

## THE INDONESIAN BILL ON RESTRUCTURING DEBTS AND REHABILITATION OF COMPANIES

Prepared by  
**Professor Sunaryati Hartono**  
Padjadjaran State University,  
Jakarta, Indonesia

Moderator, Ladies and Gentlemen,

I feel very fortunate that I was scheduled to speak after Mr. Bacelius Ruru, who pointed out the problems of an “out of court” composition in Indonesia. Because the team working on the Bill on Debt Restructuring and/or Rehabilitation of Companies, of which I have been entrusted by the Ministry of Justice and Human Rights to chair, has exactly set our focus on:

- a) Overcoming the gaps and problems mentioned and experienced by Mr. Ruru and many creditors;
- b) Forming the bridge between the “out of court composition” and the bankruptcy procedures as regulated by our bankruptcy law;
- c) Thereby remedying the legal uncertainty experienced by creditors (local and foreign) and government agencies, as well as the banks, in particular Bank Indonesia and the BPPN;
- d) All this in the hope that our economic and investment climate will improve, both for the benefit for our people and foreign investors alike;
- e) By improving our legal environment, without sacrificing and violating the general legal principles, in a law abiding country.

### I. Approach

The team drafting the Restructuring Debts and Rehabilitation of Companies (RDRC for short) takes a different philosophy compared to the bankruptcy law which takes a private law stand.

Our philosophy and approach is broader than this legalistic private law approach, on the basis of the following assumptions and prepositions:

- a) that bankruptcy of companies, es. Which it occurs en masse in an economic crisis, does not only concern the respective debtors and creditors, but affects the whole economy and society where such bankruptcy procedures and decisions are produced en masse (this accounts for our economic law approach rather than the private law approach such);
- b) that bankruptcy should not be the end of one’s or a companies’ life (in the traditional Calvinistic way of thinking), but that bankruptcy should be a means to start anew (of course in a moral and legally valid way);
- c) that bankruptcy of companies should not lame (*melumpuhkan*) the national economy and become the source of general unemployment and other social problems, such as social unrest and upheaval;
- d) that bankruptcy of local companies should not merely provide the opportunity for foreign investors to invest cheaply in the country and finally dominate the national economy, thereby in this stage of globalisation merely helping to make Indonesia the market for transnational corporations at the cost of local companies and human resources;
- e) that law should always consider social and economic changes and not only provide channels and means to remedy (micro – and macro) economic and social problems, but (in this 21<sup>st</sup> country of accelerated change and globalisation) invent new means and

opportunities to help the economy to recover and continue its process of sustainable development, thereby ensuring balance, fairness and social justice to the people, as well as to foreign creditors and investors.

Hence our approach is not purely legal, let alone purely based on private law principles and norms, but we tend to also consider economic, social and international factors, making it a multidisciplinary – and transnational approach which also takes into consideration the economic – social and international reality.

## **II. Scope of Insolvency Law Reform**

On the basis of the above presumptions our legislative drafting team views the insolvency law as covering three kinds of laws:

- a) The law on Restructuring of Debts and Rehabilitation of Companies
- b) The Bankruptcy law
- c) The law on Liquidation

Therefore the Indonesian Bankruptcy Law is or should be only a part of our Insolvency Law, so that we still need a law on RDRC and a law on liquidation to complete the entire procedure.

## **III. System of Insolvency Law**

It is our stand, that RDRC should precede the procedure of bankruptcy, which in turn should be followed by liquidation. Hence, before one starts with the bankruptcy proceedings, one should first attempt to restructure the debtor's debts, with or without rehabilitation of companies.

Only if and in the case these RDRC attempts fail, either because no agreement has been reached or whenever the RDRC agreement failed to be implemented, then the creditors or the debtor (as the case may be) can file for bankruptcy.

In the case, because sufficient time has been provided and sufficient evidence of failure of the RDRC procedure, no further delay toward the court decision for bankruptcy is necessary, so that parties need not go through the long, complete and painful procedure of bankruptcy, such as in done today.

The procedure of suspension of payments in the bankruptcy law can thus be omitted and deleted.

Finally, we still need a law on liquidation, which will hopefully be drafted in the near future.

## **IV. Principles of the RDRC Bill**

- 1) Focus on Agreement between debtors and creditors;
- 2) Providing sufficient time for rehabilitation of the debtor's company, provided there exist sufficient elements that RDRC is feasible;
- 3) Minimising the intervention of the courts and the judges;
- 4) Minimising possibilities of further delay and redress, once the court has issued a bankruptcy decision;
- 5) Simplify the bankruptcy procedures;
- 6) Bringing more legal certainty and fairer results in the negotiations and solutions;
- 7) Simplifying the task of judges and the courts, whilst at the same time improving their expertise and reliability.

## V Content of the Bill on RDRC

The Bill consists of 20 Chapters and some 170 articles as follows:

- Chapter I: General Provisions
  - Part I: Definitions
  - Part 2: Objectives of the law
  - Part 3: Principals
  - Part 4: Scope of the law
- Chapter II: Forms of DRRC
- Chapter III: Restructuring during an economic crisis
- Chapter IV: Procedure towards a proposal for DRRC
- Chapter V: Feasibility for DRRC
- Chapter VI: The restructuring team/agent
- Chapter VII: Request for a proposal for DRRC
- Chapter VIII: Creditor's meeting
- Chapter IX: The Concept of a DRRC Agreement/Composition
- Chapter X: The Concept of a DRRC Alternative Agreement/Composition
- Chapter XI: Conclusion and Registration of the DRRC Agreement/Composition
- Chapter XII: The Standstill Period
- Chapter XIII: Implementation of the DRRC
- Chapter XIV: Default by the Debtor or a/the Creditor(s)
- Chapter XV: Bankruptcy of the Debtor
- Chapter XVI: Civil Detention of the Debtor and/or his guarantor(s) in a place paid by the creditor(s)
- Chapter XVII: Sanctions
- Chapter XVIII: Cross border DRRCs
- Chapter XIX: Transitory Regulations
- Chapter XX: Closing Regulations

## **VI. Conclusions**

By putting the RDRC before the bankruptcy procedure, we are convinced that we will be putting the horse before the cart, thereby not only helping the parties (debtors and creditors) to reach a fair and agreeable solution, but also:

- a) to prevent our economy to develop bigger, graver and large scale socio-economic problems, such as large scale unemployment, starvation, ending into a social revolution.
- b) and even to help our economy to recover in order to enable the Indonesian people to not only survive the economic crisis but also to enter into new ways of production, investment, distribution and other means of sustainable macro and micro economic growth, as well as social development, in a world of globalisation, revolutionary technological change, and transnational companies dominating the Indonesians – as well as the world economy.