



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 112/PUU-XXII/2024

Concerning

Reporting Period of the Receiver and Sale of Bankrupt Assets for Items That Cannot Be Immediately or Fully Settled

- Petitioners** : Aniek Trisilowati, et al.
- Type of Case** : Judicial Review of Law 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Law 37/2004) against the 1945 Constitution of the Republic of (1945 Constitution)
- Subject Matter** : Article 74 paragraph (1) and paragraph (3) and Article 185 paragraph (1) of Law 37/2004 are contrary to Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia
- Verdict** : To dismiss the Petitioners' petition in its entirety
- Date of Decision** : Thursday, June 26, 2025
- Overview of Decision** :

Petitioner I, Petitioner II, Petitioner III, and Petitioner IV are individual Indonesian citizens who are also concurrent creditors, they have not yet obtained their rights to apartments and/or shophouses because the management of the bankrupt assets by the receiver has not been completed due to the enactment of the provisions of Article 74 paragraph (1) and paragraph (3) and Article 185 paragraph (3) of Law 37/2004, which, according to Petitioner I to Petitioner IV, do not provide fair legal certainty as guaranteed in, among others, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

With respect to the authority of the Court, pursuant to Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 10 paragraph (1) letter a of the Constitutional Court Law, Article 29 paragraph (1) of the Judicial Power Law, and Article 51 paragraph (3) of the Constitutional Court Law, because the Petitioners petition for a formal review of the law, *in casu*, Law 37/2004 against the 1945 Constitution of the Republic of Indonesia, the Court has the authority to hear the petition *a quo*.

Whereas with respect to the legal standing of the Petitioners, the Court is of the opinion that Petitioners I to IV as individual Indonesian citizens have been able to explain that they have constitutional rights guaranteed in the 1945 Constitution of the Republic of Indonesia and have also been able to explain the existence of a causal relationship (*causal verband*), which is specific in nature, between the assumed loss of constitutional rights held by Petitioner I to Petitioner IV and the enactment of the norms of Article 74 paragraph (1) and paragraph (3) and Article 185 paragraph (3) of Law 37/2004 being petitioned for review. The assumption of loss of constitutional rights is also actual in nature, because Petitioner I to Petitioner IV, as concurrent creditors, have not yet obtained their rights to the apartment and/or shophouses, because the management of the bankrupt assets by the receiver has not been completed due to the

enactment of the provisions of Article 74 paragraph (1) and paragraph (3) and Article 185 paragraph (3) of Law 37/2004, according to Petitioner I to Petitioner IV, the said provisions do not provide fair legal certainty guaranteed in, among others, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, Petitioner I to Petitioner IV (hereinafter referred to as the Petitioners) have the legal standing to submit the petition *a quo*.

With respect to the Petitioners' arguments concerning the norms of Article 74 paragraph (1) and paragraph (3) of Law 37/2004, which, according to the Petitioners, are unconstitutional due to the absence of provisions regulating the time limit for carrying out the receiver's duties since the issuance of the bankruptcy declaration, the Court is of the opinion that the provisions of Article 74 of Law 37/2004 constitute a legal basis that represents one form of implementing transparency and accountability in the management and settlement of bankruptcy that is being and/or has been carried out by the receiver, under the supervision of a supervisory judge every three (3) months/a quarter, as a form of accountability for the receiver's performance. In addition, the receiver's periodic obligation to prepare reports that are open to the public must be submitted to the supervisory judge and announced at the registrar's office of the Commercial Court, so that they may be accessed by everyone free of charge [*vide* Article 117 of Law 37/2004]. This means that, through the announcement of such reports at the Commercial Court registrar's office, both debtors and creditors, together with other third parties, obtain legal certainty regarding the management and settlement that are being and/or have been carried out by the receiver, by monitoring the process based on the reports prepared by the receiver.

Meanwhile, the provision of Article 74 paragraph (3) of Law 37/2004, which stipulates that the supervisory judge may extend the time period for submitting the receiver's report, is not intended to regulate the time period for the settlement of the bankrupt's assets, as argued by the Petitioners, but is limited solely to extending the time period for the submission of the receiver's task report. In this context, the extension of the time for submitting the receiver's quarterly reports has no direct connection with any obstruction of the fulfillment of the receiver's obligations in managing and settling the bankrupt assets. Therefore, the Petitioners have misinterpreted the time period for preparing the report, which constitutes part of the management and settlement activities periodically carried out by the receiver, as being equivalent to the time period for management and settlement as the final stage of the receiver's overall series of duties.

Then, with regard to the limits on the receiver's reporting obligations and the issue of reporting deadlines by the receiver to the supervisory judge in bankruptcy cases, as questioned by the Petitioners, pursuant to the Government's statement, there are plans to amend Law 37/2004 as included in the 2020–2024 National Legislative Program (Prolegnas) Serial Number 218, which includes a proposed amendment to Article 74 of Law 37/2004. In this regard, the draft of new formulation of the amendment to Article 74 of Law 37/2004 has accommodated transparency in the results of the reports prepared by the receiver, and administrative sanctions against receivers who are negligent in reporting on the management and settlement of bankruptcy assets. With the planned amendment to the norm *a quo*, it is expected that the implementation of the receiver's duties can be carried out optimally to produce quality performance in accordance with the provisions of Law 37/2004, while remaining under the strict supervision of the supervisory judge in relation to the management and settlement of bankrupt assets carried out by the receiver. However, notwithstanding the fact that such provisions remain in the form of a draft amendment to Law 37/2004, with regard to the time limit for completing the handling of bankruptcy decisions, which includes the management and settlement of the bankrupt debtor's assets, as argued by the Petitioners, the Court considers it important to emphasize that, in the future, the lawmakers, in formulating norms related to the settlement of bankrupt assets, must also take into account fair legal certainty, efficiency, and protection for all parties having interests in bankruptcy settlements. The Court is of the opinion that the absence of regulation regarding the time limit for the completion of bankruptcy decisions may be interpreted as providing room for debtors, creditors, receivers, supervisory judges, and even other third parties acting in bad faith to

exploit such circumstances by delaying the process and using it as a means to obtain benefits, given the complexity of the issues involved and the substantial value of the bankrupt debtor's assets, even though some creditors have in fact completed their administrative requirements and are merely awaiting settlement. This situation is evidenced by the fact that, to date, many bankruptcy cases have remained unresolved (stalled) for decades and cannot be completed. However, on the other hand, the Court also understands that if the settlement of the bankruptcy decision *a quo* is subject to strict time limits, there is a potential risk that such settlement may give rise to new legal issues concerning management and settlement that cannot be resolved by the receiver due to legal remedies and other matters initiated by the interested parties. Moreover, bankruptcy case decisions involve numerous complex dimensions, and the value of the bankrupt assets managed and settled by the receiver is often substantial. Therefore, in amending Law 37/2004, the lawmakers must ensure balanced protection for all parties, which can be realized through the formulation of the revised bankruptcy law norms. Therefore, pursuant to the above description of legal considerations, the Petitioners' arguments regarding the unconstitutionality of the norm of Article 74 paragraph (1) and paragraph (3) of Law 37/2004 are legally unjustifiable.

Furthermore, with regard to the Petitioners' argument that the norm of Article 185 paragraph (3) of Law 37/2004 is unconstitutional unless it is interpreted as "all assets that cannot be immediately or fully settled within a period of no later than two (2) years shall be subject to a decision by the receiver regarding the actions to be taken with respect to such assets, with the approval of the supervisory judge," The Court is of the opinion that, pursuant to the provisions of Article 185 of Law 37/2004, in the settlement of bankruptcy estates, the receiver has the duty and responsibility to sell the bankrupt assets through a public sale/auction or by private sale, with the approval of the supervisory judge. In addition to private (underhand) sales, the approval of the supervisory judge is also required where the receiver carries out the settlement of bankrupt assets that cannot be settled immediately or cannot be settled at all. The stages of the sale of bankrupt assets and the procedures for distribution have been further regulated in the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 109/KMA/SK/IV/2020 concerning the Implementation of the Guidelines for the Settlement of Bankruptcy Cases and Suspension of Debt Payment Obligations. In this regard, the Petitioners argue that the provisions of Article 185 paragraph (3) of Law 37/2004 create legal uncertainty, as they do not stipulate a time limit within which the receiver must take action with respect to assets that cannot be immediately or fully settled. Since for any bankrupt assets that have not yet been sold, the receiver must take a measure or action to promptly carry out settlement through other means approved by the supervisory judge.

Whereas in the context of the sale of assets that cannot be immediately or fully settled, the receiver is not authorized to conduct such sales unilaterally but must obtain the approval of the supervisory judge. The said sale constitutes an action taken by the receiver to ensure that the bankruptcy assets are not damaged, lost, and/or diminished in value, which could result in losses to the creditors. In carrying out the sale, the receiver must first meet the requirements or conditions and then submit an application accompanied by evidence and logical reasons. The supervisory judge will consider the receiver's application. If the supervisory judge deems the receiver's reasons to be appropriate and in the interests of both creditors and debtors, the supervisory judge will grant approval by issuing a determination. Following the issuance of such determination, the receiver may immediately decide on the steps to be taken in carrying out the settlement, so that creditors may promptly obtain their rights.

Furthermore, the supervisory judge has the duty to supervise the management and settlement of the bankrupt assets carried out by the receiver. The supervisory judge evaluates the extent to which the receiver's performance in managing and settling the bankruptcy can be accounted for to the debtors and creditors. Accordingly, the supervisory judge may also propose the replacement of the receiver and appoint another receiver and/or an additional receiver if it is deemed that the receiver is not acting independently in the

performance of his/her duties or if there is a conflict of interest [*vide* Article 71 paragraph (1) of Law 37/2004]. In addition, Law 37/2004 expressly regulates and provides clear and concrete provisions concerning violations committed by the receiver. In the process of managing and settling bankrupt assets carried out by the receiver, creditors are granted the right to submit a written objection to the supervisory judge regarding actions taken by the receiver or to request the supervisory judge to issue an order directing the receiver to take certain actions or to refrain from carrying out planned actions [*vide* Article 77 paragraph (1) of Law 37/2004]. In response to such objections, the supervisory judge is required to issue a decision on the said objection [*vide* Article 77 paragraph (4) of Law 37/2004].

Moreover, the responsibility of the receiver has been considered in the Constitutional Court Decision Number 144/PUU-VII/2009, which was pronounced in a plenary session open to the public on March 22, 2011. Pursuant to the foregoing description and quotations of legal considerations, if the obstacles arising from the prolonged settlement of a bankruptcy case stem from the actions of the receiver, who is deemed to have acted arbitrarily and unprofessionally, legal remedies are available, namely: (i) requesting the supervisory judge to order the receiver to take or refrain from taking certain actions; and (ii) seeking to hold the receiver civilly or criminally liable. In addition, the receiver may also be reported to the Honorary Council of the professional organization to which the receiver belongs. Meanwhile, with regard to the Petitioners' *petitum* petitioning that, within a maximum period of two (2) years, the receiver decides on the actions to be taken with respect to assets that cannot be immediately or fully settled, the Court considers that such petition has no correlation with the issue of the constitutionality of the norm, as it would apply only to the concrete circumstances experienced by the Petitioners in their capacity as concurrent creditors. This means that the said petition cannot be applied universally to all ongoing or future bankruptcy cases, which may involve greater complexity, require longer processing periods, and relate to the interests of other creditors whose bankruptcy estates have not yet been settled. Furthermore, the regulation of time limits for the completion of the receiver's duties, as considered above, falls within the authority of lawmakers to formulate in a balanced manner, ensuring fair legal protection for all parties, particularly in the context of the planned amendments to bankruptcy legislation. Accordingly, pursuant to the above legal considerations, the Petitioners' argument regarding the constitutionality issue of Article 185 paragraph (3) of Law 37/2004 is legally unjustifiable.

Pursuant to the above legal considerations, subsequently, the Court then passes down a decision, the verdict of which states to dismiss the Petitioners' petition in its entirety.