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Tracing the Legal Path: An Analysis of the Bankruptcy Decision

(Case of Bankruptcy Supreme Court Decision
No. 559 K/Pdt.Sus-Pailit/2015)

A'am Amirulhaq ✉

Notary Masters Study Program, Faculty of Law, Universitas
Diponegoro

✉ Corresponding email: aamamirulhaq@students.undip.ac.id

Abstract

This study analyzes Decision No. 559 K/Pdt.Sus-Pailit/2015, which involves a bankruptcy petition filed by creditors against PT Hong Seng Papua International. Utilizing a normative legal research methodology, the research focuses on relevant legal frameworks, particularly Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The analysis reveals that PT Hong Seng has two creditors and has defaulted on its matured debt obligations, prompting the Makassar Commercial Court to declare the company bankrupt. The importance of written documentation, such as debt acknowledgment letters and loan agreements, is emphasized as crucial evidence for the bankruptcy claim. The study concludes that the Commercial Court's decision aligns

with existing legal provisions, resulting in the rejection of the debtor's cassation petition. These findings significantly enhance the understanding of bankruptcy law application in Indonesia and its implications for future legal practices. The research highlights the necessity for clear and structured documentation in financial transactions to protect creditor rights and maintain the integrity of the legal system. Ultimately, this case not only sheds light on a specific bankruptcy situation but also addresses broader issues related to the enforcement of bankruptcy laws in Indonesia, underscoring the need for stringent adherence to legal documentation standards in financial dealings. This understanding is vital for both debtors and creditors to navigate their rights and obligations effectively, fostering a more responsible approach to debt management and strengthening trust within business relationships.

Keywords

Bankruptcy; Debt Agreement; Commercial Court.

I. Introduction

The bankruptcy petition filed by PT Hong Seng Papua International was due to the company's inability to fulfill its overdue debt obligations. With a total debt of USD 2,821,304.28, due on September 25, 2013, the company was facing severe financial difficulties. Despite being granted an extension, PT Hong Seng was still unable to repay its debts, prompting its creditors to file for bankruptcy. This situation was further exacerbated by several warning letters ignored by the debtor, reflecting a lack of good faith in resolving payment obligations. The disregard for

these warnings indicates that the issues faced by the company were not merely temporary, but rather a sign of deeper liquidity problems. In the business world, delayed debt payments can lead to severe legal consequences, including a bankruptcy petition filed by creditors.

The bankruptcy petition is not merely a legal step; it also reflects PT Hong Seng's inability to proactively manage its debts. This indicates the need for a thorough evaluation of the company's financial management practices. According to Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, PT Hong Seng should not have filed for bankruptcy but rather should have applied for a suspension of debt payments with the aim of seeking resolution through debt restructuring. In this context, the debtor is granted a temporary period of 45 days for PKPU and a maximum of 270 days for the suspension. Additionally, mediation efforts could serve as a better solution compared to filing for bankruptcy. Law No. 37/2004 should establish clear boundaries of authority and allocate these powers to two different parties; bankruptcy should be held by creditors, while the suspension of debt payment obligations should primarily be granted to debtors. The goal is to prevent any abuse of authority within the legal process. Thus, this approach is expected to create a fairer and more balanced environment for all parties involved in the bankruptcy and PKPU processes.¹

¹ Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is often referred to as having "normative defects" in addressing the Suspension of Debt Payment Obligations (PKPU) in Indonesia. It is important to review this law to ensure it aligns more closely with principles of justice, read on: Alfin Sulaiman, "Hukum Kepailitan Indonesia Dalam Perspektif Sociological Jurisprudence," Hukum Online, April 30, 2024, <https://www.hukumonline.com/berita/a/hukum-kepailitan-indonesia-dalam-perspektif-sociological-jurisprudence-lt66301058c0811/?page=all>; Fitri N. Heriani, "Enam Kesalahan UU Kepailitan," Hukum Online, October 9, 2015, <https://www.hukumonline.com/berita/a/enam-kesalahan-uu-kepailitan-lt561737ed1a1cb/>; "Ini Pentingnya PKPU Bagi Debitur," Hukum Online, 2024,

This situation also highlights the importance of understanding the regulations governing bankruptcy and debt suspension in Indonesia. By understanding the existing legal provisions, both debtors and creditors can recognize their respective rights and obligations, helping to avoid conflicts that could harm both parties. Increasing knowledge of bankruptcy law is expected to encourage more responsible behavior in debt settlement and strengthen trust between debtors and creditors in their business relationships.

This case progressed from the initial handling by the Makassar Commercial Court with Case Number 01/Pdt.Sus.Pailit/2015 to being transferred to the Supreme Court with No. 559 K/Pdt.Sus-Pailit/2015. The case emphasizes that the commercial court has the authority to handle bankruptcy cases when there are two or more creditors and overdue debts that are due and collectible. The Supreme Court, based on the evidence presented, found that the conditions for declaring bankruptcy had been met. This decision reflects the strict application of legal principles in bankruptcy cases, where the debtor is not only obligated to pay debts but must also demonstrate good faith in resolving them.

The existence of unpaid debts and the debtor's inability to meet its obligations provides a strong legal basis for creditors to file a bankruptcy petition. This demonstrates that the Supreme Court adheres to the principle of creditor protection, which is one of the key pillars of bankruptcy law. Furthermore, this decision also underscores the importance of transparency and honesty in a company's financial reporting.

From a legal perspective, this ruling aligns with the principles of legal certainty and protection of creditor rights.² The consistent application of the law shows that the commercial court can provide solutions for creditors dealing with debtors who fail to meet their obligations. The novelty in this context lies in the development of more efficient debt settlement mechanisms, such as mediation before a bankruptcy petition is filed. This initiative can help reduce the burden on the courts and give debtors a chance to settle their debts without going through a lengthy and complicated bankruptcy process.

Through mediation, both parties can seek mutually beneficial solutions, helping to reduce the negative stigma often associated with bankruptcy status. This approach has the potential to strengthen the relationship between debtors and creditors, creating a more conducive environment for future cooperation. The importance of understanding bankruptcy law and best practices in debt management has become increasingly apparent. With regulations supporting peaceful debt settlement, it is hoped that a healthier and more stable business environment will emerge, benefiting creditors, debtors, and the economy as a whole.

² Read on Leera Sinta Mega Pamungkas, "Politik Hukum Dalam Pelaksanaan Jaminan Fidusia Berdasarkan Undang-Undang Nomor 4 Tahun 1999," *Khazanah Hukum* 3, no. 1 (2021), <https://doi.org/10.15575/kh.v3i1.7678>; Rizki Ridha Syamza, Yuhelson Yuhelson, and Cicilia Julyani Tondy, "Eksistensi Kuasa Menjual Dalam Penyelesaian Kredit Debitur Macet Melalui Proses AYDA (Aset Yang Diambil Alih Oleh Bank)," *SENTRI: Jurnal Riset Ilmiah* 2, no. 7 (2023), <https://doi.org/10.55681/sentri.v2i7.1173>; Farid Hardianysah, "Pelaksanaan Parate Eksekusi Dalam Jaminan Fidusia Di Indonesia," *Jurnal Hukum, Politik Dan Ilmu Sosial* 1, no. 1 (2023), <https://doi.org/10.55606/jhpis.v1i1.1762>.

II. Method

The research method used in this study is a normative legal research method, which focuses on the analysis of laws, legal documents, and court decisions relevant to bankruptcy cases. The data sources in this research include primary data, such as the Supreme Court Decision No. 559 K/Pdt.Sus-Pailit/2015 and related legal documents, including debt acknowledgment letters and loan agreements. In addition, secondary data is also utilized, such as books, journal articles, and legal literature discussing bankruptcy law and creditor protection. Data collection techniques are carried out through document studies to analyze court decisions and other legal documents to understand the context and legal substance applied, as well as library studies to examine relevant literature in order to obtain theoretical perspectives on bankruptcy law and best practices in debt settlement. Data analysis is conducted using a qualitative approach to interpret the content of court decisions and legal documents, along with legal comparison to identify similarities and differences in the application of bankruptcy law in Indonesia and practices in other countries.

III. Brief Description of the Supreme Court Decision on Bankruptcy Case No. 559 K/Pdt.Sus-Bankruptcy/2015

The Petitioners submitted their application to the Chairman of the Makassar Commercial Court, as the Makassar Commercial Court is the competent court to examine and adjudicate this application, based on the provisions of Article 3 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations ("Bankruptcy and PKPU Law"), under Case Registration Number

01/Pdt.Sus.Pailit/2015/Pn.Niaga.Mks.In the bankruptcy case decided at the first instance in the Makassar Commercial Court, it was declared that the Respondent/Debtor, PT Hong Seng Papua International, located at Jalan Pondok Indah Blok F No. 2, Kelurahan Samofa, Kabupaten Biak Numfor, Papua Province, Indonesia, was bankrupt with all its legal consequences.

The Respondent's objection to the bankruptcy petition was rejected in its entirety, and the application submitted by the Petitioners for bankruptcy against the Respondent was granted. Based on this decision, it appears that the Respondents in cassation, previously as Petitioners for Bankruptcy/Creditors, have filed a bankruptcy declaration application before the Makassar Commercial Court. Essentially, it is stated that the cassation application from PT. Hong Seng Papua International as the previous Cassation Petitioner (Respondent in Bankruptcy) is rejected against Chau Shek Cheong and Changsheng (Holdings) Company Limited as the Second Respondents in cassation who were previously Petitioners for Bankruptcy/Creditors. The position of the Petitioners as Creditors of the Respondent/Debtor and the Respondent/Debtor as Debtors of the Petitioners confirms that the Respondents in cassation are indeed creditors who provided loans to the debtor, as evidenced by loan acknowledgment documents including:

1. Loan Acknowledgment Letter No. L.25/2012 certified by Notary Soebiantoro, S.H., a Notary in Jakarta dated October 18, 2012, stating and signed by the Respondent/Debtor, where the Respondent/Debtor owes the Petitioners USD 2,821,304.28 (two million eight hundred twenty-one thousand three hundred four point twenty-eight United States Dollars) (hereinafter referred to as "Loan Acknowledgment"), which was supposed to be paid by December 31, 2010 but was extended by the Petitioners to no later than September 25, 2013.

2. Loan Agreement No. 160/L/V/2013 certified by Notary Rasmono Sudarjo, S.H., a Notary in Surabaya dated May 10, 2013 between the Respondent/Debtor and the Petitioners, reaffirming that the debt of the Respondent/Debtor amounting to USD 2,821,304.28 (two million eight hundred twenty-one thousand three hundred four point twenty-eight United States Dollars) (hereinafter referred to as "Loan Agreement") must be paid in full to the Petitioners by September 25, 2013.

Thus, it can be proven that the respondents in cassation who were previously petitioners for bankruptcy are indeed creditors. This is also in accordance with Law No. 37 of 2004 concerning Bankruptcy and PKPU where bankruptcy requirements are clearly regulated in Article 2 paragraph (1) of the Bankruptcy Law which states:

"Debtors with two or more creditors who do not pay at least one due and collectible debt shall be declared bankrupt by court decision, either at their own request or at the request of one or more creditors."

In this case flow, the Debtor has been a business partner of Petitioner 1/Creditor 1 since August 2008 and has taken loans for purchasing work equipment in a business collaboration specifically in wood processing to support operations. However, in 2010, the Respondent/Debtor faced difficulties in meeting its obligations to the Petitioners due to financial losses. With goodwill from the Petitioners, they provided an opportunity for the Respondent/Debtor to change the payment deadline from December 31, 2010 to September 25, 2013 as stated in both Loan Acknowledgment and Loan Agreement documents previously mentioned. Despite this agreement on changing payment terms, however, the Respondent/Debtor failed to pay off its remaining debt to the Petitioners. Therefore, the Petitioners sent a

Warning Letter (Somasi), which is consistent with Article 1238 of the Civil Code stating:

"The debtor is deemed negligent with a written order or similar deed or based on obligations arising from their own obligations if this obligation causes them to be considered negligent after exceeding a specified time."

This serves as a reminder for debtors who do not fulfill their loan agreements or acknowledgment letters within stipulated timeframes; thus, by September 25, 2013 until this application was submitted to the Makassar Commercial Court. Consequently, based on evidence such as loan acknowledgment letters and loan agreements made and certified before a notary public, it is clear that respondents in cassation as creditors have rights to collect debts from cassation petitioners who have been declared negligent. Based on these two pieces of evidence that have matured and must be paid by the Respondent/Debtor to the Petitioners until February 2015 amounting to USD 4,819,728.23 (four million eight hundred nineteen thousand seven hundred twenty-eight point twenty-three United States Dollars), which has incurred a penalty of 50% per year on principal debt obligations payable monthly. The definition of debt held by cassation petitioners as debtors aligns with Article 1 point (6) of Law on Bankruptcy and PKPU because it is stated in monetary amounts in United States Dollars (USD), directly arising from Loan Agreements and acknowledgment letters; therefore it must be fulfilled by Respondent/Debtor to Petitioners. As stated in Article 1 point (6):

"Debt is an obligation expressed or capable of being expressed in monetary amounts either in Indonesian currency or foreign currency directly or that will arise later or contingent obligations arising from agreements or laws that must be fulfilled by Debtors; if not fulfilled gives creditors rights to obtain fulfillment from Debtors' assets."

In summary, the ruling indicates that because the debtor has missed payment deadlines, creditors can demand repayment. It also emphasizes that the two creditors involved in the case are treated as separate legal entities: one is an individual and the other is a company.

Therefore based on facts above it has been simply proven that Respondent/Debtor has at least two creditors without requiring other creditors' debts have matured or without requiring that Respondent/Debtor must be insolvent; this is based on Article 8 paragraph (4) of Law on Bankruptcy and PKPU stating:

"The bankruptcy declaration application must be granted if there are facts or circumstances simply proven that requirements for declaring bankruptcy as referred to in Article 2 paragraph (1) have been met."

Then explained further in Article 8 paragraph (4):

"What is meant by 'facts or circumstances simply proven' is having two or more creditors and facts about debts that have matured and cannot be paid."

The difference in amounts claimed between petitioners and respondents does not hinder bankruptcy ruling from being issued.

IV. Pandora's Box of Bankruptcy Law and Suspension of Debt Payment Obligations: Advantages or Disadvantages for Certain Parties

The complexity and potential impacts arising from the implementation of bankruptcy laws and debt payment delay, both for debtors, creditors, and the overall economic system, often lead to unforeseen consequences

and can create new problems. The term "Pandora's box" is used to describe this, where, although these laws are intended to resolve serious financial issues, the process may instead bring about more complex consequences.

Bankruptcy law in Indonesia regulates the procedure for companies or individuals who fail to pay their debts to apply for protection from creditors through a legal process as outlined in the law. This process may result in debt restructuring, settlement through liquidation, or an agreement beneficial to both debtors and creditors. Although the aim is to provide a solution for both parties, the implementation of bankruptcy laws and debt payment delays often brings different impacts depending on the parties involved.

For debtors, this law offers the opportunity to avoid direct execution actions from creditors, reorganize debt obligations, or even gain time to improve their financial condition. However, the application of bankruptcy law also carries heavy consequences, such as social stigma, long-term financial losses, and difficulties in accessing credit or running a business in the future.

For creditors, bankruptcy law provides a more structured and fair way to collect unpaid debts. However, this also means they may not recover the full amount owed, especially if the debtor must be liquidated or fails to meet their obligations despite the legal process. This impact can be detrimental to creditors, especially those who rely on debt repayment for the continuity of their business.

Economically, the implementation of bankruptcy law can serve as a balancing mechanism, preventing larger economic collapses due to the failure of a major company or several interconnected entities. However, negative impacts such as a decline in confidence in the financial system or a slowdown in investments can also arise, creating uncertainty in the market.

The case resolved through the Supreme Court Decision Number 599 K/Pdt.Sus-Pailit/2015 involved a dispute between the parties. In this case, PT. Hong Seng Papua International, despite receiving concessions from the creditors, still faced financial difficulties that prevented it from fulfilling its obligations. The financial challenges led to the debtor's inability to meet its debt obligations, even after being granted an extension for payment. This situation indicates that, despite the creditors' good faith in offering relief, the debtor's financial condition did not improve, and they remained unable to repay the debt.

Both parties reinforced their arguments during the trial, as stated in their exceptions, which highlighted that the creditor, Chau Shek Cheong and Changsheng (Holdings) Company Limited, failed to fulfill its obligations as required. Consequently, the debtor argued that it should not be held accountable for the failure to execute the agreement. The Supreme Court of the Republic of Indonesia noted that, according to the Cooperation Agreement dated July 10, 2010, the creditor had agreed to invest USD 24,000,000.00 in the debtor's company; however, the creditor only transferred USD 1,000,000.00 in four installments, and the amount did not align with the agreed investment contract. Furthermore, the creditor claimed that the funds transferred, totaling USD 2,820,000, were to be considered a loan with an interest rate of 50%.

Meanwhile, the creditor believes that the debtor's inability to repay the debt of USD 2,821,304.28 (two million eight hundred twenty-one thousand three hundred four point twenty-eight United States Dollars) constitutes a violation by PT. Hong Seng Papua International, accompanied by the company's disregard for the warning letter sent by the creditors.

Table 1. The Main Issues of the Dispute Underlying the Bankruptcy Decision

No	Party	Argument
1	Creditor	The petition for legal action to declare PT. Hong Seng Papua International bankrupt was submitted due to its failure to comply with the payment process, ultimately being considered unable to manage the company.
2	Debtor	It was rejected to declare bankruptcy on the grounds that the basis of the agreement leading to the unpaid debt, which caused harm to the two creditors (as per the bankruptcy petition requirements), was in line with the agreed cooperation. Therefore, the agreement that was supposed to benefit both parties did not proceed as intended. As a result, the petition was deemed unclear.

Highlighting the contents of the Makassar District Court Decision Number 1/PDT.SUS.PAILIT/2015/PN.Niaga.Mks, it states:

Exception:

Rejecting the exception of the Bankruptcy Respondent in its entirety.

In the Main Case:

- Granting the petition submitted by the Bankruptcy Petitioner against the Bankruptcy Respondent.*

2. *Declaring the Respondent/Debtor, PT. Hong Seng Papua International, located at Jalan Pondok Indah Blok F No. 2, Samofa Village, Biak Numfor Regency, Papua Province, Indonesia, BANKRUPT with all legal consequences.*
3. *Appointing Mr. Ibrahim Palino, S.H., M.H. as the Supervising Judge at the Commercial Court of the Makassar District Court/Commercial Court.*
4. *Appointing Mr. Iming Maknawan Tesalonika, S.H., M.M., M.C.L. as the Curator in this bankruptcy process.*
5. *Ordering the Bankruptcy Respondent to pay the costs incurred in this case amounting to IDR 2,376,000.*

The decision is considered to favor one party, as the objections raised by PT. Hong Seng Papua International were not fully examined, particularly with regard to some attached evidence that was overlooked. The Cassation Respondent contested the Investment Cooperation Agreement dated July 26, 2010 (Evidence T-1a and T-1b), where the Cassation Respondent was supposed to invest USD 24,000,000.00, implying that the respective shares were 50% for the Cassation Respondent, acting as Continuing Wealth Limited. The cooperation period was set for 5 years, and the Cassation Respondent was required to make an initial capital deposit of at least USD 8,000,000.00. However, the cooperation agreement shows that the Cassation Respondent only provided an investment in the form of an advance payment of USD 1,000,000.00, and this was transferred in 4 stages to Bank Mandiri, Jayapura Branch (Evidence T-2), which did not align with the agreed investment contract. The failure to examine this evidence has led to the bankruptcy issue being perceived as not delivering justice.

Quoting from the speech of the Professor of Bankruptcy Law at Airlangga University, the definition of debt in bankruptcy law is an obligation that is stated or can be stated in an amount of money, either in Indonesian Rupiah or foreign currency, whether directly or that which may arise in the future or is contingent, arising from an

agreement or law, and must be fulfilled by the debtor. If not fulfilled, the creditor has the right to claim satisfaction from the debtor's assets.³

Dalam kasus ini, benar adanya utang yang harus dipenuhi oleh pihak However, the assumption that the cooperation agreement, with the promised profits, was the basis for the losses incurred by the creditor was not implemented as agreed upon in the contract.

Bankruptcy arising from an agreement, which is bound by the principle of consensualism, means that the parties involved in the agreement must agree on every term or essential matter within the contract. With the principle of freedom of contract, the agreement is made based on the will of the parties, and it must be executed in good faith. Additionally, the principle of *pacta sunt servanda* binds the contract to the parties involved, and any breach is considered a violation of the promise or *wanprestasi* (failure to perform obligations).⁴

The weaknesses of bankruptcy law in Indonesia that can undermine creditors' rights. Article 2 of the Bankruptcy and Suspension of Debt Payment Obligations Law states:

- (1) *A debtor who has two or more creditors and fails to fully pay at least one debt that has matured and is collectible, may be declared bankrupt by a court decision, either upon its own petition or upon the petition of one or more of its creditors.*
- (2) *The petition referred to in paragraph (1) may also be filed by the public prosecutor for public interest purposes.*
- (3) *In the case where the debtor is a bank, the petition for bankruptcy declaration may only be filed by Bank Indonesia.*
- (4) *In the case where the debtor is a securities company, stock exchange, clearing and guarantee institution, or settlement and*

³ M. Hadi Shubhan, "Karakteristik Hukum Kepailitan Di Indonesia Dan Perkembangannya Sebagai Instrumen Hukum Recovery Pembayaran Utang Debitor," in *Pengukuban Jabatan Guru Besar Dalam Bidang Ilmu Hukum Kepailitan Pada Fakultas Hukum Universitas Airlangga*, 2022, 18–19.

⁴ "5 Asas-Asas Hukum Perdata Terkait Perjanjian," Hukum Online, 2022, <https://www.hukumonline.com/berita/a/asas-asas-hukum-perdata-lt62826cf84ccbf/?page=all>.

depository institution, the petition for bankruptcy declaration may only be filed by the Capital Market Supervisory Agency.

- (5) *In the case where the debtor is an insurance company, reinsurance company, pension fund, or state-owned enterprise operating in the public interest sector, the petition for bankruptcy declaration may only be filed by the Minister of Finance.*

The harm caused when a debtor petitions for bankruptcy can indicate a deviation in behavior, using the law as a means to evade responsibility. In this way, a debtor who is unable to fulfill obligations may take actions that benefit their own interests, while creditors continue to suffer harm. The Bankruptcy and Suspension of Debt Payment Obligations Law in Indonesia, regulated under Law Number 37 of 2004, has been a significant topic of debate. The application of this law faces various challenges, including legal constraints and practices that often hinder the debt resolution process.⁵ The requirements for bankruptcy, which are considered too easy, can be abused for unfair business competition,⁶ meanwhile, the lengthy process of bankruptcy settlement creates legal uncertainty for all parties involved.⁷ In addition, the mechanism of

⁵ Annisa Fitria, "Penundaan Kewajiban Pembayaran Utang Sebagai Salah Satu Upaya Debitor Mencegah Kepailitan," *Lex Jurnalica* 15, no. 1 (2018); Man S. Sastrawidjaja, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Hutang* (Bandung: Alumni, 2006); Serlika Aprita, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang* (Malang: Setara Press, 2019).

⁶ "Isu Krusial Penyusunan Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Atas Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," Badan Pembinaan Hukum Nasional, accessed January 25, 2025, https://bphn.go.id/data/documents/Isu_Krusial_Naskah_Akademik_Perubahan_UU_No_37_Tahun_2004_Tentang_Kepailitan_Dan_Pkpu.pdf.

⁷ "Asosiasi Kurator Bantah Pelanggaran Hak Konstitusional Dalam UU Kepailitan," Mahkamah Konstitusi Republik Indonesia, December 2, 2024, <https://testing.mkri.id/berita/asosiasi-kurator-bantah-pelanggaran-hak-konstitusional-dalam-uu-kepailitan-21904>.

Suspension of Debt Payment Obligations (PKPU) is often not well understood by both debtors and creditors, which hampers the effective resolution of debts. From an impact perspective, this law was designed to provide legal protection for debtors to prevent them from losing their assets suddenly. However, this protection is not always effective and often disadvantages creditors. Bankruptcy and PKPU gives debtors the opportunity to draft a settlement plan with creditors, but if the plan is not approved, the debtor may be declared bankrupt. In light of these issues, the Indonesian government plans to revise the Bankruptcy and PKPU Laws as part of the 2025 National Legislation Program (Prolegnas).⁸ This revision aims to align the law with the evolving dynamics of legal practice and address existing issues in its current application. Therefore, although the Bankruptcy and PKPU Laws aim to create justice in debt settlement, the challenges in their implementation show that there is still room for improvement to better meet the practical needs on the ground.

In the case between PT. Hong Seng Papua International and Chau Shek Cheong and Changsheng (Holdings) Company Limited, although the decision has become legally binding, there were bankruptcy respondent's rights that were not fulfilled by the judge. The loss of evidence, including Evidence T-1a, T-1b, and T-2, created an imbalance of opinions between the disputing parties. The judge, who based the decision only on the fact that the Warning Letters (Somatie) were issued according to Evidence P-3, P-4, and P-5, made a decision that leaned more in favor of the Bankruptcy Petitioner.

In this case, the Bankruptcy Respondent, who was considered incapable of managing the company, had acted according to the agreement, waiting for the fulfillment of the performance under the cooperation agreement. Although the creditor provided a delay in

⁸ "UU Kepailitan Direvisi, Ini Bocoran Perubahannya," Hukum Online, 2024, <https://pro.hukumonline.com/legal-intelligence/a/uu-kepailitan-direvisi-ini-bocoran-perubahannya-lt66a0abbc99e5d/>; Willa Wahyuni, "Dinamika Dan Perkembangan Jelang 20 Tahun UU Kepailitan," Hukum Online, September 2, 2024, <https://www.hukumonline.com/berita/a/dinamika-dan-perkembangan-jelang-20-tahun-uu-kepailitan-lt66d572d608775/>.

payment, the agreement was still based on the cooperation contract. If one party fails to fulfill the obligation, and if the respondent's evidence is proven to be true, then the bankruptcy petition could be dismissed with a decision of *Niet Ontvankelijke Verklaard* (NO), meaning the lawsuit is inadmissible due to formal defects. This means the lawsuit would not be pursued by the judge for examination and adjudication, resulting in no subject for execution in the decision.

Regarding *wanprestasi* (breach of contract), O.W. Holmes expressed a theory that there is an obligation to maintain a contract, and if one fails to do so, they must be liable to pay compensation or a remedy.⁹ Essentially, the concept of *wanprestasi* (breach of contract) refers to an act of deviation by a party in an agreement, without coercion, from what was previously agreed upon in the contract, which may result in harm to the other party. *Wanprestasi* can only occur during the implementation process after a contract has been legally agreed upon. This concept of *wanprestasi* is regulated to protect the parties involved in the agreement, particularly during its execution. As part of contract law, which falls under private law rather than public law, the law governing *wanprestasi* should focus on the existence and interests of the parties who made the agreement.

Regarding the concept of debt in bankruptcy, the concept of debt is crucial in bankruptcy law because, without debt, the essence of bankruptcy becomes non-existent. Bankruptcy is a legal framework for liquidating a debtor's assets to pay their debts to creditors. The definition of debt in Article 1, paragraph (6) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUKPKPU) is very broad. The inclusion of the phrase "can be expressed in monetary value" means that a breach of contract, which can be expressed in a monetary amount, could be considered as debt when filing for bankruptcy.

⁹ Oliver Wendell Holmes Jr., *The Path of The Law* (Auckland, New Zealand: The Floating Press Limited, 2009), 11; Samuel Nyoman Kurniawan, "Konsep Wanprestasi Dalam Hukum Perjanjian Dan Konsep Utang Dalam Hukum Kepailitan," *Jurnal Magister Hukum* 3, no. 1 (2014): 9.

Because this could potentially cause confusion in resolving legal issues, the concept of debt in bankruptcy law needs to be clarified and reinforced.¹⁰

V. Conclusion

The Supreme Court's decision in this case also demonstrates that, although bankruptcy law aims to provide solutions to debtors' financial problems, its application can lead to injustice if not all evidence is carefully considered. This can result in potential harm to legitimate creditors, while debtors may receive protections they should not be entitled to when clear evidence of breach of contract (*wanprestasi*) exists. Additionally, the Suspension of Debt Payment Obligations (PKPU) mechanism, which is often not well understood by all parties, complicates the debt settlement process and reduces its effectiveness. While PKPU offers debtors the opportunity to draft a peace plan, if that plan fails, the debtor may still face bankruptcy. The relatively easy bankruptcy filing process can also be exploited for unfair business competition. With the development of legal practices and emerging issues, the revision of the Bankruptcy and PKPU Law, which is planned for the 2025 National Legislation Program, is expected to align with practical needs on the ground. This revision aims to reduce potential harm to creditors and enhance legal clarity for all parties involved.

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¹⁰ Samuel Nyoman Kurniawan, "Konsep Wanprestasi Dalam Hukum Perjanjian Dan Konsep Utang Dalam Hukum Kepailitan," 10–11.

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DECLARATION OF CONFLICTING INTERESTS

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