



**THE CONSTITUTIONAL COURT
REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
ON CASE NUMBER 88/PUU-XVIII/2020**

Concerning

The Position of Concurrent Creditors in Bankruptcy

- Petitioner** : Dewantari Handayani, et al
- Case** : Judicial Review 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)
- Case of Lawsuit** : Testing Article 55 paragraph (1) of Law 37/2004 against Article 28D paragraph (1), Article 28E paragraph (1), Article 28H paragraph (1), paragraph (2) and paragraph (4) the 1945 Constitution
- Injunction** : Declare the petitioner's petition is not able to be accepted
- Date of Decision** : Thursday, January 14, 2021.
- Decision overview** :

The Petitioners are individual as Indonesian citizens as consumers of 45 Antasari Apartment who did not obtain their rights and legal certainty after the developer of 45 Antasari Apartment, namely PT Prospek Duta Sukses (PDS) was declared bankrupt by the Commercial Court.

Regarding the authority of the Court, since the petition of the Petitioners is a review of Article 55 paragraph (1) of Law 37/2004, the Court has the authority to hear the petition of the Petitioners;

Regarding the legal standing of the Petitioners, in essence the Petitioners argued that they have placed an order for the purchase of an 45 Antasari Apartment unit to the developer PT Prospek Duta Sukses (PDS) with an apartment unit area and different prices and payment methods. However, their right to handover according to the promise given by the developer has not been confirmed. In fact, the development progress has not been completed as promised by the developer until early 2020 due to the fact that the physical development that has been carried out so far has only been in the form of a parking lot (basement) or only about 10% of the total development progress. The Petitioners were increasingly disappointed and surprised in the midst of the uncertainty they experienced because of the PKPU (Debt Payment Suspension) application against PT PDS as the developer by and on behalf of the Petitioner Eko Aji Saputra with a total receivable of IDR 2 billion. In addition, based on the Decision of the Commercial Court at the Central Jakarta District Court Number 140/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst on September 22, 2020, it was declared bankrupt (see Exhibit P-12). Thus, position of the Petitioners is increasingly inconsistent. The existence is clear, because according to the Petitioners based on Law 37/2004, the position of the Petitioners as buyers of apartment units is always placed as creditors who are in the position of Concurrent Creditors where their position and position are below or always prioritized by Preferred Creditors and Separatist Creditors;

Whereas from the arguments of the Petitioners mentioned above, the Court is of the opinion that the concrete cases experienced by the Petitioners up to the court's decision which principally states that the developer of 45 Antasari Apartment is in bankruptcy and places the Petitioners in the position of Concurrent Creditors. Furthermore, the resolution of the problems

they faced with the developer of the 45 Antasari Apartment has been regulated separately in laws and regulations that have nothing to do with Article 55 paragraph (1) of Law 37/2004. Because, Article 55 paragraph (1) of Law 37/2004 is a provision that regulates Separatist Creditors or creditors holding collateral rights (secured creditors) who have the right to prepayment of receivables (Preferred Creditors) because they legally have direct control over the collateral. This is clearly different from the Concurrent Creditors as the status of the Applicants who do not have the right to control collateral in the form of objects. Therefore, the settlement of the problems they experience as Concurrent Creditors is carried out after the obligations to other creditors (Separate Creditors or Preferred Creditors) are given. Moreover, Separatist Creditors are not affected by the decision of the debtor's declaration of bankruptcy. It means that their execution rights can still be exercised as if there was no debtor bankruptcy because the creditors of this group can sell their own collateralized goods. Hence, regarding the assets pledged as collateral, the position of Separatist Creditors is very high or higher than other privileged creditors. Initially, the Petitioners were not concurrent creditors, but as consumers or buyers of 45 Antasari Apartment unit who are currently facing problems with the apartment developer who has been declared bankrupt. Therefore, based on the bankruptcy decision, the Petitioners have the same status as Concurrent Creditors and thus cannot force themselves to become Separatist Creditors or Preferred Creditors by examining Article 55 paragraph (1) of Law 37/2004 on the grounds that the Petitioners were harmed by the enactment of a quo article. The losses suffered by the Petitioners as consumers do not correlate with the enactment of the norms of Article 55 paragraph (1) of Law 37/2004. Thus, the settlement is not through testing the constitutionality of norms but through other legal remedies or positioning themselves as Concurrent Creditors. Therefore, there is no causal verband between the validity of Article 55 paragraph (1) of Law 37/2004 and the losses suffered by the Petitioners related to constitutional rights as regulated in the 1945 Constitution. According to the Court, the

Petitioners could not explain their constitutional losses, both actual and potential, which he experienced with the enactment of Article 55 paragraph (1) of Law 37/2004. Therefore, the Petitioners did not meet the legal standing requirements to file the application as referred to in Article 51 paragraph (1) of the Constitutional Court Law. Accordingly, the Court subsequently issued a decision stated that the petition of the Petitioners can't be accepted.