in repaying the debts of bankrupt companies, especially in terms of its ability to demand environmental restoration. This poses a risk that the state will not receive the damages that have been established by the court ruling, even though the ruling has permanent legal force. There was a procedural error in the process of compiling the list of creditors, which the curator owned. This exacerbates the problem. In practice, curators are often not independent or do not understand the importance of environmental claims, so state receivables such as the Ministry of Environment and Forestry (MoEF) against PT Ricky Kurniawan Kertapersada can be ignored in the list of fixed receivables.

After an interview with the curator. That the judgment of compensation that must be paid to the state in this case is represented by the Ministry of Environment and Forestry is not necessarily a pre-order creditor. Because those who become preferred creditors as stipulated in the Law are only bankruptcy costs and curatorial fees, basic wages of workers, and state bills in the form of taxes. According to the author, this can be a loophole for the perpetrator to avoid paying compensation to the state.

This situation shows the incompatibility between the principles of ecological justice and the legal principles of privatistic bankruptcy. The state is often in danger due to the conflict between creditors' desire to pay off debts and the public's desire to protect the environment. According to a comparative study by Nicolas Chaput, other jurisdictions such as Canada also have vague bankruptcy laws regarding environmental claims. The court faces a dilemma

[21] Hambali Dan Adnan Hamid, "Perlindungan Hukum Terhadap Kreditor Konkuren Ditinjau Dari Prinsif Keberlangsungan Usaha Dan Prinsif Keadilan," *Pamulang Law Review* 7, No. 2 (November 2024): 167–83, Https://Doi.Org/10.32493/Palrev.V7i2.44757.

between prioritizing the principle of insolvency that prioritizes the distribution of assets to general creditors or maintaining the principles of environmental protection as stipulated in environmental laws. Because of this uncertainty, businesses can use bankruptcy as a way to avoid significant ecological liability.[22]

In addition, there is no law that explicitly stipulates that state receivables for environmental damage must be included in the preferred category of receivables, which makes it more difficult for the state in the process of liquidating debtors' assets. Marpi, Wiwoho, and Pujiyono's theory of legal protection for creditors becomes relevant in this situation. They argue that legal protection should be not only repressive but also preventive. One way to do this is to create regulations that clarify who is entitled to repayment first based on the nature of the receivables.[23] However, this method does not cover environmental responsibility-based debt in Indonesian law. In fact, ethically and publicly, the state must ensure the restoration of damaged ecosystems before the company's assets run out to pay off commercial debt.

Experience in other countries, such as the United States, which has a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), shows that regulations can be made to ensure that environmental liability is unavoidable even if a company is in bankruptcy. According to Jean-Jacques Laffont and Marcel Boyer, systems such as CERCLA prevent the release of ecological liabilities through insolvency channels, even for financial institutions that fund businesses.[24] As a result, environmental creditors such as the state can lose their ecological restoration rights when the company goes into bankruptcy proceedings.

Meanwhile, security rights holders are given priority by laws related to fiduciary guarantees in Indonesia. Alishakur and Gunadi's study found that specific rules in the Fiduciary Act allow creditors with collateral to obtain early repayment even if the debtor defaults or goes bankrupt. However, because states have no collateral or material guarantees, they do not have comparable protection to the state responsible for ecological recovery. Therefore, the state's

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[22] Nicolas Chaput, "Environmental Clean-Up In Bankruptcy And Insolvency: What Priority For The Environment?" (University Of Toronto, 2012).

[23] Yapiter Marpi, Jamal Wiwoho, Dan . Pujiyono, "Legal Protection Of Creditors Constitutional Rights As Citizens Due To Debtor Insolvency," *Kne Social Sciences*, Advance Online Publication, 5 Januari 2024, Https://Doi.Org/10.18502/Kss.V8i21.14776.

[24] Jean-Jacques Laffont, "Environmental Protection, Producer Insolvency And Lender Liability," *Edward Elgar Publishing*, 1 (1996): 1–29.

status as the main creditor within the framework of environmental responsibility is highly dependent on the normative will of legislators and the professional integrity of curators. If there is no legal system that affirms that environmental claims should be a top priority, it will lead to state losses and undermine environmental law enforcement efforts and sustainable development principles.[25]

In Indonesia, Law Number 6 of 2023 concerning Job Creation amends environmental laws. This indicates a paradigm shift from an approach centered on environmental protection to a more pro-investment approach. With this change, the state's legitimacy to fight for its rights as the main creditor of environmental damage increases significantly. In a theoretical study by Arvante and Wisnaeni, the repeal of the Environmental Protection and Management Law (PPLH) through the Job Creation Law weakens the state's position in demanding corporate responsibility because the licensing and environmental impact analysis (EIA) aspects are simplified for investment purposes without strong public control.[26]

Structural inequalities occur in the relationship between the state and business actors as a result of these changes in the legal structure. In these cases, the state does not have a strong legal foothold to claim environmental damages in bankruptcy forums. Ironically, many businesses that have gone bankrupt also have a history of environmental pollution. In such circumstances, the state not only loses its billing rights, but also the ecosystem may be irreparable. This is because there is no binding legal obligation to enforce a civil judgment during the insolvency proceedings.

The principle of environmental responsibility has not developed within the Indonesian legal framework, which causes additional problems. This concept has evolved in many developed countries into an absolute liability or strict liability that cannot be eliminated even by bankruptcy. Its practice in Indonesia is still limited to repressive methods, such as lawsuits or administrative sanctions. The court should support efforts to strengthen this principle by

[25] Muhammad Awal Alishakur Dan Ariawan Gunadi, "Legal Protection Of Creditors' Preferences Rights Regarding Fiduciary Security Receivables," *Journal Of Law, Politic And Humanities* 5, No. 1 (November 2024): 509–14, Https://Doi.Org/10.38035/Jlph.V5i1.874.

[26] Jeremy Zefanya Yaka Arvante Dan Fifiana Wisnaeni, "Theoretical Study Of Authoritary Political Configuration Products Of Law No. 6 Of 2023 On Job Creation Law (Pplh) And Its Implications On Environmental And Social Aspects)," *International Journal Of Social Science And Human Research* 08, No. 01 (Januari 2025), Https://Doi.Org/10.47191/Ijsshr/V8-I1-50.

recognizing that the state's right to environmental restoration cannot be revoked by bankruptcy proceedings. According to Putrijanti et al., one of the important ways to protect environmental rights, including in the context of bankruptcy, is to extend the jurisdiction of citizen lawsuits to the State Administrative Court.[27]

However, Indonesia's judicial system still lacks focus on environmental law enforcement. This is shown by the fact that the Supreme Court has not provided technical training to judges on the comprehensive settlement of environmental disputes. In bankruptcy, this has a direct impact on the inability to consider environmental aspects when creating a list of fixed receivables. In fact, in an ideal system, environmental claims should be prioritized by curators and supervisory judges, as seen in some progressive legal systems.

The sustainability aspect of the company also shows the difference between environmental responsibility and the principle of economic justice. A study by Futri et al. showed that businesses with good environmental sustainability scores have difficulty obtaining financing, which indirectly increases the risk of bankruptcy. This shows that the modern economic system prioritizes short-term gains over environmental protection. In a situation like this, bankruptcy is a crisis of ecological and economic justice.[28]

In order to strengthen the state's position as a preferred creditor in bankruptcy cases related to environmental damage, a more explicit legal recognition of state receivables based on environmental court rulings is needed. One way that can be taken is through codification in the revision of the Bankruptcy Law, so that state claims based on environmental lawsuits are categorized as *ecological preferential receivables*. This recognition will guarantee that the environmental recovery continues even if the debtor's assets have been frozen or transferred in the liquidation process.

In addition to the normative approach, the principle of ecological justice must be strengthened through progressive interpretations carried out by judges. This is in line with the research of Triana and colleagues, who proposed the application of the principle of exceptio non adimpleti contractus in bankruptcy

[27] Aju Putrijanti Dkk., "Enforcement Of Environmental Law Through Citizen Lawsuit In Administrative Court," *E3s Web Of Conferences* 605 (2025): 03008, Https://Doi.Org/10.1051/E3sconf/202560503008.

[28] Inas Nurfadia Futri Dkk., "The Relationship Between Environmental Sustainability And Financial Constraints: Evidence From Indonesian Firms," *Iop Conference Series: Earth And Environmental Science* 1438, No. 1 (Januari 2025): 012040, Https://Doi.Org/10.1088/1755-1315/1438/1/012040.

law to maintain a balance between the rights of creditors and debtors. In the context of the environment, this principle can be developed to protect the parties most negatively affected by the environment. In this case, the state can act as a representative of the affected communities and ecosystems, not just as ordinary creditors.[29]

In addition, the legitimacy of state legal actions for environmental restoration should depend on court decisions and the participation of affected communities. To ensure that the bankruptcy process is not used to escape social and ecological responsibility, there are necessary public oversight mechanisms during the process of debt restructuring or liquidation of the assets of environmental companies. Without this mechanism, the legal process can lose its function as a tool of justice. In the long run, the bankruptcy and environmental legal systems must be updated to establish a legal structure that does not assert each other. Bankruptcy should not be a legal means of avoiding liability for intergenerational and public damages. Therefore, the list of creditors in bankruptcy should be made not only on the basis of contracts and material guarantees, but also on the moral and constitutional principle that every citizen has the right to a good and healthy environment.

Recent scholarly investigations have broadened the discourse on the intersection of bankruptcy and environmental obligations by highlighting multidimensional risks. Indicators of corporate social responsibility can function as predictors of bankruptcy, thereby underscoring the financial significance of ecological commitments within corporate governance.[30]Further contextualized bankruptcy risk by examining agricultural enterprises under the pressures of the pandemic, revealing how environmental and external shocks exacerbate vulnerabilities to insolvency.[31] In a complementary study, emphasized the importance of integrating community health considerations into the remediation of abandoned coal mines, suggesting that environmental restoration is inextricably linked to social justice considerations when companies encounter

[29] Yeni Triana, Tri Anggara Putra, Dan M. Fadly Daeng Yusuf, "Enhancing Legal Safeguards In Bankruptcy: The Role Of Exceptio Non Adimpleti Contractus In Balancing Creditor-Debtor Relations," *Journal Of Ecohumanism* 3, No. 8 (Januari 2025), Https://Doi.Org/10.62754/Joe.V3i8.5805.

[30] Adriana Galant Dan Robert Zenzerović, "Can Corporate Social Responsibility Contribute To Bankruptcy Prediction? Evidence From Croatia," *Organizacija* 56, No. 3 (Agustus 2023): 173–83, Https://Doi.Org/10.2478/Orga-2023-0012.

[31] Yevgen Mayovets Dkk., "Simulation Modeling Of The Financial Risk Of Bankruptcy Of Agricultural Enterprises In The Context Of Covid-19.," *Journal Of Hygienic Engineering And Design* 36 (2021): 192–98.

insolvency.[32]

The financial implications of environmental liabilities are equally apparent in cross-border empirical studies. Demonstrated that stringent environmental regulations elevate the cost of bank loans by increasing the perceived risk of bankruptcy, thereby directly associating environmental responsibilities with capital accessibility.[33] This understanding by illustrating that environmental analysis is a critical component in bankruptcy diagnostics, particularly in industries with significant ecological exposure, such as construction.[34] Collectively, these findings bolster the argument that environmental claims should be prioritized in bankruptcy proceedings, as they encompass not only legal but also financial and social imperatives.

These challenges demonstrate that Indonesia's bankruptcy framework remains trapped within a private law paradigm that prioritizes commercial certainty over ecological justice. From a doctrinal perspective, such treatment is incompatible with the principle of strict liability enshrined in Article 88 of Law No. 32 of 2009, which characterizes environmental restoration as a public obligation. Therefore, environmental liabilities cannot be equated with ordinary commercial debts because they arise not from contractual will but from public law violations affecting intergenerational interests. This conflict reveals a structural legal imbalance: while insolvency law protects private creditors through a fixed hierarchy, it systematically weakens the enforcement of environmental judgments. The state's ecological claims must therefore be repositioned as priority claims because they embody the public interest doctrine and the constitutional right to a healthy environment, which, according to Christopher D. Stone's ecological justice theory, should be treated as rights-bearing interests superior to private financial claims.[35]

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[32] Sarah J. Surber, "A Conceptual Model For Integrating Community Health In Managing Remediation Of West Virginia And Central Appalachia's Abandoned Coal Mines," *Environment, Development And Sustainability* 23, No. 2 (Februari 2021): 1563–78, Https://Doi.Org/10.1007/S10668-020-00638-9.

[33] Amirhossein Fard, Siamak Javadi, Dan Incheol Kim, "Environmental Regulation And The Cost Of Bank Loans: International Evidence," *Journal Of Financial Stability* 51 (Desember 2020): 100797, Https://Doi.Org/10.1016/J.Jfs.2020.100797.

[34] Liudmila Guzikova, Natalia Neelova, Dan Denis Ushakov, "Environmental Analysis In Bankruptcy Diagnosing (The Case Of Construction Companies)," *E3s Web Of Conferences* 371 (2023): 02059, Https://Doi.Org/10.1051/E3sconf/202337102059.

[35] Colin Mackie dan Valerie Fogleman, "Environmental Claims and Insolvent Companies: The Contrasting Approaches of the United Kingdom and the United States," *British Journal of American Legal Studies* 2, no. 2 (2013): 579–633.

The marginalization of environmental claims in bankruptcy proceedings also reflects a doctrinal inconsistency within Indonesia's legal system. While Article 28H paragraph (1) of the 1945 Constitution guarantees the right to a healthy environment as a fundamental right, bankruptcy law treats environmental claims merely as concurrent debts without public law significance. This contradiction violates the hierarchy of norms (stufenbau theory) in which constitutional rights should supersede private commercial arrangements. Moreover, principles of state responsibility in environmental law establish that environmental restoration constitutes a non derogable obligation, meaning it cannot be set aside by procedural mechanisms such as insolvency. Therefore, subordinating environmental claims to private creditors not only undermines legal certainty but also contradicts the public interest doctrine, making bankruptcy a tool that legitimizes ecological injustice under the guise of commercial orderliness.

**Legal Implementation in Indonesia in Providing Protection to the State as a Preferred Creditor in Bankruptcy Cases Due to Environmental Damage**

The implementation of state protection as a preferred creditor in environmental bankruptcy cases exposes a fundamental legal inconsistency in Indonesia's normative framework. While bankruptcy law is designed to ensure equitable distribution of debtor assets, it fails to acknowledge the public law nature of environmental debt, thereby subordinating constitutional obligations to private commercial interests. This structural defect not only weakens the state's authority to enforce ecological restoration but also transforms bankruptcy into a legal instrument that legitimizes corporate impunity. An analysis of the PT Ricky Kurniawan Kertapersada (PT RKK) case illustrates that the problem is not merely procedural but systemic, rooted in the dichotomy between environmental accountability and insolvency mechanisms.[36]

The weak position of the state in claiming environmental restoration damages within bankruptcy proceedings primarily stems from a doctrinal error in classifying environmental debts as ordinary private receivables. This interpretation is normatively flawed because environmental liability arises not from contractual transactions but from violations of public law that trigger state responsibility as guardian of the environment. Therefore, treating environmental

[36] Mackie dan Fogleman.

restoration claims as concurrent debts contradicts the constitutional hierarchy of norms and violates the polluter pays principle. The fact that curators routinely exclude ecological claims such as in the PT RKK bankruptcy proceedings demonstrates a structural failure of Indonesia's insolvency regime to differentiate commercial debt from ecological debt. This condition confirms that the state is not merely a litigating party but a constitutional creditor representing public ecological rights, whose position should logically be superior to that of private creditors.[37]

Legal protection of the state as a preferred creditor in bankruptcy cases caused by environmental damage is a complex and important issue because the state is often the party that bears the burden of environmental restoration due to the company's negligence. Article 1134 of the Civil Code and Article 21 of Law Number 6 of 1983 concerning General Provisions and Taxation Procedures (KUP Law) regulate the status of the state as a preferred creditor in the Indonesian legal system. However, in cases such as PT Ricky Kurniawan Kertapersada (PT RKK), state receivables derived from environmental damage compensation are not listed in the curator's list of permanent receivables. This shows that the state does not have adequate legal protection in this regard. A more assertive legal apparatus is needed to enforce it because the failure of the curator to list the state creditors can incur significant legal losses.[38]

Bills for environmental damage are often treated as ordinary receivables because the preferential creditor's terms usually do not distinguish between fiscal and environmental receivables. However, environmental damage must be prioritized in the bankruptcy mechanism because it has a public interest dimension.[39] The Deepwater Horizon case by British Petroleum is a significant example at the international level. The case shows that American courts still require BP to pay billions of dollars in compensation for environmental restoration even if they are guilty.[40] This case shows that a strong legal system can ensure that environmental obligations remain in place even if the debtor is

[37] Mackie dan Fogleman.

[38] Adithama Dan Ganindha, "Perlindungan Hukum Terhadap Kreditor Dalam Hal Tagihan Piutangnya Tertolak Pada Tahap Verifikasi Piutang Dalam Proses Penundaan Kewajiban Pembayaran Utang (Pkpu)."

[39] Syahputra Dan Zainal, "Optimalisasi Tanggung Jawab Kurator Dalam Pegelolaan Harta Pailit Berdasarkan Undang-Undang Nomor 37 Tahun 2004." *Jurnal Retentum* 7, No. 1 (2025): 81–92.

[40] Stefani Gestananda Widiastari, "Kebijakan Pemerintah Amerika Serikat Terhadap Kejahatan Lingkungan Akibat Pencemaran Lingkungan Oleh Perusahaan Multinasional British Petroleum Di Teluk Meksiko Tahun 2010," *Journal Of International Relations* 2, No. 3 (2016): 45–54.

at fault.

A comparative legal analysis confirms that Indonesia's treatment of environmental claims in bankruptcy is outdated and doctrinally inconsistent. Under the United States' CERCLA regime (Comprehensive Environmental Response, Compensation, and Liability Act), environmental liability is classified as a continuing public obligation that cannot be discharged by insolvency, and courts consistently give priority to environmental cleanup costs over private creditor interests to prevent corporate evasion.[41] Likewise, Canada recognizes environmental remediation costs as a "super priority" claim, as affirmed in *Nortel Networks v. Ontario* (2013), where the court held that environmental obligations must be satisfied before distribution to secured creditors.[42] In China, the Ecological Environmental Damage Compensation (EEDC) system constitutionally establishes the state as the guardian of natural resources with non-dischargeable ecological claims, ensuring that insolvency cannot eliminate liability for environmental damage. These systems share a doctrinal foundation: ecological debt is a public debt arising from legal violation and must prevail over commercial claims. Therefore, Indonesia must reconstruct its insolvency framework by adopting Ecological Preferred Claims to guarantee constitutional protection of environmental rights in bankruptcy cases.

This suggests that in the case of insurance bankruptcy, recognition as a preferred creditor can be extended through a juridical approach based on the nature of the receivables rather than just the type of institution.[43] To prioritize the repayment of state debt, this environmental strategy should be implemented. In addition, Supreme Court Regulation (PERMA) Number 1 of 2023 gives judges direction to enforce environmental decisions, but it needs to be strengthened to implement them by creating an accurate and integrated list of receivables.[44]

The role of the State Attorney as a state representative in the bankruptcy

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[41] Mackie dan Fogleman, "Environmental Claims and Insolvent Companies: The Contrasting Approaches of the United Kingdom and the United States."

[42] Shen, "Crafting the legal regime for ecological environmental damage compensation."

[43] Aji Titin Roswitha Nursanthy, Dodi Kurniawan, Dan Yuliana Hindarsah, "Legal Standing Of Insurance Policy Holders Regarding Applications For Delay Of Debt Payment Obligations Due To Bankruptcy (Study Of Commercial Court Decision Case Number 389/Pdt.Sus-Pkpu/2020/Pn-Niaga.Jkt.Pst)," *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 9, No. 2 (Desember 2024): 243–52, Https://Doi.Org/10.25217/Jm.V9i2.4969.

[44]Herlina Dan Duana, "Penegakan Hukum Lingkungan Melalui Upaya Hukum Non Penal Menurut Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup."

process is an additional strategic factor. Rahardhini stated that prosecutors have strong legal power to fight for the rights of the state, but their success is greatly influenced by administrative preparation and cross-institutional collaboration.[45] The collaboration of curators and prosecutors must be increased so that the interests of the state are not neglected in bankruptcy proceedings.[46]

Therefore, the harmonization of regulations between the PPLH Law and the Bankruptcy Law, the strengthening of the prosecutor's function, and the juridical recognition that environmental receivables are the most important public receivables must be carried out to strengthen the protection of state law as a preferred creditor in the context of environmental bankruptcy. In addition, the model that can be taken from China in the Environmental Impact Accountability Regime, discussed by Hao Shen, can be an inspiration. This regime constitutionally establishes China as the holder of power over natural resources and has an absolute right to ecological restoration.[47]

A coherent legal reform must begin with an integrated normative hierarchy analysis to resolve the conflict between Bankruptcy Law No. 37 of 2004 and Environmental Law No. 32 of 2009 (UUPPLH). According to Hans Kelsen's Stufenbau theory, a lower norm may not contradict a higher legal norm, and since environmental responsibility is rooted in Article 28H paragraph (1) of the 1945 Constitution, it holds a superior normative position above bankruptcy rules. Moreover, based on the doctrine of lex specialis derogat legi generali, UUPPLH must be deemed a special law that overrides the general provisions of bankruptcy when dealing with ecological liability. This position is further justified by the public interest doctrine (Roscoe Pound), which affirms that public ecological rights cannot be sacrificed for private debt settlement. From the perspective of environmental constitutionalism , environmental claims are extensions of constitutional environmental rights and therefore cannot be subordinated to commercial insolvency processes. Thus, environmental debt must be classified legally as a public obligation that carries priority status over

[45] Rahardhini, "Efektivitas Pelaksanaan Wewenang Jaksa Sebagai Pengacara Negara Dalam Kasus Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Di Indonesia."

[46] Kusumadewi, "Peranan Kurator Dalam Permasalahan Kepailitan Perseroan Terbata (Studi Kasus Pt Ny.Meneer)."

[47] Hao Shen, "Crafting The Legal Regime For Ecological Environmental Damage Compensation: An Analysis Of China's Approach," *Asia Pacific Journal Of Environmental Law* 27, No. 2 (Desember 2024): 168–84, Https://Doi.Org/10.4337/Apjel.2024.02.01.

private creditor claims within insolvency law.[48]

Protecting the state as a preferred creditor in the event of a company's bankruptcy that damages the environment is essential. The state not only acts as a plaintiff in environmental civil cases, but also acts as a protector of the public interest in environmental restoration. In contrast, the bankruptcy system focuses on the division of assets according to creditors' priorities. The state's right to environmental compensation is threatened when the curator refuses to include the state in the list of preferred creditors.

Environmental law emphasizes responsibility and recovery, while bankruptcy law concentrates on how assets can be properly distributed, leading to significant conflicts. In a comparative study of the United Kingdom and the United States, Fogleman and Mamutse found that the "polluter pays" principle in environmental law is often compared to the "limited liability" principle in corporate and bankruptcy law.[49] This condition causes legal uncertainty for the state in collecting compensation for environmental damage.

The country's position is not completely secure even in countries like Indonesia that recognize its status as a preferred creditor. If it is not followed by concrete action by curators and courts, legalistic symbols such as Article 1134 of the Civil Code and Article 21 of the Civil Code Law which mention state receivables as a priority are not strong enough. This is shown by the case of PT RKK, which despite having to pay the Ministry of Environment and Forestry Rp191.8 billion, the bill was not included in the bankruptcy bank.

The study by Mackie and Fogleman on the system of "self-insurance" against environmental obligations shows a real weakness in the protection of the state. If a company only shows its financial strength without setting aside special funds for environmental restoration, then when bankruptcy occurs, it is almost impossible for the state to recover the funds needed for restoration.[50]

China provides an interesting model. The state is the primary manager

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[48] Y. Marpi, "The Concept of Actio Pauliana Creditor Law Bankruptcy Boedel Dispute Process to Achieve Substantive Justice," dalam *Jurnal Ius Kajian Hukum Dan Keadilan*, no. 3, 2023, 11:528–38, https://doi.org/10.29303/ius.v11i3.1305.

[49] Colin Mackie Dan Valerie Fogleman, "Environmental Claims And Insolvent Companies: The Contrasting Approaches Of The United Kingdom And The United States," *British Journal Of American Legal Studies* 2, No. 2 (2013): 579–633.

[50] Colin Mackie Dan Valerie Fogleman, "Self-Insuring Environmental Liabilities: A Residual Risk-Bearer's Perspective," *Journal Of Corporate Law Studies* 16, No. 2 (Juli 2016): 293–332, Https://Doi.Org/10.1080/14735970.2016.1181399.

and recipient of ecological compensation in the environmental damage compensation regime (EEDC). It is based on Article 9 of the PRC's Constitution, which designates the state as the owner of natural resources. Shen emphasized that there needs to be a public law that establishes the state's responsibility to protect the environment.[51]

Common law countries such as the United States have created mechanisms to balance bankruptcy and environmental laws. For example, the state has the ability to make claims against third parties, including directors of ineligible companies, through CERCLA. The Laffont study shows that an alternative way to ensure the source of funds for environmental restoration is to impose liability on shareholders or lenders.[52] Strengthening the responsibility of the board of directors and the implementation of personal responsibility will strengthen the situation in Indonesia. To avoid paying compensation for environmental damage, companies should avoid using bankruptcy as a shield. Some jurisdictions already implement this policy, such as Canada and Ireland.[53] According to Symes' research on "legislative priorities", environmental remediation should explicitly be a priority type in bankruptcy law. This will make environmental obligations a legal burden that must be met before receivables.[54]

In Indonesian law, PPLH Law No. 32 of 2009 and Bankruptcy Law No. 37 of 2004 must be adjusted. Incorporating environmental principles into bankruptcy law will allow states to collect more efficiently rather than relying on general standards about preferred creditors. Strengthening the role of curators is also important. Curators in Indonesia have wide freedom in determining the list of receivables.[55] The importance of supervising the curators by the supervising judge so that they do not neglect the state's receivables. If the curator neglects environmental responsibility, there are administrative or criminal sanctions required.

A preventive legal strategy is essential to strengthen the state's authority in safeguarding ecological interests in bankruptcy proceedings. Corporations

[51] Shen, "Crafting The Legal Regime For Ecological Environmental Damage Compensation."

[52] Laffont, "Environmental Protection, Producer Insolvency And Lender Liability."

[53] Mackie Dan Fogleman, "Self-Insuring Environmental Liabilities."

[54] Christopher F. Symes, *Statutory Priorities In Corporate Insolvency Law: An Analysis Of Preferred Creditor Status*, Markets And The Law (Farnham, England ; Burlington, Vt: Ashgate, 2008).

[55] Syahputra Dan Zainal, "Optimalisasi Tanggung Jawab Kurator Dalam Pegelolaan Harta Pailit Berdasarkan Undang-Undang Nomor 37 Tahun 2004."

operating in high-risk sectors such as mining, forestry, oil and gas, and palm oil must be required to provide an environmental guarantee fund to ensure the availability of restoration costs even in cases of insolvency. This model is consistent with environmental guarantee mechanisms implemented in the European Union through the trust fund model for extractive industries, which ensures that environmental obligations remain enforceable regardless of corporate solvency status. In Indonesia, the lack of financial safeguards enables corporations to externalize ecological risks to the state and the public. Therefore, preventive regulation must be accompanied by institutional reinforcement, including specialized environmental law training for commercial court judges, curators, and state attorneys so that they are capable of integrating ecological liability into insolvency procedures. Without such legal capacity, state ecological claims will continue to be procedurally defeated in bankruptcy courts.[56]

Comparative legal practice demonstrates that Indonesia lags significantly behind other jurisdictions in integrating environmental accountability within insolvency law. Under the United States' CERCLA regime (Comprehensive Environmental Response, Compensation, and Liability Act), environmental liabilities are treated as continuing public obligations that cannot be discharged through bankruptcy, ensuring that insolvency is not used as a shield against ecological responsibility. Canada adopts a similar approach through the recognition of environmental "super priority claims", as established in *Nortel Networks v. Ontario (2013)*, where environmental cleanup costs took precedence over secured creditors. China, through its Ecological Environmental Damage Compensation (EEDC) System, constitutionally positions the state as the supreme ecological creditor and prohibits the extinction of environmental liability through corporate restructuring or bankruptcy. These models prove that environmental claims must be prioritized doctrinally and procedurally. [57]The absence of such protection in Indonesia is evident in the PT Ricky Kurniawan Kertapersada bankruptcy case, where the curator excluded the state's environmental claim from the verified list of receivables, enabling ecological injustice through a legal mechanism.

To provide doctrinal coherence and normative certainty, this study proposes the operationalization of Ecological Preferred Claims as a binding legal

[56] Rahardhini, "Efektivitas Pelaksanaan Wewenang Jaksa Sebagai Pengacara Negara Dalam Kasus Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Di Indonesia."

[57] Shen, "Crafting the legal regime for ecological environmental damage compensation."

mechanism within Indonesia's bankruptcy system. This model requires statutory reform by amending Article 1134 of the Civil Code and Articles 55 and 56 of Law No. 37 of 2004 on Bankruptcy, to explicitly classify environmental restoration debt as priority state claims equal to or higher than tax obligations. The implementation of this doctrine also necessitates: (1) mandatory registration of environmental court judgments in the fixed receivables list by curators; (2) state attorney (JPN) intervention rights in bankruptcy cases involving environmental losses; and (3) the establishment of a national ecological escrow account to secure funds for environmental recovery before asset distribution to private creditors. This doctrine is aligned with public interest enforcement and grounded in Kelsen's normative hierarchy theory, Roscoe Pound's public interest doctrine, and Christopher D. Stone's environmental constitutionalism, affirming that environmental debts are not private obligations but constitutional duties of the state that cannot be extinguished by bankruptcy.[58]

## CONCLUSION

This study concludes that Indonesia's bankruptcy law regime does not yet provide adequate legal protection for the state in enforcing environmental restoration claims arising from corporate ecological violations, as demonstrated by the exclusion of the Ministry of Environment and Forestry's claims in the PT Ricky Kurniawan Kertapersada case. The doctrinal weakness lies in the privatistic character of Law No. 37 of 2004 on Bankruptcy and PKPU, which fails to recognize the public nature of environmental debt, thereby creating a legal vacuum that allows corporations to evade ecological responsibility through insolvency. This study proposes the concept of Ecological Preferred Claims as a new doctrinal framework that classifies environmental liabilities as priority state debts grounded in strict liability, ecological justice, and constitutional environmental rights under Article 28H of the 1945 Constitution. Theoretically, this concept integrates public law principles into insolvency law and reconstructs the creditor hierarchy to accommodate ecological obligations. Normatively, it implies the need for the Indonesian legislature to amend the Bankruptcy Law by: (1) explicitly categorizing environmental claims as priority debts equivalent to or higher than tax claims; (2) mandating curators to register environmental judgments in the verified list of receivables; and (3) authorizing state attorneys to intervene in bankruptcy cases involving ecological loss. These measures ensure that bankruptcy cannot be used as a legal instrument to avoid environmental accountability and support the

[58] Shuai Guo, "When Environment Meets Bankruptcy: Global Lessons for and from China," *Review of European, Comparative & International Environmental Law* 34, no. 1 (April 2025): 124–35, https://doi.org/10.1111/reel.12600.

development of a green bankruptcy model that aligns commercial justice with ecological justice in Indonesia.

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**REFERENCECS**

**Book:**

Chaput, Nicolas. "Environmental Clean-Up In Bankruptcy And Insolvency: What Priority For The Environment?" University Of Toronto, 2012.

Laffont, Jean-Jacques. "Environmental Protection, Producer Insolvency And Lender Liability." *Edward Elgar Publishing,* 1 (1996): 1–29.

Symes, Christopher F. *Statutory Priorities In Corporate Insolvency Law: An Analysis Of Preferred Creditor Status*. Markets And The Law. Farnham, England ; Burlington, Vt: Ashgate, 2008.

**Journal:**

Aji Titin Roswitha Nursanthy, Dodi Kurniawan, Dan Yuliana Hindarsah. "Legal Standing Of Insurance Policy Holders Regarding Applications For Delay Of Debt Payment Obligations Due To Bankruptcy (Study Of Commercial Court Decision Case Number 389/Pdt.Sus-Pkpu/2020/Pn-Niaga.Jkt.Pst)." *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam* 9, No. 2 (Desember 2024): 243–52. Https://Doi.Org/10.25217/Jm.V9i2.4969.

Ali Adnan, Muhammad, Sanjaya Gideon Gultom, Dan Atika Sunarto. "Perlindungan Hukum Bagi Kreditur Dalam Sengketa Hutang Piutang Yang Berakhir Dengan Kepailitan Di Kota Medan." *Unes Journal Of Swara Justisia* 8, No. 3 (November 2024): 643–54. Https://Doi.Org/10.31933/5nbezc11.

Annisa, Arini Nur, Mutiah Wenda Juniar, Muh. Ramadhansyah Prasetia, Muhammad Fitrah Rahman, Dan Rifki Alfian. "Employment Migration Service Protection: Formulasi Peraturan Kebijakan Dalam Penempatan Dan

Pelindungan Pekerja Migran Indonesia." *Paulus Law Journal* 6, No. 1 (2024): 44–63.

Anugraha, Viqi, Dan Adlin Budhiawan. "Prinsip Pembuktian Sederhana Sebagai Syarat Penundaan Kewajiban Pembayaran Hutang." *Journal Of Education Research* 4, No. 2 (Juni 2023): 742–51. Https://Doi.Org/10.37985/Jer.V4i2.201.

Arvante, Jeremy Zefanya Yaka, Dan Fifiana Wisnaeni. "Theoretical Study Of Authoritary Political Configuration Products Of Law No. 6 Of 2023 On Job Creation Law (Pplh) And Its Implications On Environmental And Social Aspects)." *International Journal Of Social Science And Human Research* 08, No. 01 (Januari 2025). Https://Doi.Org/10.47191/Ijsshr/V8-I1-50.

Fanny Gresta Nova. "Keabsahan Permohonan Pailit Dan Pkpu Oleh Pekerja Sebagai Alternatif Penyelesaian Kegagalan Pembayaran Upah." *Jurnal Yustika: Media Hukum Dan Keadilan* 27, No. 01 (Januari 2025): 42–53. Https://Doi.Org/10.24123/Yustika.V27i01.6362.

Fard, Amirhossein, Siamak Javadi, Dan Incheol Kim. "Environmental Regulation And The Cost Of Bank Loans: International Evidence." *Journal Of Financial Stability* 51 (Desember 2020): 100797. Https://Doi.Org/10.1016/J.Jfs.2020.100797.

Galant, Adriana, Dan Robert Zenzerović. "Can Corporate Social Responsibility Contribute To Bankruptcy Prediction? Evidence From Croatia." *Organizacija* 56, No. 3 (Agustus 2023): 173–83. Https://Doi.Org/10.2478/Orga-2023-0012.

Guo, Shuai. "When Environment Meets Bankruptcy: Global Lessons For And From China." *Review Of European, Comparative & International Environmental Law* 34, No. 1 (April 2025): 124–35. Https://Doi.Org/10.1111/Reel.12600.

Guzikova, Liudmila, Natalia Neelova, Dan Denis Ushakov. "Environmental Analysis In Bankruptcy Diagnosing (The Case Of Construction Companies)." *E3s Web Of Conferences* 371 (2023): 02059. Https://Doi.Org/10.1051/E3sconf/202337102059.

Hambali, Dan Adnan Hamid. "Perlindungan Hukum Terhadap Kreditor Konkuren Ditinjau Dari Prinsif Keberlangsungan Usaha Dan Prinsif Keadilan." *Pamulang Law Review* 7, No. 2 (November 2024): 167–83. Https://Doi.Org/10.32493/Palrev.V7i2.44757.

Haryadi, Prim. "Pengembangan Hukum Lingkungan Hidup Melalui Penegakan

Hukum Perdata Di Indonesia." *Jurnal Konstitusi* 14, No. 1 (Juli 2017): 124. Https://Doi.Org/10.31078/Jk1416.

Herlina, Nina, Dan Rima Duana. "Penegakan Hukum Lingkungan Melalui Upaya Hukum Non Penal Menurut Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup." *Jurnal Ilmiah Galuh Justisi* 10, No. 2 (September 2022): 305. Https://Doi.Org/10.25157/Justisi.V10i2.8722.

Kusumadewi, Dimitria Pawestri. "Peranan Kurator Dalam Permasalahan Kepailitan Perseroan Terbata (Studi Kasus Pt Ny.Meneer)." *Jurnal Hukum Statuta* 3, No. 3 (Agustus 2024): 175–85. Https://Doi.Org/10.35586/Jhs.V3i3.9449.

Larasati, Genoveva Puspitasari, Dan Elly Kristiani Purwendah. "Penerapan Prinsip Pencemar Membayar Terhadap Pencemaran Limbah Bahan Berbahaya Dan Beracun (B3)." *Jurnal Locus Delicti* 3, No. 2 (Desember 2022): 150–66. Https://Doi.Org/10.23887/Jld.V3i2.1611.

Mackie, Colin, Dan Valerie Fogleman. "Environmental Claims And Insolvent Companies: The Contrasting Approaches Of The United Kingdom And The United States." *British Journal Of American Legal Studies* 2, No. 2 (2013): 579–633.

———. "Self-Insuring Environmental Liabilities: A Residual Risk-Bearer's Perspective." *Journal Of Corporate Law Studies* 16, No. 2 (Juli 2016): 293–332. Https://Doi.Org/10.1080/14735970.2016.1181399.

Marpi, Y. "The Concept Of Actio Pauliana Creditor Law Bankruptcy Boedel Dispute Process To Achieve Substantive Justice." Dalam *Jurnal Ius Kajian Hukum Dan Keadilan*, 11:528–38. No. 3. 2023. Https://Doi.Org/10.29303/Ius.V11i3.1305.

Marpi, Yapiter, Jamal Wiwoho, Dan . Pujiyono. "Legal Protection Of Creditors Constitutional Rights As Citizens Due To Debtor Insolvency." *Kne Social Sciences*, Advance Online Publication, 5 Januari 2024. Https://Doi.Org/10.18502/Kss.V8i21.14776.

Mayovets, Yevgen, Nataliia Vdovenko, Hanna Shevchuk, Mykola Zos-Kior, Dan Iryna Hnatenko. "Simulation Modeling Of The Financial Risk Of Bankruptcy Of Agricultural Enterprises In The Context Of Covid-19." *Journal Of Hygienic Engineering And Design* 36 (2021): 192–98.

Muhammad Awal Alishakur Dan Ariawan Gunadi. "Legal Protection Of Creditors'

Preferences Rights Regarding Fiduciary Security Receivables." *Journal Of Law, Politic And Humanities* 5, No. 1 (November 2024): 509–14. Https://Doi.Org/10.38035/Jlph.V5i1.874.

Nurfadia Futri, Inas, Desti Indah Pratiwi, Bimo Saktiawan, Dan Tastaftiyan Risfandy. "The Relationship Between Environmental Sustainability And Financial Constraints: Evidence From Indonesian Firms." *Iop Conference Series: Earth And Environmental Science* 1438, No. 1 (Januari 2025): 012040. Https://Doi.Org/10.1088/1755-1315/1438/1/012040.

Pardede, Josua Navirio, Dan Yun Santoso. "Refleksi Kritis Terhadap Konsep Keadilan Restoratif Dalam Penanganan Tindak Pidana Lingkungan Hidup Di Indonesia." *Jurnal Hukum Lingkungan Indonesia* 8, No. 2 (2022).

Parnika, Kania Octavia, Intan Rahayu Kholillah, Kamilia Lathifah Ahmad, Dan Januar Hukmawa Janatino. "Evaluasi Efektivitas Amdal Dalam Mencegah Kerusakan Lingkungan Di Indonesia." *Jurnal Pendidikan Tambusai* 8, No. 3 (2024): 50727–35.

Purba, Benyamin, John Pieries, Dan Wiwik Sri Widiarty. "Kedudukan Karyawan Sebagai Kreditur Preferen Akibat Penetapan Penundaan Kewajiban Pembayaran Utang Suatu Perusahaan." *Action Research Literate* 8, No. 12 (Desember 2024): 3436–51. Https://Doi.Org/10.46799/Arl.V8i12.2529.

Purnama Wati, Evi. "Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Pembangunan Yang Berkelanjutan." *Bina Hukum Lingkungan* 3, No. 1 (Oktober 2018): 119–26. Https://Doi.Org/10.24970/Jbhl.V3n1.9.

Putrijanti, Aju, Tri Laksmi Indreswari, Aditya Yuli Sulistyawan, Sri Wahyu Ananingsih, Dan Anggita Doramia Lumbanraja. "Enforcement Of Environmental Law Through Citizen Lawsuit In Administrative Court." *E3s Web Of Conferences* 605 (2025): 03008. Https://Doi.Org/10.1051/E3sconf/202560503008.

Rahardhini, Halida. "Efektivitas Pelaksanaan Wewenang Jaksa Sebagai Pengacara Negara Dalam Kasus Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Di Indonesia." *Yustitia* 10, No. 1 (April 2024): 60–74. Https://Doi.Org/10.31943/Yustitia.V10i1.226.

Saleh, Moh. "Kurator Sebagai Eksekutor Dalam Penyelesaian Kasus Kepailitan." *Jurnal Kompilasi Hukum* 9, No. 1 (2024): 42–53.

Shen, Hao. "Crafting The Legal Regime For Ecological Environmental Damage

Compensation: An Analysis Of China's Approach." *Asia Pacific Journal Of Environmental Law* 27, No. 2 (Desember 2024): 168–84. Https://Doi.Org/10.4337/Apjel.2024.02.01.

Surber, Sarah J. "A Conceptual Model For Integrating Community Health In Managing Remediation Of West Virginia And Central Appalachia's Abandoned Coal Mines." *Environment, Development And Sustainability* 23, No. 2 (Februari 2021): 1563–78. Https://Doi.Org/10.1007/S10668-020-00638-9.

Syahputra, M. Arif, Dan Arifin Hoesein Zainal. "Optimalisasi Tanggung Jawab Kurator Dalam Pegelolaan Harta Pailit Berdasarkan Undang-Undang Nomor 37 Tahun 2004." *Jurnal Retentum* 7, No. 1 (2025): 81–92.

Triana, Yeni, Tri Anggara Putra, Dan M. Fadly Daeng Yusuf. "Enhancing Legal Safeguards In Bankruptcy: The Role Of Exceptio Non Adimpleti Contractus In Balancing Creditor-Debtor Relations." *Journal Of Ecohumanism* 3, No. 8 (Januari 2025). Https://Doi.Org/10.62754/Joe.V3i8.5805.

Utama, Razhez Akbar Wildan, Dan Budi Santoso. "Analisis Yuridis Tanggung Jawab Direksi Terhadap Kepailitan Perseroan Terbatas Menurut Undang-Undang Nomor 40 Tahun 2007." *Notarius* 15, No. 2 (Desember 2022): 1002–11. Https://Doi.Org/10.14710/Nts.V15i2.37014.

Widiastari, Stefani Gestananda. "Kebijakan Pemerintah Amerika Serikat Terhadap Kejahatan Lingkungan Akibat Pencemaran Lingkungan Oleh Perusahaan Multinasional British Petroleum Di Teluk Meksiko Tahun 2010." *Journal Of International Relations* 2, No. 3 (2016): 45–54.

**Thesis:**

Adithama, Edo, Sihabudin, Dan Ranitya Ganindha. "Perlindungan Hukum Terhadap Kreditor Dalam Hal Tagihan Piutangnya Tertolak Pada Tahap Verifikasi Piutang Dalam Proses Penundaan Kewajiban Pembayaran Utang (Pkpu)." Universitas Brawijaya, 2022.