



CONSTITUTIONAL COURT

REPUBLIC OF INDONESIA

SUMMARY OF DECISIONS

CASE NUMBER 17 / PUU-XVIII / 2020

Concerning

**The absence of any legal remedies in the decision of bankruptcy cases in
postponement of debt payment obligations (PKPU)**

Petitioner : PT. Korea World Center Indonesia, Represented by
Mr. Gi Man Song

Case : Review of Law Number 37 Year 2004 concerning
Bankruptcy and Postponement of Debt Payment
Obligations (Law 37/2004) against the 1945 Constitution of
the Republic of Indonesia (UUD 1945);

Case of Lawsuit : Review of Article 235 paragraph (1) and Article 293
paragraph (1) of Law 37/2004 against Article 28D
paragraph (1) of the 1945 Constitution;

Injunction : Reject the Petitioners' petition in its entirety

Date of Desicion : Tuesday, June 23, 2020;

Desicion Overview :

The Petitioner is a private legal entity represented by the President Director named Mr. Gi Man Song is a South Korean citizen whose company was declared bankrupt by the Commercial Court through Postponement of Debt Payment Obligations (PKPU).

In connection with the authority of the Court, because the Petitioner's petition is a review of Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 against Article 28D paragraph (1) of the 1945 Constitution, the Court has the authority to adjudicate the Petitioner's petition;

Regarding the Petitioner's legal position, although the Petitioner is a private legal entity represented by a foreign citizen (South Korea), based on Article 98 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (Law 40/2007) which states that "The Board of Directors represents the Company both inside and outside the court" The applicant can be qualified as stipulated in the provisions of Article 51 paragraph (1) of the Constitutional Court Law to file a quo petition. The Petitioners' argument for constitutional impairment which basically states that Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 have significantly harmed the Petitioner's constitutional rights because they did not open any legal remedies against the PKPU case decision in bankruptcy. According to the Court, the Petitioner has specifically explained the presumption of impairment of his constitutional rights which has occurred with the enactment of the norm of the law that is being submitted for review. Thus, the Petitioner has a legal position to act as a Petitioner in the a quo petition

Whereas since the a quo Petition is clear, the Court is of the opinion that there is neither urgency nor need to hear the statements of the parties as referred to

in Article 54 of the Constitutional Court Law;

In relation to the main point of the Petitioner's petition, in essence the Petitioner argues that Article 235 paragraph (1) and Article 293 paragraph (1) have deprived the Petitioner of legal rights because there was no legal remedy for the Petitioner to obtain justice protection for his investment funds due to the judge's decision regarding PKPU that was not justice is included in the petition for a review of the Petitioner which resulted in the Petitioner's legal rights being impaired, and the Petitioner hopes that with legal remedies an erroneous court decision can be corrected by a higher court. Regarding the Petitioner's argument, the Court is of the opinion as follows:

1. Whereas the PKPU Institution is basically part of a legal effort which has functions, one of which is to assist entrepreneurs, especially debtors who are disturbed by the stalling of their business which causes difficulties in fulfilling obligations to creditors in settling their debts. By looking at such a situation, it is very appropriate if the problems between debtors and creditors can be resolved in a peaceful manner as confirmed in the General Elucidation of Law 37/2004 which, among other things, states that "For the interests of the business world in solving problems of debts fairly, quickly, openly. and it is effective, it is necessary to have a legal instrument that supports it ”.
2. Whereas in the case of a company experiencing difficulties regarding its debt payment obligations to creditors, it cannot automatically be declared bankrupt. Law 37/2004 has provided a clear legal mechanism through PKPU with the aim of establishing a peace plan between creditors and debtors regarding debtor debt restructuring to creditors who are expected to be able to make debt payments by way of peace. With the existence of time periods for carrying out

PKPU stages including peace between debtors and creditors as regulated in Law 37/2004, this provides sufficient opportunity or time for debtors to pay off their debts to creditors in whole or in part. based on the peace plan agreed in PKPU.

3. Whereas it can be understood why in the PKPU decision, legal remedies are not allowed as stipulated in Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004, because considering the process of PKPU itself has provided sufficient time for the two both parties, namely debtors and creditors, to carry out deliberations in order to achieve peace in terms of settling their debts and receivables which are mediated by the judiciary. Thus, if the outcome of the PKPU decision is questioned again by one of the parties by means of legal action, then this will lead to a deliberation between the two parties that has been taken through the court route, namely PKPU and has taken quite a long time, it will create uncertainty. law for the PKPU petition itself, because the problem of accounts payable between creditors and debtors has not yet been resolved, so it cannot be ascertained when it will end. This emphasizes that in addition to the PKPU case cannot be filed a second time because it will cause legal uncertainty to the peace efforts that have been achieved, this is also clearly contrary to the nature of the PKPU case itself and the principles of justice, namely fast, simple, and low cost. Thus Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 not only fulfill a sense of justice for the parties but also provide legal certainty for debtors and creditors because the time limit has been determined by law.
4. Whereas the Petitioners' argument which basically states that with the PKPU legal remedies, the Petitioner hopes that the PKPU Decision which has wrong

considerations can be corrected or corrected by a judicial body with a higher level. According to the Court, in essence the substance of PKPU is essentially the result of a peace deliberation between debtors and creditors as a representation of the will of the two parties, therefore there is no relevance to worrying about a PKPU decision by the judiciary that needs to be corrected or corrected because of an error. Moreover, a statement of bankruptcy from a judicial body which is actually related to bankruptcy which was not preceded by PKPU has provided legal remedies.

Based on the considerations described above, according to the Court, there has been no problem of constitutionality of the norms of Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 so that the Petitioners' arguments are legally groundless. Thus the Court issued a ruling which completely rejected the Petitioner's petition.