



DECISION

Number 18/PUU-VI/2008

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing and deciding on constitutional cases at the first and final level, has passed a decision in the case of petition for Judicial Review of Law Number 37 Year 2004 regarding Bankruptcy and Postponement of Debt Settlement Obligation against the Constitution of the State of the Republic of Indonesia Year 1945, filed by:

[1.2] 1) **M. Komarudin**, employee/General Chairperson of the Indonesian Labor Union Federation (*Federasi Ikatan Serikat Buruh Indonesia*), having his address at Koleang RT 06/01 Koleang Jasinga Village, Bogor Regency. 2) **Muhammad Hafidz**, self-employed/General Secretary of the Indonesian Labor Union Federation, having his address at Jalan Kapuk Kamal Raya Number 73, Kalideres, West Jakarta. 3) **Agung Purnomo**, ex-laborer of PT. Sindoll Pratama, having his address at Kp. Poglar RT 01/01 Cengkareng, West Jakarta. 4) **Anggraeni**, ex-laborer of PT. Sindoll Pratama, having her address at Kp. Poglar RT 01/01 Cengkareng, 5) **Anik**, ex-laborer of PT. Sindoll

Pratama, having her address at Kapuk RT 01/011 Cengkareng, West Jakarta. **6) Bambang Supramono**, ex-laborer of ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 01/011 Cengkareng, West Jakarta. **7) Basuki**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 01/03 Cengkareng, West Jakarta. **8) Bejo**, ex-laborer of PT. Sindoll Pratama, having his address at Gg. Masjid RT 01/011 Cengkareng, Jakarta Barat. **9) Cahyono**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 09/03 Cengkareng, West Jakarta. **10) Dyah Ridani**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 09/01 Cengkareng, West Jakarta. **11) Djubaheti**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 04/011 Cengkareng, West Jakarta. **12) Dwi Susanti**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk 02/03 Cengkareng, West Jakarta. **13) Eni Purwati**, ex-laborer of PT. Sindoll Pratama, having her address at having her address at Kapuk RT 02/03, Cengkareng, West Jakarta **14) Endah BT.Johan**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk Raya RT 012/011, Cengkareng, West Jakarta. **15) Enah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 04/03 Cengkareng, West Jakarta. **16) Eni Suherni**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 010/011 Cengkareng, West Jakarta. **17) Endah Susanti**, ex-laborer of PT. Sindoll Pratama, having her address at Kayu Besar RT 01/011 Cengkareng, West Jakarta. **18) Eni Mugiati**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 07/012 Cengkareng, West Jakarta. **19) Erlina Wati**, ex-laborer of PT. Sindoll Pratama, having her address at Kamp. Japat Saleh RT

02/01 Pademangan, North Jakarta. **20) Farida**, ex-laborer of PT. Sindoll Pratama, having her address at Gg. Ampao, Kapuk RT 06/011 West Jakarta. **21) Faiqoh**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 04/011 Cengkareng, West Jakarta. **22) Fatimah**, ex-laborer of PT. Sindoll Pratama, having her address at Kp. Utan Bahagia RT 07/06 Cengkareng, West Jakarta. **23) Ginarsih**, ex-laborer of PT. Sindoll Pratama, having her address at Pedongkelan RT 022/016 Cengkareng, West Jakarta. **24) Giyatmi**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 04/03 Cengkareng, West Jakarta. **25) Hayati**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 013/011 Cengkareng, West Jakarta. **26) Heni Pujiawati**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 016/011 Cengkareng, West Jakarta. **27) Hisumyati**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 03/011 Cengkareng, West Jakarta. **28) lin Lasmini**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 01/03 Cengkareng, West Jakarta. **29) Ika**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 020/30 Cengkareng, West Jakarta. **30) Ilham.S**, ex-laborer of PT. Sindoll Pratama, having his address at Jalan Pulo Harapan Indah RT 010/010, West Jakarta. **31) Iriyanti**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 05/011, Cengkareng, West Jakarta. **32) Inti Nurjanah**, ex-laborer of PT. Sindoll Pratama, having her address at Rawa Gabus RT 08/011 Cengkareng, West Jakarta. **33) Iran**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 013/012 Cengkareng, West Jakarta. **34) Jami**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 010/011

Cengkareng, West Jakarta. **35) Jumini**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 03/011 Cengkareng, West Jakarta. **36) Jumarti**, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 015/03 Cengkareng, West Jakarta. **37) Karnadi**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 10/03, Cengkareng, West Jakarta. **38) Komariah**, ex-laborer of PT. Sindoll Pratama, having her address at Jalan Marga Jaya RT 08/03 Cengkareng, West Jakarta. **39) Kasiyem**, ex-laborer of PT. Sindoll Pratama, having her address at Gg. Ampera, Kapuk RT 012/041 West Jakarta. **40) Karsih**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 011/03 Cengkareng, West Jakarta. **41) Kurnia**, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 05/03 Cengkareng, West Jakarta. **42) Lasinah**, ex-laborer of PT. Sindoll Pratama, having her address at Kp. Muk RT 02/04 Cengkareng, West Jakarta. **43) Liyanah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 02/012 Cengkareng, West Jakarta. **44) Martono**, ex-laborer of PT. Sindoll Pratama, having his address at Kebon Jahe RT 011/03 Cengkareng, West Jakarta. **45) Munawaroh**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 010/011 Cengkareng, West Jakarta. **46) Marfungah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 010/011 Cengkareng, West Jakarta. **47) Mulyadi R**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 010/03, Cengkareng, West Jakarta. **48) Maryati**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 04/03, Cengkareng, West Jakarta. **49) Muryati**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 010/011

Cengkareng, West Jakarta. **50) Misna**, ex-laborer of PT. Sindoll Pratama, having her address at Villa Regency TNG II FD-01/09 RT 04/10 Tangerang Regency.

51) Mimi Rusmiyati, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 10/011, Cengkareng, West Jakarta. **52) Mardiyati**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 02/011 Cengkareng, West Jakarta. **53) Marsinah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk 03/011 Cengkareng, West Jakarta. **54) Mutiatun**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk 03/03 Cengkareng, West Jakarta.

55) Mikuwati, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 04/011 Cengkareng, West Jakarta. **56) Murtini**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 09/03, Cengkareng, West Jakarta. **57) Miyatun**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 013/03 Cengkareng, West Jakarta. **58) Muniarti**, ex-laborer of PT. Sindoll Pratama, having her address at Gg. Masjid RT 011/03 Cengkareng, West Jakarta. **59) Martini**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 013/011 Cengkareng, West Jakarta. **60) M. Bahrudin**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 014/05 Cengkareng, West Jakarta. **61) Marwiyah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 020/03 Cengkareng, West Jakarta. **62) Nurhayati**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 04/011 Cengkareng, West Jakarta. **63) Nur Asiyah**, ex-laborer of PT. Sindoll Pratama, having her address at Rawa Bagus, Kapuk RT 08/011 Cengkareng, West Jakarta. **64) Nur Hasanah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 013/011

Cengkareng, West Jakarta. **65) Nyai Yanih**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 05/011 Cengkareng, West Jakarta. **66) Nurmanul Hakim**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 08/03 Cengkareng, West Jakarta. **67) Neneng Haryati**, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 011/012 Cengkareng, West Jakarta. **68) Nurotul Aliyah**, ex-laborer of PT. Sindoll Pratama, having her address at Kp. Kebon Pasir RT 02/01 Teluk Naga, Tangerang Regency. **69) Nurdin**, ex-laborer of PT. Sindoll Pratama, having his address at Kebon Pasir RT 02/01 Teluk Naga, Tangerang Regency. **70) Nunung**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 010/03 Cengkareng, West Jakarta. **71) Nani**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 010/011 Cengkareng, West Jakarta. **72) Odah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 05/03 Cengkareng, West Jakarta. **73) Pihardi**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 013/03 Cengkareng, West Jakarta. **74) Purwaningsih**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 03/011 Cengkareng, West Jakarta. **75) Punirah**, ex-laborer of PT. Sindoll Pratama, having her address at Cibubur RT 09/012, Ciracas, East Jakarta. **76) Puji Lestari**, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 04/03 Cengkareng, West Jakarta. **77) Parman**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 04/011 Cengkareng, West Jakarta. **78) Rasini**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 04/011 Cengkareng, West Jakarta. **79) Romlah**, ex-laborer of PT. Sindoll

Pratama, having her address at Gondrong RT 01/04, Cipondoh, Tangerang City.

80) Roilah, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 05/014 Cengkareng, West Jakarta. **81) Ribut Sugiyani**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 013/011 Cengkareng, West Jakarta. **82) Rusmi**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 01/011 Cengkareng, West Jakarta. **83) Rini Wijayanti**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 03/011 Cengkareng, West Jakarta. **84) Sugiyarni**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 022/012 Cengkareng, West Jakarta. **85) Supri**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 04/03 Cengkareng, West Jakarta. **86) Sutiana**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 012/011 Cengkareng, West Jakarta. **87) Siyam**, ex-laborer of PT. Sindoll Pratama, having her address at Kp. Baru RT 08/010, Kembangan, West Jakarta. **88) Sugiarto**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 016/011 Cengkareng, West Jakarta. **89) Setiyono**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 016/011 Cengkareng, West Jakarta. **90) Sukatmi**, ex-laborer of PT. Sindoll Pratama, having her address at Kp. Kalimati RT 011/03, Cengkareng, West Jakarta. **91) Sudarno**, ex-laborer of PT. Sindoll Pratama, having his address at Jalan Kelincir Raya RT 01/06 Cengkareng, West Jakarta. **92) Sauni**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 05/011 Cengkareng, West Jakarta. **93) Saropah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 03/011 Cengkareng, West Jakarta. **94) Sohibah**, ex-laborer of PT. Sindoll Pratama,

having her address at Kapuk RT 011/011 Cengkareng, West Jakarta. **95) Suhada**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 01/011 Cengkareng, West Jakarta. **96) Siti Junariah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 01/03 Cengkareng, West Jakarta. **97) Sukarni**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 01/03 Cengkareng, West Jakarta. **98) Sarwanti**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 013/03 Cengkareng, West Jakarta. **99) Siti Maryam**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 05/012 Cengkareng, West Jakarta. **100) Sri Aningsih**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 014/03 Cengkareng, West Jakarta. **101) Suwarni**, ex-laborer of PT. Sindoll Pratama, having her address at Rusun Cengkareng Dahlia-5 Lt.4 Number 5 West Jakarta **102) Sugiyem**, ex-laborer of PT. Sindoll Pratama, having her address at Gg. Masjid RT 01/03 Kapuk, Cengkareng, West Jakarta. **103) Suparno**, ex-laborer of PT. Sindoll Pratama, having his address at Gg. Masjid RT 04/011 Kapuk, Cengkareng, West Jakarta. **104) Sunarsih**, ex-laborer of PT. Sindoll Pratama, having her address at Jalan Gajah Tunggal Pasir Jaya RT 02/02 Tangerang. **105) Sumini**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 03/011 Cengkareng, West Jakarta. **106) Siti Rahma**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 010/03 Cengkareng, West Jakarta. **107) Sukaesih**, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 07/03 Cengkareng, West Jakarta. **108) Saminah**, ex-laborer of PT. Sindoll Pratama, having her address at Rawa Gabus, RT 08/011 Cengkareng, West Jakarta. **109)**

Suwarni, ex-laborer of PT. Sindoll Pratama, having her address at Gg. Ampera RT 012 RW 11 Kapuk, Cengkareng, West Jakarta. **110) Sulasmi**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 08/03 Cengkareng, West Jakarta. **111) Surip Suswati**, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 015/03 Cengkareng, West Jakarta. **112) Siti Nurhayati**, ex-laborer of PT. Sindoll Pratama, having her address at Ps.Donmt RT 07/012 Cengkareng, West Jakarta. **113) Siti Mariam**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 09/01 Cengkareng, West Jakarta. **114) Sumarni**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 06/011 Cengkareng, West Jakarta. **115) Siti Aminah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 07/012 Cengkareng, West Jakarta. **116) Siti Umayah**, ex-laborer of PT. Sindoll Pratama, having her address at Taman Walet RT 08/010 Pasar Kamis, Tangerang Regency. **117) Siti Saroh**, ex-laborer of PT. Sindoll Pratama, having her address at Jalan Budi Bate RT 09/012 Kapuk Cengkareng, West Jakarta. **118) Siti Redhead**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 03/011 Cengkareng, West Jakarta. **119) Siti Nurkhabibah**, ex-laborer of PT. Sindoll Pratama, having her address at Muara Baru RT 010/017 Cengkareng, West Jakarta. **120) Sunarimah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 08/011 Cengkareng, West Jakarta. **121) Syaharudin**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 04/03 Cengkareng, West Jakarta. **122) Sadali**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 04/03 Cengkareng, West Jakarta. **123) Tuti Alawiyah**, ex-laborer of PT. Sindoll

Pratama, having her address at Kapuk RT 03/03 Cengkareng, West Jakarta.

124) Titik, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 04/03 Cengkareng, West Jakarta. **125) Tukul**, ex-laborer of PT. Sindoll Pratama, having his address at Kapuk RT 015/011 Cengkareng, West Jakarta. **126) Tuminah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 012/012 Cengkareng, West Jakarta. **127) Tuiyah**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 012/012 Cengkareng, West Jakarta. **128) Tati R**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 010/011 Cengkareng, West Jakarta. **129) Ungsu**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 01/03 Cengkareng, West Jakarta. **130) Umi Narsih**, ex-laborer of PT. Sindoll Pratama, having her address at Kp. Pintu Kapuk RT 018 Teluk Kaga Tangerang Regency. **131) Ucun**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 013/011 Cengkareng, West Jakarta. **132) Uum Sumarni**, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 04/05 Cengkareng, West Jakarta. **133) Wastuti**, ex-laborer of PT. Sindoll Pratama, having her address at Gg. Masjid RT 010/03 Cengkareng, West Jakarta. **134) Winarti**, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 010/03 Cengkareng, West Jakarta. **135) Warsini**, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 05/011 Cengkareng, West Jakarta. **136) Widarto**, ex-laborer of PT. Sindoll Pratama, having his address at Kebon Jahe RT 010/011 Cengkareng, West Jakarta. **137) Wuryanti**, ex-laborer of PT. Sindoll Pratama, having her address at Kebon Jahe RT 013/012 Cengkareng, West Jakarta. **138) Yanti Susila**, ex-

laborer of PT. Sindoll Pratama, having her address at Perum Giriya Berkat Insani Blok G No.1 Rajak Tangerang. **139) Yayan Anggraeni**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 08/011 Cengkareng, West Jakarta. **140) Yuni Ekowati**, ex-laborer of PT. Sindoll Pratama, having her address at Kapuk RT 03/011 Cengkareng, West Jakarta.

For and on behalf of the Indonesian Labor Union Federation, by virtue of a Special Power of Attorney dated May 6, 2008, authorizing Dr. Andi Muhammad Asrun, S.H.,M.H., and Dewi Triyani, S.H., advocates, electing domicile with “Muhammad Asrun and Partners (MAP) Law Firm” at Gedung PGRI, Jalan Tanah Abang III Number 24, Central Jakarta.

Hereinafter referred to as **Petitioners**;

- [1.3]** Having read the petition of the Petitioners;
 Having heard the statements of the Petitioners;
 Having heard and read the written statement of the Government;
 Having heard and read the written statement of the People’s Legislative Assembly;
 Having examined the evidence;
 Having heard the statements of experts of the Petitioners;
 Having read the written conclusion of the Petitioners;

3. LEGAL CONSIDERATIONS

- [3.1]** Considering whereas the purpose and objective of the Petitioners’ petition are to test the constitutionality of Article 29, Article 55 paragraph (1),

Article 59 paragraph (1) and Article 138 of Law Number: 37 Year 2004 regarding Bankruptcy and Postponement of Debt Settlement Obligation (hereinafter referred to as the Bankruptcy and PKPU Law) against the Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution).

[3.2] Considering, prior to taking the Principal Issue of the Petition into account, the Constitutional Court (hereinafter referred to as the Court) must first consider the following matters:

1. Authority of the Court to examine, hear and decide on the *a quo* petition;
2. Legal standing of the Petitioners in acting as Petitioners in the *a quo* petition.

With respect to the aforementioned two issues, the Court is of the following opinion:

AUTHORITY OF THE COURT

[3.3] Considering whereas according to Article 24C paragraph (1) of the 1945 Constitution, and Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 regarding the Constitutional Court (hereinafter referred to as the Constitutional Court Law) *juncto* Article 12 paragraph (1) sub-paragraph a of Law Number 4 Year 2004 regarding Judicial Power, the Court has the authority to hear at the first and final level, whose decisions shall be final, among others, to review laws against the 1945 Constitution.

[3.4] Considering whereas the Government states that the constitutional review filed by the Petitioners can no longer be decided by the Court on the basis *ne bis in idem* principle, because the *a quo* petition has been once filed by the Petitioners and has been decided by the Court with Decision Number 2/PUU-VI/2008 dated May 6, 2008. With respect to such opinion of the Government, the Court is of the opinion that this case is not subject to the *ne bis in idem* principle because Decision Number 2/PUU-VI/2008 dated May 6, 2008 has not entered the principal issue of the petition. Therefore, Article 60 of the Constitutional Court Law does not prevent the Court from examining the principal issue of the *a quo* petition, so that the Court still has the authority to examine, hear and decide on the *a quo* petition.

LEGAL STANDING OF THE PETITIONERS

[3.5] Considering whereas some of the Petitioners in the *a quo* case were respectively also Petitioners in the previous case Number 2/PUU-VI/2008, who filed a petition for review of Article 29, Article 55 paragraph (1), Article 59 paragraph (1), and Article 138 of the Bankruptcy and PKPU Law, which was already decided by the Court on May 6, 2008, wherein the Petitioners were accepted as Petitioners having legal standing to file a petition for review of the articles of the *a quo* law, but as they were not considered serious in the substantiation, such petition of the Petitioners was declared unacceptable;

[3.6] Considering whereas as the Court's decision to the effect that the petition of the Petitioners cannot be accepted and has not entered the substance of the petition, and as already considered in paragraph [3.4] above, then there is no procedural hindrance for the resubmission of the petition for judicial review of the substance of the same law before the Court to be examined, heard and decided in relation to the substance or subject matter of the petition. Therefore, without reconsidering the arguments of the Petitioners insofar as they are concerned with legal standing to file a petition for judicial review of the *a quo* law, it shall be sufficient for the Court to refer to and adopt the considerations in Decision Number 2/PUU-VI/2008 dated May, 2008 regarding the Petitioners' legal standing in this petition;

[3.7] Considering whereas by adopting the legal considerations as mentioned above, the Court is of the Opinion that the Petitioners have legal standing to act as Petitioners in the *a quo* petition;

PRINCIPAL ISSUE OF THE PETITION

[3.8] Considering whereas based on the *posita* and the *petitum* of the Petitioners' petition, the constitutional issue being raised in the *a quo* petition is the review of the provisions in Article 29, Article 55 paragraph (1), Article 59 paragraph (1), and Article 138 of the Bankruptcy and PKPU Law. According to the Petitioners, such provisions impair the constitutional rights of the Petitioners as laborers or workers in relation to the occurrence of termination of employment relationship by the company declared bankrupt. In addition, Article 29, Article 55

paragraph (1), Article 59 paragraph (1), and Article 138 of the Bankruptcy and PKPU Law does not guarantee just legal certainty or equal treatment before the law for the laborers because they only give the opportunity as well as privileges to the creditors holding the pledge, guarantee, fiduciary security, security right, hypothec, other collaterals over property which will eliminate the guaranteed legal protection for the laborers, whether during the employment relationship or upon the termination of employment relationship due to bankruptcy.

[3.9] Considering whereas to support their arguments, in addition to presenting written evidence (Exhibits P-1 through P-6), the Petitioners have also presented experts whose statements have been included in the Facts of the Case part of this Decision which principally state as follows:

[3.9.1] Statement of Expert Rizal Ramli

1. Whereas, the background of the enactment of *Faillessement Verorderening* as the bankruptcy law has been the monetary and economic crises in 1997. In 1998, the Indonesian Government signed a number of *agreements* under the pressure of the international world and the International Monetary Fund (IMF) called *Letters of Intent*,
2. Whereas there were about 100 points of the *Letter of Intent* performed when Indonesia was faced with difficulties, being forced to follow neo-liberal thoughts in the Indonesian Economy which at the same time were

- aimed at doubling the security and protection of the interests of foreign investors in various cases;
3. Whereas the background of the legislative policies in the economic sector is as follows:
 - a. The mass media tells us that IMF provides aid over twenty billion rupiah, while such aid is a loan, not an aid;
 - b. Following the signing of agreement, Indonesian Government was persuaded to signed the so-called Frankfurt Agreement to the effect that all obligations of Indonesian State-Owned Enterprises as well as Indonesian private companies in Foreign Banks had to be immediately taken over by the Indonesian Government to be paid in installments and settled. With the aforementioned Frankfurt Agreement it seemed like receiving money for the left pocket (in the form of IMF loan) which upon the signing was taken out from the right pocket to pay the obligations to foreign banks.
 4. Before investing or extending loans, Foreign banks or foreign companies would first conduct a study or due diligence to mitigate risks. Indonesia was required to take over debts taken on at that time voluntarily. This means that such foreign banks or companies gained benefit from the aforementioned Letter of Intent which illustrated an unjust agreement with the indirect implication that the Indonesian people must take over such debts and must in the first place settle their obligations to foreign banks. In

short, Indonesia's borrowing from IMF has been nothing but an effort to save foreign banks (such matter is known as moral hazard);

5. The Bankruptcy and PKPU Law was formulated under international pressure as approved by some Indonesian officials and has harmed Indonesian economy;
6. In the Bankruptcy and PKPU Law, creditors are classified into several categories, among others: separatist creditors; collateral owner creditor or secured lender; preferred creditors, namely laborers; unsecured creditors; and last concurrent creditors or supplier;
7. In the bankruptcy laws of advanced countries including in super-capitalist countries such as the United States, the classification is significantly different. *First*, the group possessing administrative rights; *Second*, statutory claim, namely tax obligation, rent, wage, benefit as well as allowance. Thus the ranking for wage and allowance for employees is included under ranking number two, in the event of any money as the proceeds from liquidation of a bankrupt company. *Third*, secured creditors, namely creditors having security. *Fourth*, unsecured creditors, namely creditors having no security. *Fifth*, business owners or owners of shareholders;
8. Whereas in a super-capitalist country (the United States), laborers' wage and obligation to laborers is the second priority, followed by secured

- creditors. On the contrary, in the Bankruptcy and PKPU Law, the rights of, and obligations to, laborers are included in the second number after secured creditors;
9. Whereas the Bankruptcy and PKPU Law was designed by foreign consultants hired and appointed by IMF to give top priority to secured creditors and to position laborers' rights thereafter, while in their own country laborers' rights and laborers' allowance obligation are far more important than secured creditors;
 10. Whereas such regulation in the Bankruptcy and PKPU Law is unfair and unwise, as well as not in accordance with the goal of establishing a country because to establish a country, all parties must be protected. The state must be protected, capital owner investors must be protected, and laborers must be protected as well;
 11. Whereas Article 28D paragraph (2) of the 1945 Constitution states that, *"Every person shall have the right to work and to receive fair and proper remuneration and treatment in work relationships."* Companies can become bankrupt not due to the mistake of laborers and many companies have been bankrupt in Indonesia due to two factors namely externally factor beyond the competence of the entrepreneurs such as IMF policies in 1998 which encouraged the Government to liquidate a number of banks in Indonesia which had impacts on both entrepreneurs and laborers; whereas the second factor is internal namely mismanagement.

12. Article 33 paragraph (4) of the 1945 Constitution reads, " The national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainable and environmentally insight, independence and by keeping a balance between progress and unity of national economy." Based on the article, all parties must obtain protection.

[3.9.2] Statement of Expert Surya Chandra

1. There is contradiction between two laws, namely the Manpower Law and the Bankruptcy and PKPU Law, particularly Article 95 paragraph (4) of the Manpower Law and Article 25 paragraph (1) of the Bankruptcy and PKPU Law. The Manpower Law provides that laborers' rights shall be prioritized in the event of bankruptcy. Meanwhile, the Bankruptcy Law provides that separatist creditors shall be prioritized;
2. Whereas the Manpower Law protects laborers' interests while the Bankruptcy and PKPU Law principally protects companies, not human beings, laborers, or workers;
3. In the labor law system, laborers are entitled to bring their case first to mediation through the mediator of the Service Office of Manpower, and in the event of failure of mediation, the case is recommended to be brought to the Industrial Relations Court (PHI);

4. Whereas the Bankruptcy and PKPU Law is contradictory to the principle or process of settlement of labor disputes through PHI and underestimates PHI system;
5. Whereas laborers' rights shall not be overthrown by any other party even if a company is bankrupt, so that laborers shall not lose their right to wage during the bankruptcy process. For example, in the United States (in 1990s), Senator Durbin from Illinois took the initiative to propose a bill titled "*The Protecting Employees and Retirees in Business Bankruptcy Act of 2007.*"
6. Whereas there has not been any clear system regulating dispute settlement between laborers and receiver. This means that the difference in wage amount, calculated as of the bankruptcy up to the settlement of bankruptcy estate by the receiver (*boedel*) under the supervision of the supervisory judge. How come that a receiver can terminate employment relationship (PHK) towards laborers in a 45-day period following bankruptcy declaration, while the mandate of the Bankruptcy and PKPU Law states that the matter must be settled in accordance with the provisions of laws and regulations. This means that the issue is whether wages must be paid upon a decision of PHI institution [*vide* Article 151 paragraph (3) of the Manpower Law] or through *renvoi* of the supervisory judge meaning that the receiver or laborers shall file a complaint which would subsequently be declared null by law;

7. Whereas there has not been any clear system in the regulation of dispute settlement mechanism between laborers and receiver due to the contradiction between Article 29 and Article 39 paragraph (1) the Bankruptcy and PKPU Law.

[3.10] Considering whereas the Court has heard the statement of the Government, as completely described in the Facts of the Case part of this Decision, which is principally explains the following matters:

1. With respect to the provision of Article 29 of the Bankruptcy and PKPU Law:
 - a. Whereas the petition for judicial review of the provisions of Article 29, Article 55 paragraph (1), Article 59 paragraph (1), and Article 138 of the Bankruptcy and PKPU Law filed by the present Petitioners (in accordance with Case Registration Number 18/PUU-VI/2008), bears similar constitutionality requirements made as the basis by the previous Petitioners (*vide* Case Registration Number 2/PUU-VI/2008), and as such the aforementioned petition of the Petitioners should be set aside. Based on the foregoing, the Government is of the opinion that the petition for judicial review of the *a quo* can not be filed again (*ne bis in idem*);
 - b. Whereas the provision of Article 29 of the Bankruptcy and PKPU Law is intended for the purpose of legal protection and certainty for

creditors (whether concurrent creditors, separatist creditors or preferred creditors) in relation to debt settlement through bankruptcy;

- c. Whereas in relation to laborers' wage as provided for in Article 1149 of the Indonesian Civil Code, laborers' receivables against the company/employer have the status of preferred creditor/receivables, and hence a debtor's being declared bankrupt shall not eliminate the rights of laborers as creditors against such company. Laborers can demand payment of their wages as creditors by submitting an invoice to the receiver appointed by the Commercial Court having the duty of administering and settling the property of the bankrupt debtor. The receiver shall prioritize payment of laborers' wages as preferred creditors from the proceeds of sale of bankruptcy *boedel* over the payment to concurrent creditors;
- d. Whereas it is different when laborers file a complaint not through bankruptcy process as the laborers position themselves as concurrent creditors, and this matter is the risk of their choice;
- e. Whereas after a debtor is declared bankrupt, while there is another legal claim from another party, then the matter may disrupt the debt settlement through bankruptcy mechanism, which in fact can create legal uncertainty for the creditors themselves.

- f. Whereas therefore, the *a quo* provision has in fact given legal certainty (*rechtszekerheid*) in relation to debt settlement through bankruptcy, and therefore the *a quo* provision is not contradictory to Article 28D paragraph (1) of the 1945 Constitution and does not impair the Petitioners' constitutional rights;
2. With respect to the provisions of Article 55 paragraph (1), Article 59 paragraph (1) and Article 138 of Law Number 37 Year 2004 regarding Bankruptcy and Postponement of Debt Settlement Obligation (PKPU):
 - a. Article 55 provides the rights as if there were no bankruptcy, whereas the provision of Article 28D paragraph (2) of the 1945 Constitution regulates that every person shall have the right to work and to receive fair and proper remuneration and treatment in work relationships;

Whereas the assets of bankrupt debtors shall put as security to separatist creditors shall not include bankruptcy estate (*boedel*). Such asset put as security shall be separate from bankruptcy estate (*boedel*).and separatist creditors shall be entitled to conduct execution themselves not through a receiver. In a different manner, the rights of preferred creditors (such as laborers) and concurrent creditors, which in the event of bankruptcy cannot exercise their rights themselves, must be exercised by the receiver;

Whereas there is also the priority right of the state to tax money based on taxation regulations, namely that in the event of a Taxpayer is declared bankrupt, then the receiver shall be prohibited from distributing the Taxpayer's assets to the shareholders or other creditors before appropriating such assets to pay tax debt of the Taxpayer, as regulated in Article 41 paragraph (3) of the *a quo* law.

- b. Whereas there is no constitutionality relationship between Article 55 paragraph (1) of the Bankruptcy and PKPU Law and Article 28D paragraph (2) of the 1945 Constitution, because:
 - b.1. the provision of Article 55 paragraph (1) of the *a quo* law constitutes an elaboration of the general principle of security law which belongs to private law while the provision of Article 28D paragraph (2) of the 1945 Constitution constitutes an elaboration of public law;
 - b.2. in the Indonesian Civil Code, bankruptcy law as well as security law differentiating creditors based on their ranking are not discriminatory but on the contrary they have proportionally and fairly given the right to any person;
 - b.3. the granting of similar right to every creditor to conduct execution, while the status of each creditor is different, can

create the problem of legal uncertainty and will create injustice;

- c. The provision of Article 59 paragraph (1) of the *a quo* law shall not automatically eliminate (close) the rights of other creditors including the rights of laborers as holders of preferred creditors;
- d. The provision of Article 138 of the *a quo* law is created for guaranteeing legal certainty for creditors in accordance with their ranking, in accordance with the provision of Article 1132 of the Indonesian Civil Code which states, "*The assets shall serve as joint guarantees for his creditors; the proceeds thereof shall be divided among the creditors (namely in proportion to their respective receivables, unless there exists a legal order of priority among the creditors.*"

[3.11] Considering whereas the Court has heard the statement of the People's Legislative Assembly, as completely described in the Facts of the Case section of this Decision, which principally explains as follows:

- 1. whereas the provision of Article 29 of the Bankruptcy and PKPU Law is not at all contradictory to, while in fact it is in line with, the purpose and objective of Article 28D paragraph (1) of the 1945 Constitution, because Article 28D paragraph (1) of the 1945 Constitution basically regulates the

- principle of equality before the law, as well as the right to the recognition, guarantee, protection and certainty of just laws for all Indonesian citizens;
2. whereas the Petitioners have misunderstood Article 28D paragraph (1) of the 1945 Constitution so as to create an understanding which is not in accordance with the essential meaning as intended in the aforementioned article. Equal status for all citizens in law as regulated in Article 28D paragraph (1) of the 1945 Constitution is of course not intended to give authority to every citizen to do whatever he/she wishes without considering aspects of morality, other legal norms, other individuals/persons' rights as well as authority of state institutions.
 3. whereas just legal certainty will materialize the recognition, guarantee and protection of rights of every citizen themselves as set forth in Article 28D paragraph (1) of the 1945 Constitution which must be exercised with responsibility, moral ethics, as well as subject to the provisions of applicable laws and regulations, as regulated in Article 28J paragraph (2) of the 1945 Constitution which states, *"In exercising his/her right and freedom, every person must submit to the restrictions stipulated in laws and regulations with the sole purpose to guarantee the recognition of and the respect for other persons' rights and freedom and fulfill fair demand in accordance with the considerations of morality, religious values, security, and public order in a democratic society."*

4. whereas based on the aforementioned provision of Article 28J paragraph (2) of the 1945 Constitution regarding the obligation that the rights and freedom possessed by every citizen must be exercised in an honest, moral, and responsible manner, as well as without sacrificing the legal interests and rights of the people at large which are also vitally important to obtain recognition and respect;
5. whereas a private company (*in casu* “bankrupt debtor”) as well as BUMN, for instance PT. Bank Negara Indonesia (*in casu* “separatist creditor”) which is incorporated also needs a legal umbrella in the form of the right to the recognition, guarantee, protection and certainty of just laws, as well as equal treatment before the law, and not only the legal rights merely possessed by the laborers/workers (*in casu* “the Petitioners”), but also the rights possessed by the incorporated companies themselves;
4. whereas all incorporated companies also need the right to the recognition, guarantee, protection and certainty of just laws in order to give legal certainty and protection to the customers of PT. Bank Negara Indonesia who have reached the number of hundreds of thousands and even millions, not only thousands, as customers of PT. Bank Negara Indonesia who put their trust, hope and future in PT. Bank Negara Indonesia itself;
5. whereas Article 55 paragraph (1), Article 59 paragraph (1) and Article 138 of the Bankruptcy and PKPU Law are not contradictory to, while they are in fact in line with, the purpose and objective of Article 28D paragraph (2)

of the 1945 Constitution which reads, *“Every person shall have the right to work and to receive fair and proper remuneration and treatment in work relationships”*;

6. whereas basically, the Bankruptcy and PKPU Law has been applied in the effort of creating legal certainty in the settlement of debt-related conflicts between debtors and creditors in Indonesia;
7. whereas the provision of Article 55 paragraph (1), Article 59 paragraph (1) and Article 138 of the Bankruptcy and PKPU Law give the right to the creditors holding the pledge, guarantee, fiduciary, security right, hypothec or collateral over other assets, to be able to execute their rights as if no bankruptcy occurred, and this has been in line and in accordance with, among others, the provisions in:
 - a. Article 6 of Law Number 4 Year 1996 regarding Security Right on Land and Land-Related Objects;
 - b. Article 27 of Law Number 42 Year 1999 regarding Fiduciary Security; and
 - c. Article 1133 and Article 1150 of the Indonesian Civil Code which constitute principal provisions in the private law so that other laws adopting the provisions of the Indonesian Civil Code shall be prohibited from regulating similar matters by contradictory provisions.

OPINION OF THE COURT

[3.12] Considering whereas after carefully examining the Petitioners' petition and statement in the hearing, written evidence, statements of experts presented by the Petitioners, statement of the Government and statement of the People's Legislative Assembly (DPR) as set out in the foregoing, the Court is of the following opinion:

[3.12.1] Whereas the Petitioners have argued that Article 29, Article 55 paragraph (1), Article 59 paragraph (1), and Article 138 of the Bankruptcy and PKPU Law are contradictory to Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution;

[3.12.2] Whereas the provisions in the Bankruptcy and PKPU Law petitioned for review respectively read as follows:

Article 29: *"A lawsuit at a Court filed against Debtor, insofar as it is aimed at obtaining the fulfillment of obligation of bankruptcy assets and its case is underway, shall become null and void by the pronouncement of decision on bankruptcy stipulation against Debtor."*

Article 55 paragraph (1): *"With due observance of the provisions as intended in Article 56, Article 57 and Article 58, any Creditors holding pledge, fiduciary guaranty, security right, hypothec or collateral right on other assets, may execute their rights as no bankruptcy occurred."*

Article 59 paragraph (1): *“With due observance of the provisions in Article 56, Article 57, and Article 58, Creditors holding the rights as intended in Article 55 paragraph (1) shall exercise their right within a period of no later than 2 (two) months following the commencement of insolvency as intended in Article 178 paragraph (1).”*

Article 138 paragraph (1): *“Creditors whose receivables are secured with pledge, fiduciary guaranty, security right, hypothec, collateral right on other assets, or having the privilege on a certain property in bankruptcy assets and can substantiate that there is a possibility that any part of the receivables cannot be settled based on the proceeds of the sales of property becoming collateral, may request to be granted with the rights owned by concurrent creditors to the portion of the relevant receivables, without prejudice to the priority right on property becoming collateral on their receivables.*

[3.13] Considering whereas bankruptcy declaration by the judge constitutes an imposition of general attachment (*algemene beslag*) of all assets of a debtor in order to settle all claims of creditors in a fair, even and balanced manner, and accordingly all previous claims against the debtor individually to settle the obligations of the debtor which is declared bankrupt, shall be ceased by law and such claims of creditors shall be processed together with the settlement of claims of other creditors based on the principle of *paru passu pro rata parte*, because in fact creditors have equal status;

Whereas nevertheless, in such settlement process, the ranking or priority of receivable to be paid first shall be regulated due to different status of creditors, as regulated in the law especially regarding the guaranty for loan extended by a creditor to a debtor, so that for such creditor the claims shall be arranged from the beginning to be settled separately from the debtor's asset with the right to conduct execution against the asset becoming collateral for the loan extended. Due to such collateral, creditors secured with hypothec, pledge, fiduciary security and security right can exercise their rights in the event that the debtor does not pay his debts separately as if no bankruptcy occurred. Similarly, in the ranking order for the settlement of creditors' claims following the completion of settlement to separatist creditors, laborer's wage must still wait in the order after the claim of state's entitlement, auction office, and legal entity established by the Government to be prioritized as provided for in Article 1134 paragraph (2) *juncto* Article 1137 of the Indonesian Civil Code and Article 21 of Law Number 16 Year 2000 regarding General Tax Provisions and Procedures as most recently amended with Law Number 28 Year 2007 regarding the Third Amendment to Law Number 6 Year 1983 regarding General Tax Provisions and Procedures. According to the Petitioners, laborers'/workers' right should have been prioritized based on the provision of Article 95 paragraph (4) of Law Number 13 Year 2003 regarding Manpower which reads, "*In the event that a company is declared bankrupt or liquidated based on applicable laws and regulations, the wage and other rights of workers/laborers shall constitute debt the payment of which shall be prioritized.*" Elucidation of the article reads, "*the payment that shall be prioritized shall be the*

payment of workers/laborers' wage which must be made earlier than for other debts."

Article 28D of the 1945 Constitution states as follows:

Paragraph (1): *"Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law."*

Paragraph (2): *"Every person shall have the right to work and to receive fair and proper remuneration and treatment in work relationships."*

[3.14] Considering whereas based on the arguments presented by the Petitioners and supported by written evidence and statements of experts, as a matter of fact, the principal issue is different legal and economic status related to the payments in bankruptcy between separatist creditors and laborers. For separatist creditors, the settlement of payments in bankruptcy is secured with hypothec, collateral, fiduciary security, pledge, and security right. For laborers, their status as special preferred creditors is lower than the status of separatist creditors, with the consequence that laborers will not get anything, which is, according to the Petitioners, contradictory to the protection of laborers' right guaranteed in the 1945 Constitution, namely to just legal certainty and equal treatment, because laborers as workers are entitled to obtain fair and proper remuneration and treatment for the work they have done, which support their right to live;

In fact, it is undeniable that the status of laborers or workers in the production process conducted by companies constitutes one of vital and fundamental elements driving the process of changing potentials into concrete products, or raw materials into products which are ready for the market and for use by consumers. Another element, namely capital, is also essential. Without capital, production process, including employment, would be impossible. According to the Constitution, laborers or workers must be given just legal protection as set forth in Article 28D paragraph (2) of the 1945 Constitution.

[3.15] Considering whereas each of the elements namely capital and labor enter the organization and production process in a company based on free will and voluntariness of each element as formulated in an agreement between capital owner and laborer as well as the skill, engaged in an agreement, before involvement of each in the production process which calculates and manages risks which may arise against the parties. Different motivation, goal and strength of each also affects the substance of engagement of each, so that naturally such production elements do not have equal status viewed from the standard of certainty, guarantee, and future in the event of risks arise beyond the intention of all parties. Therefore, the Court is of the opinion that although public policy for protecting human beings, *in casu* laborers or workers, is considered of higher priority than capital, the natural cycle in the economic life will cause shift of priority order so that the priority (priority right) of separatist creditors secured by security right is position at a lower level, with the automatic consequence of reducing sufficient incentive and motivation for investor to make investments due

to the absence of capital return and this will in turn prevent the creation of employment needed by workers. Guarantee of equal and just legal certainty for workers to obtain wage for the work they have done, as recognized as their constitutional right, must be treated proportionally. Such recognition must still be based on consideration of different status and risks in the economic sector which may not always be expected.

Whereas in various principles of justice known such as egalitarianism, difference principle, resource-based concept, economic welfare are respectively as follows:

- 1) Concept of justice of egalitarianism/radical equality contains the principle that every person must have equal status in the need for goods and service and individual freedom is strictly limited;
- 2) Concept of justice based on the principle of difference contains principles that more wealth is generated in a system where the more productive ones gain greater income and which maximize the absolute position of the disadvantaged. This concept of justice means that every person must have similar right to basic freedom to the greatest possible extent in accordance with the similar system of freedom applied for other persons. Social and economic inequality must be regulated in such a way that: (i) both kinds of inequality are expected to benefit every person; and (ii) such inequality is attached to the status and functions open for all everyone;

- 3) Another concept of justice, namely resource-based justice, contains principles that every person must accept the consequences of his/her choice. This principle means that every person electing to work hard to generate more income should not be expected to subsidize those who are lazy and who therefore have less income;
- 4) Welfare-based concept of justice contains principles aimed at maximizing people's welfare in general, which is utilitarianism namely the principle of *the greatest happiness for the greatest numbers*;
- 5) Reward-based concept of justice contains principles that every person shall be rewarded or given remuneration based on his/her actual contribution, aimed at rising the standard of living by rewarding the efforts and achievements and applied only to adult workers;

Whereas the principles of economic justice which are relevant to the spirit of Indonesian economic system according to the 1945 Constitution are as follows:

1. in essence, resources belong to the One Almighty God, and human beings are limited owners based on God's message;
2. resources are possessed by human beings in partnership, not with exclusive rights and other species have similar rights to such resources;

3. initiative or efforts, namely that human beings have free choice of self-determination;
4. individuals shall receive what they are entitled to based on their efforts, without fully considering their actual contribution as emphasized by the principle of distributive justice namely to reward a person based on his/her service;
5. difference in the reward distributed shall not always be considered as a form of injustice, but something which is natural as well as something which may happen in the event of fulfillment of distribution criteria, among others: (i) exchange; (ii) need; (iii) power; as well as (iv) social system and ethical value.

Justice in the distribution of rights among creditors with respect to the assets of bankrupt creditors must be viewed from the constitutional morality in the 1945 Constitution which the Court interprets as a mandate to protect the whole nation fairly and based on humanity under the One Almighty God. In parallel with the foregoing, based on the principle of family system set forth in Article 33 of the 1945 Constitution, the state shall be entitled to regulate and maintain various economic interests of all layers of the community, including economic actors. Justice will be fulfilled in the event that elements having different interests in the community can live and develop harmoniously, including in this case interests of business owners, laborers, and creditors, as each element cannot stand alone but instead they shall must support each other;

Whereas if the rights of laborers are marginalized in bankruptcy, then the state shall straighten it immediately through a policy based on *pareto superiority*, namely a policy which benefits the interest of one party, but without sacrificing the interest of the other party. The general provisions which are related to the rights of laborers must be corrected, for instance, in the event of bankruptcy, there must be a legal certainty which constitutes the guarantee of the payment of the laborers' rights, such as the wage of the laborers, because they have already contributed their services and skills in the production process. This policy, however, may not disturb the interest of separatist creditors regulated in the security legal provision, either in form of pledge, hypothec, fiduciary or other security rights;

Furthermore it does not mean to equalize all of the receivable components having different legal basis, namely law and contract. The status of creditors based on the security (pledge, hypothec, fiduciary security, and security rights) from the beginning has reduced the debtors' rights to the property/asset put as collateral, which causes the assets to be no longer deemed as the full property right of the debtors, because the assets have been encumbered with hypothec, fiduciary security, security rights, and pledge which reduce the freedom of the debtors to act in respect of the collateral object as pseudo-owners (*pseudo eigenaar*);

Justice requires that such contract is legally and morally binding and must be complied with because actually the contract will create harmony, except when

such contract is made to purposely harm the other creditors. Denying such contract will in fact create injustice;

Equality among different creditors means that creditors will obtain equal legal protection, so that distributive justice is not viewed in flat equality, but proportionally, in accordance with equality obtained through a private contract between parties and with an equality determined by law;

Whereas the principle of equal treatment, in a certain respect, means the same with requiring the existence of a regulation, a standard or measure stipulated to treat them. Before stipulating such regulation there is no measure to compare. After such regulation is stipulated, then the equality between both of them is the logical consequence of the stipulated regulation. They are equal in respect of such regulation because it is the nature of equality, namely equality according to the same regulation.

Decision Number 15/PUU-VI/ 2008 dated July 10, 2008 has provided an interpretation of the meaning of justice, namely that justice does not always mean treating every person equally. Justice can mean treating equally in respect of things which are really similar and treating differently in respect of things which are really different. Accordingly, it is in fact unjust to treat different things equally. The elements of capital and laborers cannot be said to be similar, either from the aspects of characteristics origins, or their role;

The principle of justice in the 1945 Constitution which assigns the state to protect the whole nation, including laborers in bankruptcy, is an order to make efforts to eliminate injustice which can occur through public policy in the laws and regulations to increase the guaranty of protection for laborers.

[3.16] Considering whereas before considering the constitutionality of Article 29, Article 55 paragraph (1), Article 59 paragraph (1), and Article 138 of the Bankruptcy and PKPU Law, it is necessary to take into consideration several specific matters proposed by the expert of the Petitioners, namely:

1. whereas in the state whose economy is based on capitalism and liberalism as it is recognized in the United States of America, in the process of bankruptcy, the wage of laborers is laid as creditor's claim which is higher than the creditors claim guaranteed as secured-loan, whereby in the case of corporate bankruptcy, the payment of laborers' wage is made earlier than the payment to separatist creditors;
2. in the United States of America there is a law providing protection to laborers and retirees which is known as *Protecting Employees and Retirees in Bankruptcy Act*.

[3.17] Considering whereas from the data obtained by the Court, what is mentioned by the Petitioners' expert concerning the position of laborers' claim whose payment is prioritized over the payment of the secured-loan of separatist creditors, either from the bankruptcy law or the jurisprudence in the United States

of America, there is no sufficient evidence to support it, so that the opinion of the expert cannot be used as the material to make *comparative study* interpretation in the judicial review of the Bankruptcy and PKPU Law against the 1945 Constitution. Although it is true that there is a bill initiated by Senator Durbin, known as the *Protecting Employees and Retirees in Bankruptcy Act*, the bill has not been legalized as law. The bill has two purposes, namely: (i) protecting the rights of laborers and retirees when companies start using the bankruptcy process; and (ii) preventing companies from taking advantage of bankruptcy to influence *Collective Bargaining Agreements*. Even though the purposes of the bill are intended to improve the status of laborers or employees who have devoted themselves for companies in order not to be treated as outsiders or have a weak status in the payment when the bankruptcy process is underway, the maximum status proposed is only *on-par* with separatist creditors guaranteed by *secured-loan*. Bankruptcy system and mechanism of the United States of America are different from Indonesia's, namely that the status of laborers which is going to be improved is going on when companies want to abuse the petitioned bankruptcy process in *Chapter 11* (restructuring), which is aimed at reducing their commitment to laborers in *Collective Bargaining Agreement* when companies are still allowed to operate by executing debt reorganization and restructuring (<http://www.govtrack.us/congress/bill.xpd?bill=s110-2092>);

Whereas the almost similar thing is also carried out in the countries of European Union Community with a proposal for the construction of guideline known as *Council Directive* OJC. 135/2,9.6.1978 concerning Protection of

Laborers in Insolvent Companies (http://ec.europa.eu/employment_social/labour_law/docs/implementation_report_insolvency_en.pdf), which admits the existence of inadequate protection of laborers when insolvent companies' assets are insufficient to fulfill the claim of laborers, and the time-consuming settlement process of bankruptcy, so that a special institution is required to secure laborers' claim to provide equal protection for laborers throughout the European Union Community.

[3.18] Considering whereas according to the Court, the determination of the settlement level or the payment of credit claim in the bankruptcy process which is derived from, and regulated in, different products of laws and regulations, either in the Indonesian Civil Code (KUHPerdata), or in Law Number 4 Year 1996 concerning Security Right Over Land and Land-Related Objects, to the extent it is concerned with the status of laborers or employees, has been corrected in such a way in the Bankruptcy and PKPU Law, so that laborers' wage which was only in the fourth order of preferred creditors before (Article 1149 sub-article 4 of the Indonesian Civil Code) whose status is under separatist creditors, becomes the bankruptcy property debt under the bankruptcy cost and the receiver's fee based on Article 39 paragraph (2) of the Bankruptcy and PKPU Law. In such context, Article 95 of the Manpower Law formulating that laborers' wage in the process of bankruptcy shall be prioritized, must be read in such a way that laborers' wage is prioritized but under separatist creditors secured by pledge, hypothec, fiduciary security, security right (secured-loan),

bankruptcy cost and Receiver's fee. Accordingly, there is no contradiction of norm between the Bankruptcy and PKPU Law and the Manpower Law.

[3.19] Considering whereas in view of the development occurring, either in the United States of America or in European Union, it is necessary to provide adequate protection for laborers or employees to prevent laborers' claim from being zero, because it has been used up to pay creditors with higher status (preferred). Freedom of contract in employment agreement and commitment in business are the domains of private law, which desires balance and justice in the status of parties. However, it cannot be left solely to be based on freedom of contract between parties, but it must be carried out with a set of social laws and regulations, which require the state's intervention as recognized in the laws and regulations on social security with a wider scope, particularly for the State of the Republic of Indonesia which adheres to the principle of welfare state;

In view of the importance of protection for laborers or employees, the legislators must be serious in making efforts for the formulation of a law which provides better security and protection for laborers or employees in accordance with the purpose of state and the principles of welfare state and welfare society as included in the Preamble to the 1945 Constitution. Besides, synchronization and harmonization of various related laws and regulations are necessary;

Considering whereas based on the legal views above, in their mutual relation, the Court gives its legal evaluation that Article 29, Article 55 paragraph (1), Article 59 paragraph (1), and Article 138 of the Bankruptcy and PKPU Law

have given legal certainty, even claim right for creditors fairly, guaranteed protection for every separatist creditor, including laborers or employees in accordance with Article 28D paragraph (2) of the 1945 Constitution, with the following considerations:

1. whereas the Petitioners' reasons and argument state that the provision of Article 29 of the Bankruptcy and PKPU Law does not give any just legal certainty and equal treatment before the law for laborers in seeking justice as guaranteed by Article 28D paragraph (2) of the 1945 Constitution. According to the Court, Article 29 of the *a quo* law is imperative in nature which obliges creditors including laborers to be subject to the receiver's statement or stipulation under the supervisory of supervising judge;
2. whereas according to the Court, the Petitioners' legal basis and argument stating that Article 29 of the Bankruptcy and PKPU Law is contradictory to Article 28D paragraph (1) of the 1945 Constitution are not correct according to the law and/or do not have legal basis because Article 29 of the Bankruptcy and PKPU Law still gives recognition, guarantee, protection, as well as equal treatment before the law to the Petitioners who can still demand their rights to the receiver as clearly specified in Article 115 paragraphs (1) and (2) of the Bankruptcy and PKPU Law which read, Paragraph (1) *"All creditors shall submit their receivables to receiver along with the calculation or any other written information showing the characteristics and amount of receivables, along with*

evidence documents and their copies, and a statement as to whether or not Creditors have privilege, pledge, fiduciary security, security right, hypothec, collateral right on other assets, or the right to retain property.”

Paragraph (2), *“Upon the delivery of receivables as intended in paragraph (1), creditors shall be entitled to request for a receipt from receiver”;*

3. whereas to the extent of the Petitioners’ legal basis and argument stating that laborers are deemed as preferred creditors with privilege of obtaining the settlement of the proceeds of sales of the whole debtors’ property under the legal status of separatist creditors, it is necessary to explain that in the global economic development in Indonesia *in casu* the change and the development of economy law including bankruptcy law which is the legacy of Dutch Colonial Government, the Court does not deny the indication of pressure and influence from international organizations such as International Monetary Fund (IMF) and World Bank as set forth by the Petitioners’ experts (Rizal Ramli and Surya Chandra);
4. whereas the aforementioned Petitioners’ legal basis needs questioning whether or not the laborers’ legal status which, *nota bene*, does not explicitly (*ekspressis verbis*) mention as separatist creditors or preferred creditors in the Bankruptcy and PKPU Law, and only in the Manpower Law, laborers’ rights are paid first in a correct manner according to the law that their status is equalized to the status of separatist creditors;

5. whereas according to the Court, the provision of Article 29 of the Bankruptcy and PKPU Law is in the context of implementing the principle of protection and legal certainty in a proportional and just manner for all creditors in bankruptcy, so that it is not contradictory at all to the provision of Article 28D paragraph (1) of the 1945 Constitution;

6. whereas in respect of other articles argued by the Petitioners, namely Article 55 paragraph (1), Article 59 paragraph (1) and Article 138 of the Bankruptcy and PKPU Law, which are deemed contradictory to Article 28D paragraph (2) of the 1945 Constitution, according to the Court, such provisions are the elaboration of principles in contract law *in casu* security law in relation to private law. Article 55 paragraph (1), Article 59 paragraph (1) and Article 138 of the Bankruptcy and PKPU Law basically provide that separatist creditors may execute their rights as if there were no bankruptcy. It means that pledge, hypothec, fiduciary security, and security right are not included in bankruptcy estate (*boedel*) to be executed. Separatist creditors are entitled to execute by themselves the collateral in their possession. In case there is still insufficiency after the execution of the existing collateral in their possession, separatist creditors are entitled to the bankruptcy estate (*boedel*) as concurrent creditors; on the contrary, in case there is an excess from the receivables, then the excess must be included in the bankruptcy estate (*boedel*);

7. whereas the execution of the *a quo* separatist creditors' rights cannot be deemed as unjust and improper treatment in working relationship (relationship between laborers and entrepreneurs), because in the intended working relationship, laborers do not lose their rights in bankruptcy and laborers also do not lose their rights or their wages, either. Therefore, according to the Court, Article 55 paragraph (1), Article 59 paragraph (1) and Article 138 of the Bankruptcy and PKPU Law are not contradictory to the provision of Article 28D paragraphs (1) and (2) of the 1945 Constitution;
8. whereas when in fact the whole property of the company is used up to pay separatist creditors so that the laborers' or employees' wage is unpaid, then state's intervention is needed to overcome such condition through various concrete social policies.

[3.20] Considering whereas based on the whole descriptions of considerations above, the Court is of the opinion that Article 29, Article 55 paragraph (1), Article 59 paragraph (1), and Article 138 of the Bankruptcy and PKPU Law are not contradictory to the 1945 Constitution. However, the factor of weak protection of laborers' or employees' rights in the event of bankruptcy which can cause laborers or employees to get nothing because the debtor's asset has been put as collateral for separatist creditors requires state's intervention. Therefore, what should be done is not in the way of declaring the articles in the Bankruptcy and PKPU Law petitioned for judicial review

contradictory to the 1945 Constitution or furthermore giving laborers' the status of creditors equal to the status of separatist creditors and/or eliminating the status of separatist creditors, which will certainly harm separatist creditors whose right to the settlement of their receivables is guaranteed by the Bankruptcy and PKPU Law, but by covering the legal weakness through organizing the relationship between laborers and debtors under the Manpower Law through various concrete social policies, so that the guarantee of legal certainty for laborers' or employees' rights will be fulfilled at the time the debtor is declared bankrupt;

4. CONCLUSION

Based on the aforementioned considerations, the Court concludes:

[4.1] Whereas Article 29, Article 55 paragraph (1), Article 59 paragraph (1) and Article 138 of the Bankruptcy and PKPU Law are not contradictory to Article I 28D paragraphs (1) and (2) of the 1945 Constitution;

[4.2] Whereas in the effort of providing better legal security and protection to employees or laborers in case of bankruptcy, the legislators need to carry out synchronization and harmonization of laws related to the regulations of laborers' rights;

[4.3] Whereas, the existence of the role of the state is necessary in the form of concrete policies to provide security and protection to employees' or laborers' rights in case of bankruptcy.

5. DECISION

In view of Article 56 paragraph (5) of the Law Number 24 Year 2003 regarding Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316), therefore based on the 1945 Constitution of the Republic of Indonesia;

Passing the decision,

Declaring that the Petitioners' petition is rejected.

Hence the decision was passed in the Consultative Meeting of Constitutional Court Justices attended by nine Constitutional Court Justices on Wednesday, the fifteenth of October two thousand and eight, which was pronounced in the Plenary Meeting of the Constitutional Court open for public on this day, Thursday, the twenty third of October two thousand and eight, by eight Constitutional Court Justices, namely Moh. Mahfud MD, as Chairperson and concurrent Member, Maruarar Siahaan, H. M. Arsyad Sanusi, H. Ahmad Sodiki, H. A. Mukthie Fadjar, Maria Farida Indrati, H.M. Akil Mochtar, and Muhammad Alim, respectively as Members, assisted by Makhfud as the Substitute Registrar, and attended by the Petitioners/their Attorneys, the Government or its representative, and the People's Legislative Assembly or its representative.

CHIEF JUSTICE,

SGD.

Moh. Mahfud MD,

JUSTICES,

SGD.

Maruarar Siahaan

SGD.

H.M. Arsyad Sanusi

SGD.

Ahmad Sodiki

SGD.

H. Abdul Mukthie Fajar

SGD.

Maria Farida Indrati

SGD.

H.M. Akil Mochtar

SGD.

Muhammad Alim

SUBSTITUTE REGISTRAR,

SGD.

Makhfud