

**Analysis of Constitutional Court Decision No.23/PUU-XIX/2021:  
Legal Efforts for Cassation in Postponing Debt Payment Obligations (PKPU)  
by Rejecting a Peace Offer from the Debtor**

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**Abstract:** *Developments in the economic and trade sectors are increasingly rapid as well as debt and receivable problems that cannot be resolved by the Bankruptcy Law, the government has made changes to these regulations to become Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. PKPU is an effort used by both debtors and creditors in the event that the debtor considers that he is or is expected to be unable to continue paying his debts that are due and payable, in order to achieve a peace plan for the debtor and creditor. The absence of legal action against a PKPU decision can be a mode or abuse for creditors to reject the peace plan proposed by the debtor so that the debtor is immediately declared bankrupt. In the UUKPKPU it is explained that the peace plan submitted by the debtor in the PKPU is determined based on approval or voting from the creditors. Through a normative juridical approach with analytical descriptive methods, it can be seen to what extent judges apply the principle of balance in deciding a decision and the results of a decision can influence the position of the law.*

**Keywords:** PKPU, Bankrupt, Legal Review

**Abstrak :** Perkembangan dalam bidang perekonomian dan perdagangan yang semakin pesat serta permasalahan utang piutang yang belum bisa diselesaikan oleh UU Kepailitan, pemerintah melakukan perubahan terhadap peraturan tersebut menjadi Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang. PKPU adalah suatu upaya yang digunakan baik oleh debitur maupun kreditur dalam hal debitur menilai sudah atau diperkirakan tidak dapat melanjutkan pembayaran utang-utangnya yang telah jatuh waktu tempo dan dapat ditagih, agar tercapainya rencana perdamaian bagi debitur dan kreditur. Tidak adanya upaya hukum terhadap putusan PKPU dapat menjadi suatu modus atau penyalahgunaan bagi kreditur untuk menolak rencana perdamaian yang diajukan oleh debitur sehingga debitur langsung dinyatakan pailit. Dalam UUKPKPU dijelaskan bahwa rencana perdamaian yang diajukan oleh debitur dalam PKPU ditentukan berdasarkan persetujuan atau pemungutan suara dari pihak kreditur. Melalui pendekatan Yuridis normatif dengan metode deskriptif analitis dapat ditinjau sejauh mana hakim menerapkan asas keseimbangan dalam memutus suatu putusan dan hasil dari suatu putusan dapat mempengaruhi kedudukan Undang-undang.

**Kata kunci :** PKPU, Pailit, Pengujian Undang-undang

## Introduction

Developments in the economic and trade sectors are increasingly rapid as well as debt and receivable problems that cannot be resolved by the Bankruptcy Law, the government has made changes to these regulations into Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter referred to as UUKPKPU). In this regulation, PKPU is an important institution or facility associated with the Bankruptcy context even though UUKPKPU does not provide a specific definition of PKPU. <sup>1</sup>However, it can be seen that PKPU is an effort used by both debtors and creditors in the event that the debtor considers that he is or is expected to be unable to continue paying his debts that are due and payable, in order to achieve a peace plan for debtors and creditors. <sup>2</sup>In essence, PKPU and Bankruptcy are different processes, in that PKPU is expected to be an alternative so that debtors do not go bankrupt because of the peace plan. As said by Man S. Sastrawidjaja, PKPU is the preferred solution for dealing with debts and receivables. <sup>3</sup>It should also be noted

that the agreement between the debtor and creditor is the basis for the PKPU application and peace plan, which includes the amount and time for making debt payments. <sup>4</sup>The aim of PKPU is so that the debtor and creditor can make peace and also the debtor avoids bankruptcy. However, if peace between the parties is not agreed upon by the creditor, the debtor will be immediately declared bankrupt by the Commercial Court. As regulated in Article 235 paragraph (1) UUKPKPU, you cannot submit any legal action against the PKPU decision. Apart from that, it is also emphasized in Article 293 paragraph (1) UUKPKPU that legal action is not open to the relevant court decisions regulated in Chapter III, namely the PKPU regulations. This is different from Bankruptcy where you can file a legal remedy, namely cassation to the Supreme Court against the decision on the bankruptcy petition. <sup>5</sup>Apart from that, you can submit a review to the Supreme Court regarding the decision on the application for bankruptcy declaration which has been *inkracht* (has permanent legal force).<sup>6</sup>

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<sup>1</sup> Mosgan Situmorang, SH, MH, *Introduction to Bankruptcy Law and PKPU*, (Jakarta: BALITBANGKUMHAM Press), p. 9

<sup>2</sup> Article 222 jo. Article 228 paragraph (5) Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations

<sup>3</sup> Agitha Putri Andany Hidayat and Anita Afriana . (2021). *Postponement of Ratification of Peace in Postponing Debt Payment Obligations by Judges is Linked to*

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*the Principle of Legal Certainty.* Padjajaran Legal Axis Journal, 3(1).

<sup>4</sup>Yudha, GNW, Budiarta, INP, & Widyantara, IMM (2022). *Legal Consequences of Rejection of the Debtor's Peace Plan by Creditors in the Process of Postponing Debt Payment Obligations* . Journal of Construction Law Publishers, 3(1)

<sup>5</sup> Article 11 paragraph (1) Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations

<sup>6</sup>Article 14 Law Number 37 of 2004 concerning Bankruptcy and

The absence of legal action against a PKPU decision can be a mode or abuse for creditors to reject the peace plan submitted by the debtor so that the debtor is immediately declared bankrupt. In the UUKPKPU it is explained that the peace plan submitted by the debtor in the PKPU is determined based on approval or voting from the creditors.<sup>7</sup> It is also known that to achieve PKPU objectives, a peace plan is very important because the peace plan will be legally valid and binding on both debtors and creditors through ratification by the Commercial Court.<sup>8</sup> Basically, a PKPU application is granted to prevent the debtor from going bankrupt, however this can be detrimental to the debtor because there is no legal remedy after the debtor is declared bankrupt by the Commercial Court and the debtor is deemed to be no longer competent to manage his assets. Further in this article, it is deemed necessary to discuss the Constitutional Court Decision Number 23/PUU-XIX/2021, namely regarding the constitutionality review of Article 235 paragraph (1) and Article 293 paragraph (1) of the UUKPKPU regarding the 1945 Constitution of the Republic of Indonesia which will be linked to the principle of balance and How decision

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Postponement of Debt Payment Obligations

<sup>7</sup>Article 281 Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations

<sup>8</sup> Agitha Putri Andany Hidayat and Anita Afriana . (2021). *Postponement of Ratification of Peace in Postponing Debt Payment Obligations by Judges is Linked to the Principle of Legal Certainty*. Padjajaran Legal Axis Journal, 3(1).

the can influence both provision in UUKPKPU .

### **Formulation of the problem**

1. How Application principle balance by Judges in deciding cases in Constitutional Court Decision No.23/PUU-XIX/2021?
2. How can the Constitutional Court Decision No.23/PUU-XIX/2021 be affecting Article 235 paragraph (1) and Article 293 paragraph (1) Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations?

### **Research purposes**

1. For know and describe How Application principle balance by The judge in deciding the case on Constitutional Court Decision No.23/PUU-XIX/2021.
2. For know and describe how the Constitutional Court Decision No.23/PUU-XIX/2021 can be affecting Article 235 paragraph (1) and Article 293 paragraph (1) Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

### **Research methods**

This research writing method uses a type of doctrinal research which is normative in nature or can also be called normative juridical legal research. Research using normative juridical is basically an activity that examines aspects to resolve problems that arise in internal positive law, which can be interpreted as a method that examines statutory regulations from the perspective of the hierarchy of statutory regulations.<sup>9</sup> The normative juridical approach can also be interpreted as an approach that

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<sup>9</sup>Peter Mahmud Marzuki , *Introduction to Legal Science*. Jakarta : Kencana. 2008. Pp. 23.

refers to applicable laws and regulations.<sup>10</sup>

#### **Discussion and Research Results**

##### **Application of the Principle of Balance by Judges in Deciding Cases in Constitutional Court Decision No.23/PUU-XIX/2021**

The Constitutional Court has a role in protecting the constitution in Indonesia through the exercise of its authority, namely as a *judicial review* or examination of a law against the 1945 Constitution. <sup>11</sup>The laws and regulations that are formed must be based on, in line with, and not conflict with the contents of the 1945 Constitution. This can be detrimental The constitutional rights of citizens contained in the 1945 Constitution, namely the right to life, the right to have a family and continue their offspring, the right to develop oneself, the right to obtain justice, the right to personal freedom, the right to security, the right to prosperity, the right to participate in government, the rights of women, and children's rights. The Constitution as an instrument in the state must include rules that can control and limit political power as well as protect human rights, therefore the Constitutional Court plays a role as a controller of law makers, namely the People's Representative Council and the Government in terms of fulfilling and

providing protection for the rights of citizens. Constitutional rights of citizens. <sup>12</sup>If a law or one of the provisions in a law is not in line with the constitution, a *judicial review mechanism can be carried out*, in which case the legal product will be cancelled. The authority of the Constitutional Court is regulated in Article 24C of the 1945 Constitution, which in paragraph (1) states that "*The Constitutional Court has the authority to adjudicate at the first and last level whose decisions are final to review laws against the Constitution, ...*". Apart from that, Article 10 paragraph (1) letter a of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, which reads: "*The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final for examine laws against the 1945 Constitution of the Republic of Indonesia*". In this case, human rights contained in the constitution must be protected and respected. In other words, the constitution guarantees the rights of citizens and the Constitutional Court is the guardian of these human rights.

The case application in Constitutional Court Decision No.23/PUU-XIX/2021 examines several provisions in the UUKPKPU against the 1945 Constitution. In this case, the applicant as debtor submitted a petition to the Constitutional Court to review Article 235 paragraph (1) and Article 293 paragraph ( 1 ) . \_ Court decisions based on the provisions in Chapter III are not open to legal action, unless otherwise provided in this Law ." These two provisions do not provide legal remedies for the debtor after the

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<sup>10</sup>Bambang Sunggono, *Legal Research Methodology*, Jakarta, PT Raja, 2003, Pg. 32.

<sup>11</sup>Adna Maurilla Maharani and Gayatri Dyah Suprobawati, "*Constitutional Court: Review of Authorities and Functions in a Democratic Legal State Based on the 1945 Constitution*", *Sovereignty: Journal of Democracy and National Resilience* | Volume 1, Number 4, Year 2022

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<sup>12</sup> *Ibid* .

creditor rejects the peace plan so that the debtor is immediately declared bankrupt by the Commercial Court. Therefore, the applicant in this case feels disadvantaged because the peace plan was supposed to be a solution, but this effort legitimized the applicant's bankruptcy. These provisions do not provide legal remedies for cassation and judicial review. Thus, in the applicant's petition the two regulations are proposed to carry out a review of Article 28D paragraph (1) of the 1945 Constitution which reads: "Everyone has the right to *recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law* ." As in this case, the applicant as debtor should be given the same rights to obtain justice and legal protection by the state in accordance with the state's duties as regulated in paragraph 4 of the Preamble to the 1945 Constitution, one of which is to protect the entire Indonesian nation and all of Indonesia's bloodshed.

According to Satjipto Raharjo, legal protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights provided by law. This shows that in the concept of legal protection according to Satjipto Rahardjo there is recognition of human rights. This concept of legal protection shows that there is a role for the government through the formation of laws to protect the interests of debtors which is also reflected in the values contained in the principles of social justice for all Indonesian people, based on and inspired by the principles of the Almighty God, just and civilized

humanity, Indonesian unity and democracy led by wisdom in deliberation/representation. The fifth principle contains values which are the goals of the state as a goal in living together. Therefore, the fifth principle contains the value of justice which is realized in shared life (social life).

Based on the provisions in the General Explanation of UUKPKPU, it shows that Law Number 37 of 2004 concerning Bankruptcy and PKPU adopts the principle of balance by stating the principle of justice which has the meaning of preventing arbitrariness from collectors who seek payment of their respective bills against debtors without taking into account other creditors. <sup>13</sup>On this basis, a judge must provide balanced protection not only for creditors but also for debtors, who in this case have been harmed by the rejection of the peace plan by creditors which should be a solution but this effort legitimizes the applicant's bankruptcy. These provisions do not provide legal remedies for cassation and judicial review as a manifestation of fulfilling the protection of human rights. UUKPKPU has adopted the principle of balance by stating the principle of "fair". In the General Explanation of the UUKPKPU, it is stated, among other things, " *The main points of improving the law on Bankruptcy include important aspects which are considered necessary to realize the resolution of debt and receivable problems quickly, fairly, openly and effectively.* "

A positive legal rule must reflect legal principles because legal principles are the foundation of the

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<sup>13</sup>Hartini, R. *Bankruptcy Law* . Malang: Muhammadiyah University of Malang Press; 2007.

legal system, the principle of balance can also minimize bad faith or abuse of bankruptcy institutions and institutions that will be carried out by both creditors and debtors themselves to prioritize their respective interests. Therefore, it is highly hoped that the Panel of Judges will apply the principle of balance in deciding a case and from the entire description above it shows that the principle of balance for both debtors and creditors is a realization of the principle of justice where, the principle of balance requires justice in the sense that everyone has equal position under the law (*equality before the law*) so that they are entitled to obtain the same rights. This is reinforced by the legal fact that UUKPKPU adopts the principle of balance by mentioning the principle of "fairness" in the General Explanation. The meaning of "fair" as explained in the General Explanation of UUKPKPU is that the interests of both creditors and debtors must be considered in a balanced manner.<sup>14</sup>

**Constitutional Court Decision No.23/PUU-XIX/2021 affects Law No.37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations**

The 1945 Constitution is a written constitution and is pragmatic because it directs the state that will be formed. If we look at the Preamble to the 1945 Constitution, it can be seen that Indonesia wants to form a state based on law. A democratic country without law would be dangerous. Indonesia is a democratic rule of law country and a democratic country based on law. This can be seen in

paragraph 4 of the Preamble to the 1945 Constitution, the first and main characteristic of a democratic state based on law, namely the supremacy of the constitution. What is meant by constitutional supremacy is that all state administration practices must not conflict with the Constitution. This is what prompted the birth of the Constitutional Court.

In the Law of the Republic of Indonesia Article 24C paragraph (1) of the 1945 Constitution and Article 10 of the Constitutional Court Law, where the Constitutional Court has the authority to review laws against the 1945 Constitution (*judicial review*). In principle, *judicial review* can only be carried out well, where the state adheres to the rule of law and not to those which adhere to the supremacy of parliament. In a country that adheres to a system of parliamentary supremacy, the resulting legal products cannot be challenged because parliament is a form of representation of people's sovereignty.<sup>15</sup>

As is known, the Constitutional Court is a judicial institution. This institution has power and authority, where the legislative institution makes legal products in the form of statutory regulations which later by the Constitutional Court legal products/laws that have been made by the legislative institution are subjected to judicial review where the content of the paragraph, article or section whether or not the law conflicts with the 1945 Constitution. As an institution that has a constitutional control

<sup>14</sup> Sjahdeini, SR. *Bankruptcy Law: Understanding Faillissements Verordening in conjunction with Law Number 4 of 1998*. Jakarta: PT. Graffiti Main Library; 2002.

<sup>15</sup>Nanang Sri Darmani, " *The Position and Authority of the Constitutional Court in the Indonesian Constitutional Law System*", *Journal of Legal Reform*, Vo. II, 2015, Pp. 259.

function, the Constitutional Court can control the validity of the law. The Constitutional Court can also repeal, nullify, abolish or annul laws if they conflict with the constitution. This revocation is a reflection of the authority of the Constitutional Court.

The Constitutional Court's authority to cancel norms in laws makes the Constitutional Court also known as a *negative legislator*, namely an institution that has the authority to remove or cancel norms in laws if they conflict with the 1945 Constitution. legislative institution or *positive legislator*. Therefore, if there is a Constitutional Court decision which states that a part, article or paragraph in a law is contrary to the 1945 Constitution, then that part, article or paragraph has no efficacy but remains valid/ written. A reflection of the role of the Constitutional Court as a *negative legislator* has also been stated in Article 57 paragraph (2a) of the Constitutional Court Law.

In the event that a *judicial review decision* is granted by the Constitutional Court, then the part, article or paragraph that is contrary to the 1945 Constitution still has validity until it is declared revoked by the authorized institution but does not have *efficacy*. Not being effective means that the article is no longer effective or cannot be used anymore. Therefore, conflicting articles can be ignored by basing them on the decision of the Constitutional Court. In line with this, Article 57 paragraph (1) of the Law Court The Constitution states that the decision of the Constitutional Court stated that the content of paragraphs, articles and/or parts of the law is contrary to the 1945 Constitution, so the content of paragraphs, articles and/or parts of

the law does not have binding legal force.

The position of the Constitutional Court is seen as the guardian of the constitution, where the Constitutional Court as an actor of judicial power is considered important for supervising the enforcement of the 1945 Constitution of the Republic of Indonesia. One of the decisions of the Constitutional Court which reflects its role as a negative legislator is Court Decision No. 23 /PUU-XIX/2021. In this decision, the applicant submitted a request for constitutional review of Article 235 paragraph (1), Article 293 paragraph (1).

The existence of the Constitutional Court Decision No.23/PUU-XIX/2021 began with the submission of a *judicial review* or what could also be called a legal review of the 1945 Constitution. This was because the debtor felt that he had been treated unfairly because the peace plan was rejected by the creditor who had previously given the debtor a chance. pay their debts by applying for PKPU. Thus, the aim of the PKPU submitted by the debtor to the creditor is to be able to pay his debts within a certain period of time, thereby losing the rights that the debtor should have.<sup>16</sup> There should be two functions of judicial review that the Constitutional Court has. First, testing laws to maintain the functioning of the democratic process in the mutually influencing relationship between legislative, executive and judicial institutions. In other words, he continued, the Constitutional Court's

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<sup>16</sup>Eva Puspita Sari, Evi Congress. 2023. ' Legal Certainty Regarding the PKPU Process After the Constitutional Court Decision Number 23/PUU-XIX/2021' , Magmus Opus Law Journal, Vol. 6. No. 1, 2023, Pg.

judicial review functions to maintain the checks and balances mechanism . Second, judicial review functions to protect the rights or private lives of citizens from violations by branches of state power. " Constitutional review " functions to protect the constitutional rights of citizens. Can concluded from the above situation so on Decision Court Constitution No.23/PUU-XIX/2021 article 286 letter d influences the decision Law (UU) Number 37 of 2004 concerning Bankruptcy And Delay Obligation Payment Debt on articles 235 paragraph (1) and 293 paragraph (1).

#### **Conclusion**

Application of the principle of balance in deciding cases in Constitutional Court Decision No.23/PUU-XIX/2021 Already Enough accomplished with accept test material applicant and states that Article 235 paragraph (1) and Article 293 paragraph (1) UUKPKPU do not aligned or contrary to the 1945 Constitution , therefore it does not have binding legal force . With so , debtor For this reason, cassation and judicial review can be submitted to the Supreme Court , p This can prevent abuse or mode of party creditors who do not have faith good .

Constitutional Court Decision No.23/PUU-XIX/2021 affects Law No.37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations , because if Court Constitution do testing to Constitution And there is provisions that conflict with the 1945 Constitution so Court Constitution has the authority to delete or cancel the norms in the law , so that the part, article or paragraph does not have efficacy but remains valid/written until declared revoked by that institution authorized .

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