

**ANALYSIS OF THE RENVOI PROCEDURE IN SPECIAL  
CASES OF INSOLVENCY ON REVIEW (CASE STUDY OF  
THE DECISION OF MAHKAMAH AGUNG NUMBER 44  
PK/PDT.SUS-BANKRUPTCY/2021)**

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**Abstract**

*This article discusses the mechanism of renvoi procedures in civil cases specifically for bankruptcy in Indonesia, with a focus on the case study of Supreme Court Decision Number 44 PK/Pdt.Sus-Pailit/2021. The renvoi procedure allows creditors or debtors to dispute the amount of debt that has been acknowledged by the curator in the debt/receivables verification meeting. Through analysis of this decision, this article examines how disputes regarding the amount of debt can proceed to the judicial review stage and highlights the important role of the Supreme Court in providing legal certainty. The results of the analysis show that the renvoi procedure is an important instrument to ensure fairness and accuracy in the bankruptcy resolution process. Even though the amount of the debt has been acknowledged in the verification meeting, new evidence or recalculation can change the amount, and the dispute can be taken to court until a decision with permanent legal force is reached. This case highlights the complexity and importance of procedural review as well as the central role of the Supreme Court in ensuring that the bankruptcy resolution process is fair and in accordance with applicable legal provisions.*

**Keywords:** Renvoi Procedure, Bankruptcy, Judicial Review

**I. INTRODUCTION**

A procedural renvoi is a legal instrument used in the framework of the legal system that gives the authority to the court to propose revisions or changes in the procedures applied in a particular case. Usually, a procedural rehearsal is carried out when there is an error in the procedure of the case or if there are other reasons that indicate the need for adjustment in the legal instrument used. Procedural proposals in bankruptcy cases can have a big impact on the outcome of the case. For example, if there are errors in investigative procedures, a procedural renvoi can allow for fairer and more accurate law enforcement. Conversely, if there is an error in the determination of the penalty, a procedural renvoi can allow for more appropriate enforcement of the penalty.

While the judge's review in its conclusion also still strengthens the Supreme Court's Decision, the judge considers that Judex Juris' consideration in this case the Supreme Court did not find a real mistake and or mistake where in the settlement of bankruptcy assets it is not enough to pay all debts of the debtor, the distribution is carried out in accordance with the principles of justice and balance. (Regarding the considerations of the Supreme Court Judges in Decision Number 72 PK/Pdt.Sus-Pailit.2015).

When referring to the lawsuit of tax creditors, it is clear that the tax creditor wants all receivables that are collected to be repaid from the bankruptcy assets without taking into account the existence of other creditors such as separatist creditors and other creditors, meanwhile, if all the receivables of tax creditors are met, then in this case it will have the

potential to cause injustice to separatist creditors where the assets of the bankruptcy debtor are not enough to cover the receivables of other creditors.

## **II. PROBLEM FORMULATION**

The problem formulation of this research is :

1. renvoi based on judicial review of bankruptcy decision
2. legal consequences of bankruptcy renvoi

## **III. RESEARCH METHODS**

The type of research used in this research is a literature study, by taking a normative approach, according to Peter Mahmud Marzuki, normative legal research is "a process for finding legal rules, principles and legal doctrines in order to answer the legal issues at hand". Problematic research or norms and principles that do not use hypotheses. By identifying theories, concepts or foundations as a theoretical basis, which will be used as a basis for analyzing problems in research (I Gusti Ketut Ariawan, 2013). This research method can also be interpreted as research at the level of norms, rules, principles, theories, philosophies and rules of law that seek solutions or answers to problems in the form of legal vacuum, norm conflict or norm obscurity. Thus the normative research method also has characteristics as literature research (Yati Nurhayati, Ifrani Ifrani and M Yasir Said,2021).

## **IV. RESULTS AND DISCUSSIONS**

### **1. Renvoi Procedure**

Law No.37 Year 2004 on Bankruptcy and PKPU does not explicitly state the limitations or conditions for creditors or debtors to apply for renvoi procedures on the amount of debt of a bankrupt debtor that has been recorded by the curator. Although the curator has recorded all debts of the bankrupt debtor to its creditors and have been recognized by the bankrupt debtor, the curator and the creditors based on the data submitted by each party, the debts can still be challenged by both the debtor and the creditors through a procedural renvoi mechanism. If the renvoi procedure submitted by the bankrupt debtor or creditors is not recognized during the debt verification meeting attended by the curator, supervisory judge, bankrupt debtor and creditors, then the party who submitted the renvoi procedure / rebuttal to the amount of debt that has been recognized by the curator, can still maintain the rebuttal by filing a lawsuit to the Commercial Court, so that the Commercial Court legally validates the renvoi procedure (Brando Yohanes Tandean,2017).

The procedures and procedures for determining the amount of debt recognized by all parties so that the bankruptcy estate can be completed immediately and creditors recover their debts cannot be implemented by the curator in a short time and in an effective and efficient manner. This is due to the absence of legal certainty in determining the amount of debt that is mutually recognized by all parties, namely the curator, the bankrupt debtor, and the creditors. Although the debts of the bankrupt debtor and creditors have been recognized by the curator, bankrupt debtor and creditors, the implementation of the bankruptcy estate by paying the entire amount of the bankrupt debtor using the bankruptcy estate cannot be carried out by the curator, because there is no legal certainty regarding the amount of the

bankrupt debtor's debt. Law No.37 Year 2004 on Bankruptcy and PKPU in Article 127 paragraph 1, still provides an opportunity for bankrupt debtors and creditors to dispute the amount of debt that has been recognized by the curator (Parwoto Wignjo Sumarto,2003)

Article 127 paragraph (1) of Law No. 37 Year 2004 on Bankruptcy and PKPU states that, "In the event that there is a dispute and the Supervisory Judge is unable to reconcile the two parties, even though the dispute has been submitted to the court, the Supervisory Judge shall order the two parties to settle the dispute in court". From the provisions of Article 127 paragraph (1) above, it can be said that even though the amount of debt / debt that has been recognized by the curator and the bankrupt debtor has been obtained, in the future if the creditor has new evidence of the amount of debt of the bankrupt debtor which is greater than the amount of debt that has been recognized previously, the creditor can submit a renvoi procedure to the curator, to include the new amount of debt of the bankrupt debtor.

The provisions of Article 127 paragraph (1) indicate that the amount of debt that has been agreed upon and acknowledged by the curator, bankrupt debtor and creditors in a meeting to verify the matching of debts / receivables does not yet create legal certainty for the parties to carry out the administration of the bankruptcy estate by making payments to creditors by the curator through the bankrupt debtor's assets. The curator must wait whether or not there is a renvoi procedure submitted by the creditors or the bankrupt debtor for the amount of debt that has been recognized by the curator. In addition, if the renvoi procedure proposed by the creditors or the bankruptcy debtor is denied approval at the verification meeting, the party who has been recognized by the curator will have to wait for the renvoi procedure to be approved.

If the renvoi procedure is rejected by the Commercial Court, it can file a lawsuit to the Commercial Court and if rejected by the Commercial Court, it can file a cassation to the Supreme Court.<sup>6</sup>

Renvoi procedures in practice are carried out by bankrupt debtors / creditors who view the amount of debt / receivable that has been recognized as not in accordance with the results of calculations made by bankrupt debtors and creditors, resulting in a difference in the amount of debt that is greater or less than the amount of debt that has been recognized previously in the verification meeting that has been entered into the records / receivables of bankrupt debtors and creditors.<sup>7</sup> Thus, it can be said that the amount of debts / receivables that have been recognized by the curator, bankrupt debtor and creditors have not yet created a legal certainty until the filing of renvoi procedures, renvoi procedure lawsuits either to the Commercial Court or to the Supreme Court until the issuance of a court decision that has permanent legal force on the amount of debts / receivables of the bankrupt debtor / creditor.

Legal basis and considerations of the judge deciding this case. The decision in this case was based on legal basis and considerations. The decision is based on retroactive principles and calculations, which is contrary to the general principle that "a regulation cannot apply retroactively". The decision was made in accordance with the provisions of the KPKPU Law. The decision was also based on the request for a decision on the merits of the case, addressing the dispute over the difference in the value of the respondent's

receivables with the receivables recognized by the applicant in the debt reconciliation meeting on 11 November 2020. Decision Letter of the Applicant's Board of Directors Number 074 of 2018 concerning Fees for Extending the Use of Land Plots in the JIEP Area Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations Decision of the Supreme Court of the Republic of Indonesia Number 527 K/Pdt.Sus-Bankruptcy/2021 dated May 3, 2021 Directory of Decisions of the Supreme Court of the Republic of Indonesia putusan.mahkamahagung.go.id Page 7 of 9 pp. Put. Number 44 PK/Pdt.Sus-Bankruptcy/2021 Law Number 48 of 2009 concerning Judicial Power Decree of the Applicant's Board of Directors Number 074 of 2018. According to the regulations in Law No. 37 of 2004 emphasizing that the Commercial Court has special authority in examining and determining bankruptcy and postponement of debt payment (PKPU) cases, as well as other business cases governed by law.<sup>8</sup>

The legal process involving the Supreme Court (MA) is generally filed by the creditor or debtor to the Commercial Court. The District Court will process the bankruptcy filing, conduct an examination, and if there are valid reasons, the Commercial Court can issue a bankruptcy decision. The losing party can file a cassation to the Supreme Court, which is the highest judicial institution in Indonesia and has the authority to examine and assess whether the lower court's decision is in accordance with the law or not. The Supreme Court does not automatically examine every case, but only certain cases that meet the criteria for further examination. Thus, the legal force of a bankruptcy decision in the Supreme Court comes from the appropriate legal process, the authority of the judicial institutions concerned, and ensuring that the decision is appropriate.

## 2. Judicial Review

In bankruptcy, there is no appeal, but against the decision on the application for a bankruptcy statement, the legal remedies that can be taken are Cassation and Judicial Review (PK). Against the decision, on the application for a bankruptcy statement that has obtained permanent legal force, a review can be submitted to the Supreme Court. This is the formulation of Article 14 paragraph (1) of UUKPKPU.

Regarding extraordinary legal remedies (judicial review), Article 23 of Law No. 4/2004 on Judicial Power stipulates that:

- a) against a court decision that has obtained permanent legal force, the parties concerned may submit a review to the Supreme Court, if there are certain matters or circumstances specified in the law.
- b) No judicial review can be conducted against the decision. Then in the elucidation of Article 23 paragraph (1) of the Judicial Power Law, it states that "What is meant by "certain matters or circumstances" in this provision, among others, is the discovery of new evidence (*novum*) and / or the existence of new evidence. mistake/error of the judge in applying the law. From this article, it can be seen that judicial review can only be carried out against decisions that have permanent legal force (Inkracht van gewijsde).

The Bankruptcy Law also determines the reasons that can be used to file for judicial review in a limitative manner. Article 295 paragraph (2) of the UUKPKPU specifies the reasons or conditions that can be used to file a request for reconsideration, among others:

- a) after the case has been decided, new evidence is found that was decisive at the time the case was examined in Court but had not yet been discovered; or
- b) in the decision of the judge in question against manifest error.

The grounds or conditions that can be used for judicial review are alternative, meaning that the request for judicial review will be accepted if one of these conditions is met. The submission of a petition for review on these grounds shall be made within a period of no later than 30 days as of the date on which the judgment for which review is sought has become final.

The process of requesting a review of a bankruptcy declaration is similar to the process of requesting a cassation at the Supreme Court. The request for review is regulated in Article 296 to Article 298 of the Bankruptcy Law. Based on the bankruptcy case study filed by the debtor himself, there is an attempt by the creditors to counteract the debtor's actions to bankrupt themselves through cassation. UUKPKPU Provisions regarding parties who can file this cassation. Article 11 Paragraph (3) states that a cassation petition may not only be filed by the debtor and creditors who are parties to the first instance proceedings, but may also be filed by other creditors who are not parties to the first instance proceedings who are dissatisfied with the decision on the petition for declaration of bankruptcy.

In this case, the Curator team as the PK Applicant felt aggrieved by the decision of the Court of Cassation because the Renvoi procedure was granted because it disputed the difference in the value of receivables between the applicant for review by considering the receivables recognized by the Review Applicant in the debt matching meeting on November 11, 2020. The calculation is based on the decision letter of the applicant's board of directors regarding

Cost of Extending the Use of Land Lots in the JIEP Area. The Court held that the calculation was not in accordance with retroactive principles and calculations, contrary to the general principle that "a regulation cannot apply retroactively". Decree of the Applicant's Board of Directors No. 074/2018 on the Cost of Extending the Use of Land Lots in the JIEP Area.

In such cases, renvoi procedures are often applied. Pursuant to Article 127 paragraph (1) of Law No. 37 Year 2004, if there is a dispute that cannot be resolved amicably by the supervisory judge, then the judge will request both parties to resolve the dispute through a judicial process. In other words, when there is a dispute between a curator and a debtor, or a debtor and a creditor over the amount of a debt, the resolution does not stop at the supervisory judge level. The dispute will be examined and decided by a panel of judges who have the authority to give legal decisions.

The renvoi procedure in this bankruptcy case, the Respondent filed a request for a decision on the merits of the case, addressing the dispute over the difference in the value of the respondent's receivables with the receivables recognized by the applicant in the debt

reconciliation meeting on 11 November 2020. The case was brought to the Commercial Court at the Central Jakarta District Court to be decided on the merits. The court granted the request for reconsideration, annulled the previous decision, rejected the objections raised by the applicant, and imposed court costs of Rp10,000,000.00. The calculation of court costs was based on the decision letter of the applicant's board of directors regarding the Cost of Extending the Use of Land in the JIEP Area. This sequence shows the process of renvoi procedure in bankruptcy cases. Decree of the Applicant's Board of Directors No. 074/2018 on the Renewal Fee for the Use of Land Lot in JIEP Area Law No.37 of 2004 on KPKPU Decision of the Supreme Court of the Republic of Indonesia No.527 K/Pdt.Sus-Bankruptcy/2021 dated May 3, 2021 Decree of the Applicant's Board of Directors No. 074/2018.9

In the Reconsideration decision, there is a decision to accept the Petition for Reconsideration of the Curator Team of PT TOBU INDONESIA STEEL (which has been marked bankrupt) and cancel the Supreme Court decision Number 527 K/Pdt.Sus-Bankruptcy/2021 dated May 3, 2021.

### **3. Legal Effects of a Decision on an Objection Case (Renvoi Procedure)**

That the case at the Commercial Court Level up to Judicial Review in the explanation above is not a legal remedy in the PKPU decision of PT TOBU INDONESIA STEEL, but is an effort to Objection Case (Renvoi Procedure) at the Commercial Court Level up to Judicial Review. This decision is in accordance with Article 127 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which describes disputes related to the difference in the value of receivables claimed by the defendant with receivables recognized by the applicant in his debt. By conducting Renvoi Procedure by PT JIEP does not cancel the Bankruptcy Decision of PT TOBU INDONESIA STEEL, but PT JIEP and the Curator Team of PT TOBU INDONESIA STEEL

Has a dispute over the difference in the value of receivables with receivables recognized in the PT TOBU INDONESIA STEEL bankruptcy case, the Renvoi Procedure submitted by PT JIEP was rejected in the Judicial Review decision. Legal consequences of the Renvoi Procedure carried out by PT JIEP on the bankruptcy case of PT TOBU INDONESIA STEEL. PT JIEP is included in the list of permanent creditors and included in the fixed receivables in the bankruptcy case of PT TOBU INDONESIA STEEL and with the Reconsideration Decision on the Renvoi Procedure process, the Curator Team of PT TOBU INDONESIA STEEL must pay Rp. 2,318,250,000 to PT JIEP.

## **V. CONCLUSION**

The renvoi procedure is a mechanism that allows debtors or creditors to dispute the amount of debt that has been recognized by the curator in the verification meeting. If no agreement is reached, the dispute can be taken to the Commercial Court and even up to the Supreme Court for a legally binding decision.

In the case discussed, the renvoi procedure was initiated due to a difference in the calculation of the amount of debt recognized. This process shows that even if there

is an initial acknowledgment of the debt amount in the verification meeting, new evidence or recalculation may change the amount. The Supreme Court has an important role in examining and providing a final decision that ensures legal certainty on the disputed debt amount.

Supreme Court Decision Number 44 PK/Pdt.Sus-Bankruptcy/2021 confirms that the renvoi procedure is an important instrument in ensuring fairness and accuracy in bankruptcy proceedings. This procedure allows parties who feel aggrieved by the initial decision to seek justice through the courts, resulting in a final decision that is fairer and in accordance with the actual circumstances.

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