INSOL INTERNATIONAL

Restructuring in Indonesia in Practice

June 2022

TECHNICAL PAPER SERIES No 51

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Published June 2022

Acknowledgment

INSOL International is pleased to publish this new technical paper, "Restructuring in Indonesia in Practice", authored by Lawrence Foo and Elysia Lim (WongPartnership LLP), Makes & Partners and Nancy Silalahi (Riki & Fernandes).

The paper provides a comprehensive insight into the process, benefits and limitations of the Indonesian restructuring regime from the perspective of debtors and local and foreign creditors. The paper takes a unique approach in presenting the views of 25 prominent and highly experienced practitioners in Indonesia in relation to the Indonesian restructuring landscape, based on interviews conducted by the authors over several months.

The result is a novel and insightful paper which is relevant to practitioners and policy makers across the world. Indeed, in light of the lack of familiarity that many foreign creditors and practitioners have with the Indonesian restructuring and insolvency regime, this paper enhances understanding of the relevant legal, policy and practical considerations for creditors and other stakeholders in the context of investments in Indonesia. It also provides recommendations for future law reform that may enable Indonesia to keep pace with the reforms taking place in neighbouring jurisdictions such as Singapore, Malaysia and Hong Kong.

INSOL International expresses its sincere thanks and appreciation to the authors for their considerable efforts in undertaking the interviews and research required to complete this project, and for presenting their final analysis in such an appealing manner for the benefit of our global membership. We also thank the expert practitioners who shared their time, insights and decades of experience as part of this project in such an engaging and impactful manner.

June 2022

Restructuring in Indonesia in Practice

Lawrence Foo and Elysia Lim from WongPartnership LLP, Makes & Partners (as the Indonesian partner firm of the WPG Regional Network), and Nancy Silalahi from Riki & Fernandes*

1. Introduction

The rise in non-performing loans and defaults over the pre-pandemic years of 2017 to 2019 saw an increased number of restructuring and bankruptcy cases being brought before the Indonesian Courts.[1] This trend continued unbated during the pandemic, with the total number of restructuring cases in all five Indonesian Commercial Courts rising sharply from around 300 cases per year in 2018 and 2019, to 634 cases in 2020, before hitting an all-time high of 725 cases in 2021.[2]

However, despite the increase in cases, the Indonesian restructuring and insolvency regime has not kept pace with the current tide of restructuring reforms taking place in neighbouring jurisdictions such as Singapore, Malaysia and Hong Kong.[3] As concerns about credit risk continue to persist in the market and weigh on the financial sector in particular, it is important to examine the current status of the Indonesian restructuring landscape.

Generally, the legislative framework in Indonesia allows for informal workouts, as well as formal restructuring and bankruptcy proceedings. Formal restructuring and bankruptcy proceedings are initiated through the Courts and are governed by Law No. 37, Year 2004 on Bankruptcy and Suspension of Debt Payment (Law No. 37/2004) (Bankruptcy Law). Where the debtor wishes to bind creditors in Indonesia to a restructuring plan, the Bankruptcy Law provides an opportunity for the debtor to enter into a formal debt restructuring process by applying for a Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang* or PKPU) or otherwise applying for bankruptcy.

Indonesia is a jurisdiction which is sometimes viewed unfavourably from a restructuring and insolvency perspective. That said, since its enactment in 2004, the PKPU has evolved into a process that is well-understood, offering a degree of certainty as to how the procedure will work in practice, and where Indonesian creditors in particular feel far more comfortable using the process to drive a restructuring attempt.

Nevertheless, it is important to consider the extent to which the PKPU process is a workable and effective option for debt restructuring in practice. To better understand the restructuring landscape in Indonesia, particularly the PKPU process, we elicited the

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* The views expressed in this paper are the views of the authors and the interviewees, not of INSOL International. The authors also wish to specially thank all the interviewees for sharing their insights in this paper.

1 "Tren PKPU Meningkat Hingga Akhir 2017, Ini Penjelasan Kurator" <http://www.hukumonline.com/berita/baca/lt5a5da9e52544f/tren-pkpu-meningkat-hingga-akhir-2017--ini-penjelasan-kurator> (last accessed 25 May 2022); "Perkara PKPU Melonjak, revisi beleid kepailitan mesti susun standar restrukturisasi" <https://nasional.kontan.co.id/news/perkara-pkpu-melonjak-revisi-beleid-kepailitan-mesti-susun-standar-restrukturisasi> (last accessed 25 May 2022).

2 Registered cases as recorded in the court system in the specific years.

3 "Indonesia's PKPU: 10 Years On", 31 October 2014 <http://www.iflr.com/Article/3394086/Indonesias-PKPU-10-years-on.html> (last accessed 25 May 2022).

views of top Indonesian restructuring experts who outlined the challenges that various stakeholders, including international creditors, continue to face today in Indonesia. The views of these experts are the focus of this paper, and they form the basis for possible options for law reform that may guide the future development of restructuring in Indonesia in the years ahead.

2. General overview of the PKPU process

Pursuant to article 222 of the Bankruptcy Law, the PKPU is a moratorium, granted by the Commercial Court in favour of a debtor which is unable, or anticipates that it will be unable, to pay its debts as and when they fall due. It is preceded by a legal proceeding where the petitioner submits a petition to the Commercial Court for the suspension of payment of its debts to creditors, so that the debtor can be given sufficient time to prepare, submit to and negotiate a proposed settlement plan with its creditors.

The PKPU may be applied for by the debtor (voluntary PKPU) or by a creditor to the relevant Commercial Court which has jurisdiction over the debtor based on its domicile. In order for the PKPU petition to be granted, there needs to be evidence of: (i) the existence of at least two creditors; and (ii) at least one due and payable debt, or otherwise evidence that the debtor will be unable to pay the debt.

The PKPU process itself is divided into two stages: (i) the temporary PKPU; and (ii) the permanent PKPU.

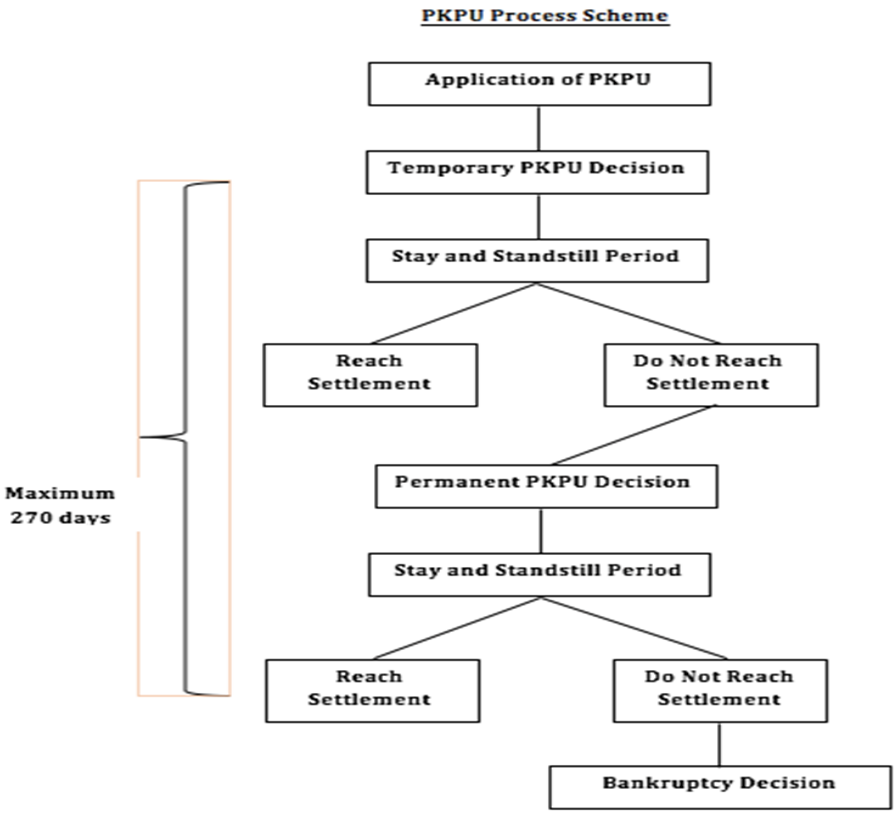
When the Commercial Court allows the PKPU petition, a temporary PKPU is first granted and the Court will appoint a Supervisory Judge and one or more administrators. The Supervisory Judge is authorised to supervise the PKPU process, whereas the administrator will, jointly with the debtor, manage the debtor's corporate affairs and its assets while the debtor is in the PKPU process.

The timeframe of the temporary PKPU is 45 days, but this can be extended if a majority in number and at least two thirds in value of both secured and unsecured creditors of the debtor present and voting at their respective meetings (Requisite Majority) vote in favor of the extension. In the event of an extension, the debtor will be considered to have entered into a permanent PKPU, and the maximum time for the PKPU process (including the 45 days for the temporary PKPU) is 270 days.

If a restructuring plan is submitted during the temporary PKPU, creditors can vote on the plan and should the Requisite Majority vote in favour of the plan, it will bind all unsecured creditors. If a restructuring plan is not submitted during this period, the creditors will vote on whether the debtor should enter into a permanent PKPU. Similarly, the Requisite Majority of creditors must vote in favour of this for it to occur.

As noted, the entire PKPU process itself must be completed within 270 calendar days starting from the date on which the temporary PKPU is granted by the Judge. The purpose of this period is to permit the debtor to agree on a composition (restructuring) plan with its creditors. However, if a plan cannot be agreed within this period, or if the agreed plan is not ratified by the Commercial Court, the Court must render a judgment to declare the debtor bankrupt.

An illustrated explanation of the PKPU process is set out below.



2.1 General legal consequences for the debtor

During the PKPU process, the debtor cannot manage and dispose of its own assets independently. Rather, the debtor can only manage its affairs together with the administrator, who is under the supervision of the Supervisory Judge.

The debtor needs to seek the administrator's approval prior to taking any legal step (such as entering into a contract), and must seek the Supervisory Judge's approval if it intends to finance its debt through a mortgage, fiduciary or collateral right, provided that any assets used as security for such financing have not already been used as security.

If the debtor takes any legal action regarding its assets without the administrator's approval, the administrator has the power to take any necessary steps to ensure the debtor's legal action is not detrimental to any creditor or the debtor itself.

Pursuant to article 243(1) of the Bankruptcy Law, the PKPU process does not generally affect the debtor's legal capacity, and as such (subject to the exceptions noted below), any legal proceedings involving the debtor which had been commenced prior to the PKPU process may continue. Furthermore, the PKPU process does not generally restrict any other party who wants to submit a claim against the debtor from doing so.

However, where a legal proceeding concerns a claim for the payment of a debt that has already been acknowledged by the debtor, the Court may record the acknowledgement and suspend any judgment on the claim until the end of the PKPU process.

In addition, pursuant to article 243(3) of the Bankruptcy Law, the debtor may not, without the administrator's approval, be a plaintiff or a defendant in any case pertaining to a right or obligation relating to its assets.

2.2 Legal consequences regarding seizure status and mortgage execution

During the PKPU process, any act of enforcement concerning an asset of the debtor will be adjourned until the process is complete. This is also applicable to the enforcement of any security over an asset of the debtor. Based on article 55 *jo.* 246 of the Bankruptcy Law, every creditor holding a mortgage, fiduciary security or collateral right may only exercise its right after the end of the PKPU process. In addition, the Court has the power to revoke the seizure of any of the debtor's assets.

2.3 Legal consequences regarding secured creditors

Based on article 246 of the Bankruptcy Law, secured creditors cannot execute their claim during the PKPU process and may only do so after the PKPU process has ended.

2.4 Legal consequences regarding debts

Pursuant to article 245 of the Bankruptcy Law, a creditor cannot force the debtor to pay its debts prior to the completion of the PKPU process, unless the payment of debts is made to all creditors proportionally. This does not apply to secured creditors.

2.5 Legal consequences regarding contracts

The PKPU process may affect certain contracts entered into by the debtor before the grant of the PKPU, as set out below.

- **Contracts with an arbitration clause**

  Pursuant to article 303 of the Bankruptcy Law, the Commercial Court is competent to receive an application for bankruptcy even if there is an arbitration agreement between the parties. However, during the PKPU process, an arbitration clause is still enforceable.

- **Reciprocal contracts**

  A reciprocal contract is a contract in which the parties to the contract have agreed to the performance of mutual obligations. Pursuant to article 249 of the Bankruptcy Law, subject to limited exceptions, the party who enters into a contract with the debtor may seek the approval of the administrator for the continuance of the reciprocal contract. If the administrator is unable or unwilling to give approval, the party that enters into the contract with the debtor may seek approval from the Supervisory Judge, failing which that party would have to join the PKPU process as an unsecured creditor.

- **Goods transfer contracts**

  If the debtor has entered into an agreement regarding the transfer of goods with another party, the contract is void if the debtor enters into the PKPU process prior to the performance of the contract. If the other party to the contract wishes to enforce its rights, it will have to join the PKPU process as an unsecured creditor.

3. The respondents' views on the Indonesian restructuring regime

This paper is largely based on in-depth interviews with 25 expert practitioners, from Indonesia as well as internationally (Respondents), who, with their vast experience in the Indonesian restructuring landscape, have given a broad spectrum of views on the practical aspects of restructuring in Indonesia, including:

(a) the general extent to which the restructuring regime in Indonesia is considered effective in practice, including from a cross-border perspective;

(b) the specific strengths and weaknesses of the PKPU process, as well as any practical and strategic considerations from the perspectives of debtors and creditors (both local and foreign); and

(c) the critical reforms which are needed to strengthen and update the Indonesian restructuring regime.

The Respondents are:

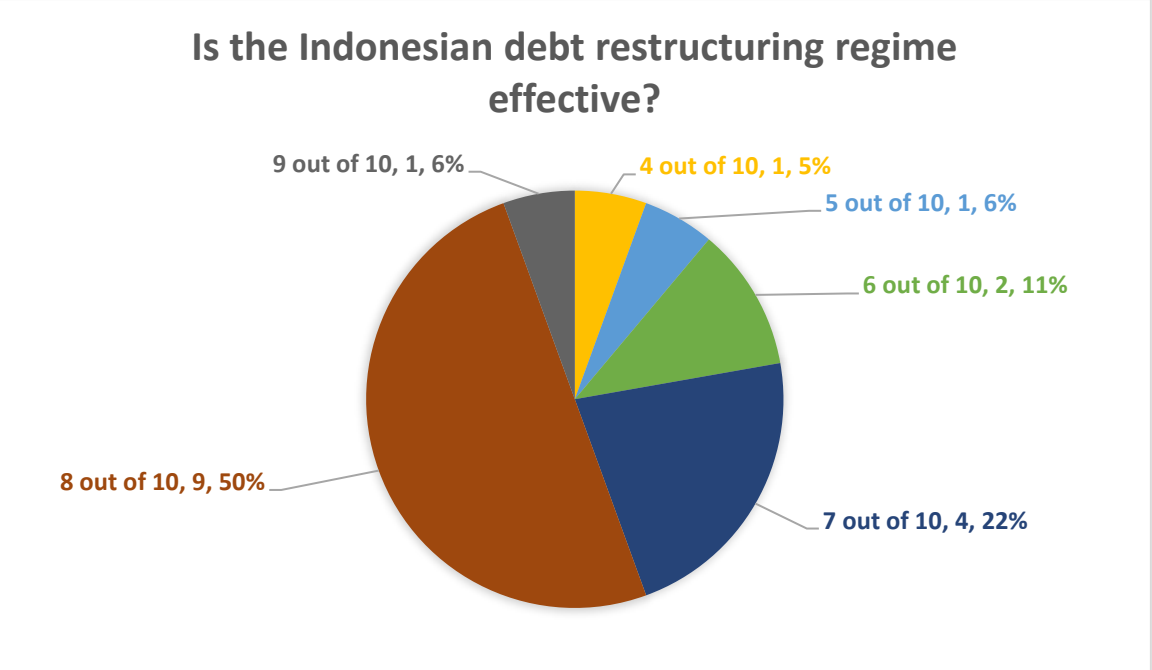
- Ricardo Simanjuntak, Ricardo Simanjuntak & Partners;
- Jimmy Simanjuntak, Jimmy Simanjuntak Law Firm;
- Erniwaty Hutagalung;
- Sarmauli Simanggungsong;
- James Purba, James Purba & Partners;
- Nien Raffles Siregar, Siregar Setiawan Manalu Partnership;
- Prahasto Wahju Pamungkas, PW Pamungkas & Co;
- Alamo Laiman, Legisperitus;
- Daniel Alfredo, Legisperitus;
- Andi Kadir, Hadiputranto, Hadinoto & Partners (HHP);
- Charles Evans, Alvarez & Marsal;
- Joel Hogarth, Eliot & Luther;

- Luke Furler, Quantuma;
- Richmond Ang, Deloitte & Touche;
- Fadriyadi Kudri, Kudri & Djamaris;
- Defrizal Djamaris, Kudri & Djamaris;
- Diaz Pramudya Hakeem, Kudri & Djamaris;
- Leonard Aritonang, Lubis Santosa & Maramis (LSM);
- Perry Sitohang, Perry Cornelius Sitohang & Co Law Office;
- Cameron Duncan, Kordamentha;
- Panji Wisnu, Kordamentha;
- Tommy Arianto, Kordamentha;
- Joshua Jeyaraj, Kordamentha;
- Rando Purba, Maramis, Purba, Santi & Singara (MAPS) Law Firm; and
- Tony Budidjaja, Budidjaja International Lawyers.

Further information on the Respondents' backgrounds may be found at Annexure A of this paper.

3.1 Is the Indonesian debt restructuring regime generally effective?

The Respondents' consolidated view is that the Indonesian debt restructuring regime is generally effective. The Respondents were asked to rank the Indonesian debt restructuring regime on a scale of 1 to 10 and replied as follows:



As can be seen, there is a large spectrum in the rankings provided by the Respondents. However, these discrepancies were mainly due to a difference in each Respondent's balancing of two fundamental factors: (i) the effectiveness of the law; and (ii) the good faith of the debtor.

While most Respondents noted that the Indonesian restructuring laws are sufficient to achieve a good outcome for most restructurings, all Respondents recognised that the application of the restructuring laws often depends on the good faith of the debtor, and consequently their advisors, the administrators and the Court.

Moreover, the lack of precedents followed by the civil law system in Indonesia, and the lack of consistent standards on how the restructuring laws should be applied in practice by administrators, contributed to a decrease in the effectiveness and the reliability of the regime.

Whether the Indonesian debt restructuring regime is effective also depends on the perspective of the relevant parties. Thus, a number of the Respondents highlighted that the Indonesian debt restructuring regime is pro-debtor, and therefore when viewed from the debtor's perspective, it would likely be seen as more effective.

In contrast, a foreign creditor is less likely to view the PKPU process as effective as compared to a local creditor. While the view that a foreign creditor is less likely to consider the PKPU process effective is not new, recent high-profile restructuring cases where foreign creditors have been perceived to be unfairly treated have not helped to improve this view.

Lastly, the Respondents pointed out that, without the PKPU process, debtors and creditors alike would have to go through a long, drawn-out enforcement process in the Indonesian legal system or face the debtor's bankruptcy. When compared against its

alternative, the PKPU process is considerably more effective in achieving the aim of restructuring the debtor's liabilities.

3.1.1 Respondents who provided positive feedback generally focused on the restructuring laws in Indonesia being mostly clear and adequate

Joel Hogarth, Eliot & Luther: "I would give the law itself probably a 7 to an 8 in terms of the actual regulation."

Alamo Laiman, Legisperitus: "I believe it is very effective, especially if compared to other legal avenues such as civil lawsuit proceedings. The World Bank's Ease of Doing Business or EoDB (discontinued in 2021) utilised 'Resolving Insolvency' as one of 10 indicators in ranking the countries. I might say that in EoDB 2020's ranking, Indonesia excelled in this as it ranked 38 for Resolving Insolvency (Indonesia ranked 73 out of 190 in general)."

Leonard Aritonang, LSM: "Despite some weaknesses, the clear rules of the game, the consistent reference for categorising debts, security and guarantees … as well as the widespread implementation resulting in numerous successes in securing debtors' businesses lead me to infer that Indonesian debt restructuring regime is effective."

Sarmauli Simanggungsong: "The prevailing regulation on the debt restructuring regime is sufficient."

3.1.2 Respondents who provided negative feedback did not necessarily disagree with the adequacy of the law, but felt that the effectiveness of the regime is largely dependent on good faith on the debtor's part

Jimmy Simanjuntak, Jimmy Simantujak Law Firm: "Based on several studies I have conducted, the effectiveness of the debt restructuring regime depends on the debtor's good faith to solve their financial problems, the creditors' trust that the debtor will be able to overcome and take full responsibility for their debt, and the administrators' ability to ensure the debtor and creditors reach an agreement on the composition plan."

Richmond Ang, Deloitte: "Lenders to Indonesian situations, such as the private credit financiers that provide structured alternative debt financings and that normally have greater risk appetite than the traditional sources of debt financings, highlighted in discussions the importance of counter-party risk in their consideration of lending opportunities. They do not focus only on the transaction structures but also on counterparty risks including their comfort with the promotor."

Ricardo Simanjuntak, Ricardo Simanjuntak & Partners: "[T]he debt restructuring regime in Indonesia depends on the current regulation and the good faith of the parties."

Perry Sitohang, PCS Law Office: "I am of the view that [the effectiveness of Indonesia's debt restructuring regime] will definitely depend on whether or not the … PKPU filing is based on good faith or not."

Andi Kadir, HHP: "[O]bviously there are stories about PKPU which are not so positive as well. That depends on the debtor. If they are not cooperative in the PKPU, we will see

some stumbling blocks in the debt restructuring process [such as a] lack of transparency."

Luke Furler, Quantuma: "There are examples where [a restructuring] works well in a cross-border situation. This will, in many cases, be driven by the motives of the debtor. If the debtor needs to keep access to capital markets or keep relationships alive, then you see a cross-border restructuring done well. If it is absent, then it does not necessarily mean it is not going to be done well, but it is more open to some of the usual games we see that can increase the risk to offshore stakeholders."

3.1.3 Respondents also generally felt that while the law itself is adequate, the application of the law is where the regime falls short

This was commented on by Joel Hogarth, Eliot & Luther: "[I]f I could score it on the law itself, probably 7 to 8, and if there was a really well-written set of guidance or set of rules for administrators that was consistently applied, that could probably even go up to 8 to 9 … Because the standards applicable to administrators are so loose, in practice it goes down to about a 3 to 4."

3.1.4 Respondents generally felt that the regime is more debtor and local creditor friendly and it is foreign creditors who do not find the regime as effective

Luke Furler, Quantuma: "Broadly, it can be effective, but my qualification here is that it will be effective for different parties. It is a regime that has matured a lot over the last 5 to 8 years … particularly where it involves international creditors. But there are some examples where the regime is still open to manipulation by parties which, unfortunately, will adversely impact creditors who might not have as strong a leverage or experience as others."

Charles Evans, Alvarez & Marsal: "[Y]ou would have a different perspective depending on whether you are a debtor versus creditor or you are a local versus a foreigner. Your rating would be quite different. From a practitioner's standpoint, I would probably give it a 4 out of 10. If you are purely a debtor advisor, you might have a different viewpoint. You might think that it is better than a 4. If you are a local creditor, you would perhaps be thinking [that] it is a 7 to 8 out of 10. It is a very debtor-friendly regime. Certainly, if you are a foreign creditor, you might even call it a 2 or 3."

Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "Overall, if you look at the PKPU regime in Indonesia, we tend to look at it through the prism of being advisors to foreign creditors, but you should look at it from the local perspective as well. There are 5 Courts that handle PKPUs in Indonesia. In Jakarta alone, the Courts handle up to 200 cases a year … and most of these matters get resolved. So, it is effective because many of them do achieve a restructuring … It serves its purpose."

Tony Budidjaja, Budidjaja International Lawyers: "That said, the secured creditors generally view the bankruptcy / PKPU proceeding as ineffective and a place to be avoided. Even the current PKPU system has been little used by the debtors because it does not either provide a fresh start for the debtor or promote [the] reorganisation of distressed business entities. The current PKPU system is often utilised by an aggressive

creditor to settle two-party disputes rather than to reorganise the distressed business in a collective process."

3.1.5 PKPU is effective when compared to the next best alternative of bankruptcy or enforcement and court litigation.

James Purba, James Purba & Partners: "Since the Bankruptcy Law was enacted in Indonesia, the application for suspension of payment (restructuring through the Commercial Court) is rising and mostly applied for by creditors. On the other hand, the application for bankruptcy cases also began to decrease. In my opinion, the effectiveness of this suspension of payment process could be rated as an 8 of 10."

Kudri, Djamaris and Hakeem, Kudri & Djamaris: "Indonesia's debt restructuring through [PKPU] can be considered effective as it is deemed to be more practical and comprehensive as the debtors shall settle their bad debts with all of their creditors in a single process / petition. On the other hand, the creditors also deemed [the PKPU] as an effective mechanism to collect their receivables due to the [PKPU] mechanism being considered easier and more cost-effective than execution through conventional litigation."

Daniel Alfredo, Legisperitus: "The foremost strength of the current Indonesian debt restructuring regime [is its] time efficiency. Article 225(3) of [the Bankruptcy Law] stipulates that the debt restructuring petition must be decided [in a] maximum [of] 20 days since such petition was registered (in the event that the petition is submitted by creditors), or [a] maximum of 3 days in the event that such petition is submitted voluntarily by the debtor. Although the Supreme Court through its Circular Letter No 1/2020 allows the proceedings to exceed the time limitation under the law during the pandemic, … the total process until [the] release of [the] decision is still considerably faster than normal arbitration and / or civil court proceedings. I also take note that from most of the [PKPU cases] in the past few years, the majority managed to reach settlement in the form of a Settlement Decision (Homologatie) in less than 9 months since [the] debtor was declared under debt restructuring by a Commercial Court decision."

Rando Purba, MAPS Law Firm: "[The] PKPU provides a debtor with a chance to avoid bankruptcy proceedings by allowing it to prepare and submit a restructuring plan for creditors' approval. Ideally speaking, a PKPU proceeding could become a win-win solution for both sides. Regardless of the existing shortcomings, a PKPU / bankruptcy process is generally regarded as the preferred legal recourse than civil litigation."

Tony Budidjaja, Budidjaja International Lawyers: "Many unsecured creditors, whether foreign or domestic, have opted for PKPU (as opposed to civil litigation) in pursuing their claims. The present civil litigation system is perceived as ineffective, costly and unpredictable."

3.2 What are the specific strengths of the Indonesian debt restructuring regime?

From the Respondents' perspective, the main strengths of the PKPU are the:

(a) strict timeline of 270 days as the maximum for the PKPU process;

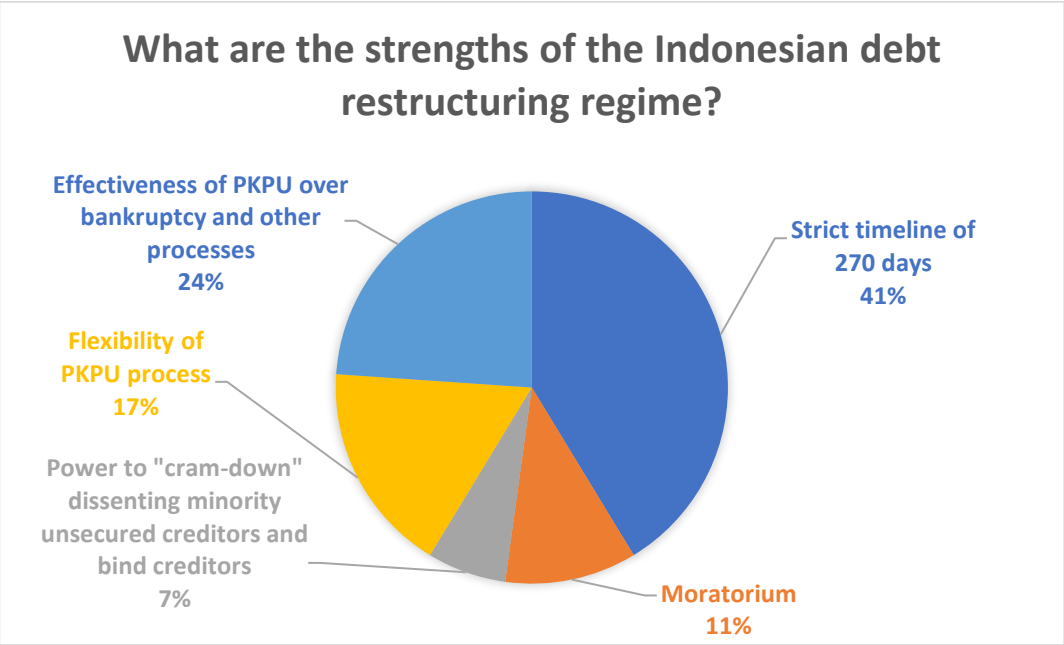
(b) moratorium in place during the PKPU process;

(c) power to "cram down" on dissenting minority unsecured creditors and bind creditors to the restructuring plan if the Requisite Majority votes in favour of the restructuring plan;

(d) flexibility of the PKPU process; and

(e) effectiveness of the PKPU process over the bankruptcy process and other avenues of enforcement (e.g. arbitration and civil litigation).

The Respondents' views are summarised below.



3.2.1 Strict timeline of 270 days for a debtor to be in PKPU

There is a strict timeline of a maximum of 270 days for a debtor to remain in PKPU, and if a restructuring plan is not approved by creditors before the expiry of this period, the debtor will be placed into bankruptcy. This puts pressure on both the debtor and creditors to agree to a restructuring plan that the parties deem suitable within the timeframe. More importantly, as the debtor and creditors are generally not better off if the debtor enters bankruptcy, this strict timeline aligns both the debtor's and creditors' interests – that is, they are generally more willing to compromise, especially as the end of the 270 day period approaches.

Additionally, the two-stage process of an initial 45-day temporary PKPU, followed by a permanent PKPU if necessary, incentivises the parties to seek to exit PKPU within the shortest timeframe possible (that is, within the 45-day temporary PKPU). If a debtor is able to reach an agreement with its creditors on a composition (restructuring) plan within the temporary PKPU period, the 45-day period required for the restructuring to take place would be regarded in most jurisdictions – even the more established restructuring regimes – as being very efficient.

The views of the Respondents on these issues are set out below.

Tony Budidjaja, Budidjaja International Lawyers: "Generally speaking, PKPU has the advantage in terms of a shorter timeframe and a less lengthy judicial process. As a matter of time, the Commercial Court will only have a maximum period of 20 days to render a judgment on whether a petition to commence the PKPU will be granted, although in practice this may be extended for one to three months depending on the complexity. Following the Court decision to commence the PKPU, the debtor will have a maximum period of 270 days to restructure its debt, including verification of claims, preparing a debt settlement plan (or a composition plan), negotiation with creditors and voting to adopt the composition plan."

Prahasto W. Pamungkas, PW Pamungkas & Co: "[The] timeframe is just right, starting from the submission of the PKPU petition to the issuance of the judgment concerning the 45 day temporary moratorium and then followed by the 270-day permanent moratorium, during which the debtor and the creditor can discuss and negotiate the proposal of the composition plan."

Luke Furler, Quantuma: "A strength is that a PKPU is a pretty quick process in comparison to other jurisdictions. You have got the hard deadline at 270 days – that is a good thing … because you have got everyone motivated to come to an outcome, but that has to be balanced in very large complex restructurings with a very complicated capital or organisational structure."

Andi Kadir, HHP: "The strength is in the timeline (i.e. the 270 days). I suppose it can be a challenge. The debt restructuring itself is already a challenge, but 270 days forces the stakeholders to work very fast. I see it more as a strength rather than a weakness because it gives more clarity on the timeline. It is a challenging process to wrap a restructuring up within 270 days but I see that as a doable timeline and it is in a way better than having an open-ended timeline."

Kudri, Djamaris and Hakeem, Kudri & Djamaris: "The strength of the Indonesia debt restructuring regime [is that] the period of time is relatively shorter and all creditors will be involved without exception in the event that the debt restructuring will be conducted through the [PKPU] process."

3.2.2 Moratorium against enforcement of debts during the PKPU process

The moratorium when a debtor is in PKPU prevents creditors from enforcing payment of debt obligations against the debtor. This includes preventing secured creditors from enforcing security for the period of the PKPU.

On the other hand, during this period, the debtor can largely continue its business with management still remaining in charge, and with certain levels of oversight from the administrator and the Supervisory Judge.

This "breathing room" provided by the moratorium allows the debtor to stabilise its business operations, and the time to negotiate a favourable settlement with its creditors, without the threat of creditors enforcing their claims against the debtor's assets.

As some of the Respondents noted:

Andi Kadir, HHP: "[The regime] also gives the framework to ring-fence the debtor, [and] to allow them to do the debt restructuring with sufficient protection."

Leonard Aritonang, LSM: "PKPU provides the spirit and makes efforts for business continuity through concluding [a] settlement over insolvency."

Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "From the company's side, it is effective because it provides … breathing space. This is in line with restructuring regimes in other jurisdictions … From a company's point of view, it is also effective because they are not paying any interest so they can manage liquidity and have time to execute a restructuring."

3.2.3 *Power to "cram down" on minority unsecured creditors and bind creditors to the restructuring plan*

All creditors will be involved in the PKPU process, and should the Requisite Majority (of a majority in number and more than two thirds in value of secured and unsecured creditors) vote in favour of the restructuring plan proposed by the debtor, the restructuring plan will be binding on all unsecured creditors regardless of whether they voted in favour of the restructuring plan or not. The secured creditors that voted in favour of the restructuring plan will also be bound by the restructuring plan. The treatment of dissenting secured creditors is outlined in further detail below.

The power to "cram down" was commented on by some of the Respondents:

Richmond Ang, Deloitte: "One of the benefits of implementing restructurings via PKPU proceedings is that it provides the ability to cram down, particularly on dissenting unsecured creditors … While there are no formal pre-pack restructurings under the Indonesian Bankruptcy Law, companies can pursue restructurings on a pre-pack basis by proactively managing and driving the process. Companies can engage with their creditors early and try to secure creditor support before entering a PKPU proceeding. The PKPU proceeding would be primarily utilised to cram down on dissenting creditors and complete the restructuring with the support of the required majority."

Perry Sitohang, PCS Law Office: "The debtor may have a chance (through a Court decision) to restructure its debts. All creditors will be bound to (and forced to comply with) such a Court decision, if [the] majority of creditors vote to accept the restructuring plan proposed by the debtor."

3.2.4 *Flexibility of the PKPU process*

While the PKPU process may not have sophisticated tools such as super-priority financing, cross-class cram downs, group restructuring mechanisms, or pre-packaged restructurings without having to hold a formal creditors' vote, its straightforward approach of only requiring the Requisite Majority of unsecured and secured creditors to approve the debtor's proposed restructuring plan allows the debtor great flexibility.

While simple, this approach can also be effective. For example, for group restructurings, even though there is no group restructuring mechanism, and PKPUs will have to be filed for each of the debtor group companies, ultimately the same outcome of restructuring the entire debtor group can be achieved.

As noted by some of the Respondents:

Tony Budidjaja, Budidjaja International Lawyers: "PKPU is a relatively flexible process in which the creditors and the debtor are free to engage with each other to negotiate the debt claims and the terms of the composition plan."

Luke Furler, Quantuma: "The PKPU is great, in that it is very flexible, and as long as the requisite creditors agree, … you can come out with anything that makes sense commercially. So, the PKPU is a great tool that can be adopted from very simple to very complex groups for restructuring."

Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "There is a lot of flexibility for companies to put forward proposals, whether be it on a single-company or a group basis. There has been some creative work in that space in a number of different PKPUs recently. It enables the company to negotiate with its creditors and there may be different outcomes for different classes of creditors. While not all parties will be satisfied with the outcome, it is not necessarily out of line with restructuring practices in other jurisdictions."

3.2.5 Superiority of the PKPU over the bankruptcy process and other avenues of enforcement

With regard to its timeline as well as achieving a successful restructuring / enforcement, the PKPU process is superior to the other alternative avenues in Indonesia such as bankruptcy, civil litigation and arbitration. Even a secured creditor may not necessarily be in a stronger position outside of the PKPU process, as enforcement of the security may be challenged by the debtor or other security holders who may file competing claims against the same asset. Further, if a secured creditor is undersecured, it may be in the creditor's interest to ensure that the undersecured portion of its debt can be repaid in the most efficient manner.

Civil litigation and arbitration are processes that may take longer than the PKPU process, and even if a favourable judgment is obtained, subsequent enforcement may be challenging.

These issues were commented on by several Respondents, as summarised below.

Nien Raffles Siregar, SSMP: "The strength in the Indonesian debt restructuring regime is in how a PKPU petition will be deemed as a priority, even when the PKPU and bankruptcy petition are filed all at once."

Jimmy Simanjuntak, Jimmy Simanjuntak Law Firm: "According to [the Bankruptcy Law], matters regarding [the PKPU] petition must be decided within 20 days after the date of registration (article 225(3)), whereas the bankruptcy request must be decided within 60 days from the date the petition for bankruptcy pronouncement is registered (article 8(5)).

This shows that [the PKPU] takes precedence over the bankruptcy proceedings."

Daniel Alfredo, Legisperitus: "From personal experience, often the debtor prepares to engage in civil court proceedings or arbitration because of its lengthy procedures and automatic appeals (for a civil case) … [A] final and binding decision would be reached after a few years of legal battle, and [this creates] a period which obliges the debtor to fulfil [its] owed obligations. However, [the PKPU] provides an effective solution resulting in [an] out of court settlement during proceedings before a decision is announced, or settlement is reached and a composition plan agreed in the PKPU to avoid bankruptcy."

Rando Purba, MAPS Law Firm: "If both PKPU and bankruptcy proceedings are simultaneously tried by [the] Court, the PKPU proceedings must be resolved first. That said, the PKPU prevails over the bankruptcy proceedings. For this reason, filing a PKPU has been the preferred option."

3.3 What are the specific challenges of the Indonesian debt restructuring regime?

From the Respondents' perspective, the main challenges faced by parties in PKPU are the:

(a) rigid timeline of 270 days for a debtor to be in PKPU;

(b) uncertainty due to a lack of consistency in decisions of the Commercial Courts and administrators;

(c) lack of transparency / disclosure requirements for the debtor;

(d) insufficient exercise of supervisory power by Courts over administrators;

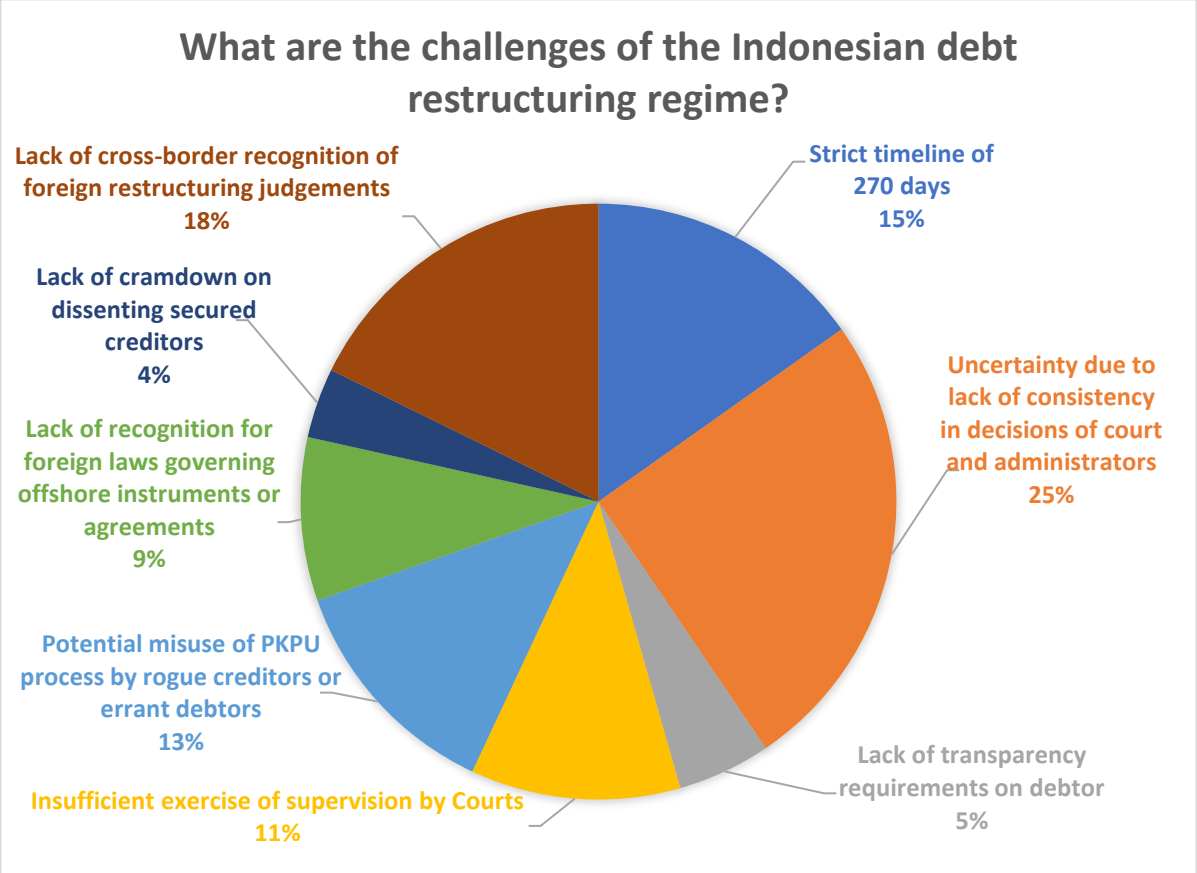
(e) potential misuse of the PKPU process by rogue creditors or errant debtors;

(f) lack of cram down on dissenting secured creditors;

(g) lack of recognition of foreign laws governing offshore instruments or agreements; and

(h) lack of cross-border recognition of foreign restructuring judgments.

The Respondents' views are summarised below.



3.3.1 Rigid timeline of 270 days for a debtor to be in PKPU

This is a very interesting point as many Respondents had highlighted this as a strength. However, a number of Respondents also noted that the strict timeline of 270 days for the PKPU process can be a double-edged sword, because in complicated restructurings where more time is required beyond the 270 days provided, there is no flexibility to order additional time. Should the parties fail to reach any form of compromise before the end of 270 days, the debtor will automatically enter bankruptcy. This may prejudice creditors even more than the debtor.

The views of the Respondents are outlined below.

Richmond Ang, Deloitte: "PKPU proceedings provide debtors and creditors with a streamlined restructuring process. Parties would, however, need to be organised and proactive given the 270-day limit for PKPU proceedings. Claims verification, preparation and submission of [the] composition plan, negotiation of terms, and approval and ratification of the plan will need to be completed under a tight timeline. The debtor will be declared bankrupt if the composition plan is not approved in 270 days."

Kudri, Djamaris and Hakeem, Kudri & Djamaris: "Moreover, there is a very unfavourable risk for both the debtor and creditor, especially related to the voting system and the

process of the [PKPU] situation which [may] result in the bankruptcy of the debtor. Basically, [the PKPU] is intended for debtors to find a way out of their financial difficulties through debt restructuring to their creditors so that the burden of paying debts can be reorganised and their business operations can resume. However, in the case of the settlement proposal [being] rejected by creditors, the debtor will be declared bankrupt and can no longer conduct its business."

Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "Timing-wise, foreign creditors who are not familiar with the process may find that they do not have enough time to validly submit a claim under the PKPU process. Foreign creditors need to educate themselves very quickly so they do meet the deadlines, because if you do not submit the claims properly, that will result [in] you in being excluded. Deadlines for claims submission exist in other jurisdictions but it is [a] disadvantage for foreign creditors in Indonesia as documents need translation and this can be time-consuming … In addition, foreign creditors need to arrange a power of attorney for local lawyers as your representative in a PKPU process and that is also a time-consuming process."

3.3.2 Uncertainty due to a lack of consistency in the decisions of the Commercial Courts and the administrators of the debtor

As Indonesia is a civil law jurisdiction, the Courts are not bound by case precedent as in the case of a common law jurisdiction. There is uncertainty as to how the Indonesian Commercial Courts are likely to rule on an identical issue on two separate instances. This not only takes place at the Court level, but also at the administrator level, often because different administrators may take different approaches towards counting votes and the adjudication of debt, among other issues.

These matters were canvassed by some of the Respondents as follows:
Perry Sitohang, PCS Law Office: "Inconsistent application of the Bankruptcy Law can also be problematic. This inconsistency does not only happen in different Commercial Courts but it even happen[s] [within the] same Commercial Court."

Luke Furler, Quantuma: "I think the judiciary does a rather great job in Indonesia – they do a good job of keeping people in line, but … the lack of the concept of the common law principle of precedent, and so the ability for decisions to be made contrary to previous decisions with really similar facts, just introduces an X factor that is really hard to price in, very hard to plan around."

Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "The flexibility which is advantageous is also potentially disadvantageous in that while you have a lot of flexibility, you also have inconsistent outcomes. Inconsistency erodes confidence in the process when you see a similar set of facts, similar capital structures, and other similarities in the restructuring but you get quite a different outcome. From an external observer's point of view, that creates a lack of confidence in the process itself. I do not think it is necessarily a structural issue related to civil law, as there are other jurisdictions in Europe where this sort of process works effectively. I think the legal structure is there. However, it is not administered, perhaps, in the way it should or could [be]. Improved administration of the existing law along with stronger judicial oversight would create more certainty and make it more effective."

Tony Budidjaja, Budidjaja International Lawyers: "The other weakness of the current debt restructuring regime is the lack of a consistent approach between each Court (and judges), because Indonesia does not adopt [the] *stare decisis* principle."

Charles Evans, Alvarez & Marsal: "The least transparent part of the process is the role of the administrators [in relation to] debt verification and the management of the voting process."

3.3.3 Lack of transparency / disclosure requirements for the debtor

There are no strict requirements for disclosure of information by the debtor, apart from the proposed restructuring plan, and cooperation with the administrators in relation to the adjudication of debt for voting purposes and the general administration of the debtor's affairs. From a creditor's perspective, the inability of legal avenues to compel the debtor to disclose further information about its financial situation or debts, including related party debts, restricts the creditors to leveraging their approval of the restructuring plan to push the debtor to disclose further information.

This was noted by some of the Respondents as follows:

Richmond Ang, Deloitte: "Debtors are responsible for preparing and proposing the composition plan in PKPU proceedings. The Bankruptcy Law does not specify content requirements for the composition plan and parties are free to agree terms. While the flexibility contributes to a more streamlined process, it can also lead to transparency issues that are a concern for creditors."

Ricardo Simanjuntak, Ricardo Simanjuntak & Partners: "Indonesia has an unpredictable legal system and that means creditors have limited certainty regarding enforcement of their rights. They find it difficult to understand what the company's financial and operational position is, largely because there is often inadequate disclosure and the legal system does not enforce adequate disclosure."

3.3.4 Insufficient exercise of supervisory power by Courts over administrators

In more recent cases, questions have been raised about the admission of certain claims by administrators, which in substance increases the total debts owed by the debtor and dilutes the claims of other creditors.

This particular issue is closely tied in with the above point in relation to the lack of transparency and disclosure requirements on the debtor under Indonesian law. Indeed, creditors may have an uphill battle to obtain further information on additional claims admitted by the administrators, let alone actually challenging the admission of these claims by the administrators. Further, as the petitioner of the PKPU petition would nominate the administrators, the petitioner would have an advantage in being able to choose the proposed administrators. In practice, it is not uncommon for either the debtor to file for the PKPU petition, or for creditors friendly to the debtor to do so.

The views of the Respondents in relation to these issues are summarised below.

Andi Kadir, HHP: "Yes, there is some power [for the Court to look at how the administrator has adjudicated creditors' claims], but the process itself can be quite inadequate. It is not sufficient. You should give more chance to the creditors to make their claim, to argue their case."

Kudri, Djamaris and Hakeem, Kudri & Djamaris: "[I]n supervising the [PKPU], the Supervisory Judge does not have much authority, so that in the event of a discrepancy between the receiver and the debtor or creditor, all forms of objection must still go through a lawsuit to the Court."

Joel Hogarth, Eliot & Luther: "I have had judges overrule administrators before. But it is a case-by-case basis – I would say it is mixed. I have seen cases where judges have been reasonably fair, particularly where you have a strong lawyer advising the creditor, and judges have actually made the right decisions. I would say it is rare to have a judge actually substitute their view for the administrators. Typically, whatever what the administrator says, particularly if it's a powerful administrator, I do not see the judges overruling them very often. I will not say it is always bad, but it depends on the individual judge."

3.3.5 Potential misuse of the PKPU process by rogue creditors or errant debtors

As noted above, the requirements for the granting of a PKPU petition are straightforward: (i) the existence of at least two creditors; and (ii) at least one due and payable debt (or otherwise an inability by the debtor to pay the debt). The Commercial Courts have also previously required that the relevant debt, or inability to pay the debt, must be capable of being simply proven. There is no requirement of an insolvency test to show that the debtor is cash flow or balance sheet insolvent.

However, in practice, this straightforward approach can lead to creditors with unpaid debts filing PKPU petitions against the debtor to put pressure on the debtor to make payment to them ahead of other creditors (following which the PKPU petition will be withdrawn).

Further, this approach can lead to a situation where the first creditor to file the PKPU petition gains a strategic advantage in the PKPU in being able to nominate the administrators. As noted above, the debtor itself may file a PKPU petition (or obtain the assistance of creditors who are friendly to the debtor to do so) to gain such a strategic advantage for itself instead.

The Respondents' concerns about potential misuse of the PKPU process are summarised below.

Richmond Ang, Deloitte: "The bankruptcy or PKPU filings can be made by providing evidence that the debtor has at least two creditors and the debtor has failed to pay one due and payable debt. [An] insolvency test or debt thresholds are not required. The relative ease of putting debtors into bankruptcy or PKPU proceedings exposes debtors to 'rogue filings', where creditors have used bankruptcy or PKPU filings to pressure debtors."

Tony Budidjaja, Budidjaja International Lawyers: "Debtors [that] are still solvent can be easily placed under PKPU by hostile creditors [and] [d]ebtors may face multiple PKPU / bankruptcy petitions from the same creditor."

Erniwaty Hutagalung: "The purpose of PKPU is solely to give some time to the debtor to pay its debts to all of its creditors but recently we can see many creditors using PKPU to take over the company or to exit the company from the market by getting them bankrupt."

Kudri, Djamaris and Hakeem, Kudri & Djamaris: "The downside of [the PKPU] is [that it is] vulnerable to being misused by debtors who just want to postpone the payment of their debts … [Debtors] do not experience any difficulty [in this regard] as the requirements regulated by [the Bankruptcy Law] do not oblige any insolvency test."

Richmond Ang, Deloitte: "First mover advantage exist[s] in PKPU proceedings as the petitioning party can nominate and drive the appointment of administrators that play a critical role in the process. Furthermore, more stringent requirements under debtor petitions have also triggered debtor-arranged friendly creditor filings."

Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "The administrator's role in determining claims acceptance and division of creditor classes contributes significantly to the eventual outcome of the PKPU. Control of the PKPU flows from the choice of administrator, and if the company files for the PKPU then they choose the administrator, and consequently control the process. [It is] vice versa if the creditors successfully file. So, it is really who files first, which can be largely down to who is most prepared. The problem with creditors is that in the large cases, you have multiple creditors in multiple jurisdictions, and getting organisation among those creditors [to agree] is complex and time-consuming, compared to the company which can probably make these decisions fairly quickly."

Rando Purba, MAPS Law Firm: "There is no guideline / requirement on how to formulate the [restructuring] plan and the administrator generally has no significant role during the course of preparing the debtor's plan. As such, the administrator is generally incapable of forecasting whether the plan is tangible and reflecting the debtor's actual situation. Not only that, debtor is at liberty to 'exaggerate' their ability to settle the debts aimed at achieving the requisite quorum during the voting, [for example] by introducing a candidate investor who injects funds to the company but is not real … There have also been rumours [of] 'fake' creditors in order to enhance the voting leverage so as to achieve the requisite quorum during the voting, and this has often forced unsecured creditors and secured creditors to vote to agree with the [restructuring] plan."

3.3.6 Lack of cram down on dissenting secured creditors

Secured creditors who do not vote in favour of the restructuring plan are not bound by it, pursuant to article 286 of the Bankruptcy Law.

Article 281(2) of the Bankruptcy Law also states that dissenting secured creditors shall be provided with compensation equivalent to the lower of the value of the security or the outstanding loan amount. However, in practice, it is unclear how dissenting secured

creditors should act, as realising their security will often be contrary to the terms of the restructuring plan.

This creates further problems because the Requisite Majority of the secured creditors who voted in favour of the restructuring plan are bound by its terms, but the minority who did not vote in favour of it are not. This may in turn lead to a situation where the debtor cannot afford to have any dissenting secured creditors who have free rein to realise security and extract potentially key assets from the debtor. On the other end of the spectrum, enforcement of security remains a great practical challenge in Indonesia, especially for foreign secured creditors, who may understandably not view their chances of realising their security favourably, and may have less leverage against the debtor than a local creditor.

These issues were touched on by some the Respondents:

Andi Kadir, HHP: "I do not know if you can put it as a strength or weakness, but the cram down is quite interesting. The law allows the cram down of unsecured creditors, but it does not apply to secured [creditors]. So, [I am] not sure if you can say this is a strength or weakness … The law itself provides an answer, but it is more on the implementation. Given the lack of precedent and everything, if we are dealing with a significant debt restructuring, usually the financial institutions will not want to go to unknown horizons."

Richmond Ang, Deloitte: "While dissenting unsecured creditors will be bound by the composition plan, dissenting secured creditors are not bound and are entitled to 'compensation, although it is not clear how this will be paid."

3.3.7 Lack of recognition of foreign laws governing offshore instruments or agreements

Indonesian law does not have any "law of trusts" as such. Accordingly, legal concepts of trust, beneficial ownership and recognition of the role of a trustee acting on behalf of beneficial owners are not automatically incorporated into Indonesian law. On the other hand, many large Indonesian debtors have offshore bonds in jurisdictions such as the US and Singapore, which incorporate the role of a trustee and security agent acting on behalf of bondholders, many of whom may be retail bondholders. Recent PKPU cases have demonstrated that there is a risk that the Indonesian Courts may not recognise the trustee's claim on behalf of the bondholders in the PKPU process, and may require individual bondholders to register their claims directly in order to vote in the PKPU process.

There is also a similar risk in cases of syndicated loans, where a security agent acting on behalf of the syndicated lenders may not be recognised for the purpose of Indonesian law, and each lender may be required to register their claim individually.

The difficulties posed by these issues were outlined by some of the Respondents as follows:

Richmond Ang, Deloitte: "The concept of [a] 'trust' is not formally recognised under the Indonesia legal system. This has led to confusion … on whether the trustee of notes or the noteholders can file in PKPU proceedings. The other issue that arises in situations involving international notes issued by offshore financing SPVs is the treatment in PKPU

proceedings of the competing noteholder and financing SPV claims against the Indonesian entity that … entered into the PKPU. This was a key issue in a few high-profile cases over the last few years."

Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "Bondholder situations add an additional layer of complexity because you might have a mixture of retail and institutional investors, so the level of sophistication is very different. Bondholder debt may also be subject to active trading which means the identity of the debtholder may change along with their strategy for the restructuring. There is also a communication issue between the company, the agent and the bondholders, and the time it takes through the clearing system. Sometimes there are communication difficulties between the agent, their lawyers, and the lawyers representing the bondholder committee due to there being more parties involved."

3.3.8 Lack of cross-border recognition of foreign restructuring judgments

Indonesia is not a signatory to the UNCITRAL Model Law on Cross-Border Insolvency (Model Law). Further, Indonesia does not automatically recognise foreign judgments, apart from international arbitration awards on the basis that Indonesia is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (more commonly known as the New York Convention). Therefore, the cross-border restructuring of Indonesian debtors or debtors with assets in Indonesia will require either a PKPU or an informal workout with local Indonesian creditors in order for the restructuring to be effective in Indonesia.

Having an additional PKPU process to the primary restructuring proceeding in a foreign jurisdiction adds to the time and the cost of the restructuring process. The PKPU process is generally expensive, with the fees of administrators being comparatively high (generally around 4% to 7% of the total debts of the debtor).

As noted by Joel Hogarth, Eliot & Luther: "Foreign judgments are not recognised in Indonesia, is the simple fact. Foreign arbitral awards technically can be… but there is no cross-border recognition of foreign court proceedings … [T]here are no doctrines of comity or anything like that in Indonesia."

3.4 Proposed areas of reform for the Indonesian debt restructuring regime

Given the challenges faced by parties to the PKPU process, as identified above, we also elicited proposals for reform from the Respondents, with a focus on amplifying the strengths of the Indonesian regime and enhancing Indonesia's competitiveness as an attractive jurisdiction for debt restructuring.

There were a number of varying, even conflicting, suggestions for reform from the Respondents, including:

(a) increasing flexibility of the timeline for PKPUs, especially for complex restructurings;

(b) increasing transparency and certainty in the adjudication and voting process;

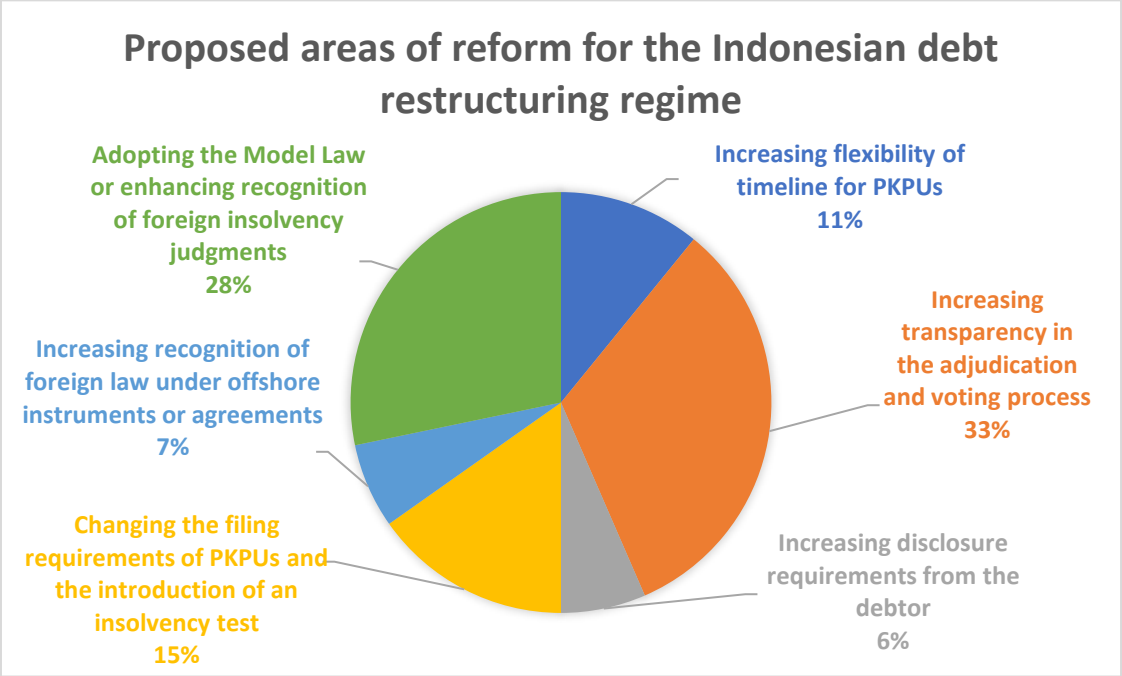
(c) increasing disclosure requirements from the debtor;

(d) changing the filing requirements of PKPUs and the introduction of an insolvency test;

(e) increasing recognition of foreign law under offshore instruments or agreements; and

(f) adopting the Model Law and / or increasing the ease of recognition of foreign insolvency judgments.

The Respondents' views are summarised below.



3.4.1 Increasing flexibility of the timeline for PKPUs, especially for complex restructurings

A significant number of the Respondents were in favour of allowing for more flexibility in the PKPU timelines, especially for complex restructuring. Their views are outlined below.

Luke Furler, Quantuma: "I think [ease of access to the PKPU] is a good thing, but there could be some improvements around the scrutiny in terms of the early stages of the PKPU. There is a very short timeframe in which votes have to be in and that can be punitive to large international creditors that cannot move as quick[ly] as local or individual creditors. There can be improvement around … extending the time or allowing some more flexibility in ensuring that people's voices are heard, particularly in very complex structures. We have, unfortunately, seen this timeline abused in recent cases that, in my view, really damages Indonesian capital markets – it is a step backwards for an otherwise progressive and beautiful country."

Richmond Ang, Deloitte: "While the 270-day time limit has the advantage of providing debtors and creditors with a definitive timeframe, a longer timeframe may be considered to facilitate the implementation of more complicated restructurings, such as restructurings that may involve fund or capital-raisings implemented in conjunction with the debt restructuring. It should be noted that extensions within the maximum PKPU time

limit are subject to creditor approvals, therefore providing creditors with some degree of control and protection."

Kudri, Djamaris and Hakeem, Kudri & Djamaris: "[T]he reorganisation of complex businesses requires a longer period of time than is [currently] regulated … Such [a] period is too short given the fact that debtors need to complete the settlement proposal, lobbying and the reorganisation of [the] business during the [PKPU] process."

Andi Kadir, HHP: "If you ask me whether we can do this better by providing some way to extend it, yes of course. There is always room to improve the system. But as it currently stands, it is better to have 270 days."

3.4.2 Increasing transparency and certainty in the adjudication and voting process

The Respondents also resoundingly highlighted a need to increase transparency and certainty in the adjudication of claims and the voting process.

Several suggestions were provided:

(a) having the Supervisory Judge and the Commercial Courts take a stronger role in supervising this process;

(b) having an independent adjudicator run the process instead of administrators;

(c) enabling creditors to challenge the petitioning party's choice of administrator;

(d) codification and clarification of standards expected of administrators; and

(e) guidance on how to evidence a creditor's claim.

These suggestions are considered in further detail below.

- *Supervisory Judge and the Commercial Courts to take a stronger role*

  Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "The Courts should be more independent and have greater input to supervise the PKPU process. While there are supervisory powers in the existing law, in practice it does not appear these powers are exercised. Existing laws should be better implemented, or creditors should be granted a greater say as to the choice of the administrator … [T]hat is something that would certainly help to solve some of these problems and remove some of these inconsistencies in the outcomes we are seeing in Indonesia."

  Andi Kadir, HHP: "The law gives too much power to the administrator to adjudicate the creditor's claim. There should be a more balanced protocol to allow the creditors to voice their concerns and to limit the administrator's power or discretion to adjudicate the claim … Unfortunately, some critics have mentioned [that the administrator's power] becomes the centre of controversy …, usually [concerning] the adjudication of claims, where some creditors' claims are rejected and there is a general feeling that this should not fall within the administrator's docket … [There is a

question as to] how we are going to balance that – a quick restructuring process and a quick adjudication with the Court."

Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "[I] think the Court should be more proactive and independent, and should be questioning what is occurring with the administrators, as this [does not] seem to occur at the moment. Greater exercise of existing supervisory powers for the Court may break the stranglehold of control currently being exercised by the administrators."

Kudri, Djamaris and Hakeem, Kudri & Djamaris: "[B]y procedural law, debt restructuring … through the [PKPU] mechanism can be carried out on a voluntary basis so that, in the event that the debtor already knows that [it] will experience financial difficulties, the [PKPU] can be filed … on a voluntary basis and in general the debt restructuring that occurs will be supervised directly by the Court through the manager / receiver appointed by the Court and the Supervisory Judge assigned by the Commercial Court. Thus, both debtor and creditor in the implementation of debt restructuring can get certainty."

Tony Budidjaja, Budidjaja International Lawyers: "[There is a need to] sanction for an appropriate degree of supervision on the way the Court-appointed receivers or administrators are discharging their duties."

- *Independent adjudicator*

Luke Furler, Quantuma: "The parts that need to be reformed in Indonesia are around the transparency of the process, particularly of the creditor claims and the voting process … The absence of an independent adjudicator – that can be improved. That will strengthen the process and [the willingness of] capital markets … to invest in Indonesia. Some form of independent oversight or at least some independent intervention in some processes [is] realistic and something that could be driven by the market. It does not need to be driven by the judiciary. You can build that into restructuring plans … Increasing transparency and independent oversight would be a step in the right direction."

- *Enabling creditors to challenge the petitioning party's choice of administrator*

Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "A potential option would be for creditors to have input in cases where the company acts first and nominates an administrator. Allowing the company to control the entire process without input from creditors is the main issue when you are looking at the PKPU process. What could be considered would be to allow creditors to supplant that choice of administrator based on certain thresholds … [T]here should be a reasonably high threshold, because creditors should not necessarily have complete control of every case. It is a matter of fairness. If a group of creditors with a small value of debt are uncomfortable with the choice of administrator and are against a PKPU, they should not have the ability to hijack the process themselves … There has to be a balance to enable creditors to have more input if creditors are able to aggregate and come together … and if there is a consensual and preferred choice of the creditors beyond a certain threshold, … that is certainly something to be considered as a potential area of reform."

- *Codification of standards applicable to administrators*

  Joel Hogarth, Eliot & Luther: "I think what [is] desperately need[ed] is a codification of the standards applicable to administrators. [Y]ou can fix a lot of the problems by having … a well-written fixed set of guides for administrators … dealing with things like the standard for meeting a claim, the standard for whether [a person] counts as secured or unsecured [and] clarification on what you do when you have multiple entities in PKPU together. [S]ometimes you get blended voting and there [are] a million different ways to calculate it in those scenarios."

  Andi Kadir, HHP: "[I]t will be helpful if there is some sort of consistency. That will be the role of the judiciary [to provide] guidelines, and that would be the role of the [professional] association as well."

- *Guidance on how to evidence a creditor's claim*

  Joel Hogarth, Eliot & Luther: "[T]here is just no guidance on how you can evidence your claim and things can get kicked out on the flimsiest of grounds and that is the single biggest issue that the system is facing at the moment."

3.4.3 Increasing disclosure requirements from the debtor

Safeguarding creditors' rights to obtain information from the debtor was also viewed as a key reform. As noted by some of the Respondents:

Andi Kadir, HHP: "When we do restructurings, I think it is important that the debtor is willing to open up and allow the creditors to ask questions and to provide reports on everything. Unfortunately … there is really no protocol to compel the debtor to open up."

Tony Budidjaja, Budidjaja International Lawyers: "[There is a need to] provide sanction for a non-cooperative debtor, including the management of the debtor."

3.4.4 Changing the filing requirements of PKPUs and the introduction of an insolvency test

The Respondents had conflicting views on whether the filing requirements of PKPUs should be changed. As discussed earlier, there is no requirement of an insolvency test to show that the debtor is cashflow or balance sheet insolvent.

This may lead to potential misuse by rogue creditors or errant debtors. Therefore, some Respondents felt that:

(a) only debtors should be able to file the PKPU petition;

(b) creditors should still be allowed to file the PKPU petition; and / or

(c) an insolvency test should be added to the filing requirements rather than just a simple debt owing to a creditor.

These options are discussed in further detail below.

- *Only the debtor should be able to file*

  Kudri, Djamaris and Hakeem, Kudri & Djamaris: "Ideally, [the PKPU] should be submitted by the debtor. In fact, the debt restructuring proceeding through [the PKPU] petition is mostly submitted by creditors since the [Bankruptcy Law] allows it. This provision is considered to be misguided. Therefore, it is necessary to make a revision that confirms that [the PKPU] cannot be submitted by creditors and can only be submitted by debtors voluntarily. However, if it is possible for the creditor to apply for a [PKPU], then the [PKPU] decision must open up opportunities for [appeal] for the debtor."

  Leonard Aritonang, LSM: "The right to initiate the PKPU process should be solely held by debtors … This is intended to minimise the possibility of riding the PKPU to effectively kill a debtor, rather than to maintain the original spirit of restructuring. [This is necessary] especially if the debtor has good debt to equity ratio. On the other hand, creditors … have [still] been provided with some options to secure or to clarify their rights, including by securing and executing the security at hand, filing civil lawsuits and [filing a] bankruptcy petition."

- *Creditors should be able to file – disagreement with debtor-only filing*

  Daniel Alfredo, Legisperitus: "There are several practitioners and / or experts [who believe] that a [PKPU] can only be submitted by debtors, based on the argument that only [the] debtor knows its financial condition. I [disagree] because in practice, there are debtors with [a] good financial situation [but with] 'stubborn' or 'hard' to fulfil payment obligations unless legal action is involved."

- *Adding an insolvency test*

  Daniel Alfredo, Legisperitus: "[An] insolvency test would be a good addition on the Law and could act as preliminary process. [I]t would filter cases at Commercial Courts to ensure [a] simple evidentiary process. Further, the existence of an insolvency test would also ensure that any settlement agreement reached during the PKPU process is based on feasibility of the debtor's financial prospects and condition."

  Kudri, Djamaris and Hakeem, Kudri & Djamaris: "In an ideal world, bankruptcy and / or debt restructuring should be applied to a debtor [that is in a] state of insolvency. A debtor cannot be said to be in a state of insolvency it fails to pay its debt just to one creditor, while [being] able to continue performing its obligations to the other creditors, unless [that one] creditor holds the majority of the debtor's debt. Therefore, one of the reforms that is needed … is an insolvency test mechanism to measure whether a debtor is actually under a state of temporary liquidity difficulty."

  Rando Purba, MAPS Law Firm: "[T]he insolvency test is required to ensure that a financially healthy debtor is not subjected to a PKPU."

  Tony Budidjaja, Budidjaja International Lawyers: "There should be a minimum outstanding amount in a PKPU / bankruptcy petition. A more stringent requirement

to file the petition is required, [as is] a clearer definition and scope of the 'simple proof evidentiary rule'. The petitioning creditor should not be required to have claims which are already 'due and payable'. It [should be sufficient to] prove that the debtor has debts to [one or more other] creditors which are already 'due and payable'. [Otherwise], the smaller creditors may not have the resources or interest to become petitioning creditors."

3.4.5 *Increasing recognition of foreign law under offshore instruments or agreements*

It is also crucial for Indonesian courts to reach a consensus to recognise foreign law concepts, including those relating to trust law. This would greatly increase certainty and confidence from bondholders, knowing that their claims in the PKPU process would be recognised through the trustee (rather than needing to lodge individual claims), and would accordingly enhance the perception of Indonesian bond offerings in offshore markets. This would have the potential to encourage further foreign investment in Indonesia.

The need for reforms in this context was identified by some of the Respondents.

Andi Kadir, HHP: "The Bankruptcy Law should also recognise foreign law, and that relates to, for example, bondholders [being able] to vote. We encounter some cases where the administrator decides to reject the bondholders' right to vote and it seems the decision is more based on Indonesian law and practice. [Instead], they should recognise the foreign law as the governing law."

Charles Evans, Alvarez & Marsal: "Consistency and transparency … in terms of [the] treatment of bonds … would help significantly on some of the larger deals."

Richmond Ang, Deloitte: "Some recent high-profile cases included issues related to: (i) trust arrangements and the involvement of the trustees and noteholders in PKPU processes; and (ii) the treatment of competing claims under offshore SPV financing structures in PKPU proceedings. It is suggested that these issues be addressed and clarified to mitigate their adverse effects on restructurings, particularly of international notes."

3.4.6 *Adopting the Model Law and / or increasing ease of recognition of foreign insolvency judgments*

Many Respondents also recognised the need for Indonesia to either adopt the Model Law, or for the Indonesian Courts to recognise foreign restructuring and insolvency judgments and closely cooperate with foreign courts to coordinate approaches in multiple jurisdictions (for example, under the Guidelines of the Judicial Insolvency Network) in cross-border insolvency matters. These measures would significantly improve efficiency, creditor returns and the effectiveness of restructuring processes in a cross-border context. That said, certain Respondents also highlighted the need for pragmatism, and suggested that the current system does provide for the necessary tools to conduct a cross-border restructuring.

The Respondents' observations are set out below.

Perry Sitohang, PCS Law Office: "[It is necessary to] include regulations on cross-border bankruptcy."

Luke Furler, Quantuma: "[Adoption of the Model Law] would definitely be a good thing … [If there is recognition of foreign insolvency judgments], without a doubt, [the Indonesian restructuring regime would be] much better."

Tony Budidjaja, Budidjaja International Lawyers: "Cross-border restructuring processes should be made clear under Indonesian law. This includes whether and how the recognition of foreign debt restructuring processes should be regulated."

Joel Hogarth, Eliot & Luther: "[If] you could recognise a foreign scheme in Indonesia, I think that could be quite powerful."

Richmond Ang, Deloitte: "The Indonesian market has more of a workout culture. As the Indonesian restructuring regime continues to evolve, parties have to take a pragmatic approach in addressing potential issues [that] arise in restructurings."

Duncan, Wisnu, Arianto and Jeyaraj, Kordamentha: "I think even if [the] Model Law [is adopted], you may still have inconsistent outcomes. We are seeing conflicting views from judges in Indonesia on whether they accept foreign decisions or not … [I]t is something to be looked at, but if you were to focus on reform, I would focus on the mechanisms around choice of administrator rather than the Model Law."

4. Conclusion

The Indonesian debt restructuring regime continues to be a very enigmatic one. As the experienced Indonesian restructuring experts we spoke to in undertaking this project identified, the Bankruptcy Law is sufficient and adequate to achieve effective restructurings in Indonesia in practice. While the system is challenging, it provides the necessary ingredients of speed, clear time limits, flexibility in what a debtor can propose in a restructuring plan and the ability to bind dissenting unsecured creditors.

Nevertheless, many of the Respondents interviewed believe that the restructuring process could be made more effective with amendments to the Bankruptcy Law and the practice of the Courts and administrators, particularly in relation to consistent application of the Bankruptcy Law, enhanced transparency and certainty in the adjudication and voting process, enhanced debtor disclosure requirements, and possible changes to filing requirements and the timeline for completing PKPUs.

Further reforms aside, it is paramount that stakeholders ensure they have strong local understanding and nuanced advice, both legal and financial, in navigating the PKPU process in order to maximise their leverage and negotiating power in the restructuring and to take advantage of the key strengths afforded by the PKPU: speed and flexibility.

In terms of cross-border restructurings, the PKPU regime unfortunately still falls short of being an effective and efficient regime which facilitates a restructuring that requires recognition in multiple jurisdictions. However, the likelihood of key reforms to the

Bankruptcy Law in the near future remains slim. Any reforms would thus most likely be implemented by the Indonesian Courts or the relevant professional associations, by way of guidelines and regulations. In the interim, issues of recognition of foreign restructuring and insolvency judgments and the treatment of foreign creditors (especially bondholders and trustees) will continue to be decided by the Commercial Courts on a case-by-case basis.

The authors would like to extend their sincere appreciation and gratitude to the Respondents for their time and for sharing their insights and views with us in the course of completing this project.

ANNEXURE A

In the process of writing this paper, we consulted the following Respondents who are experts in bankruptcy and PKPU in Indonesia:

- **Ricardo Simanjuntak, Ricardo Simanjuntak & Partners**

  Ricardo Simanjuntak is a senior curator and administrator in Indonesia and the Managing Partner of Ricardo Simanjuntak & Partners, with a focused practice in dispute resolution, bankruptcy law, PKPU and intellectual property. He was the Chairman for the Indonesian Curators and Administrators Association (AKPI) from 2006 to 2013.

- **Jimmy Simanjuntak, Jimmy Simanjuntak Law Firm**

  Jimmy Simanjuntak is a senior curator and administrator in Indonesia, and an expert in the fields of commercial and criminal litigation and bankruptcy law. He is the current Chairman of AKPI (from 2019 to 2022). He is also the Managing Partner of Jimmy Simanjuntak Law Firm.

- **Erniwaty Hutagalung**

  Erniwaty Hutagalung is a bankruptcy and PKPU practitioner in Indonesia, and a board member of the current Profession Protection Division of the Indonesian Bar Association (PERADI). She has handled various bankruptcy and PKPU cases in Indonesia. She is also a member of AKPI.

- **Sarmauli Simanggungsong**

  Sarmauli Simanggungsong is a bankruptcy and PKPU practitioner in Indonesia, and has handled various cases of bankruptcy and PKPU. He is currently serving as the Vice Manager of the Education Division of AKPI.

- **James Purba, James Purba & Partners**

  James Purba is a senior curator and administrator in Indonesia, and the Managing Partner of James Purba & Partners since 2002. He is an expert in the fields of commercial and criminal litigation, bankruptcy law, arbitration, intellectual property, labour, general corporate administrative and family law. He was also the Chairman of AKPI from 2013 to 2019.

- **Nien Raffles Siregar, Siregar Setiawan Manalu Partnership**

  Nien Raffles Siregar is a receiver and administrator in Indonesia and the Managing Partner of Siregar Setiawan Manalu Partnership. His law firm is famous for its bankruptcy and PKPU cases. He is also a member of AKPI.

- **Prahasto Wahju Pamungkas, PW Pamungkas & Co**

  Prahasto Wahju Pamungkas is a legal practitioner in Indonesia and the Managing Partner of PW Pamungkas & Co. He is also the Vice President of PT Bakrie Global Ventura and a lecturer at the University of Indonesia. He obtained his Master of Laws degree (LLM) from the University of Groningen in the Netherlands and is currently an Of Counsel at Makes & Partners Law Firm.

- **Alamo Laiman, Legisperitus**

  Alamo D Laiman is the Managing Partner of Legisperitus Lawyers in Jakarta. He is a registered receiver / administrator, and is a member of AKPI. He obtained his Master of Laws from New York University, concentrating in Corporations Law. Since 2010, Alamo has worked with PT Investasi Film Indonesia (IFI) as Executive Producer and with PT Stellar Indonesia as its General Counsel.

- **Daniel Alfredo, Legisperitus**

  Daniel Alfredo is a Senior Partner of Legisperitus Lawyers in Jakarta. His practice focuses on commercial litigation, criminal litigation and bankruptcy law. He is a member of the Indonesian Bar Association (PERADI), registered as a receiver and administrator for bankruptcy and insolvency, and is a licensed Mediator of the National Mediation Centre (Pusat Mediasi Nasional).

- **Andi Kadir, Hadiputranto, Hadinoto & Partners**

  Andi Y Kadir is a Senior Partner and Head of the Dispute Resolution Practice Group in Hadiputranto, Hadinoto & Partners, a member of Baker & McKenzie International, with a practice focused on bankruptcy and insolvency matters, litigation and arbitration. He has extensively represented multinational corporations and local companies in court-sanctioned debt restructuring proceedings (PKPU), bankruptcy and insolvency litigation and enforcement of collateral in Indonesia. Andi is a member of the Indonesian Bar Association (PERADI), a Court Member of the ICC International Court of Arbitration, Vice Chairman of the Arbitration and Alternative Dispute Resolution Commission of ICC Indonesia, and a BANI Arbitrator.

- **Charles Evans, Alvarez & Marsal**

  Charles Evans is a Senior Director with Alvarez & Marsal Restructuring in Singapore and Jakarta. He specialises in operational and financial restructuring and has extensive experience in consensual and in-court experiences, particularly Indonesian PKPU. He has served as financial advisor and Chief Restructuring Officer, and has more than 16 years of experience in distressed investing, restructuring and investment banking in Asia and Australia.

- **Joel Hogarth, Eliot & Luther**

  Joel Hogarth is the Founder and Managing Director of corporate finance boutique Eliot & Luther. He previously worked as a partner at major US and English law firms and as a Director at restructuring firm Borrelli Walsh (now Kroll), acting on over US

$30 billion of restructuring, structured finance, M&A and private equity transactions in South East Asia, particularly Indonesia. Eliot & Luther have acted as financial adviser and scheme manager on over US $2 billion of restructurings involving Indonesia, including Waskita Beton, MNC Investama, Barata Indonesia, Bukit Uluwatu Villas, Wanaartha Life and Binakarya Jaya Abadi.

- **Luke Furler, Quantuma**

Luke Furler is a Managing Director in Quantuma's Restructuring & Insolvency team and Head of Asia, overseeing the Singapore and Hong Kong offices. He specialises in large and complex restructuring engagements in Asia and is regularly appointed as Chief Restructuring Officer. Luke is a licensed insolvency practitioner in Singapore and is a member of the Institute of Chartered Accountants of Singapore (ISCA), the Chartered Accountants of Australia and New Zealand (CAANZ) and the Hong Kong Institute of CPAs (HKICPA).

- **Richmond Ang, Deloitte**

Richmond Ang is a Partner and Head of Deloitte's South East Asia Debt Advisory and Restructuring Services team based in Singapore. He has over 25 years of professional experience in financial advisory and banking, including corporate finance, structured finance and restructuring transactions across various industries and the region. Richmond has extensive experience in leading complex consensual out of court and court-sanctioned multi-creditor restructurings in the region, including successfully advising on milestone Indonesian restructurings.

- **Fadriyadi Kudri, Kudri & Djamaris**

Fadriyadi Kudri is a Founding Partner at Kudri & Djamaris in Jakarta. He has broad expertise and experience in corporate and commercial practice (including company dissolution and liquidation), and dispute resolution (including in relation to bankruptcy and suspension of debt payment proceedings). He is a licensed advocate and member of the Indonesian Bar Association (PERADI), a registered capital market legal consultant with the Indonesian Financial Services Authority (OJK) and a member of the Association of Capital Market Legal Consultants (HKHPM). Fadriyadi is also a licensed Receiver and Administrator at the Ministry of Law and Human Rights of the Republic of Indonesia and a member of AKPI.

- **Defrizal Djamaris, Kudri & Djamaris**

Defrizal Djamaris is the Managing Partner at Kudri & Djamaris in Jakarta. He was heavily involved in many high-profile cases of the firm for clients from different industries, and has exposure to civil and commercial, criminal, administrative law and unfair competition litigation. He has advised and represented national and multinational companies in bankruptcy and PKPU matters. He has appeared before the Southern New York Bankruptcy Court as the Co-Counsel. He is also a licensed advocate and member of the Indonesian Bar Association (PERADI) and the Indonesian Advocate Association (AAI), and holds a Receiver and Administrator of Bankruptcy License issued by the Ministry of Law and Human Rights of the Republic of Indonesia. Defrizal also holds a Capital Market Legal Consultant License issued by

Financial Service Authority (OJK) as well as a Certified Tax Lawyer accreditation issued by Indonesian Tax Lawyer Association (PERJAKIN).

- **Diaz Pramudya Hakeem, Kudri & Djamaris**

  Diaz Pramudya Hakeem is an Associate at Kudri & Djamaris in Jakarta. His areas of practice include civil and commercial litigation, employment and bankruptcy and debt restructuring.

- **Leonard Aritonang, Lubis Santosa & Maramis**

  Leonard Arpan Aritonang is a Partner at Lubis Santosa & Maramis in Jakarta. He is an experienced lawyer who is skilled in bankruptcy law, dispute resolution, negotiation and criminal law. He is a Registered Bankruptcy Administrator and is a member of the Indonesian Bar Association (PERADI).

- **Perry Sitohang, Perry Cornelius Sitohang & Co Law Office**

  Perry Cornelius Sitohang is the Managing Partner of Perry Cornelius Sitohang & Co Law Office in Jakarta. The firm's specialist expertise is retained on matters in Indonesia and across Asia, and includes corporate and commercial litigation, as well as bankruptcy and suspension of payment matters. He is a certified Receiver and Administrator for Bankruptcy and is a member of the Indonesian Bar Association (PERADI).

- **Cameron Duncan, Kordamentha**

  Cameron Duncan is a Partner in the Restructuring practice of Kordamentha's Singapore and Jakarta offices, with an expertise in turnaround, distressed corporate finance, financial restructuring and formal insolvency. He has over 25 years' experience in the corporate advisory and corporate restructuring industries and extensive experience in the Asia Pacific, including Indonesia. Cameron is a member of INSOL International, the Insolvency Practitioners Association of Australia, the Insolvency Practitioners Association of Singapore and the Institute of Chartered Accountants in Australia. His significant engagements include Robinsons, Ocap, Pertamina Energy Services Pte Ltd and Duniatex.

- **Panji Wisnu, Kordamentha**

  Panji Wisnu is an Executive Director in the Restructuring practice of Kordamentha's Jakarta office, with an expertise in business turnaround, financial management and operation management, as well as acting as CRO and various post restructuring monitoring roles.

- **Tommy Arianto, Kordamentha**

  Tommy Arianto is a Director in the Restructuring practice of Kordamentha's Jakarta office. He has over 10 years' experience, including advising banks, private equity funds and corporates in restructuring / PKPU, turnaround and corporate recovery, as well as forensic services. Tommy develops restructuring strategies with management

teams, short-term rolling cash flow forecasts, negotiations, creditor / stakeholder management, cash management, financial projection preparation / assessment, business review and investigations. He is a Chartered Accountant with CA Indonesia.

- **Joshua Jeyaraj, Kordamentha**

  Joshua Jeyaraj is a Director in the Restructuring practice of Kordamentha's Singapore and Jakarta offices. Since 2014, he has been involved in various restructuring, performance improvement and insolvency activities in the Asia Pacific with a specific focus in Indonesia.

- **Rando Purba, Maramis, Purba, Santi & Singara Law Firm**

  Rando Purba is a Partner at Maramis, Purba, Santi & Singara Law Firm in Jakarta. He practices domestically and internationally in complex civil and commercial proceedings, bankruptcy and suspension of payment, business competition, domestic and international arbitration and various alternative dispute resolution and general corporate matters.

- **Tony Budidjaja, Budidjaja International Lawyers**

  Tony Budidjaja is a Senior Partner at Budidjaja International Lawyers in Jakarta, with more than 26 years' standing and extensive expertise in commercial dispute resolution, bankruptcy and corporate restructuring, environment and natural resources. He is an accredited advocate, mediator and arbiter in the International Chamber of Commerce (ICC), China International Economic and Trade Arbitration Commission (CIETAC), Singapore Chamber for Maritime Arbitration (SCMA), Hong Kong International Arbitration Centre (HKIAC), Indonesian Commodities Arbitration (BAKTI), and the OJK's Alternative Dispute Resolution Institution for Financial Service Sector (LAPS-SJK). Tony is the Chairman of the Indonesian Academy of Independent Mediator and Arbitrator (MedArbId) and a member of the Asia Pacific Centre for Arbitration and Mediation (APCAM) and Asia Pacific Forum for International Arbitration (AFIA). He is a founder of the Indonesian Institute for Conflict Transformation (IICT) and the Indonesia Chapter of the Chartered Institute of Arbitrators (CIArb).

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