



MINISTRY OF LAW AND HUMAN RIGHTS
REPUBLIC OF INDONESIA
DIRECTORATE GENERAL OF LEGAL ADMINISTRATIVE AFFAIRS

The International Conference on Voluntary Insolvency and SMEs or Individual Reorganization Procedure: Debtors Option to Restart

“Debtors’ First Option: Voluntary Insolvency”

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BerAKHLAK
Berorientasi Pelayanan Akuntabel Kompeten
Harmonis Loyal Adaptif Kolaboratif



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bangsa**



Development of Indonesian Insolvency Law

FAILLISSEMENT- VERORDENING

- Staatblad 1905 Number 217 jo. Staatblad 1906 Number 348
- Balai Harta Peninggalan (Inheritance Property Office) the only one receiver/insolvency administrator (the State/Official Receiver)

Law Number 4 of 1998

- established a special court
- Introduced private/ individual receivers (Lawyers and Accountants)
- Petition filed by advocate/legal counsel
- refinement of the provision for suspension of debt payment obligations
- allocated a short period for the insolvency petition hearing (within 30 days)
- changed the time period for the suspension of payment from a maximum of 1.5 years plus another 1.5-year extension to 45 days plus a maximum extension of 270 days.

1905 - 1998

1998 - 2004

2004 -
Present

Government Regulation in Lieu of Law Number 1 of 1998

- established a special court
- Introduced private/ individual receivers (Lawyers and Accountants)
- Petition filed by advocate/legal counsel
- refinement of the provision for postponement of debt payment obligations
- allocated a short period for the insolvency petition hearing (within 30 days)
- changed the time period for the suspension of payment from a maximum of 1.5 years plus another 1.5-year extension to 45 days plus a maximum extension of 270 days.

Law Number 37 of 2004

- Determined broadest definition of debts.
- Affirmed that all types of Creditors can apply for insolvency.
- Simple evidence in procedural law.
- Attorney General Office is authorized filling insolvency petitions in the basis of public interest.
- Insolvency petition will not be hindered by Arbitration clause.
- Creditors can propose suspension of payment petition.
- Involvement of Secured Creditor in reconciliation decisions among Creditors.
- Ministry of Finance is authorized filing insolvency petitions against insurance companies.



Insolvency: the concept

Insolvency is a court decision resulting in a general confiscation of all the assets of the insolvent debtor, both existing and those that will exist in the future. The management of insolvency settlement is carried out by the Receiver under the supervision of a supervisory judge with the main objective of using the proceeds from the sale of the insolvent debtor's assets to pay all the insolvent debtor's debts proportionally (*prorate parte*) and in accordance with the creditor structure.

Article 1131 Indonesian Civil Code (ICC)

All movable and immovable assets of the debtor, either present or future, shall be regarded as securities for the debtor's personal agreements.

Article 1132 ICC

The assets shall serve as joint guarantees for his creditors; the proceeds thereof shall be divided among the creditor in proportion to their loan, unless there exists a legal order of priority among the creditors.



Insolvency and Suspension of Debt Payment Obligation

Court-supervised proceedings are primarily governed by Law Number 37 of 2004 on Insolvency and Suspension of Debt Payment Obligation, together with civil procedure law, which includes Chief of Supreme Court Decree Number 109/MA/SK/IV/2020 on Guide Book for Resolving Insolvency and Suspension of Debt Payments Cases, dated 29 April 2020.

There are two types of proceedings may be commenced:

1. Insolvency proceedings, under which the debtor loses its power to manage and dispose of its assets; and
2. Debt moratorium or suspension of debt payment obligation proceedings, under which the debtor, upon request by the creditor or the debtor itself, is given temporary relief to restructure its debts and continue in business, and ultimately to satisfy its creditors.

Law Number 37 of 2004 on Insolvency and Suspension of Debt Payment Obligation does not differentiate between individual and corporate insolvency or suspension of debt payment obligation proceedings. It also does not recognize a debt threshold and does not require an insolvency test.



Debtors' Voluntary Petition

In the case of an insolvency, a debtor or a creditor may file a petition to the commercial court by providing evidence that the debtor:

- (i) has at least 2 (two) creditors; and
- (ii) the debtor has failed to pay at least one due and payable debt.

Voluntary insolvency petition by individual debtor: Beside the administrative requirements, also needed a letter of consent from the husband/wife for the Debtor who is married and there is no agreement on the separation of assets.

For company/legal entity, the procedure for submitting an insolvency petition voluntarily is regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). Article 104 paragraph (1) UUPT stipulates that the Board of Directors can apply for insolvency of the Company itself to the commercial court by first obtaining approval from the General Meeting of Shareholders (RUPS).



Debtors' Voluntary Petition

In the case of suspension of debt payment obligation, an individual debtor who has more than 1 (one) Creditor may file a petition to the commercial court:

1. The debtor unable or predicts that they will not be able to continue paying their debts (at least one debt);
2. The debts are due and collectible; and
3. With the general intention of presenting a composition plan that includes an offer to pay all or part of their debts to Creditors.

A debtor may also file a petition for suspension of debt payment obligation after the creditor file an insolvency petition. If the court is reviewing both petitions concurrently, the petition for suspension of payments will prevail and be decided first. Although a petition for suspension of debt payment obligation does not constitute a legal remedy in and of itself (such as an appeal or civil review), it will delay the insolvency procedure for a predetermined amount of time.



Out of Court Debtor's Restructuring

- The Covid-19
- National Economy Program - Financial Service Authority Regulation (POJK) Number 11/POJK.03/2020 as last amended by POJK Number 17/POJK.03/2021 Regarding the Stimulus of the Impact of Covid-19.
- micro and small business loans for values below IDR 10 billion.
- criteria:
 - 1) Debtors who are directly or indirectly affected by the Covid-19.
 - 2) The debtor had good performance before period of Covid-19.
 - 3) The criterion for good performance is the quality of the debtor's assets at least current or under special mention prior to the impact of Covid-19.
 - 4) It is estimated that the debtor's performance may decline due to Covid-19 so that restructuring steps are needed to anticipate.
- The program was ended in March 2023.
- An extension of the stimulus related to credit restructuring due to Covid-19 until March 2024 for certain segments (accommodation, food and beverages, textiles and footwear, MSME) and region (the Province of Bali)



Recent Progress Development

1. The amendment of Law Number 37 of 2004 on Insolvency and Suspension of Debt Payment Obligation (2019 - 2024 medium-term of the national legislation's program).
2. Implementation of E-Court in Civil Cases including insolvency and suspension of debt payment obligation proceeding (Supreme Court Regulation Number 7 of 2022 on the Amendment to Supreme Court Regulation Number 1 of 2019 on Electronic Case Administration and Trials in Court).
3. Implementation of Online Registration Services for Receiver and Administrator.



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