

CONSTITUTIONAL MANDATES AND THE HIERARCHY OF CREDITOR CLAIMS IN INSOLVENCY REGIMES

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Abstract

The study aims to explore the legal position of each type of preferred creditor in the national bankruptcy system, focusing on a comparative analysis between tax bills and labor wages. The settlement of bankruptcy cases in Indonesia has important legal consequences, one of which is the obligation to distribute the assets of bankruptcy debtors to creditors according to the priorities of laws and regulations. The research uses a juridical normative approach with an analysis of Law Number 37 of 2004 concerning Bankruptcy and PKPU, as well as commercial court decisions related to conflicts between tax bills and wages. The results of the study show that taxes and wages are preferential bills, but Indonesia's positive law gives higher priority to the payment of workers' wages. This reflects protection for vulnerable groups who depend on wages for their livelihoods. This priority is in line with the constitutional mandate to protect workers' rights and realize social justice. However, its implementation still faces challenges such as differences in legal interpretation, inconsistency in jurisprudence, and weak supervision of asset distribution. It is necessary to harmonize regulations and ensure consistency in law enforcement so that the bankruptcy system in Indonesia guarantees legal certainty and protection of the rights of all parties.

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Introduction

Bankruptcy is a legal instrument used as an effort to settle the debtor's inability to fulfill its financial obligations to creditors. Bankruptcy aims to distribute the debtor's assets collectively to creditors, avoiding situations where creditors compete individually for limited debtor assets (Ho, 2016). Before reaching the liquidation stage, debtors are often allowed to perform debt restructuring, such as rescheduling payments, converting debt into equity, or selling assets. This

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step aims to avoid total bankruptcy and ensure operational sustainability (Nainggolan & Anatoliy, 2024). Some countries implement insolvency testing mechanisms to ensure that the debtor is completely unable to meet his or her obligations before being declared bankrupt. This mechanism can prevent abuse of the bankruptcy process by certain parties (Fahamsyah et al., 2024). In bankruptcy proceedings, the trustee has a critical role to manage the debtor's assets, ensure a fair distribution to creditors, and prevent illegal acts such as asset transfers before bankruptcy (Suryanti et al., 2025).

In practice, polemics often occur when it must be determined who is more entitled between the two types of preferred creditors, namely the state with tax claims and the workers with wage bills. Both have a strong juridical basis, but in a situation where the bankruptcy assets are insufficient to pay off all obligations, the question arises as to who should take precedence (Damayanti & Abdi, 2020; Ramadhani, 2021). This creates a tug-of-war between the state's fiscal interests and the need for legal protection for workers as an economically and socially weak group. Some countries, such as Germany, have mechanisms such as the "Insolvenzgeld" that guarantee the payment of workers' wages for the first three months in the early stages of bankruptcy. This provides better protection for workers than the system in Indonesia (Ariqah & Anisah, 2022).

Previous research shows that the state has priority rights related to tax debts as stipulated in Article 21 of Law No. 37 of 2004 concerning Bankruptcy, labor wage debts are ranked first to be repaid when the company goes bankrupt, then non-priority creditors or banks, and last is tax debt (Fajri et al., 2022). The priority on workers' wages reflects a commitment to social justice and workers' welfare, in line with the constitutional mandate. However, this poses a challenge in balancing the rights of various creditors, including the state (Harianto, 2019). The state has the privilege of collecting tax debts from the assets of the bankrupt debtor. This right is intended to ensure that tax liabilities are prioritized in the distribution of assets. However, the enforcement of this right is complicated by conflicts between taxation, bankruptcy, and employment laws, which can weaken the state's ability to collect tax debts effectively (Yitawati & Sulistiyono, 2019). Although wages are prioritized, other workers' rights, such as severance pay or benefits, are not provided with the same level of protection, leaving employees vulnerable in bankruptcy cases (Nuryanto et al., 2024a). Conflicting legal pluralism has led to uncertainty in the implementation of regulations, and weak oversight mechanisms have resulted in ineffective implementation. In addition, conflicts of interest between workers, employers, and the government are significant obstacles (Suryana, 2025).

Therefore, this study aims to explore the legal position of each type of preferred creditor in the national bankruptcy system, focusing on a comparative analysis between tax bills and labor wages. This article makes the main argument that although normatively positive law has given constitutional priority to protect the working class as vulnerable creditors, its implementation in commercial courts is colored by disparities in jurisprudence and ambiguity of interpretation. Inconsistencies in law enforcement and weak supervision of asset distribution have reduced the guarantee of legal certainty, so that, without the harmonization of binding regulations, the protection of labor rights in bankruptcy proceedings risks becoming just a normative illusion.

Research Method

This study uses a normative juridical approach by analyzing the legal regulations that govern the position of preferred creditors in bankruptcy, especially related to payment priorities between tax bills and labor wages (Cliteur & Ellian, 2022). The legal resources used include relevant laws, legal literature, and court rulings related to the issue of payment priority in bankruptcy proceedings. This research also adopts a case study approach to observe the

application of the law in judicial practice, to understand the implementation of such payment priorities in the context of bankruptcy disputes.

Results and discussions

Concept and Position of Preferred Creditors in Bankruptcy

Preferred creditors are one of the classifications of creditors who receive special treatment in the bankruptcy process, because they have privileges that have been explicitly established by laws and regulations (Jackson, 1982). This creditor has a higher repayment priority compared to other creditors, especially concurrent creditors, in the distribution of the proceeds of execution of the debtor's bankruptcy assets. This privilege usually does not arise from an agreement or agreement between creditor and debtor, but is granted directly by law, as a form of protection for the public interest or rights that are considered fundamental (Thanki et al., 2025). Concrete examples of preferential creditors include the state as the holder of the right to tax receivables, and workers who have wage receivables or allowances that have not been paid by the bankrupt debtor.

A regulation regarding the privilege of a preferred creditor can be found in Article 1134 of the Civil Code, which states that "Privilege is a right granted by law to a creditor that causes him to be of a higher position than another, solely by virtue of the nature of the receivable." This means that the preferred creditor does not need to have material guarantees for its receivables, because its position is automatically prioritized based on legal provisions. However, Article 1134 of the Criminal Code also emphasizes that pawns and mortgages, as a form of material security, still have a higher status than privileges, unless the law stipulates otherwise. This suggests that in the structure of debt repayment priorities, the right to material guarantees remains at the top position, except in specific cases that are strictly defined, such as workers' wage receivables that can override certain guarantees based on court decisions or labor law provisions (Nuryanto et al., 2024b).

In practice, this preferential creditor privilege has an important role in ensuring legal protection for parties who are vulnerable to harm in bankruptcy proceedings. The state, as the holder of the right to tax receivables, gets a special position to ensure that state revenues remain guaranteed. Meanwhile, workers, as parties who have economic dependence on wages, are also given legal protection so that they are not sacrificed in the settlement of company debts. Further provisions regarding the priority of repayment are also contained in Law Number 37 of 2004 concerning Bankruptcy and PKPU, as well as the Labor Law, which makes it clear that workers' receivables, especially outstanding wages, are a priority in repayment even against separatist creditors, even under certain conditions.

Thus, the position of preferred creditors not only has a strong juridical basis, but also contains the values of justice and social protection recognized in the Indonesian legal system. These privileges are not only technical but reflect moral and social principles that put the public interest above the interests of individuals, so that a balance is achieved between legal certainty and substantive justice in handling bankruptcy (Jackson, 1982; Thanki et al., 2025).

In the bankruptcy legal system in Indonesia, the regulation of preferred creditors plays a very important role, especially in terms of regulating the priority order of debt repayment from the debtor's bankruptcy assets. Bankruptcy itself is a situation when a debtor is unable to pay his debts that have matured and can be collected, as stipulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU). In this condition, the assets of the bankrupt debtor will be divided among their creditors in accordance with their respective positions and rights based on legal provisions (Sonhaji, 2018). This is where preferred creditors get a privileged position compared to other types of creditors.

In addition, the provisions governing the position of preferred creditors also reflect the principle of fairness in the distribution of bankruptcy assets, where the law not only favors the

financially strong or collateralized parties, but also protects vulnerable parties who have high economic dependence on payments from the debtor. By granting privileges to certain groups of creditors, the legal system seeks to create a balance between legal certainty and social justice, two key principles in the administration of law in a legal country like Indonesia. In the bankruptcy process, there are three types of creditors recognized in the Indonesian legal system (Retnaningsih & Ikwansyah, 2017), namely:

- a. Separatist Creditors: Creditors who have material security rights to debtors, such as dependents, mortgages, fiduciaries, warehouse receipts, and mortgages. Separatist creditors have the right to execute such guarantees directly without being bound by bankruptcy proceedings.
- b. Preferred Creditors: Creditors who have privileges or priority rights granted by law, such as unpaid tax receivables and workers' wages. Preferred creditors are prioritized in repaying receivables from the debtor's bankruptcy assets.
- c. Concurrent Creditors: Creditors who do not have material security rights or privileges. Concurrent creditors will get receivables repaid after the separatist creditors and preferred creditors are paid off.

Preferred creditors have a higher position compared to concurrent creditors in the process of repaying debts from the debtor's bankruptcy assets. This means that the preferred creditor will take precedence in the repayment of receivables before the concurrent creditor receives their share. However, separatist creditors who have material security rights still have the highest priority in repaying receivables from the object of the guarantee (Muhammad Awal Alishakur & Ariawan Gunadi, 2024).

In addition to the state, workers or laborers are also included in the category of preferential creditors who receive special legal protection. Receivables derived from wages, allowances, severance pay, or other workers' rights that have not been paid by the debtor who has been declared bankrupt must be repaid first. This is affirmed in various labor regulations, such as the Labor Law, and is also affirmed by the Constitutional Court's decision Number 67/PUU-XI/2013. In the decision, the Court stated that the provisions in Article 95 paragraph (4) of the Labor Law, which states that workers' rights due to employment relations, including wages that have not been paid by bankrupt employers, are constitutional.

The Court affirmed that the protection of workers' rights is part of the constitutional right of citizens to obtain a decent livelihood. This Constitutional Court ruling has very important implications, as it not only recognizes the position of workers as preferential creditors but also affirms that workers' rights as part of human rights must be a legal priority that cannot be defeated by commercial interests alone (Raguel & Odeku, 2023).

Legal Status of Tax Bills and Labor Wages as Preferred Creditors

In the law of bankruptcy and postponement of debt payment obligations, there is a provision regarding preferred creditors, namely, parties who have the right to take precedence in obtaining repayment of the debtor's assets. Among the various forms of receivables that fall into this category, tax bills and labor wages are two types that often receive special attention (Vento, 2018). Although both are included as preferred creditors, the position and priority level of payment of the bill are different from each other, as stipulated in the provisions of the applicable laws and regulations.

1. Position of Tax Creditors

Tax bills are a form of obligation that arises from the taxpayer's obligation to pay to the state based on the provisions in tax regulations. Based on Article 21 paragraph (1) of Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP), tax bills have a higher priority than other debts, except in terms of case costs due to confiscation of collateral, auction costs of goods, and wages of workers as stipulated in the Manpower Law. However,

in bankruptcy cases, this provision has changed. Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) states that tax privileges are not enforced, so that tax bills are treated the same as other concurrent creditors' bills. In other words, although outside the context of tax bankruptcy, it has priority rights; in bankruptcy proceedings, tax bills no longer gain a leading position unless they are accompanied by collateral that makes them separatist creditors.

Every debt or tax bill must be settled by the taxpayer or the Tax Bearer. With the emergence of the bill, the state has the right to take precedence over the property belonging to the Tax Bearer, as stipulated in Article 21 paragraph (1) of the KUP Law. The purpose of this state priority right is further explained in the Explanation section of Article 21 paragraph (1) of the KUP Law, which establishes the position of the state as a preferred creditor who has the right to take precedence over the property belonging to the Tax Insurer that will be auctioned in general. Because tax is a special provision, the state, through the Directorate General of Taxes, has the "right of precedence" in confiscating the assets or assets of taxpayers that are used as collateral for their debts, as stated in Article 21 of the KUP Law.

The application of the right of precedence by the state in terms of repayment of tax debts is carried out by prioritizing the repayment of tax bills over payments to other creditors. Payments to other creditors are made after the tax debt is paid off first. This precedence rights include tax principal, administrative sanctions in the form of interest, fines, increases, and collection fees. However, there are several exceptions to the right of precedence in the tax bill, namely: first, the cost of the case arising only due to the execution of the auction of movable or immovable goods; second, the costs incurred for the rescue of the goods; and third, the cost of matters related to auctions and settlement of inheritances.

When viewed from the perspective of Law Number 37 of 2004, debt is broadly understood as an obligation that can arise both from an agreement and from an agreement according to the provisions of the law. On the other hand, according to Soemitro, taxes are juridically a form of engagement that arises from the law, which requires citizens to hand over part of their income to the state, where the state has the authority to impose it, and the tax funds are used in the context of the administration of government.

2. Position of Labor Preferred Creditors

On the other hand, in the hierarchy structure of preferential creditors, workers' wages have a higher position than tax bills. This is emphasized in Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower, which states that workers' wages must take precedence over all forms of debt, including tax bills. The protection of labor rights is further strengthened by the provisions in Article 55 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), which emphasizes that even if the debtor is in bankruptcy, the right of workers to receive wages still gets the top priority.

In the implementation of the bankruptcy process, the payment of workers' wages ranks second after bankruptcy costs, such as the honorarium of the curator and creditors' committee, and is above the rights of separatist and concurrent creditors. However, this privilege has a limitation, which is that it only applies to wages that have not been paid within a period of no longer than 12 months before the bankruptcy judgment is pronounced. Severance pay and compensation for termination of employment are not included in this prior right.

When comparing the position of tax bills and labor wages as preferred creditors, it can be seen that labor wages have a higher position. Outside the bankruptcy context, although tax bills are set to take precedence over most other types of debt, labor wages still take precedence. Meanwhile, in bankruptcy, the position of tax bills becomes weaker because it is categorized as a concurrent creditor, while workers' wages still get priority rights. Therefore,

it can be concluded that in the hierarchy of preferred creditors, the wages of workers have the highest position, and the tax bill is below it, especially in the context of bankruptcy.

In the wage system itself, there are several principles that apply. First, the right to receive wages arises along with the employment relationship and will end when the employment relationship is terminated. Second, employers are not allowed to discriminate in the provision of wages between male and female workers for the same type of work. Third, wages are not paid if the worker or laborer does not do the work, in accordance with the principle of "no work, no pay." Fourth, the components of wages consist of basic wages and fixed allowances. Fifth, demands for the payment of wages and other rights arising from the employment relationship will expire if they are not collected within a period of two years from the occurrence of these rights.

In the context of civil law, the wages of workers or laborers are classified as a privilege over all types of objects, both movable and immovable, in general. This position means that the right to wages is after the privileges relating to certain things. Based on Article 1149 of the Civil Code, wage rights are classified as general statutory priority, which places them in third place after creditors who hold property security rights and creditors with privileges over certain objects. This provision is also reaffirmed in Article 95 paragraph (4) of Law No. 13 of 2003 concerning Manpower.

In addition, Law Number 37 of 2004 states that since the bankruptcy declaration decision is pronounced, all wages that are still payable, both before and after the judgment, are included in the debt of bankruptcy assets as stipulated in Article 39 paragraph (2). Therefore, the curator is obliged to record the wage debt along with its special nature in the list of bankrupt property receivables, as stipulated in Article 100 jo. Article 102 of Law No. 37/2004. The list must be made public in accordance with Article 103, before being matched with the bills submitted by each creditor as stipulated in Article 116 of Law No. 37/2004.

3. The Position of Right to Precede Creditors Prefers Labor Over Taxes

According to the provisions of Article 21 of Law Number 28 of 2007 concerning General Provisions and Tax Procedures, the state has preferential rights over tax receivables, which means that tax bills must be paid off first before bills from other creditors. However, this provision has changed its meaning after the Constitutional Court (MK) Decision Number 67/PUU-XI/2013, which tested the constitutionality of the phrase "payment takes precedence" in Article 95 paragraph (4) of Law Number 13 of 2003 concerning Manpower. The request for judicial review was submitted because the phrase "payment is prioritized" does not provide firm legal certainty regarding the position of repayment of workers' debts in the condition of bankruptcy or liquidation of the company. The Applicant considers that without a clear interpretation, the phrase can open up a space for multi-interpretation that is detrimental to workers because it creates ambiguity regarding the order of debt payments, especially in relation to bills from other creditors such as the state (tax), auction office, or government agency.

The Indonesian legal system itself has regulated the hierarchy of debt repayment in the Civil Code (KUHPerdota) and Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law). However, both legal instruments are *lex generalis* whose provisions can be overridden if there are other laws that are *lex specialis*. In this context, there are several laws that apply as *lex specialis*, namely Law Number 2 of 1992 concerning Insurance Business (which was later replaced by Law Number 40 of 2014), the Manpower Law, and the KUP Law.

In bankruptcy practice, there is often a conflict of interest between several parties, such as insurance policyholders, laborers, and the state through the tax authorities, regarding who is entitled to receive repayment first. In the Constitutional Court's decision, the Court gave a constitutional interpretation of Article 95 paragraph (4) of the Manpower Law, which states that the payment of workers' wages that are still owed must take precedence over all types of

creditors, including separatist creditors, the state (in the case of tax bills), auction offices, and public bodies formed by the government.

Juridical Implications of this Arrangement

In the bankruptcy legal system in Indonesia, determining the position of various types of debt bills has very important legal consequences (Fahamsyah et al., 2024; Retnaningsih & Ikwansyah, 2017). Two of the bills that have caused a lot of debate are the tax bill by the state and the labor wage bill by the workers. Both are categorized as preferred creditors, meaning they have the right to take precedence in repaying debts from the assets of bankrupt debtors. However, the implementation of this principle does not always go smoothly, especially when there is a conflict of interest between the two or with other creditors (Chandranegara & Cahyawati, 2023).

The provisions in the Bankruptcy Act do not appear to have provided sufficient clarity regarding the payment hierarchy between the tax bill and workers' wages. On the one hand, the state has a strong fiscal interest in collecting its tax receivables. On the other hand, workers as economically vulnerable parties actually need higher protection because it concerns their survival. When the value of the bankruptcy property is limited and insufficient to pay off the entire bill, this unclear legal position can lead to a violation of the principles of justice and protection of the weak.

In the Bankruptcy Law, tax bills are categorized as preferred creditors. This means that the state has the right to take precedence in the repayment of tax receivables from bankruptcy assets. However, in practice, this position is still under separatist creditors, i.e., creditors who have material security rights such as mortgages or fiduciaries (Jackson, 1982). Thus, the state must wait for the repayment of guaranteed debts before it can collect tax receivables.

Workers' wages in bankruptcy are recognized as preferential creditors who have the right to take precedence in debt repayment. This is strengthened by Article 95 paragraph (4) of the Manpower Law, which states that in the event that the company is declared bankrupt or liquidated, then wages and other rights of workers/laborers are debts that are preceded by payment (Jaelani et al., 2023). However, this protection is limited because the law only guarantees wage rights "up to a certain amount" without providing a definite elaboration. The ambiguity of this phrase has been a source of debate among legal practitioners and academics.

This uncertainty has the potential to cause multiple interpretations and weaken the protection of workers who should receive a higher priority because they are immediate living needs. In some cases, this ambiguity causes workers to get only a fraction of their rights. This is very detrimental because wages are a vital element for the survival of workers and their families. Therefore, even though normatively workers are protected, there is still an inequality in legal treatment compared to other creditors (Jaelani et al., 2023). This shows the need for a review of the provisions on workers' wages in bankruptcy to provide more effective protection for workers.

Law No. 37 of 2004 stipulates that the state has a preferential right to tax debts in bankruptcy proceedings. This provision refers to the principle that tax liability is a debt to the state that has a privileged position in civil and bankruptcy law. The Constitutional Court Decision No. 67/PUU-XI/2013 affirms that the payment of workers' wages must take precedence over all types of creditors, including separatist creditors and tax bills. This is a form of constitutional protection of the rights of workers as a vulnerable group in the situation of company bankruptcy. The Court considers that the fulfillment of labor rights has a higher value of social justice than the fiscal interests of the state and the guarantors (Blazy & Stef, 2020).

The juridical implication of the ruling is that there is a change in the structure of debt repayment preferences in bankruptcy. If previously taxes preceded other debts, now workers' wages must be explicitly paid first, even before the tax bill and the guarantee of separatist creditors (Retnaningsih & Ikwansyah, 2017). This shows that bankruptcy law is also influenced

by the principle of social justice, not purely by economic interests. On the other hand, the implementation of the Constitutional Court's decision requires technical adjustments in the curatorial process, especially in identifying and verifying the amount of labor wage debt that is still owed. The Curator must ensure that all obligations to the worker are accurately recorded and prioritized in the distribution of bankruptcy assets (Harianto, 2019).

In practice, the curator handling the bankruptcy process is responsible for compiling a list of receivables and classifying the types of bills, including verifying the amount of wage debt owed. This process often arises obstacles if there are no adequate documents or records from the company. Therefore, accuracy in employment administration is very important as evidence in legal proceedings. Legal protection for workers also includes the right to file an objection if the curator does not include their bills in the bankruptcy receivables list (Jackson, 1982). Thus, workers have the space to fight for their rights through available legal mechanisms, either through commercial courts or through trade union channels. In addition to substantial protection, the procedural aspect is also important. Workers must be given access to information and legal assistance so that they can understand their rights during the bankruptcy process. Intervention from the government, in this case the Ministry of Manpower, is also needed to ensure that workers' rights are not neglected in the judicial process (Sonhaji, 2018).

Thus, it can be emphasized that the harmonization between the protection of state rights to tax debts and the fulfillment of the normative rights of workers in bankruptcy requires improved regulations and supervisory mechanisms that are more adaptive and responsive. The revision of the Bankruptcy Law should be directed not only to strengthen the state's position in tax collection, but also to ensure that the principles of social justice, legal certainty, and transparency are maintained at every stage of the bankruptcy process (Jaelani et al., 2023).

Conclusion

Countries with tax bills and labor bills with wage bills are both included in the category of preferred creditors in the Indonesian bankruptcy system. However, normatively, workers' wages get a higher position in the order of payment priority compared to tax claims, as reflected in the provisions of Article 95 paragraph (4) of the Labor Law and strengthened by several court decisions. Although the legal position of workers has been prioritized, implementation practices in the field still face obstacles, especially in terms of legal interpretation by curators and judges, as well as inconsistencies in the execution of the distribution of bankruptcy assets. This shows that there is an urgent need for regulatory harmonization and increased compliance in the application of bankruptcy law so as not to harm parties who should be legally protected. Thus, in the future, it is necessary to carry out legal reform efforts that are able to clarify the order of priority payments and encourage consistent judicial practices in handling bankruptcy disputes involving preferred creditors.

Declaration of AI and AI-Assisted Technologies in the Writing Process

During the preparation of this manuscript, the author employed Artificial Intelligence (AI)-assisted technology, specifically ChatGPT (OpenAI), solely to assist in the development of conceptual tables, the refinement of academic language, and the enhancement of conceptual visualization within the discussion section. After the use of this technology, the author carefully reviews, revises, and validates all the resulting content to ensure its accuracy, integrity, and scientific originality. The author is solely responsible for the final content, interpretation, and conclusions presented in this publication.

CRedit Authorship Contribution Statement

Dita Julia Putri: Conceptualization, Data Curation, Formal Analysis, Methodology, Writing – Original Draft, Writing – Review & Editing, and Resources.

Declaration of Competing Interest

The author declares that no financial, professional, or personal conflict of interest could affect the research process, interpretation of findings, or publication of this article.

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Data Availability Statement

Data supporting the findings of this study are available from the relevant authors upon reasonable request via email at 05010722007@student.uinsby.ac.id. All materials and sources used in this study were obtained from relevant academic literature and library-based scientific resources.

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Ethical Approval Statement

The author emphasized that this research was conducted in accordance with established academic and research ethics standards. As a library-based study, this study did not involve human participants, personal data, or identifiable respondent information. Therefore, formal ethical approval is not required for the implementation of this research.

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