



THE CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION  
OF CASE NUMBER 23/PUU-XIX/2021

Concerning  
No Legal Efforts Against the Decision on Suspension  
of Obligations and Debt Payments

<b>Petitioner</b>	: PT. Sarana Yeoman Sembada represented by Sanglong alias Samad
<b>Type of Case</b>	: Review of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Law 37/2004) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
<b>Subject Matter</b>	: Article 235 paragraph (1), Article 293 paragraph (1), and Article 295 paragraph (1) of Law 37/2004 are in contrary to Article 28D paragraph (1) of the 1945 Constitution.
<b>Verdict</b>	: 1. To grant the Petitioner's petition in part; 2. To declare that Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 are in contrary to the 1945 Constitution and have no binding legal force, as long as it is not interpreted as legal remedies for cassation are allowed against the decision on Suspension of Debt Payment Obligations submitted by creditors and the rejection of the composition from the debtor; 3. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate; 4. To dismiss the Petitioner's petition for the rest/remainder.
<b>Date of Decision</b>	: Wednesday, December 15, 2021.
<b>Overview of Decision</b>	:

The Petitioner is a Private Legal Entity which in this case is represented by Sanglong alias Samad as Director of PT Sarana Yeoman Sembada who has suffered a constitutional loss as stated in Article 28D paragraph (1) of the 1945 Constitution due to the norms of Article 235 paragraph (1), Article 293 paragraph (1), and Article 295 paragraph (1) of Law 37/2004 which cause the Petitioner to be unable to file any legal remedies resulting in the Petitioner's inability to manage his assets due to his bankruptcy status.

In relation to the authority of the Court, because the Petitioner is requesting a judicial review of the Law *in casu* Law 37/2004 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding legal status, the Petitioner has been able to explain his qualifications as a private legal entity represented by the Director. In such qualifications, the Petitioner has also specifically described his constitutional rights which in his opinion are impaired by the enactment of the norm petitioned for review, namely the violation of the right to obtain recognition, guarantees, protection, and fair legal certainty and equality before the law due to the absence of any legal remedies for the decision on the Suspension of Debt Payments Obligations (*Penundaan Kewajiban dan Pembayaran Utang* or PKPU). Therefore, it has been clear that there is a causal

relationship between the Petitioner's assumption regarding the loss of constitutional rights that are considered impaired and the enactment of the legal norms for which judicial review is petitioned, so that if the petition is granted, such loss will no longer occur. Therefore, regardless of whether the Petitioner's argument is proven or not regarding the unconstitutionality of the legal norms petitioned for review, according to the Court, the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

Regarding the question of whether the *a quo* petition meet the criteria as stipulated in Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of the Regulation of the Constitutional Court Number 2 of 2021 concerning Proceedings in Cases of Judicial Review (PMK 2/2021), so that the *a quo* norms can be reviewed, the Court considers that although in case Number 17/PUU-XVIII/2020 and the *a quo* case use the same basis for review, namely Article 28D paragraph (1) of the 1945 Constitution, but in its description the *a quo* Petitioner outlines the contradictions of the articles that are reviewed not only with injustice but also uncertainty and discrimination in legal remedies which are also the values or principles contained in Article 28D paragraph (1) of the 1945 Constitution. In addition, there are differences in the reasons for the Petitioner's *a quo* petition with case Number 17/PUU-XVIII/2020, namely the *a quo* Petitioner has specifically described the reasons for the absence of any legal remedy against the PKPU decision whose petition was submitted by creditors as experienced by the Petitioner. Therefore, in the *a quo* petition the Petitioner requests to declare that the articles being reviewed are not merely unconstitutional as requested by case Number 17/PUU-XVIII/2020, but conditionally unconstitutional. Furthermore, in the *a quo* petition the articles that are being reviewed are not only Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 as in case Number 17/PUU-XVIII/2020, but there is also a review of Article 295 paragraph (1) of Law 37/2004 which determine the absence of legal remedies for judicial review of the constitutional issues faced by the Petitioners. Based on these considerations, notwithstanding that the *a quo* petition is substantially reasonable, formally the *a quo* petition fulfil the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021, so that the *a quo* petition can be resubmitted.

Regarding the constitutionality review of Article 235 paragraph (1), Article 293 paragraph (1), and Article 295 paragraph (1) of Law 37/2004 as argued by the Petitioner, after carefully reading and observing the Petitioner's petition and the evidence presented, the statement of the House of Representatives, the statement of the President, the statement of the Related Party of the Supreme Court, the Related Party of the Indonesian Association of Curators and Management (*Ikatan Kurator dan Pengurus Indonesia* or IKAPI), and the Related Parties to the Indonesian Association of Curators and Administrators (*Asosiasi Kurator dan Pengurus Indonesia* or AKPI), the Court considered the petitions of the Petitioners as follows:

1. Whereas the best option that can be made by the debtor in order to release himself from the inability to pay his debts is to submit a PKPU petition to the commercial court. This is because such choice means that the debtor will get the opportunity to reorganize his financial capacity and in the end can be avoided the fatal consequences experienced by the debtor, namely bankruptcy. Therefore, debtor has the opportunity to organize their business continuity and obtain the benefits of time, economy, and legal certainty. By getting the opportunity to apply for a PKPU, debtor can consult with his creditors regarding the ways to pay his debts by providing a payment plan for all or part of their debts, including if necessary and is agreed to restructure the debtor's debts. With regard to the PKPU petition, the problem that arises is due to a discrepancy between the purpose of the PKPU petition which was originally an instrument for debtors in avoiding bankruptcy by submitting a PKPU petition, but in reality the consequences of bankruptcy cannot be avoided if the PKPU petition is submitted by the creditor and it is not possible to obtain composition;

2. Whereas the reason for the PKPU petition submitted by the creditors is that the debtor cannot continue his debt which has already due and is payable, by requesting that the debtor be given a postponement of debt payment obligations, to allow the debtor to submit a composition plan which includes an offer to pay part or all of the debt to his creditors. This is also based on considerations, one of which is the petition of the principle of balance and the principle of justice. That is, if the debtor is really having difficulty making a payment plan for his debt to the creditors, the creditors shall be given the right to apply for a PKPU so that the debtor is not in an increasingly difficult situation in settling his debts, so that bankruptcy can be avoided. Therefore, this objective should not be harmed by other objectives which will put the debtor in a position of losing the opportunity to continue his business. Based on these considerations, it is particularly important to emphasize that as long as the PKPU petition can still be submitted by the creditors, it is necessary to control the good faith of such creditors so that they do not injure its objectives, so that the existence of debtors who are part of business actors who play a role in maintaining economic stability could maintain their business continuity and the law is not misused. Therefore, the legal certainty of the PKPU instrument can really be realized in accordance with the spirit of Law 37/2004, namely providing legal protection for business actors so that they are not easily bankrupt;
3. Whereas in relation to the Constitutional Court Decision Number 17/PUU-XVIII/2020 dated June 23, 2020, the Court is of the opinion that it is possible for the Court to change its stance due to fundamental issues relating to legal remedies against the PKPU petition submitted by the creditors as raised in the review of the trial of the *a quo* case. In particular, based on the information from the Related Parties, both the Supreme Court and IKAPI. This is because, in fact, the most concretely knowledgeable regarding the financial or economic capacity is the debtor and so that the court's decision on the PKPU petition submitted by the creditors can be corrected as part of the control mechanism over the court decisions at lower levels. Moreover, the PKPU petition submitted by the creditors and the composition offer submitted by the debtor was rejected by the creditors, thus it is possible that there will be a "dispute" in the interests of the parties with contentious nuances and even the judge's decision at a lower level could potentially lead to partiality or at least there is a wrong application of the law by the judge, the Court is of the opinion that legal action is needed in relation to the PKPU petition submitted by the creditors and the composition offer from the debtor rejected by the creditors;
4. That the essence of the PKPU petition is a case with the dimension that it requires prompt legal certainty in the business field and is related to the economic stability of a country, as explained in the General Elucidation of Law 37/2004 which explains, among other things, "For the interest of the business world in resolving debt problems in a fair, fast, open and effective manner, there is a great need for legal instruments to support it." Therefore, with regard to legal remedies that are sufficient for one opportunity (one level) and related to legal remedies on the grounds that there was a wrong application of the law by lower-level judges, the Court concludes that the appropriate type of legal remedy is cassation (without making available the right to file a judicial review). Meanwhile, for the PKPU petition submitted by the creditors and the composition offer from the debtor is accepted by the creditors, it is no longer relevant for any legal action to be taken;
5. Whereas for the PKPU petition submitted by the creditors and the composition offer from the debtor is not accepted, legal remedies for cassation may be filed, therefore as a juridical consequence of the other articles contained in Law 37/2004 which were not being reviewed and affected by the *a quo* decision then its implementation must be in accordance with the decision of this case. Likewise, in order to further regulate the mechanism for filing legal remedies for cassation as considered above, the Supreme Court must immediately make a regulation relating to the procedure for submitting legal remedies for cassation against a PKPU decision submitted by the creditors where the composition offer from the debtor is being rejected by the creditors;

6. Whereas the norms of Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 are in contrary to the 1945 Constitution and do not have binding legal force if it is not excluded that legal remedies for cassation against PKPU decisions submitted by the creditors and the rejection of composition offers from the debtors. Meanwhile, against the norm of Article 295 paragraph (1) of Law 37/2004 because this is related to legal remedies for judicial review and as already considered in previous legal considerations regarding legal remedies for *a quo* judicial review it is not justified on the grounds of avoiding the swelling of the number of cases in the Supreme Court. In addition, since the nature of bankruptcy and PKPU cases are cases with a "speedy trial" dimension, therefore, the Petitioner's argument regarding the unconstitutionality of Article 295 paragraph (1) of Law 37/2004 is groundless according to law. Therefore, it has been proven that Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 have been proven to cause injustice and uncertainty as referred to in Article 28D paragraph (1) of the 1945 Constitution, while Article 295 paragraph (1) of Law 37/ 2004 has apparently not caused injustice and uncertainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Petitioners' argument is legally grounded in part. As for the arguments and other matters of the petition, it is deemed irrelevant, therefore, it shall not be considered further.

Whereas based on the entire description of the considerations above, according to the Court, the subject matter of the Petitioner's petition is legally grounded in part. Accordingly, the Court subsequently issued the following decision:

1. To grant the Petitioner's petition in part;
2. To declare that Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 are in contrary to the 1945 Constitution and have no binding legal force, as long as it is not interpreted as legal remedies for cassation are allowed against the decision on Suspension of Debt Payment Obligations submitted by creditors and the rejection of the composition from the debtor;
3. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
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