THE RESTRUCTURING REVIEW

Thirteenth Edition

Editor
Dominic McCahill

THE LAWREVIEWS

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PREFACE

I am very pleased to present this thirteenth edition of *The Restructuring Review*. As with the previous editions, our intention is to help general counsel, government agencies and private practice lawyers understand the conditions that have been prevailing in the global restructuring market in 2020 and to highlight some of the more significant legal and commercial developments and trends during that period.

In particular, I would like to thank Chris Mallon for his editorship of all 12 of the previous editions. Having retired from a long and distinguished career as a restructuring lawyer in private practice, Chris is now a Senior Advisor in the Financial Advisory Group at Lazard, based in London.

2020 began with many market observers expecting a year of overall modest growth for the global economy. Of course, there were political and economic clouds on the horizon, as there usually are, such as the ongoing trade hostilities between the United States and China and the uncertain outcome of the Brexit negotiations between the United Kingdom and the Member States of the EU as the United Kingdom finally withdrew from the EU on 31 January.

However, the world is now in the midst of the covid-19 pandemic. Much of the world is in lockdown or taking tentative steps to emerge from lockdown. While the human cost is paramount, the economic impact has been enormous. This has prompted a huge response from governments and central banks around the world in an effort to support businesses and workers given the unprecedented drop in supply and demand. In some industries, the drop has been precipitous and virtually total. The full extent of the damage is yet to be assessed and the length and trajectory of the road to recovery are uncertain.

One prominent reaction to the crisis has been the emergence of new laws, rules and practices in restructuring, perhaps reflecting the maxim that one should never let a good crisis go to waste. These measures – as can be seen in the following chapters – include not only ones specific to covid-19, but also include broader reform of insolvency and restructuring law. Notwithstanding increasing nationalism in certain parts, the world's economies remain highly connected and interdependent. International, as well as national, efforts will be required to lead towards a full recovery. I hope that *The Restructuring Review* will be a useful guide at a time of evolution for restructuring law and practice internationally.

I would like to extend my gratitude to all the contributors for the support and cooperation they have provided in the preparation of this work, and to our publishers, without whom this would not have been possible.

Dominic McCahill
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July 2020

Chapter 10

INDONESIA

Emir Nurmansyah and Kevin Omar Sidharta[1]

I OVERVIEW OF RESTRUCTURING AND INSOLVENCY ACTIVITY

In court-supervised restructuring, the terms negotiated between debtors and (key) creditors and each of their financial and legal advisors mainly comprise haircuts, instalments, extensions of maturity (grace periods), debt-to-equity conversions, sales of part of a debtor's assets, potential investment plans from investors or any combination of these. It is also customary to apply different restructuring terms to different groups of creditors. In certain court-supervised restructuring cases involving a group of companies as a debtor with significant assets, a financial auditor or consultant, acting as an expert, may be appointed by the supervisory judge at the debtor's expense to carry out financial due diligence over the debtor's accounts to provide creditors with a more accurate picture of the debtor's financial state of health.

Based on the court case tracking system (SIPP) in five commercial courts (Central Jakarta, Medan, Semarang, Surabaya and Makassar), in 2019 there were 129 bankruptcy petitions and 346 Suspension of Payments (PKPU) petition filings. At the time of writing, there were already 47 bankruptcy petitions and 245 PKPU petition filings in 2020. If the numbers of cases in 2019 and 2020 are examined over the same period (January to June), bankruptcy petition filings dropped from 69 to 47 cases, while PKPU petition filings increased from 192 to 243.[2]

II GENERAL INTRODUCTION TO THE RESTRUCTURING AND INSOLVENCY LEGAL FRAMEWORK

Court-supervised insolvency and restructuring procedures available to companies in Indonesia are governed by Law No. 37 of 2004 on Bankruptcy and PKPU (Indonesian Bankruptcy Law, IBL). The IBL provides two main formal proceedings: bankruptcy (aimed at liquidation) and PKPU (reorganisation).

Both are intertwined, for on the one hand, restructuring can emerge from bankruptcy proceedings, which are primarily designed to facilitate liquidation; on the other, liquidation can be the result of PKPU proceedings, designed mainly for reorganisation and the continuation of a business.

The IBL provides that bankruptcy or PKPU proceedings can be initiated by:

---

1 Emir Nurmansyah and Kevin Omar Sidharta are partners at ABNR Counsellors at Law. The authors would like to thank Bilal Anwari, Senior Associate of the firm, for his valuable inputs and contributions in finalising this chapter.

2 As the June 2020 data were not yet complete at the time of writing, the number of cases for the January–June 2020 period may increase.

a one or more creditors;
b the debtor;
c the Public Prosecutor, if it is in the public interest; or
d particular institutions for certain debtors:
e banks, securities companies, stock exchange, clearing and guarantee institutions, depository and settlement institutions, insurance and reinsurance companies and pension funds by the Financial Services Authority (OJK); and
f state-owned companies operating in the public interest by the Ministry of Finance.

With respect to banks, although technically possible, there have been no precedents for banks being either liquidated under bankruptcy or restructured under PKPU proceedings. Instead, all bank liquidations that have occurred in Indonesia in practice used non-court-supervised insolvency proceedings under the Dissolution and Liquidation process based on Law No. 40 of 2007 on Limited Liability Companies (Company Law) and a set of specific regulations governing bank pre-dissolution supervision and dissolution/liquidation.

In Indonesia, restructuring is often carried out informally outside the court-supervised process, and is subject to general contract law under the Indonesian Civil Code. These restructuring arrangements can vary from contractual restructuring involving refinancing, maturity rescheduling, a partial haircut or instalments up to security enforcement or sale of assets, or a combination of these. 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 cramdown on dissenting and non-participating creditors. An informal restructuring example in 2019 and 2020 was PT Krakatau Steel (Persero) Tbk, a state-owned public company, which was able to restructure its US$2.2 billion debt to its various bank creditors.[3]

i Taking and enforcement of security

Under Indonesian law, the repayment of a debt can be secured by *in rem* security rights over the assets of either a debtor or its affiliate(s). *In rem* security interests in Indonesia are limited to those prescribed by Indonesian law. Those available under Indonesian law are the mortgage, fiduciary security, pledge and the hypothec.

Taking security

A mortgage under Law No. 4 of 1996 on Mortgages is used to secure land with certain land titles (right of ownership, right of exploitation, right to build, and to use, buildings, fixtures and other immovable appurtenances to the land, including machinery affixed thereto). The creation of a mortgage involves:

a the signing of the mortgage deed by the mortgagor and the mortgagee before a Land Officer or Conveyancer with jurisdiction over the land to be mortgaged;
b the registration of the mortgage deed at the relevant Land Registration Office (BPN); and

3 See: https://money.kompas.com/read/2020/01/28/184414926/krakatau-steel-restrukturisasi-utang-rp-31-triliun-terbesar-sepanjang-sejarah.

c the issuance of a Mortgage Certificate evidencing registration of the mortgage deed with the Land Registration Book maintained by BPN.

Other immovable assets, which arguably include land with land titles not qualified to be mortgaged and untitled land, and movable, tangible and intangible assets (including but not limited to receivables, insurance proceeds and intellectual property rights) can be secured by a fiduciary transfer (sometimes referred to as a fiduciary assignment) under Law No. 42 of 1999 on Fiducia Security (Fiducia Law). The creation of a fiducia security would involve the signing of

a a fiducia deed (setting out the fiduciary transfer agreement) by and between the fiducia transferor or assignor and the fiducia transferee or assignee before an Indonesian notary in the Indonesian language;
b registration of the fiducia deed at the relevant Fiducia Registration Office (FRO); and
c the issuance of a Fiducia Security Certificate, electronically signed by an FRO official, evidencing the registration of the fiducia deed with the Fiducia Registration Book kept by the FRO.

Assets that may be secured by a fiduciary transfer (other than immovable ones) can also be secured by a pledge under the Indonesian Civil Code (ICC) (Articles 1150–1160). Due to the general pledge creation requirement that pledged property be delivered to or possessed by 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 accounts, which, in practice, most of the time are secured by a pledge, given that the pledge creation requirement for this type of asset (Article 1153 ICC) is notification of the party against whom the pledged right will be exercised (for a pledge of shares, the company that issued the shares being pledged; for a pledge of bank account, the bank with which the account is opened).

There is no formal legal requirement to conclude a pledge agreement in writing. However, it is standard practice in Indonesia that pledges are embodied in a deed of pledge (in notarial deed form or private deed form) by and between the pledgor and the pledgee (and, in some instances, the company whose shares are pledged), setting forth the particulars of the pledge. With respect to a pledge of shares and a bank account, the requirement of notification is generally considered to be complied with by:

a registration of the pledge in the shareholders' register of the company for a private company;
b recordation in the shareholders' register held by the Stock Administration Bureau and the issuance of a confirmation letter by Indonesian Central Securities Depository for shares that are listed on the Indonesian stock exchange; or
c written acknowledgment from the bank where the account is opened.

A hypothec is used to secure a registered vessel or ship in Indonesia (Articles 1162 through 1232 ICC). A ship that can be registered in Indonesia must be owned by an Indonesian party (if a company, the majority shareholder must be Indonesian) and have gross tonnage of more than 20 cubic metres or the equivalent of seven gross tons (Articles 314–319 of the Indonesian Commercial Code & Law No. 17 of 2008 on Shipping). The creation of a hypothec over a registered ship would involve (1) the signing of the hypothec deed by and between the hypothecator and the hypothecatee made by the Vessel Registration and

Ownership Recordation Officer with jurisdiction over the place where the vessel is registered and recorded with the Vessel Main Registry; and (2) the issuance of the Hypothec Deed Certificate evidencing the recordation of the hypothec deed with the Vessel Main Registry.

Enforcement of security

Indonesian law in general recognises the right conferred by operation of law in which an *in rem* security right holder (secured creditors) is entitled to sell the security object directly on its own authority via a public auction without consent of the collateral provider, or the 'right of instant or direct execution'. Unfortunately, such a right can only be enforced in practice if the collateral provider is cooperative.

According to the Mortgage Law, Fiducia Law and Shipping Law, the Mortgage Certificate, Fiducia Certificate and Hypothec Deed Certificate possess executorial title, which has the same status as a final and binding decision or judgement of an Indonesian court, and confers on the holder the right to sell the security through a public auction after obtaining a writ of execution from the relevant district court. With respect to a pledge, enforcement is carried out by way of obtaining a court judgment that would either (1) determine the manner in which the pledged shares should be sold to repay the debt, plus interest and costs, or (2) permit the pledgee to acquire the pledged shares at such value to be determined by a court judgment.

Another option would be to enforce the security through a private sale. The sale of the collateral in a private sale may be effected based on (1) the court judgment for security enforcement and (2) the mutual consent of the collateral provider and the secured creditors after the debtor's default for mortgage and fiducia enforcement – provided that the highest proceeds giving great benefit to both parties can be obtained.

Stay period during court-supervised proceedings

If the secured creditors attempt to enforce their security after restructuring and insolvency proceedings have commenced, they may not be able to do so, as their right to enforce their security is subject to a stay (1) for a maximum period of 90 days from the time a bankruptcy declaration is rendered in bankruptcy proceedings, or (2) during the entire period of PKPU, which can be a maximum of 270 days from the provisional decision PKPU being granted.

Upon the expiry of the stay period in bankruptcy, secured creditors may start enforcing their security right over the collateral. However, they need to complete the enforcement process within two months of the bankruptcy estate being in a state of insolvency. Otherwise, the appointed receiver is required to request the relevant secured creditors to hand over their collateral to be sold by the receiver. If the receiver has enforced the collateral, the proceeds to be distributed to the secured creditors need first to have the bankruptcy costs (including the receiver's fee) deducted from them.

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, given (1) the lack of clarity on the term 'secured creditors' in the IBL and (2) conflicting practice in different PKPU case precedents[4].

4 For example: the practice in Case No. 23/PKPU/2011/PN.Niaga.Jkt.Pst: *PT Bank Central Asia, Tbk v. PT Arpeni Pratama Ocean Line, Tbk* is different from the practice in Case No. 27/PKPU/2012/PN.Niaga.Jkt.Pst: *PT Bank Mandiri (Persero), Tbk v. PT Berlian Laju Tanker, Tbk*.

ii Duties of directors

Indonesian law does not impose a requirement for a director of a company in financial difficulty to commence court-supervised restructuring or insolvency proceedings. In fact, voluntary bankruptcy or a PKPU petition can only be filed by a director if a General Meeting of Shareholders has approved it in advance.

Under the Company Law, the management of a company must be performed by each of the directors in good faith and with full responsibility. Each director is obliged to exercise due care when managing the company and is expected to serve in the best interests of the company. The directors owe a debt of loyalty to the company above their own personal interests and those of the shareholders who appointed them, especially where the interests of the company conflict with those other interests. The directors are not the agent of any shareholder.

The Company Law requires every member of the board of directors to accept full personal liability for losses of the company if the director concerned is at fault or negligent in the performance of their duties in managing the company in good faith and with full responsibility. In the event that the board of directors contains two members or more, personal liability and responsibility will jointly and severally apply to every member of the board of directors.

A member of the board of directors may not be held liable for losses if they can substantiate that:

a the losses do not result from their fault or negligence;

b the director has exercised management in good faith and prudence in the interests of the company, and within its objectives and purposes;

c the director has no conflict of interest, whether directly or indirectly, in the acts of management that result in losses; and

d the director has taken preventive measures against arising or continued losses, which includes steps to access information about the acts of management that result in losses, inter alia, through a meeting of the board of directors.

In case of the bankruptcy of a company as a result of the fault or negligence of the board of directors and the assets of the company are not sufficient to cover the damages caused by such bankruptcy, each member of the board of directors is jointly and severally liable for such damage, unless the directors can prove that:

a the bankruptcy is not due to their fault or negligence;

b they carried out the management in good faith, prudence, and full responsibility in the interests of the company and within the objectives and purposes of the company;

c a director does not have a conflict of interest, either directly or indirectly, over the management actions that have been performed by the board of directors; and

d a director has taken measures to prevent the occurrence of bankruptcy.

Clawback action

In bankruptcy proceedings, the receiver of the interest of the bankruptcy estate may request nullification of any legal action of the bankrupt debtor before the bankruptcy declaration if such act was considered detrimental to the creditors. For the request to be granted, the receiver must prove the following:

a the act was performed by the debtor before it was declared bankrupt;

b the debtor was not obliged by contract (existing obligation) or by law to perform the act;
c the act prejudiced the creditors' interests; and
d the debtor and a third party had or should have had knowledge that the act would prejudice the creditors' interests.

If the act was conducted within one year of the company's bankruptcy (while the act was not mandatory for the debtor – unless it could be proven otherwise), both the debtor and the third party with whom the act was performed are deemed to know that the transaction was detrimental to the creditors, if the act falls into one of the following three categories:

a a transaction in which the consideration that the debtor received was substantially less than the estimated value of the consideration given;
b a payment or grant of security for debts that are not yet due; or
c a transaction entered into by the debtor with a certain relative or related parties. (e.g., member of the board of directors or commissioners, majority shareholder).

If the act is in the form of a grant by the debtor, the receiver must be able to prove that when the grant was made, the debtor should have known that the act would prejudice the creditors' interests. If the grant is made within one year of the company's bankruptcy, the debtor is deemed to know that the grant would be detrimental to the creditors.

Payment of a due and payable debt can only be nullified if it can be proven that the recipient knew that the bankruptcy petition had been registered or if the payment resulting from a concerted action by the debtor and the creditor was aimed at facilitating preferential treatment of the latter (collusion).

III RECENT LEGAL DEVELOPMENTS

In December 2018, the Ministry of Law and Human Rights published regulation No. 37/2018 on Registration Requirements and Procedures for Submitting a Report on Receivers and Administrators to improve the transparency of activities of receivers and administrators. This regulation introduced (1) a mechanism for the registration of receivers and administrators and for online report submission; and (2) an obligation on receivers and administrators appointed to bankruptcy or PKPU cases to submit three-monthly reports on the relevant cases they handle.

In January 2020, the Supreme Court issued decree No. 3/KMA/SK/I/2020 on the Application of a Guide Book for Resolving Bankruptcy and PKPU Cases, dated 14 January 2020 (the Guide) to ensure that commercial court judges, clerks or registrars, and supervisory judges share the same understanding of and consistently implement the IBL. The Guide imposed various obligations on commercial court personnel to update information on ongoing bankruptcy and PKPU cases (announcements, court decisions) in the SIPP and administration systems. In addition, the Guide provided clarification on how the IBL should be implemented on issues that in the past were implemented differently in different cases, as elaborated below:

The Guide was controversial as it restricted a secured creditor's right to file a PKPU petition against its debtor, a feature clearly permitted in the IBL.

Further, the Guide confirmed that OJK was authorised to file a bankruptcy or PKPU petition against a bank. In the past, there was uncertainty over which party could file a

bankruptcy or PKPU petition against a bank. The IBL provides that BI is the only party that can file such a petition against a bank. In 2013, the function, task and authority in regulation and supervision of financial services activities in the banking sector were transferred from BI to OJK based on Law No. 21 of 2011 on OJK. There has yet to be a precedent of a bankruptcy or PKPU petition being filed against a bank by either BI or OJK.

The Guide further provides further guidance on technical issues, and on the implementation of which the IBL was not clear:

a the requirement to submit the latest financial statement audited by a public auditor as evidence for a voluntary bankruptcy filing by the debtor that is a legal entity;

b data on creditors obtained from OJK through the Financial Information Services System website would not carry sufficient evidentiary weight to prove the existence of more than two creditors, unless supported by other proof establishing the existence of the debt;

c several features recognised by the Indonesian civil procedural law (i.e., demurrers (unless on court competence), replies, rejoinders, interventions and counterclaims) are not recognised in a bankruptcy or PKPU case examination;

d upon permission or an order of the judge, and at the expense of the bankruptcy petitioner, the court may facilitate a bankruptcy petitioner's request to have other creditors that have been cited in the petition summoned by the court to attend an evidentiary hearing;

e a formal objection to claim verification in the bankruptcy proceedings must be raised in the formal claim verification meeting for a subsequent adjudication process to be allowed to proceed;

f when a bankruptcy estate is in a state of insolvency, this will be reflected in the minutes of the creditors' meeting to be uploaded to the court tracking system, and no separate supervisory judge's order is required;

g if the secured creditors are unable to sell by themselves the collateral within two months of the state of insolvency, the collateral must be handed over to the receiver to be sold at public auction;

h if the sale at public auction does not materialise, a private sale at the supervisory judge's approval may be carried out by the receiver after two attempts to hold a public auction, as evidenced by the minutes of auction; and

i the end of bankruptcy proceedings does not automatically dissolve a company; the receiver will act as liquidator in the process of revoking legal entity status, certificate of registration and tax identification.

Interestingly, the Supreme Court issued decree No. 109/MA/SK/IV/2020 on the same matters, dated 29 April 2020 (the Later Guide) that revoked and replaced the Guide to rectify its weaknesses. There was not much difference between the Guide and the Later Guide, except that the Later Guide dropped the controversial restriction on a secured creditor's right to file a PKPU petition against its debtor.

IV SIGNIFICANT TRANSACTIONS, KEY DEVELOPMENTS AND MOST ACTIVE INDUSTRIES

In 2019 and 2020, the most notable restructuring cases were the PKPU of a Central Java-based group of textile companies, the Duniatex Group, comprising six companies,[5] followed by the PKPU of its owner, Sumitro,[6] acting as a personal guarantor securing various liabilities of the group. Both proceeded at the Semarang Commercial Court. The market was shocked by the Duniatex PKPU, which commenced in September 2019, given that as recently as March 2019 the group issued US$300 million-worth of senior notes due to mature in 2024 at the Singapore stock exchange.

The Duniatex Group's total debt was 22.36 trillion rupiahs (approximately US$ 1.5 billion), comprising 21.72 trillion rupiahs to 58 secured creditors and 641.06 billion rupiahs to 86 unsecured creditors.[7] Sumitro's total debt was 14.07 trillion rupiahs (US$1 billion), comprising 92.38 billion rupiahs to three secured creditors and 13.98 rupiahs trillion to 44 unsecured creditors, most of whom were also secured creditors of Duniatex Group.[8]

From a procedural perspective, these two PKPU cases, initially supervised by two different supervisory judges, one for each case, and currently supervised by a newly appointed supervisory judge due to an internal personnel reshuffle at the court, are unique. The two sets of administrator teams appointed for each separate PKPU case managed to coordinate and align the restructuring process of both PKPU cases, as they are commercially connected. This accommodated the creditors of each party to the PKPU, some of whom overlapped and some totally different.

From an international perspective, the PKPU of the Duniatex Group is one of the few PKPU cases that filed petition for recognition of foreign proceedings under Chapter 15 of the US Bankruptcy Code;[9] at the time of writing, provisional Chapter 15 relief from the US Bankruptcy Court, Southern District of New York, has been rendered.[10] The Duniatex Group also filed an application with the High Court of Singapore for an order that the PKPU Proceedings be recognised in Singapore as a foreign main proceeding under the UNCITRAL Model Law on Cross-Border Insolvency of the United Nations, as adopted in Singapore.[11] From the commercial perspective, the restructuring terms that were offered were unprecedented, as the US$300 million senior noteholders, which were previously secured merely by a pledge of bank account, are being offered with additional collateral.[12]

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5 Case number 22/Pdt.Sus-PKPU/2019/PN.Niaga.Smg.: *PT SHINE GOLDEN BRIDGE v. 1. PT DELTA MERLIN DUNIA TEXTILE, 2. PT DELTA DUNIA TEKSTIL, 3. PT DELTA MERLIN SANDANG TEKSTIL, 4. PT DELTA DUNIA SANDANG TEKSTIL, 5. PT DUNIA SETIA SANDANG ASLI TEKSTIL, 6. PT PERUSAHAAN DAGANG DAN PERINDUSTRIAN DAMAI*.

6 Case number 25/Pdt.Sus-PKPU/2019/PN Niaga Smg: Sumitro.

7 See: Debtwire article dated 11 November 2019 by Megawati Wijaya: 'Duniatex: 144 creditors hold USD 1.59bn-equivalent claims – verified list'.

8 Ibid.

9 See https://links.sgx.com/FileOpen/DMDT%20Announcement%20-%20Recognition%20Filings.ashx?App=Announcement&FileID=581512.

10 See: Debtwire article dated 11 November 2019 by Megawati Wijaya: 'Duniatex: 144 creditors hold USD 1.59bn-equivalent claims – verified list'.

11 See: https://links.sgx.com/FileOpen/DMDT%20Announcement%20-%20Recognition%20Filings.ashx?App=Announcement&FileID=581512.

12 See: Debtwire article dated 07 April 2020 by Megawati Wijaya: Duniatex's revised plan proposes 2nd lien security pledge for half of USD 300m notes vs 1st lien pledge for one-third of notes in Dec plan.

After both the Duniatex group and its owner and personal guarantor utilised almost the maximum PKPU period (270 days) permitted by the IBL to negotiate with their creditors, the majority of secured and unsecured creditors approved the proposed composition plans offered by them in each of the PKPU cases; the Panel of Judges at Semarang Commercial Court then confirmed them.

A breakthrough in this area is a novel informal approach taken by the appointed administrators, the Supervisory Judge and the Panel of Judges at Semarang Commercial Court in the PKPU of the Duniatex Group and its owner and personal guarantor. This involves an attempt to try to encourage all parties to use online meeting platforms for creditor meetings to discuss and negotiate the terms and conditions of the composition plan, and the holding of online court hearings due to the covid-19 emergency. This is unprecedented, and could lead to the establishment of a 'new normal' in restructuring and bankruptcy practice in the future.

At least 10 industries are in a state of distress due to the covid-19 emergency:

a aviation, particularly commercial aerospace, with a 46 per cent (even more) reduction in business;

b hotels (30–40 per cent decrease) and tourism (90 per cent decrease);[13]

c MICE (meetings, incentives, conferences and exhibitions);

d bars and restaurants;

e shopping malls and retail;

f cinemas and concert venues;

g sports events;

h energy consumption (40 per cent decrease);

i consumer electronics (25 per cent decrease); and

j automotive (30 per cent decrease).[14]

V INTERNATIONAL

Unfortunately, the IBL has not adopted the UNCITRAL Model Law, and no international treaty has been ratified to enable Indonesian courts to recognise restructuring or insolvency proceedings commenced, or decisions issued, in another jurisdiction.

VI FUTURE DEVELOPMENTS

Since the enactment of the IBL in 2004, the reforms that have taken place were driven by the Indonesian Supreme Court through its circular letters and the Ministry of Law and Human Rights through its decisions. Most of the reforms related to the practical implementation of IBL.

The Supreme Court and Ministry of Law and Human Rights is preparing an online Bankruptcy Information Portal, which will make information on administration and liquidation of the bankruptcy and PKPU proceedings available to the public. This will

13 See: https://www.thejakartapost.com/news/2020/03/30/covid-19-impacts-across-indonesias-business-sectors-a-recap.html.

14 See: https://www.wartaekonomi.co.id/read280898/dipukul-covid-19-habis-habisan-10-sektor-bisnis-ini-paling-babak-belur.

improve transparency of reporting on administration and liquidation processes. It was expected that the portal would be running in 2020; however, due to the covid-19 emergency, this may be delayed.

In 2018, a report on the analysis and evaluation of legislation concerning bankruptcy,[15] and an academic paper for the draft IBL amendment[16] were produced by working groups established by the National Law Development Agency (BPHN). According to the Indonesian parliament's website,[17] the bill on IBL is included in the National Legislative Programme for 2020–2024 as a government-initiated bill, but is unfortunately not on the priority list. At the time of writing, the draft bill on IBL was not yet available for public review. Given the covid-19 emergency, and the fact that a number of World Bank recommendations were not accommodated in the academic paper,[18] it is expected that a lengthy discussion will take place on the draft IBL bill in parliament, and it may not be completed in the near future.

15 See: https://www.bphn.go.id/data/documents/pokja_kepailitan.pdf.

16 See: https://www.bphn.go.id/data/documents/naskah_akademik_ruu_kepailitan_dan_pkpu_final_2018.pdf.

17 See: http://www.dpr.go.id/uu/prolegnas-long-list.

18 See presentation of the World Bank Group titled Insolvency in Indonesia, Opportunities for Reform, August 24, 2018.

Appendix 1

ABOUT THE AUTHORS

EMIR NURMANSYAH

ABNR Counsellors at Law

Emir Nurmansyah, a senior partner at ABNR and a member of the firm's management board, is one of the most respected and versatile lawyers in Indonesia today. After some 30 years in legal practice, he is a market-leading lawyer for restructuring & insolvency, projects, banking & finance, corporate and mergers & acquisitions (M&A), foreign direct investment (FDI), shipping, aviation and TMT.

Most recently, he advised and represented an international bank on the US$1.7 billion debt restructuring of the Duniatex Group one of the Indonesia's biggest textile conglomerates. Previously, he acted for the China Development Bank (one of the largest creditors at US$600 million) in the US$4.5-billion Bumi Resources global debt restructuring, the largest such deal in Southeast Asia at the time and one of the most complex deals of its kind ever in the region.

He also advised the secured parties under PT Berlian Laju Tanker Tbk (BLT)'s approximately US$650 million Senior Secured MLA Credit Facility, including DNB Bank ASA, Singapore Branch, the facility agent, and affiliates of KKR and York Capital, the largest lenders under the facility, in the second stage of BLT's debt restructuring process in 2014–2015, which constituted the first ever out-of-court amendment of a court-approved restructuring plan under Indonesia's PKPU regime.

KEVIN OMAR SIDHARTA

ABNR Counsellors at Law

Kevin is listed as a Name to Know in Indonesia for restructuring and insolvency by *Global Restructuring Review* (*GRR*), and as a Next Generation Partner for restructuring and insolvency by *Legal 500 Asia Pacific*, making him one of only five Indonesian lawyers ranked for this practice area.

He represented an international bank on the US$1.7 billion debt restructuring of the Duniatex Group, one of Indonesia's biggest textile conglomerates. In 2016, he acted for the China Development Bank in the US$4.5 billion Bumi Resources global debt restructuring, having previously acted for various vessel lessor creditors and shipowner entities in the US$2 billion Indonesian court-sanctioned restructuring of PT Berlian Laju Tanker Tbk (BLT). After the BLT restructuring was completed, he advised the secured parties under BLT's approximately US$650 million Senior Secured MLA Credit Facility.

He also headed the ABNR team representing a major Japanese integrated trading and investment conglomerate in the approximately US$2 billion debt restructuring of PT Asmin Koalindo Tuhup. He has recently acted for a number of oil and gas service providers in the US$412 million debt restructuring of PT Apexindo Pratama Duta, one of Indonesia's biggest oil and gas drilling companies.

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