

INDONESIAN BANKRUPTCY LAW: REVISITED

Wijantini

Prasetiya Mulya Business School, Jakarta
wijantini@pmbs.ac.id

One of the key challenges in financial distress resolution is to find the way to renegotiate the debts. Financial troubled firms may apply either court or out-of-court resolution process. Under court supervision, firms have to follow Indonesian bankruptcy law which offers a moratorium on debt repayment through a system of court supervision and liquidation proceedings. Alternatively, firms may apply out-of-court workout. This paper is written to examine process of both resolutions, problem in executing the law and the reasons for least likelihood of filing court solution in Indonesia. In addition, it shows study on bankruptcy filing in East Asia countries.



Keywords: Financial distress, bankruptcy law, liquidation, Indonesia.

JEL classifications: G33, K22, K35

Abstract

uncertainty as to the outcome of a given legal dispute than civil law systems. Many developed countries including Japan, the US, the UK, which are Indonesian creditors, adopt a common law system (La Porta, Shleifer and Lopez 1999). The differences in perceptions of the law may create problems for those creditors who are used to the principle of precedent in common-law systems in resolving bankruptcy problems in Indonesia (Tomasic 2001).

In 1998, the government of Indonesia made some important amendments to the bankruptcy law. First, the law introduced new provisions, such as amending a chapter dealing with the creation of a moratorium on debt repayment. Second, it established the new Commercial Court (hereafter, the Court) has exclusive jurisdiction over petitions for declarations of bankruptcy and moratoriums on debt repayment. The following subsections describe the amendments in further detail.

Moratorium on Debt Repayment

The Indonesian Bankruptcy Act in 1998 allows debtors to request a moratorium on their obligation to repay their debts, on the grounds that the debtor intends to prepare

and present a composition to include an offer to repay all or part of the debt owed to unsecured creditors (Article 212). The debtor must file the moratorium petition with the Court and the Court must immediately grant a temporary moratorium on debt repayment and appoint a supervising judge and one or more trustees to manage the debtor's assets. The debtor and the creditors have only 45 days before they are required to appear again in Court at a session to consider making a permanent moratorium. If a permanent moratorium is approved at this meeting, the moratorium must not exceed 270 days from the making of the decision on the temporary moratorium on debt repayment (Article 217).

Once a moratorium has been granted, the debtor must not take any part in the management of the debtor's assets or take any action to transfer any of these assets (Article 226). However, the debtor is entitled to dismiss his employees after the commencement of the moratorium and any unpaid salaries then become debited to debtor's assets (Article 237). In addition, once the moratorium has commenced, any execution action against the debtor must be postponed (Article 228). Moreover, the

The bankruptcy petition must be granted if there are facts or circumstances proving the existence of bankruptcy. The court must decide the petition within 30 days of the registration of the bankruptcy. The lawyers acting for debtor respondents have noted that the time given is usually too short to prepare a full response. The 30-day period set by the Law for making a decision on the bankruptcy petition has also been seen as too short a time for judges to be able to come to a conclusion (Tomasic 2001).

When a declaration of bankruptcy is made, the Court may order the appointment of a supervising judge and a receiver. The debtor forfeits his right to manage or control his assets from the commencement of the bankruptcy. Legal proceedings against the bankrupt estate must be suspended, claims by creditors must be made through the receiver and proceedings initiated by the debtor may be taken over by the receiver. However, the debtor may appeal to the Supreme Court within 8 days after being declared bankrupt. In Indonesia, this article has been widely used and most Indonesian court cases are subject to appeal to the Supreme Court.

In practice, the performance of the Indonesian Commercial Court has not been outstanding. Two main issues challenge the judicial system in Indonesia, namely, charges of incompetence and corruption. The Commercial Court judges have little commercial knowledge and experience. Because many bankruptcy cases recently involved modern and sophisticated transactions, the lack of financial knowledge leads to misinterpretations or narrow understanding of the documents (Asian Development Bank Report 2001). Another issue is the existence of a culture of corruption. The presence of corrupt practices amongst the Indonesian judiciary is extremely difficult to overcome. Inadequate judicial salaries are commonly seen as the fundamental problem underlying the entrenched corruption in Indonesia (Tomasic 2001).

The Informal Procedures

So far, the Indonesian judicial system has not functioned well in dealing with bankruptcy cases; therefore court-supervised restructuring or liquidation is not an attractive option for creditors. **Table 1** presents part of Claessens, Djankov and Ferri's (1999) study on bankruptcy filing in East Asia in 1997 and 1998. It finds evidence of low bankruptcy

Table 2. Evaluation of Debt Recovery and Insolvency Procedures in Asia

1 = Low cost, easy, very efficient, quick 3 = High cost, difficult, inefficient, slow	Indonesia	Korea	Malaysia
1. Time for formal reorganization (months)	12-18	2-4	8-12
2. Time for informal workout (months)	4-8	2-4	2-4
3. Process for acquiring security (collateral) over land	2.75	1.25	1.25
4. Process for acquiring security over other property	2.75	1.25	1.25
5. Process for enforcement of security over land	3	1.25	1.25
6. Process for enforcement security over other property	2.5	1.25	1.25
7. Process for debt collection	2.5	1.25	1.25
8. Process for reorganization / restructuring	2.5	1.75	2
Predictability of positive outcome for creditors: 1 = very high 5 = very low			
9. Process for security enforcement; land	5	2	2
10. Process for security enforcement; other than land	5	4	2
11. Judicial handling of security enforcement	2	3	2
12. Judicial handling of debt collection	5	3	2
13. Judicial handling of bankruptcy / liquidation	5	4	2
14. Judicial handling of rehabilitation	5	4	3

Source: Insolvency Asia (1999), Country Report

the process is costly, difficult inefficient and slow, for instance, the time needed for formal reorganization is three times longer than those for informal workout. In addition, judicial handling for debt collection, bankruptcy/liquidation and rehabilitation is very low. Those condition may cause in-court settlement is less favourable than out-of-court approach.

During Asian crisis in 1997-98, Indonesia encounters a more difficult out of court resolution compared with those in non-crisis countries. First, the collapse of the Rupiah against USD has affected the ability of the debtors to pay the loan even when they are willing to do so. Second, the failures of the banking sector cause the renegotiation of debt more complicated. Many banks in

to control all payments to the creditors. In priority claims, the secured creditors will get priority after the costs of proceedings, any tax liabilities and claims on wages. Registering under court supervision liquidation does not prohibit most cash or other assets of distressed firms which leave the company. In other words, there is no automatic stay under Indonesia's new bankruptcy law. In summary, following features (Table 3) are related to creditors' rights under this law.

Conclusion

Indonesia has reformed its bankruptcy law in 1998. Resolution under court supervision is one of the ways to resolve the financial distress. So far, the Indonesia regulatory framework is quite satisfactory but lacks legal law enforcement. The literature reviews of current Indonesian judicial practice reveal that low legal enforcement is the crucial issue affecting regulations in the country. Thus, the government of Indonesia should support any reform program for better legal and regulatory systems in Indonesia. ■

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