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The Supreme Court's 2023 Landmark Decision on Delay of Payment

General

As a general rule, Law No. 37 of 2004 on Bankruptcy and Delay of Payment (“**Law No. 37/2004**”) provides that a delay of payment of petition should be granted by the relevant commercial court’s judges if it meets the following requirements:

- a. The debtor has two or more creditors; and
- b. At least one of the debts is due and payable.

In addition to the above requirements, another formality that must be met by the claimant is that the existence of the debt and the creditors described in the petition should be straightforward.

Recent Development

In 2024, the Supreme Court issued a compilation of its 2023 Landmark Decisions, covering several aspects of laws, including issues related to bankruptcy and delay of payment. Within this compilation, the Supreme Court has established legal norms (*kaidah hukum*) that Indonesian judges can use when adjudicating relevant cases.

In relation to delay of payment, in Ruling No. 1262 K/Pdt.Sus-Pailit/2022, the Supreme Court introduced the legal norm stating that in deciding on delay of payment petitions, judges should consider the following aspects:

1. The opportunity for the debtor to continue its business activities;
2. The intentions and purposes of the creditor in submitting the delay of payment petition; and
3. The financial condition of the debtor, whether it is solvent or insolvent.

Given the above, the Supreme Court concluded that relying solely on the debtor’s ability to pay (solvency) or inability to pay (insolvency) to decide on delay of payment rulings is not permissible.

Following this new legal norm established by the Supreme Court, it is worth noting that the factors to be considered by Indonesian judges handling delay of payment petitions can be regarded as “additional requirements” beyond those stipulated in Law No. 37/2004. Consequently, Indonesian judges cannot only simply grant a delay of payment petition solely on the basis if the debtor having two or more creditors or more and at least one debt being due and payable.

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