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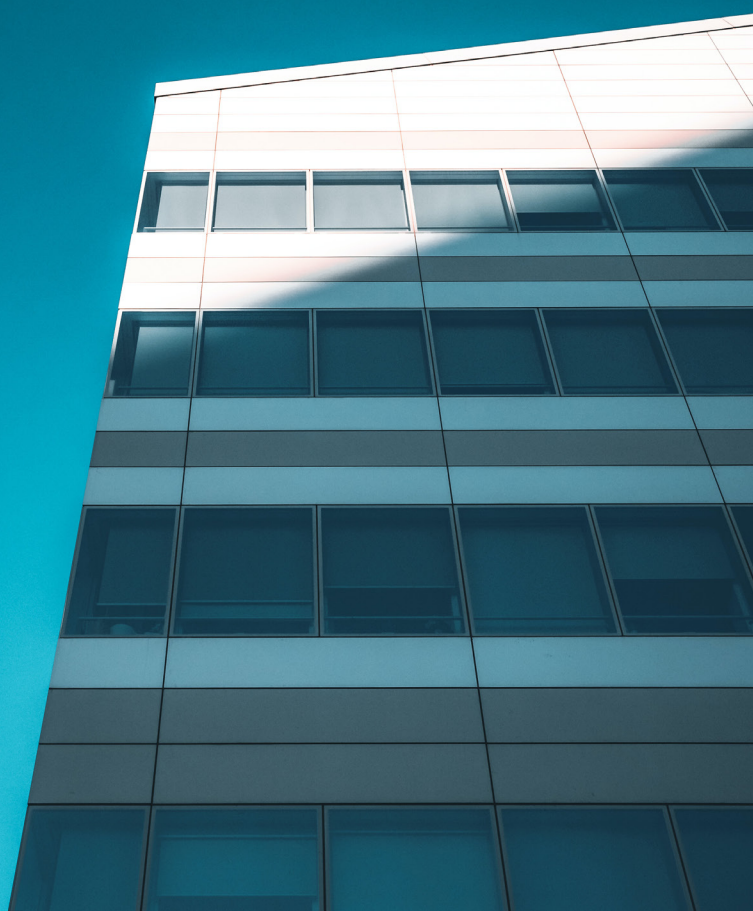
Indonesia: Law and Practice

Emir Nurmansyah, Ulyarta Naibaho and Bilal Anwari
ABNR Counsellors at Law



INDONESIA

Law and Practice

Contributed by:
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ABNR Counsellors at Law

Contents

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1. Overview of Legal and Regulatory System for Insolvency/Restructuring/ Liquidation

1.1 Legal Framework

The financial restructuring, reorganisation, liquidation and insolvency of business entities and partnerships in Indonesia can be dealt with through court-supervised proceedings or out-of-court processes.

Court-supervised proceedings are primarily governed by Law No 37 of 2004 on Bankruptcy and Suspension of Payments, as partly amended by Law No 4 of 2023 on Financial Sector Development and Reinforcement (the "Omnibus Financial Law") (the "Indonesian Bankruptcy Law", or IBL), together with civil procedure law, which includes Supreme Court Decree No 109/MA/SK/IV/2020 on the Guide Book for Resolving Bankruptcy and Suspension of Payments Cases, dated 29 April 2020 (the "Supreme Court Manual").

Out-of-court processes are governed by contract law, as set out in the Indonesian Civil Code (ICC), and by other relevant laws and regulations, depending upon the nature of the organisation, as follows.

- Sole traders, partnerships and limited partnerships: the ICC.
- Limited liability companies: Law No 40 of 2007 on Limited Liability Companies, as amended by Law No 6 of 2023 on the Ratification of Government Regulation No 2 of 2022 (a substitute for Law No 11 of 2020 on Job Creation) (the "Indonesian Company Law", or ICL).
- Co-operatives: Law No 25 of 1992 on Co-operatives (reinstated following the annulment of Law No 17 of 2012 by Constitutional Court Decision No 28/PUU-XI/2013), as amended by Law No 6 of 2023 on the Ratification of Government Regulation No 2 of 2022 (a substitute for Law No 11 of 2020 on Job Creation), as further amended by the Omnibus Financial Law.
- Charities and charitable foundations – Law No 16 of 2001, as amended by Law No 28 of 2004 on the Amendment of Law No 16 of 2001 on Foundations.
- State-owned companies: Law No 19 of 2003 on State-Owned Enterprises (SOEs), as amended by Law No 6 of 2023 on the Ratification of Government Regulation No 2 of 2022 (a substitute for Law No 11 of 2020 on Job Creation), as further amended by Law No 1 of 2025 and subsequently by Law No 16 of 2025 on the Amendment of Law No 19 of 2003 and Government Regulation No 45 of 2005 on the Establishment, Management, Supervision and Dissolution of SOEs (further amended by Government Regulation No 23 of 2022 on the Amendment of Government Regulation No 45 of 2005 on the Establishment, Management, Supervision and Dissolution of SOEs).
- Securities issuers that have conducted public offerings and public companies:
  (a) Financial Services Authority (*Otoritas Jasa Keuanga*; OJK) Regulation No 31/*Peraturan Otoritas Jasa Keuangan* (POJK).04/2015 on the Disclosure of Material Information or Facts by Issuers or Public Companies, partially revoked by POJK No 45 of 2024 on the Development and Strengthening of Publicly Listed Companies;

(b) OJK Regulation No 26/POJK.04/2017 on Information Disclosure for an Issuer or Public Company; and
(c) Board of Director of Indonesian Stock Exchange Decision No Kep-00077/BEI/05-2023 on Regulation I-L on the Suspension of Securities (this decision revoked Circular Letter of Indonesian Stock Exchange No SE-008/BEJ/08-2004 on the Temporary Suspension of Securities Trading of Listed Companies).

- Banks, including Indonesian banks duly registered at the Financial Services Authority:
  (a) Law No 7 of 1992, as amended by Law No 10 of 1998 on Banking, as further amended by Law No 6 of 2023 on the Ratification of Government Regulation No 2 of 2022 (a substitute for Law No 11 of 2020 on Job Creation) and the Omnibus Financial Law;
  (b) Law No 24 of 2004 on the Depository Fund Agency (*Lembaga Penjamin Simpanan* LPS), as amended by Law No 7 of 2009 on the Ratification of Government Regulation No 3 of 2008, as further amended by the Omnibus Financial Law;
  (c) Law No 21 of 2011 concerning the Financial Services Authority, as amended by Law No 9 of 2016 on the Prevention and Control of Financial System Crisis and further amended by the Omnibus Financial Law (the "OJK Law");
  (d) Government Regulation No 25 of 1999 on Licence Revocation, Dissolution and Liquidation of Bank Business, as amended and partially revoked by Law No 24 of 2004 on the Indonesia Deposit Insurance Corporation;
  (e) OJK Regulation No 5 of 2024 on the Determination of Status and Supervision and Problem Handling of Commercial Banks; and
  (f) LPS Regulation No 1 of 2022 on Bank Liquidation for banks in the form of limited liability companies.
- Pension funds: the Omnibus Financial Law (which revoked Law No 11 of 1992 on Pension Funds and Regulation) and OJK Regulation No 35 of 2024 on the Licensing and Institutional Aspect of Pension Funds (which revoked OJK Regulation No 9/POJK.05/2014 on the Dissolution and Liquidation of Pension Funds).
- Insurance companies: Law No 40 of 2014 on Insurance, as amended by the Omnibus Financial Law, and OJK Regulation No 28/POJK.05/2015 on the Dissolution, Liquidation and Bankruptcy of Insurance, Islamic Insurance, Reinsurance and Islamic Reinsurance Companies, as further amended by POJK No 38 of 2024 on the Dissolution, Liquidation, Bankruptcy of Insurance Companies.
- Securities companies duly licensed and operating as underwriters, securities brokers and investment managers under Law No 8 of 1995 on the Capital Markets, as amended by Law No 9 of 2017 on the Ratification of Government Regulation No 1 of 2017 on Financial Information for Tax Purposes and further amended by the Omnibus Financial Law, in conjunction with OJK Regulation No 3/POJK.04/2021 on Capital Market Activities Operations (as partially revoked by POJK No 45 of 2024 on the Development and Strengthening of Publicly Listed Companies and OJK Regulation No 20/POJK.04/2016 on the licensing of securities companies conducting underwriting and securities broker business.
- Finance leasing companies, companies providing finance to infrastructure projects, factoring companies, consumer finance companies and credit card companies: OJK Regulation No 35/POJK.05/2018 on Finance Companies Business Activities, as amended by OJK Regulation No 7/POJK.05/2022 on the Amendment of OJK Regulation No 35/POJK.05/2018 on Finance Company Business Activities, and further amended by OJK Regulation No 46 of 2024 on the Development and Strengthening of Financing Companies, Infrastructure Financing Companies and Venture Capital Companies.
- Venture capital companies: OJK Regulation No 34/POJK.05/2015 on Licences and Institution of Venture Capital Companies.

1.2 Types of Insolvency

The IBL provides for the following two types of court-supervised restructuring and insolvency proceedings, which may be initiated either voluntarily (by the debtor) or involuntarily (by creditors) by the submission of a petition to the commercial court:

- bankruptcy proceedings, which aim for liquidation, whereby a receiver will be appointed; and

- suspension of payments (*Penundaan Kewajiban Pembayaran Utang*, or PKPU), whereby an administrator will be appointed.

The bankruptcy and PKPU processes are intertwined because restructuring can emerge from a bankruptcy proceeding, since the IBL gives a bankrupt debtor the opportunity to offer a composition plan, while liquidation can result from a PKPU proceeding, especially if such proceeding fails to produce a composition plan that is acceptable to the creditors.

Bankruptcy Proceedings

If the commercial court approves a bankruptcy petition, the IBL states that it is required to render a bankruptcy declaration and appoint one or more receiver(s) and a supervisory judge.

After the bankruptcy declaration is rendered by the commercial court, the affairs of the bankrupt debtor are handled and managed by one or more court-appointed receivers. The directors of the debtor, if it is a legal entity, lose their authority to manage the bankrupt debtor's affairs and estate, as these authorities are transferred to the receiver. The receiver is subject to the supervision of a court-appointed supervisory judge.

PKPU Proceedings

If the commercial court approves a PKPU petition, the debtor will be given a provisional PKPU for up to 45 days, and one or more administrator(s) and a supervisory judge will be appointed. The 45-day provisional PKPU may be extended up to a maximum of 270 days, whereupon it becomes a permanent PKPU.

After the PKPU declaration is rendered by the commercial court, the affairs and the estate of a debtor in PKPU proceedings are handled and managed jointly by the director(s) of the company and one or more court-appointed administrators. The administrator is subject to the supervision of a court-appointed supervisory judge. The debtor is still entitled to manage and dispose of its assets, but only jointly with the administrator. The debtor cannot conduct any management or ownership actions relating to all or part of its assets without the approval of the administrator.

Any violation of this provision will entitle the administrator to take whatever action is required to ensure that the debtor's assets are not jeopardised by the debtor's action. The debtor's performance of its obligations arising after the commencement of the PKPU proceedings, without the administrator's consent, may only be imposed on the debtor's assets to the extent that such assets gain advantage/benefit from this performance.

Dissolution and Liquidation Proceedings

The ICL provides for another type of out-of-court insolvency proceeding, known as a dissolution and liquidation proceeding ("D&L proceeding"), whereby a liquidator is appointed. Under this procedure, no restructuring can be done as it is aimed at liquidation, and the end result will be the termination of the company's legal entity status.

1.3 Statutory Officers

A receiver is appointed in bankruptcy proceedings, while an administrator is appointed in PKPU proceedings. The person appointed as a receiver or administrator is either a licensed lawyer or a licensed public accountant who has taken a special course, passed the examination and been registered with the Ministry of Law (a restructuring/insolvency professional).

The Receiver

The receiver has the following roles, rights and responsibilities (in bankruptcy proceedings):

- to manage and maximise the bankruptcy estate (eg, collecting claims);
- to continue the debtor's business;
- to verify the claims of the creditors (and prepare the list of creditors with their rankings) against the debtor's book;
- to verify the assets of the bankrupt debtor;
- to facilitate composition plan discussions and lead the voting process;
- to liquidate and settle the bankruptcy estate, if such estate is already in a state of insolvency (eg, through a public auction or private sale); and
- to distribute the liquidation proceeds to the creditors, in accordance with their rankings under the prevailing laws and regulations.

The Administrator

The administrator has the following roles, rights and responsibilities (in PKPU proceedings):

- to manage the debtor's estate and continue the debtor's business, together with the director of the debtor;
- to verify the claims of the creditors (and prepare a list of creditors, along with their rankings) against the debtor's book;
- to verify the assets of the debtor; and
- to facilitate the composition plan discussions and lead the voting process.

The receiver and administrator report their tasks to the supervisory judge and the commercial court.

The commercial court may nominate a restructuring/insolvency professional as administrator or receiver based on a proposal from the petitioner, or at its own discretion. The commercial court may reject the nominated officers if they are not independent, have a conflict of interest or are handling three or more cases at the same time. Alternatively, officers of the Inheritance Agency (*Balai Harta Peninggalan*, or BHP – a state trustee) will be appointed.

The commercial court may replace an appointed receiver/administrator based on:

- the proposal of the supervisory judge;
- the creditor's application, approved by more than half of all the creditors present at the creditors' meeting;
- the receiver/administrator's application;
- another receiver/administrator's application, if any; or
- the bankrupt debtor's application (for the receiver).

The Supervisory Judge

The supervisory judge has the following roles and responsibilities (in bankruptcy and PKPU proceedings):

- to oversee the receiver or administrator in carrying out their duties;
- to authorise specific actions of the receiver as mandated by the IBL, such as the private sale of the bankrupt estate; and
- to resolve disputes regarding claim verification for the purpose of voting on the composition plan.

The supervisory judge is appointed by the commercial court in the bankruptcy decision or the PKPU decision.

The Liquidator

In the context of D&L proceedings, the liquidator has the following roles, rights and responsibilities:

- to record and gather the company's assets and liabilities;
- to make the announcement concerning the plan for the distribution of assets/proceeds resulting from the liquidation process in the daily newspaper and state gazette of the Republic of Indonesia;
- to make payment to creditors;
- to make payment of the remaining balance of the assets resulting from the liquidation process to the shareholders; and
- to perform other actions required to implement the settlement of the company's assets.

The liquidator reports to either the General Meeting of Shareholders or the district court that appoints them.

2. Creditors

2.1 Types of Creditors

Preferred Claims

There are several types of preferred claims.

Preferred claims that rank higher than secured claims

Preferred claims that rank higher than secured claims will need to be paid from the bankruptcy estate, including but not limited to the assets of the debtor that have been encumbered by in rem security rights (in the form of mortgage, pledges, hypothec, fiduciary security) being held by the secured claims, ahead of the unsecured claims. These include the following.

- Outstanding wages (excluding severance payments and other rights) of the employees of the bankrupt debtor.
- Specific expenses stipulated by the Tax Law, which include:
  (a) legal expenses arising solely from a court order to auction movable and/or immovable goods;
  (b) expenses incurred for securing the goods;
  (c) legal expenses arising solely from the auction and settlement of inheritance; and
  (d) tax claims, court charges that result specifically from the disposal of a movable or immovable asset, and the legal charges exclusively caused by the sale and saving of the estate.

Preferred claims that rank lower than secured creditors' claims

Secured claims of specific statutorily preferred creditors whose preferences relate only to the debtor's specific assets, as stipulated by Article 1139 of the ICC, will rank higher if the specific relevant assets are subject to in rem security rights of the secured claim.

General preferred claims

General preferred claims will need to be paid from the assets under the bankruptcy estate that have not been encumbered by in rem security rights being held by the secured claims, ahead of the unsecured claims.

General statutorily preferred creditors of the debtor's assets in general, as stipulated by Article 1149 of the ICC, include the revenue authorities and the outstanding rights of the employees of the bankrupt debtor, other than outstanding wages (eg, severance payments).

Secured Claims

Secured claims are claims that are secured with in rem security rights over the debtor's particular assets. In practice, there is some uncertainty and conflicting views as to whether a secured creditor holding collateral that is provided by a non-debtor third party would be considered a secured creditor in PKPU proceedings, due to the lack of clarity regarding the term "secured creditors" in the IBL, and to conflicting practice in different PKPU case precedents.

Unsecured Claims

Unsecured claims are not secured with any in rem security rights and do not have any privilege granted by the prevailing laws and regulations. They will be paid from the assets under the bankruptcy estate that have not been encumbered by in rem security rights held by the secured claims, after the general preferred claims have been paid in full.

The subordination of the creditor's claim of any class during the bankruptcy proceedings or the PKPU proceedings is not recognised under the IBL.

Subordinated Claims

The IBL does not recognise the concept of the subordination of shareholder claims, although in practice a proposed restructuring plan may incorporate such concept.

2.2 Priority Claims in Restructuring and Insolvency Proceedings

As mentioned in **2.1 Types of Creditors**, the IBL recognises a priority claim that is ranked higher than a secured creditor claim (ie, "preferred claims"). However, in addition to such preferred claims, the IBL also recognises bankruptcy estate claims (also known as post-bankruptcy claims) as claims that would normally rank higher than any other type of claim. Bankruptcy estate claims are essentially claims against the bankruptcy estate that arise during the bankruptcy proceedings after the bankruptcy declaration is rendered, such as:

- fees of the receiver/administrator;
- costs incurred during the liquidation of the bankruptcy estate or in the PKPU process (if commenced prior to the bankruptcy);
- fees of experts engaged during the proceedings;
- post-bankruptcy financing;
- lease of the bankrupt's house or office during the bankruptcy proceedings; and
- wages of employees of the bankrupt debtor for their continued employment during the bankruptcy proceedings.

2.3 Secured Creditors

Liens/Security

The types of security that may be taken by secured creditors consist of mortgages over land (*Hak Tanggungan*), fiduciary security, pledge and hypothec.

A mortgage is used to secure certain real estate titles over land and fixtures attaching to it. Other immovable assets (which arguably include land with land titles that may not be mortgaged, as well as uncertified land) and movable, tangible and intangible assets (including but not limited to receivables, insurance proceeds and intellectual property rights) may be secured by a fiduciary transfer (also referred to as a "fiduciary assignment").

Assets that can be secured by a fiduciary transfer (other than immovable assets) can also be secured by pledge. Due to the requirement under a pledge that the pledged property be delivered to the creditor, most assets are secured by a fiduciary transfer, as it does not include this requirement. An exception to this is shares of an Indonesian company and bank account balances, which in practice are normally secured by pledge.

A hypothec is used to secure registered vessels/ships that have a gross tonnage of more than 20 cubic metres or the equivalent of seven gross tonnage.

The formalities to establish security under Indonesian law (other than pledge) are, in general:

- the execution of a deed before the relevant officials (land conveyancer for mortgage, notary for fiduciary security, vessel registration and ownership recordation officer for a hypothec over a vessel); and
- registration with the relevant register maintained by the relevant authority (land registry, maintained by the land office; fiduciary registry, maintained by the fiduciary registration office; main vessel registry, maintained by the Ministry of Transportation).

Rights and Remedies

Beyond the restructuring/insolvency context, the rights and remedies that secured creditors have to enforce their security upon the debtor's default on its secured obligations include selling the security through public auction (or private sale in certain circumstances). This can be done either:

- under instant or direct right of execution (*parate eksekutie*), without a judicial process, if the security provider is co-operative; or
- based on a court execution order (*fiat eksekusi*) ordering the execution attachment and auction of the security, if the collateral provider is uncooperative.

2.4 Unsecured Creditors

Unsecured creditors have no specific rights and remedies under the IBL outside the restructuring and insolvency context. Nonetheless, the IBL allows a bankruptcy petitioner (whether a preferred, secured or unsecured creditor) to request the commercial court to:

- impose a conservatory attachment on the debtor's assets; and/or
- appoint an interim receiver to supervise the debtor's business with respect to the estate of the debtor prior to its bankruptcy.

As far as is known, there have been no cases to date involving either of these processes in Indonesia.

3. Out-of-Court Restructuring

3.1 Out-of-Court Restructuring Process

There are no formal regulatory processes or requirements for an out-of-court restructuring, but the following points should be observed.

There is no mandatory consensual restructuring negotiation before the commencement of a formal "statutory process". Debtors often prefer a court-supervised process due to the benefits the IBL provides to debtors, which include:

- a stay period that prevents the enforcement of creditors' rights against the debtor during the restructuring process; and
- the possibility of a cram-down on dissenting and non-participating creditors.

Standstill agreements, default waivers and similar agreements, as part of an informal and consensual restructuring process or negotiation, are not uncommon in Indonesia; many of the practices common in larger/more complex restructurings are followed or

mirrored (with local adaptations), especially in larger restructurings.

A standstill agreement generally contains obligations for the company aimed at, for example, providing the creditor with more detailed information on the financial circumstances of the company. It is also common to require the inclusion of more covenants, especially relating to the financial condition or actions of the company, and to request additional security as part of the restructuring arrangement.

Standstill agreements have become more common since the onset of the COVID-19 pandemic. As part of the restructuring plan, the borrower will normally be granted a grace period for repayment of the loan. Alternatively, in a more general sense, a default waiver is always an option, subject to the outcomes of negotiations between the creditor and debtor.

There are no statutory requirements or legal doctrine imposing duties on creditors. As a general rule, a creditor is entitled to act in its own interest and may decline any proposal for an out-of-court restructuring.

As there is no statutory provision enabling a cram-down to deal with dissenting creditors in an out-of-court restructuring, a consensual, agreed out-of-court financial restructuring or work-out may not be entirely effective if not all creditors participate in the process and/or agree with the proposal. As the non-participating and/or dissenting creditors are not bound by the agreed restructuring, each of them may initiate legal proceedings against the debtor on the basis of default, which would jeopardise the "partially" agreed restructuring implementation.

3.2 Legal Status

An out-of-court restructuring is based on private contractual agreements between the debtor and its creditors. The disadvantage of informal restructuring is that the debtor is unable to take advantage of the features provided by court-supervised restructuring, including a stay period that prevents the enforcement of creditors' rights against the debtor during the restructuring process and a cram-down on dissenting and non-participating creditors. Therefore, the restructuring can only be effective towards the participating creditors.

4. Statutory Restructuring, Rehabilitation and Reorganisation Proceedings

4.1 Opening of Statutory Restructuring, Rehabilitation and Reorganisation

A petition for PKPU and bankruptcy may be filed by the following.

- One or more creditors.
- The debtor on a voluntary basis.
- The public prosecutor (in the public interest).
- Prescribed agencies in the case of particular debtors, as follows:
  - (a) banks, securities companies, stock exchanges, alternative market organisers, clearing and guarantee institutions, depository and settlement institutions, fund organisers protecting investors, securities funding institutions, securities pricing agencies, insurance companies, Sharia insurance companies, reinsurance companies or Sharia reinsurance companies, pension funds, guarantee institutions, financing institutions, microfinance institutions, organisers of electronic systems that facilitate the collection of public funds through offerings, information technology-based co-funding service organisers or special-purpose vehicle (financial instrument management institutions) and/or trustees, and other financial services institutions that are registered and supervised by the OJK insofar as their dissolutions and/or bankruptcy are not regulated separately in other laws; and
  - (b) an SOE operating in the public interest, the capital of which is owned by the state and not divided into shares by the Minister of Finance of the Republic of Indonesia.

The petition will be granted if the following requirements are fulfilled:

- the debtor has at least two creditors;
- the debtor has failed to pay at least one debt that is due and owing; and
- the foregoing two requirements can be summarily proved (eg, a dispute on the amount of debt being

claimed does not make it impossible to summarily prove the debt's existence).

Aside from this substantive test, an additional test for deciding whether a PKPU can be granted relates to whether the debtor cannot, or foresees (or its creditors foresees) that it will be unable to, pay its debts as they become due and payable.

The Supreme Court Manual provides that the PKPU and bankruptcy petition can be initiated on individuals, legal entities (ie, limited liability companies, foundations and co-operations) and civil partnerships (ie, unlimited liability partnerships, limited liability partnerships and other forms of civil partnership).

4.2 Statutory Restructuring, Rehabilitation and Reorganisation Procedure

During PKPU proceedings, the appointed administrator is required to announce the PKPU decision as soon as possible in the state gazette, and in at least two daily newspapers determined by the supervisory judge. The announcement will contain the supervisory judge's determination on:

- the deadline for the claim submission;
- the schedule for the claim-verification meeting;
- the date and time the proposed composition plan will be discussed and decided in the creditors' meeting led by the supervisory judge; and
- the date of the judge's deliberation meeting.

All claims submitted by the creditors to the administrator must be verified against the debtor's record/book and report, based on the rules of verification set out in the IBL. Furthermore, the administrator/receiver will issue a permanent list of creditors containing the recognised amount of claims of creditors.

The PKPU may be terminated at the request of the supervisory judge or one or more creditors, or upon the recommendation of the commercial court, if certain conditions are fulfilled – eg, the debtor is acting in bad faith in managing its assets during the PKPU, or has inflicted loss to the creditor and others. This may result in the debtor being declared bankrupt.

The debtor may, at any time, request that the commercial court lifts the PKPU, on the basis that the debtor is now able to start repaying its debts. In this situation, the commercial court will summon the administrator and the creditors before making a decision.

The IBL provides the opportunity for a debtor to offer a composition plan that restructures the rights of creditors, parties to an agreement, shareholders and relevant parties, subject to negotiation between the debtors and such relevant parties.

Under the IBL, shareholders have limited rights in bankruptcy proceedings, and are typically last in line to receive any distributions from the liquidation of assets after all secured and unsecured creditors have been paid. While creditors have more representation during bankruptcy and PKPU proceedings, creditors can negotiate and vote upon the composition plan proposed by the debtor.

A meeting of creditors must be called within 45 days of granting the provisional PKPU. At this meeting, the secured and unsecured creditors must:

- approve the composition plan, if a plan has been submitted to the commercial court and is ready to be voted on;
- agree to convert the provisional suspension of payments into a permanent PKPU for a certain period (up to 270 days from the date of granting the provisional PKPU) if the debtor requests an extension of the PKPU period; or
- reject the composition plan or the request to extend the PKPU period, in which case the debtor will subsequently be declared bankrupt (the bankruptcy estate will immediately be in a state of insolvency).

In PKPU proceedings, the decision to approve the composition plan, extend the PKPU period or grant a permanent PKPU requires approval from:

- more than half of the unsecured creditors who are present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged and who represent at least two-thirds of the total amount of the unsecured claims of the

unsecured creditors present or represented at the meeting, whose rights are also acknowledged or provisionally acknowledged; and
- more than half of the secured creditors who are present or represented at the meeting, and who represent at least two-thirds of the total amount of the secured claims of the secured creditors present or represented at the meeting.

Dissenting Creditors

There are no special procedural protections and rights in statutory insolvency and restructuring proceedings other than the IBL rule requiring dissenting secured creditors to be compensated by either the value of the collateral (as determined by the collateral documents) or the collateral value determined by an appraiser, whichever is lower.

New Money

New money can be introduced by various parties, including current or new shareholders, secured creditors or new creditors. However, under Indonesian law, it is not possible to grant these new money providers any super-priority liens or rights, whether within or outside formal insolvency proceedings.

Providers of new money may require in rem security rights over unencumbered assets or second/subsequent-rank already-encumbered assets, as a condition for their investment. This allows them to take precedence over unsecured creditors but not over existing secured or preferred creditors, unless those creditors consent. Since not all creditors may participate in or agree to the out-of-court restructuring process, there is a risk that the transaction could be invalidated or annulled in bankruptcy for being prejudicial to other creditors.

4.3 The End of the Restructuring, Rehabilitation and Reorganisation Procedure

If a composition plan is approved and confirmed, and becomes final and binding, it will bind all creditors except the dissenting secured creditors. Subsequently, the debtor will no longer have PKPU status.

However, bankruptcy will be declared immediately, and the bankruptcy estate will be in a state of insolvency, if:

- no plan is submitted, and the request to extend the PKPU is not granted by the creditors;
- no composition is approved by the creditors after the maximum period of the PKPU expires (270 days after the provisional suspension of payments is granted);
- the plan is rejected in the voting process by the creditors;
- the plan is approved by the creditors but not confirmed by the commercial court; or
- a confirmed composition plan is annulled by the commercial court due to an annulment petition submitted by a creditor.

The IBL adopts the principle of fairness, which implies that the provisions regarding bankruptcy provide a sense of justice for the interested parties. This principle of fairness is designed to prevent the arbitrariness of creditors who seek payment of their respective claims against the debtor, without considering other creditors. The debtor is expected to observe this principle when formulating their restructuring plan.

The commercial court is the judicial authority ratifying the approved composition plan that passed the voting process. In the scheduled judge's deliberation hearing, the commercial court must decide whether or not to confirm the approved plan, and provide its reasoning. The commercial court may only refuse to ratify the plan if:

- the estate of the debtor, including goods for which a right of retention is exercised, is much larger than the amount agreed in the composition;
- implementation of the plan is not adequately assured;
- the plan was concluded fraudulently or under undue influence of certain creditors; and/or
- the administration costs cannot be paid.

Failure to fulfil the composition plan post-restructuring

This can lead to a challenge to the composition plan of the debtor, as approved by the creditors and homologated by the commercial court (homologated plan), by dissenting creditors via a cassation or case review petition to the Supreme Court. It can also lead to the filing of a petition to nullify a homologated plan by

a creditor due to the debtor's subsequent default in performing its obligations, as cited in the composition plan. The debtor must show that the allegation has no ground. Under the IBL, the commercial court may grant the debtor a 30-day grace period to fulfil its obligation. If the debtor fails, the commercial court will nullify the plan and declare the debtor bankrupt.

4.4 The Position of the Debtor in Restructuring, Rehabilitation and Reorganisation

Upon the PKPU, the debtor will still be entitled to manage and dispose of its business and assets, but only jointly with the administrator; the debtor cannot conduct any management or ownership actions over all or part of its assets without the approval of the administrator. Any violation of this provision will entitle the administrator to take any action required to ensure that the debtor's assets are not jeopardised. Performance by the debtor of an obligation arising after the commencement of the PKPU proceedings without the administrator's consent can only be imposed on the debtor's assets to the extent that the debtor's assets gain advantage/benefits from this performance.

The IBL provisions allow the debtor and the administrator in PKPU proceedings, or the receiver in bankruptcy proceedings, to obtain new financing from a third party after obtaining the supervisory judge's approval. If this new financing requires security from the debtor's assets, however, the security can only be provided from the debtor's assets that are free from any encumbrances or existing security right. Therefore, the claims under the new financing do not constitute priority claims, other than the privilege right under the security interest being provided (if any).

4.5 The Position of Office Holders in Restructuring, Rehabilitation and Reorganisation

The administrator plays a crucial role in managing the debtor's assets and facilitating a restructuring plan (see **1.3 Statutory Officers** regarding the roles, rights and responsibilities of the administrator). The administrator collaborates with the debtor, who maintains control of their business under the administrator's guidance. The primary objective of the administrator is to balance the protection of creditors' interests with providing the debtor an opportunity to restructure its debts and sustain business operations.

4.6 The Position of Shareholders and Creditors in Restructuring, Rehabilitation and Reorganisation

Shareholders' Position

Shareholders maintain their statutory voting and other rights as long as the exercise of such rights does not affect the powers of the administrator or the procedures prescribed by the IBL.

Secured Creditors' Rights and Remedies

The secured creditors' right to enforce their security is subject to a stay for the entire period of the PKPU proceedings, which can be up to a maximum of 270 days from the PKPU decision being granted. Nonetheless, the IBL provides that secured creditors have the right to seek relief from an automatic stay under both bankruptcy and PKPU, by filing for a lifting of the stay petition.

If a composition plan has been confirmed in the PKPU proceedings, such plan will bind all creditors (secured and unsecured) except dissenting secured creditors, who will be compensated by the debtor at the lowest of the value of the collateral (the collateral value as determined either by the collateral documents or by an appraiser appointed by the supervisory judge) or the actual claim directly secured by in rem rights (relating to property, not a person).

Unsecured Creditors' Rights and Remedies

Under the IBL, unsecured creditors are entitled to vote on the composition plan being offered by the debtor in both bankruptcy and PKPU proceedings. A composition plan will be deemed approved by the creditors if it fulfils PKPU voting requirements (as mentioned in **4.2 Statutory Restructuring, Rehabilitation and Reorganisation Procedure**) and bankruptcy voting requirements (as mentioned in **5.2 Course of the Liquidation Procedure**).

Failure to secure majority approval from the unsecured creditors may either:

- disrupt or block a restructuring plan; or
- fail to achieve deferral of a liquidation.

Rights of Set-Off

Any person that has a debt to or a claim against a debtor can set off that debt or claim in bankruptcy or PKPU proceedings, provided that the debt, claim or any legal action raising the debt or claim has occurred prior to the commencement of the PKPU or bankruptcy proceedings.

Trading of Claims Against a Company

It is possible for claims against a company under PKPU/bankruptcy proceedings to be traded, taking the following into account:

- any transfer of claims against the company after the PKPU/bankruptcy proceedings have commenced cannot be set off;
- any transfer of claims against the company performed after the bankruptcy proceedings have commenced, by way of breaking up claims, will not create voting rights for the new creditors; and
- the voting right arising from claims against the company being transferred in its entirety after the bankruptcy proceedings have commenced will transfer to the new creditor.

The transfer of claim needs to be notified to the administrator in the PKPU and to the receiver team in bankruptcy proceedings.

Existing Equity Owners

The IBL is silent on whether equity owners can receive or retain any ownership or other property on account of their ownership interests. However, equity owners can always receive or retain ownership or other property due to their ownership interests, to the extent that this does not relate to the debtor's assets.

5. Statutory Insolvency and Liquidation Procedures

5.1 The Different Types of Liquidation Procedure

The parties eligible to file a bankruptcy petition, as well as those to whom it applies, are subject to the same rules as the PKPU, as outlined in **4.1 Opening of Statutory Restructuring, Rehabilitation and Reorganisation**.

The debtor (individual or corporate entities) must be declared bankrupt once the satisfaction of both of the following tests for bankruptcy can be summarily proven in bankruptcy proceedings before the commercial court:

- the debtor has at least two creditors; and
- the debtor has failed to pay at least one of its debts that has become due and payable.

While the IBL regulates all details of bankruptcy proceedings, the ICL only regulates how the D&L proceedings must be performed in general. The special features/requirements of a bankruptcy proceeding (eg, the stay period, public auction of assets, power to set aside a contract, requirements to become a liquidator and possibility for a creditors' committee) do not exist in D&L proceedings.

5.2 Course of the Liquidation Procedure

The initiation of a bankruptcy petition against the debtor does not affect the debtor's legal status. Therefore, the debtor may continue to operate its business as usual during the adjudication of the bankruptcy proceedings. The legal consequences of bankruptcy will only take effect once a bankruptcy declaration is issued by the commercial court, where the board of directors (BOD) of the debtor loses its authority to manage the bankrupt debtor's affairs and estate because these authorities are transferred to the receiver; see **1.2 Types of Insolvency**.

After the bankruptcy declaration is rendered, the receiver must announce the supervisory judge's determination on the following to all known creditors, in writing (in the state gazette and at least two daily newspapers):

- the deadline for claim submission;
- the deadline for tax verification; and
- the schedule for the creditors' meeting to conduct claim verification.

All claims submitted by the creditors to the appointed receiver must be verified against the debtor's record/book and report, based on the rules of verification set out in the IBL.

After a bankruptcy declaration is rendered, the bankrupt debtor is entitled to submit a composition plan. In bankruptcy proceedings, the decision to approve the composition plan requires approval from more than half the unsecured creditors who are present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged, and who represent at least two-thirds of the total amount of the unsecured claims of the unsecured creditors present or represented at the meeting (whose rights are also acknowledged or provisionally acknowledged).

In the scheduled judge's deliberation hearing, the commercial court must decide whether or not to confirm the approved composition plan, together with the grounds for doing so. The commercial court may only refuse to confirm the approved composition plan if:

- the estate of the debtor, including goods for which a right of retention is exercised, is much larger than the amount agreed in the composition;
- implementation of the plan is not adequately assured; or
- the plan was concluded fraudulently or under the undue influence of certain creditors.

If a composition plan is approved and confirmed, and becomes final and binding, it will bind all unsecured creditors.

The bankruptcy estate will be in a state of insolvency if:

- no composition plan is offered;
- the composition plan offered is rejected by the creditors; or
- the commercial court refuses to confirm the approved composition plan.

Pre-Existing Agreement

In bankruptcy proceedings

Pursuant to Article 28 of the IBL, claims initiated by a debtor against any party, including shareholders, affiliates and agents as defendant, prior to or during the course of the bankruptcy proceedings, must be suspended at the defendant's request, to allow the defendant to summon the receiver and request that they take over the case. This must be done within a time period determined by the judges. If the receiver fails to appear in response to the summons, or refuses to take over the case, the defendant may submit a petition for the claim to be dismissed. If the defendant does not request dismissal of the claim, the case between the debtor and defendant may be continued beyond the scope of the debtor's estate. The receiver is authorised to take over the case, at any time, and request that the debtor be expelled from the case.

In PKPU proceedings

Pursuant to Article 213 of the IBL, commencement of a petition for bankruptcy or PKPU proceedings would not prevent the continuation of an existing ongoing claim, nor the commencement of a new claim, provided that the debtor did not become an applicant or defendant in a (new) claim regarding a right or obligation that relates to its assets without the administrator's approval. The elements to succeed are the same as those that would have been applicable had the debtor brought the claims before the insolvency.

5.3 The End of the Liquidation Procedure(s)

If the assets of the bankruptcy estate are insufficient to cover the costs of the bankruptcy, the commercial court may decide to terminate the bankruptcy immediately, upon the recommendation of the supervisory judge and after consulting with the temporary committee of creditors (if any) and the bankrupt debtor. Consequently, the bankrupt entity's debt is dissolved once the termination is confirmed by a final and binding decision of the commercial court due to the insufficiency of the bankruptcy estate.

Conversely, if the bankruptcy estate is sufficient to fully satisfy all creditors' claims, the bankruptcy will be concluded. The receiver will announce this termination in the state gazette and a newspaper. In this scenario, the debtor has the right to request rehabilitation, allowing the court to restore the debtor to their original status before the bankruptcy by officially acknowledging that the debtor has fulfilled all its obligations.

5.4 The Position of Shareholders and Creditors in Liquidation

Shareholders' Position

Secured Creditors' Rights and Remedies

Under court-supervised restructuring/insolvency proceedings, the secured creditors' right to enforce their security is subject to a stay for a maximum of 90 days after a bankruptcy declaration is rendered in bankruptcy proceedings. After the stay period has expired, the secured creditor is free to enforce its security, but must be able to complete the enforcement process within two months of the bankruptcy estate being in a state of insolvency. Otherwise, the receiver will take over security enforcement, and the bankruptcy costs (including the receiver's fee) will need to be deducted from the sale proceeds. The automatic stay in this provision is aimed at:

- increasing the possibility of composition;
- increasing the possibility of optimising the bankruptcy estate; or
- enabling the receiver/curator to perform its duties optimally.

During the stay period, no legal actions to obtain payment in respect of receivables may be brought before a court.

Unsecured Creditors' Rights and Remedies

See **4.6 The Position of Shareholders and Creditors in Restructuring, Rehabilitation and Reorganisation**.

6. Cross-Border Issues in Insolvency

6.1 Sources of International Insolvency Law

The IBL is the only source of law related to the international aspect of restructuring and insolvency; only three articles are stipulated regarding the matter, mainly focusing on the elaboration of the IBL's universality principle.

Indonesia has not ratified any treaties related to international insolvency proceedings in another country, nor has it adopted the UNCITRAL Model Law on Cross-Border Insolvency.

6.2 Jurisdiction

Both the bankruptcy and PKPU procedures apply to debtors that have their domicile in Indonesia. The IBL provides that the commercial court also has the authority to declare bankruptcy or PKPU for a debtor who does not reside in Indonesia but conducts their profession or business there. In this case, the court that has jurisdiction to adjudicate the petition will be the commercial court that has jurisdiction over the debtor's domicile or headquarters in Indonesia. Theoretically, a debtor incorporated outside of Indonesia can still undergo restructuring or insolvency proceedings in Indonesia, provided they meet the requirement of conducting their profession or business within the country.

6.3 Applicable Law

The IBL adopts the territoriality principle, meaning that Indonesian law shall apply to all bankruptcy and PKPU cases handled by the court, regardless of whether or not the debtor has assets outside of Indonesia. This means that foreign court judgments in foreign insolvency proceedings are not recognised in Indonesia. As a result, judgments from overseas restructuring and insolvency cases cannot be enforced within the country. A foreign creditor who secures a judgment abroad must relitigate the matter through a local proceeding governed by the IBL, through either PKPU or bankruptcy proceedings.

6.4 Recognition and Enforceability

Unless there is an applicable convention between Indonesia and the state where the judgment is rendered, foreign court judgments will not be recognised or enforced by the Indonesian courts; no such convention yet exists. However, a foreign court judgment could be offered, accepted and given such evidentiary weight as the Indonesian court may deem appropriate under the circumstances as to the applicable laws of that jurisdiction. In practice, there is a precedent where the commercial court followed a foreign court (moratorium) judgment raised by a party in deciding a PKPU case. In this regard, the Indonesian courts have very broad fact-finding powers and a high level of discretion in relation to the manner in which those powers are exercised.

A court ruling that drew considerable attention was issued in 2025, involving the enforcement of an inter-

national arbitral award against a debtor that had undergone PKPU proceedings and successfully obtained court confirmation (homologation) of its composition plan. In court case No 200/Pdt.Sus-Arb/2023/PN Jkt. Pst (*PT Mahkota Sentosa Utama vs China Light Industry International Engineering & China International Economic and Trade Arbitration Commission*), the Central Jakarta District Court annulled the execution writ (exequatur) of China International Economic and Trade Arbitration Commission (CIETAC) Arbitral Award No 0831/2019, citing a violation of Indonesian public policy. Despite the general finality of arbitral award recognition under Supreme Court Regulation No 3 of 2023, the court held that the homologated composition plan from PT Mahkota Sentosa Utama's 2020 PKPU proceedings prevailed over the arbitral award. The court emphasised that such a homologated composition plan would bind all creditors under Indonesian law, and enforcing an arbitral award contradicting it would undermine the integrity of the legal system. This ruling highlights that, under certain circumstances, a court-sanctioned composition plan may take precedence over an international arbitral award that has been registered in Indonesian court, particularly when enforcing the arbitral award could compromise the rights of creditors established through the PKPU process.

6.5 Co-Ordination in Cross-Border Cases

There is no official or unofficial system of co-operation, or protocols or other arrangements, between the Indonesian courts and those in foreign jurisdictions to co-ordinate restructuring or insolvency proceedings.

6.6 Foreign Creditors

All creditors, whether domestic or foreign, are treated equally under Indonesian law. However, the IBL contains specific provisions allowing creditors domiciled abroad to submit their claims in bankruptcy/PKPU proceedings after the expiry of the claim submission deadline, provided that certain other requirements are also fulfilled.

7. Duties and Liability of Directors and Officers

7.1 Duties of Directors

Liability for a company could be attributed to a director after a company is declared bankrupt if the bankruptcy of the company is a result of negligence by the BOD or the board of commissioners (BOC). In that case, if the assets of the company are not sufficient to cover the entire obligations of the company in the bankruptcy proceedings, each member of the BOD/BOC is jointly and severally liable for the remaining obligations of the company that cannot be covered by the bankrupt company's estate. To claim against the BOD/BOC, a lawsuit needs to be filed by the receiver of the bankrupt company in order to prove the fault or negligence of the BOD/BOC on the basis of tort under Articles 1365 and 1366 of the ICC. There could also be criminal liability under the Indonesian Penal Code for the BOD and/or the BOC.

However, the members of the BOD and/or the BOC will not be liable if it can be proved that:

- the bankruptcy is not due to their fault or negligence;
- the BOD and/or the BOC conducted the management and supervision with good faith, prudence and full responsibility in the interests of the company and within the objectives and purposes of the company;
- the BOD does not have a conflict of interest, either directly or indirectly, over the management actions; and
- the BOD and/or the BOC took measures to prevent the bankruptcy.

7.2 Personal Liability of Directors

As stated in **7.1 Duties of Directors**, the BOD and/or the BOC of the bankrupt debtor may be held jointly and severally liable for paying the company's debts if such bankruptcy resulted from their fault or negligence, and if the company's assets are insufficient to settle its debts towards the creditors.

7.3 Duties and Personal Liability of Officers

The ICL and the IBL do not stipulate obligations and liabilities related to bankruptcy situations for officers other than the BOD and BOC.

7.4 Other Consequences for Directors and Officers

The IBL does not stipulate any specific director disqualification or criminal liability as a result of a com-

pany being declared bankrupt or under PKPU. In other regulatory regimes (outside the IBL), a director found guilty of causing a company's bankruptcy may lose qualification to become a director in certain other businesses, such as in the banking sector.

While creditors may assert direct fiduciary breach claims against the directors outside bankruptcy, such claims can only be asserted by the receiver in bankruptcy proceedings.

8. Setting Aside or Annulling a Transaction

8.1 Circumstances for Setting Aside a Transaction or Transfer

The IBL provides that the bankruptcy receiver could request nullification of a transaction carried out by the debtor before its bankruptcy. The receiver must prove that:

- the transaction was performed by the debtor before it was declared bankrupt;
- the debtor was not obligated by contract (an existing obligation) or by law to perform the transaction;
- the transaction prejudiced the creditors' interests; and
- the debtor and third party had or should have had knowledge that the transaction would prejudice the creditors' interests.

While there is no strict look-back period, the IBL imposes the burden of proof on a third party (to the transaction) for denying the existence of knowledge that the transaction was detrimental to creditors for a transaction conducted within one year before the bankruptcy declaration. For transactions conducted prior to one year before the bankruptcy declaration, the burden of proof rests with the receiver.

If the transaction was concluded within one year of the bankruptcy declaration (when the transaction was not mandatory for the debtor unless it could be proven otherwise), both the debtor and the third party with whom the transaction was concluded would be deemed to know that the transaction was detrimental to the creditors if:

- the consideration that the debtor received was substantially less than the estimated value of the consideration given;
- there was a payment or grant of security for a debt that was not yet due; and
- a transaction was entered into by the debtor with a relative or related party (eg, a member of the BOD or BOC, or a majority shareholder).

8.2 Claims to Set Aside or Annul a Transaction or a Transfer

The IBL provides that claims to set aside or annul a transaction can only be asserted by the receiver in bankruptcy proceedings. Outside bankruptcy proceedings, any concerned creditor may request the nullification of a detrimental transaction carried out by the debtor based on a lawsuit under the ICC, in which case the burden of proof rests with the creditor.

The IBL does not specify the consequences of a successful annulment claim by the receiver. However, a notable example of a successful annulment claim can be found in the 2015 bankruptcy case of a local airline company, PT Metro Batavia (Batavia Air). In this case, the receiver filed an annulment claim regarding a transaction that occurred within one year prior to the bankruptcy, between the company's director and the purchaser of a plot of land that the receiver claimed was part of the bankruptcy estate. The panel of judges at the Supreme Court (at the civil review level) found that the object of the transaction belonged to the company and decided to grant the claim. The court further ruled that the transaction was conducted in bad faith and was therefore deemed to have never existed. As a result, the purchaser was ordered to vacate the land, and the object was declared to be part of the bankruptcy estate. In addition, the director of PT Metro Batavia was ordered to return the purchase money to the purchaser.

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