

**THE FUNDAMENTAL POSITION OF LEX POSTERIOR DEROGAT LEGI
PRIORI IN THE CONFLICT OF NORMS AGAINST THE RIGHTS OF
HOLDERS OF THE RIGHT TO JUSTICE**

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ABSTRACT

Keywords: Fundamentals; Liability; Principles Lex Posterior Derogat Legi Priori.	The principle as a fundamental rule is the background of the legal system, starting from the formulation and formation of laws and regulations to the enforcement of the rules in question. Legal principles are a very important element in forming laws and regulations. Violation of norms shows a tendency to violate principles, and eliminating norms will impact the propensity to destroy principles. The methods used are the conceptual approach and the statute approach. The data sources used are secondary data that researchers can obtain from literature studies in the form of books, records, newspapers, journals, and other documents that can be used in this study. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Research results: (1) The position of the lex posterior derogat legi priori principle cannot be placed as a basis for overcoming the conflict of norms between UUK-PKPU and UUHT. (2) Resolution of norm conflicts between UUK-PKPU and UUHT can be made through a harmonization approach of the two laws through the legislative process in the DPR. The bankruptcy process shows a conflict between UUK-PKPU and UUHT because the holder of the dependent right should still be authorized to exercise all his rights even though the grantor of the dependent right is declared bankrupt by Article 21 of the Law. In contrast, Article 56 paragraph (1) suspends the rights of creditors of the holder of the 'dependent right.' To overcome the conflict of norms, it should be understood that the principle of lex posterior derogat legi priori means that the new norms/rules of law perfect the enforceability of the old norms/rules of law in the same legal regime.
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Introduction

As a state of the law as mandated in Article 1 paragraph (3) of the 1945 NRI Constitution, the Unitary State of the Republic of Indonesia (NKRI) runs based on the 1945 NRI Constitution as its constitution and Pancasila as the basis of state philosophy which is the source of all sources of law, which makes it the basis for the application of all rules and regulations in which norms must always be contained and in line (Febriansyah, 2016). The standards outlined in the legislation become a benchmark that underlies the association of fellow humans in society and association with the surrounding environment where these norms are formed based on principles/principles that must be fundamentally acceptable to all levels of society and can be applied in every life of society and the wheels of legitimate government (matul Huda & Heryansyah, 2019).

Principles as fundamental rules are the basic ideas that become the background of the legal system, starting from the formulation of norms and the formation of laws and regulations to the enforcement of the rules and regulations in question (Sinaga, 2020). Legal principles are at the heart of legal restrictions, so legal regulations can be returned to these principles because they are the broadest basis for the birth of the rule of law. Therefore, legal principles are crucial in forming laws and regulations. That every rule of law will always rest on legal principles (Ridwan Tentowi, Sumadikara, & Panggabean, 2016).

As the expression conveyed by (Zamroni, 2022), one of the philosophers of the Renaissance, the consideration of morality is not the basis as a benchmark for behavior because moral considerations will weaken humans. Still, considering justice will produce acts of rationality (Sinurat et al., 2023). Therefore, fair action will help avoid conflicts that may arise in the future. The development of thought in the Renaissance period continues to the present, where law is an idea or idea that can be called norm-prescriptive. Also, the nature of law is a real reality called nomos-descriptive. Since the 19th century, legal theory has agreed that legal norms are coercive norms (norms that provide coercion), and thus, legal norms are distinguished from other norms. Therefore, the formation of laws is a form of incarnation of the will or will of the people (Kristian & Tanuwijaya, 2017).

The court is a law enforcement institution for justice seekers, where the expected justice must be based not only on the application of normative law but also must pay attention to the needs of the community as a party seeking justice, and more broadly, the judiciary has an important role in the implementation of the concept of the rule of law (Mulyani, 2017). As officials authorized to perform the duties of judicial power in applying the law, the judges are not only law enforcement but also consider justice for law seekers. In this case, bankruptcy disputes that must be resolved through trial in commercial courts with the application of Law Number 37 of 2004 concerning Bankruptcy and PKPU (from now on referred to as UUK-PKPU), including but not limited to the determination of general confiscation of all debtor assets faced with the legal position of fixed property based on Law Number 4 of 1996 concerning Dependent Rights (from now on referred to as UUHT). Insolvency is all matters concerning public confiscation (Andriyanti, 2020).

In bankruptcy proceedings, based on the UUK-PKPU, articles 1 paragraph (1) and 56 paragraph (1) indicate a conflict with the UUHT in article 20 paragraph (1) letter a where the conflict arises because the holder of the dependent rights is still authorized to exercise all his rights even though the grantor of the dependent rights is declared bankrupt by article 21 of the Law (Achir, 2020).

However, with the possibility that based on the principle of *lex posterior derogate legi priori*, the commercial court handed down a bankruptcy decision by applying Article 56 paragraph (1) of the UUK-PKPU, this is by the results of research by several choices of Commercial Court judges, that all bankruptcy cases are examined and decided based on the UUK-PKPU and do not at all offend the provisions of Article 21 of the UUHT.

With a bankruptcy declaration, all legal consequences against creditors and debtors must be subject to bankruptcy law (Wijaya, 2018).

By looking at the impression of the application of the principle of lex posterior derogat legi priori by commercial courts in terms of the context of application to the suspension of rights holders if the debtor is in bankruptcy, the application of the law tends to the legal school of positivism which is a classic school proposed by Montesquieu. The judge is only a mouthpiece or mouthpiece of the law, so it cannot change the legal force of the law and cannot add or subtract it. The application of law, if it is related to the sociological life of society, that aspects of legal certainty, justice, and expediency must be applied together without anyone being defeated.

Research Methods

The type of research used in this study is juridical-normative, which focuses on examining legal problems in formulating issues. This research is a scientific research procedure carried out to find the truth based on legal, scientific logic from its normative side. The function of research is to obtain truth from an epistemological perspective with several points of view regarding truth. The approach used in this study is conceptual because this research discusses the concepts of value that develop in society, which is currently a legal problem. This research uses conceptual and statutory approaches (statute approaches). After the data used in this study is collected, the data will be processed using qualitative data analysis methods. These data analysis methods try to describe the actual situation through secondary data.

Results and Discussion

Analysis of the Basic Position of Lex Posteriori Derogat Legi Priori in the Conflict of Norms Against the Rights of Holders of Dependent Rights to Justice in UUK-PKPU with UUHT

Bankruptcy is laying a general confiscation of all debtor assets, which aims to provide a collective forum by sorting out creditors' rights to debtor assets that are not worth enough. Where there are 90 (ninety) days, the execution rights of creditors holding dependent rights are suspended from the date the statement of bankruptcy judgment is pronounced by the mandate outlined in Article 56 paragraph (1) of the UUK-PKPU. During the 90 (ninety) day suspension period, the receivership may use the bankrupt's assets, including those that have been installed as liability, in the context of the debtor's business continuity by providing reasonable protection for the interests of creditors holding the dependent rights, as mandated in Article 56 paragraph (3) of the UUK-PKPU.

Table 1
Case Position in Article 56 paragraph (1) of UUK-PKPU

UUK-PKPU	Analysis
CHAPTER II: BANKRUPTCY Part Two: Effects of Bankruptcy	
Article 56 paragraph (1):	

<p><u>The right of execution of the Creditor</u>, as referred to in Article 55 paragraph (1), and the right of a third party to claim their property, which is in the control of the Insolvent Debtor or Curator, <u>are suspended for a maximum period of 90 (ninety) days</u> from the date the bankruptcy declaration decision is pronounced.</p>	<p>The right of execution of creditors Suspended...</p> <ul style="list-style-type: none">• <u>Creditor execution rights</u> : Refers to the right possessed by creditors to execute debtor assets as collateral for debts or loans that have not been repaid. The right of execution of creditors and the rights of third parties to property held by the insolvent debtor can generally be seen as preferred creditors who can execute dependents for debt repayment.• <u>Suspended for a maximum period of 90 (ninety) days</u> Refers to the suspension of the right of execution of creditors of the holder of the dependent right. Peace between debtors and creditors is expected within 90 (ninety) days. This delay is aimed at increasing the chances of achieving peace and optimizing bankruptcy assets or receivers carrying out duties decisively. The goal is that all assets of debtors who, before bankruptcy, have been charged with dependent rights are bankrupt assets (<i>boedel</i>) when the debtor is declared bankrupt. According to Fred B. G. Tumbuan, the purpose of holding a deferral institution to implement separatist creditor rights is to allow the receivership to manage the bankruptcy budget more regularly to benefit all parties involved in bankruptcy.
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When there is a laying of general confiscation, as a result of bankruptcy, of all debtor assets in which the execution rights of creditors of the dependent rights holder are suspended for 90 (ninety) days, it is a process by the regulations in the UUK-PKPU. The purpose of deferring creditors' execution rights during this specified period is to allow the receivership to manage bankruptcy assets more efficiently and ensure that all creditors receive fair treatment.

During the suspension period, lawsuits made to obtain repayment of a receivable are not allowed to be filed in a judicial hearing, and neither creditors nor third parties are prohibited from executing or applying for confiscation of collateral objects.

After the laying of the general confiscation and during the period of suspension of the rights of creditors of the holders of dependent rights, creditors of the holders of dependent rights can apply to the receivership to lift the suspension or change the

conditions of suspension, as mandated in Article 57 paragraph (2) of the UUK-PKPU. If the curator rejects the application, the creditor of the dependent rights holder can submit the same application to the Supervisory Judge, as mandated in Article 57 paragraph (3) of the UUK-PKPU. In addition to being able to grant the application for suspension, the Supervisory Judge, based on his discretion, can also reject the application, as stipulated in Article 58 paragraph (2) of the UUK-PKPU.

Analysis of the Basic Position of Lex Posterior Derogat Legi Priori When Applied in Resolving Conflict of Norms Between UUK-PKPU and UUHT.

The legal principle "lex posterior derogat legi priori" explains that the newer law will override or replace the older law if there is a conflict between the two so that the old law is not enforced. Applying this principle in practice can depend on various factors, including how the law details the relevant rules, whether there are exemption provisions in newer statutes, and how the courts interpret the law in a particular context. The "lex posterior derogat legi priori" principle can be a guideline. At the same time, the court will also consider the legislator's intentions, the specific provisions in the law, and the specific context of a case.

The position of the lex posterior derogat legi priori principle in the hierarchy of legal principles is included in the category of general legal principles. According to Gert-Frederik and Sudikni Mertokusumo, the lex posterior derogate legi priori principle is classified into general legal principles, which means that the principle applies to all law areas, not certain issues (Sahlan, 2016). This principle generally refers to the principle that newer laws override older laws in 1 (one) hierarchy. This is one of the basic principles in law widely accepted in various legal systems worldwide. This principle applies generally in law, but its implementation may vary depending on the specific legal context and the provisions governing it. In the Indonesian context, the lex posterior derogat legi priori principle is generally recognized and used in handling norm conflicts between laws that apply at the same level or hierarchy. Hartono Hadisaputro further explained that the lex posteriori derogat legi priori principle means that the new law changes or eliminates the old law regulating the same material.

Understanding and exploring the principle of lex posterior derogat legi priori philosophically and the moral, ethical, and conceptual implications of its application in the context of Indonesian law can be contemplated. It can help to understand more deeply the role of this principle in the formation of laws and in influencing dependent rights holders in cases of norm conflicts. For example, if a bank provided credit in the past with fixed asset guarantees (land and buildings) that have been attached with liability, say ten years ago, to debtors in the form of limited companies for business development, and during those ten years, the debtor's business activities developed which were supported by funding obtained from creditors, but in the last 1 or 2 years. Shareholders who also act as directors experience events that are not predicted early, for example experiencing fraud that depletes the company's cash flow which results in the company no longer being able to pay its obligations (cash flow shortage). If you look at the case, and if the company is bankrupted due to mistakes in the last 1 or 2 years, it will be felt that the holders of

dependent rights who used to help the development of the company feel aggrieved because of the suspension of execution rights mandated by the Law.

The purpose of this principle of *lex posterior derogat legi priori* is to prevent legal uncertainty that may arise when there are two equal rules based on hierarchy. Didik Wijayanto Wijaya, quoted by Wendi, said that the basic understanding of *lex posterior derogat legi priori* is that the new law perfects the old law, proving that the new law does not override the old law. In analyzing the conflict of norms between UUK-PKPU and UUHT, applying the *lex posterior derogat legi priori* principle becomes irrelevant in some contexts of norm conflicts between UUK-PKPU and UUHT.

In analyzing this conflict of norms, it is necessary to consider the context of the concrete case to be discussed.

Table 2
Comparison of Some Norms in UUK-PKPU with UUHT

UUK-PKPU	UUHT
Date Promulgated	
October 18, 2004	09 April 1996
CHAPTER II: BANKRUPTCY Part Two: Effects of Bankruptcy	CHAPTER II: OBJECT OF LIABILITY
Article 55 paragraph (1): With due regard to the provisions referred to in Article 56, Article 57, and Article 58, any Creditor holding a lien, fiduciary guarantee, lien, mortgage, or other property collateral right <u>may execute his rights as if bankruptcy had not occurred.</u>	Article 6: If the debtor defaults, the holder of the first Dependent Right <u>has the right to sell the object of the Liability Rights</u> on his power through a public auction and take repayment of the receivables from the proceeds of the sale.
	CHAPTER V: EXECUTION OF DEPENDENT RIGHTS
	Article 21: If the grantor of the Dependent Rights is declared bankrupt, the holder of the Dependent Rights is still authorized to <u>exercise all the rights he obtained under this law's provisions.</u>
<u>Analysis :</u>	
In the context of the conflict of norms above, Article 55 paragraph (1) of the UUK-PKPU recognizes the privileges of holders of dependent rights by the privileges possessed by holders of dependent rights in Article 21 of the UUHT. It is given the authority to sell objects of dependent rights through auctions by Article 6 of the UUHT.	
Until the context mentioned above, there is no visible conflict of norms. Still, Article 55 paragraph (1) of the UUK-PKPU provides conditions for the privileges of dependent rights holders where these requirements are stated in Article 56, Article 57, and Article 58.	
CHAPTER II: BANKRUPTCY Part Two: Effects of Bankruptcy	CHAPTER IV: PROCEDURES FOR GRANTING, REGISTERING, TRANSFERRING, AND REMOVING RIGHTS OF DEPENDENTS

Article 56 Paragraph (1):

The right of execution of the Creditor, as referred to in Article 55 paragraph (1), and the right of a third party to claim their property, which is in the control of the Insolvent Debtor or Curator, **are suspended for a maximum period of 90 (ninety) days** from the date the bankruptcy declaration decision is pronounced.

Article 14 Paragraph (3):

The Certificate of Right of Liability, as referred to in paragraph (2), has the same executory force as a court decision that has obtained permanent legal force and applies instead of the Grosse Act Hypotheek regarding land rights.

Analysis :

In the context of the conflict of norms above, Article 56, paragraph (1) of the UUK-PKPU indicates the emergence of a conflict of norms with Article 14, paragraph (3) of the UUHT. The conflict of norms arises because, in Article 56 paragraph (1), the executory rights of dependent rights holders are suspended, even though Article 14 paragraph (3) of the UUHT gives executory rights to dependent rights holders over objects charged with dependent rights.

CHAPTER II: BANKRUPTCY
Part Two: Effects of Bankruptcy

CHAPTER V: EXECUTION OF
DEPENDENT RIGHTS

Article 59 Paragraph (1):

With due regard to the provisions of Article 56, Article 57, and Article 58, Creditors holding rights as referred to in Article 55 paragraph (1) **must exercise their rights within a period of no later than 2 (two) months** after the commencement of the state of insolvency as referred to in Article 178 paragraph (1).

Article 59 Paragraph (2):

After the expiration of the period referred to in paragraph (1), **the Curator must demand the delivery of the object that is collateral for further sale in** the manner referred to in Article 185, without prejudice to the rights of the Creditor of the right holder to the proceeds of the sale of the collateral.

Article 20 Paragraph (1) Letter b :

The executory title contained in the certificate of Rights of Dependents as referred to in Article 14 paragraph (2), **the object of Rights Dependents are sold through public auction** according to the procedures prescribed in the laws and regulations for the repayment of receivables of the holder of the Right of Liability with prior rights to other creditors.

Analysis :

In the context of the conflict of norms above, Article 59 paragraph (1) of the UUK-PKPU mandates the curator to restore the executory rights of the holders of dependent rights. Still, it is limited to only 2 (two) months or 60 (sixty) days. Meanwhile, based on Article 20 paragraph (1) letter b of the UUHT, the holder of the dependent right is given the authority to sell the object of the dependent right without any time limit.

The time limit is unrealistic because, for objects of liability in the form of land and buildings (property), in practice, it is a challenging and fast object to be traded. If the holder of the dependent rights exercises his authority by selling quickly, the selling value will be meager, or there will be no buyers.

Continued in the context of the norm in Article 59 paragraph (2) of the UUK-PKPU, that if the holder of the dependent right within 2 (two) months does not succeed in exercising his rights, then the object of the dependent right must be returned to the curator. This

means that the rights of dependent rights holders, as mandated in Article 21 of the UUHT, are eliminated by the UUK-PKPU.

In the conflict of norms above, between UUK-PKPU and UUHT, in cases involving holders of dependent rights, UUK-PKPU does not perfect the UUHT but negates the enforceability of norms in the UUHT relating to the rights of holders of dependent rights. Because some norms in the UUK-PKPU reject the privilege/authority of the dependent rights holder as a creditor, this indicates that the principle of *lex posterior derogat legi priori* is not an appropriate principle to be used as an instrument in resolving the conflict of norms because the application of the principle of *lex posterior derogat legi priori* should aim to complement the older rules not to eliminate, in the same legal regime. Applying the *lex posterior derogat legi priori* principle requires that two laws in the same hierarchy are presented.

Analysis of Several Decisions on Bankruptcy Declaration Applications Related to the Fundamental Position of Lex Posterior Derogat Legi Priori on the Conflict of Norms Between UUK-PKPU and UUHT

Application for bankruptcy declaration can be submitted to the local Chief Justice by creditors or debtors through their respective advocates or requested by the authorities, provided that there are 2 (two) or more creditors who do not pay in full at least 1 (one) debt that has fallen due and can be collected which is proven simply. The summary of the stages of bankruptcy trial by the regulations in the UUK-PKPU can be seen in the following table.

Table 3
Stages of Bankruptcy Trial in Commercial Court

No.	Activities	Schedule	UUK-PKPU
1	Application for bankruptcy to the Chief Justice	Day 1	Article 6 Paragraph (1)
2	The Registrar registers the application on the date the application is filed.	Day 1	Article 6 Paragraph (2)
3	The Registrar submits an application for bankruptcy declaration to the Chief Justice 2 (two) days after the application is registered.	Day 2	Article 6 Paragraph (4)
4	No later than 3 (three) days after registration, the court studies and determines the day of the hearing;	Day 3	Article 6 Paragraph (5)
5	Summons shall be made to creditors/debtors no later than 7 (seven) days before the first hearing.	Day 14 to 21	Article 8 Paragraph (2)
6	The examination hearing shall be conducted 20 days after the application is registered.	Day 20	Article 6 Paragraph (6)
7	The court may adjourn the hearing by 25 days after registering the application.	Day 25	Article 6 Paragraph (7)
8	The court decision on the application for bankruptcy statement must be pronounced by 60 (sixty) days after the date the application for bankruptcy statement is registered.	Day 60	Article 8 Paragraph (5)
9	A copy of the court decision shall be sent to the party applying for bankruptcy, receivership, and a panel of	Day 63	Article 9

No.	Activities	Schedule	UUK-PKPU
	judges by 3 (three) days after the date the judgment on the bankruptcy declaration is pronounced.		
10	At least 5 (five) days after the curator receives the bankruptcy statement decision, the curator announces in 2 (two) newspapers determined by the supervisory judge.	Day 65	Article 15 Paragraph (4)

During the proceedings, before pronouncing a judgment on an application for bankruptcy, any creditor may apply to the court to place a security deposit against some or all of the debtor's assets. The application may be granted if it is necessary to protect the interests of the creditor, provided that the applicant's creditor provides such security as the court deems reasonable. With the pronouncing of the bankruptcy decree, on the date of the pronouncing of the bankruptcy judgment, precisely at 00.00 WIB, the bankruptcy judgment comes into effect, and the consequence is that all debtors' assets (in bankruptcy) go into the bankruptcy model.

Analysis of one example of bankruptcy decisions in bankruptcy cases in Jakarta and Semarang after the enactment of UUK-PKPU is the Commercial Court Decision at the Central Jakarta District Court Number 16 / Pdt.SusPailit / 2015 / PN. Trade. Jkt.Pst., dated July 23, 2015, states the bankruptcy case against PT. Mega Graha Internasional, whose creditors are PT. Bank OCBC NISP, Tbk. In this case, one of the debtor's assets included in the bankruptcy model is the Building Use Rights Certificate (SHGB) No. 3505 / North Meruya in the name of The Hwie Gwan, which has been paired with Rank I (first) Dependent Rights in 2007 and Rank II (second) in 2015 with the holder of dependent rights is PT. Bank OCBC NISP, Tbk.

What happens from the case of this position is that PT. Bank OCBC NISP, Tbk. did not carry out the auction execution, considering that according to the State Wealth and Auction Service Office (KPKNL) Jakarta IV, the Right to Cover for the Certificate of Right to Use Building Number 3505/North Meruya because the Certificate of Right to Use Building Number 3505/North Meruya has been included in the List of Temporary Assets / Boedel Bankruptcy, as a result of which PT. Bank OCBC NISP, Tbk. Feels aggrieved.

Approaches in Resolving Conflicts of Legal Norms Between UUK-PKPU and UUHT

The usual way to deal with a conflict of norms using derogation is to review the principle of *lex superior derogat legi inferior*, *lex specialis derogate legi generali*, and the principle of *lex priori derogat legi priori*. However, in the context of the conflict of norms examined in this paper, the use of derogation through the principles mentioned above seems to lack precision because of the principle of *lex superior derogat legi inferior*, which means that higher laws will negate the enactment of lower laws (norms/rules of law). A norm can be tested only by confirming that it derives its validity from the basic norms that make up the norm order, while UUK-PKPU and UUHT are regulations in the form of equivalent laws. The Indonesian legal system regulates it in the provisions of

Articles 7 and 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

The principle of *lex specialis derogate legi generali*, which means a specific law (norm/rule of law) negates a general law's enforceability (norm/rule of law). The rationale for prioritizing this law is that specific legal rules are more relevant, compatible, and tailored to legal needs. At the same time, UUK-PKPU and UUHT are both specialist thematic laws.

The principle of *lex priori derogate legi priori* means that the new law (norm / the rule of law) negates the enforceability of the old law (norm / the rule of law), or at least the enforceability of the new law perfects the old law. Applying this principle looks at the chronological entry into force of the regulation, which can happen if the two conflicting regulations are in the same legal regime. Meanwhile, UUK-PKPU and UUHT are specialist laws in different legal regimes, where UUK-PKPU is a law in the commercial law regime, and UUHT is a law in the guarantee law regime. In the Indonesian legal system, this has been adopted in Appendix II of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations.

The three principles cannot stand alone; each is interrelated and complementary. If a conflict of norms is to be viewed through the principle of *lex posterior derogat legi priori*, then in principle, the rules to be used must first be validated by the principle of *lex superior derogat legi inferior* because we will not enforce newer rules, but defeat rules higher in the hierarchy. Alternatively, if viewed from the *lex specialis derogate legi generali* principle, the current rules should not cause more general regulations to trump specialist regulations.

The factors that drive norm conflicts are related to different commitments and interests or different beliefs in the wishes of other parties. A persuasive approach will open opportunities for cooperation between parties who have interests. Each party will be open to legal arguments that various parties can accept. Therefore, the conflict of norms that occur should be able to find a way out because if there is a conflict of norms, which is an inconsistency of laws and regulations on an ongoing basis and is not resolved, it will have an impact, among others: (1) the occurrence of differences in interpretation in its implementation, (2) the emergence of legal uncertainty, (3) laws and regulations are not implemented effectively, and (4) legal dysfunction, meaning that the law cannot function to provide guidelines for behavior to the community, social control, dispute resolution, and as a means of social change in an orderly and orderly manner.

Based on a judicial review submitted to the Constitutional Court regarding the enforceability of the UUHT, which tested Article 6, article 14 paragraph (3), article 20 paragraph (1), article 20 paragraph (2), and Article 21 of the UUHT against the 1945 NRI Constitution, based on Decision Number 10/PUU-XIX/2021, the Constitutional Court ruled that Article 6, Article 14 paragraph (3), Article 20 paragraph (1) and paragraph (2) and Article 21 of Law 4/1996 did not contradict the 1945 NRI Constitution. By looking at the decision of the Constitutional Court, until now, the articles mandating the authority of the holder of dependent rights (Article 21 UUHT) are still valid and cannot be ignored

either wholly or partially by other laws and regulations in this case including the UUK-PKPU.

Thus, the resolution of norm conflicts cannot be done only with a derogation approach. Therefore, harmonization and synchronization of laws and regulations can be considered the following approach to overcoming norm conflicts. Harmonization of laws and rules is a stage of action to harmonize and harmonize the regulations to be prepared so that the rules issued are according to the principles of good laws and regulations. Harmonization should be carried out while drafting laws and regulations, which in this case includes 2 (two) aspects: vertically against Pancasila and the 1945 NRI Constitution and horizontally against other intersecting laws.

Thus, harmonization prevents and overcomes legal this harmonization and guarantees the process of forming a draft law abiding by the legal certainty principle. According to Erman Raja Guguk, legal uncertainty will affect the economy. Three factors cause the absence of legal certainty in Indonesia, namely: first, the hierarchy of laws and regulations does not function, and there is still overlapping material that is regulated; second, the apparatus is weak in implementing the rules; and third, dispute resolution in the economic sector cannot be predicted.

Conclusion

The primary position of *lex posterior derogat legi priori* can be felt in the practice of bankruptcy court in commercial courts because the UUK-PKPU mandates that the rights of holders of 'dependent rights' as instructed in article 21 of the UUHT are not highlighted and seem subordinated to the curator as the person in charge of managing the assets of the bankrupt debtor. This is possible in bankruptcy courts with the alleged consideration that UUK-PKPU is a newer law than UUHT, even though when viewed from the aspect of the legal regime, UUK-PKPU and UUHT are different legal regimes.

Article 1 point 1 of the UUK-PKPU, it is stated that "Bankruptcy is a general confiscation of all assets of the Insolvent Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as stipulated in this Law," giving the understanding that in the bankruptcy trial process, the holder of the dependent right loses his right to the object of security that has been paired with the dependent right. Suppose the application of the general confiscation has yet to be implemented against the guarantee installed with the conditional's right. In that case, the holder of the right to be dependent, then the holder of the right to be guaranteed, will feel justice because all his rights that have been given to the debtor long before the debtor goes bankrupt can be restored by the agreement on the installation of the right of liability protected by article 29 of the Law.

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