# PRACTICAL LAW DEVELOPMENT THE INSTITUTION OF POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS TO ACHIEVE THE VALUE OF JUSTICE

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**Abstract**

Practical law development is described as implementing the duties or ideals of the law in practice. Law is an arrangement the state provides to the community as a guarantee of security for justice seekers (justiabelen). In practice, cases examined in the application of the law by linking the regulatory norms with the legal facts, then the result of the judge's analysis is the ratio decidendi as the basis for making the ruling, as well as the decision in the PKPU realm in bankruptcy law which is lex specialist on the work of PKPU institutions. The success of the PKPU institution's work with a court decision that has permanent legal force (inkracht van gewijsde) (vide Article 287 of the Bankruptcy and PKPU Law). The PKPU peace institution in every case settlement is needed to be strongly encouraged so that the success rate is high. This is because this institution at an early stage is desired to be a tool in stopping the bankruptcy decision for the debtor, so that the debtor can continue his business and can pay his debts to creditors, therefore it is expected to provide justice for the parties who are litigating. The purpose of law is to achieve the value of justice, with the value of legal certainty and the value of the benefits of the PKPU institution, which is part of the value of justice as a legal goal. The author in this article analyzes "how the practical legal implementation of the PKPU peace institution achieves the value of justice". The writing of this article uses the normative juridical method, which makes the norm as the legal concept, and uses the analysis knife of the theory of legal objectives taken from 3 (three) general teachings of Gustav Radbruch, namely certainty, benefits and the end is justice, in addition to dissecting it, also using Kees Schuit's theory, namely idiil elements, operational elements and actuil elements. The approach used is conceptual approach, statutory approach, and case approach. The conclusion to be reached has prescriptive value as an apology for the world of legal science, especially the science of bankruptcy law and the institution of Postponement of Debt Payment Obligations (PKPU).

***Keywords***: Practical Law Development; PKPU Institution; Justice Value

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**INTRODUCTION**

PKPU as a peace institution is an institution in the commercial court, but the process is outside the authority of the commercial court but will ultimately be decided by the commercial court. As the name implies, the institution of postponement of debt payment obligations, this institution is only concerned with peace towards postponement of debt. Thus, the name implies that the philosophy of this institution is about the postponement of debt.

If, in the end, it can resolve the entire case, then that is the desired result for debt settlement and economic recovery, in accordance with the philosophy of bankruptcy law as stated in the preamble of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

The actual application of the law in the development of practical law on PKPU by analyzing the legal considerations (ratio decidendi) of judges in decisions that have permanent legal force (inkracht van gewijsde). Some of these decisions are used to analyze PKPU as a peace institution that has been regulated in bankruptcy law in its practical implementation, namely the results of the court's decision on the PKPU peace result.

Ratio decidendi of Commercial Court Decision Number 003/Pdt.Sus- Cancellation of Local Government/2020/PN. Jkt. Pst junto Decision number 118/Pdt.Sus- PKPU/2018/PN. Jkt. Pst, dated July 22, 2020 (Center, 2022) it can be analyzed that from the legal considerations and rulings of case number 003/Pdt.Sus. Cancellation of Peace/2020/PN Niaga. Jkt. Pst. Dated July 22, 2020, there is an understanding that in the PKPU peace institution the substance of the peace is only related to what is agreed in the peace as outlined in a decision.

Ratio Desidendi of Commercial Court Decision No. 49 K/Pdt.Sus- Bankruptcy/2016, dated April 1, 2015 Jo Decision on the Ratification of Peace (homologation) No. 36/PKPU/2012/PN. Niaga. Jkt. Pst dated October 25, 2012, an analysis is obtained that creditors who do not make billing records in accordance with the arrangements, then these creditors will be ruled out in submitting applications in any form to the commercial court. although creditors have submitted bills in ordinary civil law.

Ratio decidensi Decision on the ratification of peace (homologation) Commercial Court Decision Number 59/Pdt.Sus-PKPU/2014/PN. Niaga/Jkt.Pst Dated December 9, 2014 (Center, 2014) , obtained an analysis that the peace decision on an agreement contained in the minutes of the meeting. It is the creditors who are the agreement in this PKPU peace that has permanent legal force (inkracht van gewijsde).

Ratio decidendi of Commercial Court Decision number 195/Pdt.Sus- PKPU/2021/ PN.Niaga. Jkt. Pst. Dated 21 May 2015, (Central, 2015) In the ratio decidendi of this decision, an analysis is obtained that peace in the PKPU realm is a temporary or non-permanent peace and does not have permanent legal force (inkracht van gewijsde), this is because this PKPU peace cannot be executed immediately.

A description of the results of the application of the law in practice (actual), that the debt postponement process is only intended for concurrent creditors, even though the application applies to all creditors (vide Article 222 paragraph (2) of the Bankruptcy and PKPU Law). Similarly, the voting process still includes all creditors (vide Explanation of Article 228 paragraph (1) of the Bankruptcy and PKPU Law). The postponement of debt payment obligations (PKPU) as a peace institution is part of bankruptcy law which is lex specialist and special. Therefore, it needs to be analyzed in its actual realm, namely with the appropriate analytical knife and approaches in its methodology, so that it is known that the legal implementation is not in accordance with what is expected by the legislator, where the legal goal is justice. About the description in the introduction above, the author wishes to analyze in the writing of this article, namely "How does the practical legal implementation of the peace institution for postponement of debt payment obligations (PKPU) achieve justice?

**RESEARCH METHOD**

The author of this article uses a normative juridical methodology, with a concept approach, statutory approach, and case approach. The analytical knife used is the theory of Kess Scuit's legal system regarding the Idiil element, namely about the meanings, the Operational Element, namely about the institution or container used and the Actual element, namely In addition, the other analytical knife used is the 3 (three) general teachings of Gustav Rabruch, namely Certainty, benefits and justice, which are used to describe the purpose of law, namely the value of justice. The conclusion in this study is expected to be a research that has *prescriptive* value as *its axyology*, in legal science, especially bankruptcy law, more specifically in the PKPU institution as a peace institution in bankruptcy law.

## RESULTS AND DISCUSSION

### Legal development in legal science and in the peace institution of the Delay of Debt Payment Obligation (PKPU)

According to Satjipto Rahardjo, legal concepts are used to formulate the many notions covered in them, both variations and differences, into just one term. By lawmakers, the term is used to concisely state what a legal regulation wants to cover.(S. Rahardjo, 2014)

According to Satjipto further on this legal concept, namely, perception orcan be called a picture of a concept is fundamental in science. This is where the concept in the sense of science is distinguished from delusion. People who fantasize also formulate their own concepts, but all of that cannot be returnedto reality or empirical elements. The preparation of legal concepts is also required to be able to return to the empirical elements that make up the concept. A concept is also required to contain a meaning (*meaningful*). All sounds issued by humans, but do not contain any message to others are not concepts, but meaningless sounds.((Ibid) Satjipto Rahardjo, 2014)

According to Meuwissen, the systematization of legal science uses the term *rechtbeoefening* (law enforcement), this refers to all human activities regarding the existence and enactment of law in society. (M. in Herowati Poesoko, 2018) Then According to Bernard Arief Sidarta, the definition of legal development is divided into 2 (two) as follows, first is the Theoretical Legal Development, namely, pointing to theoretical reflection on the law, namely the activities of the intellect to gain intellectual mastery and understanding of the law scientifically or methodically systematic-logical rational, which consists of a number of legal disciplines. The second is Practical Law Development, namely all human actions related to realizing the law in everyday life in a concrete manner, which includes law formation, legal discovery and legal aid. ((Ibid) Bernard Arief Sidharta in Herowati Poesoko, 2018) Therefore, the development of law is related to the intellectual thinking power of the human mind, then the application of law in society. These two things are closely related because the intellectual thinking power of the mind will be applied to the actual applicationof the mind's thinking power.

According to Herowati Poesoko regarding legal development, the product of legal development activities is propositions that function as hypotheses that must be open to rational study. This proposition is called a juridical proposition (legal proposition), containing a draft decision for certain concrete social situations that can be imagined to occur in reality. The legal decision determines based on the legal rules contained in a rule of law, who is obliged to what with respect to what and on what basis, or who is entitled to what against whom concerning what on what basis, and based on that who mustdo what action (Poesoko, 2018a).

Herowati Poesoko further states that the resulting legal propositions are systematized into a systematic building so that all legal rules that apply in society, which cannot be counted, are rationally understood as a system, namely in the form of a legal system which in its function is open. Therefore, the activity of developing the science of law emphasizes the activity of distilling (extracting) legal rules that are (implicitly) contained in juridical texts both in written legal rules (legislation), as well as unwritten legal rules (customary law). In essence, distilling the rules of law from the juridical text is the essence of the activity of interpreting the juridical text, namely the act of determining the meaning and area of application of the juridical text. application of the juristic text (Poesoko, 2018b).

Legal science is a normative practical science whose main problems and targets of development are different from empirical science. (Poesoko, 2018c) Developments in the philosophy of science give rise to a variety of different opinions about the boundaries of the definition of science, demarcationcriteria, the meaning of truth, methods, objectivity, testability, value which hermeneutically can occur *horisontverschmedzung* which will give rise to a broader and more practical conception of science (Poesoko, 2018d)

The author needs to analyze the practical development of PKPU as a peace institution. The PKPU institution as a forum for implementing peace, which will automatically follow the basic principle of general confiscation. Practical law enforcement is a way to find out the results of the operation of thelaw in the actual realm. Judges carry out the process in addition to enforcing the law and also test the ability of regulation in the process of court examination, if the regulation is unable to become the legal basis or *vague norm*, then the judge is obliged to make the law with legal discovery.

The meaning of Pengembanan from the word mengemban is to carry out (duties, ideals, and obligations) (Online, 2024b) so that it means pengembanan implementation of duties or obligations or ideals, so that what is analyzed is the implementation of its actions in order to

realize its duties, obligations, and aspirations. Meanwhile, the word practical means based on practice (Online, 2024d). Thus the meaning of the word practical development is the implementation of the action of the aspired obligation (in this case, the regulation that has been made) based on practice.

As the name implies, the institution for postponement of debt payment obligations, this institution is only related to the peace of debt postponement. Thus, the name implies the philosophy of the PKPU peace institution. If in the end the entire case can be resolved, then this is the desired result for debt settlement and economic recovery. This philosophy of bankruptcy law is stated in the preface of Law No. 37 of 2004 concerning Bankruptcy and Suspension ofDebt Payment Obligations.

*Ratio desidendi of* Decision Number 003/Pdt.Sus-Cancellation ofPeace/2020/PN. Jkt. Pst junto Decision number 118/Pdt.Sus- PKPU/2018/PN. Jkt. Pst, dated July 22, 2020, an analysis can be obtained that in the PKPU peace institution only deals with peace between concurrent creditors and debtors, as well as the substance of the peace is only related to what is agreed upon in the peace as outlined in a decision.

*Ratio Desidendi of* Commercial Court Decision No. 49 K/Pdt.Sus- Bankruptcy/2016, dated April 1, 2015 Jo Decision on the Ratification of Peace (*homologation*) No. 36/PKPU /2012/PN. Niaga. Jkt. Pst dated October 25, 2012, an analysis is obtained that the process in bankruptcy and PKPU will undermine or override the decision of the district court in ordinary civil cases and the curator only processes the bills submitted to the curator, the rest will notbe processed by the curator according to the rules in bankruptcy law.

The benefits of linkage with the principle of general confiscation of the bankruptcy estate, which is a characteristic form of the law itself. and the principle of *debt pooling*, namely so that the management and/oradministration of bankruptcy property is carried out by the curator as his duty and authority (*vide* Article 69 paragraph (1) Bankruptcy and PKPU Law), only centered on the curator (*debt pooling* principle), the entire property of the bankrupt debtor is a guarantee for the repayment of creditors' debts (*paritas creditorium* principle) for creditors affected by the bankruptcy decision (*vide* Article 1 number 6 of the Bankruptcy and PKPU Law).

*Ratio decidensi Decision on the ratification of peace (homologation)* Number 59/Pdt.Sus-PKPU/2014/PN. Niaga/Jkt.Pst Date December 9, 2014, an analysis is obtained that the peace decision on an agreement contained in the minutes of the meeting of creditors which is an agreement in this PKPU peace has permanent legal force (*inkracht van gewijsde*).

*Ratio decidendi* Decision number 195/Pdt.Sus-PKPU/2021/ PN.Niaga. Jkt. Pst. Dated May 21, 2015, in the *ratio decidendi of* this decision an analysis is obtained that peace in the PKPU realm is a temporary or impermanent peace and does not have permanent legal force (*inkract van gewijsde*). The PKPU peace ratification decision (*homologation*) mentioned above, based on practice when analyzed from the decision, which is declared as a decision that has permanent legal force (*inkracht van gewijsde*) is actually not pure as a power that actually has permanent legal force (*vide* Article 287 of the Bankruptcy and PKPU Law), but its permanent force is limited, the limitation is limited to the minutes of the peace agreement (*vide* Article 282 paragraph (2) of the Bankruptcy and PKPU Law), because it still has other legal consequences, namely a bankruptcy decision.

Characteristics found in the actual application of the law, namely in the legal considerations of the judge (*ratio decidendi*) regarding the process in bankruptcy and PKPU, that in this process the curator can *derogate* or override the decision of the district court in ordinary civil cases if the creditor does not register the bill because of another court decision, and the curator only processes the bills submitted to the curator, the rest will not be processed by the curator according to the rules in bankruptcy law.

This is in accordance with the judge's legal reasoning (*ratio decidendi*) inthe actual realm, that the applicant is not among the creditors listed in the decision to validate the peace at the time of PKPU even though the creditor has filed a bill in ordinary civil. So that if the creditor, even though it has been decided by another court, if it does not register as a creditor, it will not be considered as a creditor. The creditor is not listed as a creditor in the decision to validate the PKPU peace (*homologation*).

Some of the above are examples of how the law works in its actual realm, namely in the application of law, by analyzing decisions that have permanent legal force (*inkracht van gewijsde*). The judge in his duties functionsas one of the bearers of the rules in the actual realm, also acts as a bearer of *emergency exit* if the rules turn out to be unable to be the basis of a case by making legal discoveries. Therefore, Kees Schuit's theory of the legal system, namely the idiil element, the operational element and the actuil element (cit) Kess Schuit in Ivida Dewi

Amrih, 2023), can be used as one of the benchmarksin analyzing the operation of a rule, by also analyzing its practical implementation.

**Judge's legal discovery in *ratio decidendi* as *emergency exit* In PKPU Peace Institutions**

Legal discovery according to several experts is as follows: According to Paul Scholten, the discovery of law by judges is something other than just the application of rules to the event, sometimes and even very often it happens that the rules must be found, either by way of interpretation or by way of analogy or *rechtssvervijning (*pengkongkritanan law).(and Van Duyvendjk in Bambang Sutiyoso, 2012a) John Z Laudoe, argues that the discovery of law is the application of the provisions on the facts and the provisions must sometimes beformed because it is not always found in the existing law. (and Van Duyvendjk inBambang Sutiyoso, 2012b) N. E Algra and van Duyvendjk, define legal discovery as finding the law for a concrete event, for which a judge or another juridical decision-maker must be given a juridical settlement. Furthermore, it is also stated that legal discovery is an activity of judges to use various kinds of interpretation techniques and ways of describing by using various kinds of reasons that are not contained in the law. The rules of law that exist in the events presented to him. He also does not onlymake laws for the problems that are in front of him, but also for the same events, which will come.(in Bambang Sutiyoso, 2012)

According to Sudikno Mertokusumo, legal discovery is the process oflaw formation by judges or other legal officers who are given the task ofimplementing the law on concrete events. More concretely it can be said that legal discovery is the concretization, critization or individualization of legal rules of law or das Sollen, which is general by considering concrete events or das Sein. Concrete events need to find the law which is general and abstract. Concrete events must be brought together with legal regulations. The concrete event must be connected to the legal regulations so that it can be covered by the legal regulations. Conversely, the rule of law must be adjusted to the concrete event so that it can be applied (S. Mertokusumo, 2007).

Judges in making a decision, ideally the decision must contain *idee des recht*, which includes 3 elements, namely justice (*gerechtigkeit*), legal certainty (*rechtsicherheit)*, and expediency (*zwechtsmassigkeit*). (as quoted by Sudikno Mertokusumo in Bambang Sutiyoso, 2012) These three elements should be considered and applied proportionally by the judge so that in turn a quality decision can be produced and meet the expectations of justice seekers. ((Ibid), 2012).

Judges in making legal discoveries must look at the legal facts, namely the case being handled. The judge, in this case, assesses the legal norms by conducting legal interpretation because in a statutory text if applied to a case it issometimes unclear or incomplete, therefore a method of legal interpretation is provided ((Op Cit) Sudikno Mertokusumo, 2007) to parse the norms associated with legal facts to find the law as a consideration (*ratio decidendi)*. The method of legal interpretation according to Bambang Sutiyoso is the method of interpreting the statutory text so that it can be applied to certain concrete events. ((Op Cit) Bambang Sutiyoso, 2012)

Another method is the argumentation method or the reasoning method (*redenering/reasoning*), which is used when the law is incomplete, or the norm is vague, or the norm is unable to serve as the basis for the case, then legal argumentation is needed to complete it. There are several kinds of *argumentation* methods, namely, the analogy method *argumentum per analogiam*),. *A contrario* method *(Argumentum a Contrario*), method of narrowing the law (*Rechtvervijning*). Legal fiction method. ((Ibid) Bambang Sutiyoso, 2012)

Another method in addition to legal interpretation and argumentation is the method of legal construction (*exposition* method), namely, a method to explain words or form legal understanding, not to explain goods. ((Ibid) Sudikno Mertokusumo In Bambang Sutiyoso, 2012) Legal construction is more widely used in every legal analysis, because in this legal construction it is more about applying concrete events into legal arrangements, so that a legal understanding can be produced on a case.

This is a special provision (*lex specialist*) of bankruptcy law in connection with the enactment of the principle of general confiscation of all assets of the debtor as collateral for *debt* repayment to creditors (*vide* Article 1 number 1 in conjunction with Article 1 number 6 of the Bankruptcy and PKPU Law) and the principle of *debt poolling* and the principle of *debt collection* in bankruptcy law. *Ratio decidendi of* other decisions in the author's analysis, when a decision was made to validate the PKPU peace (*homologation*), it turned out that there were several obstacles, namely related to licenses for debtors that were revoked due to bankruptcy petitions, which caused debtors to be unable to continue their business even though there was a

*homologation* decision.

Article 8 Paragraph (6) letter a of the Bankruptcy Law is an opportunity for solvent debtors to avoid bankruptcy Article 8 Paragraph (6) can be used as an opportunity to avoid bankruptcy *emergency exit* for a *judge made law* process. Therefore, the researcher analyzes the values of justice in society as an emergency exit in the judge madelaw process, if the debtor is still solvent, the problems raised in this study, namely: how judges in their legal considerations (*ratio decidendi*) make *judge made law* as an *emergency exit* for debtors.

**Practical Law Development is the value of Legal Actuality in the Application of Law for the Value of Justice for *justiabelen***

*Prescriptive* legal research is research aimed at getting suggestions aboutwhat to do to overcome certain problems that can produce new arguments, theories or concepts as prescriptions in solving the problems at hand. *Prescriptive* means that the object of legal science is the coherence between legal norms and legal principles, the coherence between legal atusran and legal norms, and the coherence between individual behavior and legal norms (Marzuki, 2014).

The most noteworthy thing is that the PKPU peace institution is a tool forbankruptcy law to avoid bankruptcy, and is the first step in the process in bankruptcy law to avoid a bankruptcy verdict on the debtor, so that the debtor can continue his business and can pay his debts to creditors. The bankruptcy condition itself stems from the default of the debtor's debt to creditors, if it is related to the philosophy contained in bankruptcy law, which is debt settlement and economic recovery.(2004, 2004) The wishes of the legislator are implicitly stated in the consideration, mainly the principle of debt settlement and the principle of economic recovery, while other principles are supporting principles for the success of bankruptcy law so that debtors can avoid bankruptcy.

Based on the description above, to achieve the value of justice according to 3 (three) general teachings of Gustav Radbruch, namely certainty, benefits and justice itself (cit) Gustav Radbruch in Ivida Dewi Amrih Suci, 2023) . A rule The value of legal certainty that has been made by the state as a guarantee of the security of the justice-seeking community (*justiabelen*) with the establishment of Law No. 37 of 2004 concerning Bankruptcy and PKPU is the value of legal certainty. The value of the benefits taken from the PKPU peace institution is as a tool for bankruptcy law to avoid bankruptcy, and is the first step in the process in bankruptcy law to avoid a bankruptcy verdict on the debtor, so that the debtor can continue his business and can pay his debts to creditors and as the main tool for the success of bankruptcy law in settlingdebts and restoring the economy in bankruptcy law has achieved its beneficial value. Thus the value of legal certainty and the value of benefits which are instruments of justice, the value of justice is achieved.

Certainty and benefits are instruments of justice, so if the PKPU peace institution is used as intended and is the most important institution in bankruptcy law, as well as that this institution is positioned in the actual domainprocess, namely in the realm of law enforcement, in the realm of practical legal development in the application of law, then if this institution has a regulation, it has the value of legal certainty, has the value of benefits, namely as the most important tool of bankruptcy law in debt settlement and economic recovery, then the value of justice is also achieved.

**CONCLUSION**

The practical legal development made by the judge, in the judge's legal construction of the results of the examination of the case in court, results in the judge's legal reasoning (*ratio decidendi*), which the judge uses as a basis for making his ruling. The PKPU peace institution here is present as a tool of the court to be able to prepare a decision called a decision to validate peace in the postponement of debt payment obligations (*homologation*) as a success in its actual realm and the success of bankruptcy law in avoiding bankruptcy. A rule that has been made by the state as a guarantee of security for the justice- seeking community (*justiabelen*) is the value of legal certainty. The value of the benefits taken from the PKPU peace institution is as a tool for bankruptcy law to avoid bankruptcy, and is the value of legal certainty.

The first step of the process in bankruptcy law is to avoid a bankruptcy verdict on the debtor, so that the debtor can continue his business and can pay his debts to creditors, thus the value of legal certainty and the value of benefits which are instruments of justice, the value of justice is achieved.

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