

# Reformulation of the Principles of Balance and Business Continuity in Indonesian Bankruptcy Law: Legal Protection for Debtors Acting in Good Faith and the Application of the *Ultimum Remedium* Principle in Bankruptcy Petitions

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## **Abstract**

This study examines the legal gap in implementing the principles of balance and business continuity under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Article 2 paragraph (1) establishes formal bankruptcy requirements without expressly requiring an assessment of the debtor's actual insolvency, while Article 8 paragraph (4) emphasizes summary proof. Consequently, viable businesses experiencing temporary liquidity difficulties may face bankruptcy proceedings. Using normative legal research with statutory, conceptual, and case approaches, this study analyzes Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022, which rejected a bankruptcy petition despite fulfillment of formal requirements, considering the disproportion between the IDR 75,000,000 claim and the consequences of bankruptcy, as well as the availability of small-claims litigation. The decision illustrates the relevance of proportionality but does not establish an insolvency test as a statutory requirement. This study proposes incorporating an insolvency test into bankruptcy law by objectively assessing assets, liabilities, cash-flow capacity, and business viability while preserving procedural efficiency. It also proposes ultimum remedium, positioning bankruptcy as a last resort when proportionate and effective alternatives are available. These proposals require legislative reform or judicial guidelines and should not automatically restrict creditors' existing statutory rights. The proposed framework aims to strengthen legal certainty, prevent disproportionate bankruptcy proceedings, and balance creditor protection with the continuity of viable businesses.

## **I. Introduction**

The dynamics of the global economy and the development of the national investment climate demonstrate that bankruptcy law constitutes an important legal instrument for resolving debt-related matters and commercial disputes (Febrian Dirgantara, 2025). The existence of bankruptcy law is essentially not intended solely to provide creditors with a means of obtaining repayment of their claims, but also to establish a dispute resolution mechanism that is swift, fair, transparent, and effective. In Indonesia, bankruptcy and the suspension of debt payment obligations (*Penundaan Kewajiban Pembayaran Utang* or PKPU) are currently governed by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy and PKPU Law). From a philosophical perspective, bankruptcy law should not merely be viewed as an instrument for terminating the existence of a business entity. Bankruptcy constitutes a legal mechanism intended to resolve debt-related matters collectively while continuing to take into account the interests of creditors, debtors, employees, shareholders, and other parties having an interest in the continuity of the debtor's business (Sartono Gurning, 2026). Accordingly, the application of bankruptcy law needs to be situated within the framework of the principle of balance and the principle of business continuity. The General Elucidation of the Bankruptcy and PKPU Law explicitly provides that the principle of balance is manifested through provisions intended to prevent the abuse of bankruptcy proceedings, whether by dishonest debtors or creditors acting in bad faith. The principle of business continuity provides an opportunity for debtor companies that remain prospective to continue their business operations (Serlika Aprita, 2019). The principle of balance essentially requires proportional protection between the interests of creditors and debtors.

Creditors must be afforded legal protection to ensure that their claims can be repaid fairly. At the same time, debtors acting in good faith should also be protected against disproportionate collection measures that may disrupt or even result in the termination of their business activities (Herman Yusup, 2021). The principle of balance is not intended to diminish creditors' rights to obtain repayment, but rather to ensure that the exercise of such rights is not excessive or disproportionate, to the detriment of the debtor's legal interests or those of other parties affected by the bankruptcy proceedings. This line of thought is consistent with the view of Sutan Remy Sjahdeini, who places the principles of bankruptcy law as an essential component in achieving the objectives of bankruptcy law, which extend beyond the settlement of debts to encompass justice and the protection of the interests of all parties involved (Sjahdeini, 2016). The principle of business continuity is closely associated with the protection of debtor companies that remain viable and have the potential to sustain their operations. This principle is grounded in the notion that financial difficulties should not necessarily result in the cessation of business activities where there remains a possibility of restructuring and fulfilling obligations through a more appropriate mechanism. The continuity of business operations may generate broader benefits by preserving the company's economic value, maintaining employment, sustaining business relationships with suppliers and business partners, and creating greater opportunities for creditors to obtain optimal repayment of their claims. Serlika Aprita explains that the principle of business continuity provides an opportunity for debtor companies that remain prospective to continue their business activities, thereby ensuring that bankruptcy law is not solely oriented toward the liquidation of the debtor's assets (Aprita, 2019). This perspective demonstrates that the principle of

business continuity serves a corrective function against the application of bankruptcy proceedings based solely on a formalistic approach, without adequately considering the debtor's actual financial condition and business prospects.

Previous studies have examined the principle of balance, business continuity, debtor protection, insolvency assessment, and the use of bankruptcy as an ultimum remedium from different perspectives. Anisah (2008) emphasizes the need to protect the interests of both creditors and debtors, while Sjahdeini (2016) discusses the principles and theoretical foundations underlying Indonesian bankruptcy law. Aprita (2019) specifically examines the application of the business continuity principle through an insolvency test as a means of providing restructuring-oriented legal protection for bankrupt debtors. More recently, Yordinand et al. (2024) analyze Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 in relation to business continuity and the bankruptcy of a solvent debtor, whereas Prawirawinata (2025) discusses bankruptcy as an ultimum remedium for resolving debts. These studies provide important conceptual and case-based foundations for evaluating the relationship between creditor protection and the debtor's continued business operations. Nevertheless, the issues of insolvency assessment, proportionality in bankruptcy adjudication, and the availability of alternative debt-resolution mechanisms require further examination within an integrated framework of legal reform. In particular, the relationship between the existing statutory requirements for bankruptcy and a proposed insolvency test requires clarification to ensure that debtor protection does not undermine creditors' legitimate rights.

The protection of creditors and the continuity of the debtor's business must

ultimately be placed within a balanced relationship. Bankruptcy law should not be oriented solely toward the interests of creditors as holders of claims, but should also take into consideration the debtor's circumstances and interests, as well as the legal and economic consequences arising from a declaration of bankruptcy. Such protection must operate in conjunction with the regulation of the principles, requirements for bankruptcy, insolvency, reorganization, and the continuity of the debtor's business within the framework of Law Number 37 of 2004. Problems arise when the application of the principle of balance and the principle of business continuity encounters the normative construction of the requirements for bankruptcy, particularly the provisions of Article 2 paragraph (1) of the Bankruptcy and PKPU Law. Article 2 paragraph (1) of the Bankruptcy and PKPU Law stipulates that a debtor may be declared bankrupt if the debtor has two or more creditors and fails to pay in full at least one debt that has fallen due and is payable. This provision establishes two principal requirements, namely the existence of two or more creditors and the existence of at least one debt that has fallen due and is payable. This formulation indicates that the debtor's overall financial capacity has not been expressly established as a requirement for determining whether the debtor may be declared bankrupt. Article 8 paragraph (4) of the Bankruptcy and PKPU Law is closely related to the normative construction of the requirements for bankruptcy. This provision stipulates that a petition for a declaration of bankruptcy must be granted where there are facts or circumstances that have been established through a summary evidentiary process demonstrating that the requirements for a declaration of bankruptcy as referred to in Article 2 paragraph (1) have been satisfied. The concept of summary proof is essentially intended to ensure that the examination of a bankruptcy petition can be conducted expeditiously and does not develop

into a complex civil proceeding. The Elucidation of Article 8 paragraph (4) further provides that the term “facts or circumstances that have been established through a summary evidentiary process” includes, among others, facts concerning the existence of two or more creditors and facts concerning the existence of a debt that has fallen due and is payable. A substantial discrepancy between the amount of debt alleged by the petitioner and that acknowledged by the respondent does not preclude the issuance of a declaration of bankruptcy, provided that the relevant requirements have been established through summary proof (Fuady, 2014). This normative construction demonstrates that summary proof constitutes an important characteristic of the examination of bankruptcy petitions in Indonesia. The mechanism does not expressly require judges to conduct a comprehensive assessment of the debtor's financial condition before issuing a declaration of bankruptcy. The Bankruptcy and PKPU Law likewise does not expressly establish an *insolvency test* as a requirement for determining whether a debtor may be declared bankrupt. The debtor's insolvency status, however, may constitute an important consideration in determining whether a company has genuinely lost its ability to meet its financial obligations on a sustained basis or is merely experiencing temporary liquidity difficulties.

The historical development of Indonesian bankruptcy law also helps explain this characteristic. The transformation of the bankruptcy regime following the 1997–1998 monetary crisis took place in an economic environment that required a swift mechanism for resolving outstanding debts. The reform of bankruptcy law during this period was also closely connected to economic recovery efforts and corporate debt restructuring initiatives promoted through Indonesia's cooperation with the *International Monetary Fund* (IMF). These circumstances

contributed to shaping the character of Indonesian bankruptcy law, which emphasizes the speed and accessibility of bankruptcy proceedings. Law Number 4 of 1998 was subsequently replaced by Law Number 37 of 2004, which expanded and further refined the legal framework governing bankruptcy and the Suspension of Debt Payment Obligations (PKPU). This historical development demonstrates that Indonesian bankruptcy law evolved in response to the need for a more effective mechanism for resolving debt-related matters, although the balance between the interests of creditors and the continuity of the debtor's business remains an important issue (Anisah, 2008).

The expedited nature of bankruptcy proceedings is a consequence of the need to provide legal certainty regarding the status of the debtor's assets and the interests of creditors. The Bankruptcy and PKPU Law prescribes a relatively short period for the examination of bankruptcy petitions. A decision on a petition for a declaration of bankruptcy must be rendered no later than 60 (sixty) days after the petition is registered. This provision demonstrates that the legislature expressly intended bankruptcy proceedings to be resolved expeditiously. At the same time, the expedited nature of the proceedings presents challenges when a case involves a company with ongoing business operations, substantial assets, employees, numerous creditors, and broader economic interests (Rahayu Hartinni, 2020). A declaration of bankruptcy does not merely produce legal consequences for the relationship between the petitioning creditor and the debtor. Upon a declaration of bankruptcy, the debtor's assets are, in principle, placed under a general seizure, while their administration and liquidation are conducted in accordance with the bankruptcy mechanism. The consequences of bankruptcy may extend to the interests of other creditors, employees, suppliers, business partners,

shareholders, and even other parties whose interests depend upon the continuity of the debtor's business operations. Accordingly, the examination of a bankruptcy petition is not merely concerned with whether a debt exists or remains unpaid, but also entails broader economic consequences.

The use of bankruptcy proceedings as a debt enforcement mechanism against debtors who actually retain sufficient financial capacity and viable business prospects raises a distinct legal concern. Bankruptcy proceedings may be reduced to merely serving as a debt collection tool when the interests of a creditor are given predominant consideration without adequately taking into account the interests of the debtor and other creditors. Such use of bankruptcy proceedings may create opportunities for abuse of process, particularly where a bankruptcy petition is employed as a means of exerting pressure on a debtor to satisfy a particular claim (Nugroho, 2018).

The risk becomes even greater when the debtor subject to a bankruptcy petition is a company that possesses substantial assets and maintains viable business operations, but experiences difficulties in fulfilling certain obligations due to disruptions in cash flow. Structural inability to pay must be distinguished from temporary liquidity difficulties. A company may possess assets whose value significantly exceeds its total liabilities, yet at a particular point in time may lack sufficient cash to satisfy debts that have fallen due. This condition is commonly referred to as cash flow distress and does not necessarily indicate that the company is fundamentally insolvent (Subhan, 2022).

The distinction between insolvency and liquidity difficulties is particularly important given the significant legal consequences of bankruptcy. A debtor that remains fundamentally financially sound and has viable business prospects may suffer substantially greater losses if declared bankrupt merely because it is

unable to fulfill a particular obligation when it falls due. Such consequences may extend to employees, other creditors, business partners, and other parties with economic interests in the company. The rigid application of bankruptcy requirements in such circumstances may therefore raise concerns from the perspectives of justice and proportionality.

The principle of balance and the principle of business continuity become particularly significant at this point. The principle of balance requires that creditors' rights to obtain repayment remain protected, while the exercise of such rights should not deprive good-faith debtors of appropriate legal protection. The principle of business continuity requires that debtor companies with viable business prospects should not be immediately forced to cease operations where legal mechanisms remain available to resolve their obligations without compromising the continuity of their business activities. These two principles do not place the interests of debtors above those of creditors. Rather, they require the resolution of debt-related matters to take into account the interests of all parties affected by the proceedings. This approach is also closely related to the concept of proportionality in bankruptcy law. Bankruptcy should ideally be employed when other available mechanisms are unable to provide a fair and effective resolution, particularly in cases involving debtors that retain viable business prospects and the capacity for recovery. Positioning bankruptcy as an *ultimum remedium* in certain circumstances does not mean eliminating creditors' right to file a bankruptcy petition. Instead, it emphasizes the importance of applying bankruptcy proceedings proportionately and in accordance with the objectives of bankruptcy law (Tolmie, 2014).

The issue of proportionality in the application of bankruptcy law is particularly relevant in Supreme Court of the Republic of Indonesia Decision Number 1714

K/Pdt.Sus-Pailit/2022. This decision is noteworthy because the Supreme Court considered not only the fulfillment of the formal requirements for bankruptcy, but also the amount of the claim and the potential consequences that could arise if the debtor were declared bankrupt. The case concerned a bankruptcy petition against a company in which the amount of the claim was relatively small compared with the potential impact of bankruptcy on the continuity of the debtor's business. In its reasoning, the Supreme Court considered that other, more proportionate mechanisms remained available to resolve the claim.

The decision demonstrates a development in judicial practice concerning the relationship between the fulfillment of formal bankruptcy requirements and consideration of the proportionality of the resulting legal consequences. This development may be viewed as a form of *rechtsvinding* in Indonesian bankruptcy law, particularly insofar as it provides room for judges to consider the debtor's concrete circumstances and the impact of bankruptcy on business continuity. The decision is also relevant from the perspective of the principle of balance and the principle of business continuity, although it cannot directly be construed as establishing a new *insolvency test* beyond the provisions of the Bankruptcy and PKPU Law.

Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 provides an empirical basis for the proposition that the application of bankruptcy law does not necessarily end with the fulfillment of the formal requirements stipulated in Article 2 paragraph (1) and Article 8 paragraph (4) of the Bankruptcy and PKPU Law. Considerations of proportionality, good faith, business continuity, and the legal consequences affecting the parties may constitute important elements in understanding the objectives of bankruptcy law. The decision has also been published by the Supreme Court in the *Garda Peradilan Indonesia Law Report* as

part of a discussion concerning the correlation between bankruptcy proceedings and small-claims litigation. The absence of an explicit assessment of the debtor's economic condition continues to raise normative concerns. The debtor's financial capacity, financial condition, and prospects for business continuity have not been expressly established as matters that must be examined in every bankruptcy petition. Consequently, Indonesian bankruptcy law remains predominantly focused on the fulfillment of formal requirements concerning the number of creditors and the existence of a debt that has fallen due and is payable. The subsequent issue concerns the extent to which the principle of balance and the principle of business continuity can be employed as instruments for protecting good-faith debtors without diminishing creditors' rights to obtain repayment.

Developments in the business environment further reinforce the relevance of this issue. Companies today face various forms of economic uncertainty, changing market conditions, supply-chain disruptions, exchange-rate fluctuations, policy changes, and liquidity pressures. Companies that remain fundamentally financially sound and possess viable business prospects may nevertheless experience difficulties in meeting short-term obligations under such circumstances. Accordingly, an assessment of the debtor's condition should not be based solely on whether a debt has fallen due, but should also take into consideration the debtor's financial condition, asset and liability structure, cash-flow generation capacity, business prospects, and the feasibility of debt restructuring.

The legal issue does not lie in eliminating creditors' right to file bankruptcy petitions, but rather in ensuring that bankruptcy proceedings are employed proportionately and consistently with the objectives for which the institution

was established. Creditors must continue to receive effective legal protection; however, such protection should not be achieved at the expense of debtors who remain viable and act in good faith. Conversely, the protection afforded to debtors should not become a means of avoiding their payment obligations to creditors. Establishing an appropriate balance between these interests constitutes a central issue that must be addressed in the reform of Indonesian bankruptcy law.

The need to reconstruct or reformulate Indonesia's bankruptcy law policy arises from these concerns. Such reformulation should be directed toward establishing a mechanism capable of reflecting a balance between legal certainty, justice, creditor protection, and the continuity of the debtor's business. Strengthening mechanisms for assessing the debtor's financial condition, applying the principle of proportionality, and providing judges with greater scope to consider business continuity under certain circumstances may form part of the direction of such reform. The reform of bankruptcy law should therefore not be oriented solely toward expediting the resolution of debt-related matters, but also toward establishing a resolution mechanism capable of producing fair outcomes for all interested parties.

The research gap addressed in this study lies in the need to integrate the principle of balance, business continuity, debtor protection, an insolvency test, and the ultimum remedium principle into a coherent framework for reformulating Indonesian bankruptcy law. Although previous studies have discussed these principles and examined Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022, further clarification is needed regarding how an insolvency test and proportionality-based assessment can operate alongside the existing requirements under Article 2 paragraph (1) and the summary

evidentiary mechanism under Article 8 paragraph (4) of Law Number 37 of 2004. The novelty of this study lies in proposing an integrated normative construction that combines an objective assessment of the debtor's financial condition and business viability with an evaluation of whether bankruptcy is a proportionate last resort when effective alternative remedies remain available. Unlike an approach that treats debtor protection and creditor protection as competing interests, this construction seeks to reconcile both interests while preserving the efficiency of bankruptcy proceedings and creditors' statutory rights. Accordingly, the proposed insolvency test and the ultimum remedium principle are positioned as complementary directions for legislative reform, rather than as requirements already expressly established by the prevailing Bankruptcy and PKPU Law.

## **2. Research Method**

This research employs a normative juridical legal research method, specifically focusing on the analysis of legal principles, statutory provisions, and judicial decisions. Referring to the view of Peter Mahmud Marzuki, normative legal research constitutes a process of identifying legal rules, legal principles, and legal doctrines in order to address the legal issues under examination (Marzuki, 2017). Consistent with the prescriptive character of legal scholarship, this research does not test hypotheses through statistical data; rather, it seeks to establish coherence between legal norms and judicial decisions. This research employs the Statute Approach, Conceptual Approach, and Case Approach. These three approaches are used complementarily to analyze the legal issues that constitute the focus of the research. The *Statute Approach* is employed to examine statutory provisions relating to bankruptcy and the Suspension of Debt Payment Obligations (PKPU). The *Conceptual Approach* is used to analyze relevant legal concepts and principles, while the *Case Approach* is employed

to examine the legal reasoning contained in judicial decisions relevant to the issues under investigation.

The legal materials used in this research are classified into Primary Legal Materials and Secondary Legal Materials. The Primary Legal Materials, which are authoritative and legally binding, include Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, decisions of the Commercial Court, and decisions of the Supreme Court. Secondary Legal Materials, which serve to explain and supplement the Primary Legal Materials, are obtained through a literature review of bankruptcy law textbooks, legal journals, previous dissertations, and the opinions of legal scholars.

### **3. Results and Discussion**

Based on an examination of primary and secondary legal materials, this research finds that the legal framework governing bankruptcy in Indonesia under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy and PKPU Law) continues to present fundamental issues, particularly concerning the requirements for filing a petition for a declaration of bankruptcy. The principal concern lies in the absence of an explicit requirement to establish the debtor's insolvency as a substantive prerequisite for a declaration of bankruptcy. The prevailing system primarily emphasizes the fulfillment of normative requirements, namely the existence of two or more creditors and at least one debt that has fallen due and is payable, with such requirements being established through summary proof.

This framework gives rise to what is commonly referred to in bankruptcy literature as the *easy-entry* paradigm, whereby access to bankruptcy proceedings is relatively straightforward because the law does not expressly require a comprehensive assessment of the debtor's financial inability to pay. Consequently, a

debtor that remains economically viable, possesses substantial assets, continues to conduct business activities, and has adequate business prospects, but is experiencing liquidity or *cash-flow* difficulties, may theoretically still be subject to a bankruptcy petition provided that the elements stipulated in Article 2 paragraph (1) of the Bankruptcy and PKPU Law can be established through summary proof. This situation creates tension between legal certainty for creditors and the protection of the debtor's business continuity.

Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 is particularly significant because it demonstrates that the fulfillment of the formal requirements for bankruptcy does not necessarily result in the granting of a bankruptcy petition. In that case, the Supreme Court upheld the decision of the Central Jakarta Commercial Court rejecting the bankruptcy petition, even though it had been established through summary proof that there were two or more creditors and that a debt had fallen due and was payable. The Court's reasoning was based, among other considerations, on the disproportion between the petitioner's claim of IDR 75,000,000 (seventy-five million Indonesian rupiah) and the potential impact of bankruptcy on the continuity of the debtor's business, as well as the availability of a small-claims proceeding as an alternative mechanism for obtaining satisfaction of the creditor's claim. The Supreme Court connected these considerations with the principle of utility and the characterization of bankruptcy as an *ultimum remedium*.

#### **A. Deconstructing the Weaknesses of the Legal Framework Governing Bankruptcy Petitions in Indonesia under the Easy-Entry Paradigm**

The Indonesian bankruptcy law system was established to provide a collective, orderly, fair, transparent, and effective mechanism for resolving debt-related matters. In practice, the normative design of the Bankruptcy and PKPU Law demonstrates that access to bankruptcy proceedings is relatively easy. This issue arises primarily because

the law does not expressly establish actual insolvency as a substantive requirement that must be demonstrated before a debtor may be declared bankrupt. Article 2 paragraph (1) of the Bankruptcy and PKPU Law provides that a debtor having two or more creditors and failing to fully pay at least one debt that has fallen due and is payable may be declared bankrupt by a court decision, either upon the debtor's own petition or upon the petition of one or more of its creditors. The provision, on its face, does not require proof that the debtor's total liabilities exceed its total assets or that the debtor is balance-sheet insolvent.

Article 8 paragraph (4) of the Bankruptcy and PKPU Law further reinforces this characteristic by providing that a petition for a declaration of bankruptcy must be granted where there are facts or circumstances established through summary proof demonstrating that the requirements for a declaration of bankruptcy as referred to in Article 2 paragraph (1) have been satisfied. The elucidation of this provision essentially places the existence of two or more creditors and the existence of a debt that has fallen due and is payable at the core of the summary evidentiary process. A dispute concerning the amount of the debt between the petitioner and the respondent does not, in itself, preclude the issuance of a declaration of bankruptcy. From the perspective of legal reasoning, this framework demonstrates the predominance of a formalistic approach in determining whether the requirements for bankruptcy have been satisfied. At the stage of examining a bankruptcy petition, judges are primarily directed to ascertain whether the elements expressly prescribed by law have been fulfilled. Consequently, the scope for conducting a more comprehensive assessment of the debtor's financial health, asset and liability structure, cash-flow generation capacity, business prospects, and the possibility of satisfying obligations through restructuring remains relatively limited. The statutory time limit for examining bankruptcy cases further illustrates this issue. Article 8 paragraph (5) of the

Bankruptcy and PKPU Law stipulates that a decision on a petition for a declaration of bankruptcy must be rendered no later than 60 (sixty) days after the date on which the petition is registered. This time limit reflects the nature of bankruptcy law, which requires expeditious proceedings and seeks to provide legal certainty for the parties. The protection of debtors may, however, become problematic where an assessment of their financial condition and business prospects requires a more comprehensive analysis. The principal issue does not lie in the expedited nature of the proceedings itself, but rather in the potential imbalance between the need for a swift examination and the need to obtain an objective assessment of the debtor's economic condition. Bankruptcy entails far-reaching legal and economic consequences because, following a declaration of bankruptcy, the administration and liquidation of the debtor's assets fall under the authority of the curator under the supervision of the supervisory judge. A decision to declare a debtor bankrupt should therefore not be viewed merely as an individual mechanism for securing repayment of a debt, but also as a legal decision that may affect the debtor's broader business ecosystem.

The *easy-entry* paradigm may create opportunities for bankruptcy proceedings to be used as an instrument of pressure in commercial relationships. A creditor holding a relatively small claim may use a bankruptcy petition as a means of seeking expedited payment, even where the value of the claim is disproportionate to the consequences that may arise for the debtor's business operations. This risk becomes more pronounced where the debtor continues to possess financial capacity and viable business prospects. Criticism of the *easy-entry* paradigm does not mean that every creditor who files a bankruptcy petition has engaged in an abuse of legal process. Bankruptcy remains a legitimate legal instrument for protecting creditors' interests and ensuring the collective resolution of debts. The issue lies in ensuring that this instrument is used consistently with the function and objectives of bankruptcy law,

rather than merely as an alternative means of individual debt collection. Legal certainty for creditors must therefore be balanced with the protection of debtors that retain viable business prospects. Bankruptcy law should be capable of distinguishing between debtors that are genuinely unable to fulfill their obligations on a structural basis and those that are merely experiencing temporary liquidity difficulties. The concept of an insolvency test is therefore relevant as a potential avenue for legal reform, rather than as a requirement currently mandated by the Bankruptcy and PKPU Law (Agus Wibowo, 2025).

**B. Analysis of the Landmark Decision: Supreme Court Decision Number 1714  
K/Pdt.Sus-Pailit/2022**

The application of the Bankruptcy and PKPU Law in Indonesia needs to be analyzed through the principle of balance and the principle of business continuity. Both principles are important because bankruptcy concerns not only the legal relationship between creditors and debtors, but also the economic consequences that may arise for the existence and business operations of the debtor. The principle of balance essentially requires proportional legal protection between the creditor's interest in obtaining certainty of payment and the debtor's interest in maintaining business continuity (Sjahdeini, 2016). This principle does not place creditors and debtors in positions that must always receive identical forms or degrees of protection; rather, it requires the use of bankruptcy mechanisms to take into account the respective legal interests of the parties in a proportionate manner. The protection of creditors remains an important objective, but its implementation should not disregard the interests of debtors that retain financial capacity and viable business prospects.

The principle of business continuity places the existence and continuation of business activities among the interests that deserve consideration in resolving debt-related matters. Business continuity does not concern only the interests of the debtor

as the owner or manager of a company. The continuation of business activities may also benefit employees, suppliers, consumers, business partners, other creditors, and parties having economic relationships with the company. Preserving productive business operations may therefore contribute to achieving greater economic value for the interested parties. The application of these two principles demonstrates that bankruptcy should not necessarily be directed toward the liquidation or administration of the debtor's assets in every case. Judges should consider whether the debtor's condition genuinely indicates structural inability to pay or merely temporary liquidity difficulties. This consideration becomes increasingly relevant where the debtor continues to possess productive assets, ongoing business operations, viable business prospects, and the capacity to fulfill its obligations within a certain period.

The condition of a debtor subject to a bankruptcy petition may indicate that the company remains highly viable and solvent, with total assets substantially exceeding its total liabilities. A debtor may also experience temporary liquidity or cash-flow difficulties due to market disruptions, delayed payments from third parties, or force majeure circumstances. Such conditions do not necessarily demonstrate that the debtor has become insolvent. The protection of good-faith debtors should therefore be situated within the framework of legal protection. Philipus M. Hadjon, through the Theory of Legal Protection, emphasizes the role of law in protecting legal subjects against actions that adversely affect their rights and interests. This framework is relevant in assessing the need for judicial authority to examine the debtor's concrete circumstances more objectively, particularly where the formal application of legal rules may produce disproportionate consequences.

Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 is significant in the development of legal reasoning in Indonesian bankruptcy law. The case involving

Edwin Heryadin's petition against PT Bhadra Samudra Indah demonstrates that the fulfillment of the formal bankruptcy requirements under Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations does not necessarily result in the granting of a bankruptcy petition. The existence of two or more creditors and a debt that had fallen due and was payable had been established through summary proof. Nevertheless, the Central Jakarta Commercial Court rejected the bankruptcy petition, and that decision was subsequently upheld by the Supreme Court at the cassation level. The case originated from Edwin Heryadin's claim against PT Bhadra Samudra Indah in the amount of IDR 75,000,000 (seventy-five million Indonesian rupiah), arising from the purchase of three MacBook Air units. The proceedings also established the existence of another creditor, PT Gistex Garmen Indonesia, which held a claim against the debtor amounting to IDR 5,656,914,286 (five billion six hundred fifty-six million nine hundred fourteen thousand two hundred eighty-six Indonesian rupiah). Accordingly, the requirements under Article 2 paragraph (1) of the Bankruptcy and PKPU Law had been satisfied through summary proof. The rejection of the bankruptcy petition was therefore not based on the failure to satisfy the formal requirements for bankruptcy, but rather demonstrated further consideration concerning the appropriateness and proportionality of the use of bankruptcy proceedings. The petitioner's claim of IDR 75,000,000 (seventy-five million Indonesian rupiah) became significant because the legal consequences of a declaration of bankruptcy could have a substantially broader impact on the continuity of the debtor's business. The Supreme Court endorsed the *judex facti*'s reasoning that the value of the claim was disproportionate to the potential impact that could arise if the debtor were declared bankrupt, including the possibility of disrupting or bringing the debtor's business operations to an end. This reasoning demonstrates that the Supreme Court

did not view bankruptcy solely from the perspective of the bilateral relationship between creditor and debtor, but also considered the broader economic consequences of a declaration of bankruptcy.

This approach demonstrates a more substantive application of bankruptcy law. Bankruptcy is not treated merely as an instrument to compel a debtor to fulfill its payment obligations, but as a legal institution carrying consequences for the debtor's entire pool of assets and the continuity of its business operations. The nature of bankruptcy as a collective debt-resolution mechanism requires its use to take into account the legal and economic consequences that may arise for all interested parties. Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 may be understood as a form of *rechtsvinding*, namely the judicial process of discovering and developing the law through the interpretation of existing legal norms in order to reach what is considered a just resolution in a concrete case. The Supreme Court did not abolish or set aside Articles 2 paragraph (1) and 8 paragraph (4) of the Bankruptcy and PKPU Law. Rather, it acknowledged that the formal requirements had been satisfied while determining that such fulfillment could not be considered independently from the consequences of bankruptcy and the availability of another legal mechanism that was more proportionate.

The principle of utility also assumes an important role in determining whether bankruptcy constitutes an appropriate instrument for resolving a particular dispute. A bankruptcy petition that formally satisfies the statutory requirements, but whose use produces consequences substantially greater than the objective sought to be achieved, should be assessed from the perspective of proportionality. Judges may consider the availability of alternative legal remedies that are more appropriate to the interest sought to be protected. The small-claims proceeding constitutes an important aspect of the *ratio decidendi* of the decision. The Supreme Court considered that a small-

claims proceeding involves relatively simple evidentiary requirements and an expedited examination process. Under Supreme Court Regulation Number 4 of 2019, at the time the case was examined, claims involving a material value of no more than IDR 500,000,000 (five hundred million Indonesian rupiah) could be resolved through the small-claims mechanism. The petitioner's claim of only IDR 75,000,000 (seventy-five million Indonesian rupiah) therefore demonstrated the availability of another legal avenue for obtaining satisfaction of the creditor's claim without producing consequences as extensive as those associated with bankruptcy proceedings.

The characterization of bankruptcy as an *ultimum remedium* becomes relevant where a concrete case has a more proportionate alternative means of resolution. The use of this concept does not necessarily mean that creditors must always pursue ordinary civil litigation before filing a bankruptcy petition. The Bankruptcy and PKPU Law continues to grant creditors the right to file bankruptcy petitions where the statutory requirements are satisfied. Decision Number 1714 K/Pdt.Sus-Pailit/2022 demonstrates that where an adequate alternative mechanism is available to obtain satisfaction of a claim and the consequences of bankruptcy are substantially greater than the interest sought to be protected, the use of bankruptcy proceedings may be regarded as disproportionate. The characterization of bankruptcy as an *ultimum remedium* in this context has also been developed in academic scholarship that considers the decision an important example of the need for proportionality in the use of bankruptcy mechanisms (Prawirawinata, 2025).

Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 demonstrates a corrective approach to an excessively formalistic understanding of the requirements for bankruptcy. A formalistic approach tends to stop at the question of whether two or more creditors exist and whether at least one debt has fallen due and is payable. The approach reflected in the decision broadens the inquiry to consider whether the

use of bankruptcy proceedings in a particular case is genuinely proportionate to the objective of debt resolution sought to be achieved. The principle of business continuity is particularly significant in this context. Bankruptcy affects not only the relationship between creditors and debtors, but may also affect employees, suppliers, consumers, business partners, other creditors, and economic activities that depend upon the existence of the company. Business continuity should therefore not be understood solely as an interest of the debtor, but also as an economic interest capable of producing consequences for other parties. The study by Yordinand, Purba, Sembiring, and Harianto (2024) considers Decision Number 1714 K/Pdt.Sus-Pailit/2022 relevant to the principle of business continuity because the debtor was considered to remain solvent and its business activities remained productive, while the amount of the disputed debt was relatively small compared with the consequences of bankruptcy.

Decision Number 1714 K/Pdt.Sus-Pailit/2022 cannot, however, be interpreted as an explicit application of an *insolvency test*. The Supreme Court did not hold that courts are required to conduct a comprehensive examination comparing the debtor's total assets with its total liabilities as a new prerequisite for bankruptcy. Nor did the decision amend Article 2 paragraph (1) of the Bankruptcy and PKPU Law by adding insolvency as a new normative element. The Supreme Court acknowledged that the formal requirements for bankruptcy had been satisfied, but nevertheless upheld the rejection of the petition based on considerations concerning the disproportion between the amount of the claim and the consequences of bankruptcy, as well as the availability of the small-claims mechanism. This distinction is important to prevent an overinterpretation of the *ratio decidendi* of the decision. The *insolvency test* constitutes a concept that may be advanced as a recommendation for legal reform based on weaknesses in the existing framework of the Bankruptcy and PKPU Law, but it is not a legal norm directly created by Supreme Court Decision Number 1714 K/Pdt.Sus-

Pailit/2022. The distinction between the *ratio decidendi* of a judicial decision and the concept of *ius constituendum* is necessary to maintain consistency between positive law (*ius constitutum*) and recommendations for legal reform. Nevertheless, the decision may provide an argumentative foundation for the development of an *insolvency test* within Indonesian bankruptcy law. The consideration of proportionality between the amount of a claim and the consequences of bankruptcy may, conceptually, be developed into a more structured mechanism for assessing the debtor's condition before a declaration of bankruptcy is issued. Such a mechanism could be designed to distinguish between debtors that are genuinely unable to fulfill their obligations and those that remain economically viable but are experiencing temporary liquidity difficulties.

The distinction between insolvency and liquidity difficulties is important for providing protection to good-faith debtors. A debtor may experience delayed payment not because it lacks assets or viable business prospects, but because of a short-term imbalance in cash flow. A debtor may possess substantial receivables that have not yet been collected, productive assets that retain significant value, and ongoing business operations that continue to generate revenue, while simultaneously facing obligations that have fallen due. Such circumstances do not necessarily demonstrate that the debtor has become permanently insolvent. A bankruptcy law framework that relies primarily on the existence of a due and payable debt may therefore overlook this economic dimension. Although Article 178 paragraph (1) of the Bankruptcy and PKPU Law provides creditors with an opportunity to submit a composition proposal to prevent the debtor from entering a state of insolvency, this mechanism operates within the framework applicable after a declaration of bankruptcy has been issued. In the context of business activities, a declaration that a debtor company has entered bankruptcy inevitably creates concern among

employees, suppliers, consumers, business partners, other creditors, and other third parties having interests in the debtor. Moreover, as a matter of law, the consequences of bankruptcy extend to the entire pool of the debtor's bankruptcy estate, making losses to the debtor difficult to avoid.

The principle of balance requires equilibrium between the creditor's right to obtain payment and the debtor's interest in maintaining viable business operations. Creditors have a legitimate interest in obtaining legal certainty and repayment of their claims. That interest is also interconnected with the interests of other creditors. The bankruptcy of a company that remains productive may result in the cessation of business operations, a decline in the value of productive assets, disruption of business relationships, and the loss of the company's ability to generate income. Bankruptcy intended to protect creditors under such circumstances may instead reduce the economic value ultimately available for distribution among creditors. Business continuity should therefore be understood as one consideration supporting the achievement of the collective objectives of bankruptcy law. Protection of the *going concern* does not mean granting debtors immunity from creditors' claims. Rather, it means ensuring that liquidation is pursued when it constitutes a more rational option than maintaining viable business operations. Consideration of business continuity also requires judges to examine the impact of a decision on the broader group of interested parties rather than focusing exclusively on the legal relationship between the petitioner and the respondent.

Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 may be positioned as a landmark decision that provides significant guidance for the development of legal reasoning in bankruptcy law, particularly concerning the application of the principle of utility, proportionality, the principle of balance, and the principle of business continuity. The Supreme Court published the case as a Landmark Decision and

indicated that the decision could serve as a reference for other judges when examining cases involving similar issues. The significance of the decision does not mean that all bankruptcy petitions involving relatively small claims must be rejected. Each case must continue to be assessed based on its specific circumstances. The amount of the claim is only one factor that may be considered. Other relevant factors include the existence of other creditors, the debtor's business condition, the nature of the legal relationship between the parties, the debtor's ability to fulfill its obligations, the relationship between the amount of the claim and the potential costs of bankruptcy proceedings, the potentially prolonged duration of bankruptcy proceedings, the availability of alternative dispute-resolution mechanisms, and the potential losses to other parties. Such an approach ensures that the principle of proportionality does not become a basis for disregarding creditors' rights, but instead functions as an instrument for preventing the use of bankruptcy proceedings in a manner inconsistent with their legal objectives.

#### **4. Conclusion**

The application of the *Principle of Balance* and the *Principle of Business Continuity (Going Concern)* in Indonesian bankruptcy law continues to face challenges, particularly because the framework governing bankruptcy petitions under the Bankruptcy and PKPU Law places greater emphasis on the fulfillment of formal requirements through summary proof. This *easy-entry* paradigm allows a bankruptcy petition to be filed based on the fulfillment of the requirements concerning the existence of two or more creditors and at least one debt that has fallen due and is payable, without requiring proof of the debtor's insolvency as a normative prerequisite. This condition potentially places debtors that remain economically solvent and have viable business prospects, but are experiencing temporary liquidity difficulties, in a vulnerable position with respect to the consequences of bankruptcy.

This situation demonstrates the need to apply the Principle of Balance and the Principle of Business Continuity more proportionately in the examination of bankruptcy petitions.

Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 demonstrates an important development in bankruptcy legal reasoning because the Supreme Court considered not only the fulfillment of the formal requirements for bankruptcy, but also the proportionality between the amount of the claim, the impact of bankruptcy on the debtor's business continuity, and the availability of other legal mechanisms that could be pursued by the creditor. The decision demonstrates that the fulfillment of formal requirements does not necessarily have to result in the granting of a bankruptcy petition where the application of bankruptcy proceedings in a particular case produces consequences disproportionate to the objective sought to be achieved. The decision further reinforces the relevance of the principles of utility, proportionality, and business continuity in bankruptcy legal reasoning.

Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 cannot yet be understood as an explicit application of an insolvency test, as the Supreme Court did not establish an examination comparing the debtor's assets and liabilities as a new requirement for a declaration of bankruptcy. An insolvency test is more appropriately positioned as a legal reform proposal that may be developed to address weaknesses in the existing bankruptcy framework. Such reform should be directed toward distinguishing debtors that are genuinely insolvent from those experiencing only temporary liquidity difficulties, so that bankruptcy may be applied proportionately while continuing to protect the legitimate interests of creditors and the continuity of the debtor's business. The decision demonstrates a shift in judicial practice from a rigid reliance on the bankruptcy requirements stipulated in Article 2 paragraph (1) and Article 8 paragraph (4) of the Bankruptcy and PKPU Law toward an approach that

places greater emphasis on the philosophy of bankruptcy as an *ultimum remedium*. Considering that the underlying rationale of the Bankruptcy and PKPU Law is to maintain a balance between business continuity and the fulfillment of creditors' claims, the relatively accessible bankruptcy requirements should be understood within the framework that bankruptcy proceedings ought to constitute a last resort when other legal measures that function as more immediate remedies remain available.

Based on the findings of this research, the legislature and the Government should evaluate and improve Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, particularly with regard to the framework governing bankruptcy petitions and the mechanism of summary proof. Such reform should consider the possible implementation of an *insolvency test* as an instrument for objectively assessing the debtor's financial condition before the court issues a declaration of bankruptcy. Where necessary, such a mechanism may involve experts or independent auditors, while maintaining the expedited and efficient nature of bankruptcy proceedings. Clearer regulations are also necessary to provide guidance for judges in assessing the balance between the interests of creditors, the debtor's financial capacity, and the impact of bankruptcy on business continuity.

Judges of the Commercial Court should consider the principle of proportionality, the Principle of Balance, and the Principle of Business Continuity when examining each bankruptcy petition. Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 may serve as an argumentative reference in cases with similar characteristics, particularly where there is a disproportion between the amount of the claim and the impact of bankruptcy on the debtor's business operations. Judges should also consider the debtor's concrete circumstances, financial capacity, prospects for business continuity, the interests of other creditors, and the availability of more

proportionate mechanisms for resolving the debt. Such an approach may prevent bankruptcy from being used merely as an instrument for individual debt collection, while continuing to respect and protect creditors' rights as guaranteed by law.

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