

Juridic Analysis of the Application of Legal Principles Contradictive Simple Proof in Two Identical Cases, hte Application for PKPU between Applicant PT Gugus Rimbarta and Requested PT Budikencana Megahjaya

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Abstract

Whereas legal issues in the business/commerce world in Indonesia are increasingly complex the presence of the state is needed in facilitating the resolution of private conflicts in commerce. Whereas Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK PKPU) is an effort by the State Administrators to prepare legal instruments in resolving debt and debt problems in the world of commerce. UUK PKPU Number 37 of 2004 is a special civil law instrument, where the lawsuit filed is a Petition/Volunteer and does not recognize the principle of *Nebis In Idem* (so that the same case can be applied repeatedly) and the formal process also does not recognize replicas, duplicates, compensation, exceptions (except regarding the authority to adjudicate) and intervention, and the application must be decided within 20 calendar days from the date the application is registered, whether the application for Whereas Case Number 51 and Case Number 211 are identical (same), because the Parties (the Petitioner and the Respondent) are the same, and the object of the debts and the arguments are the same, but in Case Number 51 the petition is rejected, while the petition for Case Number 211 is petition accepted, by implementing a simple contradictory principle of proof law, so that it has created legal uncertainty and undermined public confidence in the Commercial Court system at the Central Jakarta District Court. Whereas in December 2021, the Decision of the Constitutional Court Number 23/PPU-XIX/2021 essentially stated that the Debtor was allowed to file an appeal if the Creditor was a PKPU Petitioner, and the offer of reconciliation from the Debtor was rejected, so that the Respondent's Debtor had the opportunity to make efforts law at the *Judex Juris* level, so that it gets the opportunity to examine the legal considerations of *judex fact*.

Keywords

formal requirements for application for bankruptcy/PKPU; contradictory simple evidence principle; article 8 UUK PKPU No.37 the Year 2004; constitutional court decision number 23/PPU-IX/2021; commercial court



I. Introduction

That in the context of realizing the ideals of a just and prosperous Indonesian society as mandated in the Preamble to the 1945 Constitution of the Republic of Indonesia, and based on Pancasila and the 1945 Constitution of the Republic of Indonesia, it must be supported by certainty, order, enforcement and protection of the law with the core of justice and the essential truth.

That along with developments in today's business world, legal problems in the business world are increasingly complex, both criminally and civilly. In business relations, there are agreements of a private law nature, especially those relating to transactions

agreed upon by the parties by way of payment on credit, thus creating the risk of disputes regarding debts and receivables in the future.

That the state must be present in solving private problems in this case debts, namely by facilitating the formation of a legal institution in solving problems in the field of commerce, and the state must continue to strive to make improvements to the legislation.

d. Whereas as one of the legal means for the settlement of debts and debts, the Law on Bankruptcy in Indonesia, starting with Faillissements-verordenen, Staablad 1905:217 juncto Staatsblaad 1906:348) most of its material is no longer in accordance with the development and legal needs of the community and therefore This has been amended by Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law, which was later stipulated as Law Number 4 of 1998, but these changes have not yet met the development and legal needs of the community.

The above quote is taken from the preamble to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as "Bankruptcy Law and PKPU"), which describes the historical development of the Bankruptcy Law in Indonesia. In an effort to improve legal institutions in the field of commerce, especially regarding legal certainty in the case of Bankruptcy and Postponement of Debt Payment Obligations, the Bankruptcy Law and PKPU were born which are still in effect.

Whereas in the application of the Bankruptcy Law and PKPU, it has its own uniqueness, because in the formal process, it does not recognize the principle of nebis in idem. Whereas according to Jurisprudence, the Decision of the Supreme Court of the Republic of Indonesia Number 144 K/Sip/1971, dated July 2, 1971 states:

"Against the different civil cases filed at different times even though the subject and object are the same, namely case one is a petition (declaratoir / Voluntair Jurisdiction), and the other case is a lawsuit (contentious jurisdiction) in that case there is no nebis in idem.

This jurisprudence explicitly means that only differences in demands are not nebis in idem, while the cases submitted are both petitions (declaratoir/volunteer) or both lawsuits (contentious jurisdiction), then the principle of Nebis in idem should be applied. . The principle of nebis in idem, if applied, can prevent judges from making decisions that are inconsistent or contrary to previous decisions, or avoid the application of the same legal principle from the point of view of the previous panel of judges, with the later panel of judges.

Whereas even though the Bankruptcy Law and PKPU do not regulate or recognize the principle of Nebis In Idem, but because the claim is in the form of a petition (declaratoir/ Voluntair Jurisdiction), and not a claim in the form of a lawsuit (Contentiosa), the principle of nebis in idem does not apply. Therefore, it is possible to make repeated requests against one object of the case, both the Respondent, and the object of the same dispute (identical). However, if the parties are the same and the object of the case is the same, and there is no novum, then even though it is applied repeatedly, the result of the Panel of Judges' decision should still be the same as the first decision (decision on the previous petition), although with a different panel of judges. Therefore, to prevent contradictory judge decisions, overlapping and contradictory so that it has the potential to cause legal uncertainty, the Supreme Court of the Republic of Indonesia has issued a Supreme Court Circular Letter Number: 03 of 2002 concerning the handling of cases

relating to the principle of nebis in idem. In the circular letter, one of the dictums reads as follows:

- a. *The Panel of Judges is obliged to consider, both in the exception decision and in the main case, regarding similar cases that have been decided in the past.*

In the Supreme Court Circular, the essence is not on the principle of nebis in idem, but rather on prevention so that there are no conflicting judges' decisions on an identical case (the same parties and objects, without a novum), because it will create a state of uncertainty. law, which will result in a conflict caused by the judiciary, whose main task is to resolve conflicts/disputes.

The fear of a situation where there is a contradictory judge's decision on an identical case finally occurred in Decision Number: 211/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst (hereinafter referred to as "Case Number 211") which contradicts Decision Number: 51/PDT.SUS./PKPU/2013/PN.Niaga.JKT.PST (hereinafter referred to as "Case Number 51") between PT GUGUS RIMBATA (hereinafter referred to as "PKPU Applicant") and PT BUDI KENCANA MEGAH JAYA (for hereinafter referred to as "PKPU Respondent"). Whereas with respect to the two decisions, the parties and the object of the case, as well as the arguments submitted are identical (same), but the decisions against the two can be different, where in Case Number 51, the Panel of Judges rejected the application submitted by the PKPU Petitioner, but in Case No. Number 211 The Panel of Judges granted the request from the PKPU Petitioner.

If the Panel of Judges pays attention to the Circular Letter of the Supreme Court Number: 03 of 2002 and considers the Decision on Case Number 51, then the Decision of the Panel of Judges should state that the Petitioner's Application cannot be accepted. The following are the considerations of the Panel of Judges in Case Number 51:

Considering, whereas according to the above considerations, according to the Panel of Judges, there are unfinished work and debts that are due and collectible, it is also unclear when it is said to be due and the amount of the money so that it is not simple and requires separate proof. Therefore, the Petitioner's Application must be rejected.

The Panel of Judges in Case Number 211 gave the following considerations:

Considering, whereas the Panel of Judges has stated that the PKPU application is proven to be simple and has fulfilled the requirements, the objections raised by the Respondent have no legal basis and are set aside, as well as other evidence does not need to be considered again.

The Panel of Judges in Case Number 51 and the Panel of Judges in Case Number 211 both use a simple principle, but differ in their considerations. The Panel of Judges in Case Number 51 states that the situation is not simple, while the Panel of Judges in Case Number 211 states a simple situation by assuming that the objections raised considered by the Respondent to have no legal basis and was ruled out, as well as other evidence not considered by the judge, including the previous decisions of the Panel of Judges, including Decision on Case Number 51 even though in fact the evidence stated that the Respondent had argued to deny the existence of Debt, due to work the agreement has not been resolved, as stated in the legal considerations in Case Number 51. Article 8 paragraph (4) of the Bankruptcy Law and PKPU states:

(4) The application for a declaration of bankruptcy must be granted if there are facts or circumstances that are proven SIMPLE that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled.

With the argument of the Respondent's denial, that the work has not been completed and the debt due is not clear when and how much the debt is, then the element of "simply proven" should not be fulfilled, so that the formal requirements for granting the PKPU Application should not be fulfilled.

Legal considerations to reject or grant a PKPU application are regulated in the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: 3/KMA/SK/I/2020 concerning the Enforcement of the Bankruptcy Case Settlement Manual and PKPU point 5.2.2. and point 5.2.4. letter b) reads:

II. Research Method

In discussing the problems as described in Chapter I Introduction, the research steps are carried out using the type of empirical juridical research which is legal research regarding the implementation of legal principles in a particular legal event that occurs. In this case, the object of the author's research is the application of a simple, contradictory principle of evidentiary law to the decisions of the Panel of Judges dealing with identical (same) cases as detailed in Chapter II point B. Research object.

Empirical legal research, in English, is called empirical legal research, in Dutch it is called empiric juridisch onderzoek. is a type of legal research that analyzes and examines the workings of law in society.

Empirical legal research examines laws that are conceptualized as actual behavior, as unwritten social phenomena that are experienced by everyone in social life. Therefore, empirical legal research is also called sociological legal research. The terms of empirical legal research include; 1. empirical legal research, 2. sociological legal research (empirical), 3. socio legal research (socio legal research). Empirical legal research is one type of legal research that analyzes and examines the workings of law in society.

III. Result and Discussion

3.1 Analysis of Decision on Case Number 211 compared to Decision on Case Number 51 and other related decisions.

That on August 19, 2020 the Panel of Judges of the Commercial Court at the Central Jakarta District Court has granted the PKPU application filed by the Petitioner (PT Gugus Rimbarta and CV Teguh Persada) against the Respondent (PT BudiKencana MegahJaya), with a Decision on Case Number 211 which contradicts the Decisions- The verdict is as follows:

- a. Judex Facti Decision Number 51
- b. Decision on Case Number 640
- c. Judex Facti Decision on Case Number 06
- d. Judex Facti Decision on Case Number 45
- e. Judex Facti Decision on Case Number 162

Whereas in the Decisions mentioned above, the cases are identical, namely the Parties, Legal Relations, and Problems (Main Case), and the demands are the same, but the Decision on Case Number 211 contradicts the five other decisions above. That all the legal

facts are still fixed and have not changed since the first PKPU application was filed in 2013 (Judgment Number 51) until now, among others:

1. That the work of PT Gugus Rimbarta for Work Order No. 358 stopped at 72.7299% progress since December 28, 2008 until now. (no work completion).
2. Payments made by PT BudiKencana MegahJaya from 2007 to February 28, 2013 and have been recognized as received by PT Gugus Rimbarta amounted to Rp36,517,062,498.00 (Thirty six billion five hundred seventeen million sixty two thousand four hundred nine twenty eight rupiah)

That this case has been examined and tested 4 times at the Judex Factie level and 1 time at the Judex Jure level, where in this review all decisions rejected the petitions of the Petitioners (PT Gugus Rimbarta and CV Teguh Persada). The following are the considerations of the Panel of Judges examining previous applications that contradict the deliberations of the Court of Judges in Case Decision Number 211:

Decision on Case Number 51

In essence, the Judges' Decision stated as follows:

... Considering, whereas according to the above considerations, according to the Panel of Judges, some work has not been completed and debts that are due and collectible are also unclear when it is said to be due and the amount of the money so that it is not simple and requires separate proof. The applicant must be rejected...

JUDGE:

- *Rejecting the Application for Suspension of Debt Payment Obligations submitted by the Petitioner.*
- *Sentencing the Petitioner to pay court fees of Rp.316,000 (Three hundred and sixteen thousand rupiah)*

Decision of the Supreme Court of the Republic of Indonesia Case Number 640

In essence, the Supreme Court Decision states as follows:

...Considering, that based on the considerations above, it turns out that the Decision of the Commercial Court at the Central Jakarta District Court Number 51/PDT.SUS/PKPU/2013/PN. Niaga JKT.PST dated September 16, 2013 in this case does not conflict with the law and/or legislation so that the appeal filed by the Cassation Petitioner PT. GUGUS RIMBARTA, this must be rejected...

JUDGE:

- *Reject the appeal from the Cassation Petitioner PT GUGUS RIBARTA.*
- *Sentencing the Cassation Petitioner/PKPU Petitioner (Creditor) to pay court fees at the cassation level set at Rp. 5,000,000.00 (five million rupiah)*

Decision on Case Number 06

In essence, the Judges' Decision stated as follows:

...Considering, whereas therefore the condition for the existence of "Debt" in the a quo case is not proven, therefore the Petitioner's application must be rejected.

Decision on Case Number 45

In essence, the Judges' Decision stated as follows:

... Considering, whereas therefore the existence of the Respondent's debt to the Petitioner in this application is not proven, therefore the Petitioner's application must be rejected.

Decision on Case Number 162

In essence, the Judges' Decision stated as follows:

... Considering based on the foregoing matters, the Panel of Judges is of the opinion that the Petitioners' argument which states that the Respondent has debts, is not sufficient evidence and thus the requirements of Article 2 paragraph 1 of Law No.37 of 2004 are not fulfilled and therefore the petition the applicant must be rejected.

Decision on Case Number 211

In essence it states:

...Accepts the Application for Suspension of Temporary Debt Payment Obligations of the PKPU Applicant for 44 (forty four) days from the date of promulgation

The considerations for the Panel of Judges in granting the Petition for Case Number 211 are as follows:

1. Page 70 the first paragraph of the Decision on Case Number 211 reads:

...Considering, whereas in the response of the PKPU Respondent to the existence of the Management, the Assembly is of the opinion that the PKPU Respondent has automatically acknowledged its debt to the said PKPU I Petitioner;

The author is of the opinion that the narration of the Panel of Judges' considerations is very assumptive, and has no legal basis, and is not based on the logic of a causal relationship, between submitting the Management and acknowledging the existence of Debt. Submitting the Management is only a formal narrative from the Respondent and is not an acknowledgment of the existence of Debt. The Management's submission in the Respondent's response is only a formal narrative which intends not to precede the decision of the Panel of Judges, and has nothing to do with the acknowledgment of the existence of Debt. The assumptive consideration of the Panel of Judges (the Panel of Judges assumes) is repeated in the next consideration, on the same page, the last paragraph and continued on page 71 which states:

Considering, whereas to the warning of the PKPU II Petitioner, the PKPU Respondent until this application was submitted to the Commercial Court at the Central Jakarta District Court there was no answer and settlement and in his response the PKPU Respondent submitted the Management, the Panel of Judges was of the opinion that the PKPU II Respondent had a debt to the PKPU II Petitioner. The debt has matured and is collectible.

2. Page 70 of the second paragraph of the Decision on Case Number 211 reads:

Considering, whereas based on the description of the considerations above, the Panel of Judges is of the opinion that the PKPU Respondent has a debt to the PKPU I Petitioner in the amount of Rp.74,671,798,412. (Seventy-four billion six hundred seventy-one million

seven hundred ninety-eight thousand four hundred and twelve rupiahs) the debt has matured and can be collected.

The author is of the opinion that the consideration of the Panel of Judges is premature and presumptive, because the Panel of Judges has drawn a conclusion regarding the existence of the Respondent's Debt which has matured and can be collected, even though the Panel of Judges has not considered the arguments, and the evidence of the Respondent's objection stating that it rejects all the arguments of Petitioner I and Petitioner II which state the existence of Debt. To confirm the rejection of the existence of Debt, the Respondent has submitted evidence to strengthen the arguments against it, and among these evidences there are deeds of previous decisions, but the Panel of Judges did not consider them and even ruled them out.

3. Page 71 2nd, 3rd, and 4th paragraphs of Decision on Case Number 211 reads:

Considering, whereas based on the considerations above, the PKPU Respondent has debts to the PKPU Applicants as referred to in the above considerations, however, the concrete amount at the time of the PKPU verification meeting and the debts has been acknowledged by the PKPU Respondent and has matured and can be billed;

Considering, whereas therefore the PKPU application is proven to be simple and the PKPU Respondent fulfills the requirements to be applied for PKPU because it has two or more creditors that are past due and can be collected as referred to in Article 2 paragraph (1) jo. Article 8 paragraph (4) of Law number 37 of 2004;

Regarding the consideration of the Panel of Judges, the author is of the opinion that, when the Panel of Judges declares that there is a debt, it is also implied that the Panel of Judges themselves are actually not sure about how much the debt is, because the concrete amount can only be known at the time of PKPU verification, so the legal principle of proof is simple. about the existence of debt, is not fulfilled. The Panel of Judges should be sure of how much the debt exists if it can be proven simply.

Therefore, the simple application/implementation of the legal principle of proof is contradictory to the Decision on Case Number 211 which in the consideration of the Panel of Judges essentially states as follows:

Considering, whereas according to the above considerations, according to the Panel of Judges, there are unfinished work and debts that are due and collectible, it is also unclear when it is said to be due and the amount of the money so that it is not simple and requires separate proof. Therefore, the Petitioner's Application must be rejected.

The author is of the opinion that if the Panel of Judges is not sure about the concrete amount of the debt, it must state that the application is rejected because the proof of the existence of a debt is not simple, and does not meet the formal provisions as regulated in Article 2 paragraph (1) jo. Article 8 paragraph (4) of the Bankruptcy Law and PKPU

Considering, whereas the Panel of Judges has stated that the PKPU application is proven to be simple and has fulfilled the requirements, the objections raised by the Respondent have no legal basis and are set aside, as well as other evidence does not need to be considered again.

Regarding the considerations of the Panel of Judges above, the author is of the opinion that the Panel of Judges has made a mistake, and made a real mistake because it has made unbalanced considerations, thus violating the Code of Ethics for Judges' Behavior because it clearly and clearly does not act professionally because it has ruled out evidence where Among the Respondent's evidence, there are deeds of previous decisions which should be used as sources of law (jurisprudence) in providing legal considerations regarding the a quo case because they are identical. In addition, the evidence must be used as a source by the judge in finding the law and the truth.

3.2 Inconsistent implementation of the principle of simple proof has the potential to create a situation of legal uncertainty.

As a result of not applying the *nebis in idem* principle in the application of the Bankruptcy Law and PKPU, it is possible for a PKPU application to be submitted repeatedly by the same Petitioner against the same Respondent and the Object of the Case. However, as long as the decision of the Panel of Judges is not contradictory, of course it will not cause problems. Contradiction of a decision in an identical case has the potential to cause legal uncertainty, and can undermine public trust in justice seekers. Therefore, as far as possible the judicial system pays attention so that there is no bad precedent for judges' decisions that have legal implications, which have the potential to cause chaos.

Proof is a requirement stipulated in Article 8 paragraph (4) of the UUK and PKPU "Application for a declaration of bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled". Explicitly the provision only mentions "application for bankruptcy declaration", but in practice this is also applied in the PKPU application trial process.

If we try to compare it with the evidentiary system in civil procedural law in general, it is the party who submits the PKPU application that must provide proof. Article 1865 of the Civil Code "Everyone who claims to have a right, or designates an event to confirm his right or to refute a right of another person, is obliged to prove the existence of that right or the event that is stated". Article 163 HIR "Anyone who claims to have a right or proposes an act or event to confirm his right, or to dispute the rights of another person must prove the existence of that right or the existence of such an act or event". That is, the PKPU Applicant must really be able to prove that 2 PKPU conditions have been fulfilled, so that automatically, on the contrary,

The implementation of the legal principle of proof is simply contradictory, because the previous decision deeds that have been used as evidence by the Respondent in refuting the Petitioners' arguments are not seen as valuable sources of law (jurisprudence) or that must be respected, so that there are no inconsistencies in the law. the application of legal principles, because this will become a double standard in the application of law, and this will undermine public confidence in the judicial system in Indonesia.

3.3 The Bankruptcy Law and PKPU have the potential to eliminate the Constitutional Rights of the Respondent.

Whereas the Bankruptcy Law and Article 235 of the PKPU are not possible to take legal action against the judge's decision, so that the PKPU Respondent has closed the opportunity to prove at the *Judex Jure* level to the Cassation Level regarding the Judge's Decision, even though the judge's decision is very clear and clearly contradicts legal principles, legal rules and legal norms that apply in the community so that if there is a judge's error and a real error in the judge's decision, it cannot be tested at the *Judex Jure* level.

That this contradictory Judge's Decision may occur because it is facilitated by the formal provisions contained in the Bankruptcy Law and PKPU, namely in Article 235 which eliminates constitutional rights, namely the right to take other legal remedies, as well as to take legal remedies for Requests for Judicial Review as regulated in Article 296 The Bankruptcy Law and PKPU are only limited in time for 180 days after the date of the Decision.

Quoted from the book Dr. Drs. H. Misbahul Huda, SH, MH in his book Comparison of Legal Systems, Scholar, 2020 p. 17:

That there has been a crisis in the legal field, due to the legal substance, legal structure, and legal culture which often creates uncertainty, overlapping, and inconsistency of regulations. In addition, due to the lack of independence of legal institutions, especially law enforcement agencies and the degradation of legal culture in society.

3.4 Efforts to Improve the Formal Process for the Settlement of Bankruptcy Cases and PKPU in Indonesia.

In 2013 the first time the PKPU Petitioner submitted his application based on Case Number 51 by filing 4 claims based on the Work Order, but in the facts of the trial there were 3 (three) Work Orders that had been completed and proved by the Handover Certificate, but it can be proven by the Respondent that the Work Orders have all been paid in full so that there is no evidence of any debt. However, there is 1 (one) Work Order Number 358 for which there is no Work Handover Report because the work has only reached 72.7299% progress so that the Panel of Judges at that time was of the opinion that because the work had not been completed, it was not clear when the debt was due and how much. the amount of the debt is not clear, so the application is rejected.

Then, in 2018, the PKPU Petitioner filed an application arguing that one of the Work Orders had not been paid, even though it was a fact of the trial in 2013 that the claim could be proven by the Respondent that it had been paid in full. Case applications in 2018 are Case Number 06, Case Number 45, and Case Number 162. Whereas the applications submitted throughout 2018 are based on the same petition and arguments, but because the principle of *nebis in idem* is not known in the Bankruptcy Law and PKPU , then this can be requested over and over again.

Until 2020, the PKPU Petitioners again submitted an application by submitting the same billing basis as in 2013 namely submitting a bill for 4 (four) Work Orders, and in this Application, the Application submitted by the PKPU Petitioner was granted and the PKPU Respondent was declared in a state of Temporary PKPU.

At the time of the decision on Case No. 211, the Constitutional Court Decision No. 23/PPU-XIX/2021 was issued which essentially stated that the Debtor was allowed to file a cassation if the Creditor was the Applicant for PKPU, and the offer of reconciliation from the Debtor was rejected. Therefore, the Debtor of PT Budi Kencana Megah Jaya or the Respondent of PKPU can file an appeal and show evidence that there is no debt because if it is bankrupted in the *Judex Factie*, then there is still a chance to prove that the PKPU process has violated legal principles and rules. in force, there are even clear and clear indications of fraud in the submission of evidence from the PKPU Applicant.

However, with the Decree of the Constitutional Court Number 23/PPU-XIX/2021, which was only issued in December 2021, then in the future there will be no more debtors trapped in this unfair PKPU process. In the event of the PKPU formal process in Case Number 211, there are several legal events that need to be examined at the *Judex Jure* level, including:

1. Regarding the consideration of the Panel of Judges which granted the petition of the applicant which was contrary to the principle of simple evidence and previous Decisions;
2. Regarding the attitude of the Panel of Judges which set aside the arguments and evidence presented by the Respondent;

The author is of the opinion that there are efforts from the Stakeholders and Policy Stakeholders, both from the activist community in the world of Indonesian bankruptcy, the association of Curators and Administrators in Indonesia and also from the Supreme Court, Constitutional Court, and Executive and Legislative Institutions to continue to carry out improvement of judicial institutions and regulatory instruments with the following concrete efforts:

1. The Decree of the Chief Justice of the Supreme Court Number: 3/KMA/SK/I/2020 concerning the Enforcement of the Bankruptcy Case Settlement Manual and Suspension of Debt Payment Obligations has been issued;
2. There is a Constitutional Court Decision Number 23/PPU-XIX/2021, which was only issued in December 2021, which essentially states that in the event that the PKPU Applicant is a Creditor and the offer of reconciliation from the Debtor is rejected, the Debtor can take legal action against him.

IV. Conclusion

From this discussion, the author concludes that there has been a simple implementation of the contradictory principle of the law of proof in the decision on Case Number 211 compared to the decision on Case Number 51, and the judge gave unbalanced legal considerations, even overriding previous decisions in identical cases (same case.), so that it has created legal anomalies, double standards, contradicting each other so that it undermines public confidence in the legal institutions where justice is sought. In his consideration the judge deciding Case Number 211 stated on page 71 the fourth paragraph reads:

Considering, whereas the Panel of Judges has stated that the PKPU application is proven to be simple and has fulfilled the requirements, the objections raised by the respondent have no legal basis and are set aside, as well as other evidence does not need to be considered again.;

Proof is a requirement stipulated in Article 8 paragraph (4) of the UUK and PKPU "Application for a declaration of bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled". Explicitly the provision only mentions "application for bankruptcy declaration", but in practice this is also applied in the PKPU application trial process.

If we try to compare it with the evidentiary system in civil procedural law in general, it is the party who submits the PKPU application that must provide proof. Article 1865 of the Civil Code "Everyone who claims to have a right, or designates an event to confirm his right or to refute a right of another person, is obliged to prove the existence of that right or the event that is stated". Article 163 HIR "Anyone who claims to have a right or proposes an act or event to confirm his right, or to dispute the rights of another person must prove the existence of that right or the existence of such an act or event". That is, the PKPU Applicant must really be able to prove that 2 PKPU conditions have been fulfilled, so that automatically, on the contrary,

That this consideration has injured the sense of justice for justice fighters, because the arguments of the PKPU Respondent's objections and evidence are not considered equally and fairly with the arguments and evidence of the PKPU Petitioners, so it is very clear and clear that there is an indication that the Panel of Judges sided with PKPU Applicant. The Panel of Judges for Deciding on Case Number 211, should be suspected of

having made a clear mistake and error in deciding Case Number 211 and deliberately not taking into account the previous Decisions, even though the case submitted by the Petitioner had identical (same) arguments in their entirety. the parties, the object of the dispute, and the circumstances of the case.

Whereas with the issuance of the Decision of the Constitutional Court Number 23/PPU-XIX/2021, there has been an opportunity for legal remedies to test the Decision of the Panel of Judges, namely through the Legal Effort of Cassation, as long as the PKPU Application is submitted by the Creditor and the offer of reconciliation from the Debtor is rejected.

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