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Juridical Analysis of the Application of Bankruptcy Requirements in Commercial Court Practice in Indonesia

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Abstract: This study sets out to analyze the practical implementation of bankruptcy requirements in Indonesia's commercial courts, along with its impact on the legal safeguards available to both debtors and creditors. According to Indonesian law specifically Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations a bankruptcy petition requires at least two creditors and one payable debt that has matured. Adopting a normative juridical approach, the research draws on statutory and conceptual frameworks, and qualitatively examines primary, secondary, and tertiary legal sources. The results show that in commercial court practice, the enforcement of bankruptcy conditions tends to focus on formal criteria via the simple proof doctrine, often overlooking a comprehensive review of the debtor's financial standing. This gives rise to several juridical issues, including the absence of an insolvency test, the potential misuse of bankruptcy as a pressure tool by creditors, and inconsistencies in court decisions interpreting "due and payable debt." The implications reveal an imbalance in legal protection between debtors and creditors. Debtors are vulnerable to being declared bankrupt despite being solvent, while creditors may suffer losses due to premature proceedings. Therefore, optimization is needed through legal reformulation, strengthening jurisprudential guidelines, and enhancing the effectiveness of the Suspension of Debt Payment Obligations (PKPU) mechanism. In conclusion, the application of bankruptcy requirements in Indonesia still requires improvement to better reflect the principles of justice, legal certainty, and utility in a balanced manner.

Keyword: Bankruptcy, Bankruptcy Requirements, Commercial Court, Legal Protection, PKPU.

INTRODUCTION

Bankruptcy law plays an important role in the economic legal system, particularly in regulating the relationship between debtors and creditors in the event of payment default. In Indonesia, the regulation of bankruptcy is governed by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the

Bankruptcy Law) (Hartini, 2009). This law was established as an effort to provide legal certainty, justice, and efficiency in the settlement of debts through commercial court institutions (Sjahdeini, 2009). According to Article 2 paragraph (1), the Bankruptcy Law is characterized by fairly straightforward prerequisites for bankruptcy, specifically the existence of a minimum of two creditors along with one overdue and demandable debt. These requirements are intended to simplify the evidentiary process and expedite the resolution of bankruptcy cases in the Commercial Court (Fuady, 2014). However, the simplicity of these requirements has in fact given rise to various problems in practice.

In commercial court practice, the application of bankruptcy requirements often focuses solely on the fulfillment of formal aspects without comprehensively considering the financial condition of the debtor. This is due to the absence of an obligation to prove the debtor's state of insolvency. As a result, debtors who are in fact still financially capable (solvent) may still be declared bankrupt simply because they fail to fulfill their payment obligation on one debt that has become due (Kartini & Widjaja, 2005). This condition opens the possibility for the misuse of the bankruptcy institution by creditors. In some cases, bankruptcy petitions have been used as a pressure tool to force debtors to repay their debts in a short period of time (Al-Anshori, 2019). This phenomenon indicates a shift in the function of bankruptcy from a mechanism for collective debt settlement to a coercive litigation instrument (Khairandy, 2013).

Furthermore, in judicial practice, inconsistencies have also been found in court decisions regarding the application of bankruptcy requirements, particularly in interpreting the element of "debt that has become due and payable." These differences in interpretation create legal uncertainty and potentially harm the parties involved (Shubhan, 2008). This indicates that although legal norms have been clearly regulated, their implementation still faces various obstacles. On the other hand, the Bankruptcy Law also provides the Suspension of Debt Payment Obligations (PKPU) mechanism as an alternative for debt restructuring. However, in practice, PKPU has not been fully utilized optimally and often becomes merely an initial stage before ultimately leading to bankruptcy (Al-Anshori et al., 2024). This condition indicates that the goal of saving the debtor's business has not been maximally achieved. Based on the foregoing, juridical problems can be identified in the application of bankruptcy requirements in Indonesia, particularly with regard to the not yet optimal balance between the principles of legal certainty, justice, and utility. This imbalance indicates a gap between the prevailing legal norms and their implementation in commercial court practice. Therefore, a comprehensive and systematic analysis of the application of bankruptcy requirements is needed, including an evaluation of its implications for the legal protection of debtors and creditors.

This research has urgency both theoretically and practically in enriching the body of knowledge in the field of bankruptcy law and contributing to the formulation of more responsive legal policies. Thus, it is hoped that the results of this research can encourage the creation of a more just bankruptcy legal system, guarantee legal certainty, and provide proportional utility for all interested parties. The formulation of the problem in this study addresses the juridical problems that arise in the application of bankruptcy requirements in the Commercial Court, the implications of the application of bankruptcy requirements for the legal protection of debtors and creditors, and the efforts that can be made to optimize the application of bankruptcy requirements so that they better reflect justice, legal certainty, and utility.

METHOD

This research is classified as normative legal research (normative juridical), which is a type of research that focuses on the study of norms, principles, and the prevailing positive legal system, particularly related to the application of bankruptcy requirements in Indonesia. Within this framework, law is positioned as an autonomous normative structure, so that the analysis is directed at the consistency, synchronization, and adequacy of legal norms in addressing bankruptcy issues. This approach does not emphasize social behavior (law in action), but rather law as a rule (law in books), with the aim of finding legal arguments, principles, and doctrines relevant to assessing the application of bankruptcy requirements as regulated in the legislation (Soekanto & Mamudji, 2018).

Two key frameworks guide the implementation of this research namely, the statutory approach and the conceptual approach. The former is conducted by analyzing all regulations that address bankruptcy, particularly those found in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), together with various subordinate regulations and significant court rulings. Through this approach, the researcher seeks to identify the legal norms governing bankruptcy requirements while also testing the consistency of their application in judicial practice. Meanwhile, the conceptual approach is used to examine concepts, doctrines, and legal principles developed in legal literature, such as the principles of justice, legal certainty, and utility, in order to provide a theoretical foundation for analyzing the problems under study (Marzuki, 2005).

Three types of legal materials are employed in this study. Primary legal materials, which carry direct legal authority, include legislation especially Law Number 37 of 2004 along with Commercial Court decisions on bankruptcy matters. Secondary legal materials encompass scholarly works, for instance legal textbooks, journal articles, and relevant past research, all of which help clarify, interpret, and critique the primary materials. Tertiary legal materials, such as legal dictionaries and encyclopedias, serve as tools to better grasp technical terms and legal doctrines in a more complete manner.

This research collects legal materials using a library research technique, which involves locating, reviewing, and analyzing various pertinent written legal sources connected to the research topic. Subsequently, a qualitative analysis of these legal materials is performed through a descriptive-analytical method. This method aims to systematically and comprehensively describe the application of bankruptcy requirements in practice, while also analyzing the conformity between the prevailing norms and their implementation in the field (Kristiawanto, 2022). Thus, this research is expected to provide an in-depth understanding and strong legal arguments in answering the problems under study.

RESULTS AND DISCUSSION

Juridical Problems in the Application of Bankruptcy Requirements

The regulation of bankruptcy in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is fundamentally intended to provide a mechanism for fair, fast, and efficient debt settlement. However, in practice, the application of bankruptcy requirements as regulated in Article 2 paragraph (1) has in fact given rise to various complex juridical problems, both at the level of norms and implementation in the commercial court (Aprita, 2018). These problems reflect a tension between the formal approach adopted by the law and the need for substantive justice (Hasibuan et al., 2023).

One of the main problems lies in the application of the principle of simple proof, which requires the existence of two creditors and one debt that has become due and payable as the basis for declaring bankruptcy (Hartini, 2023). Although this principle is intended to expedite the process, in practice this approach often ignores the debtor's overall financial condition. As a result, the actual state of insolvency does not become the primary consideration, so that

debtors who are economically still capable of fulfilling their obligations may still be declared bankrupt (Sjahdeini, 2009).

The absence of an insolvency test mechanism in the Indonesian bankruptcy legal system further reinforces this formalistic character (Rahayu & Hartono, 2020). This differs from systems in other countries such as the United States and the United Kingdom, which require a general inability to pay through the cash flow test or balance sheet test approach (Al-Anshori, Handayani, et al., 2023). As a consequence, the fulfillment of administrative requirements is more dominant than the assessment of the debtor's real economic condition (Fuady, 2014). This condition also opens the possibility for the misuse of the bankruptcy institution by creditors. In practice, bankruptcy petitions are frequently used as a pressure tool to force debtors to pay their debts (Kartini & Widjaja, 2005). This indicates a shift in the function of bankruptcy from a mechanism for collective debt settlement to a coercive collection instrument. Whereas normatively, bankruptcy aims to protect the interests of all creditors proportionally (Al-Anshori, 2018a).

Another problem arises in the interpretation of the element of "debt that has become due and payable." In judicial practice, there are differences of opinion regarding whether a debt that is still in dispute can be used as the basis for a bankruptcy petition (Mubarok et al., 2025). Some decisions hold that a debt still in dispute has not yet fulfilled the element of legal certainty, while other decisions still grant the petition by adhering to the principle of simple proof (Al-Anshori et al., 2023). These differences indicate inconsistency in the application of law, which has implications for legal uncertainty (Shubhan, 2008). This inconsistency also reflects the absence of uniformity in jurisprudence within the commercial court environment. Although the Supreme Court has the authority to maintain uniformity in the application of law, there is no clear guidance regarding the standard of proof in bankruptcy cases (Khairandy, 2013). As a result, court decisions are greatly influenced by the interpretation of each panel of judges, which potentially gives rise to disparities in decisions (Apmayuda, 2019).

The aspect of good faith of the parties has also not yet become an optimal consideration in judicial practice. Many decisions place greater emphasis on the fulfillment of formal requirements without examining the motives behind the filing of a bankruptcy petition. Whereas the assessment of good faith plays an important role in preventing the misuse of legal processes and keeping the purpose of bankruptcy on the track of justice (Sugiarto et al., 2025). The juridical problems in the application of bankruptcy requirements indicate that the existing system has not been fully able to integrate legal certainty, justice, and utility in a balanced manner (Hasibuan et al., 2026). This confirms that the main challenge lies not only in the legal norms, but also in judicial practice that still tends to be formalistic and has not fully reflected substantive justice (Harahap, 2022).

Based on the entirety of the foregoing, it can be affirmed that the juridical problems in the application of bankruptcy requirements in the Commercial Court are systemic and layered in nature, and reflect an imbalance between the formal approach and the need for substantive justice. The dominance of the application of the principle of simple proof indicates that the process of rendering a bankruptcy decision places greater emphasis on the fulfillment of administrative requirements in the form of two creditors and one debt that has become due and payable, without being accompanied by a comprehensive assessment of the debtor's financial condition. As a result, the meaning of bankruptcy as a state of general inability to pay becomes diminished, thereby opening the possibility that debtors who are economically still solvent may nonetheless be declared bankrupt (Helena & Kartika, 2024).

The absence of an insolvency test mechanism in the Indonesian bankruptcy legal system further reinforces this formalistic character. Without clear parameters for assessing a general inability to pay, the standard for bankruptcy becomes very minimalistic and unable to

clearly distinguish between debtors who are genuinely incapable of fulfilling their obligations and debtors who are merely in a dispute situation or experiencing a payment delay. This condition not only weakens the selective function of the bankruptcy mechanism, but also potentially creates injustice for debtors. In practice, this condition also opens space for the misuse of the bankruptcy institution by creditors. Bankruptcy petitions are frequently used as a pressure instrument to accelerate debt repayment, rather than as a collective mechanism that functions to settle debts proportionally. This functional shift indicates a deviation from the main purpose of bankruptcy law, which should guarantee balanced protection for all interested parties.

Juridical problems are also reflected in the inconsistency of interpretation of the element of “debt that has become due and payable,” particularly in the context of debts that are still in dispute. The absence of a uniform standard of interpretation has resulted in differing decisions in cases with similar characteristics, thereby creating legal uncertainty. This condition is compounded by the not yet established uniformity of jurisprudence within the Commercial Court environment, which causes court decisions to depend heavily on the interpretation of each panel of judges and potentially give rise to disparities.

Furthermore, the aspect of good faith of the parties has not yet received adequate consideration in the case examination process. Excessive emphasis on the fulfillment of formal requirements causes the examination of the motives behind the filing of a bankruptcy petition to be less than optimal, thereby opening the possibility for the misuse of legal processes. Whereas the principle of good faith plays an important role as a corrective instrument to ensure that the bankruptcy mechanism is used in accordance with its legal purpose.

All of these conditions indicate that the application of bankruptcy requirements in the Commercial Court still faces fundamental problems in integrating legal certainty, substantive justice, and utility in a balanced manner. These problems affirm the need for strengthening both the normative aspects and judicial practice, so that the bankruptcy mechanism is not only oriented toward the fulfillment of formal requirements, but is also capable of reflecting more substantive and proportional justice.

Implications for the Legal Protection of Debtors and Creditors

The application of relatively simple bankruptcy requirements in Indonesian bankruptcy law brings broad implications for legal protection, both for debtors and creditors. From the debtor’s perspective, the ease of filing a bankruptcy petition in fact has the potential to create legal vulnerability. Debtors who factually still have business prospects and the ability to continue their economic activities can easily be declared bankrupt simply because of the inability to fulfill one payment obligation that has become due. This condition indicates that the simple standard of proof has not fully considered the aspect of the debtor’s business continuity comprehensively (Sjahdeini, 2022).

The legal consequences of a bankruptcy declaration are also very significant and have a direct impact on the debtor’s legal position. From the moment of being declared bankrupt, the debtor loses the right to control and manage their assets, which then transfer to a curator for settlement. In addition to having a juridical impact, bankrupt status also brings non-juridical implications in the form of reputational decline in the eyes of the public, business partners, and investors (Anshori et al., 2025). In the context of the business world, reputation is an intangible asset that plays a strategic role in maintaining business continuity, so that bankrupt status can cause long-term losses that are not easily recovered (Al-Anshori, 2021)

From the creditor’s side, the bankruptcy system provides a legal means to collect debts through a collective mechanism. This ease reflects the existence of protection for creditors’ rights, particularly when the debtor fails to fulfill their obligations (Yo’el & Al-Anshori,

2019). However, this ease also has the potential to create injustice, particularly for other creditors who have greater interests (Fuady, 2014; Al-Anshori et al., 2025)

When examined normatively, the implications of legal protection in bankruptcy are also closely related to the evidentiary character adopted by Law Number 37 of 2004. Article 8 paragraph (4) affirms that a bankruptcy petition must be granted if there are facts or circumstances proven in a simple manner. This formulation reinforces the procedural orientation in the resolution of bankruptcy cases, but on the other hand has implications for the limited space available to judges to assess the debtor's economic condition more substantially. As a result, legal protection for debtors tends to be formalistic in nature, because the assessment does not explicitly cover aspects of solvency or business viability.

On the creditor's side, the provisions regarding general seizure as formulated in Article 1 number 1 of Law Number 37 of 2004 provide a guarantee that all of the debtor's assets become the object of settlement for the common benefit of creditors. However, this principle does not automatically produce equal protection, because the distribution of settlement proceeds is still influenced by the priority structure as recognized in bankruptcy practice. This indicates that legal protection for creditors is relative in nature, depending on the position and type of receivable held.

The provisions regarding the Suspension of Debt Payment Obligations (PKPU) in Article 222 in fact reflect the legislator's effort to balance protection between debtors and creditors through a restructuring approach. Within this framework, the debtor is not merely positioned as a party to be liquidated, but also as a subject who still has the opportunity to restore their financial condition. However, because PKPU is optional and depends on the initiative of the parties, its effectiveness in providing optimal legal protection is still very much determined by judicial practice and the dynamics of negotiation between debtors and creditors. Thus, it can be understood that Law Number 37 of 2004 implicitly places greater emphasis on legal certainty through simple evidentiary mechanisms and fast processes, but has not fully integrated a legal protection approach based on the real economic condition of the parties. This creates a need for more progressive interpretation in judicial practice so that legal protection is not only normative-procedural in nature, but also substantive and just.

Furthermore, prematurely filed bankruptcy proceedings can harm all parties, including the creditors themselves. The liquidation of the debtor's assets under non-optimal conditions has the potential to reduce asset value, so that the proceeds from the settlement of the bankruptcy estate are not maximized. Under certain conditions, debt restructuring through the Suspension of Debt Payment Obligations (PKPU) mechanism can provide better results because it allows the debtor to continue operating their business while fulfilling their obligations gradually (Shubhan, 2008). Another implication is the imbalance between legal certainty and justice. Simple bankruptcy requirements do indeed provide legal certainty because they are easy to apply, but in practice they often ignore the aspect of justice for debtors. Therefore, efforts are needed to balance these two principles so that the bankruptcy system can function optimally (Fitriyah et al., 2023).

This imbalance indicates that the legal protection resulting from the current application of bankruptcy requirements is not yet fully proportional in nature. Debtors face the risk of quickly losing control over their assets without adequate assessment of their financial condition and business prospects. On the other hand, creditors, although obtaining ease in pursuing legal channels, do not always obtain optimal results because liquidation carried out under non-ideal conditions has the potential to reduce asset value. This situation reflects that the bankruptcy system still tends to place greater emphasis on a formal-procedural approach compared to a substantive economic approach.

In this context, a reorientation is needed in the application of bankruptcy requirements that does not merely rely on simple proof, but also accommodates a more comprehensive

assessment of the debtor's economic viability. Strengthening the Suspension of Debt Payment Obligations (PKPU) mechanism becomes important as a restructuring instrument that enables a more optimal settlement to be achieved for all parties. In addition, the development of more proportional parameters in judicial practice is needed to ensure that the application of bankruptcy not only provides legal certainty, but also reflects justice and utility. Thus, the bankruptcy system is expected to be able to function in a more balanced manner as a debt settlement instrument as well as a sustainable legal protection mechanism.

Efforts to Optimize the Application of Bankruptcy Requirements

Efforts to optimize the application of bankruptcy requirements so that they better reflect justice, legal certainty, and utility must fundamentally be carried out systemically, both through normative renewal, institutional strengthening, and a change in the law enforcement paradigm. Normatively, revision of the Bankruptcy Law is a crucial step, particularly by incorporating an insolvency test as a prerequisite for filing a bankruptcy petition. Thus far, the simple evidentiary system that only requires the existence of two creditors and one debt that has become due and payable has proven to be overly formalistic and potentially misused as a pressure tool against debtors who are in fact still solvent. With the application of the insolvency test, the court would not only assess the existence of the debt, but also the debtor's overall financial condition, so that bankruptcy truly becomes an *ultimum remedium* for debtors who are no longer capable of fulfilling their obligations (Khairandy, 2013). This approach will strengthen the aspect of justice while also increasing the rationality of decisions.

Furthermore, it needs to be affirmed that the application of bankruptcy requirements in practice cannot be based solely on the formal approach as reflected in the provisions of Article 2 paragraph (1) of Law Number 37 of 2004. An approach that is too oriented toward simple proof has the potential to reduce the meaning of bankruptcy as a collective mechanism for resolving a general inability to pay. In this context, judges should not only assess the existence of a debt that has become due, but also consider the debtor's financial condition more comprehensively. Thus, bankruptcy petitions are not misused as pressure instruments by certain creditors, but truly reflect the legal need for collective debt settlement.

On the other hand, to guarantee legal certainty, a normative affirmation is needed regarding the concept of "debt that has become due and payable," including clarity on the status of debts that are still in dispute. The ambiguity in this definition has long given rise to disparities in decisions in the Commercial Court, because judges have very broad interpretive space. Therefore, the legislators need to provide more operational limitations, for example by clearly distinguishing between debts that have obtained permanent legal force and debts that are still in the dispute process. This step will minimize inconsistencies in decisions and increase legal predictability for the parties (Al-Anshori, 2018b). Thus, legal certainty will not only be procedural in nature, but also substantive.

In commercial court practice, the lack of clarity in these limitations frequently gives rise to differences in assessment regarding debts that are still in dispute, particularly when no decision with permanent legal force has yet been rendered. This condition indicates that legal certainty in bankruptcy law is still relative in nature and very much dependent on judicial interpretation. Therefore, in addition to normative renewal, consistency in application through the strengthening of uniform decision patterns is needed, so that the parties can predict the legal consequences of every bankruptcy petition filed.

Strengthening the role of the Supreme Court in building jurisprudential consistency is an important aspect in optimizing the application of bankruptcy requirements. The Supreme Court can issue guidelines through Supreme Court Circulars (SEMA) or even Supreme Court Regulations (PERMA) that provide official interpretations of crucial issues in bankruptcy

law. The presence of these guidelines will function as an interpretive standard for judges in the Commercial Court, thereby reducing disparities in decisions and increasing the uniformity of the application of law (Fitriyah et al., 2023): In this context, jurisprudence becomes not only a complementary source of law, but also an instrument for harmonizing judicial practice.

Optimization also needs to be directed at strengthening the Suspension of Debt Payment Obligations (PKPU) mechanism as an effective restructuring instrument. In practice, PKPU is often positioned merely as a transitional stage toward bankruptcy, rather than as a means of saving the business. Whereas conceptually, PKPU is designed to provide space for debtors and creditors to reach a restructuring agreement that benefits both parties. Therefore, policies are needed that encourage the substantial use of PKPU, for example by tightening the requirements for converting PKPU into bankruptcy or providing incentives for parties who successfully reach a settlement (Kartini & Widjaja, 2005). Strengthening the function of PKPU will enhance the legal utility aspect, because it enables business continuity and labor protection.

The optimization of PKPU also needs to be directed at a paradigm shift that bankruptcy is not the primary goal, but rather the last resort when restructuring is no longer possible. In this regard, judges play a strategic role in encouraging the achievement of a settlement between debtors and creditors by actively assessing the prospects for the debtor's business continuity (going concern). If the debtor still has viable business potential, then resolution through PKPU will provide greater economic benefit compared to liquidation through bankruptcy.

From the law enforcement perspective, judges need to adopt a more substantive and contextual approach in examining bankruptcy cases. This means that in addition to examining the fulfillment of formal requirements, judges must also consider the debtor's economic condition, business prospects, and the socio-economic impact of the bankruptcy decision. This approach is consistent with the concept of substantive justice that is not only oriented toward normative certainty, but also toward outcomes that are just and beneficial for society. Thus, a bankruptcy decision does not merely become a legalistic instrument, but also a reflection of the values of social justice.

Finally, increasing the capacity of judges and court officials is an important prerequisite in realizing this optimization. The complexity of bankruptcy cases involving legal, economic, and business aspects demands the existence of multidisciplinary competence. Therefore, continuous training, special certification, and strengthening of understanding of financial analysis and debt restructuring need to be enhanced. With adequate capacity, judges will be better able to produce decisions that are not only legally correct, but also just and beneficial for the parties.

Overall, the optimization of the application of bankruptcy requirements must be carried out through a combination of regulatory reform, institutional strengthening, and a change in the law enforcement paradigm. The synergy of these three aspects will create a more balanced bankruptcy system, in which legal certainty does not sacrifice justice, and utility remains the ultimate goal of law enforcement itself.

CONCLUSION

Based on the discussion, it can be concluded that the application of bankruptcy requirements in Law Number 37 of 2004 concerning Bankruptcy and PKPU still focuses on simple proof, namely the existence of two creditors and one debt that has become due and payable, without comprehensively considering the debtor's state of insolvency. This in practice in the Commercial Court gives rise to various problems, such as the potential misuse of bankruptcy as a pressure tool, as well as inconsistencies in judicial interpretation of the debt element. The implication is that legal protection for debtors and creditors becomes

unbalanced, where debtors can be declared bankrupt even though they are still solvent, while creditors are also potentially harmed due to a non-optimal bankruptcy process. Therefore, improvements are needed through the reformulation of rules, the strengthening of judicial guidelines, and the optimization of the PKPU mechanism so that the application of bankruptcy requirements better reflects justice, legal certainty, and utility.

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