

TABLE OF CONTENTS :

Table of Contents	
Overview	1
I. Bankruptcy	3
A. Eligible Petitioners	3
B. Petition Requirements	5
C. Overall Procedure for the Processing of Bankruptcy Petitions	11
D. Follow-up Measures to Bankruptcy Decisions	12
II. PKPU	18
A. Eligible Petitioners	18
B. Petition Requirements	19
C. Overall Procedure for the Processing of PKPU Petitions	23
D. Follow-Up Measures to PKPU Decisions	24
Conclusion	28

Bankruptcy and PKPU Cases: The Handbook

In general, the handbook elaborates the provisions relating to the parties which are eligible to submit petitions in relation to either bankruptcies or suspension-of-debt-payment obligations, as well as requirements and procedures for the processing of said petitions and the various follow-up measures which can be implemented after decisions have been handed down.

Overview

Having been some time in the preparation, the Supreme Court has finally published a handbook for cases that involve bankruptcy settlements and suspension-of-debt-payment obligations through the issuance of Decree [No. 3/KMA/SK/I/2020](#) (“**Decree 3/2020**”).¹ While aiming to ensure that judges and registrar staffs operating within commercial courts implement the various provisions set out under Law [No. 37 of 2004](#) on Bankruptcy and Suspension of Debt Payment Obligations (“**Law 37/2004**”) in a consistent fashion,² the handbook was also created in an effort to support the Indonesian Government’s objective of providing simple, prompt and affordable proceedings, thus bringing the country into line with global ease of doing business standards.³

¹ Decree 3/2020 was briefly discussed in ILB [No. 3832](#).

² For more information on Law 37/2004, see ILD [No. 397](#) and [No. 398](#).

³ Mahkamah Agung, “Mahkamah Agung Segera Rampungkan Pedoman Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU)”, as accessed through <https://www.mahkamahagung.go.id/id/berita/3708/mahkamah-agung-segera-rampungkan-pedoman-kepailitan-dan-penundaan-kewajiban-pembayaran-utang-pkpu> on 24 March 2020.

The Appendix to Decree 3/2020 addresses the structure of the handbook, which is divided into the following two books:

1. Book I on Processes for the Examination of Petitions for Declaration-of-Bankruptcy and Suspension-of-Debt-Payment Obligation (*Penundaan Kewajiban Pembayaran Utang* – “PKPU”) Cases (“**Book I**”); and
2. Book II on Processes for the Settlement of Bankruptcy and PKPU Cases after Decisions on Declarations of Bankruptcy and PKPU (“**Book II**”).

The handbook’s contents have been enforced since 14 January 2020,⁴ and in an effort to elaborate upon the handbook’s contents, this edition of Indonesian Law Digest (ILD) will specifically address the following matters:

- I. Bankruptcy:
 - A. Eligible petitioners;
 - B. Petition requirements;
 - C. Overall procedure for the processing of bankruptcy petitions;
 - D. Follow-up measures to bankruptcy decisions.
- II. PKPU:
 - A. Eligible petitioners;
 - B. Petition requirements;
 - C. Overall procedure for the processing of PKPU petitions;
 - D. Follow-up measures to PKPU decisions.

⁴ Point 3, Decree 3/2020.

I. Bankruptcy

Under Law 37/2004, bankruptcy is defined as the general seizure of all of the assets of any debtor who has been declared bankrupt (“**Bankrupt Debtor**”). These assets are to be managed and settled by a receiver under the auspices of the relevant supervisory judge.⁵ A debtor may be declared as bankrupt by a commercial court if:⁶

1. The debtor is saddled with two or more creditors, in which creditors can comprise the following: concurrent/unsecured creditors, separate/secured creditors and preferred creditors;⁷
2. The debtor has not settled the relevant credits; and
3. One of the credits in question is due and payable.

The following sections will offer an elaboration of the provisions set out in the handbook which address the various parties which may submit bankruptcy petitions. The ensuing sections will also address the various requirements which have to be met and procedures that have to be completed in order to process such petitions, as well as various follow-up measures that apply after decisions on bankruptcy declarations have been handed down.

A. Eligible Petitioners

In general, the commercial court can declare bankruptcies based on petitions which are filed either by a debtor or by creditors.⁸ Book I clarifies the various types of parties which may submit petitions:⁹

Debtors	Creditors
Individuals	
Civil partnerships, including limited partnerships (<i>commanditaire vennootschap</i> – “CV”), <i>firma</i> partnerships and other forms of civil partnership	
Legal entities which take the form of limited liability companies, foundations and cooperatives	Legal entities which take the form of limited liability companies, foundations and cooperatives
The Financial Services Authority (<i>Otoritas Jasa Keuangan</i> – “OJK”), which represent debtors that take the form of banks, securities companies, the stock exchange, clearing and guarantee agency,	The OJK, which can represent creditors operating within the capital market, insurance and pension

⁵ Art. 1 (1) and (4), Law 37/2004.

⁶ Art. 2 (1), Law 37/2004.

⁷ Elucidation, Art. 2 (1), Law 37/2004.

⁸ Art. 2 (1), Law 37/2004.

⁹ Points 1.1 - 1.2, Section A, Book I, Appendix, Decree 3/2020.

depository and settlement agency, financing companies, insurance and reinsurance companies, and pension funds	fund sectors, as well as various other types of financial institutions
The Minister of Finance ("MoF") or other ministers responsible for representing debtors which take the form of state-owned or regionally owned enterprises, the core businesses of which lie within the public sector and involve the public interest	State-owned or regionally owned enterprises, under the auspices of MoF or other responsible ministers
-	<p>The Office of the Attorney General ("OAG") if a case relates to the public interest, for instance:¹⁰</p> <ol style="list-style-type: none"> 1. A debtor has fled; 2. A debtor has embezzled disputed assets; 3. A debtor has outstanding liabilities to a state-owned enterprise or other entity which is financed through public funding; 4. A debtor has a liability which originated through public funding; 5. A debtor has not acted in good faith or has not been cooperative; or 6. Other conditions, as deemed necessary by the OAG
-	<p>Receivers, provided that:</p> <ol style="list-style-type: none"> 1. The relevant creditors are Bankrupt Debtors and petitions are made against other third parties; and 2. A receiver has obtained a permit from the relevant supervisory judge

Although Law 37/2004 does not specifically authorize receivers to submit bankruptcy petitions on behalf of Bankrupt Debtors, Law 37/2004 specifies the duty of receivers to manage and/or settle bankruptcy estates (*harta pailit*). Therefore, a receiver may become an eligible petitioner, since the receivables of a Bankrupt Debtor against third parties are part of the relevant bankruptcy estates and their management, therefore, falls under the duty of the receiver. Any legal actions which involve such estates, including petitions for bankruptcy in relation to said receivables, must be submitted by the receiver.

¹⁰ Elucidation, Art. 2 (2), Law 37/2004.

B. Petition Requirements

Petitions for declarations of bankruptcy should be submitted to the head of the relevant commercial court,¹¹ along with various required documents which differ based on the relevant type of petitioner, as elaborated upon in the table below:¹²

Required Documents	Individuals		Non-Individuals									
	...as Debtors	...as Creditors	Legal Entities		Civil Partnerships		The OJK		MoF		OAG	Receivers
			...as Debtors	...as Creditors	...as Debtors	...as Creditors	...as Debtor	...as Creditor	...as Debtor	...as Creditor	...as Creditor	...as Creditors
Duly-stamped petition which is to be delivered to the head of the relevant commercial court. Said petition must be signed by the relevant attorney (with the exception of petitions which are submitted by PA). Four copies of this document	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

¹¹ Art. 6 (1), Law 37/2004.

¹² Points 1.1 – 1.2, Section A, Book I, Appendix, Decree 3/2020.

must be provided												
Special power of attorney (<i>surat kuasa khusus</i>) signed by individuals, directors or administrators of entities, as well as by the Chairpersons of the OJK or MoF if the relevant parties are utilizing advocates	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Letter of duty (<i>surat tugas</i>) from the Chairperson of the OJK, MoF, relevant minister, the Attorney General or the directors/chairpersons of the	×	×	×	×	×	×	✓	✓	✓	✓	×	✓

represented institutions												
Valid license, as issued by a professional advocates' organization and the official minutes of an advocate's oath-taking ceremony at the High Court	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	✓
Identity of the principal petitioner	✓	✓	x	x	x	x	x	x	x	x	x	✓
Legalized marriage certificate	✓	x	x	x	x	x	x	x	x	x	x	x
Spousal consent (if the petitioner is married and possesses joint assets with the relevant spouse)	✓	x	x	x	x	x	x	x	x	x	x	x

List of assets and liabilities	✓	×	✓	×	×	×	✓	×	✓	×	✓	×
Proposal of the receiver, which can either be a Property and Heritage Agency (<i>Balai Harta Peninggalan</i> – “BHP”) or individuals who meet certain criteria ¹³	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Deed of establishment	×	×	×	×	✓	✓	✓	×	✓	×	✓	×
Articles of association/bylaws, including their amendments (if any)	×	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
Final financial balance (in terms of legal	×	×	✓	×	✓	×	✓	×	✓	×	×	×

¹³ The criteria for individuals are as follows: 1) Must be Indonesian citizens who are domiciled in Indonesia; 2) Must possess receiver and administrator training certificates; 3) Must be registered with the Ministry of Law and Human Rights (“**Ministry**”); 4) Must enclose an affidavit confirming certain information (e.g. independence, lack of any conflict of interest); and 5) Must deliver approval for the appointment of the receiver by the creditors, with the exception of the appointment of BHP by the commercial court (only in relation to bankruptcy petitions which are submitted by debtors). (Part [m], Points 1.1.1 - 1.1.3; Part [i], Points 1.1.4 - 1.1.5; Part [g], Point 1.2.1; Part [h], Points 1.2.2 and 1.2.6; Part [i], Point 1.2.3; and Part [f], Points 1.2.4 - 1.2.5, Section A, Book I, Appendix, Decree 3/2020)

entities specifically, said balance must have been audited by a public accountant)												
Loan agreement or other evidence which outlines the existence of debt	x	x	x	x	x	x	✓	x	✓	x	x	x
Evidence of the existence of a minimum of two creditors, to which one of the debts is due and payable	x	x	x	✓	x	✓	x	✓	x	✓	✓	x
Initial evidence of a violation of the public interest	x	x	x	x	x	x	x	x	x	x	✓	x
Approvals to present during trial from the	x	x	x	x	x	x	x	x	x	x	x	✓

supervisory judges												
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It is important to note that a bankruptcy petition submitted by a debtor in the form of an entity must be signed by the relevant persons in charge, specifically:¹⁴

Petitioner	Person-in-charge
Limited liability company	Board of directors, provided that intended filing of a bankruptcy petition has been approved by a company General Meeting of Shareholders (<i>Rapat Umum Pemegang Saham</i> – “RUPS”) or extraordinary RUPS
Foundation or cooperative	Administrator
CV	Active administrator
Firm partnership	All partners of the firm
Other form of partnership	The relevant administrator/owner

Moreover, any individual debtors who are aiming to submit bankruptcy petitions through documents which are drawn up in other languages must utilize the services of sworn translators when translating such documents into the Indonesian language. This also applies if documents are drawn up outside of Indonesian territory, provided that said documents are also legalized by Indonesian embassy/representatives’ offices located in the relevant countries of origin.¹⁵

The above-discussed mandatory bankruptcy petition documents, whether they are submitted by debtors or creditors, must also be prepared in the form of electronic files, specifically petitions and lists of evidence. Furthermore, any petitions which are submitted electronically will be subject to the provisions of Regulation of the Supreme Court [No. 1 of 2019](#)¹⁶ on the Administration of Cases and Legal Proceedings in Court via Electronic Means (“**Regulation 1/2019**”).¹⁷

¹⁴ Points 1.1.2 and 1.1.3, Section A, Book I, Appendix, Decree 3/2020.

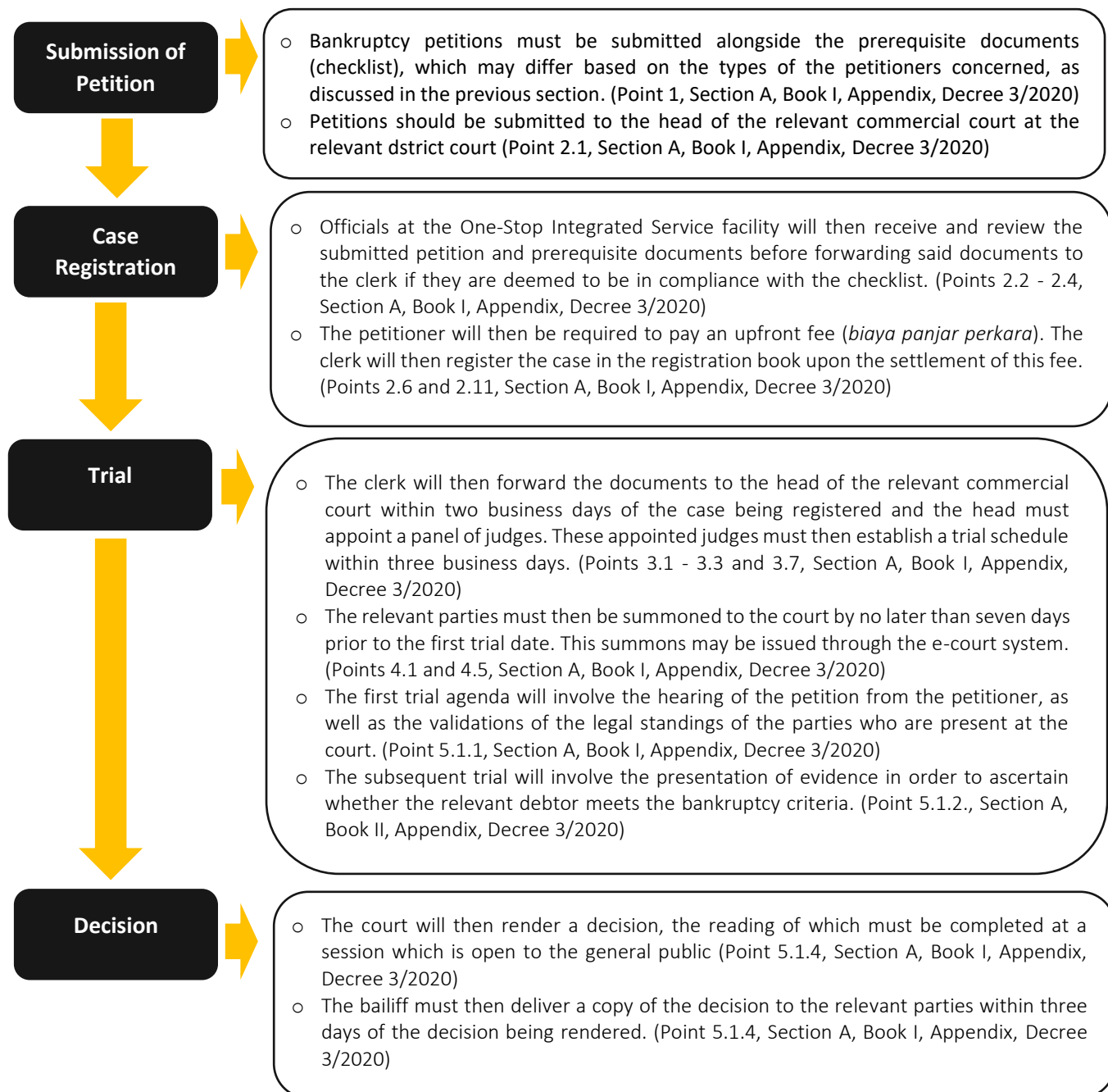
¹⁵ Parts (k), (l), (n) and (o), Point 1.1.1, Section A, Book I, Appendix, Decree 3/2020.

¹⁶ For more information on Regulation 1/2019, see ILB [No. 3677](#).

¹⁷ Point 1.1 - 1.2, Section A, Book I, Appendix, Decree 3/2020.

C. Overall Procedure for the Processing of Bankruptcy Petitions

The overall procedure which should be followed in order to resolve bankruptcy petitions is set out in the following flowchart:



After bankruptcy decisions have been handed down, the relevant parties may submit appeals for cassations and case reviews to the Supreme Court.¹⁸

D. Follow-up Measures to Bankruptcy Decisions

Once a decision on bankruptcy has been handed down, the relevant supervisory judge must first ensure that the publicity principle is fulfilled by implementing the following measures:¹⁹

1. Summoning and instructing the receivers to announce the relevant bankruptcy within five days of their taking receipt of the bankruptcy decision from the supervisory judge;
2. Publishing the announcement through an official gazette, as well as via a minimum of two daily newspapers;
3. Determining a schedule and place for a first creditors' meeting within 30 days of the relevant bankruptcy decision being rendered; and
4. Determining a time limit for the submission of receivables and tax verifications.

Furthermore, the parties involved in the bankruptcy case in question must attend creditors meetings, meetings which address the verification of receivables and/or reconciliation prior to settlement and closure. Each of these procedures is elaborated upon below.

Creditors Meetings

According to Law 37/2004, a supervisory judge must organize creditors meetings while the relevant receivers must attend said meetings.²⁰ During the first creditors meeting, the supervisory judge will read out the bankruptcy decision and implement several actions, including:²¹

1. Explaining and outlining the various administrative and settlement processes and stages that will be implemented in relation to the bankruptcy declaration, including an explanation that all information relating to said administrative and settlement processes and stages will be made available at the registrar's office at the relevant commercial court;
2. Ordering the receiver to explain his/her duties and responsibilities, in accordance with the various provisions set out under Article 124 of Law 37/2004 and Circular of the Supreme Court [No. 2 of 2016](#) on Handling Efficiency and Transparency for Bankruptcy Cases and Suspension-of-Debt-Payment-Obligation Cases by Courts ("[Circular 2/2016](#)");²²

¹⁸ Point 5.2, Section A, Book I, Appendix, Decree 3/2020.

¹⁹ Point 1, Section A, Book II, Appendix, Decree 3/2020.

²⁰ Art. 85, Law 37/2004.

²¹ Points 2.5 - 2.10, 2.12 and 2.14, Section A, Book II, Appendix, Decree 3/2020.

²² For more information on Circular 2/2016, see ILB [No. 2868](#).

3. Providing the opportunity for debtors to: a) Explain the underlying reasons for the relevant bankruptcy, as well as to outline debtors' assets, debts and creditors; and b) Submit a reconciliation plan;
4. Providing the opportunity for creditors to respond to the information provided by debtors in relation to debtors' assets;
5. Reminding the various parties concerned of the deadline for the submission of objections relating to the list of receivables by creditors during verification meetings and that creditors will be unable to submit any objections after this deadline has passed;
6. Scheduling other creditors meetings, if this is deemed necessary by either the creditors' committee (if any) or by at least five creditors who represent 1/5 of all receivables which have been acknowledged or conditionally accepted.²³

During the following creditors' meetings, the receiver or the creditors may propose that the receiver continue to administer the debtor's businesses and the supervisory judge may approve such a proposal if:²⁴

1. The temporary creditors' committee approves the proposal; or
2. The receiver has obtained a permit from the supervisory judge if no creditors committee exists.

Within 14 days of such a proposal being made, the supervisory judge must hold a creditors meeting in order to decide if said proposal has been approved or not. A proposal will be deemed to have been approved if it is approved by unsecured creditors whose receivables represent more than ½ of all receivables which have been acknowledged or temporarily accepted.²⁵

If the proposal is approved and the receiver thus continues to administer the debtor's businesses, then the receiver may use the services of the debtor and pay the debtor a salary which is to be determined by the supervisory judge.²⁶

²³ Point 4, Section A, Book II, Appendix, Decree 3/2020.

²⁴ Points 4.4 - 4.6, Section A, Book II, Appendix, Decree 3/2020.

²⁵ Points 17.1.3 and 17.1.7, Section B, Book II, Appendix, Decree 3/2020.

²⁶ Point 17.1.8, Section B, Book II, Appendix, Decree 3/2020.

Meetings for the Verification of Receivables

Within 14 days of a bankruptcy being declared, the relevant supervisory judge must:²⁷

1. Determine deadlines for: a) The submission of claims by the creditors; and b) The relevant tax verification, which must be at least 14 days from the deadline for the submission referred to in point (a); and
2. Schedule a creditors meeting for receivables verification purposes.

During verification meetings, the creditors, debtor and receiver can either reject or approve submitted claims in accordance with the list of acknowledged receivables read by the supervisory judge.²⁸ During such meetings, the debtor must be present in person, otherwise, the debtor will be deemed to have approved the amount claimed by the creditors.²⁹

If the debtor or creditor fails to agree on an amount and/or level of claims submitted by the creditors and the supervisory judge fails to settle any such dispute, then said parties must resolve their dispute through the courts. This procedure is commonly known as *renvoi*.³⁰ It should be noted that any verification meetings which involve creditors currently being subject to the *renvoi* process will be put on hold until said dispute is finally resolved. Once the *renvoi* procedure has been concluded and the supervisory judge has received the *renvoi* decision, then the judge will once again commence verification meetings for these creditors.³¹

Reconciliation

A Bankrupt Debtor may propose a reconciliation with the relevant creditors, provided that said reconciliation plan is submitted by no later than eight days prior to the receivable verification meeting outlined in the previous section. Upon the submission of a reconciliation plan, the supervisory judge will determine a schedule and location in which to hold a creditors meeting in order to discuss and vote for the proposed reconciliation plan.³²

The voting procedure is subject to provisions which are set out under Regulation of the Government [No. 10 of 2005](#) on the Calculation of Voting Rights of Creditors, which state that:³³

1. Each receivable amounting to IDR 10 million will be converted into one vote;
2. Each receivable amounting to IDR 5 million or more will be converted into one vote; and
3. Each receivable amounting to less than IDR 5 million will not be covered by any voting rights.

²⁷ Art. 113, Law 37/2004 and Points 5.1 and 5.3, Section A, Book II, Appendix, Decree 3/2020.

²⁸ Point 5.4.4, Section A, Book II, Appendix, Decree 3/2020.

²⁹ Point 5.4.3, Section A, Book II, Appendix, Decree 3/2020.

³⁰ Point 6.1, Section A, Book II, Appendix, Decree 3/2020.

³¹ Points 5.4.18 and 7.1, Section A, Book II, Appendix, Decree 3/2020.

³² Points 8, 9.1. and 10.1., Section A, Book II, Appendix, Decree 3/2020.

³³ Point 10.5.1, Section A, Book II, Appendix, Decree 3/2020.

A reconciliation plan will be deemed to have been approved if it's ultimately approved by more than ½ of the relevant unsecured creditors who attend the creditors meeting and whose receivables have been acknowledged (whether temporarily or not) as being in amounts that represent at least 2/3 of the total receivables of all unsecured creditors whose receivables have been acknowledged.³⁴

An approved reconciliation plan must then be ratified by the court. This ratification process (*homologasi*) must take place between 8 to 14 days after the relevant reconciliation plan has been approved.³⁵

However, the ratification of any approved reconciliation plan must be rejected if any of the following conditions prevail:³⁶

1. The amount of debtor's assets which have been encumbered is higher than the amount agreed in the relevant reconciliation plan;
2. The execution of the reconciliation plan is not assured;
3. The reconciliation is agreed through acts of fraud, conspiracy or any other unlawful measures.

If a reconciliation plan or its ratification is rejected, then the debtor may not submit any further reconciliation plan.³⁷ However, the debtor or creditors may file for cassation in relation to the rejection. Furthermore, any creditors who disagree with the ratification of a reconciliation plan may also file for cassation in relation to the ratification. The abovementioned cassation applications must be submitted within eight days of the relevant approval or rejection being issued.³⁸

Moreover, creditors may also submit cancellations of any reconciliation plans which have been ratified by the court if the relevant debtor fails to comply with its contents. If a reconciliation is canceled, then the concerned parties may file for cassation.³⁹

Overall, bankrupt estates will be designated as being of insolvent status if no reconciliation plan is offered during the receivable verification meeting or if the reconciliation plan or its ratification is rejected.⁴⁰ If this is the case, then the supervisory judge will:⁴¹

1. Declare the insolvent status of the relevant assets; and
2. Inform secured creditors that they are entitled to sell the collateral that they hold within two months or hand over such collateral to the receiver to be sold to the public.

³⁴ Point 10.5.3 Section A, Book II, Appendix, Decree 3/2020.

³⁵ Points 12.1 and 12.5, Section A, Book II, Appendix, Decree 3/2020.

³⁶ Point 12.6.6, Section A, Book II, Appendix, Decree 3/2020.

³⁷ Point 12.6.10, Section A, Book II, Appendix, Decree 3/2020.

³⁸ Points 13.1 - 13.3, Section A, Book II, Appendix, Decree 3/2020.

³⁹ Points 14.1 - 14.3, Section A, Book II, Appendix, Decree 3/2020.

⁴⁰ Point 16.1. Section A, Book II, Appendix, Decree 3/2020.

⁴¹ Points 16.1, 16.2 and 16.5, Section A, Book II, Appendix, Decree 3/2020

Settlements

During the settlement stage, all bankrupt estates must be sold through public auctions. Prices are to be estimated by certified appraisers who are recommended by receivers and are to be stipulated by the supervisory judge.⁴²

However, a receiver may sell the bankrupt estates on a private basis if any of the following conditions apply:⁴³

1. Auctions which are organized in order to sell such estates fail on two occasions; and
2. A private sale is permitted by the supervisory judge.

Prices for private sales must also be estimated by certified appraisers. The price that will ultimately be used should be either the market price or the liquidation price, whichever is highest, but must not be lower than liquidation price.⁴⁴

The receiver must decide on the various measures which are to be taken as regards any bankrupt estates that fail to be sold, on the condition that any such measures do not harm said estates.⁴⁵

Moreover, if sufficient funds are available, then the supervisory judge may order the receiver to draw up a list of the distribution of bankrupt estates in a pro-rata manner. This list will be available at the registrar's office at the relevant commercial court and will also be uploaded to the Court Information System, as well as published by the receiver in at least two daily newspapers, as designated by the supervisory judge.⁴⁶

During the period set by the supervisory judge, creditors may submit their objections. The trial which will process these objections must be stipulated within seven days of the announcement period ending. The relevant court must render its decision on the first day of the trial or seven days afterward.⁴⁷

Once the public access period for the list has ended (if there are no objections) or once a decision has been handed down in relation to an objection, then the receiver must distribute the payment according to the stipulated list.⁴⁸

⁴² Points 17.2.1 and 17.2.3, Section A, Book II, Appendix, Decree 3/2020.

⁴³ Point 17.2.7, Section A, Book II, Appendix, Decree 3/2020.

⁴⁴ Points 17.2.8 and 17.2.10, Section A, Book II, Appendix, Decree 3/2020.

⁴⁵ Point 17.2.9, Section A, Book II, Appendix, Decree 3/2020.

⁴⁶ Points 17.3.1 - 17.3.3, Section A, Book II, Appendix, Decree 3/2020.

⁴⁷ Points 17.3.4, 17.3.9 and 17.3.11, Section A, Book II, Appendix, Decree 3/2020.

⁴⁸ Points 17.3.16, Section A, Book II, Appendix, Decree 3/2020.

Closing of Bankruptcy

A bankruptcy process is deemed to have been completed when:

1. The bankruptcy declaration is revoked;
2. The debtor has fully paid the receivables of the creditors after creditors meetings;
3. The Supreme Court cancels the bankruptcy declaration;
4. A reconciliation plan is approved;
5. The receivables of the creditors have been fully paid or the closing bankrupt estate's distribution becomes binding.

A closing must be announced via at least two daily newspapers, with the exception of any closings which are due to revocations. In the latter case, announcements may be made through an announcement board and via the Court Information System.⁴⁹

It should be noted that any limited liability company which has been declared bankrupt and for which the relevant bankruptcy has already been settled must be dissolved. Said dissolutions must be carried out in accordance with the provisions set under Law No. 40 of 2007 on Limited Liability Companies.⁵⁰

⁴⁹ Points 18.1 - 18.2., Section A, Book II, Appendix, Decree 3/2020.

⁵⁰ Points 19.1 - 19.3., Section A, Book II, Appendix, Decree 3/2020.

II. PKPU

In essence, a debtor or creditor may propose a PKPU if:⁵¹

1. The debtor has more than one creditor; and
2. The debtor is unable to, or it has been predicted by either the debtor or their creditors that the debtor will be unable to, settle debts that are due and payable.

PKPU cases are different from bankruptcy cases as PKPU are not based on any condition whereby a debtor has merely failed to settle the relevant due and payable debts or is in a condition of insolvency. Moreover, a PKPU does not encompass any intention to dissolve the debtor's assets.⁵²

It should also be noted that PKPU cases will be prioritized over bankruptcy cases. This means that if a bankruptcy petition and a PKPU petition are to be examined simultaneously, then the PKPU petition must be resolved first. The foregoing condition will also apply even if a bankruptcy petition is submitted before a PKPU petition.⁵³

The following sections will elaborate upon the various provisions contained within the handbook which relate to the parties which may submit PKPU petitions, along with the requirements and procedures for the processing of such petitions, as well as follow-up measures which are to be implemented after a PKPU decision has been handed down.

A. Eligible Petitioners

Petitions for PKPU may be submitted by parties similar to those addressed in the above section on bankruptcy, with the exception of the OAG, the MoF⁵⁴ and receivers.⁵⁵ However, it is explicitly stated in the handbook that the types of creditors which are deemed eligible to submit PKPU petitions are limited to unsecured/concurrent creditors.⁵⁶

While there has not yet been any clarification offered by the Supreme Court as to why this limitation has been incorporated into the handbook, it is believed that it offers a higher level of protection for concurrent debtors. However, the quorum that has been set for approvals of reconciliation plans maintains the provisions set under Law 37/2004, which set the same quorum for both unsecured debtors and secured

⁵¹ Art. 222, Law 37/2004.

⁵² Prof. DR. Sutan Remy Sjahdeini, *"Sejarah, Asas dan Teori Hukum Kepailitan"*, p.433.

⁵³ Art. 229 (3 - 4), Law 37/2004.

⁵⁴ PKPU petitions for debtors which take the form of state-owned enterprises are submitted by the OJK. (Point 1.1.4, Section B, Book I, Appendix, Decree 3/2020)

⁵⁵ Points 1.1 - 1.2, Section B, Book I, Appendix, Decree 3/2020.

⁵⁶ Point 1.2.1, Section B, Book I, Appendix, Decree 3/2020.

debtors. Therefore, despite the limitation outlined above, the provisions in the handbook seem inconsistent with the initial idea of prohibiting secured creditors from submitting PKPU petitions in the first place.⁵⁷

In addition, the foregoing limitation may also conflict with Law 37/2004, which does not specify any such limitation under its framework. Instead, Law 37/2004 states that debtors can file petitions for PKPU in relation to debts that are owed to all types of creditors, from concurrent to separate creditors.⁵⁸

B. Petition Requirements

A PKPU petition should be submitted to the relevant commercial court⁵⁹ along with various required documents which differ based on the relevant type of petitioner, as elaborated upon in the table below.⁶⁰

Required Documents	Individuals		Non-Individuals					
	...as Debtor s	...as Creditor s	Legal Entities		Civil Partnerships		The OJK	
			...as Debtor s	...as Creditor s	...as Debtor s	...as Creditor s	...as Debtor r	...as Creditor r
Duly-stamped petition which is to be delivered to the head of the relevant commercial court. Said petition must be signed by an attorney, as well as by the relevant principal petitioner, whether as creditor or debtor (with the exception of petitions which are	✓	✓	✓	✓	✓	✓	✓	✓

⁵⁷ Hukumonline.com, "MA Terbitkan Aturan Baru Penyelesaian Perkara Kepailitan," as accessed through <https://www.hukumonline.com/berita/baca/lt5e67921a0ac53/ma-terbitkan-aturan-baru-penyelesaian-perkara-kepailitan/> on 24 March 2020.

⁵⁸ Art. 222 (2) and its elucidation, Law 37/2004.

⁵⁹ Art. 224 (1), Law 37/2004.

⁶⁰ Point 1.1 - 1.2, Section B, Book I, Appendix, Decree 3/2020.

submitted by the OJK). Four copies of this document must be provided								
Special power of attorney signed by the individuals, directors or administrators of the entities or by the Chairperson of the OJK	✓	✓	✓	✓	✓	✓	✓	✓
Letter of duty (<i>surat tugas</i>) issued by the Chairperson of the OJK or directors/chairpersons of the represented institutions	x	x	x	x	x	x	✓	✓
Valid license issued by a professional advocates' organization and official minutes of an advocate's oath-taking ceremony at the High Court	✓	✓	✓	✓	✓	✓	✓	✓
Identity of the principal petitioner	✓	✓	x	x	x	x	x	x
Legalized marriage certificate	✓	x	x	x	x	x	x	x

Spousal consent (if the petitioner is married and possesses joint assets with the relevant spouse)	✓	×	×	×	×	×	×	×
List describing the nature and amounts of receivables, debts of the debtor and sufficient evidence for such information	✓	×	✓	×	✓	×	✓	×
Evidence of the existence of a minimum of two creditors, to which one of the debts is due and payable	✓	✓	✓	✓	✓	✓	✓	✓
Reconciliation plan (if any)	✓	×	×	×	×	×	×	×
Proposed administrator, who must meet certain criteria ⁶¹	✓	✓	✓	✓	✓	✓	✓	✓
Deed of establishment	×	×	×	×	✓	✓	✓	×

⁶¹ The criteria are as follows: 1) Must be Indonesian citizens who are domiciled within Indonesia; 2) Must possess the skills to administer debtors' assets; 3) Must be registered with the Ministry; 4) Must enclose an affidavit confirming certain information (e.g. independence, lack of any conflicts of interest); and 5) Must be approved by the relevant creditors (only if a proposal is made by debtors, with the exception of the OJK). (Part [l], Point 1.1.1; Part [n], Point 1.1.2 - 1.1.3; Part [i], Point 1.1.4; Part [h], Point 1.2.2; Part [k], Point 1.2.3; Part [l], Point 1.2.4; and Part [g], Point 1.2.5, Section B, Book I, Appendix, Decree 3/2020)

Articles of association/bylaws, including their amendments (if any)	x	x	✓	✓	✓	✓	✓	✓
Minutes of RUPS or extraordinary RUPS in relation to the submission of the PKPU petition	x	x	✓	x	x	x	x	x
Final financial balance	x	x	✓	x	✓	x	✓	x
Loan agreement or any evidence of the existence of debt	x	x	x	x	x	x	✓	✓

It is important to note that all PKPU petitions, with the exception of any petitions which are submitted by individual debtors or creditors, must also be signed by the directors, administrators or owners of the relevant entities.⁶² Furthermore, all of the required documents must be prepared in electronic form in accordance with Circular of the Supreme Court [No. 14 of 2010](#) on Electronic Documents as Formal Requirements for the Filing of Cassation and Case Review Petitions, as amended by Circular of the Supreme Court [No. 1 of 2014](#).⁶³ Any petitions which are submitted electronically will be processed in accordance with the provisions set under Regulation 1/2019.⁶⁴

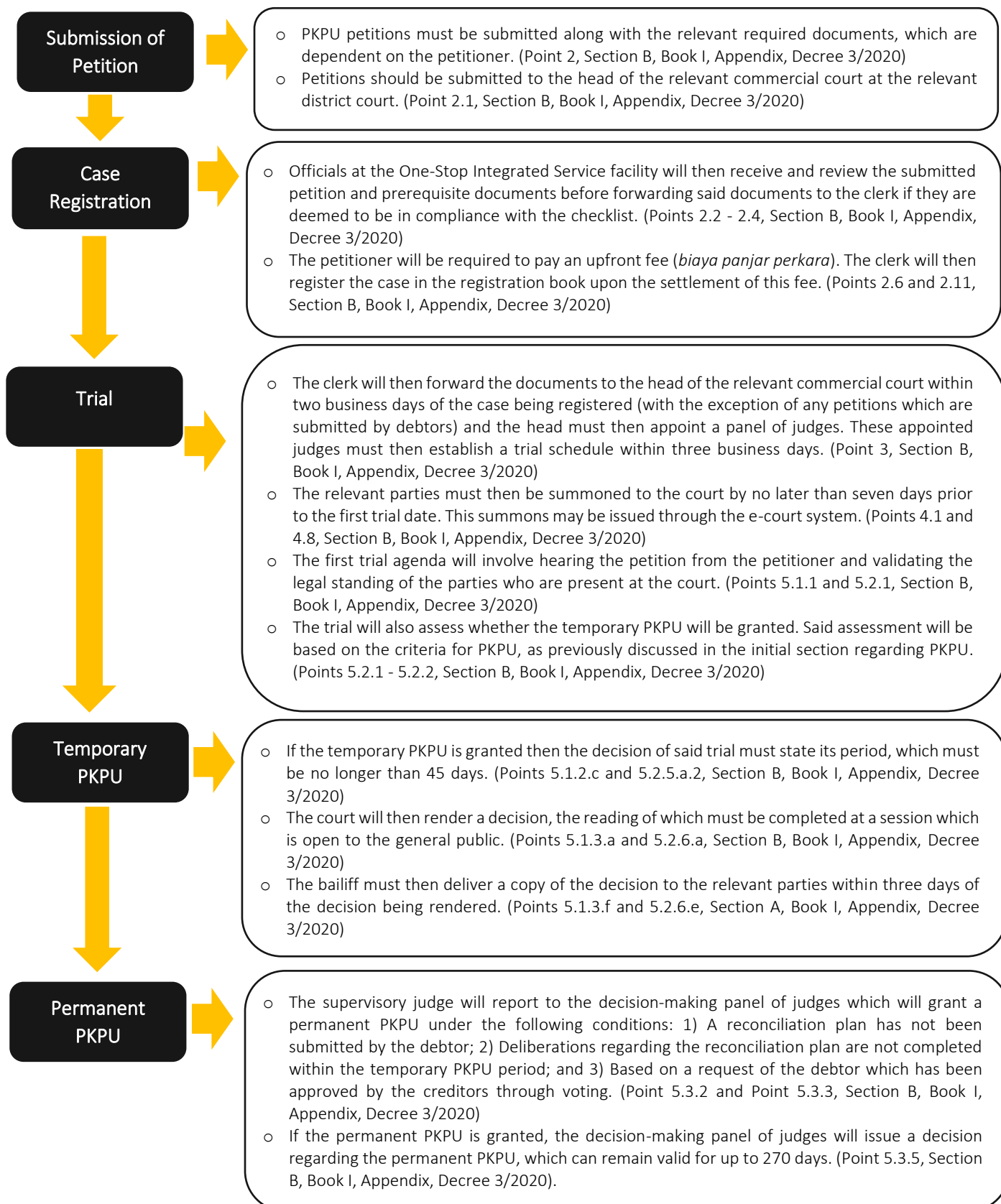
⁶² Points 1.1 - 1.2, Section B, Book I, Appendix, Decree 3/2020.

⁶³ For more information on the submission of electronic documents, see ILB [No. 2347](#).

⁶⁴ Points 1.1 - 1.2, Section B, Book I, Appendix, Decree 3/2020.

C. Overall Procedure for the Processing of PKPU Petitions

The overall procedure for the processing of PKPU petitions is set out in the following flowchart:



It is important to note that no legal remedy is available in relation to any decision on temporary or permanent PKPU.⁶⁵ Furthermore, a debtor may be declared bankrupt during a given PKPU process if:⁶⁶

1. A reconciliation plan during a temporary PKPU is not approved;
2. A permanent PKPU is not approved;
3. A reconciliation plan during a permanent PKPU is not approved;
4. The ratification of a reconciliation plan is rejected by the court.

There is also no legal remedy available in relation to any debtor that is declared during a PKPU process. Meanwhile, a cassation and case review may be implemented in relation to any PKPU that is terminated based on requests which are issued by creditor(s), a supervisory judge or the court, as set out under Article 255 of Law 37/2004. A cassation may also be implemented in relation to the ratification of a given reconciliation plan.⁶⁷

D. Follow-Up Measures to PKPU Decisions

Similar to the process which applies during bankruptcy petitions, the relevant supervisory judge is also required to order the administrator to fulfill the publicity principle by announcing the PKPU within the pages of two daily newspapers, as determined by the supervisory judge, as well as in the official gazette. Said announcements must be completed within five days of a given temporary PKPU decision being received by both the administrator and the supervisory judge.⁶⁸

Furthermore, the parties involved in a given PKPU case should attend creditors meetings during temporary PKPU, meetings for the verification of receivables during temporary PKPU, voting for permanent PKPU, and reconciliation and closing of PKPU. Each of these procedures is elaborated upon further below.

Creditors Meetings during Temporary PKPU

Similar to creditors meetings during bankruptcy cases, creditors meetings during PKPU cases are held in order to bring together the relevant creditor and debtor so that the debtor may explain the reason behind the PKPU petition.⁶⁹ However, since a reconciliation plan for a given PKPU case may be submitted either during the first submission of a PKPU petition, during the examination of a PKPU petition or upon a temporary PKPU decision being handed down, the supervisory judge will remind the debtor to submit the

⁶⁵ Points 5.4.1a and 5.4.3a, Section B, Book II, Appendix, Decree 3/2020.

⁶⁶ Point 5.4.2, Section B, Book II, Appendix, Decree 3/2020.

⁶⁷ Points 5.4.3a, 5.4.4 and 5.4.5, Section B, Book II, Appendix, Decree 3/2020.

⁶⁸ Point 1, Section B, Book II, Appendix, Decree 3/2020.

⁶⁹ Point 2.7, Section B, Book II, Appendix, Decree 3/2020.

reconciliation plan during the first creditors meeting if the debtor has not yet submitted a plan.⁷⁰ The creditors may then respond to the submitted reconciliation plan during the first meeting before the end of said meeting and prior to a schedule for a subsequent creditors meeting being set.⁷¹

During subsequent creditors' meetings, the supervisory judge will determine the schedule and location for a meeting which will discuss the reconciliation plan (if said plan has already been submitted and the supervisory judge has obtained responses from the parties involved).⁷²

It should be noted that a debtor may be declared bankrupt if said debtor does not attend the first and subsequent creditors' meetings.⁷³

Meetings for the Verification of Receivables during Temporary PKPU

Similar to meetings for the verification of receivables during bankruptcy cases, meetings for the verification of receivables during temporary PKPU should bring together the relevant debtor and creditors in order to approve or reject the list of receivables which are temporarily acknowledged or not acknowledged by the administrator.⁷⁴ However, as a pivotal difference, the supervisory judge has the sole discretion to issue disputes relating to the acknowledgment of receivables.⁷⁵

Voting for Permanent PKPU

Temporary PKPU will end and permanent PKPU will simultaneously commence if:⁷⁶

1. The debtor in a temporary PKPU fails to submit a reconciliation plan within 45 days and requests an extension which is then approved by the creditors; or
2. A reconciliation plan has been submitted but deliberations of said plan have not yet been completed and, as a result, the debtor requests an extension that is approved by the creditors.

A meeting at which a vote will be held in relation to a change of status (from temporary to permanent) and the granting of approval for the relevant extension should be attended by both unsecured and secured creditors. The stipulation of which will be issued by the court based on the following:⁷⁷

1. Approval from more than ½ of unsecured creditors with rights which are acknowledged or temporarily acknowledged, which attend the meeting and which represent a minimum of 2/3 of all receivables which are acknowledged or temporarily acknowledged; and

⁷⁰ Point 2.8, Section B, Book II, Appendix, Decree 3/2020.

⁷¹ Point 3.6, Section B, Book II, Appendix, Decree 3/2020.

⁷² Point 2.8, Section B, Book II, Appendix, Decree 3/2020.

⁷³ Point 9.1.1, Section B, Book II, Appendix, Decree 3/2020.

⁷⁴ Points 4.2.5 - 4.2.7, Section B, Book II, Appendix, Decree 3/2020.

⁷⁵ Point 4.2.10, Section B, Book II, Appendix, Decree 3/2020.

⁷⁶ Point 5.1, Section B, Book II, Appendix, Decree 3/2020.

⁷⁷ Points 5.3.1 - 5.3.2, Section B, Book II, Appendix, Decree 3/2020.

2. Approval from more than $\frac{1}{2}$ of secured creditors with rights which attend the meeting and which represent a minimum of $\frac{2}{3}$ of the receivables of all creditors who attend the meeting.

Reconciliation

As outlined in the previous section, a reconciliation plan for PKPU cases may be submitted during the following timeframes:⁷⁸

1. During the submission of a PKPU petition;
2. During the examination of a PKPU petition; or
3. Upon a temporary PKPU decision being rendered.

A reconciliation plan will be deemed to have been approved if:⁷⁹

1. It is approved by more than $\frac{1}{2}$ of unsecured creditors with rights which are acknowledged or temporarily acknowledged, which attend the creditors' meeting (including creditors whose rights are denied) and which represent a minimum of $\frac{2}{3}$ of all receivables which are acknowledged or temporarily acknowledged by unsecured creditors which attend said meeting; and
2. It is approved by more than $\frac{1}{2}$ of secured creditors who attend the meeting and represent a minimum of $\frac{2}{3}$ of all receivables from said creditors who attend the meeting.

If the voting results in the rejection of the reconciliation plan, then the debtor will be declared bankrupt.⁸⁰ However, if the voting results otherwise, then the approved plan must first be ratified.⁸¹ However, the court must reject the ratification if:⁸²

1. The amount of the debtor's assets is higher than the amount approved in the plan;
2. The execution of the plan is unassured;
3. The reconciliation is reached based on unlawful measures;
4. The compensation and fees for the relevant experts and administrators have not been settled or there is no guarantee that such a payment will be made.

If the ratification is rejected, then the debtor will also be declared bankrupt.⁸³

⁷⁸ Point 6.1, Section B, Book II, Appendix, Decree 3/2020.

⁷⁹ Point 6.3.1, Section B, Book II, Appendix, Decree 3/2020.

⁸⁰ Point 6.3.6, Section B, Book II, Appendix, Decree 3/2020.

⁸¹ Point 6.3.8, Section B, Book II, Appendix, Decree 3/2020.

⁸² Point 7.6, Section B, Book II, Appendix, Decree 3/2020.

⁸³ Point 7.7, Section B, Book II, Appendix, Decree 3/2020.

Closing of a PKPU Petition

A PKPU petition may come to an end upon a request being made by the relevant supervisory judge, creditor(s) or panel of judges. Furthermore, PKPU may be terminated if:⁸⁴

1. The debtor acts in bad faith during the PKPU period;
2. The debtor has harmed or tried to harm the creditors;
3. The debtor administers the assets without the permission of the administrator;
4. The debtor fails to undertake actions required during the PKPU period;
5. The condition of the debtor's assets is deemed unfit for the continuance of the PKPU period;
6. The debtor is assessed as being unable to fulfill their obligations to the creditors in due time.

⁸⁴ Points 8.1 - 8.2, Section B, Book II, Appendix, Decree 3/2020.

Conclusion

Despite several questionable provisions having being incorporated into the handbook, the Supreme Court's effort to publish said handbook has finally borne fruit and should be acknowledged. Not only does the handbook represent a real and significant attempt to create a comprehensive regulatory framework by gathering together various provisions that were originally set out under the implementing regulations to Law 37/2004 and thus provides technical clarification of the provisions set out under said law. The handbook also represents an attempt to provide a more updated set of guidelines by incorporating provisions that address the use of technology throughout bankruptcy and PKPU procedures. This will hopefully result in greater streamlining and efficiency, in the process of boosting Indonesia's ease-of-doing-business ranking.

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