



**THE CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**THE SUMMARY OF THE DECISION  
OF CASE NUMBER 24/PUU-XIX/2021**

**Concerning**

**Execution of Bankrupt Verdict**

<b>Petitioner</b>	: Calvin Bambang Hartono
<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>	: Judicial Review of Article 31 paragraph (1) of Law 37/2004 against the 1945 Constitution
<b>Verdict</b>	: To dismiss the Petitioner's petition in its entirety.
<b>Date of Decision</b>	: Wednesday, December 15, 2021
<b>Overview of Decision</b>	:

The Petitioner is an individual Indonesian citizen who works as an entrepreneur who thinks his constitutional rights have been impaired due to the enactment of the *a quo* article.

Regarding the authority of the Court, since the Petitioner's petition is to review the constitutionality of legal norms, *in casu* Article 31 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioner, the Petitioner acting in his position as a debtor thinks that his constitutional rights have been impaired due to the enactment of Article 31 paragraph (1) of Law 37/2004 in which the Petitioner, who is currently a debtor of Bank Bukopin, gets credit/loan with land and building collateral, but did not obtain his right to fair legal certainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution. The petitioner who has been declared a Bankrupt Debtor does not get the opportunity to fight for his rights because his assets are in general confiscation of bankruptcy as a result of the provisions of Article 31 paragraph (1) of Law 37/2004. In its consideration, the Court considered the legal standing of the Petitioner to file the *a quo* petition and states that the Petitioner has the legal standing to file the *a quo* case.

Whereas regarding the subject matter of the petition, the Court in its legal considerations declares that the General Elucidation of Law 37/2004 explains in essence that the *a quo* law was established with the aim of resolving debt problems in the community in a fair, fast, open, and effective manner. Whereas in the *a quo* law it has also been given guidelines regarding the main conditions that must be met by a debtor if he is to be declared bankrupt, namely a debtor has at least 2 (two) creditors and does not pay off one of his debts which has been due (mature) and with the issuance of bankruptcy declaration, it is expected that the debtor's bankruptcy assets can be used to repay all debtor's debts fairly and equitably and in a balanced manner. Meanwhile, regarding the declaration of bankruptcy according to the *a quo* Law, it can be filed by one or more creditors, the debtor, or public prosecutors for the public interest, but bankruptcy does not relieve a person who is declared bankrupt from the obligation to pay his debts. Furthermore, Law 37/2004 has also

determined the main principles in relation to the efforts to avoid seizure of debtor's assets if at the same time there are several creditors who collect their receivables from debtors and there are efforts to avoid frauds committed by one of the creditors or by the debtor himself. According to the Court, the arrangements for the settlement of accounts payable as regulated in *a quo* Law aims to ensure a balance between debtor's rights and creditor's rights in line with the principle of balance adopted in the *a quo* Law, namely, on the one hand, there are provisions that can prevent the abuse of bankruptcy agencies and institutions by both debtors and creditors who are dishonest or have bad intentions. In addition to the principle of balance, Law 37/2004 also applies the principle of business continuity, the principle of justice, and the principle of integration which are the benchmark in the implementation of debt settlement in a fair, fast, open, and effective manner.

In addition, according to the Court, there are principles underlying the implementation of the bankruptcy, therefore these principles can be universally implemented in the bankruptcy settlement process, including in this case the proportional distribution of debtor assets to creditors. Therefore, Law 37/2004 stipulates that the authority of the receiver to carry out the task of managing and/or settling bankruptcy assets shall be effective from the date the bankruptcy decision is declared even though an appeal or judicial review is filed against the decision [vide Article 16 paragraph (1) of Law 37/2004]. Provisions regarding the authority of the receiver in managing and settling bankruptcy assets shall relate to all assets of the bankrupt debtor, including the control of assets to pay or settle the debts of the bankrupt debtor to his creditors, which shall be divided into preferred creditors and separatist creditors. Meanwhile, concurrent creditors shall distribute bankruptcy assets based on the principle of *pari pasu pro rata parte* (obtaining payment collectively). Therefore, the general confiscation of the assets of a bankrupt debtor is the result of bankruptcy which is an unavoidable juridical consequence, especially to realize the principles as described above. Another thing that was also disclosed by the Court was that the statement of bankruptcy in the judge's decision was a general confiscation (*algemene beslag*) against all debtors' assets with the aim of being able to pay all creditors' claims fairly, evenly and in a balanced manner so that all previous claims directed against the debtor individually to fulfil the bankrupt debtor's obligations to be terminated by law and the creditors' claims will be processed together with the settlement of other creditors' claims based on the principle of togetherness in accordance with the nature/position of creditors proportionally.

Whereas according to the Court, without the intention of assessing the concrete case experienced by the Petitioner, as a debtor, the Petitioner has been given sufficient time by the creditors to settle his debt so that the decision to declare his bankruptcy, which according to the Petitioner has caused his constitutional losses, is the maximum effort to resolve the debt problem between the Petitioner and creditors who have been decided by the judiciary. In addition, according to the Court, bankruptcy decisions are decisions that fall into the category of decisions that can be implemented first even though there are legal remedies (*uitvoerbaar bij voorraad*). In other words, as an immediate decision where any decision issued can be directly executed, even though the decision has not yet obtained permanent legal force as stipulated in Article 8 paragraph (7) of Law 37/2004 which states "The decision on the petition for bankruptcy declaration as referred to in Article 8 paragraph (7) of Law 37/2004 Paragraph (6) which contains in full the legal considerations underlying the decision must be pronounced in a trial that is open to the public and can be implemented first, even though any legal remedies is made against the decision.." In this context, the implementation of the decision as referred to in Article 8 paragraph (7) of Law 37/2004 and Article 16 paragraph (1) of Law 37/2004 is actually still in the perspective of a general confiscation of the debtor's assets which is carried out at the request of the Receiver under the supervision of the Supervisory Judge for security to be followed up with verification of the grouping of creditors as attached to the assets of the bankrupt debtor. Furthermore, for such general confiscation, the debtor's debt repayments can be distributed to the creditors according to

their nature as described above and in a manner of *pari passu pro rata parte*. Therefore, in fact, the provisions of Article 31 paragraph (1) of Law 37/2004 that the Petitioner have applied for with regard to general confiscation are in line with the principle of *pari passu pro rata parte*, namely obtaining repayment collectively in accordance with the nature of the respective creditors who have receivables. Therefore, the function of this bankruptcy justifies the realization of the principle of guarantee as stipulated in the provisions of Article 1131 and Article 1132 of the Civil Code which provides protection for concurrent creditors or competing creditors and differentiates them from separatist creditors and preferred creditors. While in relation to the Petitioner's argument that the general confiscation of the bankrupt debtor's assets cannot be carried out if there is still a civil case with the same subject and object, it is important for the Court to emphasize that the general confiscation of all assets of the bankrupt debtor which is then managed and settled by the Receiver under the supervision of the Supervisory Judge is the essence of bankruptcy [vide Article 1 point 1 of Law 37/2004]. With the general confiscation, it will rule out other special confiscations with regard to the assets, such as confiscation of collateral, confiscation of execution or confiscation of marital property. This aims to prevent any overlaps between the types of confiscations that exist and the potential for seizure of the bankrupt debtor's assets the by creditors and to stop the actions of the bankrupt debtor who have bad intentions and have the potential to harm their creditors. However, the principle of *actio pauliana* shall apply to this, namely the court can cancel all legal actions of the debtor that are detrimental to the creditors [vide Article 1341 of the Civil Code). In addition, according to the Court, if the bankrupt debtor's assets both before and after the bankruptcy declaration are placed under criminal confiscation, there will be a conflict between public interests and civil interests. Article 39 of the Criminal Procedure Code states that objects that are in confiscation due to a civil case or due to bankruptcy can be confiscated for the purposes of investigation, prosecution and trial of criminal cases. Therefore, against such arguments, the public interest must take precedence. Therefore, in any confiscation that is related to a criminal case and not related to the public interest, the state must be present to protect the relevant public interest. Furthermore, in relation to the position of general confiscation, the Court needs to reaffirm that general confiscation has a more preferential position. Therefore, through this general confiscation, the obligations of the bankrupt debtor to his creditors can be fulfilled proportionally and maximally, namely limited to the bankrupt debtor's assets covered in the general confiscation and other assets of the debtor as referred to in Article 1131 of the Civil Code. Therefore, other interpretations or meanings of Article 31 paragraph (1) of Law 37/2004 will actually override justice and legal certainty guaranteed by the 1945 Constitution in handling bankruptcy cases and PKPU. Therefore, the Court is of the opinion that there is no constitutionality issue with respect to the norms of Article 31 paragraph (1) of Law 37/2004 as argued by the Petitioners above.

Therefore, the Court issued a decision which verdict is to dismiss the Petitioner's petition in its entirety.