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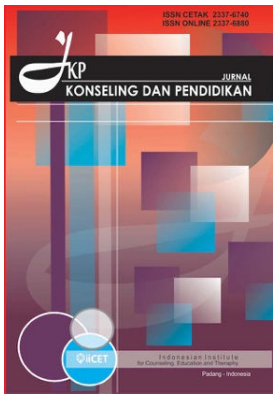

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Article

Presumption of insolvency under law no. 37/2004: a call for reform to safeguard debtor welfare and social justice

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ABSTRACT

The Presumption of Insolvency doctrine in Article 2 paragraph (1) of Law No. 37/2004 allows debtors to be declared bankrupt if proven to have two creditors and one due debt, without verifying their actual insolvency. Recent data highlights its urgency: the SIPP system recorded 652 PKPU petitions and 94 bankruptcies in 2023, rising from 572 PKPU and 105 bankruptcies in 2022, while PKPU registrations surged from 199 cases in 2016 to 560 in 2023. Such growth indicates increasing reliance on bankruptcy and restructuring mechanisms, particularly affecting small and medium-sized debtors. This study applies a normative legal method with qualitative analysis of 201 court decisions issued between 2010 and 2023. The findings reveal three core issues: (1) procedural inequality from the reverse burden of proof, which disadvantages debtors, (2) socio-economic consequences including the loss of assets, employment, and reputation, and (3) remedial imbalance as the PKPU mechanism often arrives too late. Reform recommendations include establishing differential debt thresholds, introducing a grace period before bankruptcy, requiring social-impact assessments, and strengthening PKPU as the primary restructuring route. These measures are expected to balance creditor certainty with debtor protection while making social justice outcomes measurable through indicators such as recovery rates and access to legal remedies.

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Introduction

The phenomenon of bankruptcy in Indonesia has increasingly demonstrated its urgency in recent years. Data from the Commercial Court indicate that the number of Suspension of Debt Payment Obligations (PKPU) and bankruptcy cases rose significantly in the aftermath of the COVID-19 pandemic, as companies' resilience weakened in the face of global crises, inflation, and changes in national fiscal policies (Budiyono, 2021). This situation affects not only large corporations but also micro, small, and medium-sized enterprises (MSMEs) and individuals, underscoring that bankruptcy mechanisms have become a legal instrument with broad implications for economic stability, as well as social and psychological well-being. According to CRIF Asia, there were 624 PKPU cases in 2024, a decrease from 677 cases in 2023, but with a significant surge in the third quarter (162 cases) and the fourth quarter (171 cases) (CRIF Asia, 2025). This indicates that despite improvements in debt risk management, liquidity pressures continue to reemerge throughout the year.

Meanwhile, data from the SIPP system of the five main commercial courts recorded 652 PKPU petitions and 94 bankruptcy petitions in 2023, an increase from 572 PKPU and 105 bankruptcy petitions in 2022 (Anwari et al., 2024). Furthermore, historical data show a sharp rise in PKPU

registrations, from 199 cases in 2016 to 560 cases in 2023, while bankruptcy filings ranged only from 129 (2016) to 75 (2023) (Suyudi, 2024). This trend confirms that PKPU is more widely used as a restructuring instrument compared to formal bankruptcy, while also indicating that the application of bankruptcy law remains relatively low, albeit gradually increasing. Such dynamics highlight the crucial need for a balanced legal framework that ensures fairness and proportional protection amid recurring global economic pressures, particularly in safeguarding the fundamental rights of debtors.

Normatively, bankruptcy in Indonesia is regulated under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUKPKPU) (J. Simanjuntak, 2023). Article 2 paragraph (1) stipulates that a debtor may be declared bankrupt if they have at least two creditors, with one debt due and payable (Saija & Radjawane, 2024). This principle is known as the Presumption of Insolvent. The doctrine essentially does not distinguish whether the debtor is unwilling to pay or genuinely unable to pay (Al Kautsar & Muhammad, 2021). With only simple proof, a debtor may be declared bankrupt. While this provides legal certainty for creditors, many argue that such provisions risk creating injustice for debtors, as the process is considered too easily invoked and potentially disregards the debtor's actual condition or good faith (Candini & Alka, 2022; Kiemas et al., 2023; Wiguna, 2024).

Previous studies (Azizah, 2022; Mantili & Dewi, 2021; Nyaman & Dewi, 2023) have largely examined the procedural aspects of bankruptcy, yet few have addressed the implications of the Presumption of Insolvent doctrine from humanitarian and human rights perspectives. Consequently, there remains a literature gap regarding how the Indonesian bankruptcy system can adequately protect debtors acting in good faith, particularly when facing external circumstances beyond their control, such as economic crises, pandemics, or natural disasters.

The key issues examined in this study are: (1) whether the application of the Presumption of Insolvent doctrine reflects the principles of substantive justice for debtors; (2) to what extent the current legal system provides protection for debtors acting in good faith; and (3) how bankruptcy practices in other jurisdictions may serve as a reference for developing a more just and humane bankruptcy system in Indonesia.

Based on these problem formulations, this research aims to: (1) analyze the effectiveness of the Presumption of Insolvent doctrine in Indonesian bankruptcy law from humanitarian and human rights perspectives; (2) evaluate the weaknesses of the current legal protection framework for debtors; and (3) propose an alternative legal approach that balances the interests of creditors and debtors. Through a normative-comparative approach, this study is expected to contribute academically and provide policy recommendations for the reform of Indonesian bankruptcy law, making it not only procedurally efficient but also substantively just.

Methods

This research employs a normative legal research design with a descriptive-analytical orientation. The choice of this method is based on the objective of critically examining the doctrine of the Presumption of Insolvency in Indonesian bankruptcy law, not only from a doctrinal perspective but also by assessing its alignment with principles of humanity and substantive justice.

Research Approaches

This research employs two main approaches. First, the statutory approach, which focuses on examining primary legislation, particularly Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUKPKPU), the Civil Code, as well as relevant amendments and implementing regulations (Arifuddin et al., 2025; Tan, 2021). The legal materials analyzed are limited to the period 2010–2025 to ensure their relevance to contemporary practices and policies. Second, the conceptual approach, which explores theoretical ideas related to human rights, social justice, and humanitarian law principles within the framework of economic law and company law. This approach provides a broader normative-philosophical foundation for evaluating the humanitarian dimensions of bankruptcy law in Indonesia.

Data Sources

The primary legal materials in this research consist of legislation, including the UUKPKPU, the Civil Code, and related regulations issued within the period of 2010–2025. In addition, jurisprudence from the Supreme Court and commercial courts within the same timeframe is analyzed. The selection of cases follows specific sampling criteria, namely (a) relevance to the application of the presumption of insolvency doctrine, and (b) the accessibility of full-text decisions to ensure accuracy and completeness of interpretation. Secondary legal materials are academic journals on bankruptcy law and human rights, limited to publications in the last five years (2020–2025), ensuring the coverage of the most recent academic debates.

Data Analysis

The analysis in this research employs a qualitative-descriptive technique carried out through several structured steps. First, the identification and classification of legal norms relevant to the presumption of insolvency are conducted. Second, jurisprudence is comparatively mapped across different judicial levels, namely the commercial court, appellate court, and the Supreme Court. Third, thematic coding is applied to issues emerging from both literature and jurisprudence in order to capture recurring patterns and doctrinal debates. Finally, these findings are synthesized with humanitarian and social justice considerations to formulate alternative policy and doctrinal reforms.

Validation and Reliability

To ensure objectivity and reproducibility, this study incorporates several validation mechanisms. Internal cross-checking is conducted among research team members to maintain consistency of interpretations, while peer review of data coding and analysis is carried out by experts in bankruptcy law to strengthen credibility. In addition, triangulation with secondary sources, such as scholarly commentary and practitioner reports is employed to balance doctrinal analysis with practical perspectives. Through this methodological design, the research aims to construct a normative yet empirically informed argument, ensuring that the recommendations for reform are both scientifically grounded and practically applicable within the context of Indonesia's commercial law.

Results and Discussion

Application of Doctrine Presumption of Insolvent and its effectiveness

Doctrine Presumption of Insolvent as regulated in Article 2 paragraph (1) UUKPKPU stipulates that a person debtor can be declared bankrupt if they have two or more creditors and not paying off at least one due and payable debt. This mechanism is in perspective a creditor is an efficient and simple legal tool to collect debts and prevent protracted defaults. Creditors do not need to prove in detail whether the debtor cannot pay (insolvent) or simply does not want to pay. This is considered to provide legal certainty and speed up resolving receivable disputes.

However, the effectiveness of this simplified procedure has serious consequences for debtor protection. The overly lenient verification procedure allows creditors to use the bankruptcy mechanism as a tool for negotiation or business pressure. This practice is reflected in a number of cases, such as the case of PT Telkomsel (2012), in which a company in sound financial condition was declared bankrupt by the Central Jakarta Commercial Court at the request of PT Prima Jaya Informatika for Rp 5.3 billion. However, Telkomsel's President Director stated that "Telkomsel's performance was not affected" even though the bankruptcy ruling was handed down (Antara News, 2012). This decision sparked widespread criticism because it was considered contrary to the principle of justice and actually created uncertainty in the business world. Empirical data shows that the trend of bankruptcy filings in Indonesia does not always reflect actual insolvency; some cases are driven by strategic motives or commercial pressure (e.g., debt restructuring negotiations).

From the debtor's perspective, the application of this doctrine imposes a heavy reverse burden of proof. Debtors must convince the court that they remain capable of fulfilling their obligations or are preparing a repayment mechanism such as restructuring. This position is problematic, especially for MSMEs and individual debtors who generally lack access to legal services, have limited mastery of

formal evidentiary instruments, and are structurally weaker compared to large corporations. Thus, the "one-size-fits-all" treatment risks producing inequities across debtor segments.

The impact of applying this doctrine can be observed in three dimensions are economic, in the form of the loss of productive assets, disruption of cash flow, and premature liquidation risks even when companies are only experiencing short-term liquidity constraints. Social, in the form of bankruptcy stigma, declining business reputation, and psychological pressures on individual debtors. Legal, in the form of limited access to legal aid and complete dependence on curators and judges in determining the continuation of business operations.

In addition, academic literature Yonatan et al. (2023) and Fahamsyah et al. (2024) has proposed a paradigm shift in Indonesian bankruptcy law from debt payment orientation toward business reorganization, similar to practices in the United States. However, comparative studies with other jurisdictions show variations: the United Kingdom and Australia, for instance, implement stricter insolvency tests by considering the debtor's actual financial condition. This model is more selective in determining whether a debtor is truly insolvent or merely illiquid, thereby reducing the potential abuse of bankruptcy procedures.

The decision to declare bankruptcy is based on the fulfillment of Article 2 Paragraph (1) of the Bankruptcy Law and PKPU, a decision handed down based on the presumption that the debtor has become insolvent. That means the debtor is not necessarily insolvent. For that reason, against debtors, those who have been declared bankrupt still have the right to submit a peace proposal based on Article 144 of the Bankruptcy Law and PKPU, either through a cash settlement pattern at an agreed price or through a debt restructuring scheme to all their creditors. When a debtor who has been declared bankrupt did not submit a peace proposal or the peace proposal submitted by the bankrupt debtor was rejected by the majority of its creditors (concurrent creditors), based on Article 178 of the Bankruptcy Law and PKPU, then legally debtor is stated insolvent, as a basis for the curator who is appointed to take action to settle (liquidate) the assets of the bankrupt debtor (R. Simanjuntak, 2023).

In the Indonesian, institutional constraints must also be taken into account. Commercial courts face limitations in the number of judges, heavy caseloads, and minimal access to legal aid for small debtors. Without strengthening institutional capacity, adopting new models such as an insolvency test or safe-harbor provisions risks being ineffective. Therefore, reforms should be carried out gradually through improving judicial competence, providing legal aid clinics, and introducing auditing standards to objectively assess debtors' financial conditions.

In sum, the application of the Presumption of Insolvency doctrine is procedurally efficient and safeguards creditors from uncooperative debtors. However, such effectiveness is insufficiently sensitive to the objective conditions of debtors, particularly MSMEs and individuals. Without adequate substantive protections, this doctrine risks transforming bankruptcy into an instrument of economic repression rather than a tool of justice. A reform toward an insolvency test system, emphasizing the debtor's actual economic capacity would better align with the objectives of social justice and business sustainability.

Presumption of Insolvent from a Social Justice Perspective

Chapter 2 verse (1) UU 37/2004 positions the doctrine *Presumption of Insolvent* as the "entrance" to bankruptcy: it is enough to prove that there are two creditors and one debt is due, then the debtor is considered unable to pay. This logic was created to prevent the situation of fighting *over debtor assets* by creditors so creditors obtain a fast and specific collective mechanism. From the perspective of market efficiency, this scheme is rational: low-proof costs, a concise process, and high certainty of collection. However, data from the commercial court's SIPP shows a sharp increase in PKPU and bankruptcy petitions: from 435 in 2019 to 726 in 2021, and remaining high at 563 in October 2023. In Q4 2024, there were 624 PKPU cases 87.13% of which were still in the negotiation stage (Indonesia Business Post, 2023). This phenomenon confirms that the fast-track procedure is indeed the preferred option, but it also opens up opportunities for abuse for commercial pressure.

The first dimension of injustice lies in information asymmetry. Institutional creditors usually come with teams of lawyers and accountants, while MSMEs or individual debtors rarely have audited balance sheets or standard cash flow statements. When a bankruptcy petition is filed, the burden of proof is reversed: the debtor must prove that they are still solvent within 20–60 days of the trial. Large corporations still have the technical instruments to do so, but MSMEs almost always fail to present equivalent documents. As a result, the right to defend oneself becomes an illusory procedural imbalance across debtor categories.

The impact of bankruptcy rulings also needs to be examined. Economically, debtors lose liquid assets and vital assets such as homes and business capital. Socially, there is a decline in status and stigma, including for families who depend on the debtor. Legally, access to justice becomes unequal because bankruptcy status immediately closes access to financing and stigmatizes reputation before any restructuring efforts are made. Without distinguishing between bad debtors and crisis victims, this legal instrument actually deepens structural vulnerability and has the potential to violate the right to a decent livelihood as stipulated in the Economic, Social and Cultural Covenant.

In theory, PKPU should provide a path to restructuring. However, practice in commercial courts shows that PKPU is more often filed after the "bankrupt" stamp has already been thrown into the public domain. Institutional barriers are also significant: the number of commercial judges is limited, legal fees are high, and there is a lack of legal aid clinics for small debtors. This means that substantive protection only emerges after economic and psychological damage has already occurred, thereby reinforcing remedial injustice.

If the objective of the bankruptcy system is the fair distribution of risk for business failure, then the current Presumption of Insolvent format fails to meet the standard of proportionality. Administratively, it benefits creditors, but substantively, it harms vulnerable groups. The necessary reforms include: (i) different nominal debt thresholds for individual debtors, MSMEs, and corporations; (ii) statutory demands that allow room for negotiation before bankruptcy petitions are granted; and (iii) social impact analysis as a prerequisite before bankruptcy verdicts are handed down. Each recommendation has its pros and cons: statutory demands may delay the process and have the potential to be abused by uncooperative debtors, but at the same time provide room for the rescue of productive businesses. Similarly, differential nominal thresholds may increase substantive fairness, but risk increasing the administrative burden on creditors.

Research by (Khair, 2021) states that the existence of Article 55 and Article 56 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations has resulted in injustice towards debtors in the implementation of bankruptcy against debtors carried out by creditors; So it is necessary to reform the implementation of debtor protection in implementing bankruptcy for debtors by implementing a debtor protection system in implementing bankruptcy for debtors which is based on Pancasila.

Another research by (Rahmawati & Rizkianti, 2023), highlights the application of the principle of presumption of bankruptcy in Indonesian bankruptcy law and its impact on small business actors. Their study revealed that the implementation presumption of insolvency based on the existence of two or more creditors and overdue debts often ignores the real conditions of debtors, especially those from economically weak groups. This creates inequality in legal protection and harms the principles of social justice as mandated in Article 33 of the 1945 Constitution. So, according to (Faisal, 2024), in his research, he stated that the need for courts to maintain a balance between the rights of creditors and protection for debtors who experience financial difficulties. The recommendations include clarity in legal interpretation, consistent application of the Bankruptcy Law and PKPU, and an approach that prioritizes justice in every decision on a bankruptcy petition or PKPU. These two studies provide an important basis for reconstructing the approach to bankruptcy law to make it more socially just.

Comparative Studies Presumption of Insolvent in Other Countries

Testing doctrine *Presumption of Insolvent* (PoI) through the magnifying glass of social justice does not rely sufficiently on national normative arguments; we need to look at the jurisprudence of other countries that have successfully balanced collection efficiency with debtor protection. Comparison

has a double function: (i) as a benchmark, namely assessing whether Indonesian standards are still relevant, and (ii) as a source of regulatory innovation tested in similar contexts.

Singapore defends the Presumption of Insolvency, but the (Insolvency, Restructuring and Dissolution Act 2018, 2020) framework adds three "buffers of justice." First, a statutory demand of 21 days with an SG debt threshold of $ 15,000 gives an initial negotiation room a similar cooling-off period. Second, Art 125 (2)(c) allows the judge to consider prospective liquidity and whether the debtor can become solvent again within a reasonable horizon. Third, IRDA integrates the restructuring route (scheme of arrangement) at the initial level so that liquidation becomes the ultimate remedy option. Empirical studies indicate that Singapore's scheme of arrangement has a relatively high success rate in preserving going-concern value, especially for SMEs (Wan, 2022), showing that debtor protection can be institutionalized without sacrificing efficiency.

Australia emphasizes business rescue principles melalui safe-harbor provision (Corporations Act s 588 GA). Directors actively developing restructuring plans are protected from prosecution by "trading while insolvent." This approach shifts the narrative from "punishment for failure" to "incentives for recovery." Research by Xynas & Xynas (2021) shows that the provision has improved early restructuring attempts and reduced premature liquidations, particularly for small and medium enterprises. For creditors, safeguards remain through registered restructuring practitioners; for debtors, breathing space is provided to avoid unnecessary liquidation.

United Kingdom introduced reforms through the Corporate Insolvency and Governance Act 2020 (CIGA), which grants an automatic 20-day moratorium when a debtor applies for restructuring. During this period, creditors are prohibited from executing claims, similar to the U.S. automatic stay, while "super-priority" financing ensures operational continuity. Reports from the Doshi & Jain (2021) highlight that the moratorium has been effective in preventing the collapse of viable firms during COVID-19, aligning insolvency procedures with broader social and economic stability.

United States under Chapter 11 of the Bankruptcy Code grants debtors-in-possession the authority to manage business operations during restructuring, while creditors are given voting rights on reorganization plans. The system prioritizes a "fresh start" post-reorganization rather than liquidation. Empirical evidence shows that recovery rates for creditors under Chapter 11 often exceed those from liquidation, while debtors benefit from continuity and job preservation (Breuer & Mersmann, 2025). The U.S. approach demonstrates that balancing creditor recovery with debtor rehabilitation produces greater long-term economic value.

The four jurisdictions above show a similar pattern: the presumption of incapacity is still used for efficiency but is always accompanied by safety valves, nominal threshold, moratorium, safe harbor, or structured moratorium that gives debtors a rescue room. For Indonesia, selective adoption can take the form of (i) a statutory demand of 30 days with different debt limits for corporations and small debtors, (ii) safe-harbor protection for directors who are in good faith in preparing to restructure, and (iii) a short automatic moratorium when a PKPU is submitted. Such reforms should not only be stated at the policy level but also operationalized through amendments to Law No. 37/2004 and clarified in Supreme Court regulations or consistent jurisprudence. This ensures that collection efficiency and social justice are not mutually exclusive, but rather complementary in building a bankruptcy system that protects both creditors' rights and the socio-economic fabric of society.

Conclusion

Document review and cross-country comparisons show that the doctrine Presumption of Insolvent in Article 2 verse (1) UU 37/2004, although effective in shortening the collection process and preventing seizure of debtor assets by creditors, is not yet in line with the principles of social justice and protection of debtor's fundamental rights. The reverse burden of proof, information asymmetry, and the absence of buffer mechanisms, such as nominal debt thresholds and mandatory negotiation periods, create risks of structural poverty for small debtors and individuals who may still be economically viable.

The experiences of Singapore, Australia, the UK, and the United States prove that efficiency and humanitarian protection can go hand in hand with safety valves from statutory demand terms, automatic moratoriums, safe harbor for management, and focus on restructuring first. Therefore, reformulation of the Presumption of Insolvent may include setting limits on the value of differential debt, grace period pre-bankruptcy, prerequisites social-impact assessment, and strengthening PKPU can be carried out so that the Indonesian bankruptcy system is not merely a tool for contract enforcement, but rather a means of economic recovery that maintains human dignity and upholds social justice.

Nevertheless, these conclusions must be read within the scope of the study's limitations. The findings rely on a restricted time frame of court decisions and limited access to jurisprudence, meaning that broader empirical validation is still needed. Future research should test each proposed reform through case-based studies and debtor–creditor surveys to ensure contextual accuracy before legislative adoption. Finally, to avoid rhetorical objectives without measurable progress, policy reform should be accompanied by a clear evaluation framework. This includes quantitative indicators (e.g., percentage of successful restructurings, reduction in individual bankruptcy filings) and qualitative measures (e.g., post-process debtor satisfaction, stakeholder perceptions), with independent evaluators and regular reporting. Such a framework would provide an objective basis to monitor whether the bankruptcy regime is truly moving toward efficiency and social justice.

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