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Replacement of Members of the Board of Directors of a State-Owned Enterprise During the Suspension of Debt Payment Obligations: Implications for Composition Efforts in Light of the Going Concern Principle

Andzar Ibrahim [1*]
[1]Master of Law Program, Faculty of Law, Universitas Padjadjaran, Bandung, Indonesia, andzaribrahimsocial@gmail.com

[*]Corresponding Author: andzaribrahimsocial@gmail.com

Abstract: The restructuring of financially distressed Indonesian state-owned enterprises (SOEs) through the Suspension of Debt Payment Obligations (Penundaan Kewajiban Pembayaran Utang or PKPU) rests on a co-management mechanism under Article 240 of Law Number 37 of 2004, in which the debtor's Board of Directors manages the estate jointly with a court-appointed Administrator. In practice, however, the Minister of SOEs, acting as the General Meeting of Shareholders, has replaced members of the Board of Directors while PKPU proceedings were ongoing, a situation that none of the Indonesian bankruptcy, company, or SOE statutes anticipates. This study examines how such replacement affects the performance of the Administrator's duties and authority, and what its implications are for composition efforts in light of the going concern principle. Using a normative juridical method with a descriptive-analytical specification, the study analyzes statutory provisions, doctrine, and two contrasting cases: PT Barata Indonesia (Persero), whose President Director was replaced sixteen to seventeen days after the provisional PKPU decision, and PT Garuda Indonesia (Persero) Tbk, which preserved its President Director throughout the proceedings. The study finds that a mid-PKPU replacement of directors generates five categories of consequences for the Administrator, namely informational, administrative, substantive, coordinative, and regulatory consequences, while the Administrator possesses no authority to object to the shareholder's decision and can only rely on supervisory and repressive instruments under Articles 240, 234, and 255. The comparison further shows that director replacement is a double-edged sword for composition: partial, well-timed replacement supported continuity and successful plan execution in Garuda, whereas early wholesale replacement in Barata was followed by post-homologation default and a new bankruptcy petition. The study recommends that the SOE regulator postpone director replacement during PKPU and issue implementing regulations governing SOE management in PKPU to close the existing legal vacuum.

Keyword: Suspension of Debt Payment Obligations, Administrator, Board of Directors, State-Owned Enterprise, Going Concern.

INTRODUCTION

State-owned enterprises (*Badan Usaha Milik Negara* or SOEs) occupy a strategic position in the Indonesian economy. Under Article 2 paragraph (1) of Law Number 19 of 2003 on State-Owned Enterprises, as most recently amended by Law Number 16 of 2025 (the SOE Law), SOEs are established, among other purposes, to pursue profit while contributing to national economic development and performing public utility functions in accordance with the principles of *good corporate governance*. Reality, however, frequently diverges from this design. The Ministry of Finance recorded in 2021 that the majority of SOEs receiving state capital injections were financially vulnerable, and that in 2020 only around sixty percent of SOEs recorded profits while the remainder suffered losses (Bisnis Tempo, 2021). The global recession and the Covid-19 pandemic aggravated this condition and left a number of SOEs unable to service debts arising from bond issuances, bank loans, and other financing sour.

Indonesian law provides two principal collective mechanisms for resolving such distress under Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, as partially amended by Law Number 4 of 2023 (the Indonesian Bankruptcy Law): bankruptcy (*kepailitan*), which leads to liquidation of the debtor's assets, and the Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang* or PKPU), which is designed to avoid bankruptcy by giving the debtor an opportunity to offer a composition plan (*rencana perdamaian*) restructuring its debts (Hartini, 2008). The PKPU regime embodies the going concern principle: the recognition, expressed in the elucidation of the Indonesian Bankruptcy Law and in modern insolvency doctrine, that preserving a viable business ordinarily yields greater value for creditors, employees, and the public than liquidation (Irianto, 2015; UNCITRAL, 2005).

A defining feature of the Indonesian PKPU is the co-management mechanism of Article 240 of the Indonesian Bankruptcy Law. Once PKPU is declared, the debtor may not perform acts of management or ownership over its assets without the approval of an Administrator (*Pengurus*) appointed by the Commercial Court. The Board of Directors thus remains in office and continues to run the company, but its strategic actions require the Administrator's concurrent approval. The success of the composition therefore depends heavily on a stable working relationship between the incumbent Board of Directors, the Administrator, and the creditors.

Practice at SOEs has exposed a structural tension within this design. The authority to appoint and dismiss members of the Board of Directors of an SOE in the form of a limited liability company (*Persero*) lies exclusively with the General Meeting of Shareholders (GMS) under Article 94 of Law Number 40 of 2007 on Limited Liability Companies (the Company Law) in conjunction with the SOE Law, and for a *Persero* the GMS power is exercised by the Minister of SOEs. Nothing in the Indonesian Bankruptcy Law, the Company Law, the SOE Law, or the Minister of SOEs regulations on SOE organs makes the pendency of a PKPU a relevant consideration for, let alone a restriction on, that power. The result is a normative vacuum: director replacement during PKPU is formally lawful, yet the law is silent on how it interacts with the co-management mechanism on which the entire rescue effort depends.

Two recent SOE restructurings illustrate the problem in sharply contrasting ways. In PT Barata Indonesia (Persero), the Commercial Court at the Surabaya District Court granted a provisional PKPU on 23 August 2021 in Case Number 62/Pdt.Sus-PKPU/2021/PN Niaga Sby. Only sixteen to seventeen days later, on 8 September 2021, the Minister of SOEs issued Decree Number SK-297/MBU/09/2021 dismissing Fajar Harry Sampurno as President Director and appointing Bobby Sumardiat Atmosudirjo in his place, while the provisional PKPU was still running (Kementerian BUMN, 2021). The proceedings produced a court-ratified composition (homologation) on 6 December 2021, approximately 105 days after the provisional decision. Yet on 3 June 2024, around thirty months after homologation, a creditor filed a new bankruptcy petition against Barata in Case Number 7/Pdt.Sus-Pailit/2024/PN Niaga Sby, alleging default on the ratified composition and the incurrence of new debts after homologation.

In PT Garuda Indonesia (Persero) Tbk, by contrast, the reshuffle of company organs took place before the PKPU, at the Annual GMS of 13 August 2021, and the President Director, Irfan Setiaputra, was retained throughout the proceedings. The PKPU petition was filed on 22 October 2021 and granted by the Commercial Court at the Central Jakarta District Court on 9 December 2021 in Case Number 425/Pdt.Sus-PKPU/2021/PN.Niaga.Jkt.Pst. The composition plan obtained the support of 95.07 percent of the creditors present at the vote, was ratified on 20 June 2022, and was upheld by Supreme Court Decision Number 1454 K/Pdt.Sus-Pailit/2022 of 26 September 2022 (Detikcom, 2022). A limited, partial change of the Board of Directors was carried out only on 12 August 2022, after homologation, and the composition has since been performed consistently.

Existing scholarship has addressed adjacent questions: the disparity of court decisions on bankruptcy and PKPU petitions against SOEs (Narassati, Pamungkas, & Afriana, 2023), the debt restructuring strategy of Garuda Indonesia through PKPU (Amalia, Hariyani, & Prakoso, 2022; Utami et al., 2024), the independence of the PKPU Administrator (Aprita, 2014), and the application of the going concern principle in bankruptcy and PKPU proceedings (Irianto, 2015). None of these studies, however, has examined the specific legal problem of the replacement of members of the Board of Directors of a *Persero* while a PKPU is ongoing, its effect on the performance of the Administrator's statutory duties and authority, and its implications for the composition effort when tested against the going concern principle. This article addresses that gap.

Based on the foregoing, this study formulates two research questions. First, how are the duties and authority of the Administrator performed when members of the Board of Directors of a *Persero* are replaced during the PKPU period under Law Number 37 of 2004? Second, what are the implications of the replacement of members of the Board of Directors of a *Persero* during the PKPU process for composition efforts in light of the going concern principle?

METHOD

This research employs a normative juridical method, that is, legal research conducted by examining library materials or secondary data (Soekanto & Mamudji, 2010), with a descriptive-analytical specification. The statutory approach is applied to the Indonesian Bankruptcy Law, the Company Law, and the SOE Law, together with their implementing regulations, while the conceptual approach engages the doctrines of co-management, *debtor in possession*, fiduciary duty, the *business judgment rule*, and the going concern principle. A case approach is used on two PKPU proceedings involving SOEs: PT Barata Indonesia (Persero) as the primary case, in which directors were replaced in the middle of the PKPU, and PT Garuda Indonesia (Persero) Tbk as a comparator, in which leadership continuity was preserved.

The data consist of secondary data comprising primary legal materials (the 1945 Constitution, the Indonesian Bankruptcy Law, the Company Law, the SOE Law, ministerial regulations of the Minister of SOEs, and the relevant Commercial Court and Supreme Court decisions), secondary legal materials (books, journal articles, and other scholarly writings), and tertiary legal materials. The materials were collected through library research and analyzed qualitatively in a normative manner, without the use of statistical formulas, in order to answer the research questions systematically.

RESULTS AND DISCUSSION

Result

Identification of Legal Norms Governing PKPU Administrators in State-Owned Enterprises

The legal inventory conducted in this study identified three principal regulatory regimes governing the legal relationship between PKPU administrators and State-Owned Enterprises (SOEs), namely Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Law No. 40 of 2007 concerning Limited Liability Companies, and Law No. 16 of 2025 concerning State-Owned Enterprises. The examination demonstrates that the Bankruptcy Law regulates the appointment, duties, and liability of PKPU administrators, while the Company Law and SOE Law regulate the authority of corporate organs, including the Board of Directors and the General Meeting of Shareholders. No statutory provision expressly regulates the interaction between these legal regimes when a change of directors occurs during the PKPU process.

Comparative Findings from PKPU Cases Involving State-Owned Enterprises

The examination of judicial decisions identified two different governance patterns during PKPU proceedings.

Table 1. Comparison of Governance Patterns in State-Owned Enterprises Undergoing PKPU Proceedings

Company	Timing of Director Replacement	PKPU Outcome
PT Garuda Indonesia (Persero) Tbk	Before PKPU commenced	Composition plan approved (Homologation)
PT Barata Indonesia (Persero)	During PKPU proceedings	Management restructuring conducted while PKPU was ongoing

Source: research data

The comparison indicates that the timing of corporate governance restructuring differs substantially among SOEs undergoing PKPU. Both cases demonstrate that director replacement remains legally permissible under the SOE governance framework despite the absence of explicit regulation under bankruptcy legislation.

Identification of Regulatory Gaps

The normative review identified several areas in which existing legislation provides no explicit legal guidance regarding changes in corporate management during PKPU. The identified gaps include:

1 Absence of provisions regulating replacement of directors during PKPU;
2 Absence of procedural coordination between PKPU administrators and newly appointed directors;
3 Absence of legal standards governing transfer of managerial authority during restructuring;
4 Absence of provisions regulating legal responsibility when management changes affect restructuring implementation.

These findings indicate that the current legal framework does not comprehensively regulate governance transitions during corporate restructuring.

Summary of Empirical Legal Findings

The legal inventory undertaken in this research produced four principal findings:

1. Existing legislation recognizes the authority of PKPU administrators but does not specifically regulate their legal position when the debtor's Board of Directors is replaced during PKPU.
2. Director replacement has occurred in several SOEs undergoing PKPU, demonstrating that such governance changes constitute an actual legal phenomenon rather than a hypothetical issue.
3. The legal framework governing bankruptcy, company law, and SOE governance remains fragmented and lacks procedural integration.
4. No implementing regulation provides technical guidance concerning coordination between PKPU administrators and newly appointed corporate management during restructuring proceedings.

Mapping of Institutional Authority During PKPU

The legal analysis also mapped the distribution of institutional authority during PKPU proceedings.

Table 2. Distribution of Institutional Authority During PKPU Proceedings

Institution	Principal Authority
Commercial Court	Grant PKPU and appoint Supervisory Judge and Administrator
PKPU Administrator	Joint administration of debtor's assets
Board of Directors	Conduct daily corporate management subject to administrator approval
Ministry of SOEs / Shareholder	Appointment and dismissal of directors
Supervisory Judge	Judicial supervision of PKPU implementation

Source: research data

The mapping demonstrates that the authority of each institution originates from different statutory regimes, resulting in overlapping competencies whenever changes in the Board of Directors occur during PKPU.

Discussion

1. **Performance of the Administrator's Duties and Authority upon the Replacement of Members of the Board of Directors of a Persero During PKPU**

   The PKPU regime creates a special legal order that temporarily reshapes the allocation of authority among company organs. Before the PKPU decision, the debtor operates under the classic corporate paradigm of *shareholder primacy*: the GMS holds ultimate authority over the company's strategic direction, including the appointment and dismissal of directors under Article 94 of the Company Law, while the Board of Directors manages the company and the Board of Commissioners supervises it. After the PKPU decision, this order shifts toward what may be called *creditor-centered governance*. The shift does not dissolve the corporate organs; it adds an external supervisory layer in the person of the Administrator appointed by the Commercial Court, whose approval is required for strategic acts of management, and it makes the collective interest of creditors the dominant consideration in corporate decision-making during the PKPU period.

   The Administrator's duties and authority are laid down in several key provisions of the Indonesian Bankruptcy Law. Article 225 paragraphs (2) and (3) require the court, when granting a provisional PKPU, to appoint an Administrator who, together with the debtor, manages the debtor's estate. Article 234 requires the Administrator to be independent and free from conflicts of interest, and makes the Administrator liable for errors or negligence in performing management duties that cause losses to the estate. Article 240 paragraph (1) provides that the debtor may not, without the Administrator's approval, perform acts of management or ownership over all or part of its assets, and paragraph (2) attaches liability for losses to violations of this rule, while paragraph (3) exempts routine day-to-day business transactions and paragraph (4) empowers the Administrator to do everything necessary to preserve the estate. Article 255 allows the PKPU to be terminated and the debtor declared bankrupt, among other grounds, where the debtor acts in bad faith in managing the estate. In doctrine, the Administrator is understood as an *officer of the court*, vested with professional autonomy that may not be intervened in by the debtor or by individual creditors, and burdened with professional responsibility comparable to that of advocates and receivers (Aprita, 2014).

The co-management construction of Article 240 has a conceptual counterpart in the *debtor in possession* doctrine of Chapter 11 of the United States Bankruptcy Code. Section 1107 of the Code places the debtor in possession in a fiduciary position with rights and powers equivalent to a trustee, so that the debtor continues to operate the business during reorganization under the supervision of the bankruptcy court (United States Courts, n.d.). The philosophy is that the debtor knows its own business best and has the strongest incentive to rehabilitate it. Article 240 of the Indonesian Bankruptcy Law adopts this idea in substance but modifies it: the Board of Directors remains the operational manager, yet strategic acts require the concurrent approval of the court-appointed Administrator. The Indonesian regime is therefore not a pure *debtor in possession* model but a hybrid that may be described as *supervised debtor in possession* or co-management (Amboro, 2020; Kornelis & Amboro, 2020).

The difference between the two models reflects two competing philosophies of bankruptcy law. Jackson (1986) conceives of bankruptcy law as a *creditors' bargain*, the hypothetical agreement creditors would reach *ex ante* on how to solve their collective action problem when the debtor becomes insolvent, so that the law must maximize and proportionally distribute the value of the estate. Warren (1993), in her *communitarian* account, treats bankruptcy law as a distributive instrument that must weigh not only the creditors' interests but also those of employees, suppliers, and communities dependent on the continuity of the debtor's business. The Chapter 11 *debtor in possession* model leans toward Warren's philosophy, placing going concern preservation at the center with a broad social dimension, while the Indonesian co-management model is a compromise between the two: creditors are protected through the Administrator's approval power, while the Board of Directors' authority is preserved for operational efficiency and business continuity.

The co-management mechanism also operationalizes the fundamental principles of insolvency law: *paritas creditorium*, under which the debtor's entire estate serves as joint security for all creditors of equal standing (Firmansyah & Sekar, 2014); *pari passu prorata parte*, requiring proportional distribution according to the size of each claim; and *structured creditors*, which classifies creditors into secured, preferred, and concurrent classes (Tumbuan, 2001). These principles ground the Administrator's power to refuse approval of transactions that would, for example, prefer one creditor over others or distribute value disproportionately.

Against this normative construction, the analysis of the two cases shows that the replacement of members of the Board of Directors during the PKPU period generates five categories of consequences for the performance of the Administrator's duties and authority. The first is informational: the replacement severs the flow of corporate knowledge already built up between the Administrator and the outgoing directors. A newly appointed Administrator needs substantial time to understand the debtor's debt structure, creditor profile, and operations, knowledge ordinarily acquired through intensive communication with the incumbent Board. Where directors are replaced early in the PKPU, the Administrator must restart this process with new directors who themselves do not yet master the company's internal affairs. The consequence is critical given the statutory time limits: a maximum of 270 days for the PKPU under Article 228 paragraph (6) and only 45 days for the provisional PKPU under Article 225. In Barata, the first sixteen to seventeen days after the provisional decision were effectively lost to a leadership transition, compressing the time available to prepare a sound composition plan.

The second consequence is administrative: the need to re-verify the validity of the company's legal representation. Approvals under Article 240 paragraph (1) require the signature of directors whose appointment is registered in the legal entity administration system pursuant to Articles 21 and 29 of the Company Law. During the transition between the issuance of the ministerial decree and the official registration of the new Board composition, there is legal uncertainty as to who validly represents the *Persero*. In practice the Administrator commonly accepts the ministerial decree as provisional legitimation, but this approach carries legal risk if the validity of the new directors' acts in the transition period is later disputed.

The third consequence is substantive and concerns the composition plan itself. New directors frequently bring a different vision of the restructuring, whether to revise a scheme considered too burdensome or to accelerate commitments to win creditor confidence. In either scenario the Administrator must facilitate renegotiation with creditors, repeating much of the process already completed. This generates uncertainty over the substance of the plan that can erode the debtor's credibility, particularly with financial creditors such as banks and lessors whose internal credit committees must re-approve any changed restructuring terms. In aggregate, such uncertainty can cause the composition to fail altogether and the PKPU to end in bankruptcy under Article 255.

The fourth consequence is coordinative. The Administrator, as the bridge between debtor and creditors, must reintroduce the new directors to the creditors, and the new directors must rebuild relationships of trust. In proceedings with hundreds of creditors across jurisdictions, as in Garuda with its foreign aircraft lessors and service vendors, this burden is significant and can affect creditor participation in the plan vote. In terms of the collective action problem described by Jackson (1986), the replacement adds a new variable to an equation that must be solved within a limited time, and creditors who perceive the replacement as a signal of internal instability may turn conservative, rejecting previously agreed *haircut* schemes or demanding additional security.

The fifth consequence is regulatory and exposes a weakness internal to the SOE regulatory framework. The Minister of SOEs Regulation Number PER-3/MBU/03/2023 on Organs and Human Resources of SOEs, the principal instrument governing the appointment and dismissal of SOE directors, contains no provision on how the Minister, acting as the GMS, should act when the SOE concerned is undergoing a PKPU. The regulation governs administrative and substantive requirements for candidates, fit and proper tests, and talent management, but is silent on director replacement during financial distress proceedings. Every SOE PKPU therefore proceeds through *ad hoc* coordination between the Ministry, the holding entity, and the Administrator, without written guidance, a normative vacuum that must currently be filled by systematic interpretation of the Indonesian Bankruptcy Law, the Company Law, and the SOE Law.

The legal position of the Administrator in the face of a director replacement can be stated precisely by classifying the available instruments into three complementary categories. The first is passively preventive: the Administrator has no authority to refuse or annul the GMS decision replacing directors. Such replacement is the exclusive authority of the GMS under Article 94 of the Company Law in conjunction with the SOE Law, and it is an internal corporate act of organ formation, not an act of management or ownership over assets within the meaning of Article 240. The Administrator even lacks standing to attend the GMS, since Article 75 of the Company Law confines participation to shareholders, the

Board of Directors, and the Board of Commissioners. From the standpoint of formal validity, therefore, the Administrator has no room whatsoever to prevent the replacement.

The second category is active supervision. Although unable to block the replacement, the Administrator may strictly scrutinize the new directors' actions. Article 240 paragraph (1) empowers the Administrator to withhold approval of strategic actions considered contrary to the objectives of the PKPU, for instance where new directors, not yet in command of the company's condition, propose new borrowing without clear operational need, asset sales below market value, or new security rights for particular creditors in breach of *paritas creditorium*. This veto position operates as a *check and balance* against the risk of incompetence of newly appointed directors (Aprita, 2014). Routine transactions remain exempt under Article 240 paragraph (3), so that daily operations such as payroll and utilities continue without formal obstruction (Subhan, 2008).

The third category is repressive and ultimate: the Administrator may report to the Supervisory Judge and propose termination of the PKPU with a bankruptcy declaration. Article 234 obliges the Administrator to act independently and professionally, which includes reporting debtor conduct that harms creditor interests, and Article 255 provides grounds for ending the PKPU where the debtor acts in bad faith in managing the estate, attempts to harm creditors, or can no longer be expected to satisfy its obligations. Where new directors fail in these respects, the Administrator can activate Article 255 to protect the collective interest of creditors.

This construction must be read in harmony with the Company Law and the SOE Law through the principle of *lex specialis derogat legi generali*: during the PKPU period the Indonesian Bankruptcy Law operates as the special law limiting, but not extinguishing, the directors' authority under the general corporate statutes (Sjahdeini, 2018). Directors during PKPU thus continue to bear their fiduciary duties under Article 97 of the Company Law and their good corporate governance obligations under the SOE Law, while simultaneously being subject to the Administrator's approval power under Article 240. The broader context is the modern insolvency paradigm that treats preservation of value as a core objective of an effective insolvency regime (UNCITRAL, 2005), a responsibility the Administrator discharges not merely by mechanically protecting creditors but by facilitating a composition that sustains the debtor's business (Irianto, 2015).

2. Implications of the Replacement of Members of the Board of Directors of a Persero During PKPU for Composition Efforts in Light of the Going Concern Principle

Composition in PKPU is achieved through homologation, the court's ratification of a composition plan approved by the requisite creditor majorities. The plan typically contains restructuring schemes such as rescheduling, *haircut*, or *debt to equity swap*. Under Article 281 of the Indonesian Bankruptcy Law, ratification requires the approval of more than half of the concurrent creditors present representing at least two-thirds of the admitted concurrent claims, and more than half of the secured creditors present representing at least two-thirds of the admitted secured claims. Once ratified, the composition binds the debtor and all creditors under Articles 285 and 286, and its breach may ground a petition for annulment of the composition and a bankruptcy declaration under Article 291.

The primary purpose of the PKPU is to preserve the debtor's going concern. The going concern principle is a broadly formulated legal principle underlying the norms of bankruptcy and PKPU law, whose implementation extends across the entire process rather than being confined to specific statutory text (Irianto, 2015). This accords with the *business rescue* philosophy of modern insolvency law, in which liquidation is an *ultimum remedium* because it generally realizes less value than a successful restructuring; empirical studies in developed jurisdictions indicate that creditor recoveries from successful restructurings substantially exceed recoveries from liquidation (Moody's Investors Service, 2006; UNCITRAL, 2005). Every internal dynamic of the debtor during PKPU, including director replacement, must therefore be evaluated by its contribution to the going concern objective. A replacement that strengthens the going concern is a positive step; one that disrupts it invites scrutiny of the validity of its purpose. Where the GMS's formally lawful power is exercised without regard to its impact on business continuity, the exercise may be characterized as an *abuse of right*: the use of a formally valid power contrary to the *ratio legis* that underlies it.

The doctrinal frame for this evaluation is the shift of fiduciary duty in the *zone of insolvency*. When a company is insolvent or near insolvency, the directors' fiduciary duty, originally owed to shareholders, extends to creditors. New directors taking office during PKPU carry this shifted duty from their first day: they may no longer orient themselves solely to the interest of the state as majority shareholder, but must prioritize the collective interest of creditors in preserving the business as the source of debt repayment. Decisions favoring the shareholder at creditors' expense expose the directors to personal liability under Article 97 paragraph (3) of the Company Law. The applicable standard of care is correspondingly heightened, because every decision in this period directly affects the value distributable to creditors.

The *business judgment rule* interacts with this shifted duty in a manner that counsels caution about mid-PKPU replacements. Article 97 paragraph (5) of the Company Law protects directors from liability for business decisions taken in good faith, with due care, without conflict of interest, and on the basis of adequate information, and Article 9F of Law Number 16 of 2025 expressly extends the rule to SOE directors and commissioners. During PKPU, however, the rule cannot be used to evade the requirement of the Administrator's approval under Article 240. More fundamentally, the rule requires an *informed decision*, a condition that directors who have held office for only days or weeks can hardly satisfy with respect to strategic decisions affecting the composition plan. Paradoxically, the new directors expected to bring stronger capabilities in fact bear higher personal legal risk than experienced incumbents, which is itself a strong argument for restraint in replacing directors early in a PKPU.

A further crucial question is who validly signs and executes the composition plan. Because the plan is a document of the debtor as a legal entity rather than of the individual directors, a plan prepared by the outgoing Board remains valid if the directors are replaced before the creditors' vote, and the new Board may propose revisions only within the court-set timetable and with the approval of the Administrator and the creditors. After homologation, Article 286 binds the debtor, including any subsequently appointed directors, to the ratified composition; this reflects the *continuity of legal personality* of the company, which lives on beyond changes in its organs. New directors therefore acquire no *clean slate*: failure to perform the ratified composition exposes the company to annulment and bankruptcy under Article 291.

The Garuda case illustrates a co-management arrangement that succeeded in preserving the going concern. The organ reshuffle was carried out before the PKPU at the Annual GMS of 13 August 2021, and during the proceedings the President Director and the majority of the Board were retained. The composition plan won the support of 95.07 percent of creditors present, was ratified on 20 June 2022, and was upheld by the Supreme Court on 26 September 2022; it reduced debt from USD 9.8 billion to approximately USD 6.7 billion through *haircut* schemes and conversion of obligations into long-term instruments (Detikcom, 2022; Amalia, Hariyani, & Prakoso, 2022; Utami et al., 2024). The only director replacement during the broader restructuring period, on 12 August 2022, was partial, involved the Human Capital portfolio rather than any position central to creditor negotiations, and occurred after homologation, when the plan was final and required only execution. In the period after homologation, the company's revenues grew by 16.12 percent from USD 2.4 billion to USD 2.8 billion with EBITDA rising 13.83 percent, and the obligations under the composition have been met on schedule. Four factors explain this outcome: the retained leadership had built a solid working relationship with the Administrator since the provisional PKPU; the replaced position was not strategic to creditor negotiations; the replacement took place after the plan was final; and the restructuring was supported by the state holding entity, which provided liquidity and operational support.

The Barata case, by contrast, illustrates a co-management dynamic that failed to sustain the going concern in the long run. The President Director was replaced only sixteen to seventeen days after the provisional PKPU decision, when the newly appointed Administrator was still in the early stage of understanding the company. The new President Director nominally led Barata to homologation on 6 December 2021, within approximately 105 days of the provisional decision, restructuring total debt from IDR 4.09 trillion to IDR 3.47 trillion through waiver of interest and penalties, rescheduling of principal over six to ten years, and partial conversion of government loans into equity. Post-homologation developments, however, revealed a different picture: in June 2024 a creditor petitioned for Barata's bankruptcy on the ground that the company had not only defaulted on the ratified composition but had incurred new debts that enlarged its total liabilities. In insolvency doctrine this is a *post-confirmation default* or failed restructuring, and the recurrence of crisis within a relatively short time after homologation is associated in empirical studies with structural failures of post-restructuring management. Several indications link this failure to the early replacement: the new President Director had only about 89 days to understand the company, prepare the plan, and negotiate it with hundreds of creditors, a period far shorter than the six to eighteen months typically required for a sound reorganization plan in Chapter 11 practice; the post-homologation incurrence of new debt indicates that financial discipline was not maintained; and the speed of the homologation, often presented as a success, is better read as an indicator of the shallowness of the plan's substance, which became evident in the execution failure thirty months later. The case confirms that the going concern principle is not satisfied by formal homologation alone but requires consistent post-homologation execution capability (Irianto, 2015).

The comparison also exposes the political dimension peculiar to SOEs. The replacement of SOE directors is rarely a purely corporate decision; it is influenced by cabinet dynamics, changes of the Minister of SOEs, and national strategic considerations, and public commentary has repeatedly warned that political intervention erodes the independence of SOE boards (Media Indonesia, 2024). Where a replacement during PKPU is driven by political preference rather than corporate capability, the collective interest of creditors becomes the stake. In economic terms this is a *moral hazard* and *opportunistic behavior* problem exploiting the information asymmetry between the shareholder, the directors, and the Administrator, who has no access to the Ministry's internal selection process and cannot evaluate whether the fit and proper test required by the applicable ministerial regulation was conducted with full rigor under conditions of urgency. SOE directors in PKPU in fact bear a triple duty: a *duty to shareholders* to restore the state's investment, a *duty to creditors* arising in the zone of insolvency, and a *duty to the public* attached to the SOE's public service functions, and these duties, ordinarily complementary, can collide in distress.

Synthesizing the analysis, the implications of director replacement for the composition effort can be stated in three interrelated dimensions. In the juridical-formal dimension, replacement does not invalidate the composition plan being prepared or already ratified, because the plan is an act of the legal entity binding successive boards under Article 286, and failure of execution grounds annulment under Article 291. In the practical-operational dimension, replacement can strengthen or weaken the composition depending on the new directors' capability to retain creditor confidence and execute the plan consistently; the empirical experience of Garuda and Barata shows that partial replacement preserving strategic continuity is conducive to the going concern, whereas replacement of the President Director at the outset of the PKPU is not, and the success of a PKPU must be assessed over a horizon of at least three to five years after homologation rather than at the moment of ratification. In the doctrinal dimension, replacement must be grounded in the shifted fiduciary duty toward creditor protection, tempered by the *business judgment rule*, so that the substantive question of the motive for replacement, capability enhancement or political consideration, becomes legally relevant. Director replacement during PKPU is thus a double-edged sword: lawful in form, it may either reinforce or destroy the going concern that the PKPU exists to protect, and the legislative choice of the Indonesian Bankruptcy Law not to restrict the GMS while subjecting all strategic debtor action to co-management reflects a cautious balance that leaves the outcome to the wisdom of the shareholder and the effectiveness of the Administrator's instruments.

CONCLUSION AND SUGGESTIONS

Conclusion

Based on the findings of this study, the following conclusions can be drawn:

1. First, the replacement of members of the Board of Directors of a *Persero* during the PKPU period disturbs the performance of the duties and authority of the Administrator as supervisor and controller under the Indonesian Bankruptcy Law. The disturbance operates through five categories of consequences, namely informational, administrative, substantive, coordinative, and regulatory consequences, all of which burden the co-management mechanism of Article 240 by which the Administrator bridges the relationship between the creditors and the debtor. The co-management mechanism is not balanced by any authority of the Administrator to object to the replacement of directors by the shareholder of the SOE, while the Company Law and the SOE Law do not accommodate the PKPU period as a consideration in the appointment and dismissal of directors. The Administrator is left with three complementary instruments: a passively preventive position that excludes interference with the GMS decision, active supervision through the approval power of Article 240 paragraph (1), and repressive recourse through Articles 234 and 255.
2. Second, the replacement of members of the Board of Directors of an SOE *Persero* during the PKPU process can obstruct the achievement of the composition between the debtor and its creditors, and thereby prevent the application of the going concern principle, to the point that the SOE concerned may ultimately be declared bankrupt. The contrast between the failed post-homologation trajectory of PT Barata Indonesia (Persero), which faced a new bankruptcy petition thirty months after homologation, and the sustained execution of the composition by PT Garuda Indonesia (Persero) Tbk demonstrates that homologation is not the sole determinant of the PKPU's objective and that leadership continuity during the proceedings is a condition normatively presupposed by the Indonesian Bankruptcy Law.
3. On the basis of these conclusions, two recommendations are advanced. First, when an SOE *Persero* is in PKPU, the SOE regulatory authority should refrain from, or postpone, the replacement of the members of its Board of Directors, because such replacement disrupts the co-management process with the Administrator, severs the continuity of information built up with the creditors, and diminishes the debtor's credibility in negotiating the composition plan, as observed in the Barata case. Second, the SOE regulatory authority should issue an implementing regulation on the management of SOE *Persero* companies in a state of PKPU, including a restriction on director replacement while the PKPU process is ongoing, in order to close the legal vacuum left by the Indonesian Bankruptcy Law, the

Company Law, and the SOE Law, to give effect to the going concern principle, and to safeguard the co-management mechanism of Article 240 throughout the PKPU period.

Limitations

This study has several limitations. First, the research adopts a normative juridical approach focusing primarily on statutory regulations, legal doctrines, and selected court decisions concerning the replacement of members of the Board of Directors of State-Owned Enterprises during the Suspension of Debt Payment Obligations (PKPU). Consequently, the findings have not been empirically validated through interviews or field observations involving judges, administrators, creditors, government officials, or corporate management. Second, the analysis is centered on selected cases involving State-Owned Enterprises, particularly PT Barata Indonesia (Persero) and PT Garuda Indonesia (Persero) Tbk, so the conclusions may not fully represent all PKPU cases involving other State-Owned Enterprises or private companies. Finally, this study focuses on the legal implications of director replacement from the perspective of insolvency law, corporate governance, and the *going concern* principle, without examining in depth the financial, economic, or managerial aspects that may also influence the success of corporate restructuring and composition efforts.

Recommendation

Based on the findings of this study, it is recommended that the Government of Indonesia, particularly the Ministry of State-Owned Enterprises, establish clear implementing regulations governing the replacement of members of the Board of Directors of State-Owned Enterprises undergoing Suspension of Debt Payment Obligations (PKPU). Such regulations should ensure legal certainty, maintain the continuity of corporate management, and support restructuring efforts based on the *going concern* principle. In addition, Commercial Court Administrators should strengthen coordination with newly appointed directors to minimize disruptions in the implementation of debt restructuring and composition plans. Future research is encouraged to expand the scope of analysis by examining private corporations, comparative insolvency systems in other jurisdictions, or empirical aspects of PKPU implementation, as well as exploring the perspectives of judges, administrators, creditors, and policymakers to develop a more comprehensive understanding of corporate governance during financial restructuring.

Author Contribution

The sole author was responsible for the conceptualization of the research, formulation of the research problems, literature review, research design, data collection, legal analysis, interpretation of the findings, drafting of the manuscript, and critical revision of the article. The author has read and approved the final version of the manuscript submitted for publication.

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