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## Fairness for Creditors in Bankruptcy Proceedings: Between Certainty and Economic Interests

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**Abstract:** This study aims to analyze the concept of creditor justice in bankruptcy proceedings in Indonesia, with a particular focus on the tension between legal certainty and economic interests. Bankruptcy, as a legal mechanism for debt settlement, often places creditors in an unequal position, especially in relation to the different classifications of creditors, namely secured creditors, preferred creditors, and unsecured creditors. This research employs a normative juridical method with statutory and conceptual approaches, referring to Law No. 37 of 2004 and relevant legal literature on bankruptcy and suspension of debt payment obligations (PKPU). The findings indicate that although the Indonesian bankruptcy system provides legal certainty through clear, structured, and relatively fast procedures, substantive justice for all creditors has not been fully achieved. This is reflected in the unequal distribution of bankruptcy assets, where unsecured creditors often occupy the most disadvantaged position. In addition, the PKPU mechanism, which is intended as a debt restructuring tool, also faces practical challenges, including the potential misuse by debtors acting in bad faith. These conditions demonstrate that the bankruptcy system still encounters difficulties in balancing legal certainty with economic fairness. Therefore, regulatory strengthening and improved supervision are required to create a more balanced, fair, and effective system that better protects the interests of all parties, particularly creditors.

**Keyword:** Bankruptcy, PKPU, Creditors, Justice, Legal Certainty

### INTRODUCTION

The rapid development of the business world in the era of globalisation has led to an increase in the intensity of legal relationships between economic actors, particularly in the form of creditor-debtor relationships. Such dynamic business activities often give rise to the risk that debtors will be unable to meet their debt repayment obligations to creditors within the agreed timeframe. This situation ultimately creates a need for legal instruments capable of resolving debt and credit issues in an orderly and fair manner, whilst providing legal certainty for the parties concerned (Al-Anshori et al., 2024).

Within the Indonesian legal system, bankruptcy serves as one of the primary instruments for resolving issues arising from a debtor's inability to repay their debts. Bankruptcy functions

not only as a mechanism for the general seizure of all the debtor's assets, but also as a means of ensuring the collective distribution of the debtor's assets to creditors in accordance with applicable legal principles. Thus, bankruptcy is expected to provide legal certainty in the debt settlement process, whilst also establishing order in the legal relationship between debtors and creditors (Al-Anshori et al., 2023).

However, in practice, the application of insolvency law does not always succeed in achieving a balanced sense of justice for all creditors. This is due to the differing legal statuses of creditors as set out in the provisions of Law No. 37 of 2004. Under this system, creditors are categorised as secured creditors, preferential creditors and unsecured creditors. Separate creditors have a stronger position as they are backed by security rights, whilst preferential creditors enjoy special rights under the provisions of the law, and unsecured creditors are in the weakest position as they have no specific security (Al-Anshori et al., 2023).

In practice, this difference in status often leads to inequities in the distribution of the bankrupt's assets. Separate and preferential creditors tend to be given priority in payment, whilst unsecured creditors often receive only a very small share of the debtor's remaining assets, and in some cases receive no payment at all. This demonstrates that the principle of equality amongst creditors in bankruptcy is not applied absolutely, but is limited by the system of priorities established by law (Anshori & Ramadhita, 2025).

On the other hand, the insolvency mechanism, which is designed to provide legal certainty, also emphasises the importance of speed in resolving cases. Whilst this expedited process is intended to avoid prolonged uncertainty for creditors, in practice it can actually give rise to new issues regarding economic justice. The rapid liquidation of the debtor's assets often leads to a decline in asset value (a fire sale), meaning that the proceeds from the sale of the bankrupt estate do not reflect the true economic value. Consequently, the amount distributed to creditors is smaller than what could have been obtained under normal circumstances.

Further, the existence of the Debt Payment Obligation Deferral (PKPU) mechanism—which is essentially intended as an alternative debt restructuring measure to safeguard the debtor's business continuity—is not without its own set of practical challenges. PKPU should serve as a means to reach a settlement agreement between the debtor and creditors, thereby providing a more beneficial solution for both parties compared to liquidation. However, in some cases, PKPU is instead used by debtors as a means to postpone payment obligations without a genuine intention to settle the debt, thereby prolonging uncertainty for creditors.

This phenomenon indicates that the bankruptcy system and PKPU in Indonesia still face challenges in striking a balance between legal certainty and economic justice. On the one hand, legal certainty has been realised through clear procedures and structured mechanisms. On the other hand, the aspect of justice, particularly for all creditors, has not yet been fully and optimally achieved.

Based on this analysis, it is important to conduct further research into how the concept of justice for creditors can be realised within the bankruptcy process, without sacrificing the legal certainty that is the primary objective of the bankruptcy system, and without disregarding the economic interests inherent in business relationships. This research is expected to contribute to the development of a more balanced, fair, and responsive bankruptcy law that meets the practical needs of the business world.

### **Research Questions**

1. What is the concept of justice for creditors under Indonesian insolvency law?
2. Has the application of insolvency law struck a balance between legal certainty and economic interests?
3. What are the obstacles to achieving justice for creditors?

## METHOD

This study is a normative legal research project focusing on the examination of applicable positive law, particularly regarding the protection and justice afforded to creditors in bankruptcy proceedings. The methodology involves analysing secondary legal materials as the primary source, obtained through library research, which encompasses primary, secondary and tertiary legal materials (Susanti & Efendi, 2014).

Primary legal sources consist of relevant legislation, in particular Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Repayment Obligations (PKPU), as well as court rulings relating to bankruptcy cases. Meanwhile, secondary legal materials include academic literature such as books, legal journals, research findings, and expert opinions discussing the concepts of bankruptcy, justice, and legal protection for creditors. Tertiary legal materials consist of legal dictionaries, encyclopaedias, and other sources that support conceptual understanding.

The approaches used in this study are the statutory approach and the conceptual approach. The statutory approach involves a systematic examination of the provisions of Law No. 37 of 2004 and other relevant regulations to understand the normative construction of the conditions for bankruptcy and their implications for creditors. Meanwhile, the conceptual approach is used to analyse legal concepts that have developed in legal doctrine, such as justice, legal certainty, utility, and the principles of bankruptcy law and PKPU (Kristiawanto, 2022).

The collection of legal materials is carried out through the inventory, classification and systematisation of legal materials relevant to the research problem. Subsequently, the analysis of legal materials is conducted qualitatively by interpreting and constructing legal norms based on coherent legal logic. This analytical process employs deductive reasoning, which involves drawing conclusions from general principles to the specific case or problem under investigation (Marzuki, 2005).

## RESULTS AND DISCUSSION

### The Concept of Justice for Creditors in Indonesian Insolvency Law

The concept of fairness to creditors in Indonesian insolvency law is fundamentally rooted in a fundamental principle of civil law, namely *paritas creditorum*, which affirms that all creditors, in principle, have equal standing with regard to the assets of the insolvent debtor. This principle is further reinforced by the doctrine of *pari passu pro rata parte*, which provides that the distribution of the bankrupt's assets is to be carried out proportionally in accordance with the amount of each creditor's claim (Subekti, 2001). Philosophically speaking, these two principles reflect an effort to achieve distributive justice in the context of insolvency—a form of justice that does not demand equal outcomes, but rather emphasises proportional treatment based on the position and rights of each party (Rawls, 1971). Thus, justice is not understood as an equal distribution, but as a distribution that is consistent with the rights and priorities established by law (Al-Anshori, 2018).

In the context of positive law, this concept of justice finds its normative basis in statutory provisions, particularly in Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Repayment Obligations. Article 2(1) of that Act stipulates that a debtor may be declared bankrupt if they have at least two creditors and fail to pay a debt that has fallen due and is enforceable. This provision indicates that bankruptcy law is oriented towards the protection of the collective interests of creditors. Furthermore, the principle of *paritas creditorum* is also rooted in Articles 1131 and 1132 of the Civil Code, which affirm that all of the debtor's assets serve as security for all creditors, unless there are valid grounds for priority. Thus, justice for creditors is not merely philosophical in nature, but also has a strong normative foundation within the Indonesian legal system.

However, this concept cannot be separated from the normative reality within the Indonesian insolvency legal system. Under the provisions of Law No. 37 of 2004 on Insolvency and the Suspension of Debt Repayment Obligations, there is a classification of creditors that directly affects their position in the distribution of the insolvent estate, namely separate creditors, preferential creditors and unsecured creditors (Apmayuda et al., 2019). A secured creditor is a party holding a security interest, such as a charge, pledge or fiduciary interest, and therefore enjoys a stronger position as they may enforce their security interest as if no bankruptcy had occurred (Fuady, 2014). Meanwhile, preferential creditors are granted special rights under the law, such as the state's right to tax revenue or employees' right to certain wages (Subekti & Tjitrosudibio, 2008). Unsecured creditors are creditors without specific security who are entitled only to the remaining assets of the insolvent estate once the obligations to other creditors have been met (Anshori, et al., 2024).

These differences in the status of creditors are set out in various provisions of Law No. 37 of 2004, such as Article 55, which grants secured creditors the right to enforce their security, and Articles 56 to 59, which provide for the suspension of the exercise of such rights for a specified period. Meanwhile, the status of preferential creditors relates to provisions in the Civil Code, specifically Articles 1139 to 1149. These provisions demonstrate that the principle of creditor equality in bankruptcy is not absolute, but rather recognises the existence of legally justified inequality (Al-Anshori et al., 2023). Therefore, justice in bankruptcy is best understood as relative and contextual, rather than absolute (Anshori, et al., 2024). From the perspective of distributive justice theory, differential treatment of creditors may be justified provided it is based on objective and rational grounds (Sugiarto et al., 2025), in line with the primary objective of insolvency law to ensure the orderly, fair and efficient distribution of the debtor's assets amongst creditors (Sjahdeini, 2009).

Nevertheless, in practice, the application of this principle of fairness still faces various challenges (Hasibuan et al., 2026). Unsecured creditors are often in a weak position because they only receive the remaining proceeds from the distribution of the bankrupt estate after the claims of secured and preferential creditors have been satisfied first (Harahap, 2022). This situation raises questions about the extent to which substantive justice is actually realised within the insolvency system. Furthermore, this imbalance is exacerbated by the liquidation process, which often leads to a decline in the value of the debtor's assets. The rapid sale of assets (fire sale) during the liquidation process frequently fails to reflect their true market value, thereby having a direct impact on the amounts received by creditors (Black, 1999).

In judicial practice, the dynamics of justice for creditors are also reflected in various commercial court rulings. One frequently cited example is the bankruptcy case of PT Telekomunikasi Selular (Telkomsel), in which a petition for bankruptcy was filed even though the company was financially sound. This ruling demonstrates that the straightforward application of Article 2(1) of Law No. 37 of 2004 has the potential to create tension between legal certainty and substantive justice. This underscores that the implementation of the concept of justice in bankruptcy is determined not only by legal norms, but also by how judges interpret and apply them in specific cases (Helena & Kartika, 2024)

It can therefore be concluded that the concept of fairness to creditors in Indonesian insolvency law is a combination of the principle of formal equality and legally justified differential treatment. Fairness in this context does not aim to equalise outcomes, but rather to ensure that each creditor receives a share in accordance with their respective legal rights (Al-Anshori, 2021). Therefore, an understanding of the concept of justice for creditors under Indonesian insolvency law must be comprehensive, taking into account the interrelationship between theoretical principles, the provisions of legislation, and evolving judicial practice.

## **The balance between legal certainty and economic interests in the application of insolvency law**

The application of bankruptcy law in Indonesia is essentially designed to ensure legal certainty in the settlement of debts through relatively straightforward mechanisms, swift judicial proceedings in the Commercial Court, and bankruptcy rulings that can be enforced immediately. This framework aims to provide creditors with the assurance that their claims will be satisfied through clear and predictable legal procedures (Fuady, 2014). However, this legal certainty cannot be separated from the economic dimension, which is also a primary objective of the modern insolvency regime. From an economic perspective, insolvency does not merely serve as a means of distributing the debtor's assets, but also aims to maximise asset value and preserve the viability of the debtor's business where it still has economic prospects (Jackson, 1986). This is consistent with the view that modern insolvency also serves economic purposes in addition to formal legal ones (Fitriyah et al., 2023).

When viewed from a normative perspective in accordance with Article 2(1) of Law No. 37 of 2004, the requirements for filing for bankruptcy which stipulate only the existence of two creditors and one debt that has fallen due and is enforceable—demonstrate a strong emphasis on the principle of legal certainty through the principle of simple proof. However, the formulation of this provision does not explicitly require a condition of general inability to pay (insolvency test), and thus does not provide sufficient scope to assess the debtor's economic condition comprehensively. Consequently, a debtor who, economically speaking, still possesses business prospects and adequate assets remains at risk of being declared bankrupt merely because they are unable to meet specific obligations within a certain timeframe, which ultimately demonstrates that economic considerations have not been fully accommodated within the framework of bankruptcy law.

In practice, this balance between legal certainty and economic interests has not yet been fully achieved. The insolvency system in Indonesia tends to place greater emphasis on formal legal certainty, namely the swift and procedure-based resolution of cases (Mubarok et al., 2025). However, this overly procedural approach often overlooks the optimisation of the economic value of the debtor's assets (Sjahdeini, 2009). As a result, the liquidation process in bankruptcy proceedings often yields a lower sale price for assets than their actual market value, thereby actually causing financial loss to creditors (Yo'el & Al-Anshori, 2019).

When compared with approaches in other legal systems that use the insolvency test as their primary basis, the bankruptcy system in Indonesia appears to place greater emphasis on the condition of default than on overall financial incapacity. This approach implies the possibility of using bankruptcy instruments as a debt collection tool, rather than as a debt resolution mechanism oriented towards economic efficiency. In this context, the legal certainty produced risks undermining economic value, as businesses that remain viable may lose the opportunity to restructure and continue their operations (Hasibuan et al., 2023).

Furthermore, the absence of an explicit insolvency test requirement also creates scope for potential misuse of bankruptcy instruments by creditors. In practice, bankruptcy petitions are not infrequently filed not merely to settle debts collectively, but as a strategy to pressure debtors into promptly fulfilling their obligations. This situation indicates that bankruptcy risks shifting from a debt settlement instrument into a coercive negotiation tool, which may ultimately harm the economic interests of debtors who actually still possess the capacity to continue their business operations.

On the other hand, the Debt Payment Obligation Deferral (PKPU) mechanism which is intended to safeguard economic interests through debt restructuring—has not yet been functioning optimally. In practice, PKPU is often used merely as a means of deferring obligations without being accompanied by a realistic and implementable settlement plan

(Hartini, 2009). This indicates that the economic function of this instrument has not yet been fully able to maintain a balance of interests between debtors and creditors.

Furthermore, from an institutional perspective, the roles of judges and liquidators also influence the striking of a balance between legal certainty and economic interests. When examining bankruptcy petitions, judges tend to focus on the fulfilment of formal requirements under the law, thereby limiting the scope for considering the viability of the debtor's business. Meanwhile, in the process of settling bankruptcy assets, trustees more often prioritise the rapid liquidation of assets over efforts to preserve economic value through mechanisms such as the sale of the business as a going concern. This situation further reinforces the dominance of the legal-formal approach over the economic approach in bankruptcy practice.

From a normative perspective, Law No. 37 of 2004 has established a clear legal framework for debt resolution through bankruptcy and voluntary arrangement (PKPU) mechanisms. However, when analysed from a law and economics perspective, the effectiveness of a legal system is not measured solely by procedural certainty, but also by its ability to generate economic efficiency and minimise losses for the parties involved (Posner, 2014). In this context, the application of bankruptcy law in Indonesia still tends to prioritise formal legal certainty, whilst the dimension of economic efficiency has not yet been fully and optimally accommodated.

Taking into account the legal framework of Law No. 37 of 2004 and its practical application, it can be asserted that the application of insolvency law in Indonesia has not yet fully reflected a balance between legal certainty and economic interests. Although both objectives have been accommodated in theory, in practice there remains an imbalance that indicates the dominance of legal certainty over the protection of economic value.

To achieve a balance between legal certainty and economic interests, strengthening is required at the normative level, particularly through the refinement of insolvency criteria by taking a more comprehensive view of the debtor's insolvency. Furthermore, the optimisation of the PKPU mechanism must be directed towards ensuring it genuinely functions as an effective debt restructuring tool, rather than merely a deferral of obligations. In this way, insolvency law will not only provide procedural certainty but will also be capable of preserving economic value and business continuity in a proportionate manner.

### **Challenges in Achieving Justice for Creditors**

In the practice of insolvency law in Indonesia, efforts to achieve justice for creditors still face various obstacles, both normative and practical, meaning that the principle of distributive justice has not yet been fully and optimally realised. One of the main obstacles is the inequality of status among creditors. Under Law No. 37 of 2004, creditors are classified as separate, preferential and unsecured creditors. Although this classification has a clear legal basis, in practice it places unsecured creditors in the weakest position as they only receive payment from the remaining proceeds of the liquidation of the bankrupt's assets after the separate and preferential creditors have been satisfied, thereby giving rise to substantive injustice (Sjahdeini, 2009). In principle, Law No. 37 of 2004 provides a framework for the protection of all creditors; however, in practice there is a gap between the law on the statute books and the law as applied, particularly regarding the distribution of proceeds from the liquidation of bankrupt estates.

Furthermore, challenges also arise from the decline in the value of the debtor's assets during the bankruptcy proceedings. The liquidation process, which tends to be carried out swiftly, often results in assets being sold below market value (fire sale), which in turn leads to a low distributable value for creditors. This situation directly hinders the optimal recovery of creditors' rights (Fuady, 2014). This situation indicates that bankruptcy procedures are not

always able to preserve the economic value of the debtor's assets, meaning that the principle of maximising the value of the estate has not yet been fully realised in practice.

Furthermore, the Debt Payment Obligation Deferral (PKPU) mechanism, which was essentially designed as a means of debt restructuring, is in practice frequently misused by debtors to defer payment obligations without good faith, thereby prolonging the uncertainty for creditors regarding the recovery of their debts (Hartini, 2009). From the perspective of procedural justice, this situation creates an imbalance between debtors and creditors, as legal mechanisms that are intended to be protective can instead be exploited to delay the fulfilment of obligations in a disproportionate manner.

Other challenges relate to the role of the liquidator and the lack of oversight in the process of settling the estate of a bankrupt. Liquidators have significant authority to manage and distribute the debtor's assets; however, in practice, issues such as a lack of professionalism, potential conflicts of interest, and suboptimal oversight mechanisms still arise. This has implications for the final outcome of the distribution of the estate, which may be detrimental to creditors (Yuhassarie, 2005; Aprita, 2018)

Furthermore, the complexity of legal proceedings and the length of time taken to resolve cases also present significant obstacles. Although insolvency law is designed to provide certainty through a swift process, in practice there are often disputes between creditors, objections to the list of claims, and subsequent litigation, all of which prolong the duration of proceedings, thereby undermining the system's effectiveness in delivering both justice and legal certainty (Hartini, 2023). In this context, the principle of legal certainty—which is a defining feature of insolvency law—is undermined by the complexity of the process and the length of time it takes to resolve cases.

Consequently, the obstacles to achieving justice for creditors stem not only from the normative structure of the insolvency legal system, but are also influenced by the economic condition of the debtor's assets and suboptimal legal practices. This situation has also affected business operators' confidence in the effectiveness of the insolvency system as a means of resolving debt disputes in Indonesia. This indicates that, although the legal framework is in place, there is a need to strengthen implementation, oversight and policy updates so that justice for all creditors can be achieved in a more proportionate and balanced manner (Rahayu & Hartono, 2020).

## CONCLUSION

Justice for creditors under Indonesian insolvency law is essentially proportional in nature; that is, it is granted in accordance with the legal standing of each creditor, rather than on an equal basis. This is in line with the provisions of Law No. 37 of 2004, which distinguishes between different types of creditors. On the one hand, the bankruptcy system has provided legal certainty through clear procedures and structured mechanisms. However, on the other hand, economic interests have not been fully met due to the persistence of disparities in distribution, a decline in asset value, and the potential for abuse of the PKPU. Furthermore, there are various obstacles to achieving justice for creditors, including disparities in the status of creditors, a decline in asset value during the liquidation process, and the sub-optimal implementation of the PKPU mechanism in practice. Consequently, it can be concluded that justice for creditors has not yet been fully and optimally realised; hence, improvements in practice and supervision are required to achieve a balance between legal certainty and economic justice.

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