2017 Asia Pacific Restructuring & Insolvency

INDONESIAN R&I: THE STORY SO FAR

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THE STORY SO FAR:
SUSPENSION OF PAYMENT PROCESS (PKPU)

PKPU (Penundaan Kewajiban Pembayaran Utang)

- Debt payment moratorium
- Debtor in possession
- PKPU process is supervised by the Commercial Court
- PT Berlian Laju Tanker Tbk, PT Trikomsel Oke Tbk, PT Arpeni, PT Bakrie Telecom Tbk, PT Mandala Airlines, PT Humpuss Intermoda

PKPU decision

- No PKPU without the Commercial Court decision
- Both debtor and creditor can file a PKPU petition to the Commercial Court
- PKPU petition must meet 3 requirements otherwise the Commercial Court will reject this application:
  - Creditor and debtor relationship: the debtor has debts to 2 or more creditors. Assignment of claim: *PT Plaza Indonesia Realty Tbk v. PT Priven Indonesia (2011)*
  - Debts due and payable: a debt to one of the creditor is due but unpaid.
  - Bankruptcy decision – a simple matter: points (a) and (b) above must be proven in a simple manner.

PKPU decision *(cont'd)*

- Quick process: 20 days for the creditor's petition and 3 days for the debtor's petition
- Confined to PKPU debtor (not a group of companies)
- Petitioning party nominates the administrator
- Commercial Court will appoint the supervisory judge and the administrator
- Appeal to the Supreme Court but there is no automatic stay

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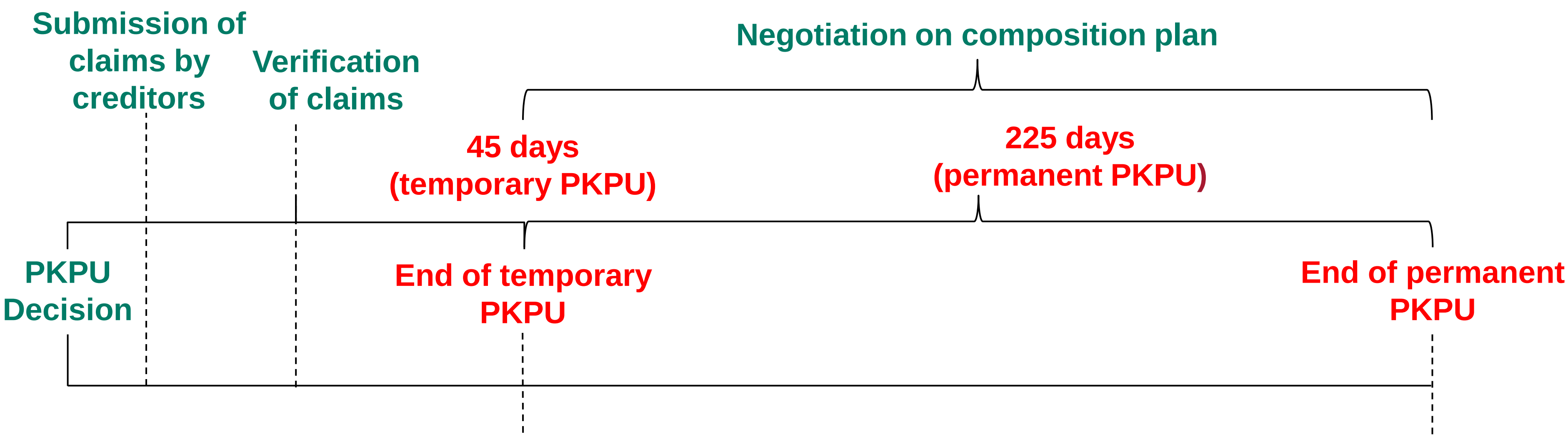
Timeline of PKPU Process

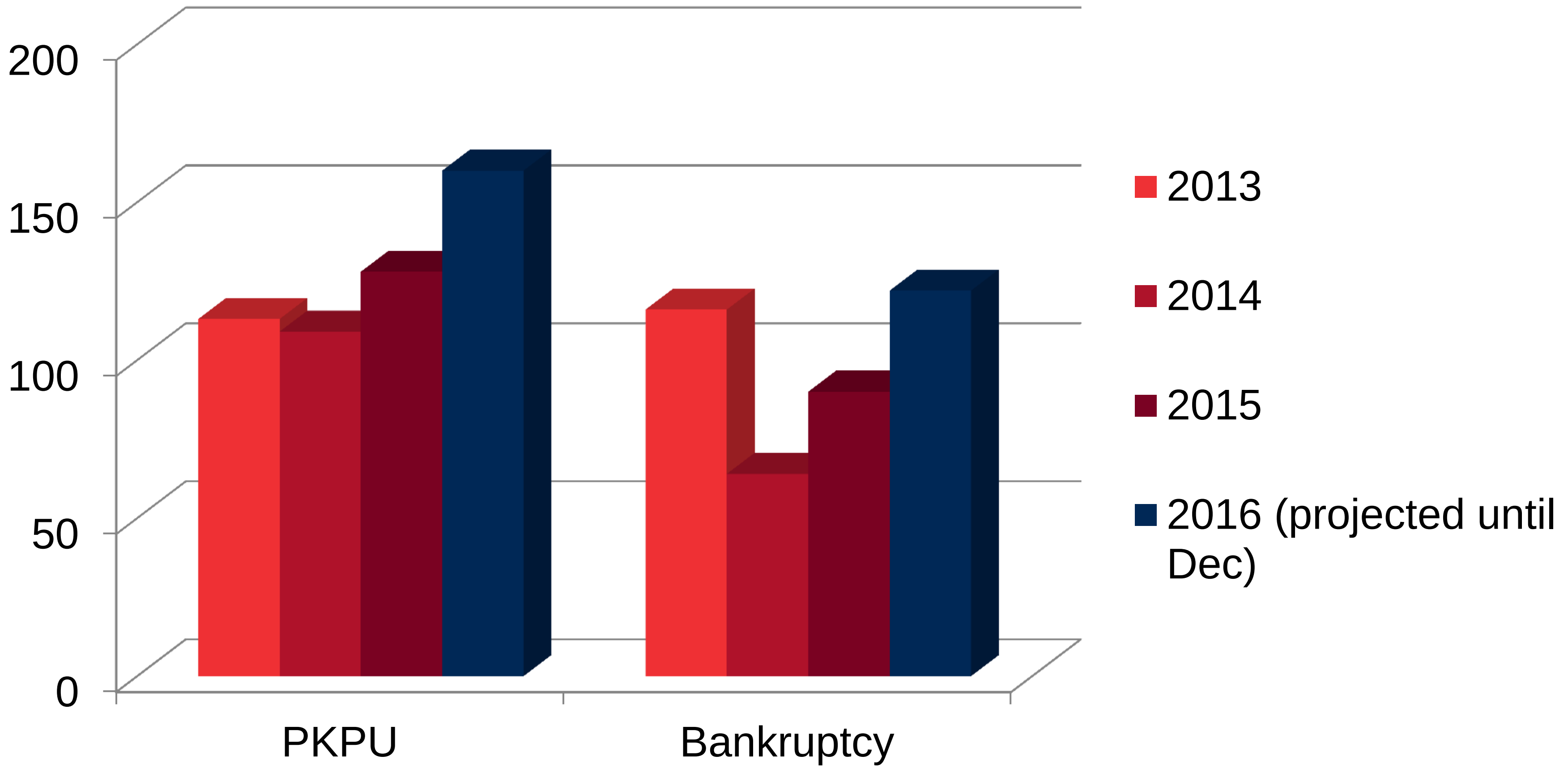


Temporary PKPU can be extended by the creditors:

(a) Affirmative votes of more 1/2 of the concurrent creditors hold at least 2/3 of all unsecured claims held by the concurrent creditors present in the meeting; and
(b) Affirmative votes of more than 1/2 of the secured creditors hold at least 2/3 of all claims held by the secured creditors present in the meeting.

No extension

Statistic


200
150
100
50
0
PKPU
Bankruptcy
2013
2014
2015
2016 (projected until Dec)

PKPU is the only option?

- Ineffective legal system, eg, lengthy and uncertainty court litigation process, the enforcement of security can be challenging if the debtor is aggressive.
- Cross-border insolvency is not recognized.
- Easy to obtain a PKPU court order, ie, 20 or 3 days and no insolvency test.
- Certainty: 270 days or bankrupt
- Creditors: Last resort to obtain the payment from the debtor through restructuring process and/or threat of bankruptcy.
- Debtor: Automatic standstill to ring fence the company from enforcement process.
- Litigation tool rather than restructuring tool.

Standstill process

- Main purpose is to safeguard the debtor's business and assets during PKPU process. This translates to the following:
  - Disposal of asset during PKPU process?
  - Loan during PKPU process?
  - Enforcement process during PKPU process?
  - Status of agreements during PKPU process?
  - Payment to the creditor during PKPU process?
  - Obligations of the debtor incurred without approval of the administrators may only be charged against the debtor’s assets insofar as they are profitable to the debtor’s assets.

3 Key stages in PKPU process

- Submission of creditors' claims to the administrators
- Verification of claims
- Composition plan

Submission of creditors' claims

- Schedules to be determined by the administrator
- All (known or unknown) creditors are invited to submit their claims
- Every creditor submits its claim in the form of a written statement setting out the nature and the amount of the claim, accompanied by documentary evidence or copies relating thereto and a statement as to whether the creditor concerned has a security right in rem or a statutory priority right.

Verification of claims

- The administrator verifies the claims in coordination with the debtor.
- First mover advantage
- Unsecured v. secured creditor?
  - *Arpeni v. CIMB Niaga (2011)*
  - The creditors are treated unsecured since the claims are secured by third parties' assets. But the Commercial Court can decide not to follow this precedent.
  - *PT Berlian Laju Tanker Tbk v. Bank Mandiri (2012)*

Verification of claims *(cont'd)*

- Central of controversy (litigation tool rather than restructuring tool):
  - Bank, as a holder of third party security, was treated as an unsecured creditor for the reason the relevant debtor is not a security grantor. Consequently, the bank was bound by the composition plan despite voting against it.
  - The creditor in respect of an inter-company loan was afforded voting rights in PKPU process despite the inter-company loan being in breach of a covenant under the relevant debtor's loan facility agreements with other creditors.
  - Suspected fictitious creditors were afforded voting rights in PKPU process.
  - A trustee representing bondholders was not afforded voting rights in PKPU process.
  - The administrator was prosecuted for refusing to accept suspected fictitious claims.

Dispute on classification of claims

- Three stages:
  - First is during verification of claims. The creditor can argue its case, but it is subject to the administrators' decision.
  - Second stage: Disputes would be resolved by the supervisory judge.
  - Third stage: If the party disagrees with the supervisory judge, disputes would be resolved by the panel of judges (Commercial Court)?

Composition plan

- No specific requirement on its content.
- Threshold:
  - A simple majority of the unsecured creditors present, provided that they represent at least 2/3 of the value of all accepted unsecured claims held by the concurrent creditors present at the meeting.
  - A simple majority of the secured creditors present, provided that they represent at least 2/3 of the value of all accepted secured claims held by the secured creditors present at the hearing or meeting.

Composition plan *(cont'd)*

- The composition plan will bind all unsecured creditors (even though they vote against the plan) and secured creditors (who do not vote against the plan).
- Secured creditors who reject the composition plan must be compensated with the lesser of the value of the collateral or the actual value of their debt directly secured by the collateral rights to property. No precedent.
- *PT Polysindo Eka Perkasa Tbk v. Babbington Developments Limited (2007)*

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Implementation of composition plan

- Debtor has only 1 shot to survive
- Default of the restructuring agreement will cause bankruptcy; 30-day grace period
- Enforcement of collaterals post bankruptcy. Stay period? Completion within 2 months after stay period? Labor unrest?
- Threshold for calling the default?
- Amendment of PKPU restructuring agreement?
- Debtor is still subject to PKPU process by new creditor post PKPU restructuring agreement.
- CRO

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