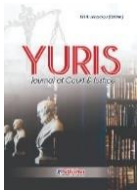

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# Reformulating Indonesian Bankruptcy Law: Substantive Justice and Good Faith

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## ABSTRACT

*Indonesian bankruptcy law, governed by Law Number 37 of 2004, was designed to balance creditor rights with debtor rehabilitation while ensuring orderly insolvency resolution. However, two decades of implementation reveal systemic dysfunction whereby formalistic judicial interpretation has transformed the law into an instrument of strategic litigation rather than equitable dispute resolution. This normative legal research employs statutory, conceptual, case study, and comparative approaches to deconstruct the prevailing application and propose comprehensive reformulation. The study identifies pervasive judicial formalism as the fundamental pathology, wherein courts mechanically apply technical default criteria without substantive inquiry into genuine insolvency or business viability. This enables widespread abuse through strategic bankruptcy filings by competitors and creditors pursuing collateral objectives, resulting in premature liquidation of viable enterprises and substantial economic waste. The research establishes that effective reform requires anchoring the system in two interdependent principles: substantive justice, mandating holistic assessment of debtor financial condition and restructuring prospects beyond procedural compliance, and good faith, functioning as rigorous procedural gatekeeper to filter abusive petitions. Implementation necessitates legislative amendments refining insolvency definitions, explicitly requiring good faith examination, and strengthening rehabilitation mechanisms. Judicial capacity enhancement through specialized training in financial analysis and institutional innovations including dedicated insolvency divisions prove essential. This reformulation framework transforms Indonesian bankruptcy law from strategic weapon into credible instrument serving economic efficiency, commercial justice, and constitutional values, thereby supporting Indonesia's developmental trajectory and investment climate enhancement.*

**Keywords:** *Bankruptcy Law, Commercial Court, Good Faith, Insolvency, Substantive Justice*

## INTRODUCTION

The promulgation of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Penundaan Kewajiban Pembayaran Utang or PKPU) represented a watershed moment in the evolution of Indonesian commercial jurisprudence. This legislative instrument was conceived to supersede the emergency provisions enacted during the 1998 financial crisis, establishing a comprehensive framework for insolvency resolution that would align Indonesia with international best practices.[1] The law articulates three foundational objectives: ensuring legal certainty for creditors and debtors, fostering equitable treatment among creditor classes, and facilitating debtor rehabilitation to preserve economic value.[2][3] Nevertheless, after two decades of implementation, a conspicuous disjuncture has emerged between these laudable legislative intentions and their practical manifestation within Indonesia's Commercial Courts. The statutory framework, which was designed to serve as a balanced mechanism for addressing corporate financial distress, has increasingly been subverted into an instrument of strategic litigation and commercial warfare.

The fundamental pathology afflicting the current system stems from the persistent dominance of a formalistic legal paradigm within the Commercial Court. This formalism manifests in the mechanical application of the statutory threshold for bankruptcy, specifically the debtor's failure to settle a single, due, and enforceable debt, which has been transformed from a preliminary evidentiary indicator into a virtually automatic trigger for liquidation proceedings.[4] Such reductionist interpretation systematically excludes substantive inquiry into the debtor's actual financial condition, operational viability, or restructuring prospects.[5] Consequently, judicial determinations have become divorced from the economic realities they purport to address, whereby a technical default, potentially stemming from disputed claims or temporary liquidity constraints, precipitates the wholesale dismantlement of otherwise solvent enterprises.[6] This methodological rigidity contravenes fundamental principles of proportionality and substantive justice that should undergird any credible insolvency regime.

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[1] Pemerintahan Republik Indonesia, *UU No. 37 Tahun 2004*, *Sekretariat Negara*, 2004.
[2] Ibid.
[3] Arlisah Sri Utami, "LEGAL CERTAINTY OF CREDITORS' RIGHTS IN THE BANKRUPTCY OF CONDOMINIUM UNITS (APARTMENTS)," *Journal of Court and Justice* 4, no. 4 (October 11, 2025): 26–38, https://journal.jfpublisher.com/index.php/jcj/article/view/849.
[4] Gede Aditya Pratama, "Hilangnya Tes Insolvensi Sebagai Syarat Kepailitan Di Indonesia," *KRTHA BHAYANGKARA* 15, no. 1 (May 25, 2021): 1–10, http://ejurnal.ubharajaya.ac.id/index.php/KRTHA/article/view/450.
[5] Fairus Nur Fitriana and Herma Setiasih, "THE ENFORCEMENT OF WANPRESTASI ON DEBT RECOGNITION IN DEBT AGREEMENTS," *Journal of Court and Justice* 1, no. 4 (December 1, 2022): 1–10, https://journal.jfpublisher.com/index.php/jcj/article/view/206.
[6] Ermanto Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied?," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* (June 30, 2024): 199–218, https://ejournal.uinsaizu.ac.id/index.php/volksgeist/article/view/10079.

This formalistic orientation has catalyzed widespread instrumentalization of bankruptcy proceedings for purposes fundamentally antithetical to the law's intended function. The phenomenon of strategic bankruptcy has proliferated, wherein petitions are filed not in good faith to recover legitimate debts, but as tactical weapons to achieve collateral business objectives.[7] Market competitors exploit the bankruptcy mechanism to eliminate rivals, creditors deploy it as leverage in unrelated commercial disputes, and disgruntled business partners utilize it to force asset liquidation below fair market value. The socioeconomic ramifications are profound: viable business entities are prematurely liquidated, employment is terminated, supply chain networks are disrupted, and substantial going-concern value is irreversibly destroyed.[8] These outcomes fundamentally contradict both the rehabilitative ethos embedded in the statute and the constitutional principle of social justice enshrined in Pancasila.[9]

Scholarly discourse on Indonesian bankruptcy law has progressively identified these systemic deficiencies. Pratama (2021) demonstrated through doctrinal analysis that the absence of an insolvency test as a prerequisite for bankruptcy declarations has resulted in solvent debtors being subjected to bankruptcy proceedings, arguing that the current framework fundamentally departs from universal bankruptcy law philosophy.[10] Complementarily, Silalahi and Iskandar (2024) conducted a comparative analysis of Indonesia's simple proof test against United States bankruptcy procedures, revealing that Indonesian courts effectively turn a blind eye to matters requiring thorough legal and factual assessment, a deficiency now acknowledged in the current draft Bankruptcy Bill.[11] These studies illuminate critical dimensions of the problem but have not systematically integrated the principles of substantive justice and good faith into a unified analytical framework for comprehensive legal reform.

Recent scholarship has further contextualized Indonesia's challenges. Robert and Sirait (2023) examined the urgency of implementing good faith principles in Indonesia's bankruptcy regime, establishing a theoretical foundation for using good

[7] Robert Robert and Ningrum Natasya Sirait, "The Urgency of Good Faith Principle Implementation in Indonesian Bankruptcy Regime," *JURNAL MERCATORIA* 16, no. 2 (December 28, 2023): 107–118, https://ojs.uma.ac.id/index.php/mercatoria/article/view/8835.
[8] Itok Dwi Kurniawan et al., "SEMI-PUBLIC RESTRUCTURING TO UPHOLD GOOD FAITH AND GOING CONCERN IN INDONESIAN PUBLIC COMPANY BANKRUPTCY," *Indonesia Private Law Review* 6, no. 1 (November 12, 2025): 85–102, https://jurnal.fh.unila.ac.id/index.php/iplr/article/view/4498.
[9] The Constitutional Court, *The 1945 Constitution of the Republic of Indonesia* (The Office of the Registrar and the Secretariat General Of the Constitutional Court of the Republic of Indonesia, 2015), accessed February 12, 2026, www.mahkamahkonstitusi.go.id.
[10] Pratama, "Hilangnya Tes Insolvensi Sebagai Syarat Kepailitan Di Indonesia."
[11] Udin Silalahi and Louise Kalista Iskandar, "Effectiveness of Indonesia's Simple Proof Test in Comparison to the US Code," *Journal of Law and Sustainable Development* 12, no. 1 (January 8, 2024): e2421, https://ojs.journalsdg.org/jlss/article/view/2421.

faith as a filtering mechanism against abusive petitions.[12] Yonatan et al. (2023) investigated methods of proving debtor inability to pay and the application of presumption against abuse of insolvency institutions, highlighting that Indonesia's reliance on a presumption of inability to pay creates conditions ripe for institutional abuse.[13] While these contributions have enhanced understanding of specific deficiencies, they have not yet articulated a comprehensive doctrinal and institutional roadmap that addresses both the philosophical foundations and practical implementation mechanisms necessary for transformative reform.

The present study addresses this lacuna by advancing a fundamental reconceptualization of Indonesian bankruptcy law grounded in the twin pillars of substantive justice and good faith. Substantive justice requires that judicial determinations produce materially equitable outcomes through holistic evaluation of debtor financial health, business viability, and restructuring potential, transcending mere procedural compliance with technical default criteria.[12] Concurrently, the principle of good faith must function as a rigorous procedural gatekeeper, mandating ex officio judicial scrutiny of petition legitimacy to filter abusive claims.4 This research addresses three interconnected questions: First, how can substantive justice be operationalized to shift judicial adjudication from formalism to contextual assessment of genuine insolvency? Second, through what mechanisms should good faith function to prevent abuse? Third, what specific legislative amendments and institutional reforms are required? By integrating normative legal analysis with comparative jurisprudence and practical reform proposals, this study offers a comprehensive blueprint for transforming Indonesian bankruptcy law into an instrument that authentically serves economic efficiency, commercial justice, and constitutional values.

The urgency of this intervention is amplified by escalating economic costs and the imperative to enhance Indonesia's investment climate. Each instance of a viable enterprise being liquidated through strategic proceedings represents a public economic failure, signifying destruction of productive capital and employment.[14] Furthermore, the perception of Indonesia's bankruptcy regime as susceptible to weaponization generates legal uncertainty that deters investment, as investors require confidence that insolvency laws will adjudicate business failure fairly.[15] Beyond economic imperatives, the philosophical foundations of Indonesian constitutional law demand this reorientation. The national legal system is fundamentally informed by Pancasila's values, particularly the principles of just and civilized humanity and social justice for all Indonesian people.5 A bankruptcy process that mechanistically destroys a going concern based on technical default,

[12] Robert and Sirait, "The Urgency of Good Faith Principle Implementation in Indonesian Bankruptcy Regime."
[13] Yonatan Yonatan et al., "Selection of Methods of Proving the Inability of Debtors to Pay Debts and the Application of Prejudice Against Misuse of Insolvency Institutions in Insolvency Law in Indonesia," *International Journal of Environmental, Sustainability, and Social Science* 4, no. 2 (March 31, 2023): 507–513, https://journalkeberlanjutan.com/index.php/ijesss/article/view/524.

without regard for dependent livelihoods or recovery potential, is fundamentally incompatible with these constitutional commitments.

## RESEARCH METHODOLOGY

This study employs normative legal research methodology, focusing on the prescriptive analysis of legal norms, principles, and doctrines to construct a comprehensive framework for reformulating Indonesian bankruptcy law.[14][15] The research utilizes a multi-dimensional analytical approach integrating several complementary methodologies. The statutory approach is deployed to meticulously examine Law Number 37 of 2004 and its implementing regulations, identifying textual ambiguities, normative gaps, and interpretive inconsistencies that facilitate formalistic application.[16] The conceptual approach serves as the theoretical foundation for deconstructing and redefining core juridical concepts within the bankruptcy context, specifically the notions of insolvency, cessio bonorum, substantive justice, and good faith.[17] A case study approach is implemented through systematic analysis of Commercial Court decisions and Supreme Court rulings to examine the practical application of bankruptcy law. Selected landmark cases illustrate problematic formalistic tendencies, such as declarations of bankruptcy based solely on minor or disputed debts despite evidence of business viability, as well as progressive rulings incorporating considerations of fairness and petitioner motive.[18] This jurisprudential analysis provides empirical grounding for the theoretical critique and demonstrates the real-world consequences of interpretive choices.

The research additionally incorporates a comparative legal approach to illuminate alternative insolvency frameworks and extract principles applicable to the Indonesian context. This comparative dimension examines advanced insolvency jurisdictions, particularly the United States Chapter 11 reorganization procedures and the United Kingdom's administration regime, which emphasize debtor-in-possession restructuring, robust judicial oversight, and the preservation of going-concern value.[19] The comparative analysis is not intended to advocate wholesale transplantation of foreign legal models but rather to identify best practices adaptable to Indonesia's distinctive legal culture and socioeconomic

[14] Peter Mahmud Marzuki, *Penelitian Hukum*, Revisi. (Prenada Media, 2017).
[15] Dr. Jonaedi Efendi and Prof. Dr. Prasetijo Rijadi, *Metode Penelitian Hukum Normatif Dan Empiris*, Kedua. (KENCANA, 2016).
[16] Marzuki, *Penelitian Hukum*.
[17] Ibid.
[18] Clarita Stefanie Panjaitan, R. Kartikasari, and Artaji Artaji, "Keabsahan Keadaan Solven Debitor Sebagai Dasar Pertimbangan Dalam Perkara Kepailitan," *Media Iuris* 5, no. 1 (February 18, 2022): 19, https://e-journal.unair.ac.id/MI/article/view/27480.
[19] Emad Mohammad Al-Amaren, Sultan Ibrahim Aletein, and Kukuh Tejomurti, "The Mock Application of the Insolvency Law by the Jordanian Courts: Lessons Learnt from Indonesia," *Hasanuddin Law Review* 8, no. 1 (April 3, 2022): 30, http://pasca.unhas.ac.id/ojs/index.php/halrev/article/view/3330.

context. Legal materials utilized comprise both primary and secondary sources. Primary sources include Law Number 37 of 2004 and its amendments, relevant provisions of the Indonesian Civil Code, the 1945 Constitution, Supreme Court Regulations concerning Commercial Court procedures, and selected court decisions.[202122] Secondary sources encompass peer-reviewed articles from accredited national journals indexed in SINTA and international journals indexed in Scopus, authoritative legal treatises, and international instruments including the UNCITRAL Legislative Guide on Insolvency Law.

Data collection is conducted through systematic documentary study involving comprehensive library research and digital database searches. The analysis employs qualitative legal reasoning techniques encompassing grammatical interpretation to examine statutory text, systematic interpretation to ensure coherence within the broader legal framework, historical interpretation to understand legislative intent, and teleological interpretation to align legal rules with their social purposes.[23] Legal construction methodology is applied to develop normative arguments and propose concrete solutions, including recommended legislative amendments and procedural reforms. The analytical process proceeds through identification of legal problems, conceptual deconstruction of key principles, critical evaluation of current implementation against normative standards, comparative analysis to identify alternative approaches, and synthesis into a coherent reform framework. This methodological rigor ensures that the proposed reformulation is grounded in systematic doctrinal analysis, empirical observation of legal practice, and comparative jurisprudential insights, yielding normative prescriptions for legislative reform, judicial practice guidelines, and institutional capacity-building recommendations.

## RESULT AND DISCUSSION

### The Principle of Substantive Justice in Bankruptcy: From Formal Default to Holistic Economic Assessment

The imperative for substantive justice in bankruptcy proceedings derives from the profound and often irreversible consequences that a bankruptcy declaration imposes upon commercial entities. The current formalistic application of Indonesian bankruptcy law, characterized by its fixation upon technical default as a dispositive criterion, proves fundamentally inadequate and frequently produces unjust outcomes. Substantive justice mandates that the Commercial Court undertake a multi-dimensional inquiry designed to achieve decisions that are

[20] Pemerintahan Republik Indonesia, *UU No. 37 Tahun 2004*.
[21] *Kitab Undang-Undang Hukum Perdata*, n.d.
[22] The Constitutional Court, *The 1945 Constitution of the Republic of Indonesia*.
[23] Marzuki, *Penelitian Hukum*.

equitable in substance rather than merely procedurally correct.[24] This necessitates a paradigmatic transformation from mechanical verification of a singular factual element, namely default on payment, to comprehensive assessment of a complex economic condition, specifically genuine insolvency. The analytical framework must begin by dismantling the reductionist equation that conflates default with insolvency. Insolvency constitutes a state of sustained financial failure rather than an isolated act of non-payment. Judges must be required to investigate whether the debtor experiences temporary liquidity constraints (cash-flow insolvency) or suffers from fundamental balance-sheet insolvency where total liabilities exceed aggregate assets.[25] A business entity possessing substantial illiquid assets or experiencing cyclical cash flow patterns may default on specific payment obligations while retaining fundamental economic viability, a distinction that formalistic interpretation systematically disregards. This finding directly supports the observations of Pratama (2021), who documented that Indonesia's failure to require an insolvency test as a precondition for bankruptcy declarations has resulted in solvent debtors being wrongfully subjected to bankruptcy proceedings, a condition that departs from the universal philosophy of bankruptcy law.[26]

Extending beyond balance sheet analysis, a substantive justice framework imposes upon courts the obligation to evaluate debtor business viability and future economic prospects. The judicial inquiry must determine whether the entity, if afforded relief from immediate financial pressure or permitted to pursue restructuring, possesses realistic potential to restore profitability. This assessment should incorporate multiple dimensions including the company's competitive market position, the quality of its products or services, management competency, and the economic feasibility of any proposed turnaround strategy.[27] Consider a manufacturing enterprise with established brand equity and modern production facilities that encounters temporary debt service difficulties due to adverse market conditions. Such an entity represents an optimal candidate for rehabilitation through PKPU rather than liquidation. The systematic disregard for going-concern value, which frequently exceeds the aggregate worth of liquidated assets by substantial margins, constitutes not merely legal error but economic waste and dereliction of judicial responsibility.[28] The court must reconceptualize its institutional role,

[24] Kurnia Toha and Sonyendah Retnaningsih, "Legal Policy Granting Status of Fresh Start to the Individual Bankrupt Debtor in Developing the Bankruptcy Law in Indonesia," *Academic Journal of Interdisciplinary Studies* 9, no. 2 (March 10, 2020): 157, https://www.richtmann.org/journal/index.php/ajis/article/view/10715.
[25] R Benny Riyanto et al., "Clashing Legal Realities: A Comparative Analysis of Insolvency Tests in Australia and Indonesia's Bankruptcy Law," *Jambura Law Review* 7, no. 1 (December 30, 2024): 88–104, https://ejurnal.ung.ac.id/index.php/jalrev/article/view/27327.
[26] Pratama, "Hilangnya Tes Insolvensi Sebagai Syarat Kepailitan Di Indonesia."
[27] Farih Romdoni Putra, "Reform of Plan Termination in Suspension of Debt Payment Obligations (PKPU) in Indonesia," *Yuridika* 36, no. 3 (September 1, 2021): 639, https://e-journal.unair.ac.id/YDK/article/view/30295.
[28] Kurniawan et al., "SEMI-PUBLIC RESTRUCTURING TO UPHOLD GOOD FAITH AND GOING CONCERN IN INDONESIAN PUBLIC COMPANY BANKRUPTCY."

transcending the narrow function of debt collection enforcement to assume guardianship over economic value preservation where circumstances warrant such protection.

Furthermore, substantive justice requires rigorous inquiry into the causative context precipitating default. A payment failure triggered by force majeure circumstances, unanticipated regulatory policy shifts, or wrongful creditor actions such as unlawful asset freezes presents a morally and economically distinct scenario from default stemming from persistent managerial incompetence or fraudulent conduct.[29] Comprehending the root causation proves essential for calibrating appropriate legal remedies. Granting bankruptcy petitions predicated upon defaults caused by third-party actionable wrongs would itself constitute judicial perpetration of injustice. Additionally, the principle demands conscious consideration of broader socioeconomic ramifications flowing from bankruptcy determinations. The closure of significant employers affects workers, their families, supply chain participants, and the broader community economic infrastructure.[30] This perspective does not suggest that socially consequential companies merit immunity from bankruptcy, but rather recognizes that profound social costs should constitute acknowledged factors within the holistic assessment mandated by substantive justice. This orientation naturally directs judicial preference towards rehabilitation through PKPU when reasonable success prospects exist, thereby aligning legal outcomes with the public interest and the constitutional goal of social justice.

The operationalization of substantive justice additionally necessitates fundamental re-evaluation of evidentiary standards governing Commercial Court proceedings. Under current practice, prima facie evidence of default frequently shifts a nearly insurmountable burden onto debtors to affirmatively prove solvency, creating asymmetric litigation dynamics favoring creditor interests. A substantive approach would rebalance these evidentiary requirements. Petitioning creditors should bear heightened initial burdens to demonstrate not merely isolated default but credible indicators of the debtor's generalized inability to satisfy debts as they mature.[31] The court should engage in active case management, potentially appointing independent financial experts at preliminary stages to provide objective assessment of debtor financial condition and viability, rather than relying exclusively upon partisan evidence from interested parties.[32] This proactive judicial case management epitomizes courts genuinely pursuing substantive truth over procedural formalism. These procedural reforms directly address the systemic

[29] Panjaitan, Kartikasari, and Artaji, "Keabsahan Keadaan Solven Debitor Sebagai Dasar Pertimbangan Dalam Perkara Kepailitan."
[30] Kurniawan et al., "SEMI-PUBLIC RESTRUCTURING TO UPHOLD GOOD FAITH AND GOING CONCERN IN INDONESIAN PUBLIC COMPANY BANKRUPTCY."
[31] Yonatan et al., "Selection of Methods of Proving the Inability of Debtors to Pay Debts and the Application of Prejudice Against Misuse of Insolvency Institutions in Insolvency Law in Indonesia."
[32] Silalahi and Iskandar, "Effectiveness of Indonesia's Simple Proof Test in Comparison to the US Code."

deficiencies identified by Silalahi and Iskandar (2024), whose comparative analysis documented that Indonesian courts effectively ignore matters requiring thorough factual assessment, a pattern now acknowledged in the draft bankruptcy bill as requiring urgent correction.[33]

**Good Faith as a Procedural Gatekeeper and Parameter of Legitimacy**

While substantive justice governs ultimate adjudicatory outcomes, the principle of good faith must function as the primary control mechanism regulating access to bankruptcy proceedings themselves. Good faith, operating as a general principle permeating all juridical acts within Indonesian legal tradition, must be rigorously applied as a filtering mechanism to evaluate the legitimacy of every bankruptcy or PKPU petition submitted to Commercial Courts.[34] Its essential function is to distinguish between bona fide utilization of legal remedies for legitimate debt recovery purposes and their abuse as strategic weapons in commercial warfare. The demonstrable absence of consistent and stringent good faith assessment within Indonesian Commercial Courts constitutes a critical procedural deficiency enabling predatory litigation behavior. This assessment framework must operate bidirectionally, scrutinizing conduct of both petitioning creditors and responding debtors. The present findings strongly support and operationalize the theoretical arguments advanced by Robert and Sirait (2023), who established the normative foundation for using good faith as a bankruptcy filtering mechanism.[35] The present analysis extends their work by articulating specific indicia for judicial evaluation and concrete procedural implementation mechanisms.

For petitioning creditors, courts must conduct proactive inquiry into underlying motivations and contextual circumstances. Filing bankruptcy petitions constitutes an extraordinary legal measure carrying severe consequences for all stakeholders; such action cannot be justified by malicious intent or ulterior strategic business objectives. Key indicia potentially evidencing lack of good faith include: petition filing occurring immediately subsequent to negotiation collapse in unrelated business dealings; petitioner status as direct market competitor of the debtor entity; claimed debt amounts minimal relative to debtor's overall operational scale; or documented creditor history of refusing to engage in reasonable debt restructuring negotiations offered by the debtor.[36] Courts should possess both authority and duty to dismiss petitions where the predominant objective appears to be commercial coercion, competitor elimination, or opportunistic asset acquisition below fair market value, rather than legitimate debt recovery. This analytical framework directly addresses the abuse phenomenon documented by Yonatan et al.

[33] Ibid.
[34] *Kitab Undang-Undang Hukum Perdata*.
[35] Robert and Sirait, "The Urgency of Good Faith Principle Implementation in Indonesian Bankruptcy Regime."
[36] Ibid.

(2023), whose research revealed that Indonesia's reliance on a presumption of inability to pay without good faith screening creates systematic conditions for institutional abuse of bankruptcy mechanisms.[37]

Conversely, debtor good faith assumes equal critical importance, particularly when entities seek protection under PKPU proceedings. The PKPU mechanism was conceptually designed as a protective shield for the honest but unfortunate debtor, following the legal tradition of distinguishing deserving from undeserving insolvents. Debtors must demonstrate transparent and cooperative conduct throughout proceedings. Affirmative indicia include: maintenance of orderly and accurate financial records accessible for creditor and court examination; proactive communication with creditors regarding emerging financial difficulties prior to crisis escalation; complete disclosure of all asset holdings; and submission of credible, comprehensively prepared restructuring plans treating different creditor classes equitably according to established priority rules.[38] Evidence of fraudulent asset conveyances, systematic asset dissipation, or intentional debt incurrence without realistic repayment prospects would clearly manifest bad faith, warranting denial of PKPU protection or expedited conversion to bankruptcy liquidation.[39]

To provide enforcement efficacy to good faith principles, the legal framework requires incorporation of clear procedural sanctions addressing bad faith conduct. Under current arrangements, risks associated with filing abusive petitions remain minimal, creating perverse incentives for strategic litigation. Legislative amendments should authorize courts to award substantial compensatory damages to debtors who successfully defend against bankruptcy petitions filed in demonstrable bad faith, thereby creating powerful economic disincentives for predatory filings.[40] Furthermore, the Supreme Court should develop coherent jurisprudence or promulgate authoritative circular letters (Surat Edaran Mahkamah Agung) providing systematic guidance on evaluating good faith in insolvency contexts, establishing predictable and equitable standards. The application of good faith testing must also extend to conduct during proceedings themselves, encompassing behavior of court-appointed administrators (kurator and pengurus). Documented instances exist where administrators, wielding substantial power over debtor assets, have acted to unnecessarily accelerate liquidation or favor particular

[37] Yonatan et al., "Selection of Methods of Proving the Inability of Debtors to Pay Debts and the Application of Prejudice Against Misuse of Insolvency Institutions in Insolvency Law in Indonesia."
[38] Krista Yitawati, Adi Sulistiyono, and Pujiyono Pujiyono, "Reconstructing the Debt Restructuring Mechanism in the Indonesian Law on Bankruptcy and Suspension of Debt Payment Obligations," *Financial Engineering* 1 (June 1, 2023): 88–95, https://wseas.com/journals/fe/2023/a165107-2036.pdf.
[39] Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied?"
[40] Robert and Sirait, "The Urgency of Good Faith Principle Implementation in Indonesian Bankruptcy Regime."

creditors, contravening their fiduciary duties of neutrality and estate preservation.[41] Courts must exercise close oversight over administrator conduct, with allegations of undisclosed conflicts of interest, excessive fee extraction, or negligent estate management constituting grounds for removal. Good faith therefore operates as a continuous obligation binding all participants throughout insolvency processes.

**The Urgency and Form of Regulatory Reformulation**

The operationalization of substantive justice and good faith principles proves unattainable within the constraints of Indonesia's current legal framework and prevailing judicial culture. Consequently, deliberate and systematically structured reformulation constitutes an urgent imperative. This reform agenda must adopt a multi-axial approach, simultaneously targeting legislative textual revision, judicial institutional capacity enhancement, and transformation of adjudicatory practice norms. The urgency derives from tangible and escalating economic damage inflicted by the status quo, wherein destruction of viable business enterprises undermines aggregate economic growth, employment stability, and investor confidence.[42] Indonesia's developmental aspiration necessitates establishment of a bankruptcy regime oriented toward value preservation rather than expedient value destruction. These findings directly support the economic analysis of Dulyono et al. (2023), who demonstrated that Indonesia's bankruptcy regulation requires deregulation reform to promote ease of doing business, confirming that the current formalistic framework constitutes a structural barrier to economic development.[43]

At the legislative stratum, amendments to Law Number 37 of 2004 assume paramount importance. First, the statutory definition of insolvency in Article 2 requires fundamental refinement. Revised provisions should mandate that petitioners provide prima facie evidence demonstrating not merely isolated default but the debtor's generalized inability to satisfy debts as they mature or establish that total liabilities exceed aggregate asset value.[44] This reformulation shifts the evidentiary burden from proving a singular factual occurrence to establishing a comprehensive financial condition. Second, new legislative provisions must explicitly mandate that all bankruptcy and PKPU petitions be filed and prosecuted in good faith, with courts obligated to examine this requirement ex officio as a threshold jurisdictional matter. Third, the PKPU statutory chapter requires strengthening to favor business rescue over liquidation. Access requirements for debtor-initiated PKPU filings should be liberalized to permit earlier intervention,

[41] Kurniawan et al., "SEMI-PUBLIC RESTRUCTURING TO UPHOLD GOOD FAITH AND GOING CONCERN IN INDONESIAN PUBLIC COMPANY BANKRUPTCY."
[42] Dulyono et al., "Deregulation Policy of Bankruptcy Regulation in Effort To Promote The Indonesian Ease of Doing Business," *International Journal of Academic Research in Business and Social Sciences* 13, no. 8 (August 11, 2023), https://hrmars.com/journals/papers/IJARBSS/v13-i8/18029.
[43] Ibid.
[44] UK Legislation, *Insolvency Act 1986 Section 123*, 1986.

and the procedural model should incorporate greater debtor-in-possession elements, reducing automatic management displacement that frequently destroys organizational value.[45] These legislative prescriptions directly address the comparative deficiencies identified by Yitawati, Sulistiyono, and Pujiyono (2023), who called for reconstruction of the debt restructuring mechanism in Indonesian bankruptcy law to better balance debtor and creditor interests through more flexible legislative provisions.[46]

Concurrently, judicial empowerment and specialization constitute non-negotiable reform imperatives. Legislative provisions must explicitly authorize and indeed require Commercial Court judges to exercise robust discretion in assessing debtor overall financial condition and petition bona fides, moving beyond mechanical application of technical default criteria. To equip judicial officers for these enhanced responsibilities, establishment of permanent, specialized training programs in financial statement analysis, business valuation methodologies, and corporate restructuring techniques becomes essential.[47] The reform objective is creation of a specialized cadre of business court judges possessing equal facility in interpreting cash flow statements and legal precedents. Furthermore, the Supreme Court must exercise leadership by developing coherent precedential jurisprudence that champions substantive justice and good faith principles, providing authoritative guidance to lower courts. Institutional innovations including dedicated Insolvency Divisions within Commercial Courts, mandatory pre-filing mediation periods, and strengthened Justice Coordinator authority will further facilitate effective implementation.[48]

Beyond legislative amendment and judicial capacity enhancement, achieving transformative reform necessitates fundamental cultural evolution within the broader legal community. Legal practitioners representing both creditors and debtors must abandon the conception of bankruptcy as purely adversarial, zero-sum litigation warfare. The professional mindset should evolve toward recognizing insolvency law as a specialized facet of economic regulation aimed at achieving optimal, equitable solutions that maximize aggregate social welfare. This cultural transformation, supported by reformed statutory frameworks and enhanced judicial confidence, will facilitate transformation of Indonesian bankruptcy law from its current problematic configuration into a credible institution authentically serving justice and economic progress objectives. Riyanto et al. (2024), through their comparative analysis of insolvency tests in Australia and Indonesia, confirmed that Indonesia's current system produces outcomes fundamentally inconsistent with

[45] Yitawati, Sulistiyono, and Pujiyono, "Reconstructing the Debt Restructuring Mechanism in the Indonesian Law on Bankruptcy and Suspension of Debt Payment Obligations."
[46] Ibid.
[47] Silalahi and Iskandar, "Effectiveness of Indonesia's Simple Proof Test in Comparison to the US Code."
[48] Putra, "Reform of Plan Termination in Suspension of Debt Payment Obligations (PKPU) in Indonesia."

universally recognized insolvency principles, underscoring the urgency of this cultural and institutional transformation.[49]

The findings of this research substantially support, extend, and in certain dimensions contradict existing scholarship on Indonesian bankruptcy law reform. The analysis provides strong support for the diagnostic observations of Pratama (2021), who identified the absence of an insolvency test as a fundamental legal deficiency.[50] Where the present study significantly extends this contribution is through development of a comprehensive operationalization framework grounded in substantive justice and good faith principles. Pratama documented the problem through doctrinal analysis; this research advances beyond diagnosis to prescribe specific legislative amendments, evidentiary standard reforms, and judicial training protocols necessary to remedy identified deficiencies. Similarly, this study validates and extends the theoretical advocacy of Robert and Sirait (2023) for rigorous good faith application in bankruptcy proceedings.[51] Their work provided normative justification rooted in Indonesian insolvency principles; the present analysis operationalizes this theoretical foundation by articulating concrete indicia for evaluating petitioner and debtor good faith and integrating good faith assessment into a broader substantive justice framework that their work did not fully develop.[52]

The research also builds substantially upon the comparative analysis of Silalahi and Iskandar (2024), who examined structural deficiencies in Indonesia's simple proof test relative to US bankruptcy procedures.[53] While their analysis remained largely descriptive of comparative differences, the present study extends their work by demonstrating how substantive justice principles can be integrated into Indonesian bankruptcy law through specific statutory amendments while maintaining fidelity to domestic constitutional values. Furthermore, this research addresses the implementation gap they identified by proposing graduated reform measures including liberalized PKPU access requirements, enhanced judicial case management authority, and mandatory pre-filing negotiation periods that adapt comparative best practices to Indonesian institutional realities. The findings regarding evidentiary asymmetries directly confirm and extend the empirical research of Yonatan et al. (2023), who documented systematic conditions for institutional abuse of bankruptcy mechanisms.[54] The present study not only validates their diagnostic findings through independent normative analysis but prescribes detailed remedial measures including establishment of permanent

[49] Riyanto et al., "Clashing Legal Realities: A Comparative Analysis of Insolvency Tests in Australia and Indonesia's Bankruptcy Law."
[50] Pratama, "Hilangnya Tes Insolvensi Sebagai Syarat Kepailitan Di Indonesia."
[51] Robert and Sirait, "The Urgency of Good Faith Principle Implementation in Indonesian Bankruptcy Regime."
[52] Pratama, "Hilangnya Tes Insolvensi Sebagai Syarat Kepailitan Di Indonesia."
[53] Silalahi and Iskandar, "Effectiveness of Indonesia's Simple Proof Test in Comparison to the US Code."
[54] Yonatan et al., "Selection of Methods of Proving the Inability of Debtors to Pay Debts and the Application of Prejudice Against Misuse of Insolvency Institutions in Insolvency Law in Indonesia."

judicial education programs, independent financial expert appointment mechanisms, and creation of dedicated Insolvency Divisions.[55]

However, certain findings diverge from or complicate conclusions drawn in previous scholarship. Yitawati, Sulistiyono, and Pujiyono (2023) called for reconstruction of the debt restructuring mechanism through modifications to the PKPU framework.[56] While the present study agrees that PKPU reform constitutes a necessary element, it argues that such measures prove insufficient without simultaneous implementation of substantive justice principles requiring holistic assessment of debtor financial condition at the bankruptcy petition stage. Their exclusive focus on restructuring mechanism reform overlooks the fundamental need to transform the substantive legal standard from technical default to genuine insolvency, which this research identifies as the root cause enabling strategic abuse. Additionally, while Dulyono et al. (2023) correctly identified the need for deregulation to promote ease of doing business, their analysis suggested primarily procedural streamlining.[57] The present research extends this perspective by demonstrating that meaningful reform requires not merely procedural efficiency but paradigmatic transformation of judicial approach, incorporating substantive justice and good faith as interdependent governing principles. Through this integration with existing scholarship, the research establishes its distinctive contribution: providing the first comprehensive normative and institutional framework that unifies substantive justice and good faith principles as interdependent pillars for transforming Indonesian bankruptcy law from a mechanism of strategic destruction into an instrument of equitable economic governance.[58]

## CONCLUSION

This research establishes that the fundamental pathology afflicting Indonesian bankruptcy law stems from pervasive judicial formalism that reduces complex socioeconomic adjudication to mechanical procedural verification. The current system permits the law to be weaponized for strategic purposes, resulting in premature liquidation of viable enterprises, economic inefficiency, and systematic deviation from the statutory objectives of fairness and rehabilitation. Analysis reveals that substantive justice and good faith must function as interdependent principles governing bankruptcy proceedings. Substantive justice requires holistic judicial assessment of debtor financial condition, business viability, and restructuring potential rather than mere technical default verification. Good faith

[55] Silalahi and Iskandar, "Effectiveness of Indonesia's Simple Proof Test in Comparison to the US Code."
[56] Yitawati, Sulistiyono, and Pujiyono, "Reconstructing the Debt Restructuring Mechanism in the Indonesian Law on Bankruptcy and Suspension of Debt Payment Obligations."
[57] Dulyono et al., "Deregulation Policy of Bankruptcy Regulation in Effort To Promote The Indonesian Ease of Doing Business."
[58] Yitawati, Sulistiyono, and Pujiyono, "Reconstructing the Debt Restructuring Mechanism in the Indonesian Law on Bankruptcy and Suspension of Debt Payment Obligations."

operates as procedural gatekeeper, mandating rigorous scrutiny of petition legitimacy to distinguish bona fide debt recovery from predatory litigation strategies.

Implementation of these principles necessitates comprehensive multi-axial reform. Legislative amendments to Law Number 37 of 2004 must refine the insolvency definition in Article 2 to require evidence of generalized debt payment inability, explicitly mandate good faith requirements with ex officio judicial examination, and strengthen PKPU provisions to favor business rescue through liberalized access and enhanced debtor-in-possession elements. Judicial capacity enhancement through specialized training programs in financial analysis and corporate valuation proves essential for enabling informed adjudication. The Supreme Court must develop coherent precedential jurisprudence championing substantive justice and good faith principles while providing authoritative guidance to Commercial Courts. Institutional innovations including dedicated Insolvency Divisions, mandatory pre-filing mediation periods, and strengthened Justice Coordinator authority will facilitate effective implementation.

The proposed reformulation transcends doctrinal refinement to constitute an economic policy imperative critical for Indonesia's developmental trajectory. A bankruptcy regime consistently delivering substantive justice and filtering bad faith is indispensable for fostering resilient, competitive economic environments that attract investment and preserve productive capacity. Beyond economic imperatives, reform represents constitutional fidelity, ensuring commercial legislation operates harmoniously with Pancasila values emphasizing social justice and just humanity. Transforming Indonesian bankruptcy law from instrument of strategic destruction into pillar of equitable commercial governance requires confronting entrenched interests and investing in judicial capacity. However, the cost of maintaining the current dysfunctional system, measured in destroyed businesses, lost employment, diminished growth, and eroded confidence in the rule of law, far exceeds reform implementation costs. Future research should empirically examine reform implementation outcomes and develop refined metrics for assessing judicial adherence to substantive justice principles in bankruptcy adjudication.

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