



DECISION

NUMBER 2/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 upon constitutional cases at the first and final level, has passed a decision in the case of Petition for Judicial Review on Law Number 37 Year 2004 regarding Bankruptcy and Postponement of Debt Settlement Obligation against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

- [1.2]
1. **M. Komarudin**; Moslem; employee; General Chairperson of the Indonesian Labor Union Federation; Indonesian citizen; residing at jalan Koleang RT 06/01 Koleang Jasinga Village, Bogor Regency;
 2. **Muhammad Hafidz**; Moslem; entrepreneur; General Secretary of the Indonesian Labor Union Federation; Indonesian citizen, residing at jalan Kapuk Kamal Raya Number 73 Kalideres, West Jakarta.

In this case acting for and on behalf of the Indonesian Labor Union Federation, having its address at Jalan Kapuk Kamal Raya Number 73 (Komplek Miami) Kalideres West Jakarta, registered as Worker Union/labor union with the sub-Service Office of Manpower and Transmigration in West Jakarta Municipality through by virtue of Letter Number 258/077-73 dated February 8, 2006, under Record Number 299/III/S.P/II/2006;

Hereinafter referred to as **the Petitioners**;

[1.3] Having read the Petitioners' Petition;

Having heard the Petitioners' Statement;

Having examined the Petitioners' Evidences.

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the purpose and objective of the Petitioners' Petition are as described above;

[3.2] Considering whereas before entering the Principal Petition, the Constitutional Court (hereinafter referred to as the Court) must first consider the following matters:

- Whether or not the Court has the authority to examine, hear, and decide upon the Petitioners' Petition;

- Whether or not the Petitioners have legal standing for filing the a quo petition to the Court;

The Authority of the Court

[3.3] Considering whereas based on Article 24C of the Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution), one of the authorities of the Constitution Court is to review Laws against the 1945 Constitution;

[3.4] Considering whereas the Petitioners' Petition is a petition for judicial review on Law Number 37 Year 2004 regarding bankruptcy and Postponement of Debt Settlement Obligation (hereinafter referred to as Law on Bankruptcy and PKPU) against the 1945 Constitution;

[3.5] Considering whereas therefore, the Court has the authority to examine, hear, and decide upon the *a quo* petition;

Legal Standing of the Petitioners

[3.6] Considering whereas based on Article 51 Paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court (LNRI Year 2003 Number 98, TLNRI Number 4316, hereinafter referred to as the CC Law) and Elucidation of Article 51 Paragraph (1) Sub Paragraph a, the Petitioners for judicial review on laws against the 1945 Constitutions shall be parties who

believe that their constitutional rights and/or authorities are impaired by the enactment of a law, namely:

- a) Individual Indonesian Citizen (including groups of people having common interest);
- b) units of customary law communities insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia set forth in the law;
- c) public or private legal entities; or
- d) state institutions;

[3.7] Considering whereas since Decision Number 06/PUU-III/2005 and the following decisions, the Constitutional Court has determined 5 (five) requirements in its legal considerations on the impairment of constitutional rights and/or authorities as intended in Article 51 paragraph (1) of the CC Law, namely as follows:

- a. the petitioner holds a constitutional right and/or authority granted by the 1945 Constitution;
- b. such constitutional right and/or authority are deemed to have been impaired by the enactment of a law;
- c. such impairment of constitutional rights and/or authorities are specific and actual in nature or at least will likely occur based on logical reasoning;

- d. there is a causal connection between the impairment of such constitutional rights and/or authorities of the Petitioner and the law petitioned for judicial review;
- e. if the petition is granted, the argued impairment of the constitutional rights and authorities will not occur or no longer exist;

[3.8] Considering whereas the Petitioners in the judicial review on Law on Bankruptcy and Postponement of Debt Settlement Obligation are M. Komarudin and Muhammad Hafidz, who are General Chairperson and General Secretary of the Indonesian Labor Union Federation, respectively. Nevertheless, the Petitioners classify themselves as a group of Indonesian citizens having common interest, namely interest as workers who, according to the Petitioners, have constitutional rights granted by Article 28D of the 1945 Constitution. Article 28D Paragraph (1) of the 1945 constitutions reads, *“Every person shall have the right to fair recognition, guarantee, protection and legal certainty as well as equal treatment before the law.”* Meanwhile Article 28D Paragraph (2) of the 1945 constitution reads, *“Every person shall have the right to work and to receive fair and proper remuneration and treatment in work relationships..”*

[3.9] Considering whereas the Petitioners argue that their constitutional rights are harmed by the enactment of several articles of the Law on Bankruptcy and Postponement of Debt Settlement Obligation, such as:

- Article 29: *“A lawsuit filed to a Court against a Debtor insofar as it is intended to obtain the fulfillment of obligation from bankrupt estates in an*

ongoing case shall become null and void by the pronouncement of the decision on bankruptcy declaration against the Debtor”;

- Article 55 Paragraph (1): *“With due observance of the provisions as intended in Articles 56, 57 and 58, every Creditors that hold a pledge, fiduciary security, security right, mortgage, or collateral right on other objects, may exercise their rights as if the bankruptcy does not occur”;*
- Article 55 Paragraph (2): *“In the event of the collection of a debt as intended in Articles 136 and 137, it may only be allowed after the verification of the invoice and only for the collection of the settlement based on the amount acknowledged in the invoice”;*
- Article 59 Paragraph (1): *“With due observance of the provisions in Articles 56, 57, and 58, Creditors holding the rights as intended in Article 55 paragraph (1) must exercise their right within a period of 2 (two) months following the commencement of insolvency as intended in Article 178 paragraph (1);*
- Article 59 Paragraph (2): *“Following the lapse of the period as intended in paragraph (1), the curator must require for the handover of the objects serving as collaterals to be subsequently sold in accordance with the method as intended in Article 185, without prejudice to the right of the Creditor holding the right on the proceeds of the sale of such collaterals”;*

- Article 59 Paragraph (3): *“The Curator may at any time release the objects serving as collaterals by paying the lesser of the market price of the collaterals and the debt secured by the collaterals to the Creditor concerned”;*
- Article 138: *“A creditor whose receivables are secured with pledge, fiduciary security, security right, mortgage, collateral right on other objects, or having a privilege on a certain object in the bankruptcy estate and is able to prove the possibility that a part of the receivable cannot be covered from the proceeds of the objects serving as the collaterals, may request to be granted rights held by congruent creditors on the portion of such receivables, without prejudice to the priority right on the objects serving as the collateral for its receivables”;*

According to the Petitioners, the aforementioned articles of the Law on Bankruptcy and Postponement of Debt Settlement Obligation disregard the workers' right on the remuneration to be paid by a bankrupt company. The articles contradict with the 1945 Constitution because they do not consider workers as privileged creditors whereas Article 95 Paragraph (4) of Law Number 13 Year 2003 regarding manpower states: *“In case a company is declared bankrupt or liquidated in accordance with the prevailing laws and regulations, the remuneration and other rights of the workers/labors shall serve as prioritized debts.”* The elucidation on the aforementioned Paragraph (4) reads: *“Prioritized*

debts shall mean that the workers'/ laborers' remuneration must be paid first before other debts";

[3.10] Considering whereas based on the exhibits filed (Exhibits P-1 up to P-6), the *prima facie* Court is of the opinion that the Petitioners have the legal standing to file the *a quo* petition. Nevertheless it is still necessary to prove in the considerations on the Principal Petition whether or not the Petitioners' constitutional rights are impaired by the enactment of the articles of the Law on Bankruptcy and Postponement of Debt Settlement Obligation petitioned for judicial review;

Principal Petition

[3.11] Considering whereas in the Principal Petition, the Petitioners argue that the articles of Law on Bankruptcy and Postponement of Debt Settlement Obligation contradict with Article 28D Paragraph (1) and Paragraph (2) of the 1945 Constitution and are also not in accordance with Article 95 Paragraph (4) of the Law on Manpower, so as it is petitioned for they to be declared not having binding legal force;

[3.12] Considering whereas the Court has given opportunities for the Petitioners to support the exhibits filed (Exhibits P-1 up to P-6) by presenting Witnesses and Experts to corroborate their arguments. However, up to the designated time limit, the Petitioners were not able to present any Witness and Expert as intended above. The Court has also granted toleration by giving the

Petitioners an opportunity to file written statements from the desired Experts, however, such opportunity was not used within the two-week period given by the Court;

[3.13] Considering whereas the Petitioners only provided an additional exhibit in the form of clippings in media on the interview of several Experts, which were accessed through the internet (Exhibit P-7 up to P-11), received by the Clerk's Office of the Court on April 17, 2008, exceeding the time limit determined by the Court;

[3.14] Considering whereas the Court is of the opinion that the Petitioners are not serious in proving the impairment of their constitutional rights due to the enactment of the articles of Law on Bankruptcy and Postponement of Debt Settlement Obligation petitioned for judicial review. Therefore, the Court, which was initially of the opinion that the Petitioners were deemed to have legal standing, is of the opinion that they are in fact unable to prove that their constitutional courts are impaired and fail to meet the provisions of Article 51 Paragraph (1) of the CC Law;

4. CONCLUSION

Based on the foregoing considerations, the Court concludes that the Petitioners do not meet the Provisions of Article 51 Paragraph (1) of the CC Law, so as the petition shall be declared unacceptable (*niet ontvankelijk verklaard*);

5. DECISION

In view of Article 56 Paragraph (1) of Law Number 24 Year 2003 regarding the 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);

Passing the Decision

Declaring that the Petitioners' petition is unacceptable (*niet ontvankelijk verklaard*);

In witness whereof, decided at the Consultative Meeting of Justices attended by nine Constitutional Court Justices on Monday, May 6, 2008, and pronounced at a Plenary Session open for public on this day, Tuesday, May 6, 2008, by us, Jimly Asshiddiqie as the chairperson and concurrent member, H. Abdul Mukthie Fadjar, H.A.S Natabaya, I Dewa Gede Palguna, H.M. Laica Marzuki, Maruarar Siahaan, H. Harjono, Soedarsono, and H. Moh. Mahfud MD, respectively as members, assisted by Eddy Purwanto as the Substitute Clerk, in the presence of the Petitioners/their Attorneys-in-fact, the Government or its representative, and the People's Legislative Assembly or its representative;

CHIEF JUSTICE,

Jimly Asshiddiqie

MEMBERS,

H. Abdul Mukthie Fadjar

H.A.S Natabaya

I Dewa Gede Palguna

H.M. Laica Marzuki

Maruarar Siahaan

H. Harjono

Soedarsono

H. Moh. Mahfud MD

SUBSTITUTE CLERK,

Eddy Purwanto