



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
PT JABA GARMINDO (INDONESIA)
FINDINGS, RECOMMENDATIONS AND STATUS
December 18, 2015**

I. Introduction

This memorandum concerns PT Jaba Garmino (“Jaba Garmino”), an Indonesian garment manufacturer that, in April 2015, entered bankruptcy without having paid legally required severance benefits and final wages to its roughly 4,000 employees. According to worker testimony and documents provided by management, in the months before closure, Jaba Garmino supplied knitwear and other apparel to a number of international brands and retailers including Uniqlo (which is owned by Fast Retailing), s.Oliver, Jack Wolfskin (which is owned by the Blackstone Group), and Gerry Weber. Press reports also indicate that Jaba Garmino supplied apparel to H&M.¹

In addition, data provided to the WRC by the Licensing Resources Group (LRG, now Learfield Licensing Partners (“Learfield”)) indicated that Jaba Garmino was a supplier of university licensed products to Haddad Apparel. However, discussions with both Haddad and Learfield have indicated that these data were incorrect and that the factory has not produced university licensed apparel for at least ten years.² As the factory had been disclosed as a collegiate supplier, however, the workers had a reasonable expectation that they would be protected by university codes. Given this, and given the relevance of this case to our work to address the industry-wide issue of failure to pay severance benefits, the WRC has completed our investigation and continued to press for the workers to be receive the funds that they are owed.

The 4,000 workers employed at Jaba Garmino are owed at least 141 billion rupiah (US\$10.8 million) in unpaid compensation.³ This includes unpaid wages both for work performed prior to the factory closure and for a period during which workers were unlawfully placed on unpaid leave, as well as severance benefits required by Indonesian law. This figure only represents claims filed with the court-appointed bankruptcy trustees; as not all employees have filed claims, the total amount owed to all Jaba Garmino employees is doubtless even larger.

While the workers are pursuing their claims through the bankruptcy process, they are extremely unlikely to receive payment of funds owed them in a timely or substantial manner through this process. Secured creditors have already seized and disposed of the company’s most valuable assets. The bankruptcy trustees are preparing to auction off the

¹ “Perusahaan Pembuat Sweter H&M dan Uniqlo dari Majalengka Pailit,” *Detik News* (April 23, 2015), <http://news.detik.com/berita/2895656/perusahaan-pembuat-sweter-hm-dan-uniqlo-dari-majalengka-pailit>.

² See Appendix A for more information on this failure of Learfield’s procedures for obtaining accurate, timely factory disclosure data.

³ Unless otherwise noted, all rupiah-dollar conversions in this document use the rate of US\$1:Rp13,018, the figure as of April 20, 2015, the date on which the obligations to the creditors were announced..

remaining assets; however, they are unlikely to bring high enough prices at auction to satisfy the workers' claims. In addition, workers' claims hold a disadvantaged legal position vis-à-vis the secured creditors, who continue to have large outstanding claims. Finally, even if workers are allocated funds through the initial disposition of assets, the extensive delays that plague Indonesia's justice system mean that the workers may have to wait years before seeing any of these funds.

Because Indonesia lacks basic social insurance and other safety nets for its low-income population, failure to ensure that workers receive legally owed wages, fringe benefits and severance payments can subject employees and their families to extreme hardship at a time when they are most economically vulnerable – when they have just lost their primary source of income. In such cases, workers and their families often suffer loss of housing, inability to pay for other basic family expenses – such as adequate nutrition, medical care, and primary school fees for children — and may go into crippling debt to loan sharks and informal money lenders.

The key buyers from Jaba Garmino have adopted codes of conduct that require them to ensure that their suppliers pay workers are legally required compensation. In addition, several buyers are affiliated to multi-stakeholder organizations, notably the Fair Labor Association (FLA) and Fair Wear Foundation (FWF), with codes that similarly require compliance with national laws regarding compensation. In an increasing number of cases over the past five years, international apparel firms have acknowledged their responsibility to ensure that workers at their supplier factories receive the funds that they were owed, even if this requires the apparel firms' providing the necessary funds themselves. In this case, workers are unlikely to be made whole unless these brands and retailers take action to ensure that their codes' requirements are fulfilled, and that workers receive the funds that they earned.

Over the past five years, in cases where factory owners shirked their legal responsibility to provide wages and/or severance benefits to employees, an increasing number of international brands and retailers – including Nike,⁴ adidas,⁵ Disney,⁶ Fruit of the Loom,⁷

⁴ See, Greenhouse, Steven, "Pressured, Nike to Help Workers in Honduras," *New York Times* (July 26, 2010), <http://www.nytimes.com/2010/07/27/business/global/27nike.html>, and WRC, "Workers at PT Kizone Still Owed \$1.8 Million; No Action from adidas and Dallas Cowboys" (July 26, 2011), <http://www.workersrights.org/university/memo/072611.html>.

⁵ See, Brettman, Allan, "Adidas settles with Indonesian workers over PT Kizone," *The Oregonian* (April 24, 2013), http://www.oregonlive.com/playbooks-profits/index.ssf/2013/04/adidas_settles_with_indonesian.html.

⁶ See, WRC, "Case Summary: Hawkins Apparel (Honduras)" (November 25, 2013), <http://www.workersrights.org/freports/WRC%20Memo%20re%20Hawkins%2011.25.13.pdf>.

⁷ See, WRC, "Case Summary: Confecciones Gama (El Salvador)" (November 25, 2013), <http://www.workersrights.org/freports/WRC%20Memo%20re%20Gama%2011.25.13.pdf>, and, WRC,

Hanesbrands,⁸ H&M,⁹ Walmart,¹⁰ and Jack Wolfskin¹¹ – have taken active steps to ensure that workers received compensation they were owed.¹² These buyers either provided the funds owed to workers, themselves, or pressed their supply chain partners (factory owners, buying agents, etc.) to do so, so that the workers received the sums that they were due under law.

Unless the buyers from Jaba Garmino take similar steps, these workers are likely to be left without compensation that they earned while producing for these buyers, and these very serious violations of Indonesian law, their own codes of conduct and those of the multi-stakeholder programs of which they are members (FLA and FWF) are likely to remain unremedied. The WRC urges these buyers to take prompt action, including directly providing funds to workers, if necessary, to ensure a just and constructive outcome to this situation.

“Remediation of Severance Pay Violations at MDR/CCC (El Salvador)” (April 29, 2015), <http://www.workersrights.org/Freports/WRC%20Memo%20re%20MDR%204.29.15.pdf>.

⁸ See, WRC, “Remediation of Severance Pay Violations at MDR/CCC (El Salvador)” (April 29, 2015), <http://www.workersrights.org/Freports/WRC%20Memo%20re%20MDR%204.29.15.pdf>.

⁹ See, Pearlman, Alex, “Cambodian workers win \$200,000 settlement from Walmart, H&M,” *Global Post* (March 3, 2013), <http://www.globalpost.com/dispatches/globalpost-blogs/rights/cambodian-workers-win-200000-settlement-wal-mart-hm>.

¹⁰ Ibid.

¹¹ Fairwear Foundation, “Complaint – Jack Wolfskin – Thailand,” (January 7, 2015), <http://www.fairwear.org/ul/cms/fck-uploaded/documents/complaints/2014/complaintthailandJackWolfskinApril2014.pdf>

¹² See, DePillis, Lydia, “Why it’s so hard to protect workers caught in global supply chains,” *Washington Post Wonkblog* (April 29, 2015), <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/04/29/why-its-so-hard-to-protect-workers-caught-in-global-supply-chains/>.

II. Methodology

The findings presented in this report are based on the following sources of evidence:

- Interviews with Jaba Garmino workers;
- Meetings and communications with representatives of the two unions representing the Jaba Garmino workers, the Indonesian Federation of Metalworkers' Unions (FSPMI) and the Federation of Independent Trade Unions (GSBI);
- Review and analysis of documentary evidence, including:
 - Documents pertaining to the Jaba Garmino bankruptcy proceedings, including worker claims filed with the curator and the curator's responses; and
 - Documents generated by the Tangerang District Office of the Ministry of Manpower and Transmigration (Manpower Ministry);
- Analysis of Indonesian employment and commercial statutes as they pertain to terminal benefits for employees;
- Communication with international apparel brands sourcing from Jaba Garmino; and
- Review of media coverage of the case in the Indonesian press.

III. Findings

In April 2014, the WRC initiated an investigation of labor practices at Jaba Garmino in response to worker complaints alleging a range of violations of Indonesian laws, including illegal contracting practices, unlawful termination of pregnant workers, unpaid overtime, health and safety hazards, and retaliation against workers engaging in union activities.

By March 2015, when the likelihood of the factory's impending closure became apparent, the WRC had secured the remediation of some, but not all, of the freedom of association violations workers had reported but was still investigating a number of the other issues.

A. Factual Background

In January 2015, workers from Jaba Garmino began reporting to the WRC that they were not being paid their wages on time. By April 2015, when the company's two main facilities permanently ceased operations, their workers had not been paid at all for several months. These two facilities are located in the district of Cikupa, which is in the Tangerang regency of Banten province, and the regency of Majalengka, which is located in the province of West Java.

1. Closure of Cikupa Facility

At the company's Cikupa facility, which employed roughly 1,500 workers, the factory did not pay employees the wages due on January 30, 2015, until February 4. On March 6, when February wages were a week late, the factory announced that it only planned to pay workers 25% of the wages due on February 27. In response, on March 8, workers launched a protest to protest the company's failure to pay the full wages, which included a round-the-clock vigil in front of the factory to prevent the company from removing its physical assets. Such actions are common in Indonesia in cases where factories appear likely to close while owing wages and severance benefits. The company negotiated with the two unions, and committed to pay the workers 50% of their February wages. These payments were made between March 20 and March 25, 2015.

Following these payments, the day-to-day situation at the factory deteriorated. While many workers continued reporting to work, some managers were no longer working, and it production workers were left confused as to their responsibilities and their situation. After a brief interruption, the workers resumed their vigil in front of the factory.

On April 8, at a meeting with Indonesian government officials and the leaders of the two unions that represent workers from the Cikupa factory, Jaba Garmino's management stated that it would pay workers the remaining 50% of their wages that had been due in February.

On April 10, Jaba Garmino's management paid workers from the Cikupa facility the remainder of their February wages, and then announced that these employees were being furloughed without pay until further notice. Employees report that they have not been recalled to work since this date. Some workers, however, have continued to come to the factory, maintaining their vigil in front of the factory fence.

2. Closure of Majalengka Facility

At the Majalengka facility, Jaba Garmino's management informed workers in late February 2015 that production at the plant was being suspended. Workers reported that after this announcement they were sent home without pay, and to date have not been recalled to work.

3. Bankruptcy Proceedings

As further discussed below, on April 22, 2015, Jaba Garmino entered bankruptcy due to failure to meet its debt repayment obligations to several major creditors. The company has since been placed into receivership by the Indonesian courts so that its assets can be liquidated to satisfy its creditors.

B. Failure to Pay Legally Earned Wages and Fringe Benefits

Because Jaba Garmino did not officially terminate its employees prior to entering bankruptcy, its workers remained formally employed by the company, and legally entitled to compensation,¹³ until May 7, 2015, when the bankruptcy trustees that the court had appointed (known in Indonesia as the "curators"), issued termination notices to them. These notices stated that all Jaba Garmino employees would be terminated as of June 21, 2015, 45 days from the date of notice.¹⁴

On May 7, 2015, the Tangerang District Office of the Manpower Ministry, issued a recommendation to Jaba Garmino's bankruptcy trustees, stating that the employees were legally entitled to their regular wages for March through June 2015, which includes the

¹³ Circular Letter of the Minister of Labor of the Republic of Indonesia No. SE-05 / M / BW / 1998.

¹⁴ See, letter from Curator Team for PT Jaba Garmino (in bankruptcy) and Djoni Gunawan (in bankruptcy), May 7, 2015, with reference number 078 / Kurator / Jago / V / 2015,

period after they were furloughed up until the company entered bankruptcy.¹⁵ The Manpower Ministry noted in its recommendation that, under Indonesian law, if workers are already contracted and willing to work, but the employer chooses not to assign them duties because of “mistake or obstacles that the employer should have been able to avoid,” the employer is still required to pay workers’ their wages.¹⁶

The Manpower Ministry also stated, in the same recommendation, that workers were entitled to their statutory annual bonus for 2015. This bonus consists of one month’s pay for workers who have been employed for more than one year, and a smaller amount for less senior workers.¹⁷

As the Manpower Office observed, workers who have been terminated are legally entitled to receive the annual bonus for a given year from their former employer if they are dismissed either after or within 30 days before the national holiday of Eid al-Fitr.¹⁸ In 2015, Eid al-Fitr was officially celebrated on July 17-18,¹⁹ and Jaba Garmino’s employees were formally terminated on June 21, so the workers are legally entitled to receive this bonus.

Jaba Garmino’s bankruptcy trustees have certified that the company’s former workers have a valid legal claim of 42.8 billion Indonesian rupiah (US\$3.3 million) for their unpaid wages, and 8.8 billion rupiah (US\$676,000) for fringe benefits, including their annual bonus.

Failure to provide workers with legally required compensation is a violation of not only Indonesian labor law, but also codes of conduct applicable to the company’s former buyers. Former Jaba Garmino buyer Jack Wolfskin is a member of the multi-stakeholder organization Fair Wear Foundation (FWF), whose code of conduct for participating companies requires that compensation paid to employees of their supplier factories “shall meet at least legal or industry minimum standards.”²⁰ Likewise, former buyers s.Oliver and Uniqlo are members of the Fair Labor Association (FLA), whose code of conduct requires that in the case of factories supplying participating companies “employers shall pay at least the minimum wage or the appropriate prevailing wage, whichever is higher, comply with all legal requirements on wages, and provide any fringe benefits required by

¹⁵ Letter from Tangerang District Office of Manpower and Transmigration (May 7, 2015), Letter No. 560/2955/Disnakertrans.

¹⁶ 2003 Act, Art. 93(2)(f).

¹⁷ See, Minister of Labor Regulation No. PER-04/MEN/1994, Art. 3.

¹⁸ Ibid, Art. 6.

¹⁹ See, Ministry for Administrative and Bureaucratic Reform, “Hari Libur dan Cuti Bersama Tahun 2015,” (May 7, 2014), <http://www.menpan.go.id/berita-terkini/2437-hari-libur-dan-cuti-bersama-tahun-2015>.

²⁰ Fairwear Foundation, Labor Standards, <http://www.fairwear.org/496/labour-standards/5.-payment-of-living-wage/>.

law or contract.”²¹ Similarly, Trutex, another former buyer, states that it “works towards the ‘Ethical Trading Initiative Base Code,’”²² another multi-stakeholder standard, which requires that compensation paid by supplier factories should “meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher.”²³ Several buyers have their own codes of conduct as well; Uniqlo, for example, has adopted a code requiring that “production partners shall furnish wages and benefits... in compliance with all applicable laws.”²⁴

C. Failure to Pay Legally Required Severance Benefits

In addition to unpaid wages and fringe benefits, as a result of their termination, under Indonesian law, Jaba Garmino workers are owed significant severance payments. Indonesia’s Law on Manpower (Act No. 13 of 2003, “2003 Act”) requires that workers dismissed when their employer enters bankruptcy receive monetary compensation,²⁵ of no less than: “Severance pay” at a rate of one month’s base wages for each year of service, up to a maximum of nine months’ pay;²⁶

- “Reward pay for services rendered,” consisting of an additional month’s pay for every three years of service, up to a maximum of ten months’ pay;²⁷ and
- “Compensation pay,” in the amount of²⁸:
 - The value of any accrued but unused annual leave that has not expired;
 - The costs or expense of transporting the worker and his/her family back to the original place of hire (if different than the employee’s worksite at the time of termination);
 - Compensation for legally required allowances for housing, medication, and health care, at a rate of 15% of the sum of the severance pay and reward pay owed to the worker, for those workers who are eligible for such compensation;

²¹ Fair Labor Association, FLA Workplace Code of Conduct, <http://www.fairlabor.org/our-work/labor-standards>.

²² Trutex, Ethical Trading at Trutex, <http://www.trutex.com/ethical-trading-at-trutex/>.

²³ Ethical Trading Initiative, ETI Base Code, Clause 5.1, <http://www.ethicaltrade.org/eti-base-code>.

²⁴ Fast Retailing, “Code of Conduct for Production Partners,” <http://www.fastretailing.com/eng/csr/business/pdf/coc.pdf>.

²⁵ See 2003 Act, Art. 165. Such severance payments are also required in cases of economic layoffs, as well as when a facility closes down following two consecutive years of financial losses or due to force majeure, Art. 164(1), or where the ownership of the business changes and workers do not wish to remain employed, Art. 163. Additional severance payments are required when a business is shut down in exercise of the owner’s prerogative for rationalization. Art. 164(3).

²⁶ 2003 Act, Art. 156(1).

²⁷ Id., Art. 156(2).

²⁸ Id., Art. 156(3).

- Any other compensation that is required by an applicable employment contract and/or collective agreement.²⁹

The Manpower Office has affirmed that a number of these forms of compensation are owed to the former Jaba Garmino workers in this case.³⁰ The company's bankruptcy trustees have calculated the payment owed to Jaba Garmino's former workers to satisfy these legal requirements to amount to 88 billion rupiah (US\$6.7 million).

As noted above, failure to provide workers with this compensation is a clear violation of Indonesian law and, by extension, the codes of conduct of the FWF³¹, ETI,³² and FLA,³³ as well as individual brands and retailers that have purchased garments from Jaba Garmino.³⁴

D. Need for Buyer Intervention to Remedy Worker Rights Violations

1. Bankruptcy Trustees' Determination of Amount Legally Owed to Workers

Jaba Garmino's bankruptcy trustees have determined that the company's former workers are owed a total of 141 billion rupiah (US\$10.8 million), as detailed in the chart below. This total includes a number of workers who allege that they were unlawfully terminated by Jaba Garmino prior to the factory closure. Under Indonesian law, these workers were still employees at the time of closure, because their cases were still in progress.³⁵

It is worth noting that this figure does not actually represent the full amount denied to all Jaba Garmino workers. This sum only covers workers who have filed claims with the curator via a union or attorney. Some number of workers, particularly those who were not members of either union, have not presented claims and, as a result, are unlikely to receive any compensation.

²⁹ While there was a collective bargaining agreement in effect at Jaba Garmino at the time of the factory's closure, it did not require severance payment above that required by law.

³⁰ Letter from Tangerang District Office of Manpower and Transmigration (May 7, 2015), Letter No. 560/2955/Disnakertrans.

³¹ See, *supra* note 20.

³² See, *supra* note 23.

³³ See, *supra* note 21. In addition, the FLA has recommended since at least 2006 that firms establish escrow accounts to set aside funds to cover workers' severance in case of closure. (Fair Labor Association, *Retrenchment: Guidance for FLA-Affiliated Companies*, February 2006, page 6, http://www.fairlabor.org/sites/default/files/fla_retrenchment_guidelines.pdf.)

³⁴ See, e.g., *supra* note 24.

³⁵ 2003 Act, Art. 155(2).

Amount Legally Owed to Workers

Category	Rupiah	Dollars
Unpaid Wages	42,769,428,918	\$ 3,285,407
Severance Payments	88,015,323,609	\$ 6,761,048
Other Compensation	8,804,893,087	\$ 676,363
Amount Owed 121 Additional Majalengka Workers ³⁶	1,379,460,000	\$ 105,966
Total Amount Owed	140,969,105,614	\$ 10,828,784

2. Bankruptcy Proceedings and Initial Asset Sales

Jaba Garmino's entrance into bankruptcy was precipitated by legal claims filed against the company and its owner, Djoni Gunawan, in January 2015 by two of the company's creditor banks, PT Bank CIMB Niaga and PT Bank UOB Indonesia, for failure to make required payments on its debts.³⁷ These claims resulted, on April 22, in the Central Jakarta District Court declaring both Jaba Garmino and Gunawan bankrupt.³⁸

In the court's declaration, it recognized the company as having obligations to 12 secured creditors (i.e., creditors whose loans were backed by preferential claims to company assets as collateral, which are known in Indonesian legal parlance as "separatist creditors), ten of which are financial institutions and two being suppliers of machinery suppliers. According to the court, these creditors' claims total 1.4 trillion rupiah³⁹ (US\$109 million).

³⁶ The WRC has not been able to procure a detailed breakdown of the figure for these workers, who submitted claims to the curator through an attorney.

³⁷ See, e.g., Pradena, Sandy Rio, "Jaba Garmino Dimohonkan PKPU Dua Bank," *Kabar24* (January 21, 2015), <http://kabar24.bisnis.com/read/20150121/16/393223/jaba-garmino-dimohonkan-pkpu-dua-bank>.

³⁸ See, e.g., "Rencana Perdamiaan Ditolak, Jaba Garmino Pailit," *Hukum Online* (April 26, 2015), <http://www.hukumonline.com/berita/baca/lt553c43c0d7d3a/rencana-perdamiaan-ditolak--jaba-garmino-pailit>.

³⁹ Coordination Team, PT Jaba Garmino (in Suspension of Debt Payment Obligations) and Djoni Gunawan (Suspension of Debt Payment Obligations), April 20, 2015, Minutes of Vote regarding Acceptance/Rejection of Peace Plan of PT Jaba Garmino (in Suspension of Debt Payment Obligations) and Djoni Gunawan (Suspension of Debt Payment Obligations), Case No. 4/Pdt.Sus/PKPU/2015/PN.Niaga.Jkt.Pst.

In addition, the court recognized claims from unsecured creditors totaling 300 million rupiah (US\$23,000). The court also appointed bankruptcy trustees (“curators”), under a Supervisory Judge.

Under Indonesian bankruptcy laws, the company’s collateralized assets passed directly to their respective secured creditors for sale to satisfy their respective claims.⁴⁰ The creditors had two months to sell the assets themselves, and retain the proceeds.⁴¹ Any assets not sold within two months would become the responsibility of the curator.

During the designated two-month period, which is now expired, the secured creditors sold the company’s real estate in Majalengka, the machinery from the Cikupa facility, and other miscellaneous assets. Although the secured creditors have not yet reported to the bankruptcy trustees the sums that the sales of these assets have garnered, sources involved in the bankruptcy process have estimated the value of these assets at approximately 250 billion rupiah (US\$19 million) — only roughly 17% of the total debt held by these creditors.

Jaba Garmino’s only significant asset that was not sold to satisfy the secured creditors is the company’s real estate in Cikupa. Although Jaba Garmino’s bankruptcy trustees are currently preparing to offer this property for sale at auction, the WRC’s sources estimate the value of these assets at auction as roughly 150-300 billion rupiah (US\$11.5 - 23 million) – which would satisfy only an additional 11-22% of the company’s outstanding secured debt.

3. Likelihood of Remediation through Judicial Process

As Jaba Garmino has been declared bankrupt and its assets seized, its former workers are now pursuing claims for such compensation through the Indonesian courts. However, due to the significant legal, procedural and practical obstacles that face these employees in their efforts to secure such compensation, it is extremely unlikely that workers will receive payment of these funds in a timely or substantial manner through this process.

In addition to the fact that, as already discussed, the secured creditors have already seized and mostly disposed of the company’s key assets, these barriers to justice include: (1) the disadvantaged legal position of workers’ wage, benefit and severance payment claims vis-à-vis the secured creditors’ much larger claims that remain outstanding, (2) the Indonesian courts’ lack of consistency and clarity regarding interpretation and application

⁴⁰ 2004 Act, Art. 55(1).

⁴¹ 2004 Act, Art. 59(1).

of the bankruptcy laws, and (3) the extensive delays that plague the country's justice system.

a. Limited Legal Priority for Workers' Severance Payment and Benefit Claims

As the WRC has noted in previous reports,⁴² the position of Indonesia workers' unpaid wages, benefit and severance claims relative to those of other creditors in employer bankruptcy cases is governed by a confounding patchwork of contradictory laws. While a recent decision of the country's Constitutional Court has improved workers' legal position to some extent with respect to claims for unpaid wages, it has not resolved the law's contradictions and lack of clarity, and has not established priority for workers' other claims, including those for severance payments and fringe benefits. Moreover, despite the Constitutional Court decision, as explained below, in actual practice, even workers' claims for unpaid wages are unlikely to be satisfied through the bankruptcy process.

i. Worker Claims under Labor and Bankruptcy Laws

Indonesia's Law on Manpower holds that "workers' wages and other entitlements shall be prioritized" in case of bankruptcy,⁴³ but does not actually state how such claims will be ranked with respect to those of other creditors. In any case, the notion that the law affords workers' claims favorable status is undermined by provisions of the country's Civil Code and its Law on Bankruptcy and Suspension of Obligation for Payment of Debts (Act No. 37 of 2004, "the 2004 Act"), which indicates that certain categories of creditors are privileged above a bankrupt firm's former workers.

Indonesia's Civil Code ("Code") states that the claims of lienholders and mortgage-holders shall have priority over those of any other creditors, including those granted special status under other laws, unless those laws specifically state to the contrary.⁴⁴ The 2004 Act not only reaffirms this principle, but specifically grants super-priority to any creditors "whose claims are secured by lien, fiduciary security, security right, mortgage, or other collateral rights on property, or those having priority rights on an [specific] asset within the bankruptcy estate."⁴⁵

⁴²"Findings, Recommendations, and Status re PT Kizone, Indonesia," (January 18, 2012), [http://workersrights.org/Freports/WRC%20Assessment%20re%20PT%20Kizone%20\(Indonesia\)%201-18-12.pdf](http://workersrights.org/Freports/WRC%20Assessment%20re%20PT%20Kizone%20(Indonesia)%201-18-12.pdf).

⁴³ Law on Manpower, Art. 95(4).

⁴⁴ Code, Art. 1134.

⁴⁵ Art. 138.

ii. Legal Impact of 2014 Constitutional Court Decision

A decision of the country's Constitutional Court in September 2014 did improve the status of workers' claim in bankruptcy proceedings—but only with respect to unpaid wages, and not severance payments or fringe benefits.⁴⁶ Based on a review of relevant statutes and constitutional provisions, the Court stated that workers' claims for unpaid wages, specifically, should be granted priority over all other claims — including those of secured creditors.

The Court did not, however, extend this priority to workers' claims for severance payments or fringe benefits. In fact, the Court stated that workers' "other rights" would hold a lower priority than the claims of secured creditors.⁴⁷ While the Court did not specifically identify these "other rights," Indonesian legal experts have interpreted this category to include severance payments, and fringe benefits — such as payment in lieu of unused annual leave, housing and food allowances, and any other nonwage compensation to which workers are legally entitled.⁴⁸

Following this reading of the Court's decision, in the case of Jaba Garmino, the bankruptcy trustee and court should award the company's available assets to pay: first, workers unpaid wages; then, the company's secured debts; and, then, if any assets remain, workers' outstanding severance payments and fringe benefits. However, as the bankruptcy trustees have verified claims by the secured creditors of 1.4 trillion rupiah (US\$109 million), which is significantly more than the estimated value of all available assets, no funds would be left to compensate workers for the severance payments and fringe benefits they are due, which account for more than 2/3 of the funds they are legally owed.

However, despite the Constitutional Court's decision, Jaba Garmino's workers most likely will not receive even the portion of the compensation that is due to them for unpaid wage through the bankruptcy process. This is because, as already noted, Indonesian legal practice has permitted secured creditors, at the time that a firm enters bankruptcy, to take

⁴⁶ Constitutional Court of Indonesia, Decision No. 67/PUU-XI/2013 (September 11, 2014), http://www.bphn.go.id/data/documents/67_puu_2013-uu-ketenagakerjaan-telahucap-11sept2014-wmactio.pdf.

⁴⁷ Id. at 45.

⁴⁸ See, e.g., Akset Law, "Constitutional Court Decides Employee Wages Get Priority over Secured Creditors in Bankruptcy / Liquidation," (October 13, 2014), <http://aksetlaw.com/news-event/newsflash/constitutional-court-decides-employee-wages-get-priority-over-secured-creditors-in-bankruptcyliquidation/>, and Corrs Chambers Westgarth, "Employment in Indonesia: employees take priority," (November 21, 2014), <http://www.lexology.com/library/detail.aspx?g=89024c8e-e340-4b29-9092-4d65601a2846>.

possession of their respective collateral assets, and sell these to satisfy their claims outside of the regular bankruptcy process.

This practice has continued, even after the Constitutional Court's decision, including in the case of Jaba Garmino, even though some legal experts have asserted that the practice contravenes the Court's decision, since it means that secured creditors' claims continue to be prioritized above workers' wages. Other experts, however, have opined that the practice remains legally acceptable, claiming that the decision's prioritization of claims for unpaid wage claims does not extend to assets pledged as collateral to a specific creditor.⁴⁹

iii. In Actuality, 2014 Court Decision will not Result in Payment of Workers' Wage, Benefit and Severance Claims

In the case of Jaba Garmino, the company's secured creditors have already seized and sold its most valuable assets, without even informing the bankruptcy trustees of the amount of funds they have recovered to satisfy their claims. Workers have held protests against one of the Jaba Garmino's largest creditors, Bank UOB, demanding that the bank share with employees the proceeds of the sale of the assets it seized immediately following the company's entrance into bankruptcy. The company's bankruptcy trustees, however, have said that they will not intervene in this dispute.⁵⁰ As a result, workers are unlikely to receive any share of the proceeds from the sale of the estimated 250 billion rupiah (US\$19 million) in company assets that have already been disposed of by its secured creditor banks. Any funds available for disbursement to workers by the bankruptcy trustees will have to be provided from the company's unsecured assets, which are unlikely to satisfy employees' claims for unpaid wage claims, much less for severance payments and fringe benefits.

In conclusion, contrary to prior assertions by several of the company's buyers, the Constitutional Court's issuance of its 2014 decision does not mean that workers are likely to receive more than a small fraction of the sums they are owed in unpaid wages, severance payments and fringe benefits through the legal bankruptcy process. This conclusion is consistent with the WRC's overall experience in Indonesia, which has shown that, absent active intervention by brands and retailers, workers displaced by

⁴⁹ For a legal analysis discussing this issue as an unresolved area of Indonesian law, see Akset Law, "Constitutional Court Decides Employee Wages Get Priority over Secured Creditors in Bankruptcy / Liquidation," (October 13, 2014), <http://aksetlaw.com/news-event/newsflash/constitutional-court-decides-employee-wages-get-priority-over-secured-creditors-in-bankruptcyliquidation/>.

⁵⁰ See, Rio Sandy Pradana, "Pemberesan Aset, Eksekusi Bank UOB Bukan Ranah Kurator," *Kabar24*, (July 7, 2015), <http://kabar24.bisnis.com/read/20150707/16/451162/pemberesanaseteksekusibankuobbukanranahkurator>.

factory closures receive only one-third to one-half of the funds they are legally owed, through this process.

Even if the bankruptcy trustees and court do allocate a significant portion of the proceeds of the sale of the company's assets to the factory's former workers, appeals by other creditors may prevent workers from actually receiving these funds for years to come. To cite one well-known example, in bankruptcy proceedings for the factory, PT Kizone, in Tangerang, Indonesia, a supplier to Nike and adidas that closed in early 2011, such appeals have meant that workers have yet to receive any of the funds allocated to them from the liquidation of the factory's assets.⁵¹

For workers who, even when employed, were earning barely enough for their families to survive, such delays can be devastating. Workers may be unable to obtain needed medical care for themselves or family members, resulting in permanent disability or even death. Likewise, they may be unable to pay school fees for their children, permanently harming the latter's education and future earning potential. Even if workers ultimately receive the funds they are legally owed, such harms rarely can be fully remedied.

⁵¹ WRC memos related to the PT Kizone case can be found at: WRC, "Factory Investigation: PT Kizone," <http://www.workersrights.org/Reports/PT%20Kizone.asp>.

IV. Recommendations

The WRC recommends that all brands and retailers whose garments were produced at Jaba Garmino during its final twelve months of operation take all necessary steps to ensure that the factory's former workers promptly receive all severance pay, back pay, or other compensation that they are owed. The WRC shared this recommendation with the buyers in June 2015.

It is instructive here to consider the "Protect, Respect, and Remedy" framework delineated in the "Guiding Principles on Business and Human Rights" endorsed by the United Nations Human Rights Council. Under this widely respected framework, companies have an obligation to "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."⁵² This worker rights violation, the failure to pay severance benefits, is all too common in the international garment supply chain. Given the high risk of the violation occurring, it is reasonable to expect apparel firms concerned with code compliance to take steps to "prevent or mitigate" this violation. Such steps could include requiring suppliers to set aside funds in an escrow account to be used to cover workers' terminal benefits in the case of closure, and auditing the firm to ensure that adequate funds were being set aside. This type of preventative measure has been widely discussed in the industry,⁵³ and recommended by at least one multi-stakeholder initiative.⁵⁴

The U.N. Human Rights Council Commentary on the Guiding Principles goes on to state that, "addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation." In this case, these firms failed to take adequate measures to prevent these violations. Now that the violation has occurred, the WRC recommends that the firms take the necessary steps to remedy the violations.

An increasing number of international apparel firms are undertaken such remedial action in cases of unpaid severance. In most of these cases, the international firms initially attempt to press the factory owners to make workers whole, or attempt to engage in legal or bureaucratic processes to ensure that available assets are used to compensate workers.

⁵² United Nations Human Rights Council, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, 14.

⁵³ See, DePillis, Lydia, "Why it's so hard to protect workers caught in global supply chains," *Washington Post Wonkblog* (April 29, 2015), <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/04/29/why-its-so-hard-to-protect-workers-caught-in-global-supply-chains/>.

⁵⁴ See, e.g., *supra* note 23.

Where it becomes clear that these measures will not bring prompt, full payment, however, major apparel firms including Nike, adidas, and Fruit of the Loom have gone further to fulfill their obligation to remedy. These buyers have made a commitment to guarantee that workers will receive the full amount that they are legally owed, and then have either provided the funds owed to workers, themselves, or pressed their supply chain partners (factory owners, buying agents, etc.) to do so. It should be noted that in several of these cases, the international firms chose to provide these funds while bankruptcy processes or other legal proceedings were still ongoing, in order to prevent workers from suffering harm while they waited for these processes, which were unlikely to bring full payment in any case, to conclude.

Indeed, both Jack Wolfskin and H&M have directly provided funds to workers when workers were denied legally owed funds at the time of a factory closure. In a case involving a Thai factory that closed in 2014 without providing legally owed severance payments to its workers, FWF reports that Jack Wolfskin provided €115,000 (US\$125,000)⁵⁵ to ensure that workers received the funds they were due.⁵⁶ In a similar case in Cambodia in 2013, H&M and another buyer provided US\$200,000 to workers.⁵⁷

In this case, it is highly unlikely that workers will receive a prompt, full remedy through the Indonesian legal system. The assets available are insufficient, and a significant portion of those assets has already been claimed by secured creditors. Even if the courts do interpret the patchwork of Indonesian bankruptcy laws to reach a decision favorable to the workers, resulting in their receiving some portion of the amount they are owed, they are unlikely to see those funds in any reasonable timeframe. For this reason, the WRC recommends that the buyers take prompt action independent of the Indonesian legal system, including directly providing funds to workers if necessary.

⁵⁵ This conversion uses the rate of €1:US\$1.08, the rate as of December 18, 2015.

⁵⁶ Fairwear Foundation, “Complaint – Jack Wolfskin – Thailand,” (January 7, 2015), <http://www.fairwear.org/ul/cms/fck-uploaded/documents/complaints/2014/complaintthailandJackWolfskinApril2014.pdf>

⁵⁷ See, Pearlman, Alex, “Cambodian workers win \$200,000 settlement from Walmart, H&M,” *Global Post* (March 3, 2013), <http://www.globalpost.com/dispatches/globalpost-blogs/rights/cambodian-workers-win-200000-settlement-wal-mart-hm>.

V. Brand and Retailer Responses

On or around March 30, 2015, after the factory had ceased production, PT Asmara Karya Abadi, a buying agent representing several brands and retailers doing business with Jaba Garmino, including Jack Wolfskin and S. Oliver, removed its clients' finished products from the factory. On April 15, the WRC initially contacted a number of buyers, including Jack Wolfskin, Uniqlo, S. Oliver, Roxy, Gerry Weber, and Trutex regarding the factory's closure, urging them to take action prior to the company's entrance into bankruptcy to ensure that workers received the funds they were legally owed.

In June 2015, after the factory entered bankruptcy, the WRC again contacted these buyers to urge them to ensure that the workers receive these funds. S. Oliver, Jack Wolfskin, Gerry Weber, and Uniqlo have responded to the WRC that they are continuing to follow the bankruptcy process, but have not indicated any plans for how they plan to ensure that the violations of Indonesian law, their own codes of conduct, and those of the multi-stakeholder bodies in which they are members (FLA and FWF) are corrected. Through the Fairwear Foundation and PT Asmara, Jack Wolfskin has contacted both the WRC and the unions representing the workers, but has not yet committed to take any specific action. Similarly, Trutex, which reported that it had received its final shipment from Jaba Garmino in January 2015, indicated that it would write to the bankruptcy trustees urging them to prioritize the workers.

Worker testimony and press reports indicate that several other firms sourced apparel from Jaba Garmino during the year before closure; the WRC will contact these former buyers as well to press them to ensure that the workers are made whole.

Appendix A

Inaccuracies in Factory Disclosure Data

Between 2001 and 2015, the Licensing Resource Group (“LRG,” now Learfield Licensing Partners (“Learfield”)) repeatedly identified Jaba Garmino as a supplier of collegiate apparel to Haddad Brands (“Haddad”) in data LRG provided to the WRC. However, both Jaba Garmino’s management and Haddad asserted to the WRC this year that there had been no Haddad production in the factory for more than ten years, a claim that neither worker testimony nor documentary evidence contradicted.

In October 2015, the WRC contacted both Haddad and Learfield to inquire as to why Jaba Garmino had been identified to the WRC as a collegiate apparel supplier. Both Haddad and Learfield reviewed the history of correspondence between Haddad and LRG concerning the former’s supplier factories. Haddad informed the WRC that it has recently exited the collegiate apparel market, but it worked with the WRC to review its final factory disclosure data for accuracy.

Learfield was unable to produce any evidence that either Learfield or, previously, LRG had, in the past several years, requested updated factory supplier data from Haddad. The licensing agreement signed by Haddad with LRG/Learfield-represented colleges and universities did not stipulate any schedule for updating disclosure data, simply stating that Haddad would, “from time to time, or upon request by LRG” provide such information.

This failure by Learfield to demonstrate that it or LRG made any reasonable effort to secure and maintain accurate factory data is extremely concerning, and calls into question the accuracy of all of Learfield’s current disclosure data. The WRC has repeatedly contacted Learfield over the past two years regarding inaccuracies in this data, and has been assured over the past year that the company is improving its systems and taking the WRC’s feedback into account.

In the course of reviewing this case, Learfield has again stated that it is revamping its factory data disclosure process. It is clear that significant improvements are necessary if Learfield is to fulfill its commitment to universities to provide accurate, up-to-date data regarding locations of factories producing collegiate apparel.