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The Principle of Utility in Revoking a Bankruptcy Adjudication in Bankruptcy Law

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Abstract

Bankruptcy law regulates the unity of assets due to bankruptcy adjudications, as stipulated in Article 64 paragraph (1) of the Bankruptcy Law, which establishes that "The bankruptcy of a husband or wife who is married under a unity of assets shall be treated as the bankruptcy of that unity of assets." However, bankruptcy law does not yet address the unity of assets that remain undivided due to divorce, and the case where a husband or wife who has divorced is declared bankrupt. The bankruptcy orders against these distinct legal subjects have been filed in separate commercial courts, indicating that they are indeed separate legal subjects. The question arises whether the undivided unity of assets can undergo a consolidation of bankrupt assets for both parties in separate cases. Drawing from Article 2 paragraph (1) of the Bankruptcy Law, which stipulates that "A debtor who has two or more creditors that remain unpaid and one of them has fallen due may be declared bankrupt," we inquire whether this principle can be applied. Likewise, based on the principle of integrity and the absence of provisions regarding undivided shared assets, this study adopts a generic legal approach. This research employs a normative methodology with the analytical framework of Kees Schuit's legal system theory and the goal

theory of law, founded on the three general principles of Gustav Radbruch: certainty, utility, and justice. In conclusion, this research possesses prescriptive value in the realm of legal scholarship, particularly within the scope of bankruptcy law.

KEYWORDS: *Principle of Justice, Undivided Shared Assets, Bankruptcy Adjudications*

Introduction

Bankruptcy Law is a legal system expected to provide benefits to its users or to those seeking justice (*justitiabelen*). Bankruptcy cases are related to a debtor's debt to creditors. The understanding of bankruptcy depicts that bankruptcy encompasses everything related to public attachment[1]. Public attachment is a form of attachment known in civil law, particularly in bankruptcy law, which regulates the relationship between creditors and debtors[2]. Public attachment involves all of the bankrupt estate[3] at the time bankruptcy is declared and any assets acquired during the course of the bankruptcy proceedings[4]. Aimed at protecting creditors' interests against actions by debtors that may harm the bankrupt estate[5]. Similarly, bankruptcy law has principles that support and benefit both parties when resolved within this legal framework. In accordance with the purpose of the law, in its implementation and enforcement, it should provide benefits to individuals[6]. Those seeking justice (*justiabelen*) should ideally seek the best legal framework that can ensure parties resolve their issues. Cases that can be brought under bankruptcy law require the existence of a debt due to the debtor's failure to pay at least two creditors[7]. The debtor's financial condition has reached a point where they are genuinely incapable of repaying the debt to the creditors, or it can be said that the debtor has

[1] Nola, "Kedudukan Sita Umum Terhadap Sita Lainnya Dalam Proses Kepailitan (The Position Of General Seizure Towards Others In The Process Of Bankrupcy)."
[2] Dini Herawati, "Sita Dalam Perkara Pidana Atas Sita Umum Boedel Pailit (Studi Kasus Putusan Nomor 1533 K/Pdt.Sus-Pailit/2017 Jo Putusan Nomor 16/Pdt.Sus-GGL/2017/PN.Niaga Jkt.Pst)."
[3] Erades, "Legal Effects in Indonesia of a Bankruptcy Pronounced in the Netherlands."
[4] Isfardiyana, "Sita Umum Kepailitan Mendahului Sita Pidana Dalam Pemberesan Harta Pailit."
[5] Fernando and Nugroho, "Kedudukan Sita Pidana Terhadap Sita Umum Kepailitan."
[6] Oktavira, "Perlindungan Hukum Bagi Kreditor Pemegang Hak Tanggungan Terhadap Sita Perkara Pidana."
[7] Aria Alim Wijaya, Rilda Murniati, "Hak Eksekusi Kreditor Separatis Terhadap Benda Agunan Dalam Kepailitan."

defaulted[8]. As for Bankruptcy Law applied in Indonesia, it uses the terms "unable to pay the debt" and "ceased to pay the debt" and failing to pay at least one debt[9]. If default occurs frequently, lenders will provide fewer loans and/or charge a higher risk premium[10].

All parties involved in this matter, whether debtors or creditors, naturally hope that their case can be resolved properly and in accordance with the principles of justice. Bankruptcy law is considered by justice seekers (*justiciabelen*) as the most reliable legal framework for settling debts. This is because bankruptcy law, with its principle of public attachment, is regarded as the fairest means of resolution. It places the entire estate of the bankrupt as collateral for all the debtor's debts[11] and its management and/or settlement are carried out by currator.

Several other principles that support bankruptcy to make this legal institution more equitable for justice seekers (*justitiabelen*) include the principle of paritas creditorium, which states that bankruptcy law does not differentiate treatment among creditors, whether they have large or small claims, or whether they have collateral or not. This principle advocates equality among all creditors involved in a bankruptcy adjudication[12]. unless specific legal provisions dictate otherwise

The principle of "pari passu pro rata parte," interpreted as "equally and proportionately," signifies the fundamental notion that the assets and wealth underpinning a debtor's estate are held as collective collateral among creditors. Within the framework of bankruptcy, the principle of "structured creditors" is intertwined with the varying statuses of creditors, driven by the presence of some holding collateral, possessing statutory preferential rights, while others do not hold any security interest. The principle of debt

[8] Yono et al., "Reconstruction of Separate-Creditor Positions in the Process Declaring Bancruptcy in Indonesia Based on Justice Value."
[9] Fauzi, "Insolvency within Bankruptcy: The Case in Indonesia."
[10] Thomas, "Bankruptcy Proceedings for Sovereign State Insolvency and Their Effect on Capital Flows."
[11] Slamet, "Perlindungan Hukum Dan Kedudukan Kreditor."
[12] Subhan, *Hukum Kepailitan: Prinsip,Norma,Dan Praktik Di Peradilan*.

resolution underscores that the institution of bankruptcy would cease to exist were it not for the existence of debts. Hence, the paramount principle within bankruptcy revolves around debt settlement. Furthermore, the principle of economic recovery is one that merits paramount consideration, as it bears direct implications for the economic conditions of society and the overall stability of the nation's economy.

The principle of integration plays a vital role in the field of bankruptcy law regulation. Its significance lies in its ability to govern the intricate relationship between bankruptcy legislation and other areas of legal jurisprudence. This principle primarily deals with how issues are addressed when bankruptcy law lacks specific provisions. In such cases, the principle serves as a bridge connecting bankruptcy law with its parent legal systems, particularly civil law and national civil procedural law. Furthermore, bankruptcy law encompasses several other fundamental legal principles.

In connection with this writing and based on the provision of Article 18 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law, which states as follows:

(1) In the event that the bankrupt estate is insufficient to cover the bankruptcy costs, the court, upon the request of the supervisory judge and after hearing the interim creditors' committee, if any, as well as after conducting a proper hearing or hearing from the debtor, may decide to revoke the bankruptcy adjudication.

In this context, there is a certain ambiguity for the parties involved, primarily the creditors, due to the provision concerning a decision that can annul the debtor's bankruptcy ruling. This situation can potentially lead to a lack of legal certainty for justice seekers (*justitiabelen*) associated with the bankruptcy case.

As a result, the bankruptcy adjudication which leads to another decision, namely the decision to revoke the bankruptcy adjudication. This subsequent adjudication essentially annuls the previous adjudication,

which typically, under procedural law, necessitates a legal recourse to a higher court if one wishes to overturn a judge's decision. In the context of bankruptcy adjudication, in addition to adhering to the principle of speedy justice, they also follow the principle of immediate enforceability (*uitvoobaar bij voorraad*), thus requiring expeditious resolution. Due to the insufficiency of the bankrupt estate to cover bankruptcy fees and the inability to settle the debtor's debts to creditors, it becomes necessary to seek a decision to revoke the bankruptcy adjudication. This situation may also arise from the judge's oversight during the case examination. If during the examination it is deemed that the Respondent will not be able to pay, the adjudication should ideally be rejected.

The examination of bankruptcy cases in its verdict is based on Article 2 paragraph (1) of the Bankruptcy Law, which outlines the requirements for a simplified examination, stipulating that "the presence of 2 (two) or more creditors, one of whom can be billed, can result in a bankruptcy ruling." It should also be based on Article 8 paragraph (6), which prescribes the judge's duty, in addition to adhering to Article 2 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligation Law, to delve into customs or laws prevalent within the society. This duty also entails the judge's responsibility to make legal considerations through legal analysis and legal findings, to prevent conflicting rulings and the resulting legal uncertainty regarding the bankruptcy adjudications rendered by the judge. Despite the regulation stipulating that the submission of a bankruptcy petition is not preceded by an examination of the solvency (liquidity) of the prospective bankrupt, based on the aforementioned discourse, the author analysed the legal issue regarding the revocation of a bankruptcy declaration to determine whether it aligns with the principle of benefit, ultimately leading to the principle of justice.

Method

The author employs normative legal research methodology, using Kees Schuit's legal system theory analytical framework, which encompasses ideational, operational, and actual elements. Additionally, the study draws from Gustav Radbruch's theory of legal purpose, comprising three general principles. The approaches include conceptual, statutory, and case-based methods. Legal judgment, based on the analysis of the judge's legal reasoning (ratio decidendi) derived from Decision No. 6/Pdt.Sus-PKPU/2020/PN Niaga Sby, dated October 31, 2022. This research aims to provide a prescriptive contribution to legal scholarship, with a particular focus on bankruptcy law.

Result and Discussions

The Principle of Utility Encompassed in the Revocation of a Bankruptcy Adjudication

The discussion of the title begins by first analysing the ideational element, which involves understanding the meaning of it to ascertain the correctness of a norm, thereby conveying the legislator's intent to the public. The operational element pertains to the authority of the examining institution, which is related to the legality of the examining institution. The actual element concerns its actuality within a legally binding court decision (*inkracht van gewijsde*), aiming to create a systemic legal framework. The outcome of the discussion of these three elements will determine whether the benefits of the revocation decision have indeed achieved the principle of justice.

The Meaning of a Revocation Adjudication within Its Norms

Analysing the meaning within each sentence or word in every legal norm is of utmost importance because law itself revolves around meanings. The regulation regarding the revocation of decisions in civil procedural law is not as extensively detailed compared to regulations in other legal domains concerning the revocation of legal proceedings in court, such as the revocation of ongoing cases if agreed upon by the parties. Bankruptcy law is a specialized and unique field (*lex specialis*), characterized by its distinctive regulatory framework, including the special characteristics found within bankruptcy law that govern the revocation of bankruptcy adjudications.

Article 18 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law states to as follows:

(1) In the event that the bankrupt estate is insufficient to cover the bankruptcy costs, the court, upon the request of the supervisory judge and after hearing the interim creditors' committee if any, as well as after conducting a legitimate hearing or hearing the debtor, may decide to revoke the bankruptcy adjudication.

To deconstruct the components of this norm, the author uncover the intended meaning that the legislator seeks to convey to the public in their pursuit of justice in bankruptcy cases.

Analysing Article 18 paragraph (1) of the Bankruptcy and PKPU Law in terms of its constituent elements, several elements can be identified: 1. Insufficiency of the bankrupt estate; 2. To cover bankruptcy fees; 3. Court upon the request of the supervisory judge; 4. After hearing the interim creditors' committee if any; 5. Legitimate hearing or hearing the debtor; 6. May decide to revoke the bankruptcy ruling. Subsequently, after identifying these elements within the norm, it becomes essential to analyse their meaning to understand them correctly. This analysis serves not only to comprehend the legislator's intent but also to derive the accurate meaning of the regulation. Thus, based on the analysis conducted, it can be determined that the regulation possesses legal certainty, holds utility value, and ultimately leads to a sense of justice.

The intention behind the first element of the aforementioned norm, which is "the bankrupt estate is insufficient," needs to be initially analysed in the context of bankruptcy law. Article 1 paragraph 1 of the Bankruptcy and Suspension of Debt Payment Obligations Law defines bankruptcy as follows: "Bankruptcy is the general seizure of all the wealth of the bankrupt debtor..." Wealth itself, according to legal dictionaries, refers to all movable or immovable property, whether tangible or intangible; wealth acquired individually or jointly during the course of a marriage, subsequently referred to as joint property[13]. Meanwhile, a bankrupt debtor, according to Article 1 number 7 of the Bankruptcy and PKPU Law, is "A debtor who has been declared bankrupt by a court ruling."[14]. Thus, the meaning of "bankrupt estate," both according to legal dictionaries and the provisions of the Bankruptcy and Suspension of Debt Payment Obligations Law, is the wealth owned by a debtor declared bankrupt according to the law.

The meaning of the word "tidak cukup" (insufficient) comes from the word "tidak"[15] which means "a particle to express denial, rejection, or denial." Meanwhile, the meaning of the word "cukup" is "1. The amount (quantity) is sufficient to meet needs or satisfy desires, and so on." Thus, the meaning of the phrase "tidak cukup" is that the quantity or amount is not sufficient to meet the needs. The meaning of the element "the bankrupt estate is insufficient" is that the wealth owned by the debtor declared bankrupt according to the law in a court decision is not enough to meet the needs.

The meaning of "To cover bankruptcy fees" in the second element of Article 18 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law slightly deviates from the original purpose of bankruptcy, which is that the bankrupt estate is used as collateral for the payment of the debtor's debts, as outlined in bankruptcy law, specifically the principle of

[13] Marwan, M, *Kamus Hukum: Dictionary of Law Complete Edition*.
[14] Marwan, M.
[15] Kebudayaan, *Kamus Besar Bahasa Indonesia*.

pari passu pro rata parte. The understanding of this principle is that wealth constitutes a common guarantee among creditors (see Article 1 number 6 of the Bankruptcy and Suspension of Debt Payment Obligations Law). However, in the execution process, it turns out that the wealth or assets of the bankrupt debtor are also used to cover bankruptcy fees. This can become problematic if there are no standard bankruptcy fee guidelines, as it may deplete the bankrupt estate solely for these expenses.

Analysing the word "To cover," it is separated first to understand the meaning of the word "for," which means 'a preposition indicating something designated for...' The word "membayar" (pay) means "2. to fulfill"[16]. The word "biaya" (fees) refers to "money expended for carrying out (establishing, conducting, and so on) something, expenses, expenditures""[17]. As for "kepailitan" (bankruptcy) based on Article 1 number 1 of the Bankruptcy and Suspension of Debt Payment Obligations Law, it pertains to "the general seizure of the entire wealth of the bankrupt debtor, managed and settled by a curator." The meaning of "sita umum" is derived from the word "sita," which means "beslag" in Dutch, indicating the taking of goods or wealth from the control of an individual or legal institution"[18] and the meaning of "umum" is "3. for many people; (for people) in general." Thus, the phrase "To cover bankruptcy fees" can be understood as "money expended to fulfil expenses in the seizure of goods or wealth from the control of an individual or legal entity for many people (public attachment) carried out by a curator."

The meaning of the third element in Article 18 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law, which states "Pengadilan atas usul hakim pengawas" (The Court upon the request of the supervisory judge), can be elucidated by dissecting its constituent components. The term "Pengadilan" (The Court) in bankruptcy law, as

[16] Kebudayaan.
[17] Kebudayaan.
[18] Subekti, *Kamus Hukum*.

defined in Article 1 number 7 of the Bankruptcy and PKPU Law, refers to "commercial courts within the general judiciary." In general, legal terminology, "pengadilan" means a tribunal vested with the duty and authority to adjudicate cases and render decisions on legal disputes, legal violations, or legislation, known as *rechtsbank*[19] in Dutch. Therefore, in the context of bankruptcy, it denotes commercial courts with jurisdiction to adjudicate and decide cases related to legal disputes and bankruptcy matters. (*vide* Article 1 number 1 Bankruptcy Law and Suspension of Debt Payment Obligations Law).

The meaning of the phrase "atas usul hakim pengawas" is, starting with the word "usul," which means "a proposal (opinion, etc.) presented for consideration or acceptance."[20] "Hakim pengawas" (the supervisory judge) is defined in Article 1 number 8 of the Bankruptcy and PKPU Law as "a judge appointed by the court (as stated clearly in Article 1 number 7 of the Bankruptcy and PKPU Law, which refers to commercial courts in the bankruptcy or Suspension of Debt Payment Obligation Law." The duties of the supervisory judge are regulated in Article 65 of the Bankruptcy and Suspension of Debt Payment Obligations Law, which states that "the supervisory judge oversees the administration and settlement of the bankrupt estate." Furthermore, the procedure for the request of the supervisory judge is explicitly delineated in Article 66 of the Bankruptcy and Suspension of Debt Payment Obligations Law, which states that "the court must hear the opinion of the supervisory judge before making a decision regarding the administration or settlement of the bankrupt estate." Thus, the meaning of "Pengadilan atas usul hakim pengawas" is "commercial courts with jurisdiction to adjudicate and decide cases related to legal disputes and bankruptcy matters, obliged to consider or accept recommendations presented by the judge overseeing the administration and settlement of the bankrupt estate."

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[19] Marwan, M, *Kamus Hukum: Dictionary of Law Complete Edition*.
[20] Subekti, *Kamus Hukum*.

The fourth element of the Bankruptcy and Suspension of Debt Payment Obligations Law, "Setelah mendengar Panitia kreditor sementara" (After hearing the temporary creditors' committee), can be analysed to reveal its meaning. This begins with the word "mendengar," which means "4. to listen to; to heed," and the meaning of "panitia kreditor sementara" (temporary creditors' committee) starts with an understanding of "kreditor" (creditor) either based on expert opinion or legal provisions. According to Munir Fuadi, in principle, a creditors' committee represents the interests of creditors, continually advocating for their legal rights. There are two types of creditors' committees: the temporary creditors' committee appointed by the court when issuing a bankruptcy order and the permanent creditors' committee established by the supervisory judge if the court does not appoint a temporary creditors' committee[21].

The temporary creditors' committee is regulated in Article 79 paragraph (1), which states, "In the bankruptcy order or subsequently by a separate decision, the court may establish a temporary creditors' committee consisting of 3 (three) members selected from recognized creditors, with the purpose of providing advice to the curator." Regarding the creditors' committee, according to the Bankruptcy and Suspension of Debt Payment Obligations Law, there are two types of creditors' committees, but their roles are similar: to represent the interests of creditors in their capacity and provide advice to the curator. The difference lies in the appointment process; the temporary creditors' committee is appointed by a court decision, while the permanent creditors' committee is determined by the supervisory judge based on the choice of concurrent creditors (see Article 80 of the Bankruptcy and Suspension of Debt Payment Obligations Law). Therefore, the meaning of "Setelah mendengar Panitia kreditor sementara" is that the opinions or considerations of the temporary creditors' committee in the decision to revoke the bankruptcy order under Article 18 paragraph (1) of the Bankruptcy and PKPU Law must be heard by the court

[21] Fuady, *Hukum Pailit Dalam Teori & Praktek. Bandung*.

The fifth element is "Memanggil dengan sah," which, when analyzed for its meanings, reveals the intended meaning of the legislator. The word "memanggil" means "2. to invite; to request to come," and the word "sah" as per legal dictionaries means "valid, legal, in accordance with the law"[22]. Thus, the meaning of "memanggil dengan sah" is an invitation from the court to the supervisory judge and the temporary creditors' committee to provide their opinions and considerations in accordance with the prescribed procedures.

The sixth element of Article 18 paragraph (1) of the Bankruptcy and PKPU (Suspension of Debt Payment Obligations) Law is "Mendengar debitor" (Hearing the debtor). The term "debitor" is defined in Article 1 number 3 of the Bankruptcy Law as "a person who has a debt arising from an agreement or law, the payment of which can be claimed before a court." Meanwhile, a bankrupt debtor, as per Article 1 number 4 of the Bankruptcy and Suspension of Debt Payment Obligations Law, is "a debtor who has been declared bankrupt by a court decision." In bankruptcy law, even though the debtor is considered incapable of managing their wealth, the opinions of the debtor, who has been declared bankrupt by a court decision, are still respected based on the principle of justice.

The final element, the seventh one, is "Dapat memutuskan pencabutan putusan pailit," which, upon analysis, means the authority to decide on the annulment of a bankruptcy order. The word "dapat" (able) translates to "can"[23]. ""Memutuskan," according to the Kamus Besar Bahasa Indonesia, means "4. To annul; to cancel; to invalidate; 5. To conclude; to terminate something that has not yet ended"[24]. The term "pencabutan" means "5. To declare invalid; to cancel (regulations, permits, and the like)"[25]. Meanwhile, the meaning of "putusan" (ruling) is "the result or final conclusion of a case;

[22] Marwan, M, *Kamus Hukum: Dictionary of Law Complete Edition*.
[23] Kebudayaan, *Kamus Besar Bahasa Indonesia*.
[24] Kebudayaan.
[25] Kebudayaan.

the outcome or conclusion of an examination of a case based on considerations that determine what is in accordance with bankruptcy law."

The term "pailit" or bankruptcy, as defined in Article 1 number 1, is as follows:

1. Bankruptcy is the general seizure of all the wealth of the bankrupt debtor, the management and settlement of which are carried out by a curator under the supervision of a supervisory judge as regulated in this law.

Therefore, a bankruptcy order pertains to the result or final conclusion of an examination of a case based on considerations that determine what is in accordance with bankruptcy law.

Article 8 paragraph (7) of the Bankruptcy and Suspension of Debt Payment Obligations Law further elaborates on the bankruptcy order, which has characteristics that are specialized and unique. This is because it is explicitly stated as a provisional decision (*uit voor baar bij voorraad*), even though legal remedies can be filed against such a decision in a higher court, namely cassation, as stipulated in its norm:

(7) The decision on the application for a bankruptcy declaration as referred to in paragraph (6) which contains a complete legal reasoning underlying the decision must be pronounced in an open hearing accessible to the public and can be executed even though legal remedies have been filed against such decisions.

The meaning of the revoking adjudication in Article 18 paragraph (1) of the Bankruptcy Law has a specific reason, namely the necessity to allocate funds for various expenses, one of which involves the seizure of property or wealth from the control of an individual or legal entity (inventory of bankrupt assets) for the benefit of the general public (general seizure). This is intended for the settlement of the debtor's debts, carried out by a curator. However, these expenses are not limited to inventory costs alone because

the curator's duties in managing and/or settling bankrupt assets encompass three key aspects: inventory, verification, and settlement.[26]

The characteristics of the revoking adjudication, as stipulated in its norm, shape its meaning. The essence of this ruling is to terminate the bankruptcy order due to insufficient funds to execute it. In the examination process, judges should be diligent in anticipating potential cost shortfalls if the respondent or debtor initiates bankruptcy proceedings. This is even though the rules are straightforward in Article 2 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law, which stipulates that a debtor with at least two creditors, and one of them fails to pay a due debt that can be demanded, can be declared bankrupt.

The points above should also be carefully considered by judges regarding the regulation in Article 8 paragraph (6) letter a, which stipulates that the basis for its decision is specific provisions in the relevant legislation and/or unwritten legal sources. This is to prevent situations where a bankruptcy order is issued but cannot be executed due to a lack of funds, which could be determined based on an assessment of the bankrupt estate's ability to finance the bankruptcy proceedings. Similarly, petitioners for bankruptcy should also calculate the value of the bankrupt estate before filing a bankruptcy petition. Therefore, the annulment decision can lead to injustice for those seeking justice (*justitiabelen*).

Based on the explanations above, when examining the meaning of the annulment of a bankruptcy order, it is intended to terminate the bankruptcy proceedings that have not actually concluded, as assessed through an inventory conducted by the curator, indicating that the bankrupt estate cannot finance the bankruptcy process. Therefore, for the sake of legal certainty, Article 18 paragraph (1) of the Bankruptcy and PKPU Law is established. The analysis used is in accordance with Kees Schuit's theory of legal system, focusing on the first element, the ideal element, which seeks to

[26] Suci, Ivida Dewi Amrih, *Ukum Kepailitan: Kepastian Hukum Penjualan Benda Tidak Bergerak Secara Di Bawah Tangan Oleh Kurator*.

understand the meaning of a norm. Understanding the meaning of Article 18 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law regarding the annulment of a bankruptcy order is essential to ascertain the true intent behind the creation of this norm for the benefit of all parties involved. Ultimately, this requires a norm that provides legal certainty and, in the end, leads to justice for those seeking it (*justitiabelen*).

The Authority of the Commercial Court in Annulment Ruling

Analysing the authority of the commercial court in accordance with the second operational element as the analytical tool used by the researcher, namely the legal system theory by Kees Schuit. This operational element is the one that analyses the entire organizations or institutions established within a legal system. The institutions or organizations referred to in this operational element, in relation to annulment decisions, include the commercial court (see Article 1 number 7 of the Bankruptcy and PKPU Law), and other elements within it, such as the curator (see Article 69 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law), supervisory judge (see Article 65 of the Bankruptcy and PKPU Law), and court clerk[27]. These elements within the institution must support the enforcement of bankruptcy law because the examination institutions are in accordance with the legislation, and the institutions that carry out bankruptcy are also in compliance.

Authority is defined as "2. The right and power to do something"[28] (Op.Cit, KBBI n.d.). The authority of the commercial court in annulment decisions is an unusual authority because typically, to conclude a decision by a lower court, one would resort to legal remedies directed to a higher court, such as appeals, cassation, or judicial review. The authority of the

[27] Suci, *Hukum Kepailitan: Karakteristik Renvoi Prosedur Dalam Perkara Kepailitan*.
[28] Kebudayaan, *Kamus Besar Bahasa Indonesia*.

commercial court in adjudicating bankruptcy cases is regulated in Article 1 number 1 of the Bankruptcy and PKPU Law, which states that the relevant court is the commercial court. Then, in examining bankruptcy petition cases, it is regulated in Article 2 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law, which sets out the conditions for the commercial court to issue a bankruptcy adjudication.

The jurisdiction to adjudicate held by the commercial court is a subordination (placed in or belonging to a lower class or position) within the general judiciary, specifically in the field of civil law. Subordinate elements or parts under the authority of the general judiciary, especially in the field of civil law, include the commercial court. According to Article 8 paragraph (1) of Law No. 49 of 2009 concerning the Second Amendment to Law No. 2 of 1986 concerning general judiciary, it is stated that "special courts regulated by law are formed within the general judiciary." Several courts under the general judiciary include district courts, commercial courts, industrial dispute resolution courts, and others, all of which are regulated by law[29].

According to Ivida Dewi Amrih Suci and Herowati Poesoko, the commercial judiciary is a differentiation within the general judiciary. One of the key features of bankruptcy law is the introduction of specialized courts (with specialized judges) to examine and decide cases in the field of commerce, including but not limited to bankruptcy cases[30]. This means that the commercial court is a necessity within the general judiciary with the existence of bankruptcy law. In other words, the general judiciary is directed by bankruptcy law to establish a specialized judicial entity, namely the commercial court, to serve the requirements of bankruptcy law.

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[29] Poesoko, Herowati, M Hadi Subhan, *Hukum Kepailitan: Karakteristik Hukum Kepailitan Dalam Penegakan Hukum, Hakekat Kepailitan, Subjectum Litis & Objectum Litis, Pengembanan Teoritis & Pengembanan Praktis Dan Gugatan Lain-Lain.*

[30] Suci, Ivida Dewi Amrih, *Hukium Kepailitan: Kedudukan Dan Hak Kreditor Separatis Atas Benda Jaminan Debitor Pailit.*

The authority to adjudicate held by the commercial court is a jurisdiction granted under the general judiciary, making it a specialized court regulated by law. This jurisdiction is not specifically outlined in separate legislation but is governed by a single provision within Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations Law. This regulation is considered specialized (lex specialist) and slightly different from other courts. Within the commercial court, there are roles such as curators and supervising judges. The curator's responsibility is to manage and/or settle the assets of the bankrupt estate (see Article 69, paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law). In contrast, the supervising judge's role is to oversee the management and settlement of the bankrupt estate (see Article 65 of the Bankruptcy and Suspension of Debt Payment Obligations Law), which is carried out by the curator. The opinion of the supervising judge must be considered by the commercial court before making a decision (see Article 66 of the Bankruptcy and Suspension of Debt Payment Obligations Law). These aspects highlight the unique and exceptional nature of the commercial court.

Another provision in bankruptcy law that regulates the commercial court is found in Article 300 of the Bankruptcy and Suspension of Debt Payment Obligations Law, which states:

(1) The court, as referred to in this law, in addition to examining and deciding on bankruptcy declarations and postponement of debt payment obligations, also has the authority to examine and decide on other cases in the field of commerce, the determination of which is made by law.

(2) The establishment of the court as referred to in paragraph (1) is carried out gradually by the decision of the president, taking into account the need and readiness of the resources to be applied.

Article 300 of the Bankruptcy and Suspension of Debt Payment Obligations Law grants authority to the commercial court to examine and decide on cases in the field of commerce. Therefore, the commercial court's

jurisdiction is not limited to handling only bankruptcy cases. From the analysis above, it is evident that the commercial court derives its authority from the constitution, based on the General Judiciary Law, and is outlined in the Bankruptcy and Suspension of Debt Payment Obligations Law.

The unique and special characteristic of the commercial court lies in its procedural implementation within its regulations, allowing it to issue a decision for the revocation of a bankruptcy ruling when the costs of continuing the bankruptcy proceedings are deemed insufficient. Additionally, the bankruptcy law follows the principle of speedy justice, necessitating the creation of norms governing such revocation decisions. In this regard, to annul a decision made by the commercial court, an appeal must be filed with a higher court, such as the Court of Cassation. However, pursuing this legal process can prolong the resolution time. Therefore, to regulate and provide legal certainty, Article 18, paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law was established. In its implementation, there are also specific requirements that must be met by the curator, which are proposed by the supervising judge.

Actual Elements in the Ratio Decidendi of the Revocation Ruling

In analysing using the decision of the commercial court in the legal reasoning (ratio decidendi), this aligns with the theory I employ as the analytical framework, namely Kess Schuit's theory of the legal system, which analyzes its meaning, operational aspects, and actual elements[31] (Suci, Hukum Kepailitan: Prinsip Kepastian Hukum Penetapan Hakim Pengawas terhadap DPT-PKPU pada Pencocokan Piutang oleh Kurator dalam Kepailitan 2021). This theory examines the meaning, operational aspects, and practical application of the legal system. The analysis primarily

[31] Suci, *Prinsip Kepastian Hukum Penetapan Hakim Pengawas Terhadap DPT-PKPU Pada Pencocokan Piutang Oleh Kurator Dalam Kepailitan*.

focuses on the concrete elements found in the legal facts, which have undergone scrutiny in a judicial context. Specifically, it centres on court rulings that carry legal weight (*inkracht van gewisjde*). To support this analysis, reference is made to Commercial Court Decision No. 6/Pdt-Sus-PKPU/2020/PN Niaga Sby, dated October 28, 2022, in conjunction with Commercial Court Decision No. 6/Pdt-Sus-PKPU/2020/PN Niaga Sby, dated May 28, 2020.

Analysis of the aforementioned decision should be preceded by an understanding of several legal considerations made by the judge based on the trial results. These considerations can be related to the discussion in this writing. The relevant passage from the above decision is as follows:

- Considering that based on the above considerations, it is found that the implementation of the bankruptcy estate management and/or settlement conducted through the going concern mechanism has proven to be ineffective, and the payment of debts to creditors has not been fully fulfilled. Therefore, in order to meet the debtor's obligations to all its creditors, both the debtor and the creditors have agreed to resolve the debt and credit matters outside of bankruptcy. Consequently, the parties have agreed to terminate the bankruptcy of PT Kedap Sayaaq (In Bankruptcy) by revoking the bankruptcy declaration adjudication, as stipulated in Article 18 of the Bankruptcy and PKPU Law;

- Considering the facts and dynamics of the case a quo, it appears that bankruptcy proceedings conducted through the concern mechanism for the bankrupt debtor engaged in the coal mining sector faced obstacles stemming from regulations related to coal mining. This hindered the increase of the bankruptcy estate as a consequence of government agencies' failure to understand the provisions of bankruptcy law and the postponement of debt payment;

- Considering the opinion of Prof. Dr. M. Hadi Shubhan, S.H., M.H., C.N., as stated in the legal opinion in the field of Bankruptcy Law dated September 6, 2022, bankruptcy will be terminated if the curator has

distributed (closed) all the assets of the bankruptcy estate to the registered creditors in the list of claims. This is followed by the curator making announcements about the end of bankruptcy in the State Gazette of the Republic of Indonesia and newspapers. Additionally, the curator is required to provide accountability to the supervisory judge and submit all documents to the debtor. This is regulated in Article 202 of the Bankruptcy Law;

- Considering both the creditors and the debtor have agreed to terminate the bankruptcy of PT Kedap Sayaaq (In Bankruptcy), even though the bankruptcy estate management and/or settlement conducted by the curator has not been completed. Prof. Dr. M. Hadi Shubhan S.S., M.H., C.N. further states that bankruptcy can also be terminated during bankruptcy administration, even before the final distribution, if two conditions are met: a. the bankruptcy is revoked, and b. a settlement (*akkord*) is reached);

- Considering that bankruptcy can be revoked on the grounds that the bankruptcy estate is insufficient to cover the costs of bankruptcy, the rationale behind this provision is rooted in the purpose of bankruptcy, as mentioned earlier. The primary objective of bankruptcy is to liquidate the debtor's assets as part of the bankruptcy estate to pay off the debts owed by the bankrupt debtor to its creditors. Therefore, if the bankruptcy process continues when there are insufficient assets to cover only the bankruptcy costs, it would be against the purpose of bankruptcy;

- Considering the legal foundation for the annulment of bankruptcy proceedings due to insufficient assets to meet bankruptcy-related expenses, it is outlined in Article 18, paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU (Debtor's Suspension of Payment). This article stipulates that "*If the assets of the bankruptcy estate are inadequate to cover the expenses associated with bankruptcy, the court, upon the request of the supervisory judge and subsequent to the consideration of the provisional creditors' committee, if one exists, may summon or hear the debtor and make a decision to annul the bankruptcy declaration.*"

- Considering the explanation of Prof. Dr. Hadi Shubhan, S.H., M.H., C.N., there have been several jurisprudence cases based on Article 18 of the Bankruptcy Law that resulted in the revocation of bankruptcy. One such case is the decision regarding the revocation of bankruptcy in Decision No. 74/PAILIT/2009/PN.NIAGA.JKT.PST dated October 27, 2010, together with the Supreme Court's Decision No. 32 K/N/2000 dated November 3, 2000;

- Considering the revocation of bankruptcy, the Presiding Judge determines that bankruptcy has ended, and the bankrupt debtor returns to the state it was in before bankruptcy was declared. However, the debtor's debts remain intact, just as they were before. In some cases, a bankrupt debtor in the form of a limited liability company (PT) can also be dissolved by the Presiding Judge, following the provisions of Article 142, paragraph (1) letter f of Law No. 40 of 2007 concerning Limited Liability Companies;

- Prof. Hadi Shubhan, S.H., M.H., C.N., emphasizes that in the case a quo, it is possible for the bankruptcy of PT Kedap Sayaaq (Bankrupt Debtor) to be revoked based on the insufficiency of the bankruptcy estate to cover the costs of bankruptcy. The revocation of bankruptcy is proposed by the supervisory judge to the Presiding Judge, who will subsequently revoke the bankruptcy of PT Kedap Sayaaq, returning everything to its state before bankruptcy. This means that PT Kedap Sayaaq will operate normally, as it did before bankruptcy, while its debts remain and are not extinguished;

- Considering that, based on Article 5 letter b of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 2 of 2017 concerning Amendments to the Regulation of the Minister of Law and Human Rights Number 11 of 2016 concerning Guidelines for Compensation for Curators and Administrators, it states: "In the event that the debt payment obligation ends without an amicable settlement, the amount of compensation for administrators shall be charged to the debtor determined by the panel of judges, with a maximum limit of 7.5% (seven

point five per one hundred percent)" and the value of the debt that must be paid;

- Considering that, based on Article 234 paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and PKPU (Debtor's Suspension of Payment), it states: "*the amount of administrator's compensation shall be determined by the court based on the guidelines determined by the Minister in the scope of his duties and responsibilities in the field of law and legislation after the suspension of debt payment ends and must be paid first from the debtor's assets"*

- Considering that furthermore, the termination of bankruptcy, whether it is annulled at the cassation or reconsideration level, then all actions carried out by the curator before or on the date the curator receives notice of the annulment decision remain valid and binding, as stipulated in Article 16 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations Law, which states:

(1) The curator is authorized to carry out the task of managing and/or settling the bankruptcy estate from the date the bankruptcy decision is pronounced, even if cassation or reconsideration is filed against the decision;

(2) In the event that the bankruptcy decision is annulled as a result of cassation or reconsideration, all actions carried out by the curator before or on the date the curator receives notice of the annulment decision as referred to in Article 17 shall remain valid and binding on the Debtor.

- Considering that, in accordance with the above provisions, according to the opinion of Prof. Hadi Shubhan, S.H., M.H., M.Kn., as stated in the legal opinion in the field of Bankruptcy Law dated September 6, 2022, it is stated that in principle, the curator carries out his duties and authorities immediately from the moment the bankruptcy decision is pronounced, even if cassation or reconsideration is filed against the decision. This is because the primary function of bankruptcy is to register the debtor's assets as bankruptcy assets, list the debtor's debts in a fixed list of claims, and create

a list of the distribution of bankruptcy assets, so if later the debtor's bankruptcy is annulled at the cassation or reconsideration level or terminated due to a predetermined annulment of bankruptcy, there are no issues with the debtor or the creditors;

- Considering that, referring to the provisions of Article 16 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, according to Prof. Dr. Hadi Shubhan, S.H., M.H., M.Kn., all actions taken by the curator remain valid and binding. This applies mutatis mutandis to the termination due to the annulment of bankruptcy based on Article 18 of Law Number 37 of 2004 concerning Bankruptcy and PKPU and the approval of a settlement based on Article 166 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. This is because the curator is authorized to carry out the task of managing and/or settling bankruptcy estate assets from the date the bankruptcy decision is pronounced, as stipulated in Article 16 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations Law;

- Considering that, based on the considerations above, it is reasonable to declare that all actions taken by the curator in carrying out the task of managing and/or settling bankruptcy estate assets are valid and binding on all parties;

- Considering that, based on the provisions of Article 18 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations Law, the status of bankruptcy of PT Kedap Sayaaq (In Bankruptcy) is declared annulled, and it is restored to its original state;

- Considering that, with the annulment of the bankruptcy declaration and the restoration to its original state, according to the opinion of Prof. Dr. Hadi Shubhan, S.H., M.H., M.Kn., in principle, it is stated that the annulment of bankruptcy proposed by the supervisory judge to the deciding judge, and subsequently the deciding judge will determine the annulment of bankruptcy of PT Kedap Sayaaq and restore it to its original state, so that PT Kedap Sayaaq returns to its normal state as before bankruptcy and will

operate as it did before, while the debts of PT Kedap Sayaaq remain and are not extinguished;

Based on the considerations above, the panel of judges makes its own legal reasoning or the judge's legal reasoning (ratio decidendi) as follows:

- Considering that if we refer to the decision of the Supreme Court, it can be understood that Decision Number 6/Pdt.sus-PKPU/2020/PN.Sby dated August 6, 2020, regarding going concern, is valid and has legal force that is binding, and further orders the Ministry of Energy and Mineral Resources of the Republic of Indonesia, through the Directorate General of Mineral and Coal, and the Directorate of Supervision of Coal Business, to implement the decision on going concern, the PT Kedap Sayaaq's Mining Permit is continued and maintained;

- Considering that based on the above considerations, according to the opinion of the panel of judges, the decision on going concern, which states that the IUP in the name of PT Kedap Sayaaq is continued and maintained, is valid and binding. Therefore, by analogy and based on the law, the IUP OP PMA (Foreign Investment Mining Business License for Production Operation) of PT Kedap Sayaaq must be reinstated to its original state before bankruptcy, so that PT Kedap Sayaaq returns to its normal state as before bankruptcy and will operate as before, while the debts of PT Kedap Sayaaq remain and are not erased;

- Considering that with the valid execution of the peace agreement dated August 22, 2022, it is determined that the Minister of Environment and Forestry of Indonesia shall implement the Peace Agreement Number PKS.1/REN/PPKH/PLA.O/8/2022 and Number 295/KSQ-Pailit/VIII/2022 dated August 22 regarding the Commitment to Pay PNPB-PKH Due in the name of PT. Kedap Sayaaq, and subsequently revoke or annul the Decision of the Minister of Environment and Forestry Number SK.77/Menlhk/Setjen/PLAO/3/2021 dated March 16, 2021, regarding the Revocation of the Minister of Forestry's Decision Number SK.528/Menhut-11/2012 dated September 24, 2012, concerning the Borrowing of Forest

Area for Coal Mining (Exploitation) and Supporting Facilities by PT. Kedap Sayyaq (Phase 1) covering an area of 2,568.37 hectares in the Kutai Barat regency, East Kalimantan;

- Considering that in accordance with the provisions of Article 19 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, decisions that order the revocation of bankruptcy declarations are announced by the clerk of the court in the State Gazette of the Republic of Indonesia and in at least 2 (two) daily newspapers as referred to in Article 15 paragraph (4);

Based on the legal considerations (ratio decidendi) above, which constitute an actual system in the application of norms regulated by the law and are the result of examination in court, which connects the existing legal facts and the governing norms, it has been determined whether their application is appropriate or whether the judge still needs to analyze whether there are regulations to fill the legal gaps or whether the governing norms are vague. In this regard, the judge is obliged to make findings in their legal considerations (ratio decidendi). The judge's legal findings in a case are to assess the adequacy of the governing norms in relation to the factual circumstances that have undergone examination in the form of evidence. The judge's legal considerations (ratio decidendi) serve as the basis for the judge to make a decision.

The Decision of the Commercial Court of Surabaya Number 6/Pdt-Sus-PKPU/2020/PN Niaga Sby dated October 28, 2022, together with the Decision of the Commercial Court of Surabaya Number 6/Pdt-Sus-PKPU/2020/PN Niaga Sby dated May 28, 2020, in its legal considerations (ratio decidendi) analyzed the relationship between the governing norms and the legal facts in a court examination. The result of the ratio decidendi in this decision places the debtor in a position to continue their business. Similarly, the debtor's debts to the creditors are based on the list of debts prepared by the curator. This is clearly stated in the legal considerations regarding the results of the peace agreement between both parties, namely

the creditors and the relevant institutions related to the company's operations, allowing the company to return to normal operation and continue its business while paying off its debts.

In the decision, which relates to other institutions, the judge provides legal considerations in line with the agreement made between the debtor and the relevant institutions to revoke permits that hinder the continuation of the debtor's work and reinstate permits that allow the debtor to operate. This allows the debtor to resume operations and settle its debts. Thus, this is the breakthrough made by the judge in the decision and also constitutes a legal finding by placing the debtor in a normal position, potentially even better than before.

The aforementioned bankruptcy revocation ruling has obtained legal certainty through the enactment of Article 18 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law. Within the ratio decidendi of the aforementioned decision, it is a requirement for the decision to be final, and certain conditions must be fulfilled, namely:

1. Creditors have reached an agreement that the debt-related matters will be resolved outside of bankruptcy. Therefore, all parties have agreed to terminate the bankruptcy of PT Kedap Sayaaq (In Bankruptcy) by revoking the bankruptcy declaration, as intended by the provisions of Article 18 of the Bankruptcy and Suspension of Debt Payment Obligations Law.
2. If the curator has distributed (closed) all the assets of the bankruptcy to the creditors listed in the debt list, followed by the curator announcing the termination of bankruptcy in the State Gazette of the Republic of Indonesia and newspapers, and the curator providing accountability to the supervising judge and submitting all documents to the debtor.

The descriptions above are the result of an analysis based on its actual elements. Besides providing legal certainty through the regulation in Article 18 paragraph (1) of the Bankruptcy and Suspension of Debt Payment

Obligations Law, it turns out that in the bankruptcy revocation decision, the judge can make legal findings that benefit both the debtor and creditors. With the revocation decision, the judge can make a breakthrough by returning the debtor's business to a normal state, and in some cases, the debtor's condition can even become better than before.

The Principle of Utility of Revoking a Bankruptcy Petition Ruling to Achieve Justice

The principle of utility is related to the concept of law created by a state that prioritizes utility or efficiency (*doelmatige heids*). The enforcement of the law aims to fulfil three standards expected by Radbruch and is viewed as a "Triad," which includes legal certainty, justice, and utility or efficiency. The idea of law (*rechtsidee*) is to establish justice (*gerechtmatigheid*) along with utility (*doelmatigheid*) and legal certainty (*rechtsmatigheid*). The presence of law with justice, legal certainty, and utility or efficiency is expected to enable the law to meet these three essential standards as envisioned by Gustav Radbruch. Law that is created should be capable of safeguarding the interests of the people.

Utility, in this context, is understood as the purpose of the law, which should be directed towards something beneficial or advantageous. The fundamental purpose of the law is essentially to generate pleasure or happiness for the majority of the population. It is believed that the state and the law are created for the true benefit, which is the happiness of the majority of the population. Therefore, regulations that provide legal certainty through the establishment of norms and rules that are highly beneficial to society are considered to adhere to the principle of justice[32] .

Gustav Radbruch in Heather Leawoods stated: *Radbruch finds that although the idea of law is justice, this alone does not fully exhaust the*

[32] Suci, *Hukum Kepailitan: Karakteristik Renvoi Prosedur Dalam Perkara Kepailitan*.

concept of law. Justice, he says, "leaves open the two questions. Whom to consider equal or different, and how to treat them." To complete the concept of law Radbruch uses three general precepts: Purposiveness, justice and legal certainty. Therefore, Radbruch defines law as "the complex of general precepts for the living-together of human beings" whose ultimate idea is oriented toward justice or equality[33] (Leawoods 2020). In essence, Gustav Radbruch asserts that law is a complex matter in societal life. Therefore, to complete the concept of law, Gustav Radbruch employs three general principles: utility, justice, and legal certainty.

In settling obligations such as a company's debt to creditors, it can also be resolved outside of the court, as seen in debt restructuring. Moreover, creditor friendly laws privilege reorganization of credits through their liquidation, partially or totally, against reorganization of debts[34]. One cannot rely on the courts for a quick resolution[35].

Conclusion

The principle of benefit in the decision to revoke a bankruptcy ruling primarily serves the purpose of terminating bankruptcy proceedings due to the bankrupt estate's incapacity to cover the expenses associated with implementing the bankruptcy decision. Beyond this primary benefit, there are additional benefits accrue to the parties involved. Notably, the judge, in their legal deliberation (ratio decidendi), has the potential to introduce legal innovation and legal findings. Within their decision, the judge may restore the debtor to a normal position, akin to their status before the onset of bankruptcy, or possibly even improve the debtor's circumstances beyond

[33] Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher."
[34] Frouté, "Theoretical Foundation for a Debtor Friendly Bankruptcy Law in Favour of Creditors."
[35] Hausch and Ramachandran, "Systemic Financial Distress and Auction-Based Bankruptcy Reorganization."

the pre-bankruptcy state. Consequently, this can empower the debtor to fulfil their debt obligations to the creditors.

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