A Limited Priority for Environmental Remediation Claims over Contaminated Assets in Indonesian Bankruptcy

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Abstract

Environmental remediation claims rank as unsecured (concurrent) claims in Indonesian bankruptcy law, so the burden of remediation shifts to the state precisely when the polluter is least able to pay. The bankruptcy of PT Ricky Kurniawan Kertapersada illustrates this failure: a final and binding judgment of IDR 191,803,261,700, including IDR 147.058 billion in environmental restoration costs, confronted an estate distribution that offers no normative basis for giving it precedence. This article formulates a priority model that effectively secures remediation funding while remaining proportionate to other creditors, and is therefore viable in legislative politics. The study employs normative legal research with a prescriptive orientation and a functional comparison with the United States, Canada, and Sweden, followed by norm drafting and a four-stage proportionality test. The main finding is that no single instrument suffices. An effective system combines obligations that remain alive during bankruptcy proceedings, a priority limited to the affected assets, and ex ante financial assurance segregated from the estate. On that basis, the article proposes a four-tier priority model, namely environmental bankruptcy costs, a special privilege over affected assets, a general privilege over the residual claim, and ex ante safeguards, which passes the proportionality test because its impact on secured creditors is confined to assets whose risks they themselves failed to price. The article contributes concrete draft provisions for amending the Bankruptcy and Suspension of Debt Payment Obligations Law, together with a harmonisation map.

1. Introduction

On March 21, 2023, the Commercial Court at the Medan District Court handed down a bankruptcy verdict against PT Ricky Kurniawan Kertapersada (PT RKK) at the company's own request,[1] after the environmental responsibility has permanent legal force. Forest and land fires covering an area of 591 hectares in 2015 in Muaro Jambi Regency resulted in a total penalty of Rp191,803,261,700 — consisting of material damages for ecosystem damage of Rp44.745 billion and environmental function restoration costs of Rp147.058 billion.[2]

What happens next is the crux of the problem of this article. The Ministry of Environment and Forestry is not listed in the Provisional Receivables List or the Permanent Receivables List, even though it holds a judgment with permanent legal force of more than Rp191 billion; it underwent a renvoicing procedure and was finally recognized as a creditor.[3] The recognition only solves procedural problems: after recognition, the state stands as a concurrent creditor, after the separatist creditors take their collateral and after the tax debt and workers' wages are paid first. The Rp147 billion bill is almost certainly unpaid, and the burden falls on the state budget — the opposite of the polluter principle of paying in Article 2 letter j of the PPLH Law.[4]

Bankruptcy thus becomes an exit from liability which is expressly closed by the environmental law itself. Article 87 paragraph (2) of the PPLH Law states that the transfer or change of business form does not release the legal responsibility of the

[1] Commercial Court Decision at the Medan District Court Number 04/Pdt.Sus-Pailit/2023/PN. Niaga.Mdn, March 21, 2023.
[2] The Jambi High Court Decision Number 65/Pdt.LH/2017/PT. JMB, is confirmed by the Supreme Court Decision Number 854 PK/Pdt/2022.
[3] Patricia, B., Al Asy'arie, M. A. H., & Triyono. (2025). *Juridical analysis of the position of the Ministry of Environment and Forestry as a creditor in the bankruptcy process of PT Ricky Kurniawan Kertapersada* [Thesis, Diponegoro University]; see also Tarigan, F. D. (2025). *Curatorial responsibility in the settlement of bankruptcy assets: A case study of the non-inclusion of the Ministry of Environment and Forestry as a creditor in the bankruptcy of PT RKK in 2023* [Thesis, University of Jambi].
[4] Article 2 letter j of Law Number 32 of 2009 concerning Environmental Protection and Management.

business entity that violates the law.[5] PT RKK achieved through bankruptcy what it is forbidden to achieve through corporate restructuring. Ironically, the bankruptcy came precisely after the court applied absolute liability, a doctrine that in Indonesia's forest fire litigation has grown in various facets[6] and reaffirmed, among others, through Decision Number 527 PK/Pdt/2023 which sentenced PT Kumai Sentosa to pay IDR 175 billion in damages and take remedial action. [7] This pattern also does not stop at one case: PT RKK and PT Waringin Agro Jaya both ended up in bankruptcy after being sentenced to pay environmental damages, and under the prevailing scheme the Ministry of Environment and Forestry can only stand as a concurrent creditor behind preferred and separatist creditors.[8] The problem is not the absence of the right to sue: the PPLH Law has recognized the right to sue for environmental damage, including the right to sue organizations, and the Government Administration Law opens up the space for lawsuits against government actions.[9] The problem lies downstream, that is, when the judgment won through the right to sue loses its coercive force once the debtor enters bankruptcy.

This gap has been highlighted. Kadir, Dahlan, and Mathen examined a similar case and proposed the recognition of environmental debt as *an ecological preferred claim*, concluding that Indonesia's bankruptcy arrangement "remains privatistic and

[5] Article 87 paragraph (2) of Law Number 32 of 2009.
[6] Wibisana, A. G. (2019). The many faces of strict liability in Indonesia's wildfire litigation. *Review of European, Comparative & International Environmental Law, 28*(2), 185–196. https://doi.org/10.1111/reel.12284
[7] Purwanto, E., Sjarief, R., & Saleh, M. Z. (2024). Legal dynamics in environmental accountability: A case study of forest fire litigation in Indonesia. *International Journal of Environmental Impacts, 7*(1), 25–30. https://doi.org/10.18280/ijei.070103
[8] Sitanggang, R. W. (2025). Problems of the execution of court decisions against plantation companies affected by fines for compensation for environmental lawsuits. *Honeste Vivere, 35*(1), 109–128. https://doi.org/10.55809/hv.v35i1.422
[9] Andriana, D. E., Fadli, M., Negara, T. A. S., & Permadi, I. (2023). Legal standing and organization's right to sue in cases of unlawful government acts after the implementation of Law No. 30 of 2014. *Conscience, 23*(2), 283–296. https://doi.org/10.19109/nurani.v23i2.19831

fails to accommodate ecological justice".[10] The diagnosis is correct, but the prescription stops at three points. First, the proposal takes the form of a general priority category without distinguishing bills according to the time they arise, even though the countermeasures incurred by the curator during the process are conceptually different from the pre-bankruptcy bills that the court has decided—the first is the cost of maintaining the treasury, the second is the old bill. Second, the proposal does not test its impact on separatist creditors. This is not a technical objection: any new priority proposal will meet the investment climate argument at the lawmakers' desk, and that argument can only be answered by showing that the proposed priorities are limited and can be challenged. Third, the bill-rating-based proposal does not answer the problem of polluted assets that the curator releases; if the curator releases a burned peatland because its restoration costs exceed its selling value, no bill rating helps.

This article answers one question: **how should Indonesia's bankruptcy law be reconstructed so that environmental restoration cost bills are guaranteed to be financed according to *the polluter pays* principle, while maintaining a balance of creditors' interests?** The novelty lies in three things: the priority model is structured in stages and not as a single category; the model is tested for proportionality as a legislative eligibility requirement; and the results are formulated down to the article level.

2. Research Methods

This research is a prescriptive-oriented normative juridical research (*law reform research*). The comparison is carried out functionally following Zweigert and Kötz — what is compared is the function, i.e. the way each system ensures that recovery is

[10] Kadir, N. K., Dahlan, M. F., & Mathen, Y. P. (2025). State's legal priority as a creditor in environmental bankruptcy proceedings. *EXECUTION: Journal of Law, 7*(2), 244–271. https://doi.org/10.24014/je.v7i2.38257

financed when the polluter goes bankrupt.[11] The design of norms rests on the principles in Article 5 and Article 6 of Law No. 12 of 2011 as well as Maria Farida Indrati's theory of harmonization,[12] and its feasibility is tested through four-stage proportionality. This normative juridical framework with such legislative, conceptual, and analytical approaches has been used to design an ideal legal construction in the environmental field, including a model of environmental approval based on public participation in risk-based business licensing in forest areas.[13]

The three jurisdictions were chosen not because of the similarity of their systems to Indonesia's, but because they each answer a different part of the same issue. **The United States** has the richest precedent regarding the qualification of environmental costs as boedel's administrative costs and the prohibition on the release of polluted assets — two things that Indonesia's proposed reforms do not touch. **Canada** has explicit priority norms at the legislative level and has tested them in the highest court in 2019, providing the only example of how firm environmental priorities work in practice. **Sweden** was chosen because of its *civil law* tradition, the documented experience of mining bankruptcy by the state audit body, and — most importantly methodologically — because it is a negative case: it does not give any priority to environmental bills, so the consequences of its absence can be observed.

Comparisons were made on six variables, each representing a single point of leakage in recovery financing: (a) the qualification of claims; (b) priority position; (c) the treatment of non-monetary liabilities; (d) the release of tainted assets; (e) ex ante

[11] Zweigert, K., & Kötz, H. (1998). *An introduction to comparative law* (T. Weir, Trans.; 3rd ed.). Clarendon Press, p. 34.
[12] Article 5 and Article 6 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations; Indrati S., M. F. (2007). *Laws and Regulations: Types, Functions, and Content Materials*. Kanisius.
[13] Permadi, I., Maharani, D. P., & Ayub, Z. A. (2023). Averting deforestation: Designing the model of a public participation-based environmental agreement of shifting functionality of forest. *Journal of Indonesian Legal Studies, 8*(2), 707–752. https://doi.org/10.15294/jils.v8i2.68911

collateral instruments; and (f) the impact on separatist creditors. The results are presented in Table 1.

1. Results and Discussion

A. Polluter Pays as a Risk Allocation Principle in Insolvency

The *polluter pays principle* was born as an economic principle, not a moral principle. The 1972 OECD recommendation formulated it as a cost-allocation principle: polluters must bear the costs of pollution prevention and control so that those costs are reflected in the prices of the goods that cause them,[14] and the 1974 Recommendation affirms that exceptions are justified only to a very limited extent.[15] The point is internalization: environmental costs should not be thrown at the public. The bankruptcy literature itself has only recently touched on this issue; Linna notes that sustainability receives almost no attention in the study of the bankruptcy process, and that the purpose of bankruptcy itself can hinder the full implementation of sustainability.[16]

Two implications are rarely drawn up in the Indonesian bankruptcy literature. First, internalization covers future costs: the company that leaves the polluted land has not internalized any costs, it has just postponed them, and if the delay ends in bankruptcy what is a public subsidy for the destructive activities. *Polluter pays* are therefore only implemented if there is a mechanism in place that ensures recovery obligations are financed when polluters are unable to pay. Second, this principle governs the allocation of risk, not punishment. The bank is a voluntary creditor: it chooses to lend, assesses the risk, sets interest as its price, and can ask for collateral.

[14] OECD. (1972). *Recommendation of the Council on guiding principles concerning international economic aspects of environmental policies* (C(72)128). OECD.
[15] OECD. (1974). *Recommendation of the Council on the implementation of the polluter-pays principle* (C(74)223). OECD.
[16] Linna, T. (2019). Insolvency proceedings from a sustainability perspective. *International Insolvency Review, 28*(2), 210–232. https://doi.org/10.1002/iir.1345

The state as the holder of the recovery bill has never chosen to come into contact with polluters and cannot refuse the consequences of pollution. The priority for recovery bills is therefore not to punish the bank, but rather to transfer the risk to those who are structurally able to measure and appreciate it.

That this risk transfer works is not just a theoretical postulate. Ohlrogge points out empirically that after *Apex Oil* raised the priority of recovery obligations, companies with limited operations in the Seventh Circuit reduced their on-site releases of toxic chemicals by about 12 to 30 percent and replaced them with treatment at specialized facilities, while a number of lenders added stricter credit clauses regarding toxic waste management.[17] His other findings reinforce the urgency: the closer a company is to bankruptcy, the more likely it is to breach rules protecting third parties, with a shift from best credit ratings to worst associated with a seven-fold increase in the frequency of breaches.[18] Bankruptcy law that treats recovery bills as concurrent bills is not neutral to this *judgment-proofness issue* ; it exacerbates it. The evidence from Texas leads to the same conclusion: insurance obligations that narrow the chances of a company avoiding liability through bankruptcy substantially improve the environmental performance of small companies while depressing their production.[19]

The orientation of restoration is not unfamiliar to the Indonesian legal tradition. Istislam, Permadi, and colleagues point out that national law tends to rely on administrative instruments, while Tengger customary law works through restorative

[17] Ohlrogge, M. (2024). Bankruptcy claim dischargeability and public externalities: Evidence from a natural experiment. *American Law and Economics Review*. Advance online publication. https://doi.org/10.1093/aler/ahae009
[18] Ohlrogge, M. (2018). *Insolvency and incentives for efficient care* (SSRN Working Paper No. 3136775). SSRN.
[19] Boomhower, J. (2019). Drilling like there's no tomorrow: Bankruptcy, insurance, and environmental risk. *American Economic Review, 109*(2), 391–426. https://doi.org/10.1257/aer.20160346

sanctions that demand restoration of circumstances rather than mere payment.[20] The lesson: unpaid recovery responsibility is a restorative sanction that loses its content.

From this framework, three conditions were derived from the assessment of the three comparative countries: the model must be **effective in guaranteeing recovery** (generating real funds, not ranking higher on empty portfolios), not shifting **the burden to the public** (closing the path of leakage including the release of contaminated assets), and **proportionate to other creditors** (limiting the impact on parties who can afford to measure the risk).

B. **United States: Priority through Administration Fees and Asset Release Prohibition**

The United States has never given prebankruptcy environmental bills special priority. The strength of the model lies in the liabilities that live *during* the bankruptcy process.

Section 503(b)(1)(A) *of the Bankruptcy Code* recognizes as administrative costs "the actual, necessary costs and expenses of preserving the estate", and Section 507(a)(2) places it second in the hierarchy of payments.[21] When the curator controls and operates the contaminated assets, the cost of post-bankruptcy treatment falls into this category and is paid from the boedel first. That qualification depends on the time and its relationship to the maintenance of the boedel, not on the environmental nature of its liability: a prebankruptcy bill does not constitute an administrative expense simply because it is an environmental bill.

The boundary between a clean-up order and a bill of money is set in two rulings. In *Ohio v. Kovacs*, the Supreme Court ruled unanimously that when what is actually wanted from the debtor is money to finance the cleanup, the order has turned into an

[20] Istislam, Permadi, I., Tinambunan, H. S. R., Atmoko, P. W., & Cuikitalia. (2026). Adaptive environmental governance within a legal pluralism framework: A case study of the Tengger indigenous community in Indonesia. *Jurisdictie: Journal of Law and Sharia, 17*(1), 1–36. https://doi.org/10.18860/j.v17i1.41228

[21] 11 U.S.C. § 503(b)(1)(A); 11 U.S.C. § 507(a)(2).

obligation to pay money and can be abolished through bankruptcy.[22] Justice O'Connor in his concurring opinion added the most relevant point here: a state can protect its environmental law enforcement interests by granting statutory *lien status* to a cleanup judgment[23] Justice O'Connor in his concurring opinion added the most relevant point here: a state can protect its environmental law enforcement interests by granting statutory *lien status* to a cleanup judgment. [24] Judge Posner made it clear in *Apex Oil*: because Section 7003 *of the Resource Conservation and Recovery Act* does not authorize monetary damages, the costs to be incurred by the defendant are not entitled to payment in the hands of the plaintiff.[25] A different stance in *Whizco* has never been followed by any other appellate court.[26]

The most important contribution to Indonesia is the prohibition on the release of tainted assets. In *Midlantic National Bank v. NJDEP*, the Supreme Court ruled by a 5-to-4 vote that a curator should not release property contrary to regulations reasonably designed to protect the public health or safety from identified dangers, and that bankruptcy courts are not authorized to authorize releases without formulating adequate conditions to protect the public.[27] Footnote 9 narrows it: this exception is narrow and does not cover speculative offenses. [28] *Midlantic* is therefore not an absolute prohibition but a conditional prohibition that works through judicial supervision — and it is precisely in this conditional form that it can be adopted into the structure of Indonesia's supervisory judges without paralyzing settlement.

[22] *Ohio v. Kovacs*, 469 U.S. 274, 283 (1985).
[23] *Ohio v. Kovacs*, 469 U.S. 274, 285–286 (1985) (O'Connor, J., concurring).
[24] *In re Chateaugay Corp.* , 944 F.2d 997, 1008 (2d Cir. 1991).
[25] *United States v. Apex Oil Co.* , 579 F.3d 734, 736–737 (7th Cir. 2009), *cert. denied*, No. 09-1023 (U.S. October 4, 2010).
[26] *United States v. Whizco, Inc.* , 841 F.2d 147, 150–151 (6th Cir. 1988); compare *In re Torwico Electronics, Inc.* , 8 F.3d 146 (3d Cir. 1993).
[27] *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494, 507 (1986).
[28] *Midlantic*, 474 U.S. 494, 507 n.9 (1986).

In contrast, the CERCLA federal lien is weak. Article 107(l) creates *a lien* on immovable property that is the object of a recovery action, but subjects it to the rights of the purchaser, suretyholder, or creditor of the judgment lien holder whose rights were perfected **before the** lien *notice* was registered.[29] It is not a *superlien*: it works on *a first-in-time, first in right* basis and almost always loses to the bank that registered its collateral first. State law chooses a different architecture — *New Jersey*'s *Spill Act* gives liens on property that are the object of cleanup priority over all other bills, while *liens* on other polluting property apply only from registration;[30] Massachusetts follows exactly the same pattern.[31] The structural lesson: the priority that truly precedes the right of security is limited to the polluted asset itself.

C. Canada: Super-Priority Charge and Redwater Verdict

Canada is the only comparator that has explicit environmental priority norms at the legislative level and has tested them in the highest court. Both provide lessons in opposite directions, and that's precisely what they are worth.

Section 14.06(7) *of the Bankruptcy and Insolvency Act* states that the Crown's bill for the costs of remediation of environmental conditions or damage is secured by a right of security in respect of the property affected and on the property of other debtors adjacent to and relating to the causative activity, and that the collateral "ranks above any other claim, right, charge or security against the property, despite any other provision of this Act or anything in any other federal or provincial law".[32] Two textual restrictions are important because they will be transplanted: the guarantee attaches to the property and not to the boedel as a whole, and the extension to adjacent property is subject to two cumulative conditions—adjacent **to and** relating to causative activity.

[29] CERCLA § 107(l)(3), 42 U.S.C. § 9607(l)(3).
[30] N.J. Stat. Ann. § 58:10-23.11f(f).
[31] Mass. Gen. Laws ch. 21E, § 13.
[32] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 14.06(7).

Section 14.06(8) states that the recovery expense bill is verifiable regardless of whether the condition arose before or after the bankruptcy judgment.[33]

On January 31, 2019 the Supreme Court of Canada ruled *in Orphan Well Association v. Grant Thornton Ltd.* by a 5-to-2 vote, in the case of an oil and gas company that went bankrupt by abandoning a well that was obliged to be closed and reclaimed.[34] The Court ruled in three mutually supportive cases. Article 14.06 regulates the **personal** liability of the curator and not the liability of the boedel, so the release releases the curator personally but does not remove the environmental obligations inherent in the boedel. By applying *the AbitibiBowater test* —there must be a debt to a creditor, the debt arose before bankruptcy, and it must be possible to attach a monetary value to it[35]—the obligation of closure and reclamation is not a verifiable bill, because the supervisory body enforces a public obligation through a non-monetary order without deriving financial gain. Because it is not a bill, the obligation is outside the bankruptcy distribution scheme, so the boedel must satisfy it before there is a distribution to the separatist creditors.

For analytical honesty it should be noted that *Redwater* 's results do not rely on Article 14.06(7). The victory of environmental interests comes through the qualification of the liability as not a bill, so there is no conflict of priority to resolve. This at the same time demonstrates the limits of Article 14.06(7): because the guarantee is attached to the polluted property while the company's value lies in the productive well, the provision does not reach what needs to be reached.

Concerns about access to credit arose immediately. Post-termination credit

[33] *Bankruptcy and Insolvency Act*, s. 14.06(8).
[34] *Orphan Well Association v. Grant Thornton Ltd.* , 2019 SCC 5 (Wagner C.J., 5-2), 31 January 2019. The paragraph numbers in this judgment are cited through the secondary literature that corroborates each other; see Wood, R. J. (2019). Environmental obligations in insolvency proceedings: Orphan Well Association v Grant Thornton Ltd. *Canadian Business Law Journal, 62*, 211–230.
[35] *Newfoundland and Labrador v. AbitibiBowater Inc.* , 2012 SCC 67, para. 26.

agreements began to require annual decommissioning budgets, covenants on liability management ratios, and reductions in the *borrowing base*, although market approaches to the exact amount of discounts had not yet developed,[36] and Girgis and colleagues argued that *Redwater* was disrupting commercial certainty because lenders had difficulty calculating recovery obligations whose value was constantly changing.[37] But evidence to the contrary is also available: 2019 market coverage noted that the overall reduction of credit facilities did not occur, and — more methodologically important — **there was not a single published empirical study measuring the magnitude of the credit contraction attributable to *Redwater***. Alberta's own policy response is moving in *an ex ante direction*: abandoned well funds are financed by the industry through regulatory levies, with cumulative contributions exceeding CAD 1.14 billion,[38] and since July 30, 2020 the *Liability Management Framework has been in place*. [39] Barretto and colleagues note that post-Redwater regulatory obligations are in practice treated as priority bills before distribution to creditors, while *Directive 088* shifts liability management toward permitting capability assessments and mandatory closing spending targets.[40]

D. Sweden: Ex Ante Financial Security in the Civil Law Tradition

Sweden is a negative case: a *civil law* country with advanced environmental laws that does not give any priority to a recovery bill in bankruptcy. The consequences of

[36] Maksimow, D. (2019, July 27). *The response of Canadian banks to the Supreme Court of Canada's Redwater decision*. Association of Corporate Counsel.
[37] Girgis, J., Gurofsky, R., Konowalchuk, O., & MacLeod, W. (2025). Redwater's continuing impact on Canada's energy sector. *Alberta Law Review, 62*(2), 396. https://doi.org/10.29173/alr2808
[38] *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6, ss. 69, 70, 73(2); Orphan Well Association. (N.Y.). *Fiscal responsibility*. https://www.orphanwell.ca/about-us/fiscal-responsibility
[39] Government of Alberta, *Liability Management Framework*, July 30, 2020; Alberta Energy Regulator, *Directive 088: Licensee Life-Cycle Management*, effective December 1, 2021.
[40] Barretto, J., Davidson, J., McLelland, C., Prince, T., & Surani, A. (2022). Leading the way? Liability management for the Alberta oil and gas industry. *Alberta Law Review, 60*(2), 487–521. https://doi.org/10.29173/alr2728

that choice are documented with a precision rarely found, as state audit bodies and government commissions of inquiry have measured them.

Chapter 2 Article 8 Miljöbalken formulates the polluter pays principle: any person who carries out activities that cause environmental damage is liable to recover it to the extent that it can be considered reasonable according to Chapter 10.[41] This reasonableness clause (*skälighet*) distinguishes it from Canada: Sweden's liability from the outset is measured, not absolute. Chapter 10 establishes the business actor as the primary liability, while the subsidiary liability of the party acquiring the polluted property only applies if it knew or should have known of the pollution at the time of acquisition — and, most relevantly, that liability **does not apply** to the bank that acquired the property to protect its receivables.[42] Sweden deliberately shielded separatist creditors who executed its collateral, the exact opposite of *Redwater's results*.

Förmånsrättslagen contains no words for the environment, pollution or restoration anywhere. Public authorities that carry out the recovery at their own expense and then charge for reimbursement stand as ordinary concurrent creditors under Article 18 — a position identical to that of the Ministry of the Environment in the bankruptcy of PT RKK.[43] The contrast is stark: in 2004 Sweden abolished the right of precedence for taxation,[44] while business guarantees were restored to special priority over the company's movable property in 2009.[45] The result, from an environmental point of view, is the opposite — the secured lender holds a special priority that precedes all public priorities, while the state recovery bill holds no priority. Sweden abolished fiscal privileges without ever replacing them with

[41] *The Environmental Code* (SFS 1998:808), Chapter 2, Section 8.
[42] *The Environmental Code*, Chapter 10, Sections 2–3.
[43] *The Preferential Rights Act* (SFS 1970:979), Section 18.
[44] SFS 2003:535, effective 1 January 2004; see *Prop. 2002/03:49 New preferential rules*.
[45] SFS 2008:988, effective 1 January 2009; see *Prop. 2007/08:161 Corporate mortgage — a better security for loans to companies*.

ecological privileges.

The path Sweden has chosen is financial collateral as a condition of licensing. Chapter 16 Article 3 Miljöbalken states that the validity of the permit **can** be conditioned on the provision of collateral for recovery costs,[46] and for mining Minerallagen requires the concessionaire to provide collateral unless there is a specific reason.[47] The word "could" is the weak point: collateral becomes a condition of a discretionary permit, not an obligation attached to the type of activity.

The empirical evidence is overwhelming. The Riksrevisionen noted that the total guarantee for the entire mining sector was around SEK 2.7 billion, while the recovery costs for the 27 documented sites were estimated at SEK 790 million to 1.4 billion.[48] The commission of further inquiry calculated that for the Blaiken and Svärtträsk mines, where the mining company had gone bankrupt, the recovery cost **exceeded SEK 400 million** while the guarantees placed by the business actors amounted to **SEK 2.3 million** — a difference of about 99.4 percent — and that the total sector guarantee of SEK 2.6 billion actually needed to reach SEK 6.3 billion.[49] The parent company in question was declared bankrupt at its own request in 2014, the same pattern as PT RKK.[50]

Sweden proves three things that neither the United States nor Canada can prove. Strict redress in environmental law is meaningless if bankruptcy law does not support it — Chapter 2 Article 8 of the Miljöbalken is a powerful *polluter country formulation* , and it fails nonetheless. Facultative *ex ante* guarantees will be systematically set too

[46] *The Environmental Code*, Chapter 16, Section 3.
[47] *The Minerals Act* (SFS 1991:45), Chapter 4, Section 6, Sec. 13, Section 4.
[48] Swedish National Audit Office. (2015). *Mining waste: Economic risks for the state* (RiR 2015:20). Swedish National Audit Office, p. 14.
[49] The Swedish government's public investigations. (2018). *The state's mining risks* (SOU 2018:59). The Government Offices, pp. 11–12.
[50] Lappland Goldminers AB was declared bankrupt by Lycksele tingsrätt on 2 April 2014 at its own application.

low: the 99.4 percent difference in Blaiken is the structural result of discretion without benchmarks. And most importantly for Indonesia: **priority alone is not enough when the boedel has been exhausted, and *ex ante guarantees* alone are not enough if the amount is not mandatory and not evaluated.** Australia's experience points to a similar direction of correction: Queensland and Western Australia are both abandoning bond-based guarantee systems and switching to public guarantee systems, with Queensland opting for a more risk-averse design.[51]

E. Comparative Synthesis

Table 1. Six-variable comparison grid

Variable	United States	Canada	Sweden	Indonesia (current)
(a) Qualification of claims	A bill if the holder of the order can do the work on his own and then demand a replacement (*Chateaugay*); not a bill if he stops the pollution from continuing (*Apex Oil*)	A recovery obligation **is not** a verifiable bill if the supervisor enforces a public obligation (*Redwater*)	Reimbursement bill = ordinary civil receivables	Money bills based on decisions; included in the definition of "debt" in Article 1 number 6 of the KPKPU Law
(b) Priority position	Post-bankruptcy costs = *administrative expenses*; pre-bankruptcy bills = concurrent	*Charge* Article 14.06(7) precedes all rights to the affected and adjacent property	**No priority**; competition (Article 18 Preference Act)	**competitor**; no basis of privilege
(c) Non-monetary obligations	The order to stop pollution cannot be abolished	Closure and reclamation obligations are fulfilled by the boedel before the division	No special treatment	Unregulated
(d) Discharge of contaminated assets	Prohibited when it is contrary to the law protecting public health (*Midlantic*)	Release releases the personal curator, **does not** release the boedel	Not specially set	Unregulated; curators are free to remove
(e) Ex *ante* guarantee	Varies between states and sectors	Industry-financed abandoned well fund + capability	Facultative; proven to be far below the need	Guarantee fund (PP 22/2021) + reclamation

[51] Mills, L. (2022). Getting closure? Mining rehabilitation reform in Queensland and Western Australia. *The Extractive Industries and Society, 11*, Article 101097. https://doi.org/10.1016/j.exis.2022.101097

Variable	United States	Canada	Sweden	Indonesia (current)
		assessment		guarantee (PP 78/2010); the status of Boedel is not clear
(f) Impact on separatists	*Federal liens* are subject to a perfect first warranty; state *superliens* precede, limited to contaminated locations	Significant; credit access concerns are documented but **not quantified**	Intentionally protected (Chapter 10 Miljöbalken)	Unaffected; separatists and taxes preceded

Source: Processed by author, 2026.

This grid yielded one consistent finding: every country that relied on **one** instrument had a leak at a point that it did not reach— the *United States federal lien lost out on the previously perfect guarantee,* the Canadian charge did not reach the productive assets that actually held the value of the boedel, and *Sweden's ex ante* line proved to be set far below the need. Constructed positively: *an effective system combines liabilities that live during the bankruptcy process, a priority limited to the affected assets, and* ex ante guarantees **that are separate from the boedel.**

Not everything that works there can be moved, and the four filters apply. *Legal system filter:* Indonesia is a *civil law* country without a binding precedent doctrine, so the *Kovacs–Chateaugay–Apex Oil* distinction cannot be imported as a jurisprudential doctrine but must be codified as a formulation of articles. *The filter of Article 1134 of the Civil Code is* the most decisive: paragraph (2) states that "Mortgages and mortgages are higher than privileges, except in cases where the law expressly specifies otherwise". [52] The standard rule of Indonesian law is thus that the right to guarantee property precedes privileges, so that any proposal that places environmental bills above separatist creditors must be in the form of a provision of a law that expressly preserves them — not an interpretation, not a principle in the PPLH Law, and not a government

[52] Article 1134 paragraph (2) of the Civil Code.

regulation. Article 1137 of the Civil Code provides the door because it hands over the regulation of the prerogative rights of the state to a special law, and that is the door that Article 21 of the KUP Law uses for tax debts.[53] *Filter Article 60 paragraph (2) of the KPPPU Law:* the structure already exists, because it states that upon the demand of a privileged curator or creditor whose position is higher than that of the holder of the right of guarantee, the holder of the right of sale is obliged to hand over a portion of the proceeds of sales equal to the amount of the privileged bill.[54] All that does not exist is a law that creates that privilege for environmental bills. *Institutional screening:* the Midlantic-style *release ban* requires officials to weigh environmental interests against settlement interests, and Indonesia has supervisory judges, but the technical capacity to assess environmental hazards is not available to supervisory judges or curators, so transplantation must be accompanied by an obligation to seek consideration from environmental agencies. This kind of institutional fragmentation is not new; Tambunan, Safa'at, Permadi, and Sulistyarini show that the spread of authority over land disputes to various forums results in inconsistent rulings.[55]

F. Four-Tier Priority Model for Indonesia

The proposed model is tiered, not single, because environmental restoration bills are not one type of bill: they differ according to when costs arise, which assets are polluted, and whether safeguards have been provided in the first place. Treating them entirely as a single category forces lawmakers to choose between priorities that are too weak to be useful or too broad to accept.

[53] Article 1137 of the Civil Code.
[54] Article 60 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.
[55] Tambunan, R. J. R., Safa'at, R., Permadi, I., & Sulistyarini, R. (2025). Justice, land, and sharia: Conceptualizing agrarian courts in the settlement of land ownership disputes. *De Jure: Journal of Law and Shariah, 17*(2), 530–552. https://doi.org/10.18860/j-fsh.v17i2.32486

Table 2. Four-layer priority model

Lapis	Contents	Impact on other creditors
1. Liability during the process	The cost of dealing with environmental hazards after the bankruptcy decision is qualified as bankruptcy costs; the curator is prohibited from releasing contaminated assets without the permission of the supervisory judge and the consideration of the environmental agency	Limited to costs incurred during the process; does not touch pre-bankruptcy bills
2. Special privileges over the affected assets	The recovery bill takes precedence over the proceeds of the sale of contaminated assets, including to separatist creditors of the assets	Separatists over other assets **are not affected at all**
3. General privileges over the remaining bills	The rest of the bill after Layer 2 becomes a general preferred creditor, below the wages of workers	Shifting concurrent creditors; equivalent to tax debt
4. Ex *ante security*	The guarantee fund and the reclamation/post-mining guarantee are confirmed to be **outside** the bankruptcy boedel	**Does not reduce the existing portfolio**

Source: Processed by author, 2026.

Layer 1 adopts the strength of the United States model on Indonesia's existing footing. Article 191 of the KPKPU Law states that all bankruptcy costs are charged to every object that is part of the bankruptcy property,[56] so that the cost of remedying after bankruptcy that is qualified as bankruptcy costs automatically burdens the entire estate and is paid before distribution, without the need for a new hierarchy. One textual leak must be closed: Article 191 excludes objects that have been sold by separatist creditors themselves under Article 55, and for tainted assets the exemption reverses the purpose of the norm, because the party most interested in selling quickly is the holder of the collateral for the asset whose recovery costs are high. The second component is the prohibition of discharge in the form of a conditional form in *the style of Midlantic*, which keeps the settlement from being paralyzed while ensuring that the discharge decision is not taken unilaterally. This procedure also answers the anticipated clash between the calculations of the curator and the environmental auditor appointed to execute the recovery judgment when the debtor is already

[56] Article 191 of Law Number 37 of 2004.

bankrupt.[57]

Layer 2 is the only layer that touches separatist creditors and that deviates from Article 1134 paragraph (2) of the Civil Code. It takes the form of Article 14.06(7) of the BIA of Canada and *the superlien* of New Jersey and Massachusetts, with the same restriction: priority applies only to the proceeds of the sale of the contaminated assets themselves, plus adjacent assets and related to the causative activities. This restriction is a logical consequence, not a political compromise, because the market value of contaminated land sold without an obligation of recovery actually comes from the recovery costs that were never incurred; when the state takes a share of the proceeds of the sale, it returns a value that never belonged to the debtor in the first place to collateral. Material guarantees for other assets are completely untouched, and the implementation mechanism is already available in Article 60 paragraph (2) of the KPKPU Law.

Layer 3 places the remaining bills — which will always be there, since the cost of recovery usually exceeds the value of the polluted assets — as a general privilege over all bankruptcy assets, below the wages of laborers. The placement is not just a political prudence: Article 95 of the Labor Law prioritizes workers' wages before payment to all creditors and other workers' rights over all creditors except holders of property security rights,[58] as a codification of the Constitutional Court's Decision No. 67/PUU-XI/2013; placing an environmental bill on it would clash two constitutional interests without adequate reason. The position on taxes is more open. Article 21 paragraph (3) of the KUP Law states that the right of tax precedence exceeds all other rights of precedence except for the cost of auction cases, the cost of saving goods, and

[57] Sitanggang (2025), pp. 117–118.
[58] Article 95 of Law Number 13 of 2003 concerning Manpower as amended by Law Number 6 of 2023.

the cost of settling inheritance.[59] Two arguments support equal status: the exclusion of "costs incurred to save goods" is conceptually related to the cost of recovering polluted assets, kinship that echoes in Article 1139 number 4[60] of the Civil Code; and losses due to non-payment of taxes are fiscal and can be compensated from other revenues, while burned peatlands cannot be recovered with money at a later date. This article therefore proposes a position **of equal status with** tax debts with proportional distribution, which also does not require changes to the KUP Law. Affirmation of the ranking in the law is also necessary because the judicial practice of prior rights disputes between tax authorities, separatist creditors, and the labor itself is not yet uniform.[61]

Layer 4 is a Swedish lesson, and it is he who determines whether the previous three layers are meaningful, because the *ex post* priority only divides the boedel and does not create it. Indonesia already has two *ex ante instruments* that are problematic at the same point: the guarantee fund for the restoration of environmental functions in Chapter VIII of GR 22/2021,[62] and the reclamation and post-mining guarantee based on Article 100 of the Mineral and Mineral Law as last amended by Law No. 2 of 2025, the implementation of which is regulated by Government Regulation No. 78 of 2010.[63] The problem is in the form of placement. Articles 30 and 37 of GR 78/2010 require time deposits in government banks, but Article 31 paragraph (2) opens up four forms for the stage of production operations — joint accounts, time deposits, bank guarantees,

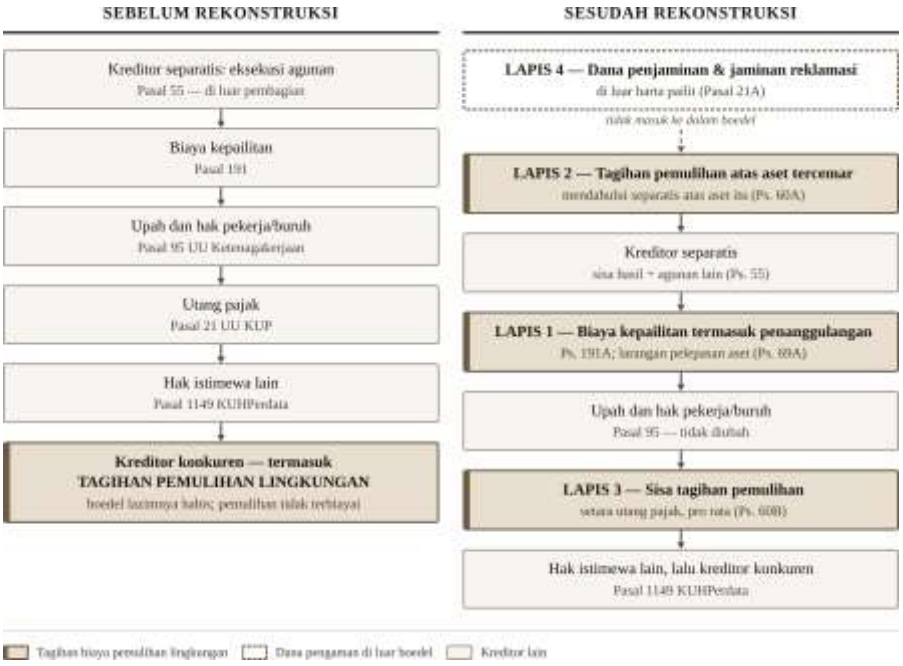
[59] Article 21 paragraph (3) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 7 of 2021.
[60] Article 1139 number 4 of the Civil Code.
[61] Muhasan, I., Dwi Lestari, I., & Simanjuntak, D. (2024). The creditors who come first in the eyes of the judges: A classic dispute between taxpayers, separatist creditors, and labor. *Educoretax*, *4*(12), 1600–1617. https://doi.org/10.54957/educoretax.v4i12.1047
[62] Chapter VIII, Articles 471–479 of Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management.
[63] Article 100 of Law Number 4 of 2009 concerning Mineral and Coal Mining as last amended by Law Number 2 of 2025.

and **accounting reserves**.[64] Guarantees in the form of accounting reserves are not separated at all from the company's assets; they are only bookkeeping. When a bankruptcy judgment is pronounced, Article 21 of the KPKPU Law sweeps the debtor's entire assets into the treasury,[65] so that the collateral that is supposed to secure recovery becomes the assets distributed to creditors. None of the laws explicitly states that the funds are outside the bankruptcy assets: their immunity rests on government regulations, and partly even on the form of placement chosen by the company itself. Layer 4 therefore contains two norms — affirmation at the level of law, and elimination of the form of accounting reserves. This urgency is in line with the findings of Istijab, Safa'at, Permadi, and Koeswahyono that permits for the use of forest areas for the mining industry must contain periodic environmental management criteria and transparent conservation standards.[66] Similar conclusions are drawn from domestic studies: the reclamation guarantee fund has not functioned as a substantive legal instrument due to the disharmony between the Mineral and Mineral Law and the PPLH Law, weak supervision, and the absence of strict sanctions;[67] the insolvency of the guarantee fund has even been pushed into the criminal realm;[68] and the transparency of its management is still a recommendation that has not been met.[69] Kadir Jaelani and his colleagues question whether the existing reclamation policy is

[64] Article 30, 31 paragraph (2), and 37 of Government Regulation Number 78 of 2010 concerning Reclamation and Post-Mining.
[65] Article 21 of Law Number 37 of 2004.
[66] Istijab, Safa'at, R., Permadi, I., & Koeswahyono, I. (2022). Legal protection of forest customary rights in land procurement from the mineral mining industry. *Brawijaya Law Journal, 9*(2), 165–181. https://doi.org/10.21776/ub.blj.2022.009.02.04
[67] Kurniawan, A., Madjid, A., & Istislam. (2025). Reconstructing legal frameworks for post-mining reclamation guarantees and ecological justice. *Journal of Ius Constituendum, 10*(3), 491–514. https://doi.org/10.26623/jic.v10i3.12779
[68] Kaimuddin Haris, O., Hidayat, S., Abdullah, S. A., & Carolauw, M. A. (2024). Criminal liability for post-mining reclamation guarantee funds. *Halu Oleo Legal Research, 6*(2), 417–431. https://doi.org/10.33772/holresch.v6i2.784
[69] Pattynama, F. M. (2024). Legal responsibility of mining companies in post-mining reclamation in Indonesia. *Journal of Mandalika Literature, 6*(1), 152–163. https://doi.org/10.36312/jml.v6i1.3742

able to guarantee rehabilitation, considering the number of mine pits left without reclamation.[70] The gap is even wider for unlicensed mining, which is beyond the reach of reclamation responsibilities in Law No. 3 of 2020[71] and its enforcement emphasizes penalties and fines rather than reclamation obligations.[72]

Chart 1. *Waterfall* of bankruptcy property payments before and after reconstruction.



Source: Processed by author, 2026.

G. Proportionality Test on the Principle of Balance

Any model that shifts the position of creditors must pass the proportionality test before it is feasible to be submitted as a norm. This test is an answer to the objections that must arise in the discussion room of the law, as well as the application of the

[70] Kadir Jaelani, A., Kusumaningtyas, R. O., & Orsantinutsakul, A. (2022). The model of mining environment restoration regulation based on Sustainable Development Goals. *Legality: Scientific Journal of Law, 30*(1), 131–146. https://doi.org/10.22219/ljih.v30i1.20764

[71] Rohmadanti, I. F., Rafiqi, I. D., Saputra, I. K. R. V. D., & Kumar, A. (2023). Reclamation responsibility for illegal mining in Indonesia: How should it take place? *Indonesia Law Reform Journal, 3*(3), 255–273. https://doi.org/10.22219/ilrej.v3i3.29669

[72] Sonda, S., Alqadri, D., Reumy, L. J. I. R., Bym, E. R., & Fahd, A. (2025). Legal certainty on the implementation of post mining land reclamation of unlicensed coal mining as an effort to preserve the environment in Indonesia. *Journal of Law and Legal Reform, 6*(2), 1009–1046. https://doi.org/10.15294/jllr.v6i2.19112

material principle of "balance, harmony, and harmony" in Article 6 paragraph (1) letter j of Law No. 12 of 2011.[73] The use of proportionality measures to assess the formulation of norms in Indonesian environmental legislation has also been developed in the literature, at least for the formulation of criminal sanctions.[74]

The legitimate purpose has three tiered footholds: Article 28H paragraph (1) of the 1945 Constitution which guarantees the right to a good and healthy environment; Article 2 letter j of the PPLH Law which stipulates that polluters pay as a principle, together with Article 54 paragraph (1) which requires the restoration of environmental functions;[75] and the protection of state finances from the imposition of costs which are legally the responsibility of the private sector.

Suitability differs per layer, and it is this difference that makes the tiered model stronger than the single category (Table 3). Tier 3 is the lowest suitability because it only means that there is still a free boedel after bankruptcy costs and workers' wages are paid—a recognition that explains why it is placed as the third layer and not as the core of the model.

The need demands an examination of two lighter alternatives, and both have been tested by experience. *Alternative A* — simply reinforcing *ex ante* guarantees without changing priorities — is the Swedish option, which fails structurally: guarantees established at the beginning of activity always rely on estimates of damage that have not yet occurred, while actual damage depends on unforeseen events such as the 591-hectare fire in Muaro Jambi. *Alternative B* — relying on procedural renvoi — is the path taken in PT RKK's case: renvoi is successful, but only moves the state from an unrecorded position to a concurrent creditor, without adding a single rupiah

[73] Article 6 paragraph (1) letter j of Law Number 12 of 2011.
[74] Ali, M., & Setiawan, M. A. (2022). Penal proportionality in environmental legislation of Indonesia. *Cogent Social Sciences, 8*(1), Article 2009167. https://doi.org/10.1080/23311886.2021.2009167
[75] Article 54 paragraph (1) of Law Number 32 of 2009.

to recovery. The need stage is therefore met, and this model remains the mildest form among the effective because it limits deviations to the right of guarantee only in Layer 2.

The *balance of stricto sensu* rests on four considerations. *First*, the burden on separatists is textually limited in Layer 2: only creditors hold collateral for the affected contaminated assets, equal to the cost of restoring those assets. *Second*, the risk can be measured by the bearer — the bank that receives collateral in the form of plantation land, mining areas, or industrial estates is in a position to conduct environmental due diligence and adjust interest rates or loan-to-collateral ratios. Ohlrogge's evidence suggests that adjustment actually occurred when the rules changed, and Canada's practice after *Redwater*'s decision shows the same pattern; a burden that can be anticipated and rewarded is not a disproportionate burden. *Third*, and this must be frankly stated, **claims about the magnitude of the impact on credit costs cannot be verified in any direction**. A search of the Canadian literature after *Redwater's decision* — the jurisdiction with the world's most assertive environmental priorities and seven years of experience — did not find a single published empirical study that measured it. This finding applies both ways: supporters of the reform cannot claim that the impact is nil, and the opponents cannot claim that the impact is great. In a symmetrical state of the evidence, the investment climate argument loses its factual status and is again a policy consideration that must be weighed, not a fact that stops consideration. *Fourth*, there is the analogous legitimacy of the Constitutional Court Decision No. 67/PUU-XI/2013, which ruled that the wages of workers owed take precedence over all types of creditors including separatist creditors and state rights bills, while other workers' rights take precedence over all bills except separatist creditors' bills.[76] This ruling is the only precedent in Indonesian law where non-contractual constitutional

[76] Constitutional Court Decision No. 67/PUU-XI/2013, pronounced on September 11, 2014.

interests are placed above material security rights, and the structure of the argument is transferable: if the constitutional interest in a decent livelihood justifies a deviation from Article 1134 paragraph (2) of the Civil Code, then the constitutional right to a good and healthy environment supports **a more limited deviation**, since this model only touches separatists over polluted assets whereas Constitutional Court 67/2013 touches all separatists. Two notes accompany it: the ruling is a conditional interpretation of an existing priority clause, and there is no equivalent clause for the environmental bill, so reform must be pursued through the formation of a law. But the subsequent journey was actually corroborated, because the decision has been codified into Article 95 of the Labor Law — a two-step pattern of constitutional decisions and then legislative codification is a procedural precedent, not just a substantive precedent. The implementation of the decision continues to be tested in major bankruptcys, including the Sritex bankruptcy,[77] which confirms that firm codification is more reliable than interpretation.

Table 3. Summary of proportionality test per layer

Lapis	Compatibility	Requirements	Stricto sensu *balance*	Conclusion
1. Environmental bankruptcy costs	**High** — funds available from boedel run	Without this the danger continues throughout the process	Load limited to runtime costs	**Passed**
2. Special privileges over the affected assets	**High** — tied to the proceeds of the sale of real assets	Alternative A fails (Sweden); Alternative B fails (PT RKK)	Only separatists over polluted assets; risks can be assessed; analogy of MK 67/2013	**Passed**
3. General privileges over the remaining bills	**Low–medium** — depending on the rest of the boedel	So that the rest of the bill does not fall into concurrent	Shifting concurrent, not separatist; tax equivalent	**Pass with a record**
4. Ex *ante security*	**Highest** — worked before bankruptcy	Without this the bag is often empty	Does not reduce the existing portfolio	**Passed**

[77] Butar Butar, M. A., Tjahyadi, C. A., & Jonathan, C. A. (2026). Priority of workers' wages in bankruptcy according to Constitutional Court Decision 67/PUU-XI/2013 and its implementation in the Srithex case. *Journal of Multidisciplinary Sciences, 4*(5), 3791–3803. https://doi.org/10.38035/jim.v4i5.1582

Source: Processed by author, 2026.

H. Norm Formulation and Harmonization of Regulations

The placement of norms is determined by two provisions: Article 1134 paragraph (2) of the Civil Code requires that deviations be strictly stipulated by law, and Article 5 letter c of Law No. 12 of 2011 requires conformity between type, hierarchy, and content material.[78] The KPKPU Law was chosen as the *main locus* because what is regulated is the position of creditors in the settlement of boedel and its implementers are curators and supervisory judges; placement there also avoids the problem of Article 55 of the PPLH Law, whose formulation rests on environmental permits — a concept that has been replaced by Environmental Approval after the Job Creation Law.[79] The following formulation is illustrative.

> **Article 191A (insert) — Layer 1.** (1) The costs incurred by the Curator for the management of pollution hazards and/or environmental damage that arise or continue after the bankruptcy declaration decision is pronounced are bankruptcy costs. (2) The costs as intended in paragraph (1) are charged to every object that is part of the bankruptcy property, including objects that have been sold by the Creditor himself as intended in Article 55, as long as the object is the source or directly affected by the pollution and/or damage. (3) The provisions of paragraph (2) deviate from the provisions of Article 191.
>
> **Article 69A (insert) — Layer 1.** (1) The curator is prohibited from relinquishing, abandoning, or transferring rights to objects that are a real and identified source of pollution and/or environmental damage hazards. (2) The release as intended in paragraph (1) can only be done with the permission of the Supervisory Judge after obtaining written consideration from the minister in charge of government affairs in the field of the environment. (3) The Supervisory Judge in granting permission shall determine the conditions necessary to protect the health and safety of the community as well as the function of the environment. (4) A request for consideration as intended in paragraph (2) that is not answered within a period of

[78] Article 5 letter c of Law Number 12 of 2011.
[79] Article 55 of Law Number 32 of 2009. The status of this provision after the Job Creation Law is still debated because the trigger rests on the "environmental permit" which has been replaced by the Environmental Agreement.

30 (thirty) days shall be deemed to have no objection.

Article 60A (insert) — Layer 2. (1) The state bill for the cost of restoring environmental functions takes precedence over the proceeds of the sale of the property that is the source or direct impact of pollution and/or environmental damage, and on the debtor's property adjacent to it related to the activities that cause the pollution and/or damage. (2) The precedence rights as intended in paragraph (1) also apply to the Creditor holding the mortgage, fiduciary guarantee, dependency rights, mortgage, or other collateral rights over the property. (3) The provisions of paragraph (2) are expressly determined to the contrary as intended in Article 1134 of the Civil Code. (4) The amount of the bill as intended in paragraph (1) is limited to the cost of restoring the property in question, calculated based on the laws and regulations in the field of the environment. (5) The submission of the portion of the sales proceeds shall be carried out in accordance with the provisions of Article 60 paragraph (2).

Article 60B (insert) — Layer 3. (1) The remaining state bill for the cost of restoring environmental functions that are not fulfilled under Article 60A is a privileged receivable on all bankruptcy assets. (2) Receivables as intended in paragraph (1) take precedence after payment of wages and other rights of workers/laborers as intended in the laws and regulations in the field of employment. (3) Receivables as intended in paragraph (1) are equivalent to tax debts as intended in Article 21 of the Law on General Provisions and Tax Procedures, and if the bankruptcy assets are insufficient, they shall be paid proportionally.

Article 21A (insert) — Layer 4. (1) Not included in bankruptcy assets: guarantee funds for the restoration of environmental functions, reclamation guarantees, and post-mining guarantees that have been placed in accordance with the provisions of laws and regulations. (2) Funds and guarantees as intended in paragraph (1) can only be used for the restoration of environmental functions, reclamation, and post-mining activities. (3) In the event that the funds and guarantees as intended in paragraph (1) are insufficient, the deficiency is a bill as intended in Article 60A and Article 60B.

Paragraph (3) of Article 60A is a provision that specifically meets the requirements of Article 1134 paragraph (2) of the Civil Code; without that paragraph, the entire Layer 2 is eliminated. Paragraph (4) limits the amount of bills so that banks can calculate their maximum exposure. As a consequence, Article 55 paragraph (1) needs to be added with a reference to Article 60A, and the form of placement of

accounting reserves in Article 31 paragraph (2) letter d of Government Regulation No. 78 of 2010 must be deleted.

Table 4. Horizontal harmonization

Law	Related terms	Required adjustments
Law 32/2009 (PPLH)	Articles 54, 55, 87 paragraphs (2)	Insert a reference clause that the recovery obligation remains in force and takes precedence in the event that the person in charge of the business is declared bankrupt; restore the Article 55 trigger from "environmental permit" to Environmental Approval
KUP Law Article 21	The right to precede tax debts; paragraph (3a) prohibits the curator from distributing assets before the tax debt is paid	There is no need to change when Layer 3 is equivalent; **the model of sentence (3a) is adopted** as a formulation technique — direct orders to the curator are easier to enforce than the rules of the level
Labor Law Article 95	Wages take precedence over all creditors; other rights above all except the holders of tangible guarantees	Unchanged; Layer 3 is placed under it
Article 100 of the Mineral and Mineral Law	Obligation to provide and place reclamation and post-mining guarantee funds	Add a paragraph that affirms that the guarantee fund is not part of the bankruptcy estate, in line with Article 21A
Civil Code Articles 1134, 1137, 1139	The standard rules and doors for the nation's right to precede	Not amended; Article 60A paragraph (3) works as a clear deviation through the door of Article 1137

Source: Processed by author, 2026.

This harmonization moves against the latest changes in Indonesia's environmental law. The Job Creation Law amends Article 88 of the PPLH Law by removing the phrase "without the need to prove the element of error", thus weakening absolute responsibility.[80] The weakening of the level of material responsibility actually makes strengthening the level of financing more urgent: if it is more difficult to prove responsibility, then the liability that is successfully proven — as in the case of PT RKK — must be more guaranteed to be paid. Some authors read the change as the

[80] Article 88 of Law Number 32 of 2009 as amended by Law Number 6 of 2023.

elimination of absolute liability from Article 88,[81] and the application of absolute responsibility in environmental civil litigation after the Job Creation Law does face significant challenges. [82] On the licensing side, the Environmental Approval that replaces the environmental permit can still be qualified as a permit from the perspective of state administrative law,[83] so that the trigger of Article 55 of the PPLH Law can be restored simply by adjusting the formulation.

At the executive level, three adjustments are needed. Government Regulation No. 22 of 2021 needs to contain procedures for disbursing guarantee funds when the person in charge of the business is declared bankrupt, including who is authorized to submit it when the company no longer has a functioning organ. Government Regulation No. 78 of 2010 needs to be amended to remove the form of accounting reserves. Minister of Environment Regulation No. 7 of 2014 provides a calculation method that can be referred to in Article 60A paragraph (4).[84] Guidelines are also needed for curators and supervisory judges — the most appropriate form is the Supreme Court Regulation — regarding procedures for requesting consideration from environmental agencies, standards for identifying environmental hazards in bankruptcy assets, and the obligation to notify decisions regarding environmental obligations to the relevant ministries. This need comes directly from the case of PT RKK: the first failure there is not a failure of the priority norm but a failure of notification, and the priority norm is useless for creditors who have never been on the

[81] Kusuma, L. A. N. (2022). Environmental disputes without protection of strict liability principles: Again, law on job creation. *Law and Justice, 7*(1), 1–13. https://doi.org/10.23917/laj.v7i1.699

[82] Al Fikri, M. A. (2022). Implementation of strict liability by companies in cases of environmental damage in Indonesia: An overview of state administrative law in Indonesia. *Indonesian State Law Review, 5*(2), 41–52. https://doi.org/10.15294/islrev.v5i2.47460

[83] Prasetyo, F. N. A., & Jaelani, A. K. (2022). The changing of environmental approval: Administrative law perspective. *Journal of Human Rights, Culture and Legal System, 2*(3), 191–208. https://doi.org/10.53955/jhcls.v2i3.55

[84] Regulation of the Minister of Environment Number 7 of 2014 concerning Environmental Losses Due to Pollution and/or Environmental Damage.

list.

As long as the revision of the KPKPU Law has not yet taken place, the test to the Constitutional Court can be taken by analogy to Decision No. 67/PUU-XI/2013, but the opportunity is limited: the 2013 ruling conditionally interprets the existing priority clause, while for the environmental bill there is no equivalent clause that can be interpreted. The application will ask the Court to create a new priority category — a request that is consistently assessed as the authority of the lawmaker. This path is more appropriately positioned as a means of obtaining constitutional affirmation of the urgency of the problem, rather than a substitute for legislative reform.

3. Conclusion

The proposed reconstruction takes the form of a four-tier priority model. The first layer qualifies the cost of dealing with environmental hazards after a bankruptcy decision as a bankruptcy cost and limits the curator's authority to release contaminated assets. The second layer provides special privileges over the proceeds of the sale of the affected assets, including against separatist creditors of the assets. The third layer places the rest of the bill as a general privilege, below the wages of workers and equivalent to tax debts. The fourth layer asserts that the guarantee fund and reclamation guarantee are outside the bankruptcy property.

All four layers pass the proportionality test, noting that the effectiveness of Layer 3 depends on the availability of residual assets. That escape rests on a single design feature: deviations from property security rights are limited to Layer 2, and even that layer only touches the holders of collateral for the polluted assets as much as the cost of recovery — a limitation that distinguishes this proposal from the general priority proposal and makes it tenable in the face of investment climate arguments.

Its conceptual contribution can be expressed in one sentence: the *polluter pays* principle only works fully precisely when the polluter cannot afford to pay. As long

as solvent polluters are in effect, the principle is implemented through ordinary law enforcement; the real test comes at the point of bankruptcy, and it is at that point that Indonesian law gives up — turning the Rp147 billion recovery obligation into a concurrent bill that will never be paid.

The recommendations are: the House of Representatives and the Government include the revision of the KPKPU Law into the National Legislation Program with five article formulations in section 3.8; the ministry in charge of environmental affairs amends Article 31 paragraph (2) of Government Regulation No. 78 of 2010 and completes Government Regulation No. 22 of 2021 with procedures for disbursing guarantee funds in bankruptcy; The Supreme Court issued guidelines for curators and supervisory judges regarding the identification of environmental hazards in bankrupt assets; and the curators' association included environmental due diligence as a professional standard.

This article is normative and does not provide quantitative data on the impact of the model on credit costs in Indonesia — a limitation that is not limited to this article, as such empirical studies do not exist even in Canada. Two follow-up research agendas are open: a study on the behavior of Indonesian lenders towards collateral with high environmental risks, and a study on the actual adequacy of reclamation guarantees against real recovery costs in the case of Indonesia using an equivalent methodology used by Riksrevisionen.

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