



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 11/PUU-XXI/2023

Concerning

Authority of Secured Creditor and Curator

Petitioners	: Umar Husin, et al.
Type of Case	: Judicial Review of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations of Debt Settlement (Law 37/2004) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Judicial Review of Article 55 paragraph (1) and Elucidation of Article 31 paragraph (1) of Law 37/2004 against the 1945 Constitution
Verdict	: To declare that the Petitioner's Petition is inadmissible
Date of Decision	: Thursday, 30 March 2023
Overview of Decision	:

Whereas the Petitioners are individual Indonesian citizens who work as Curators. The Petitioners believe that their constitutional rights have been harmed by the enactment of the norms of Article 55 paragraph (1) and the Elucidation of Article 31 paragraph (1) of Law 37/2004 which do not include the provisions of the norms of Article 59 of Law 37/2004 in the norms and Elucidation of the *a quo* Article. Furthermore, by not including the provisions of Article 59 of Law 37/2004 as part of the norms of Article 55 paragraph (1) and the Elucidation of Article 31 paragraph (1) of Law 37/2004, it potentially harms the constitutional rights of the Petitioners as Curators, because the curators do not have a legal umbrella to demand the Secured Creditor or any third party failing to exercise an enforcement decree under an insolvency as contained in the provisions of Article 59 of Law 37/2004. Thus, the enactment of the norms of Article 55 paragraph (1) and the Elucidation of Article 31 paragraph (1) of Law 37/2004 does not provide recognition, guarantees, protection and fair legal certainty as contained in Article 28D paragraph (1) of the 1945 Constitution;

In relation to the authority of the Court, because the Petitioners petition for a judicial review, *in casu* Law 37/2004, against the 1945 Constitution, which is one of the powers of the Court, based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Judicial Powers Law, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing, the Petitioners have been able to explain their constitutional rights which they believe are harmed due to the enactment of Article 55 paragraph (1) and Elucidation of Article 31 paragraph (1) of Law 37/2004. The presumption of such constitutional loss is specific and actual or at least potential. The petitioners have also been able to describe the presumed loss of constitutional rights which has a causal relationship (*causal verband*) with the enactment of the norms and elucidation of the law being petitioned for review. Therefore, if the *a quo* petition is granted, the presumption of such

constitutional loss as described will no longer happen and will not happen. Thus, regardless of whether the unconstitutionality of the norms and elucidation being petitioned for review by the Petitioners is proven or not, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* Petition;

Subject Matter

Whereas after the Court has carefully read the *a quo* petition along with the evidence presented by the Petitioners, before further considering the argument of the Petitioners' petition, it is important for the Court to consider the following matters:

1. Whereas with regard to the systematic of the petition in the revised petition submitted by the Petitioners. In accordance with Article 10 paragraph (2) of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021), it states the following:

- 1) ...

- (2) The petition submitted by the Petitioner and/or legal attorney as referred to in paragraph (1) shall at least contain:

- a. ...;

- b. clear description of:

1. the authority of the Court, which contains an explanation regarding the authority of the Court in adjudicating the Judicial Review cases as stipulated in the laws and regulations and the object of the petition;
2. the legal standing of the Petitioner, which contains an explanation regarding the constitutional rights and/or authorities of the Petitioner who is deemed to have been harmed by the enactment of the law or Government Regulation being petitioned for review as referred to in Article 4; and
3. the reasons for the petition, which contains an explanation regarding the formation of a law or Government Regulation that does not comply with the provisions for forming a law or Government Regulation under 1945 Constitution and/or that the contents of paragraphs, articles and/or parts of the law or Government Regulation are contrary to the 1945 Constitution.

- c. the *petitum*, which contains the matters to be decided in the petition for formal review as referred to in Article 2 paragraph (3), namely:

1. ...;

2. Etc.

- d. the *petitum*, which contains the matters to be decided in the petition for material review as referred to in Article 2 paragraph (4), namely:

1. to grant the petition of Petitioner;

2. to declare that the contents of the paragraphs, articles, and/or parts of the law or Government Regulation being petitioned for review are contrary to the 1945 Constitution and do not have binding legal force;

3. to order the publication of the Decision in the State Gazette of the Republic of Indonesia;

or in the event that the Court is having a different opinion, petition for a decision which is in accordance with what is equitable and good (*ex aequo et bono*).

2. Whereas regarding the aforementioned systematic of the petition in the revised petition, it is basically in accordance with the format of the petition for judicial review as stipulated in Article 31 paragraph (1) of the Constitutional Court Law and Article 10 paragraph (2) of PMK 2/2021. However, after the Court has carefully examined the part of the matters to be decided (*petitum*) in the *a quo* petition, the *petitum* of the Petitioners is unclear or at least not in accordance with the prevalence

of *petitum* in judicial review cases. In fact, during the trial on 08 February 2023, with the Preliminary Examination agenda, the Court has advised the Petitioners to revise the *petitum* in accordance with the *petitum* format applicable to the Constitutional Court [*vide* Minutes of Case Session Number 11/PUU-XXI/2023, Wednesday, dated 8 February 2023, p. 7-8]. In this regard, the *petitum* number 2 “states that the Elucidation of Article 31 paragraph (1) is constitutional to the extent that it is amended by the phrase: without prejudice to the provisions of Article 56, Article 57, Article 58 and Article 59, this provision shall not apply to the creditor as referred to in Article 55” and the *petitum* number 3 “states that Article 55 paragraph (1) is constitutional to the extent that it is amended by the phrase: with due observance of the provisions as referred to in Article 56, Article 57, Article 58 and Article 59, any Creditor who is the holder of any pledge, fiduciary security, land mortgage, hypothecation, or any other security or proprietary rights may enforce his/her rights as if no bankruptcy has occurred”. The entire formulation of the *petitum* is unusual. Formally, such *petitums* are not in accordance with the *petitum* formulation as referred to in Article 10 paragraph (2) letter d of PMK 2/2021.

Whereas based on all of the above legal considerations, even though the Court has the authority to hear the *a quo* petition and the Petitioners have the legal standing, but since the *petitum* of the Petitioners is unclear or obscure (*obscur*), therefore it does not fulfil the formal petition requirements as referred to in Article 31 paragraph (1) of the Constitutional Court Law and Article 10 paragraph (2) of PMK 2/2021. Therefore, the Court does not consider the petition of the Petitioners any further.

Accordingly, the Court passes down a decision in which the verdict states that the petition of the Petitioners is inadmissible