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Criminal Justice Implications of Bankruptcy Abuse Against Solvent Debtors

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Abstract
Bankruptcy law provides a legal mechanism for resolving financial distress while safeguarding the legitimate interests of creditors and debtors. However, creditors may misuse bankruptcy proceedings against solvent debtors and transform a legitimate debt recovery mechanism into a means of coercion, procedural manipulation, and economic pressure. This practice raises serious criminal justice concerns when parties deliberately present misleading claims, conceal material financial information, manipulate judicial procedures, or initiate bankruptcy proceedings to pressure debtors who retain sufficient financial capacity to meet their obligations. This study examines the criminal justice implications of bankruptcy abuse against solvent debtors and evaluates whether the existing legal framework provides adequate safeguards against the misuse of bankruptcy proceedings. The research applies normative legal research through statutory, conceptual, and comparative approaches. The findings reveal that the current bankruptcy framework primarily determines bankruptcy through formal requirements concerning the existence of multiple creditors and at least one due and payable debt. Courts therefore may declare a debtor bankrupt without first determining whether the debtor actually lacks the financial capacity to satisfy its obligations. This legal structure exposes solvent debtors to bankruptcy petitions even when they possess sufficient assets and maintain viable business operations. More importantly, the absence of a substantive insolvency assessment enables parties to exploit bankruptcy proceedings for objectives unrelated to legitimate debt recovery. Fraud, deception, coercion, and deliberate procedural manipulation in bankruptcy proceedings may undermine procedural fairness, disrupt business continuity, and weaken the integrity of judicial institutions. Comparative analysis shows that an insolvency test can establish a substantive safeguard against abusive bankruptcy petitions by requiring an objective assessment of the debtor's financial condition. This study therefore proposes the incorporation of an insolvency test alongside stronger legal mechanisms for detecting and addressing abusive conduct in bankruptcy proceedings. These reforms would strengthen protection for solvent debtors, prevent procedural manipulation, reinforce legal accountability, and advance substantive justice within the criminal justice system.

Keywords: Bankruptcy; Criminal; Legal Protection; Solvent Debtors;

Introduction
Bankruptcy law constitutes an essential component of economic legal systems by providing a collective mechanism for debt resolution that

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promotes fairness and legal certainty for all interested parties.[1] Bankruptcy law not only protects creditors' rights to recover outstanding claims but also ensures proportionate legal protection for debtors experiencing financial difficulties so that business continuity (going concern) may be preserved whenever possible. From a philosophical perspective, bankruptcy functions as an *ultimum remedium* that should apply only to debtors who are genuinely unable to satisfy their financial obligations because of insolvency rather than to those who merely experience temporary payment delays or disputes concerning particular debts. Accordingly, bankruptcy law should maintain an appropriate balance between protecting creditors' interests, safeguarding debtors' rights, and supporting national economic stability.[2]

In Indonesia, bankruptcy is governed by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Legislators enacted this statute as part of the post 1997 Asian financial crisis legal reforms to establish a debt resolution mechanism that is efficient, expeditious, and capable of ensuring legal certainty.[3] Nevertheless, after more than two decades of implementation, numerous provisions of this legislation continue to generate significant juridical concerns regarding inadequate legal protection for debtors. One of its principal shortcomings arises from Article 2(1), which permits a bankruptcy petition upon proof that a debtor has at least two creditors and has failed to pay at least one due and payable debt without requiring any substantive assessment of the debtor's actual financial condition. This provision reflects adoption of presumption of insolvency doctrine, under which law presumes that a debtor is unable to meet financial obligations solely because statutory formal requirements have been satisfied, without first determining whether the debtor is genuinely insolvent.[4]

Application of this doctrine is further reinforced by Article 8(4) of Law Number 37 of 2004, which requires courts to grant a bankruptcy petition whenever requirements prescribed in Article 2(1) are established through

[1] Fang Zhang, 'Can Patient Capital Enhance Corporate Resilience? Evidence from China', *International Review of Economics and Finance*, 110 (2026) <https://doi.org/10.1016/j.iref.2026.105549>

[2] Zong Lan and others, 'The Effect of Creditor Judicial Protection on Trade Credit in Supply Chains: Evidence from the Establishment of Bankruptcy Courts in China', *International Review of Financial Analysis*, 112 (2026), 105132 https://doi.org/10.1016/J.IRFA.2026.105132

[3] Pranshu Tripathi and Anil K. Sharma, 'Bankruptcy Law and Capital Structure Choices in Economically vs. Financially Distressed Firms: Evidence from an Emerging Market', *Managerial Finance*, 52.1 (2025), 36–54 https://doi.org/10.1108/MF-02-2025-0078

[4] Nemiraja Jadiyappa and L. Emily Hickman, 'Creditors' Bankruptcy Rights and Accounting Conservatism: Evidence from a Quasi-Natural Experiment', *The British Accounting Review*, 58.3 (2026), 101574 https://doi.org/10.1016/J.BAR.2025.101574

summary evidentiary proceedings.[5] Consequently, bankruptcy proceedings focus primarily on formal proof concerning existence of creditors and outstanding debts, while debtor's actual financial condition does not constitute a mandatory element of judicial examination. Such a legal framework encourages a formalistic and procedural approach to bankruptcy adjudication and creates opportunities to misuse bankruptcy proceedings as a debt collection mechanism rather than as a legal remedy reserved for debtors who have genuinely experienced financial failure.[6]

This deficiency has become evident in several prominent bankruptcy cases in Indonesia. Bankruptcy proceedings involving PT Asuransi Jiwa Manulife Indonesia and PT Telekomunikasi Selular (Telkomsel) demonstrate that companies possessing substantial assets and strong financial capacity were nevertheless declared bankrupt because of relatively minor payment disputes. Although Supreme Court ultimately overturned those decisions, bankruptcy proceedings had already produced significant legal and economic consequences, including reputational damage, diminished investor confidence, and disruption of business activities.[7] These cases illustrate that absence of both an insolvency test and a statutory debt threshold under Law Number 37 of 2004 allows economically solvent companies to remain vulnerable to bankruptcy petitions.

This legal framework reveals an imbalance between protection afforded to creditors and that provided to debtors. Various provisions of Law Number 37 of 2004 predominantly favour creditors' interests while providing insufficient safeguards for debtors who retain adequate financial capacity. Once a bankruptcy judgment is rendered, all assets belonging to debtor become subject to a general attachment, and authority to administer those assets transfers to a court appointed receiver, as stipulated in Articles 21 and 24 of Law Number 37 of 2004. Consequently, debtor loses authority to manage its business operations, experiences deterioration of commercial reputation, and faces substantial reductions in enterprise value despite not being economically bankrupt.[8] Such consequences undermine principle of balance that underpins bankruptcy law and may adversely affect investment

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[5] Ranjeet Singh and others, 'Strengthening Operational Creditor Rights and Trade Credit: Evidence from Creditor Reforms', *Pacific-Basin Finance Journal*, 83 (2024), 102250 https://doi.org/10.1016/J.PACFIN.2024.102250

[6] Nicolae Stef, Sami Ben Jabeur, and Robert F. Scherer, 'Time to Resolve Insolvency and Political Elections', *International Review of Law and Economics*, 72 (2022), 106104 https://doi.org/10.1016/J.IRLE.2022.106104

[7] Kedi Wang and Chen Wu, 'Financial-Judicial Specialization and Corporate Misconduct: Evidence from the Establishment of the Shanghai Financial Court', *Economics Letters*, 229 (2023), 111198 https://doi.org/10.1016/J.ECONLET.2023.111198

[8] Geeta Singh, 'Dividend Policy Adjustments under Bankruptcy Law: Insights from Distressed Firms', *Finance Research Letters*, 70 (2024), 106253 https://doi.org/10.1016/J.FRL.2024.106253

climate and business certainty, both of which constitute essential prerequisites for sustainable national economic development.[9]

Comparative developments in bankruptcy law demonstrate a markedly different regulatory approach. Jurisdictions such as United States, United Kingdom, Australia, and Singapore have incorporated insolvency tests through either cash flow test or balance sheet test to determine whether a debtor is genuinely unable to satisfy financial obligations before bankruptcy may be declared.[10] This approach ensures that bankruptcy proceedings remain available only for debtors experiencing actual economic insolvency, thereby preserving business continuity and preventing misuse of bankruptcy as an instrument of commercial pressure against financially viable debtors. Compared with these developments, Indonesian bankruptcy law has yet to incorporate any formal insolvency assessment, creating a regulatory gap that weakens legal protection for solvent debtors.[11]

Previous studies have examined Indonesian bankruptcy law, particularly regarding adoption of insolvency test and protection of debtors in bankruptcy proceedings.[12] However, most of these studies focus primarily on necessity of incorporating an insolvency test as a substantive requirement for bankruptcy without comprehensively analysing presumption of insolvency doctrine as a fundamental source of structural deficiencies within Indonesian bankruptcy law. M. Hadi Shubhan emphasises importance of insolvency test in protecting solvent companies from bankruptcy abuse and concludes that such a mechanism should become an integral component of Indonesian bankruptcy system.[13] Nevertheless, this study does not specifically examine normative construction of presumption of insolvency doctrine or its implications for legal protection of solvent debtors from perspective of regulatory reform. Similarly, Tivana Arbiani Candini and Reisar Alka analyse insolvency test as a prerequisite for bankruptcy petitions and conclude that insolvency assessment should become a mandatory

[9] Frédéric Closset and Daniel Urban, 'The Balance of Power between Creditors and the Firm: Evidence from German Insolvency Law', *Journal of Corporate Finance*, 58 (2019), 454–77 https://doi.org/10.1016/J.JCORPFIN.2019.06.004

[10] Mehdi Arbati, Shahin Dabirian, and Ali Katebi, 'Prevent Insolvency in Construction Projects: A Strategic System Dynamics Model for Managing Line-of-Credit Financing', *KSCE Journal of Civil Engineering*, 30.6 (2026), 100509 https://doi.org/10.1016/J.KSCEJ.2026.100509

[11] James N. Cannon and others, 'The Effect of International Takeover Laws on Corporate Resource Adjustments: Market Discipline and/or Managerial Myopia?', *Journal of International Business Studies*, 51.9 (2020), 1443–77 https://doi.org/10.1057/s41267-020-00370-6

[12] Yue Zhang and Kai Wu, 'Bankruptcy Court Establishment and Corporate Risk-Taking', *Finance Research Letters*, 58 (2023), 104490 https://doi.org/10.1016/J.FRL.2023.104490

[13] M. Hadi Shubhan, 'Legal Protection of Solvent Companies from Bankruptcy Abuse in Indonesian Legal System', *Academic Journal of Interdisciplinary Studies*, 9.2 (2020), 142–48 https://doi.org/10.36941/AJIS-2020-0031

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requirement in bankruptcy proceedings.[14] However, their analysis remains confined to normative urgency of adopting an insolvency test and does not address conceptual weaknesses of presumption of insolvency doctrine, evidentiary mechanisms for assessing debtor's financial condition, or reconstruction of statutory norms contained in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Likewise, Kendry Tan examines significance of insolvency test in preventing unnecessary bankruptcy during COVID-19 pandemic and concludes that insolvency assessment plays a vital role in maintaining business continuity.[15] Nevertheless, this study concentrates primarily on extraordinary economic circumstances arising from pandemic and does not develop a comprehensive and permanent model for bankruptcy law reform.

Review of previous scholarship demonstrates that existing studies generally regard insolvency test as a normative solution to deficiencies within Indonesian bankruptcy system without comprehensively examining interrelationship between presumption of insolvency doctrine, legal protection for solvent debtors, and broader direction of bankruptcy law reform in Indonesia.[16] Furthermore, previous studies have not employed comparative legal analysis to evaluate differences between Indonesian bankruptcy law and legal systems that require proof of insolvency as a substantive prerequisite for bankruptcy, particularly those of Singapore, United Kingdom, and Australia.

This research lies not only in its comprehensive analysis of implications arising from application of presumption of insolvency doctrine for legal protection of solvent debtors within Indonesian bankruptcy system but also in formulation of a regulatory reconstruction model that integrates insolvency test as a substantive requirement for bankruptcy adjudication. Proposed reconstruction advocates reformulation of provisions contained in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, strengthening evidentiary mechanisms for assessing debtor's financial condition through independent public accountants, and incorporating comparative legal approaches derived from Singapore, United Kingdom, and Australia to establish a bankruptcy system that is more equitable, proportionate, and oriented toward protecting solvent debtors without diminishing legal certainty afforded to creditors. This research is

[14] Tivana Candini and https://independent.academia.edu/TivanaCandini, 'Insolvensi Tes Sebagai Dasar Permohonan Pailit Dalam Hukum Kepailitan DI Indonesia', *Gloria Justitia*, 2.2 (2022), 181–93 https://doi.org/10.25170/GLORIAJUSTITIA.V2I2.3900
[15] Kendry Tan, 'Preventing Debtor Bankruptcy during the Covid-19 Pandemic: Benefits of Suspension of Debt Payment Obligations & Insolvency Test?', *Journal of Judicial Review*, 24.2 (2022), 305–18 https://doi.org/10.37253/JJR.V24I2.7363
[16] Martijn A. Boermans and Robert Vermeulen, 'International Investment Positions Revisited: Investor Heterogeneity and Individual Security Characteristics', *Review of International Economics*, 28.2 (2020), 466–96 https://doi.org/10.1111/ROIE.12460

significant because it not only identifies regulatory deficiencies within Law Number 37 of 2004 but also evaluates extent to which application of presumption of insolvency doctrine has departed from philosophical objectives of bankruptcy law as a fair, balanced, and business-oriented mechanism for collective debt resolution. Findings of this study are expected to contribute to development of Indonesian bankruptcy law by formulating a more equitable framework of legal protection, including incorporation of insolvency test as a substantive prerequisite for bankruptcy petitions.

Methodology

This study employs normative legal research with a descriptive analytical design to examine legal protection for solvent debtors within Indonesian bankruptcy system as a consequence of applying presumption of insolvency doctrine. This research conceptualizes law as a normative system and analyses legal principles, doctrines, theories, and statutory provisions to evaluate whether normative framework of Indonesian bankruptcy law aligns with principles of justice, legal certainty, and legal utility. To achieve this objective, this study adopts statutory, conceptual, and comparative approaches.[17] Statutory approach examines Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations together with other relevant legislation. Conceptual approach analyses presumption of insolvency doctrine, concept of insolvency test, legal protection, legal certainty, and substantive justice. Comparative approach evaluates bankruptcy regulations in Singapore, United Kingdom, and Australia, with particular emphasis on implementation of insolvency test as a substantive prerequisite for determining bankruptcy status. Legal materials consist of primary, secondary, and tertiary legal sources obtained through library research. This study analyses all legal materials qualitatively by employing descriptive, comparative, and prescriptive methods to identify deficiencies in bankruptcy regulations that continue to rely upon presumption of insolvency doctrine, compare Indonesian legal framework with bankruptcy regimes adopted in selected jurisdictions, and formulate a regulatory reconstruction by integrating insolvency test as a substantive requirement for bankruptcy proceedings in order to strengthen equitable legal protection for solvent debtors.[18]

[17] Yunhao Dai, Keke Peng, and Xinchu Tong, 'Bankruptcy System Reform and Entrepreneurship: Evidence from the Establishment of Bankruptcy Courts in China', *Economic Analysis and Policy*, 91 (2026), 1301–21 https://doi.org/10.1016/J.EAP.2026.04.018

[18] Najah Attig, 'Relaxed Financial Constraints and Corporate Social Responsibility', *Journal of Business Ethics*, 189.1 (2024), 111–31 https://doi.org/10.1007/s10551-023-05353-9

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Results and Discussion

Doctrine of Presumption of Insolvency in Indonesia's Bankruptcy Legal System

Bankruptcy fundamentally constitutes a legal mechanism designed to resolve situations in which debtors have genuinely lost their ability to satisfy financial obligations owed to creditors.[19] Contemporary bankruptcy law no longer bases bankruptcy adjudication solely on existence of due and payable debts but instead emphasizes debtor's economic inability to meet financial obligations, commonly referred to as insolvency.[20] This concept has become a cornerstone of modern bankruptcy regimes because it enables courts to distinguish objectively between debtors experiencing genuine financial failure and those facing only temporary liquidity constraints.[21] Such a distinction is particularly significant because a bankruptcy order produces far reaching legal consequences, including imposition of a general attachment over all assets of debtor, transfer of authority to administer and control those assets to a court appointed receiver, and substantial restrictions on debtor's ability to continue business operations, as provided under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

Historical development of Indonesian bankruptcy law traces concept of insolvency to Faillissementsverordening (State Gazette of 1905 No. 217 in conjunction with State Gazette of 1906 No. 348), which adopted concept of cessation of payment *staking van betaling*, referring to circumstances in which a debtor ceased making payments to creditors. Nevertheless, this legal regime did not establish clear economic criteria for determining how such inability to pay should be demonstrated. Following enactment of Law Number 37 of 2004, legislative orientation shifted from concept of "cessation of payment" toward requirement that debtor has failed to pay at least one due and payable debt, as stipulated in Article 2(1). This shift indicates that Indonesian bankruptcy law prioritizes existence of debtor creditor legal relationships rather than substantive evaluation of debtor's financial condition.[22] Consequently, bankruptcy status no longer depends upon proof

[19] Yuanbiao Huang and Jinlei Li, 'Regulatory Enforcement Actions and Bank Liquidity Creation: Evidence from China', *Global Finance Journal*, 67 (2025) https://doi.org/10.1016/j.gfj.2025.101169

[20] Udichibarna Bose, Stefano Filomeni, and Sushanta Mallick, 'Does Bankruptcy Law Improve the Fate of Distressed Firms? The Role of Credit Channels', *Journal of Corporate Finance*, 68 (2021) https://doi.org/10.1016/j.jcorpfin.2020.101836

[21] Abdul Rashid, Muhammad Akmal, and Syed Muhammad Abdul Rehman Shah, 'Corporate Governance and Risk Management in Islamic and Convectional Financial Institutions: Explaining the Role of Institutional Quality', *Journal of Islamic Accounting and Business Research*, 15.3 (2023), 466–98 https://doi.org/10.1108/JIABR-12-2021-0317

[22] Olusola Joshua Olujobi, 'Combating Insolvency and Business Recovery Problems in the Oil Industry: Proposal for Improvement in Nigeria's Insolvency and Bankruptcy Legal Framework', *Heliyon*, 7.2 (2021), e06123 https://doi.org/10.1016/J.HELIYON.2021.E06123

of actual insolvency but instead upon satisfaction of statutory formal requirements.[23]

This normative framework has given rise to presumption of insolvency doctrine, under which a debtor is presumed incapable of satisfying financial obligations merely because statutory requirements contained in Articles 2(1) and 8(4) of Law Number 37 of 2004 have been fulfilled. This doctrine represents a form of legal presumption that equates failure to pay a single due and payable debt with insolvency without requiring any substantive assessment of debtor's financial health.[24] As a consequence, judicial examination of bankruptcy petitions focuses primarily on administrative verification of existence of at least two creditors and one due and payable debt rather than on comprehensive evaluation of debtor's overall financial capacity.[25]

From a conceptual perspective, this approach conflates concepts of default and insolvency, although these doctrines possess fundamentally different legal meanings.[26] Default refers to failure to perform a specific contractual obligation, whereas insolvency describes a broader financial condition in which a debtor is no longer capable of satisfying overall financial obligations. Not every instance of default indicates insolvency.[27] Companies possessing substantial assets, positive cash flow, and strong commercial prospects may experience temporary payment delays arising from contractual disputes, financial restructuring, or short-term liquidity constraints. Conversely, a company may already be insolvent despite continuing to satisfy certain obligations where its aggregate liabilities exceed value of its assets and future cash generating capacity.[28] Accordingly, equating default with insolvency

[23] Nana Yang and Yongqian Tu, 'Can the Application of Artificial Intelligence Improve Corporate Governance Level of Listed Companies? The Moderating Role and Heterogeneity of Patient Capital', *International Review of Financial Analysis*, 110 (2026) https://doi.org/10.1016/j.irfa.2025.104869
[24] Hiteshkumar Thakkar, Khyati Maurya, and Saransh Sood, 'Law and Economics Approach to Information Asymmetry in Insolvency Resolutions: Enhancing Creditor Confidence and Resolution Outcomes under India's IBC Framework', *International Journal of Law and Management*, 2025 https://doi.org/10.1108/IJLMA-02-2025-0054
[25] Kirill Borusyak, Xavier Jaravel, and Jann Spiess, 'Revisiting Event-Study Designs: Robust and Efficient Estimation', *Review of Economic Studies*, 91.6 (2024), 3253–85 https://doi.org/10.1093/restud/rdae007
[26] John Jianqiu Bai, Douglas Fairhurst, and Matthew Serfling, 'Employment Protection, Investment, and Firm Growth', *Review of Financial Studies*, 33.2 (2020), 644–88 https://doi.org/10.1093/rfs/hhz066
[27] Frédéric Closset and others, 'Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms', *Journal of Banking & Finance*, 149 (2023), 106756 https://doi.org/10.1016/J.JBANKFIN.2022.106756
[28] Imad Khalil Abu Hag and others, 'Third Party Funding (TPF) in Arbitration: An Analytical Study in Jordanian Arbitration Law', *Journal of Human Security*, 21.1 (2025), 98–105 https://doi.org/10.12924/JOHS2025.210116

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constitutes an oversimplified legal assumption that may produce bankruptcy decisions inconsistent with debtor's actual economic condition.[29]

Unlike Indonesian bankruptcy system, contemporary bankruptcy regimes in many jurisdictions have shifted from a predominantly formalistic approach toward a substantive assessment of insolvency as an essential prerequisite for bankruptcy.[30] Singapore has adopted this approach through Insolvency, Restructuring and Dissolution Act 2018 (IRDA), which employs concept of inability to pay debts as principal criterion for determining insolvency. Singaporean courts evaluate not only whether debts have become due and payable but also whether company possesses actual financial capacity to satisfy obligations based upon its overall financial condition.[31] This approach enables courts to distinguish between businesses experiencing temporary liquidity difficulties and those suffering genuine financial collapse, thereby preventing misuse of bankruptcy proceedings as a strategic instrument in commercial disputes.[32]

United Kingdom adopts an even more comprehensive framework through Insolvency Act 1986. Section 123 establishes two principal criteria for determining insolvency, namely cash flow test and balance sheet test. Cash flow test evaluates whether debtor can satisfy obligations as they become due, whereas balance sheet test examines whether company's total liabilities exceed value of its assets.[33] Combined application of these tests ensures that bankruptcy adjudication rests not merely upon existence of contractual default but also upon a comprehensive assessment of financial health and long term economic viability of business.[34] Consequently, United Kingdom bankruptcy law treats bankruptcy primarily as a mechanism for addressing genuine economic failure rather than merely resolving debt disputes.

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[29] Balagopal Gopalakrishnan and Sanket Mohapatra, 'Insolvency Regimes and Firms' Default Risk under Economic Uncertainty and Shocks', *Economic Modelling*, 91 (2020), 180–97 https://doi.org/10.1016/J.ECONMOD.2020.06.005
[30] Chuanlin Lin and Shiyuan Zhan, 'Does the Establishment of Bankruptcy Courts Affect the Risk of Corporate Collapse?', *International Review of Financial Analysis*, 96 (2024), 103792 https://doi.org/10.1016/J.IRFA.2024.103792
[31] Thomas Bourveau, Yun Lou, and Rencheng Wang, 'Shareholder Litigation and Corporate Disclosure: Evidence from Derivative Lawsuits', *Journal of Accounting Research*, 56.3 (2018), 797–842 https://doi.org/10.1111/1475-679x.12191
[32] Nuri Ersahin, 'Creditor Rights, Technology Adoption, and Productivity: Plant-Level Evidence', *Review of Financial Studies*, 33.12 (2020), 5784–5820 https://doi.org/10.1093/rfs/hhaa038
[33] Abdullah Nasser A. Aldahmash, 'The Petition for a Liquidation Procedure and the Administrative Liquidation Procedure: A Comparative Analysis Study in Saudi and UK Insolvency Law', *International Journal of Law and Management*, 68.4 (2026), 628–52 https://doi.org/10.1108/IJLMA-10-2024-0384
[34] Ahmed Imran Hunjra and others, 'The Impact of a Dual Banking System on Macroeconomic Efficiency', *Research in International Business and Finance*, 61 (2022) https://doi.org/10.1016/j.ribaf.2022.101647

Australia has likewise adopted a substantive insolvency framework through Corporations Act 2001, particularly Section 95A, which defines an insolvent company as one that is unable to pay debts when they become due and payable.[35] Australian courts determine insolvency by considering multiple economic indicators, including cash flow, composition of assets and liabilities, ability to obtain additional financing, and prospects for maintaining business continuity as a going concern.[36] This approach demonstrates that bankruptcy determinations require integration of legal analysis with objective economic assessment, thereby producing judicial decisions that more accurately reflect debtor's actual financial condition.[37] Comparison of these jurisdictions demonstrates that principal distinction between Indonesian bankruptcy law and bankruptcy regimes in Singapore, United Kingdom, and Australia lies in absence of any normative obligation under Indonesian law to establish debtor's insolvency before bankruptcy may be declared.[38]

Singapore, United Kingdom, and Australia consistently recognize insolvency as a substantive legal requirement that must be demonstrated through objective financial indicators, whereas Indonesian bankruptcy law continues to prioritize formal proof concerning existence of creditors and outstanding debts.[39] This distinction illustrates that Indonesian bankruptcy system continues to adhere to presumption of insolvency paradigm, while those jurisdictions have embraced proof of insolvency paradigm requiring substantive evidence of debtor's financial condition before bankruptcy status may be imposed.[40] Differences between these competing paradigms carry significant implications for legal protection afforded to both creditors and debtors. Legal systems adopting proof of insolvency provide balanced protection by ensuring collective satisfaction of creditors' claims while simultaneously protecting financially viable debtors from premature

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[35] Yong Sun and Richard Bailey, 'Effect of Applied Cathodic Potential on Friction and Wear Behavior of Cocrmo Alloy in Nacl Solution', *Lubricants*, 8.11 (2020), 1–15 https://doi.org/10.3390/lubricants8110101

[36] Yusto Lucian Habiye, Rajendra Parsad Gunputh, and Sameerchand Pudaruth, 'Verdicts on the Optimization of Corporate Insolvency Legal Frameworks for Sustainable Development in Tanzania and Mauritius', *International Journal of Law and Management*, 68.2 (2026), 276–95 https://doi.org/10.1108/IJLMA-09-2024-0324

[37] Petter Gottschalk, 'Deferred Prosecution Agreements as Miscarriage of Justice: An Exploratory Study of Corporate Convenience', *Journal of Economic Criminology*, 4 (2024), 100059 https://doi.org/10.1016/J.JECONC.2024.100059

[38] Chenxi Xu and Lingyan Yang, 'The Level of Digitalization in Commercial Banks and Bank Liquidity Creation', *Finance Research Letters*, 63 (2024) https://doi.org/10.1016/j.frl.2024.105280

[39] Juhi Gupta and Smita Kashiramka, 'Financial Stability of Banks in India: Does Liquidity Creation Matter?', *Pacific Basin Finance Journal*, 64 (2020) https://doi.org/10.1016/j.pacfin.2020.101439

[40] Luigi Bocola and Alessandro Dovis, 'Self-Fulfilling Debt Crises: A Quantitative Analysis', *American Economic Review*, 109.12 (2019), 4343–77 https://doi.org/10.1257/aer.20161471

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bankruptcy proceedings.[41] By contrast, systems that continue to apply presumption of insolvency primarily safeguard creditors' interests because courts may declare bankruptcy without examining debtor's actual financial condition. Consequently, bankruptcy proceedings risk evolving from a mechanism designed to resolve genuine insolvency into a strategic litigation tool employed to strengthen bargaining positions in commercial disputes.[42]

Table 1. Comparison of Bankruptcy Legal Frameworks, Insolvency Standards, and Debtor Protection Models in Indonesia, Singapore, the United Kingdom, and Australia

Aspect	Indonesia	Singapore	United Kingdom	Australia
Legal Framework	Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations	*Insolvency, Restructuring and Dissolution Act 2018*	*Insolvency Act 1986*	*Corporations Act 2001*
Basis for Bankruptcy Determination	Existence of two or more creditors and one due and payable debt	Inability to pay debts (*unable to pay debts*)	Inability to pay debts determined through the *cash flow test* and *balance sheet test*	Inability to pay debts based on the company's financial condition
Judicial Focus in Bankruptcy Proceedings	Verification of formal statutory requirements	Assessment of the debtor's financial condition	Assessment of the debtor's solvency and overall financial health	Assessment of the debtor's solvency and business continuity prospects
Model of Debtor Protection	Predominantly reactive legal protection after a bankruptcy order is issued	Preventive legal protection through insolvency assessment	Preventive legal protection through proof of insolvency	Preventive legal protection through evaluation of the debtor's financial condition
Legal Paradigm	Presumption of Insolvency	Proof of Insolvency	Proof of Insolvency	Proof of Insolvency

Source: Compiled by the Author

Table above demonstrates that Indonesian bankruptcy law continues to adhere to presumption of insolvency paradigm, whereas Singapore, United Kingdom, and Australia have adopted proof of insolvency paradigm, which

[41] Sergii Kiiashko, 'Optimal Time-Consistent Government Debt Maturity, Fiscal Policy, and Default', *Journal of the European Economic Association*, 20.5 (2022), 2062–97 https://doi.org/10.1093/jeea/jvac024

[42] Lixin Jiang, Sergio López Bohle, and Maree Roche, 'Contingent Reward Transactional Leaders as "Good Parents": Examining the Mediation Role of Attachment Insecurity and the Moderation Role of Meaningful Work', *Journal of Business and Psychology*, 34.4 (2019), 519–37 https://doi.org/10.1007/s10869-018-9553-x

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requires substantive evidence of debtor's financial condition before a bankruptcy order may be issued. This fundamental distinction provides a strong normative basis for arguing that reform of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations should incorporate an insolvency test as a substantive prerequisite for bankruptcy in order to strengthen legal protection for solvent debtors. Comparative legal analysis further reveals that presumption of insolvency doctrine constitutes a defining characteristic of Indonesian bankruptcy system and distinguishes it from contemporary developments in modern bankruptcy law.[43] Although this doctrine promotes procedural efficiency by simplifying evidentiary requirements and expediting bankruptcy proceedings, such an approach has not fully achieved an appropriate balance among legal certainty, justice, and legal utility.[44] Experiences of Singapore, United Kingdom, and Australia demonstrate that integrating an insolvency test as a substantive requirement for bankruptcy not only improves accuracy of bankruptcy adjudication but also enhances legal protection for financially solvent debtors without diminishing creditors' rights to obtain satisfaction of their claims.[45] Accordingly, this comparative legal analysis provides an important normative foundation for evaluating implications of applying presumption of insolvency doctrine within Indonesian bankruptcy system and for assessing necessity of regulatory reform, which is examined in the following section.

Strengthening Criminal Justice Implications of Bankruptcy Abuse Against Solvent Debtors

Application of presumption of insolvency doctrine within Indonesian bankruptcy system produces consequences that extend far beyond evidentiary issues in proceedings before Commercial Courts. This doctrine directly determines extent to which legal protection is afforded to debtors who remain economically solvent.[46] When a bankruptcy order may be issued solely upon satisfaction of formal statutory requirements under Article 2(1) in conjunction with Article 8(4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, without requiring objective proof of debtor's actual financial condition, legal protection shifts from a preventive mechanism to one that operates only after bankruptcy has

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[43] David Schoenherr and Jan Starmans, 'When Should Bankruptcy Law Be Creditor- or Debtor-Friendly? Theory and Evidence', *Journal of Finance*, 77.5 (2022), 2669–2717 https://doi.org/10.1111/JOFI.13171

[44] Mabel D. Costa, Ahsan Habib, and Md Borhan Uddin Bhuiyan, 'Financial Constraints and Asymmetric Cost Behavior', *Journal of Management Control*, 32.1 (2021), 33–83 https://doi.org/10.1007/s00187-021-00314-7

[45] Luigi Bocola and Guido Lorenzoni, 'Financial Crises, Dollarization, and Lending of Last Resort in Open Economies', *American Economic Review*, 110.8 (2020), 2524–57 https://doi.org/10.1257/aer.20180830

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been declared.[47] Consequently, law no longer functions to prevent erroneous bankruptcy adjudications but merely provides debtors with an opportunity to pursue legal remedies after a bankruptcy judgment has already produced its legal effects.

First and foremost, a bankruptcy order immediately deprives debtor of authority to administer and control all assets included in bankruptcy estate. Article 24(1) of Law Number 37 of 2004 provides that, from date on which bankruptcy judgment is pronounced, debtor loses all rights to manage and dispose of assets forming part of bankruptcy estate, and such authority transfers to a court appointed receiver under supervision of supervisory judge.[48] This arrangement constitutes a logical consequence where debtor has genuinely become insolvent and collective administration of assets is necessary to protect interests of all creditors.[49] Difficulties arise, however, when these severe legal consequences are imposed upon debtors who remain financially capable of satisfying their obligations. Under such circumstances, transfer of control to a receiver no longer functions as a mechanism for resolving insolvency but instead becomes an unwarranted restriction upon debtor's proprietary rights that lacks any objective assessment of actual financial condition.

From perspective of private law, bankruptcy not only removes debtor's authority over its assets but also substantially restricts freedom to conduct business operations. Every legal act involving bankruptcy estate must be undertaken through receiver, thereby reducing company's ability to make timely commercial decisions.[50] For businesses that continue to operate normally, this situation may interrupt production activities, delay performance of contractual obligations, and disrupt legal relationships with customers, suppliers, and financial institutions.[51] Consequently, consequences of bankruptcy extend beyond administration of assets and

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[47] Nacera Yeddou and Marc Pourroy, 'Bank Liquidity Creation: Does Ownership Structure Matter?', *Quarterly Review of Economics and Finance*, 78 (2020), 116–31 https://doi.org/10.1016/j.qref.2020.01.003

[48] Anthony Piscitelli and others, 'The Best Interests of a Cooperative', *Journal of Co-Operative Organization and Management*, 13.1 (2025), 100257 https://doi.org/10.1016/J.JCOM.2024.100257

[49] Dilesh Rawal, Jitendra Mahakud, and Rohan Kumar Mishra, 'Do Stronger Creditors' Rights and an Efficient Bankruptcy Process Affect the Speed of Adjustment to Target Capital Structure? Evidence from a Quasi-Natural Experiment', *Cogent Economics and Finance*, 12.1 (2024) https://doi.org/10.1080/23322039.2024.2394490

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[51] Musaib Ashraf and Jayanthi Sunder, 'Can Shareholders Benefit from Consumer Protection Disclosure Mandates? Evidence from Data Breach Disclosure Laws', *Accounting Review*, 98.4 (2023), 1–32 https://doi.org/10.2308/tar-2020-0787

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directly threaten business continuity, which should remain protected where company continues to demonstrate financial solvency.[52]

Application of presumption of insolvency doctrine also produces significant economic consequences. Within modern commercial practice, corporate reputation represents an intangible asset of substantial economic value. Once a company is declared bankrupt, investors, creditors, business partners, and wider market immediately reassess its credibility and financial reliability.[53] Even before liquidation of assets commences, bankruptcy status frequently undermines market confidence, restricts access to financing, causes termination of commercial relationships, and diminishes enterprise value.[54] Such losses generally cannot be fully remedied merely through reversal of bankruptcy judgment because restoration of corporate reputation requires considerable time and sustained commercial recovery.[55] Accordingly, an erroneous bankruptcy declaration against a financially solvent debtor may generate economic losses far exceeding value of disputed debt itself.

These implications became particularly evident in bankruptcy proceedings involving PT Telekomunikasi Selular (Telkomsel). Decision of Central Jakarta Commercial Court No. 48/Pailit/2012/PN.Niaga.Jkt.Pst demonstrates that a financially robust company could nevertheless be declared bankrupt solely because statutory formal requirements had been satisfied. At time proceedings were conducted, Telkomsel possessed total assets of approximately IDR 58.93 trillion and generated net profits of approximately IDR 11.72 trillion, whereas disputed debt amounted to only approximately IDR 5.3 billion. This comparison clearly illustrates that Telkomsel possessed more than sufficient financial capacity to satisfy its obligations.[56] Nevertheless, company's solvency received little judicial consideration because applicable evidentiary framework did not require courts to assess debtor's financial health. Although Supreme Court subsequently overturned this decision through Decision No. 704 K/Pdt.Sus/2012, reversal did not

[52] Iñigo Martin-Melero and others, 'Comparison of Corporate Insolvency Prediction in Spain Employing Financial Ratios in Analytical Models and Machine Learning', *Academia Revista Latinoamericana de Administración*, 38.1 (2025), 134–55 https://doi.org/10.1108/ARLA-04-2024-0060

[53] Frédéric Closset and Daniel Urban, 'The Balance of Power between Creditors and the Firm: Evidence from German Insolvency Law', *Journal of Corporate Finance*, 58.1 (2019), 454–77 https://doi.org/10.1016/j.jcorpfin.2019.06.004

[54] Elisabeta Pana, 'A Bibliometric Review of Liquidity Creation', *Research in International Business and Finance*, 64 (2023) https://doi.org/10.1016/j.ribaf.2022.101841

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eliminate fact that bankruptcy mechanism had already been invoked against a company that was objectively not insolvent.

Telkomsel case further illustrates how presumption of insolvency doctrine creates opportunities for bankruptcy abuse by allowing bankruptcy petitions to function as instruments of commercial pressure. In practice, creditors may exploit threat of bankruptcy strategically to strengthen bargaining position during contractual negotiations, even where dispute merely concerns ordinary contractual performance.[57] Such practices transform bankruptcy from a collective debt resolution mechanism into a coercive litigation strategy. Consequently, fundamental objective of bankruptcy law to maintain balance between interests of creditors and debtors becomes distorted because creditors acquire disproportionately greater leverage than debtors who continue to possess adequate financial capacity.[58]

A contrasting illustration emerges from insolvency proceedings involving PT Asuransi Jiwasraya (Persero). Unlike Telkomsel, which remained financially solvent, Jiwasraya experienced genuine insolvency because it became unable to satisfy obligations owed to policyholders. Nevertheless, creditors could not immediately petition for bankruptcy because Article 2(5) of Law Number 37 of 2004 grants exclusive authority to Financial Services Authority (*Otoritas Jasa Keuangan* OJK) to initiate bankruptcy proceedings against insurance companies. This regulatory framework demonstrates that Indonesian legislature implicitly recognizes necessity of conducting a more comprehensive assessment before declaring certain business entities bankrupt, particularly where such entities perform systemic functions within national economy.[59]

Comparison between these two cases reveals a significant inconsistency within Indonesian bankruptcy system.[60] On one hand, companies experiencing genuine insolvency receive additional procedural protection through regulatory oversight before bankruptcy proceedings may commence. On other hand, financially healthy companies remain vulnerable to immediate bankruptcy declarations solely because statutory formal requirements have been fulfilled. Such differential treatment demonstrates that legal protection afforded to debtors depends primarily upon classification of business entity rather than objective assessment of financial

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[58] Saibal Ghosh, 'Loan Delinquency in Banking Systems: How Effective Are Credit Reporting Systems?', *Research in International Business and Finance*, 47 (2019), 220–36 https://doi.org/10.1016/j.ribaf.2018.07.011
[59] Mark Aguiar and others, 'Take the Short Route: Equilibrium Default and Debt Maturity', *Econometrica*, 87.2 (2019), 423–62 https://doi.org/10.3982/ecta14806
[60] Saibal Ghosh, 'Credit Quality Determinants of Banks: How Important Are Bankruptcy Reforms?', *Journal of Economic Studies*, 50.8 (2023), 1672–93 https://doi.org/10.1108/jes-08-2022-0415

condition.[61] Bankruptcy however, should fundamentally be determined by debtor's actual economic circumstances rather than by industrial sector in which debtor conducts commercial activities.

From perspective of rule of law, this inconsistency also raises concerns regarding constitutional guarantee of fair legal certainty embodied in Article 28D (1) of Constitution of Republic of Indonesia of 1945. Legal certainty should not be understood merely as consistent application of procedural rules but must also require congruence between legal norms and factual circumstances underlying their application.[62] Where bankruptcy status is imposed without objective evaluation of debtor's financial condition, resulting legal certainty remains purely formal while substantive justice is left unfulfilled. In Gustav Radbruch's jurisprudence, legal systems that prioritize formal certainty at expense of justice ultimately lose their moral legitimacy as instruments for achieving legal order and justice within society.[63]

The implications of presumption of insolvency doctrine extend beyond deprivation of debtor's authority over bankruptcy estate. This doctrine also produces substantial economic losses, creates opportunities for abuse of bankruptcy proceedings, and weakens legal protection for debtors who remain objectively solvent.[64] These circumstances indicate that Indonesian bankruptcy system has not yet achieved an appropriate balance between interests of creditors and debtors.[65] Strengthening legal safeguards therefore requires incorporation of mechanisms capable of ensuring that bankruptcy status is imposed exclusively upon debtors who have genuinely lost their financial capacity to satisfy obligations. Inadequate legal protection afforded to solvent debtors within Indonesian bankruptcy system fundamentally stems from normative framework established by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which continues to treat formal statutory requirements as primary basis for determining bankruptcy status. Article 2(1) requires only existence of two or more creditors and one due and payable debt, while Article 8(4) mandates that a bankruptcy petition be granted once these facts have been established through summary evidentiary proceedings.[66] Although this normative construction promotes procedural certainty and expedites

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[62] Shubhan.
[63] Giovanni Callegari and others, 'On a Lender of Last Resort with a Central Bank and a Stability Fund', *Review of Economic Dynamics*, 50 (2023), 106–30 https://doi.org/10.1016/J.RED.2023.07.012
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bankruptcy adjudication, it provides courts with no meaningful opportunity to evaluate debtor's overall financial condition. Consequently, Indonesian bankruptcy system remains unable to distinguish clearly between debtors experiencing genuine insolvency and those that retain sufficient financial capacity but temporarily encounter liquidity constraints, business restructuring, or contractual disputes.[67] Absence of statutory parameters governing insolvency demonstrates that Law Number 37 of 2004 has yet to accommodate developments in modern bankruptcy law, which recognize debtor's financial condition as principal foundation for bankruptcy adjudication.

From a normative perspective, this deficiency also reveals an imbalance between protection afforded to creditors and that available to debtors.[68] Bankruptcy law undoubtedly seeks to provide creditors with legal certainty through collective enforcement of claims by means of a general attachment over debtor's assets. Nevertheless, this objective cannot be pursued at expense of debtor's constitutional right to fair legal certainty as guaranteed under Article 28D (1) of Constitution of Republic of Indonesia of 1945. Within a constitutional state governed by rule of law, legal certainty requires not only transparent procedural rules but also objective, proportionate, and justifiable grounds for every restriction imposed upon private proprietary rights.[69] Declaring a financially solvent debtor bankrupt without first conducting an objective assessment of its financial condition therefore risks violating principles of due process of law and proportionality, both of which constitute essential characteristics of a democratic state governed by law.

Addressing these deficiencies requires strengthening legal protection for solvent debtors through integration of an insolvency test as a substantive requirement in bankruptcy proceedings.[70] Such integration does not seek to impede creditors' ability to recover outstanding claims but instead ensures that bankruptcy mechanism applies exclusively to debtors that have genuinely lost financial capacity to satisfy obligations. Under this approach, insolvency test functions as a legal screening mechanism that enables courts to distinguish temporary payment difficulties from permanent financial insolvency.[71] Consequently, bankruptcy law regains its proper function as a collective mechanism for resolving financial distress affecting economically distressed debtors rather than serving as a procedural instrument for resolving ordinary contractual disputes.

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[67] Thakkar, Maurya, and Sood.

[68] Mark Aguiar and Manuel Amador, 'Self-Fulfilling Debt Dilution: Maturity and Multiplicity in Debt Models', *American Economic Review*, 110.9 (2020), 2783–2818 https://doi.org/10.1257/AER.20180831

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Within this framework, adoption of both cash flow test and balance sheet test represents the most appropriate approach for integration into Indonesian bankruptcy law.[72] Cash flow test evaluates debtor's actual ability to satisfy obligations as they become due by examining company's cash flow position, whereas balance sheet test determines whether total liabilities exceed value of company's assets. Cumulative application of these two tests provides courts with a more objective basis for determining insolvency because it considers not only short-term liquidity but also overall financial health of business enterprise. Bankruptcy decisions would therefore rest not merely upon existence of unpaid debts but upon a comprehensive evaluation of debtor's economic capacity to maintain business continuity.[73] Strengthening bankruptcy system must also be accompanied by reform of evidentiary procedures.[74] Principle of summary proof, which has long characterized Indonesian bankruptcy proceedings, continues to play an important role in maintaining judicial efficiency.[75] Nevertheless, courts should interpret this principle more progressively by granting judges authority to order an examination of debtor's financial condition whenever credible indications suggest that debtor remains solvent. In cases involving business entities with complex financial structures, proof of financial condition should no longer depend exclusively upon documentary evidence of debtor creditor relationships but should instead be supported by objective economic evidence, including audited financial statements, cash flow reports, solvency ratio analyses, and expert testimony from accounting and financial professionals. Such evidentiary reform does not seek to transform bankruptcy proceedings into protracted financial audits but rather ensures that bankruptcy judgments rest upon verifiable economic facts.[76]

Within this context, participation of independent public accountants becomes an essential element of evidentiary process. Independent public accountants do not determine whether debtor should be declared bankrupt; instead, they provide professional assessments concerning company's financial condition in accordance with applicable accounting and auditing standards.[77] Their expert opinions may assist courts in determining whether debtor's inability to pay constitutes a temporary liquidity problem or has developed into structural insolvency. Consequently, bankruptcy adjudication acquires not only stronger legal legitimacy

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[72] José Arias, Carlos Maquieira, and Mauricio Jara, 'Do Legal and Institutional Environments Matter for Banking System Performance?', *Economic Research-Ekonomska Istrazivanja* , 33.1 (2020), 2203–28 https://doi.org/10.1080/1331677x.2019.1666023
[73] Thorsten Beck and others, 'Liquidity Creation, Investment, and Growth', *Journal of Economic Growth*, 28.2 (2023), 297–336 https://doi.org/10.1007/s10887-022-09217-1
[74] Erman Noor Adi, Anis Eliyana, and Hamidah, 'An Empirical Analysis of Safety Behaviour: A Study in MRO Business in Indonesia', *Heliyon*, 7.2 (2021) https://doi.org/10.59962/9780774820875-002
[75] Emmanuel Kobina Mesi Edzie and others, 'Incidence Rate and Age of Onset of First Stroke from CT Scan Examinations in Cape Coast Metropolis', *Heliyon*, 7.2 (2021) https://doi.org/10.1109/ICECE.2014.7026862
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[77] Jing Hao, Mengzu Peng, and Wenjia He, 'Digital Finance Development and Bank Liquidity Creation', *International Review of Financial Analysis*, 90 (2023) https://doi.org/10.1016/j.irfa.2023.102839

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but also greater economic validity, thereby improving accuracy, objectivity, and overall quality of commercial court decisions.[78]

Beyond integration of an insolvency test, reform of Indonesian bankruptcy law should also consider adoption of a statutory debt threshold as an administrative prerequisite for filing bankruptcy petitions. Absence of any minimum debt requirement under Law Number 37 of 2004 permits virtually every due and payable debt, regardless of its economic significance, to serve as a legal basis for bankruptcy proceedings. Such a framework creates opportunities for bankruptcy abuse because creditors may employ bankruptcy petitions strategically against financially healthy companies. Introducing a statutory debt threshold would therefore ensure that bankruptcy proceedings are initiated only in disputes involving economically significant obligations that genuinely reflect debtor's financial insolvency.[79] Based on this analysis, comprehensive reform of Indonesian bankruptcy law requires amendment of several fundamental provisions contained in Law Number 37 of 2004. First, Article 2(1) should be reconstructed by requiring not only existence of two or more creditors and one due and payable debt but also proof that debtor is insolvent based upon results of an insolvency test. Second, Article 8(4) should be revised so that summary evidentiary proceedings encompass not only proof of outstanding debt but also judicial authority to evaluate objective economic evidence concerning debtor's financial condition.[80] Third, legislature should introduce new statutory provisions defining legal concept of insolvency, specifying types of insolvency tests that may be applied, and regulating procedures for independent expert examination whenever debtor's financial condition becomes disputed. Fourth, legislators should consider establishing a statutory debt threshold as an administrative requirement to prevent bankruptcy proceedings from being invoked in disputes lacking substantial economic significance.[81]

This proposed regulatory reconstruction seeks fundamentally to restore balance between rights of creditors and debtors without diminishing effectiveness of bankruptcy law as a collective debt resolution mechanism. Creditors would continue to enjoy effective legal remedies for recovery of claims through bankruptcy proceedings, while implementation of those remedies would occur in a more proportionate manner that properly considers debtor's actual financial condition. At same time, debtors would receive preventive legal protection against losing authority to administer and control their assets solely because formal statutory

[78] Soumyabrata Basu, Praveen Bhagawan, and Jyoti Prasad Mukhopadhyay, 'Bankruptcy Reform and Audit Fees: Evidence from Quasi-Natural Experiment in India', *Finance Research Letters*, 81 (2025), 107512 https://doi.org/10.1016/J.FRL.2025.107512
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[80] Vuong Thao Tran and Hoa Nguyen, 'Competition, Liquidity Creation and Bank Stability', *Accounting and Finance*, 64.2 (2024), 2111–46 https://doi.org/10.1111/acfi.13212
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requirements have been satisfied despite absence of genuine financial insolvency.[82] Such reform would further strengthen bankruptcy law as an instrument capable of promoting not only legal certainty but also justice and legal utility, consistent with jurisprudential framework advanced by Gustav Radbruch.

From perspective of national legal development, these reforms also accord with values embodied in Pancasila, particularly fifth principle concerning social justice for all Indonesian people.[83] A bankruptcy regime that balances interests of creditors and debtors will foster a healthier economic system, enhance business confidence in judicial institutions, and strengthen national investment climate by providing fair and predictable legal certainty.[84] Strengthening legal protection for solvent debtors through integration of an insolvency test, reform of evidentiary mechanisms, and reconstruction of statutory provisions contained in Law Number 37 of 2004 therefore represents a strategic step toward developing an Indonesian bankruptcy system that is more responsive to contemporary economic developments and more closely aligned with principles of rule of law and substantive justice.

Conclusion

Application of presumption of insolvency doctrine within Indonesian bankruptcy system demonstrates that bankruptcy requirements prescribed under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations continue to rely primarily on formal proof through existence of two creditors and one due and payable debt, without requiring substantive evidence of debtor's insolvency. This normative framework creates opportunities for bankruptcy abuse, obscures fundamental distinction between default and insolvency, and weakens legal protection afforded to debtors who remain economically solvent. Compared with bankruptcy regimes in Singapore, United Kingdom, and Australia, which recognize an insolvency test as a substantive prerequisite for bankruptcy, Indonesian bankruptcy law has yet to establish an adequate mechanism for preventive legal protection. Accordingly, regulatory reconstruction is required through amendment of Articles 2(1) and 8(4) of Law Number 37 of 2004 by incorporating an insolvency test as a substantive requirement for bankruptcy petitions, strengthening evidentiary mechanisms for assessing debtor's financial condition through reports prepared by independent public accountants, and developing a bankruptcy law paradigm that places greater emphasis on substantive justice, legal certainty, and a balanced protection of creditors' and debtors' interests.

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