Journal of Private and Commercial Law

A peer-reviewed journal published by Faculty of Law Universitas Negeri Semarang, Indonesia. The title has been indexed by DOAJ, SINTA, GARUDA. ISSN 2599-0314 (Print) 2599-0306 (Online). Available online at https://journal.unnes.ac.id/journals/index.php/jpcl/index

Reassessing the Principle of Utility in the Revocation of Bankruptcy Adjudications: Implications for Legal Practice

Ivida Dewi Amrih Suci ✉
Faculty of Law, Janabadra University, Yogyakarta, Indonesia
https://orcid.org/0009-0003-8225-4636

R. Murjiyanto
Faculty of Law, Janabadra University, Yogyakarta, Indonesia
https://orcid.org/0000-0003-0167-8334

Mohd Zamre Mohd Zahir
Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia
https://orcid.org/0000-0002-1572-084X

Sudiyana
Faculty of Law, Janabadra University, Yogyakarta, Indonesia
https://orcid.org/0000-0003-0576-9911

✉ Corresponding email: ivida@janabadra.ac.id

Abstract

This paper reassesses the principle of utility in the revocation of bankruptcy adjudications while addressing a critical gap in bankruptcy law concerning undivided marital assets following divorce. Article 64(1) of the Indonesian Bankruptcy Law establishes that bankruptcy involving spouses under a unity of assets is treated as a single estate. However, the law remains silent on situations where spouses have divorced but their shared assets remain undivided, and one or both parties are subsequently declared bankrupt in separate proceedings. In practice, such cases are handled by different commercial courts, reinforcing their status as distinct legal subjects and raising the question of whether consolidation of bankrupt estates is permissible or desirable. Using a normative legal methodology, this study draws on Kees Schuit's legal system theory and the goal-oriented theory of law, grounded in Gustav Radbruch's triad of certainty, utility, and justice. It critically examines how the principle of utility is applied in determining whether revocation or consolidation of bankruptcy adjudications serves a meaningful legal purpose. The analysis reveals inconsistencies in judicial reasoning, particularly where utility is narrowly interpreted as economic benefit, neglecting considerations of fairness, procedural coherence, and legal certainty. The paper's main contribution lies in proposing a structured framework for interpreting utility that integrates both doctrinal clarity and practical guidance. It also advances the argument that undivided post-divorce assets may, under certain conditions, justify consolidation based on principles of integrity and efficiency. This approach enhances predictability in legal practice while preserving judicial flexibility. Ultimately, the study contributes a prescriptive perspective to bankruptcy law by bridging doctrinal gaps and refining the application of utility in complex insolvency contexts.

KEYWORDS *Bankruptcy Law; Principle of Utility; Asset Unity; Insolvency Adjudication; Legal Certainty*

Introduction

Bankruptcy law plays a central role in regulating the distribution and management of a debtor's assets in situations of financial distress, ensuring an orderly process that balances the interests of creditors and debtors.[1] One of its fundamental concepts is the unity of assets, as reflected in Article 64 paragraph (1) of the Indonesian Bankruptcy Law, which provides that the bankruptcy of a husband or wife married under a regime of shared property is treated as the bankruptcy of that unified estate.[2] This provision reflects a clear legislative intent to preserve coherence and efficiency in handling jointly owned assets within insolvency proceedings. However, significant

[1] Mehra Senbet, and Tracy Yue Wang. "Corporate financial distress and bankruptcy: A survey." *Foundations and Trends in Finance* 5, no. 4 (2012): 243-335; Shakti Deb, and Indrajit Dube. "Insolvency and bankruptcy code 2016: revisiting with market reality." *International Journal of Law and Management* 63, no. 1 (2021): 125-146.

[2] Komang Febrinayanti Dantes, "Dampak Hukum Putusan Pailit Terhadap Harta Kekayaan Suami Istri Yang Tidak Melakukan Perjanjian Perkawinan Pisah Harta." *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 3 (2021): 917-923; Siddik Meliasta Sebayang, "Akibat Hukum Kepailitan Suami Terhadap Harta Bersama Menurut Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan." *Jurnal Notarius* 3, no. 2 (2017): 113-129. *See also* Reza Fahlevi Bachtiar, and Umar Ma'ruf. "Due to Legal Marriage Without Married Agreement Relating to the Existence of Bankruptcy." *Jurnal Akta* 5, no. 2 (2018): 403-408; Yustitianingtyas Levina, "Bankruptcy Boedel Execution Practices in Indonesia." *Journal of Private and Commercial Law* 4, no. 1 (2020): 44-50.

legal uncertainty arises when this unity of assets persists after divorce but remains formally undivided, particularly when one or both former spouses are declared bankrupt in separate proceedings before different commercial courts.

In such circumstances, the law does not explicitly regulate whether undivided shared assets should be treated as a single bankruptcy estate or as separate estates attached to distinct legal subjects.[3] This gap creates practical and doctrinal challenges, including the risk of inconsistent judgments, overlapping claims by creditors, and inefficiencies in asset administration. The issue becomes more complex when considering the possibility of consolidating bankruptcy estates across separate cases, especially in light of Article 2 paragraph (1) of the Bankruptcy Law, which sets out the general requirements for declaring bankruptcy but does not address the treatment of residual joint property post-divorce.

Bankruptcy law is a legal system designed to provide practical benefits to its users, particularly individuals and entities seeking justice (*justitiabelen*).[4] Bankruptcy proceedings regulate the legal relationship between debtors and creditors, focusing on the settlement of outstanding obligations. Conceptually, bankruptcy operates as a regime of general or public attachment, whereby the debtor's assets are collectively subject to seizure and administration for the benefit of creditors in accordance with established legal procedures.

Public attachment refers to a form of universal seizure in civil law, particularly within bankruptcy law, governing creditor–debtor relations. It covers the debtor's entire estate at the time of the bankruptcy declaration, as well as assets acquired during the proceedings. This mechanism serves to preserve the value of the estate by preventing any debtor actions that may reduce or prejudice its substance.[5]

---

3 Adriel Michael Tirayo, and Yoefanca Halim. "Problematik Definisi Harta Pailit untuk Mencapai Kepastian Hukum dalam Pelaksanaan Kepailitan dan PKPU." *Jurnal Ilmiah Penegakan Hukum* 6, no. 2 (2019): 130-137; Yunita Kadir, "Pembuktian Sederhana Dalam Kepailitan." *CALYPTRA* 3, no. 1 (2014): 1-27.

4 Yapiter Marpi, Pujiyono Suwadi, and Hari Purwadi. "Actio Pauliana Legal Reconstruction of Creditors in Bankruptcy Disputes to Achieve Substantive Justice." *International Conference On Law, Economic & Good Governance (IC-LAW 2023)*. Atlantis Press, 2024; Puja Dwi Pangestu, "Actio Pauliana as the Rights Protection Efforts for Creditors in the Bankruptcy Case." *Journal of Private and Commercial Law* 3, no. 1 (2019): 26-29.

5 Furthermore, public attachment in Indonesian law aligns with the concept of *sita umum* under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (*UU Kepailitan*). When a bankruptcy decision is declared by the Commercial Court, all assets of the debtor—both existing at the time of the ruling and those acquired afterward—automatically fall under general seizure. This reflects the principle of universality, ensuring that no individual creditor can claim priority outside the legal

Public attachment involves all of the bankrupt estate[6] at the time bankruptcy is declared and any assets acquired during the course of the bankruptcy proceedings[7]. Aimed at protecting creditors' interests against actions by debtors that may harm the bankrupt estate[8]. 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[9].

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[10]. The debtor's financial condition has reached a point where they are genuinely incapable of

---

process. The mechanism protects the bankruptcy estate (*boedel pailit*) from dissipation, as the debtor loses control over their assets, which are then managed by a curator under judicial supervision. According to Indonesian legal scholar Sutan Remy Sjahdeini, this system ensures fairness among creditors (*paritas creditorum*) and prevents fraudulent transfers by the debtor. Thus, public attachment functions as both a protective and distributive legal instrument within Indonesia's bankruptcy framework. *See* Dini Herawati, and Gunawan Widjaja. "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)." *IMANOT: Jurnal Kemahasiswaan Hukum & Kenotariatan* 1, no. 1 (2021): 51-73; Roni Pandiangan, "Diskrepansi Sita Umum Kepailitan dengan Sita Pidana Dihubungkan Dengan Pemberesan Harta Pailit Yang Mengandung Unsur Pidana." *Jurnal Pendidikan dan Konseling* 4, no. 5 (2022): 4051-4061; Luthvi Febryka Nola, "Kedudukan Sita Umum Terhadap Sita Lainnya dalam Proses Kepailitan (The Position of General Seizure Towards Others in The Process of Bankrupcy)." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 9, no. 2 (2019): 217-234. *See* also Republic of Indonesia. *Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations* (Jakarta: Sekretariat Negara, 2004); Sutan Remy Sjahdeini, *Hukum Kepailitan* (Jakarta: Pustaka Utama Grafiti, 2010); Denny Chandra, "Legal position of criminal confiscation against general confiscation in bankruptcy for the realization of legal certainty." *International Journal of Science and Society* 4, no. 1 (2022): 140-151; Elli Ruslina, Siti Rodiah, and Benny Wulur. "General Confiscation Versus Criminal Confiscation in Regard to Curators' Authority and Responsibility in Bankruptcy Settlement Process." *Sociological Jurisprudence Journal* 3, no. 2 (2020): 112-116.

6 Erades Erades. "Legal Effects in Indonesia of a Bankruptcy Pronounced in the Netherlands." *Netherlands International Law Review* 5, no. 2 (1958): 211–12. https://doi.org/10.1017/S0165070X00029788

7 Siti Hapsah Isfardiyana, "Sita Umum Kepailitan Mendahului Sita Pidana dalam Pemberesan Harta Pailit." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* , no. 3 (2016): 628-650.

8 Josua Fernando, and Susanti Adi Nugroho. "Kedudukan Sita Pidana Terhadap Sita Umum Kepailitan." *Jurnal Hukum Adigama* 1, no. 1 (2018): 339-363.

9 Bernadetha Aurelia Oktavira, and Yudho Taruno Muryanto. "Perlindungan Hukum Bagi Kreditor Pemegang Hak Tanggungan dalam Eksekusi Harta (Boedel) Pailit Terhadap Sita Perkara Pidana." *Jurnal Privat Law* 8, no. 1 (2020): 63-69.

10 Alim Wijaya Aria, and Murniati Rilda. "Hak Eksekusi Kreditor Separatis Terhadap Benda Agunan dalam Kepailitan." *Pactum Law Journal* 2, no. 3 (2019): 713-724.

repaying the debt to the creditors, or it can be said that the debtor has defaulted[11]. 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[12]. If default occurs frequently, lenders will provide fewer loans and/or charge a higher risk premium[13].

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[14] and its management and/or settlement are carried out by currator. In addition, 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,[15] 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 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,

---

11 Supri Yono, et al., "Reconstruction of Separate-Creditor Positions in the Process Declaring Bancruptcy in Indonesia Based on Justice Value," *Scholars International Journal of Law, Crime and Justice* 3, no. 11 (2020): 334–341.

12 M. Fauzi, "Insolvency within Bankruptcy: The Case in Indonesia." *SHS Web of Conferences,* 54 (2018): 06004. https://doi.org/10.1051/shsconf/20185406004

13 Jonathan P. Thomas, "Bankruptcy proceedings for sovereign state insolvency and their effect on capital flows." *International Review of Economics & Finance* 13, no. 3 (2004): 341-361.

14 Sri Redjeki Slamet, "Perlindungan Hukum Dan Kedudukan Kreditor." *Forum Ilmiah* 13, no. 1 (2016).

15 M. Handi Shubhan, *Hukum Kepailitan*. (Jakarta: Prenada Media, 2015).

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 Indonesian 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.[16]

Against this backdrop, the principle of utility emerges as a potentially decisive factor in guiding judicial discretion, particularly in decisions concerning the revocation or consolidation of bankruptcy adjudications. Yet, its application remains ambiguous and inconsistently interpreted, often reduced to narrow economic considerations without sufficient regard for broader values such as legal certainty and justice. This study therefore seeks to reassess the role and scope of the utility principle within bankruptcy law, especially in cases involving undivided post-divorce assets.[17]

The authors employ a normative legal research methodology, utilizing Kees Schuit's legal system theory as an analytical framework, encompassing ideational, operational, and actual elements. In addition, the study draws on Gustav Radbruch's theory of legal purpose, which is grounded in three fundamental principles: certainty, utility, and justice. The research adopts conceptual, statutory, and case-based approaches, with particular emphasis on legal reasoning (ratio decidendi) as reflected in Decision No. 6/Pdt.Sus-

---

[16] *See* M. Hadi Shubhan, "Rethinking Simple Evidence in Bankruptcy Petitions for Legal Certainty." *Indonesia Law Review* 9, no. 2 (2019): 66-82; Andika Wijaya, "Implementation of the Doctrine of the Business Judgment Rule on Bankruptcy Law in Indonesia." *Yuridika* 35, no. 1 (2020): 1-14; Isis Ikhwansyah, and Lambok Marisi Jakobus Sidabutar. "The Implementation of Insolvency Test on Debtors' Bankruptcy in Performing the Principle of Justice." *Jurnal Media Hukum* 26, no. 2 (2019): 240-251.

[17] *See* Donald H. Regan, "The Problem of Social Cost Revisited." *The Journal of Law and Economics* 15, no. 2 (1972): 427-437; Richard A. Posner, "Utilitarianism, Economics, and Legal Theory." *The Journal of Legal Studies* 8, no. 1 (1979): 103-140; Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law*. (Cambridge: Beard Books, 2001).

PKPU/2020/PN Niaga Sby dated October 31, 2022. Through this methodological framework, the study aims to provide a prescriptive contribution to legal scholarship, particularly within the field of bankruptcy law, by addressing doctrinal gaps and offering guidance for more consistent and principled judicial practice.

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.

A. 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 authors 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 first element of the aforementioned norm—namely, that "the bankrupt estate is insufficient"—must be examined within the conceptual framework of Indonesian bankruptcy law. Article 1(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations defines bankruptcy as a general seizure (*sita umum*) over all assets of the debtor. This formulation reflects the principle that, upon a declaration of bankruptcy, the entirety of the debtor's patrimony becomes subject to collective administration for the benefit of creditors.[18]

In legal terminology, "wealth" encompasses all assets, whether movable or immovable, tangible or intangible, including property acquired individually or jointly during marriage (commonly referred to as marital or joint property). Furthermore, Article 1(7) of the same law defines a bankrupt debtor as a debtor who has been declared bankrupt by a court decision. Accordingly, the term "bankrupt estate" (*boedel pailit*) should be understood as the totality of assets belonging to a debtor who has been legally declared bankrupt. This includes both pre-existing assets and those acquired during the bankruptcy process, which are placed under general seizure for distribution to creditors.[19]

The phrase "insufficient" (*tidak cukup*) warrants clarification from both a linguistic and legal perspective. Etymologically, the term *tidak* functions as a negation particle, expressing denial or absence, while *cukup* denotes sufficiency in quantity or adequacy to meet a particular need or

[18] Jonathan Law, ed. *A Dictionary of Law*. (Oxford: OUP Oxford, 2015).
[19] Bryan A. Garner, *Garner's Dictionary of Legal Usage*. (Oxford: Oxford University Press, 2011).

purpose.[20] Accordingly, the combined phrase *tidak cukup* signifies a condition in which the available quantity is inadequate to satisfy required demands or obligations.

Within the context of bankruptcy law, the element stating that "the bankrupt estate is insufficient" refers to a situation in which the total assets of a debtor—who has been formally declared bankrupt by a court decision—are inadequate to fulfill the claims of creditors. In other words, the value of the *boedel pailit* does not meet the aggregate liabilities owed. This interpretation aligns with the fundamental objective of bankruptcy proceedings, namely the equitable distribution of limited assets among creditors, while acknowledging that such assets may fall short of covering all outstanding debts.

The phrase "to cover bankruptcy fees," as articulated in the second element of Article 18(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, reflects a functional deviation from the classical objective of bankruptcy law. Fundamentally, bankruptcy is designed to position the debtor's estate as a common pool of assets for the satisfaction of creditor claims, in accordance with the principle of *pari passu pro rata parte*, whereby creditors are paid proportionally based on the size of their claims. This principle underscores that the debtor's assets serve as a collective guarantee for all creditors.

However, in practice, the administration of bankruptcy necessarily entails procedural and administrative costs, including curator fees and court expenses, which are paid out of the bankrupt estate. Consequently, the estate is not exclusively allocated to creditor repayment but is also diminished by such costs. This raises normative concerns, particularly in the absence of clear and standardized guidelines governing bankruptcy fees. Without such regulation, there is a risk that excessive administrative expenses may substantially erode the estate, thereby undermining the equitable distribution principle and reducing the recovery available to creditors.

A closer linguistic and legal analysis of the phrase "to cover bankruptcy fees" is necessary to clarify its normative meaning. The expression may be deconstructed into its constituent terms. The preposition "to" (or *untuk*) denotes purpose or designation. The term *membayar* (to pay) may be understood as fulfilling an obligation, while *biaya* (fees) refers to monetary expenditures incurred in carrying out a particular process or activity.[21]

---

[20] Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 1989).
[21] Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*

Furthermore, *kepailitan* (bankruptcy), as defined in Article 1(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, refers to a general seizure (*sita umum*) over all assets of the debtor, administered and settled by a court-appointed curator. The term *sita*—derived from the Dutch *beslag*—denotes the legal act of taking control over assets from an individual or legal entity, while *umum* signifies that such seizure is conducted for the collective interest of creditors.[22] Accordingly, the phrase "to cover bankruptcy fees" may be interpreted as referring to the allocation of funds from the bankrupt estate to fulfill expenses arising from the administration and execution of the general seizure process, including costs incurred by the curator in managing and settling the estate for the benefit of all creditors.

The third element in Article 18(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations—namely, "the Court upon the request of the supervisory judge" (*pengadilan atas usul hakim pengawas*)—may be clarified through a conceptual breakdown of its key components. The term *pengadilan* (the Court), within the framework of bankruptcy law, refers specifically to the Commercial Court (*Pengadilan Niaga*) as stipulated in Article 1 of the Bankruptcy Law. Institutionally, this court operates within the general judiciary and is vested with jurisdiction to examine, adjudicate, and decide bankruptcy and debt restructuring matters. In broader legal terminology, *pengadilan* denotes a judicial body (*rechtsbank* in Dutch) endowed with the authority to resolve legal disputes and render binding decisions.[23]

Accordingly, in the context of bankruptcy proceedings, the term signifies a specialized court with competence over insolvency-related disputes. The phrase "upon the request of the supervisory judge" further indicates that such judicial action is not exercised *ex officio*, but rather initiated based on a formal proposal from the *hakim pengawas* (supervisory judge), who oversees the administration of the bankruptcy estate. This formulation reflects a structured system of judicial oversight, ensuring that decisions affecting the bankruptcy process are made within an institutional framework that balances procedural control and judicial authority.

The phrase "*atas usul hakim pengawas*" (upon the proposal of the supervisory judge) may be interpreted through an examination of its constituent legal terms and their functional roles within bankruptcy

[22] Marta Chromá, "Translation and the Law Dictionary." In *Legal Lexicography*. (London: Routledge, 2016), pp. 135-160.

[23] Henry Campbell Black, et al. *Black's Law Dictionary*. Vol. 196. (St. Paul, MN: West Group, 1999).

proceedings. The term *usul* refers to a proposal or recommendation submitted for consideration, acceptance, or further decision-making.[24]

The *hakim pengawas* (supervisory judge) is defined under Article 1(8) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations as a judge appointed by the Commercial Court (*Pengadilan Niaga*), which itself is part of the general judiciary as referred to in Article 1(7) of the same law. The supervisory judge plays a central oversight role in bankruptcy administration. Article 65 of the law stipulates that the supervisory judge is responsible for supervising the management and settlement of the bankrupt estate (*boedel pailit*). In addition, Article 66 provides that the court is required to hear the opinion of the supervisory judge prior to rendering decisions concerning the administration or settlement of the bankruptcy estate.[25]

The fourth element of the Bankruptcy and Suspension of Debt Payment Obligations Law—namely, "after hearing the temporary creditors' committee" (*setelah mendengar panitia kreditor sementara*)—may be interpreted through a breakdown of its linguistic and legal components. The term *mendengar* refers to the act of listening to or duly considering a submitted opinion or input as part of a decision-making process.[26]

The expression *panitia kreditor sementara* (temporary creditors' committee) must be understood in light of the legal concept of *kreditor* (creditor), as well as doctrinal interpretations in insolvency law. According to Munir Fuady, a creditors' committee fundamentally functions as a representative body safeguarding and articulating the collective interests of creditors, particularly in protecting their legal rights during bankruptcy proceedings.[27] In practice, two forms of creditors' committees may be distinguished: a temporary creditors' committee appointed by the court at the time of the bankruptcy declaration, and a permanent creditors' committee established by the supervisory judge when no temporary committee has been appointed by the court.

In this context, the requirement that the court act "after hearing" the temporary creditors' committee indicates a procedural obligation for

---

24 Subekti Subekti, and R. Tjitrosoedibio. *Kamus Hukum*. (Jakarta: Pradnja Paramita, 1972).

25 *See also* Holyness Singadimeja,Rai Mantili, and Ema Rahmawati. "The Implementation of Legal Certainty Principles in the Reporting Process of Debtor Bankruptcy Settlement by Curator to Supervisory Judge in Bankruptcy Practice." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 5, no. 3 (2018): 506-526; Bambang Sugeng Rukmono, "The Role of Supervisory Judge in the Bankruptcy of Foundation." *Yustisia* 8, no. 1 (2019): 69-78.

26 Munir Fuady, *Hukum Pailit dalam Teori dan Praktek*. (Bandung: PT. Citra Aditya Bakti, 1999).

27 Fuady.

judicial decision-making to incorporate the views of creditor representatives. This mechanism reflects the participatory nature of bankruptcy proceedings, ensuring that creditor interests are formally considered within the adjudicative process, even though final authority remains vested in the Commercial Court.

The temporary creditors' committee is regulated under Article 79(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, which provides that, either in the bankruptcy judgment or through a separate subsequent decision, the court may establish a temporary creditors' committee consisting of three members selected from among recognized creditors. The primary function of this committee is to provide advice and recommendations to the curator in the administration and settlement of the bankrupt estate.

Under the Bankruptcy Law, two types of creditors' committees are recognised: the temporary creditors' committee and the permanent creditors' committee. Although both serve essentially the same substantive function—namely, representing creditor interests and advising the curator—their distinction lies in their formation. The temporary creditors' committee is appointed directly by the Commercial Court, whereas the permanent creditors' committee is established by the supervisory judge based on the selection of concurrent creditors, as stipulated in Article 80 of the same law.

Accordingly, the phrase "after hearing the temporary creditors' committee" (*setelah mendengar panitia kreditor sementara*) indicates a procedural requirement that the Commercial Court must take into account the views, considerations, or recommendations of the temporary creditors' committee when making decisions, including decisions concerning the revocation of a bankruptcy declaration under Article 18(1) of the Bankruptcy Law. This requirement reflects the participatory and consultative nature of bankruptcy proceedings, ensuring that creditor representation is formally integrated into judicial decision-making.[28]

The fifth element, "*memanggil dengan sah*" (lawfully summons), may be interpreted by examining the constituent meanings of its terms. The verb *memanggil* refers to the act of inviting or requesting the presence of a party, while *sah* denotes validity, legality, or conformity with applicable legal procedures. Accordingly, *memanggil dengan sah* refers to a summons issued by the court that is carried out in accordance with legally prescribed procedural requirements. In the context of bankruptcy proceedings, this

[28] *See* Mochamad Cahyo Pamungkas, "Tinjauan Yuridis Tentang Pengaturan Pihak Yang Berwenang dalam Mengajukan Permohonan Pailit Terhadap Perusahaan Umum." *Novum: Jurnal Hukum* 8, no1 (2021): 13-23.

lawful summons ensures that the supervisory judge and the temporary creditors' committee are formally invited to attend and provide their opinions and considerations, thereby safeguarding procedural due process.[29]

The sixth element, "*mendengar debitor*" (hearing the debtor), likewise requires contextual interpretation. Under Article 1(3) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, a debtor is defined as a person who has a monetary obligation arising from an agreement or by law, the fulfilment of which may be legally demanded before a court. Furthermore, Article 1(4) defines a bankrupt debtor as a debtor who has been declared bankrupt by a court decision. In bankruptcy proceedings, although the debtor is placed under limitation in managing their assets due to the legal consequences of bankruptcy, their right to be heard remains preserved. This reflects the principle of fairness and procedural justice, whereby the debtor's statements and explanations are still taken into account by the court, despite the loss of control over the bankrupt estate.

The seventh and final element, "*dapat memutuskan pencabutan putusan pailit*" (may decide on the revocation of the bankruptcy judgment), may be interpreted as conferring authority to annul a previously rendered bankruptcy order. The term *dapat* denotes capability or legal competence, equivalent to "may" or "is authorised to" in a normative legal sense. The verb *memutuskan* refers to the act of rendering a decision or conclusion; in legal terminology, it may also encompass the act of terminating or annulling a legal state or proceeding.[30] The term *pencabutan* signifies the revocation, cancellation, or invalidation of a legal instrument, such as regulations, permits, or judicial determinations.[31] Meanwhile, *putusan* (judgment or ruling) refers to the final determination issued by a court following the examination of a case, based on legal reasoning and applicable norms.[32]

Accordingly, the phrase as a whole refers to the court's legal authority to revoke a bankruptcy judgment, thereby terminating its legal effects. This revocation represents a judicial determination that a previously established state of bankruptcy is no longer valid, based on considerations grounded in bankruptcy law and judicial assessment of the relevant circumstances.

The term "pailit" (bankruptcy), as defined in Article 1(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, refers

[29] *See* Martin, *A Dictionary of Law*.
[30] Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*
[31] Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*
[32] Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*

to a legal condition of general seizure (*sita umum*) over all assets belonging to a debtor declared bankrupt. The administration and settlement of such assets are conducted by a court-appointed curator under the supervision of a supervisory judge, in accordance with the provisions of the law.

From this definition, a bankruptcy order may be understood as the judicial outcome or final determination resulting from the examination of a case, based on legal considerations that establish whether the statutory requirements for bankruptcy have been satisfied. In other words, it represents the court's conclusive finding that triggers the legal consequences of general seizure and the subsequent collective administration of the debtor's estate under 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:

> *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.*[33]

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

[33] Article 8 paragraph (7) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations establishes that a bankruptcy decision remains immediately enforceable notwithstanding the filing of legal remedies such as appeal, cassation, or judicial review. The principal issue arising from this provision lies in the tension between legal certainty and procedural fairness. By allowing immediate execution, the law enables the curator to take control of the debtor's assets and initiate the general seizure process (*sita umum*) without waiting for final judicial confirmation. This may lead to irreversible legal and economic consequences, particularly if the decision is later annulled by a higher court. Consequently, debtors may suffer significant prejudice despite their ongoing access to legal remedies. Scholars have criticised this mechanism for prioritising efficiency and creditor protection over due process guarantees. Thus, Article 8(7) reflects a pro-creditor orientation in Indonesian bankruptcy law, but simultaneously raises concerns regarding fairness, proportionality, and legal certainty.

the curator's duties in managing and/or settling bankrupt assets encompass three key aspects: inventory, verification, and settlement[34].

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 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*).

[34] Ivida Devi Amrih Suci, and Herowati Poesoko. *Hukum Kepailitan, Kepastian Hukum Penjualan Benda Tidak Bergerak Secara di Bawah Tangan oleh Kurator*. (Yogyakarta: LaksBang Justitia, 2020).

B. 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[35]. 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"[36]. 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 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

[35] Ivida Dewi Amrih Suci, *Hukum Kepailitan: Karakteristik Renvoi Prosedur dalam Perkara Kepailitan*. (Yogyakarta: LaksBang Justitia, 2020).

[36] *See* Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*.

courts, industrial dispute resolution courts, and others, all of which are regulated by law[37].

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[38]. 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.

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

---

37 Herowati Poesoko, M. Hadi Subhan, and Ivida Dewi Amrih Suci. *Hukum Kepailitan: Karakteristik Hukum Kepailatan dalam Penegakan Hukum, Hakekat Kepailitan, Subjectum Litis & Objectum Litis, Pengembanan Teoritis & Pengembanan Praktis, dan Gugatan Lain-Lain*. (Yogyakarta: LaksBang Justitia, 2023).

38 I. Dewi Amrih, and Herowati Poesoko. *Hukum Kepailitan Kedudukan dan Hak Kreditor Separatis atas Benda Jaminan Debitor Pailit*. (Yogyakarta: LaksBang Pressindo, 2016).

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

The analysis of Commercial Court decisions in relation to *ratio decidendi* can be further developed through Kees Schuit's theory of the legal system, which conceptualises law as an interrelated structure consisting of normative meaning, operational mechanisms, and empirical application.[39] In this sense, law is not only understood as a static set of rules, but as a dynamic system in which legal norms are continuously interpreted and operationalised through judicial decision-making. Schuit's framework is particularly relevant in bankruptcy adjudication, where statutory provisions under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment

39 S. R. Schuit, "Onderneming en Integriteit: de Bestuurder." In *Onderneming en Integriteit*. (Leiden: Kluwer, 2007), pp . 7-31.

Obligations (UUK-PKPU) must be concretised through judicial reasoning in response to complex economic realities.[40]

Within this theoretical framework, Commercial Court Decision No. 6/Pdt.Sus-PKPU/2020/PN Niaga Sby (28 October 2022), read in conjunction with the earlier decision of 28 May 2020, demonstrates how normative provisions are operationalised through judicial interpretation. The court's reasoning reflects a structured engagement between legal norms—particularly Article 18(1) UUK-PKPU—and factual circumstances emerging during insolvency proceedings. Article 18(1) allows the revocation of bankruptcy when the bankruptcy estate is insufficient to cover bankruptcy costs, thereby functioning as a corrective mechanism within the insolvency regime. This provision reflects the legislative intent to prevent inefficient continuation of bankruptcy proceedings when their primary objective—collective asset distribution—is no longer achievable.[41]

From a doctrinal perspective, the court's reasoning is consistent with the principle of *pari passu pro rata parte*, which constitutes the foundational distribution principle in Indonesian bankruptcy law. As Sutan Remy Sjahdeini explains, bankruptcy law is designed to ensure equitable distribution among creditors based on proportional entitlement, rather than prioritising individual enforcement actions.[42] In the present case, the court's recognition that the going concern mechanism was ineffective indicates a judicial acknowledgment that the continuation of insolvency proceedings no longer served this distributive objective. Consequently, termination under Article 18(1) becomes justified as a means of preserving systemic efficiency within the bankruptcy framework.

Furthermore, the court's reliance on expert opinion, particularly that of Hadi Shubhan, illustrates the integration of doctrinal scholarship into judicial reasoning. According to Shubhan, bankruptcy may be terminated not only upon full distribution of the estate but also when settlement (*akkord*) is achieved or when the estate is manifestly insufficient to cover administrative costs.[43] This interpretation reflects a functional understanding of insolvency proceedings, where the continuation of formal bankruptcy administration must be justified by its utility in achieving creditor satisfaction. In this sense, judicial reliance on scholarly authority demonstrates the role of *rechtsvinding* (legal discovery), whereby judges

[40] Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of a Legal System*. (Oxford: Oxford University Press, 1980).
[41] *See* Sjahdeini, *Hukum Kepailitan*
[42] Sjahdeini.
[43] Shubhan, "Rethinking Simple Evidence in Bankruptcy Petitions for Legal Certainty."

actively construct legal meaning in situations where statutory norms require interpretative supplementation.[44]

The decision also illustrates the importance of Article 16 UUK-PKPU, which provides that the curator's actions remain valid and binding even if a bankruptcy decision is later annulled. This provision reflects a strong commitment to legal certainty (*rechtszekerheid*), ensuring that acts performed during bankruptcy administration are not retroactively invalidated. As legal scholars have noted, this rule prevents systemic instability that would arise if curatorial actions were subject to ex post nullification following appellate proceedings (Fuady, 2017). In this regard, the Indonesian bankruptcy system prioritises transactional stability over procedural uncertainty, thereby reinforcing trust in insolvency administration.

Additionally, the court's reasoning demonstrates an important intersection between bankruptcy law and administrative regulatory regimes, particularly in the mining sector. The reinstatement of mining permits (*IUP*) following the restructuring process reflects judicial efforts to harmonise insolvency outcomes with sectoral regulatory frameworks. This approach is consistent with the principle of systemic coherence in law, whereby different branches of legal regulation must be interpreted in a mutually reinforcing manner rather than in isolation as emphasized by Kelsen.[45] The court's decision to restore operational capacity to the debtor entity therefore reflects not only insolvency considerations but also broader economic governance objectives.

At a jurisprudential level, the *ratio decidendi* of the decision reveals that bankruptcy revocation under Article 18(1) is not merely procedural termination but a substantive reconfiguration of legal and economic relations. Upon revocation, the debtor is restored to its pre-bankruptcy legal status, while existing debts remain enforceable. This dual structure reflects a balance between debtor rehabilitation and creditor protection, ensuring that insolvency proceedings do not extinguish obligations but rather reorganise their enforcement framework.[46]

---

44 *See* Satjipto Rahardjo, *Membedah Hukum Progresif*. (Jakarta: Penerbit Buku Kompas, 2006). *See also* M. Zulfa Aulia, "Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi." *Undang: Jurnal Hukum* 1, no. 1 (2018): 159-185.

45 Hans Kelsen, *Pure Theory of Law*. (California: Univ of California Press, 1967). In addition, this principle means that legal norms must be interpreted as part of a unified system, where different areas of law support and complement each other. According to Kelsen, law is hierarchical and coherent, so interpretations should ensure consistency across legal branches, avoiding contradictions and maintaining the overall integrity of the legal order.

46 *See* Jackson, *The Logic and Limits of Bankruptcy Law*

Therefore, the decision exemplifies the judiciary's role in bridging normative gaps through *rechtsvinding*. The judge does not merely apply statutory provisions mechanically but engages in interpretative reasoning to resolve tensions between efficiency, justice, and legal certainty. As Satjipto Rahardjo argues, judges in progressive legal systems function as active constructors of justice rather than passive enforcers of written norms.[47] In this case, the court's decision to permit bankruptcy revocation, reinstate operational permits, and maintain creditor claims demonstrates a purposive and adaptive interpretation of bankruptcy law aimed at achieving substantive justice within a complex economic context.

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. 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.[48]

Gustav Radbruch in Heather Leawoods stated: *Radbruch finds that although the idea of law is justice, this alone does not fully exhaust the 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*[49]. 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

---

47 Rahardjo, *Membedah Hukum Progresif*.

48 Ivida Dewi Amrih Suci, *Hukum Kepailitan: Karakteristik Renvoi Prosedur Dalam Perkara Kepailitan*. (Yogyakarta: LaksBang Justitia, 2020).

49 Heather Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher." *Washington University Journal of Law & Policy* 2, no. 1 (2000): 489-515.

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.[50] One cannot rely on the courts for a quick resolution.[51]

Conclusion

In conclusion, the analysis of Commercial Court Decision No. 6/Pdt.Sus-PKPU/2020/PN Niaga Sby demonstrates that the application of Article 18(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations operates not merely as a procedural mechanism, but as a substantive instrument for ensuring systemic efficiency and legal coherence within Indonesian insolvency law. The court's reasoning reflects a purposive interpretation of bankruptcy norms, particularly in recognising that the continuation of insolvency proceedings is unjustifiable when the bankruptcy estate is insufficient to cover administrative costs. This aligns with the foundational principles of *pari passu pro rata parte* and legal certainty, while simultaneously affirming the judiciary's role in maintaining balance between creditor protection and the functional limits of the bankruptcy process.

Furthermore, the decision illustrates the dynamic role of judicial interpretation (*rechtsvinding*) in harmonising statutory provisions, doctrinal scholarship, and sectoral regulations. By integrating expert opinions and ensuring coherence between bankruptcy law and related regulatory frameworks, the court reinforces the principle of systemic coherence within the legal system as articulated in Kelsenian theory. Ultimately, the *ratio decidendi* in this case confirms that bankruptcy revocation serves as a corrective legal mechanism designed to prevent inefficiency and preserve normative equilibrium, thereby contributing to a more adaptive and just insolvency framework in Indonesia.

---

50 Philippe Frouté, "Theoretical foundation for a debtor friendly bankruptcy law in favour of creditors." *European Journal of Law and Economics* 24, no. 3 (2007): 201-214.

51 Donald B. Hausch, and S. Ramachandran. "Systemic financial distress and auction-based bankruptcy reorganization." *International Review of Economics & Finance* 18, no. 3 (2009): 366-380.

References

Amrih, I. Dewi, and Herowati Poesoko. *Hukum Kepailitan Kedudukan dan Hak Kreditor Separatis atas Benda Jaminan Debitor Pailit*. (Yogyakarta: LaksBang Pressindo, 2016).

Aria, Alim Wijaya, and Murniati Rilda. "Hak Eksekusi Kreditor Separatis Terhadap Benda Agunan dalam Kepailitan." *Pactum Law Journal* 2, no. 3 (2019): 713-724.

Aulia, M. Zulfa. "Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi." *Undang: Jurnal Hukum* 1, no. 1 (2018): 159-185. https://doi.org/10.22437/ujh.1.1.159-185

Bachtiar, Reza Fahlevi, and Umar Ma'ruf. "Due to Legal Marriage Without Married Agreement Relating to the Existence of Bankruptcy." *Jurnal Akta* 5, no. 2 (2018): 403-408. https://doi.org/10.30659/akta.v5i2.3094

Black, Henry Campbell, et al. *Black's Law Dictionary*. Vol. 196. (St. Paul, MN: West Group, 1999).

Chandra, Denny. "Legal position of criminal confiscation against general confiscation in bankruptcy for the realization of legal certainty." *International Journal of Science and Society* 4, no. 1 (2022): 140-151. https://doi.org/10.54783/ijsoc.v4i1.424

Chromá, Marta. "Translation and the Law Dictionary." In *Legal Lexicography*. (London: Routledge, 2016), pp. 135-160.

Dantes, Komang Febrinayanti. "Dampak Hukum Putusan Pailit Terhadap Harta Kekayaan Suami Istri Yang Tidak Melakukan Perjanjian Perkawinan Pisah Harta." *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 3 (2021): 917-923. https://doi.org/10.23887/jmpppkn.v1i2.50

Deb, Shakti, and Indrajit Dube. "Insolvency and bankruptcy code 2016: revisiting with market reality." *International Journal of Law and Management* 63, no. 1 (2021): 125-146. https://doi.org/10.1108/ijlma-05-2020-0133

Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 1989).

Erades, Erades. "Legal Effects in Indonesia of a Bankruptcy Pronounced in the Netherlands." *Netherlands International Law Review* 5, no. 2 (1958): 211–212. https://doi.org/10.1017/s0165070x00029788

Fauzi, M. "Insolvency within Bankruptcy: The Case in Indonesia." *SHS Web of Conferences,* 54 (2018): 06004. https://doi.org/10.1051/shsconf/20185406004

Fernando, Josua, and Susanti Adi Nugroho. "Kedudukan Sita Pidana Terhadap Sita Umum Kepailitan." *Jurnal Hukum Adigama* 1, no. 1 (2018): 339-363. https://doi.org/10.24912/adigama.v1i1.2148

Frouté, Philippe. "Theoretical foundation for a debtor friendly bankruptcy law in favour of creditors." *European Journal of Law and*

Economics 24, no. 3 (2007): 201-214. https://doi.org/10.1007/s10657-007-9033-7

Fuady, Munir. *Hukum Pailit dalam Teori dan Praktek*. (Bandung: PT. Citra Aditya Bakti, 1999).

Garner, Bryan A. *Garner's Dictionary of Legal Usage*. (Oxford: Oxford University Press, 2011). https://doi.org/10.1108/09504121211205043

Hausch, Donald B., and S. Ramachandran. "Systemic financial distress and auction-based bankruptcy reorganization." *International Review of Economics & Finance* 18, no. 3 (2009): 366-380. https://doi.org/10.1016/j.iref.2008.09.007

Herawati, Dini, and Gunawan Widjaja. "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)." *IMANOT: Jurnal Kemahasiswaan Hukum & Kenotariatan* 1, no. 1 (2021): 51-73. https://doi.org/10.24912/adigama.v2i1.5257

Ikhwansyah, Isis, and Lambok Marisi Jakobus Sidabutar. "The Implementation of Insolvency Test on Debtors' Bankruptcy in Performing the Principle of Justice." *Jurnal Media Hukum* 26, no. 2 (2019): 240-251. https://doi.org/10.18196/jmh.20190137

Isfardiyana, Siti Hapsah. "Sita Umum Kepailitan Mendahului Sita Pidana dalam Pemberesan Harta Pailit." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, no. 3 (2016): 628-650. https://doi.org/10.22304/pjih.v3.n3.a10

Jackson, Thomas H. *The Logic and Limits of Bankruptcy Law*. (Cambridge: Beard Books, 2001).

Kadir, Yunita. "Pembuktian Sederhana Dalam Kepailitan." *CALYPTRA* 3, no. 1 (2014): 1-27.

Kelsen, Hans. *Pure Theory of Law*. (California: Univ of California Press, 1967).

Law, Jonathan, ed. *A Dictionary of Law*. (Oxford: OUP Oxford, 2015).

Leawoods, Heather. "Gustav Radbruch: An Extraordinary Legal Philosopher." *Washington University Journal of Law & Policy* 2, no. 1 (2000): 489-515.

Levina, Yustitianingtyas. "Bankruptcy Boedel Execution Practices in Indonesia." *Journal of Private and Commercial Law* 4, no. 1 (2020): 44-50. https://doi.org/10.15294/jpcl.v4i1.25344

Marpi, Yapiter, Pujiyono Suwadi, and Hari Purwadi. "Actio Pauliana Legal Reconstruction of Creditors in Bankruptcy Disputes to Achieve Substantive Justice." *International Conference on Law, Economic & Good Governance (IC-LAW 2023)*. Atlantis Press, 2024. https://doi.org/10.2991/978-2-38476-218-7_112

Nola, Luthvi Febryka. "Kedudukan Sita Umum Terhadap Sita Lainnya dalam Proses Kepailitan (The Position of General Seizure Towards Others in the Process of Bankrupcy)." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 9, no. 2 (2019): 217-234. https://doi.org/10.22212/jnh.v9i2.1047

Oktavira, Bernadetha Aurelia, and Yudho Taruno Muryanto. "Perlindungan Hukum Bagi Kreditor Pemegang Hak Tanggungan dalam Eksekusi Harta (Boedel) Pailit Terhadap Sita Perkara Pidana." *Jurnal Privat Law* 8, no. 1 (2020): 63-69. https://doi.org/10.20961/privat.v8i1.40368

Pamungkas, Mochamad Cahyo. "Tinjauan Yuridis Tentang Pengaturan Pihak Yang Berwenang dalam Mengajukan Permohonan Pailit Terhadap Perusahaan Umum." *Novum: Jurnal Hukum* 8, no1 (2021): 13-23.

Pandiangan, Roni. "Diskrepansi Sita Umum Kepailitan dengan Sita Pidana Dihubungkan dengan Pemberesan Harta Pailit Yang Mengandung Unsur Pidana." *Jurnal Pendidikan dan Konseling* 4, no. 5 (2022): 4051-4061. https://doi.org/10.56957/jsr.v9i1.315

Pangestu, Puja Dwi. "Actio Pauliana as the Rights Protection Efforts for Creditors in the Bankruptcy Case." *Journal of Private and Commercial Law* 3, no. 1 (2019): 26-29. https://doi.org/10.15294/jpcl.v3i1.18673

Poesoko, Herowati, M. Hadi Subhan, and Ivida Dewi Amrih Suci. *Hukum Kepailitan: Karakteristik Hukum Kepailatan dalam Penegakan Hukum, Hakekat Kepailitan, Subjectum Litis & Objectum Litis, Pengembanan Teoritis & Pengembanan Praktis, dan Gugatan Lain-Lain*. (Yogyakarta: LaksBang Justitia, 2023).

Posner, Richard A. "Utilitarianism, Economics, and Legal Theory." *The Journal of Legal Studies* 8, no. 1 (1979): 103-140. https://doi.org/10.1086/467603

Rahardjo, Satjipto. *Membedah Hukum Progresif*. (Jakarta: Penerbit Buku Kompas, 2006).

Raz, Joseph. *The Concept of a Legal System: An Introduction to the Theory of a Legal System*. (Oxford: Oxford University Press, 1980). https://doi.org/10.1093/acprof:oso/9780198253631.001.0001

Regan, Donald H. "The Problem of Social Cost Revisited." *The Journal of Law and Economics* 15, no. 2 (1972): 427-437. https://doi.org/10.1086/466745

Republic of Indonesia. *Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations* (Jakarta: Sekretariat Negara, 2004).

Rukmono, Bambang Sugeng. "The Role of Supervisory Judge in the Bankruptcy of Foundation." *Yustisia* 8, no. 1 (2019): 69-78. https://doi.org/10.20961/yustisia.v0ixx.28000

Ruslina, Elli, Siti Rodiah, and Benny Wulur. "General Confiscation Versus Criminal Confiscation in Regard to Curators' Authority and Responsibility in Bankruptcy Settlement Process." *Sociological Jurisprudence Journal* 3, no. 2 (2020): 112-116. https://doi.org/10.22225/scj.3.2.1803.112-116

Schuit, S. R. "Onderneming en Integriteit: de Bestuurder." In *Onderneming en Integriteit*. (Leiden: Kluwer, 2007), pp . 7-31.

Sebayang, Siddik Meliasta. "Akibat Hukum Kepailitan Suami Terhadap Harta Bersama Menurut Undang-Undang Nomor 37 Tahun 2004

Tentang Kepailitan." *Jurnal Notarius* 3, no. 2 (2017): 113-129. https://doi.org/10.31219/osf.io/g5evj_v1

Senbet, Mehra, and Tracy Yue Wang. "Corporate financial distress and bankruptcy: A survey." *Foundations and Trends in Finance* 5, no. 4 (2012): 243-335. https://doi.org/10.1561/0500000009

Shubhan, M. Hadi. "Rethinking Simple Evidence in Bankruptcy Petitions for Legal Certainty." *Indonesia Law Review* 9, no. 2 (2019): 66-82. https://doi.org/10.15742/ilrev.v9n2.527

Shubhan, M. Handi. *Hukum Kepailitan*. (Jakarta: Prenada Media, 2015).

Singadimeja, Holyness, Rai Mantili, and Ema Rahmawati. "The Implementation of Legal Certainty Principles in the Reporting Process of Debtor Bankruptcy Settlement by Curator to Supervisory Judge in Bankruptcy Practice." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 5, no. 3 (2018): 506-526. https://doi.org/10.22304/pjih.v5n3.a6

Sjahdeini, Sutan Remy. *Hukum Kepailitan* (Jakarta: Pustaka Utama Grafiti, 2010).

Slamet, Sri Redjeki. "Perlindungan Hukum dan Kedudukan Kreditor." *Forum Ilmiah* 13, no. 1 (2016).

Subekti, Subekti, and R. Tjitrosoedibio. *Kamus Hukum*. (Jakarta: Pradnja Paramita, 1972).

Suci, Ivida Devi Amrih, and Herowati Poesoko. *Hukum Kepailitan, Kepastian Hukum Penjualan Benda Tidak Bergerak Secara di Bawah Tangan oleh Kurator*. (Yogyakarta: LaksBang Justitia, 2020).

Suci, Ivida Dewi Amrih. *Hukum Kepailitan: Karakteristik Renvoi Prosedur dalam Perkara Kepailitan*. (Yogyakarta: LaksBang Justitia, 2020).

Thomas, Jonathan P. "Bankruptcy proceedings for sovereign state insolvency and their effect on capital flows." *International Review of Economics & Finance* 13, no. 3 (2004): 341-361. https://doi.org/10.1016/j.iref.2003.11.009

Tirayo, Adriel Michael, and Yoefanca Halim. "Problematik Definisi Harta Pailit untuk Mencapai Kepastian Hukum dalam Pelaksanaan Kepailitan dan PKPU." *Jurnal Ilmiah Penegakan Hukum* 6, no. 2 (2019): 130-137. https://doi.org/10.31289/jiph.v6i2.2963

Wijaya, Andika. "Implementation of the Doctrine of the Business Judgment Rule on Bankruptcy Law in Indonesia." *Yuridika* 35, no. 1 (2020): 1-14. https://doi.org/10.20473/ydk.v35i1.12436

Yono, Supri et al., "Reconstruction of Separate-Creditor Positions in the Process Declaring Bancruptcy in Indonesia Based on Justice Value," *Scholars International Journal of Law, Crime and Justice* 3, no. 11 (2020): 334–341. https://doi.org/10.36348/sijlcj.2020.v03i11.001

***

DECLARATION OF CONFLICTING INTERESTS
The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION
None.

ACKNOWLEDGMENT
None.

GENERATIVE AI STATEMENT
None

HISTORY OF ARTICLE
Submitted : February 21, 2023
Revised : July 11, 2023; December 21, 2023; March 10, 2024
Accepted : April 20, 2024
Published : May 25, 2024