

## Interpretation of Indebtedness from Bankruptcy Perspective

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Promulgation of Law Number 37 of 2004 on Bankruptcy and Suspension of Payment (“**Indonesian Bankruptcy Law**”) was aimed to amend and add some provisions in the previous bankruptcy law i.e. Law Number 4 of 1998. Back in 1998 until 2003, some judgements define indebtedness in narrow sense, while others in broad definition.

For instance, Supreme Court judges in the Cassation case Number 03/K/N/1998 dated 2 December 1998 contended that indebtedness should be defined from monetary loan agreement and cannot be in other forms such as sale and purchase of house agreement. On the other hand, Supreme Court judges in the Judicial Review case Number 13/PK/N/1999 dated 2 August 1999 has different views on indebtedness. Failure of landlord to hand over the land based on the agreed timeframe under sale and purchase of land agreement was considered as indebtedness.

Bankruptcy laws are actually derived from the Indonesian Civil Code. Basically, the Indonesian Civil Code stipulates that indebtedness is arising out of an agreement between two parties or law. These create rights and obligations of the parties to provide something, to do something or not doing something. The obligations could be paying the principal and its interests, handing over goods to buyers or building houses.

As a result, the debtors would be borrowers, sellers or developers, while the creditors would be lenders, purchasers and buyers. In the event of the debtors cannot fulfill their obligations to the creditors, it can be regarded as an indebtedness under Article 1234 of the Indonesian Civil Code. It leads to the conclusion that the Indonesian Civil Code construes an indebtedness in broad definition.

Meanwhile, Article 1.6 of Law Number 37 of 2004 on Bankruptcy and Suspension of Payment (“**Indonesian Bankruptcy Law**”) stipulates definition of Indebtedness as follow:

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*'Indebtedness shall mean an obligation that is expressed or may be expressed in monetary unit under Indonesian or foreign currency that exist now or thereafter or is contingent that is incurred from an agreement or pursuant to the prevailing law and must be fulfilled by the Debtor, failing which the Creditor becomes entitled to recover its loan from the assets of the Debtor'*

Wording of 'obligation that is expressed or may be expressed in monetary unit under Indonesian or foreign currency' creates broad interpretation of indebtedness itself. The obligation could be 'to provide or to do something or not doing something' that can be valued in monetary unit. Any breach of these obligations to one of minimum two creditors has fulfilled the requirement of bankruptcy.

This broad interpretation gives alternative forum for creditors dealing with the debtors under any kind of commercial agreements such as sale and purchase agreement, services agreement and so forth. These agreements basically establish legal relationship between debtors and creditors as well as obligations of debtors that can be assessed in monetary unit. Therefore, any breach of contract disputes can also be settled through Indonesian commercial court.

Creditors tend to bring their commercial disputes through Indonesian commercial court as the proceeding is much faster than normal civil legal proceeding. Pursuant to Article 8.5 of the Indonesian Bankruptcy Law, court judgment on a bankruptcy application should be granted not later than 60 (sixty) days as of the registration date, while civil legal proceeding will take around 6 (six) months. Some experts still believe that narrow interpretation should be used for bankruptcy trial to be in line with the timeframe and principle of simple authentication in examining the merits of the case.

Article 222 of the Indonesian Bankruptcy Law also set a Suspension of Payment (*Penundaan Kewajiban Pembayaran Utang - PKPU*) proceeding for sole creditor to request settlement or restructuring of indebtedness through Indonesian commercial court. The commercial court judges should grant their verdict not later than 20 (twenty) days as of the application date.

Indonesian Bankruptcy Law defines indebtedness in broad sense as an obligation of debtors that can be valued in monetary unit either obligation to provide something, to do something or not doing something.