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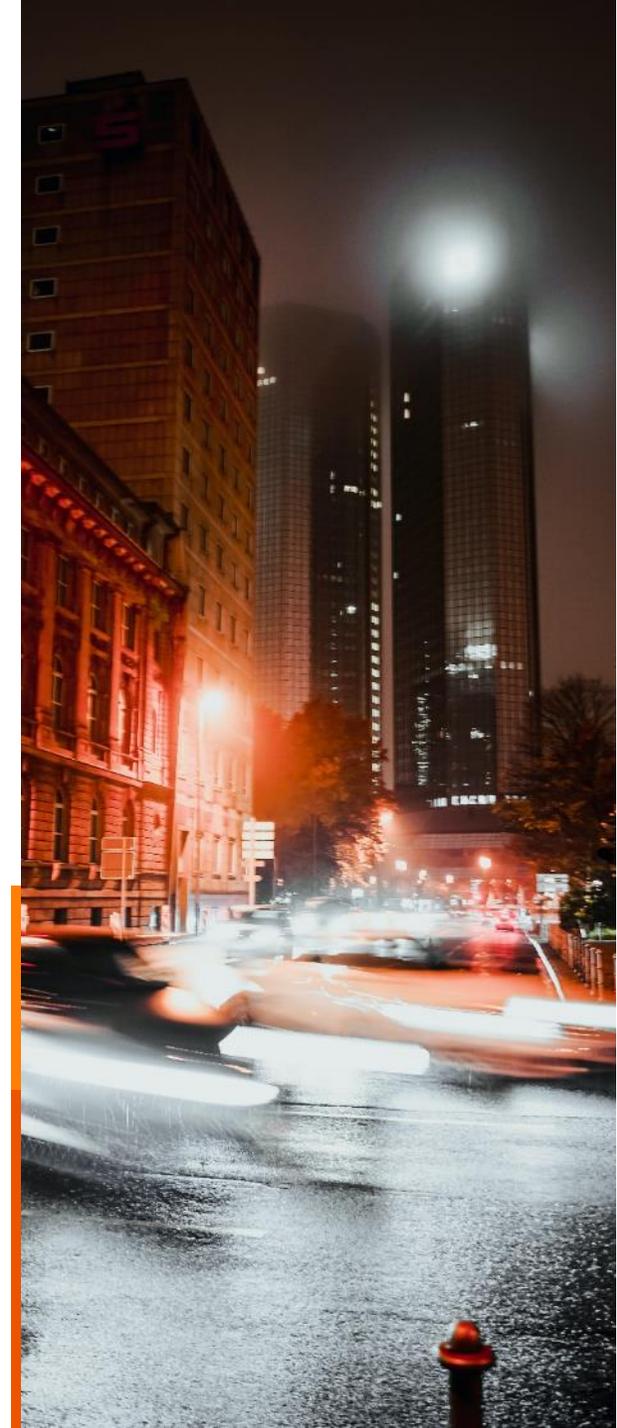
MEMBER OF RAJAH & TANN ASIA NETWORK CAMBODIA | CHINA | INDONESIA | LAOS | MALAYSIA | MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIETNAM

Points of Discussion

- 1) Challenges in enforcing contract, resolving insolvency, and getting credits;
- 2) Expectations from the business communities to ease of doing business in Indonesia;
- 3) Economic law that needs to be reformed.

General Issues

1. Lack of body of knowledge
2. Insufficient regulatory drafting from practical and enforcement perspective; significant gap between law on the books and practice
3. Institutional issues



Challenges in enforcing contract and security

Enforcement of default under a contract

Enforcing a default under a contract would need to go through a civil claim, which will take 3-5 years to conclude. Although it would be good to make the process more efficient, it is more critical to ensure that final and binding court decision can be fully enforced.

The main issues in enforcing a court decision are:

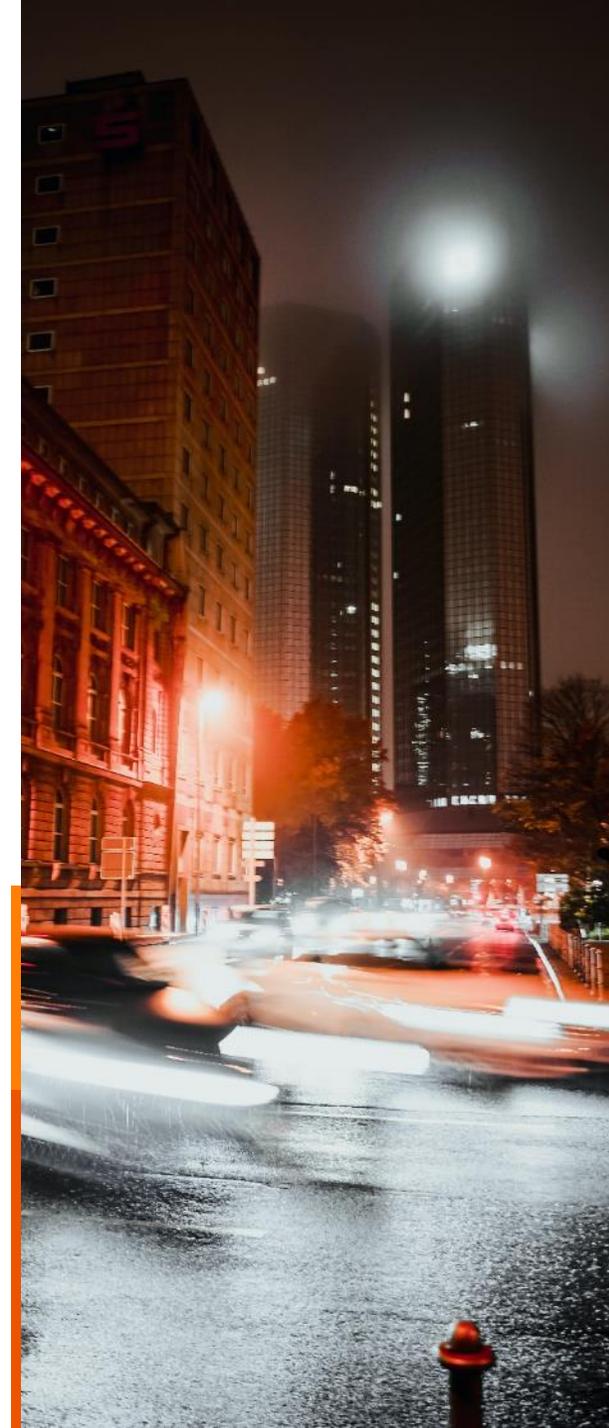
1. Courts requiring data/information specific to a certain asset to be enforced but such data/information can only be obtained with cooperation of the debtor/obligor, which would be difficult in enforcement scenario. Courts should be authorized to instruct judgment debtor to provide those information with legal consequences.
2. Enforcement over assets by the courts is lead by a juru sita which cannot take action by itself but rather have to coordinate with various parties to repossess the asset (e.g. the police, local administration). The courts may not have sufficient manpower or skills to accommodate this.



Challenges in enforcing contract and security

Enforcement of Security

- Enforcement of security can be done without going through the court process by auctioning the security through the state auction office. However:
 - Uncertainty of detailed mechanics (eg listed shares pledge: must be in ordinary market or can be in negotiated market, etc)
 - Method of enforcement uncertain eg:
 - if already in cash form, can creditors directly possess and appropriate?
 - If in form of receivables can secured creditors directly demand payment or must the receivables be auctioned?
 - For certain types of assets the auction office cannot or have no experience to auction e.g. receivables, insurance claims proceeds
 - Enforcement of certain security require certain information or documents that can only be procured with assistance from the debtor/ related party (e.g. for pledge of shares: updated shareholder register, statement from the board of directors. This is especially difficult since the pledgor and the company is represented by the same person or at least related.)
 - Enforcement of movable object if possession is not with creditor requires court assistance (similar issue as above).
- Even though legally permissible, private sale remains risky (prone to challenge)
- Even though not required, some creditors voluntarily choose to request court order for enforcement



Resolving Insolvency

Suspension of Debt Payment Proceeding (“PKPU”) and bankruptcy proceeding – whilst this process has been commonly used and somewhat effective, there are still numerous issues in its implementation e.g.:

- Dynamics with enforcement of security
- Lack of body of knowledge beyond petition and declaration and on detailed interpretation of the law
- Institutional problems:
 - Critical role of receiver/administrator, a race for nomination. If a debtor submits to a PKPU, the nomination of the receiver/administrator requires creditors’ consent. Thus, in practice, debtors would look for a friendly creditor to apply for a PKPU instead
 - Lack of standards/code of conducts and enforcement, transparency, accountability
 - Retention of knowledge among judges, unclear career path

Getting Credit

Main Issues:

- Remains relationship driven
- Unsecured credits is difficult to obtain and expensive given secured credits remain difficult to enforce
- Unclear process of enforcing security and contract as described above
- Lack of buyers in enforcement of security. Even if a security can be enforced, it may be difficult in finding a buyer our it would yield much lower price as buyer expect to face legal issues

Expectations from the business communities to ease of doing business in Indonesia

- Reduced formalities and red tape (some significant changes already)
- Better predictability of process and likely outcomes, less abuse of process

Economic law that needs to be reformed

- Many, but:
 - Priorities should be on detailed application and practicalities. Eg recent GR re IP as security
 - Focus on ensuring enforcement



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Thank You

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