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Going Concern Assessment Reform in Bankruptcy: Preventing Premature Liquidation and Protecting Employment

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Abstract

Bankruptcy and postponement of debt repayment obligations in Indonesia face problems in the application of the going concern principle because the debtor's business sustainability has not been the basis for an objective assessment in determining restructuring or liquidation. The PKPU system, which relies on creditor voting weighted by receivable value, has the potential to entrench majority-creditor dominance and disregard the commercial viability of a debtor whose business is still worth preserving. This study aims to analyze the weaknesses of the regulation of the principle of going concern in the bankruptcy system and PKPU and formulate a reform model through the application of Going Concern Assessment System. This study uses normative legal research methods with a legislative, conceptual, and comparative legal approach through a study of settings in Indonesia, The Netherlands, Germany, the United States, and the United Kingdom. The findings indicate that Indonesian bankruptcy law has not provided an independent and objective assessment mechanism to distinguish debtors who are experiencing temporary financial difficulties from debtors who are structurally no longer fit to maintain their businesses. Therefore, it is necessary to integrate the Going Concern Assessment System within the PKPU framework based on financial condition, business prospects, recovery capabilities, and professional supervision. The reforms are expected to prevent premature liquidation, protect workers and supply chains, maintain economic value, and support the achievement of the Sustainable Development Goals.

KEYWORDS *Suspension of Debt Payment Obligations, Going Concern Assessment System, Legal Framework, Poverty Eradication, Business Continuity.*

Introduction

Global economic instability due to international conflicts has significantly impacted financial markets and economic growth in Indonesia, including the structure of debtor-creditor relations. In such conditions, the debtor's failure to fulfill payment obligations is not always caused by force majeure, but may also arise from structural issues within the framework of the bankruptcy law itself.[1] Hadi Shubhan defines bankruptcy as a situation in which a debtor cannot pay his debts to creditors due to financial difficulties, making it difficult to meet his debt obligations.[2] This definition is an important starting point to assess whether the current legal framework really distinguishes between debtors who are not worth maintaining and debtors who actually still have business prospects.[3]

The question of such differentiation should be answered within the applicable normative framework. The legal framework in question is contained in Law No. 37 of 2004 on bankruptcy and suspension of debt repayment obligations (hereinafter referred to as Law No. 37/2004), which explicitly recognizes the principle of going concern as one of the four basic principles of the Indonesian bankruptcy system.[4] However, there is a normative tension between the principle and the technical provisions in Law No. 37/2004. Article 2 Paragraph (1) only requires two creditors and one unpaid overdue debt, while Article 8 paragraph (4) requires that a bankruptcy petition be granted if the fact is "proven simply".[5] This minimal standard of proof structurally overrides the substantive assessment of the debtor's business continuity, so that the principle of going concern risks

[1] G Dewi, "... on Insolvency of Sharia Insurance Company from the Perspective of Islamic Economic Law in Indonesia (Case Study on Bankruptcy Decision of Asuransi ...," *KnE Social Sciences*, 2019.

[2] M Hadi Shubhan, "Deconstructing Simple Evidence in Bankruptcy Petition for Legal Certainty," *Indonesia Law Review* 9, no. 2 (2019), https://doi.org/10.15742/ilrev.v9n2.527.

[3] Andre Kiemas, Juan Matheus, and Ariawan Gunadi, "Redefining Bankruptcy Law: Incorporating the Principle of Business Continuity for Fair Debt Resolution," *Rechtsidee* 11, no. 2 (2023), https://doi.org/10.21070/jihr.v12i2.996.

[4] M Hadi Shubhan, "Legal Protection of Solvent Companies from Bankruptcy Abuse in Indonesian Legal System," *Academic Journal of Interdisciplinary Studies* 9, no. 2 (2020): 142, https://doi.org/10.36941/ajis-2020-0031.

[5] Rahayu Hartini, "The Ambiguity of Dismissal of Notary over Bankruptcy in Indonesia," *Legality : Jurnal Ilmiah Hukum* 29, no. 2 (2021): 269–85, https://doi.org/10.22219/ljih.v29i2.15677.

becoming a normative formality without adequate enforcement mechanisms.[6]

Data from the Indonesian Association of curators and administrators (AKPI) shows that the success rate of business continuity mechanisms, including business continuity arrangements and postponement of debt repayment obligations (PKPU), only ranges between 30-40% of the cases submitted.[7] This low figure raises the question of whether such outcomes reflect the genuine non-viability of debtors' businesses, or whether they stem from systematic deficiencies in the Commercial Court's assessment process. Without standard evaluation criteria, judicial decisions have been inconsistent, which weakens legal certainty and predictability for both creditors and debtors.[8]

Such structural weaknesses carry consequences that go beyond the legal sphere. Early liquidation of debtors who are still eligible to operate triggers mass job cuts, an impact that is also vulnerable to Micro, Small and Medium Enterprises (hereinafter referred to as MSMEs) as a contributor to the Indonesian economy as well as the backbone of Indonesia's employment structure.[9] The failure of one MSME entity does not stop at the entity itself, but has the potential to propagate to upstream suppliers and downstream distribution through interconnected supply chains, thus extending the negative economic impact to the community level.[10]

This issue is related to Indonesia's commitment to the Sustainable Development Goals (SDGs), especially SDG 1 (Zero Poverty), SDG 8 (Decent Work and economic growth), and SDG 10 (reducing inequality).

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[6] Tata Wijayanta, "Kajian Tentang Pengaturan Syarat Kepailitan Menurut Undang-Undang Nomor 37 Tahun 2004," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 26, no. 1 (2014): 1, https://doi.org/10.22146/jmh.16063.

[7] Glevano Sambiri, Hendri Jayadi, and Yuni Artha Manalu, *Tinjauan Yuridis Terhadap Gagalnya Penerapan Asas Kelangsungan Usaha (On Going Concern) Dalam Perkara Kepailian*, 2023, https://doi.org/https://doi.org/10.55809/tora.v9iSpecial Issue.534.

[8] Albert Hasea Samuel Sihombing and Aurora Jillena Meliala, "Assessment of the Business Prospects of Bankrupt Debtors in the Implementation of the Going Concern Principle: A Legal Review Under Indonesia's Bankruptcy Regime," *Eduvest - Journal of Universal Studies* 6, no. 1 (2026): 68–82, https://doi.org/10.59188/eduvest.v6i1.52620.

[9] PricewaterhouseCoopers, "The Indonesian Insolvency and Restructuring Landscape," 2026.

[10] Abhaya Sanatan Satpathy et al., "Strategies for Enhancements of MSME Resilience and Sustainability in the Post-COVID-19 Era," *Social Sciences \& Humanities Open*, 2025, https://doi.org/10.1016/j.ssaho.2024.101223.

The three targets explicitly place legal institutions, including bankruptcy law as structural instruments in achieving poverty alleviation and protection of labor. Encouraging early liquidation is not only a technical issue of bankruptcy law, but also a form of normative nonconformity with the Sustainable Development mandate that has been ratified by Indonesia.

Previous studies have shown that the principle of going concern is doctrinally or conducting comparative studies of business feasibility assessments in other jurisdictions, without integrating it structurally into the PKPU regulatory framework as poverty alleviation in line with the SDGs.[11] The intersection between bankruptcy law reform, labor protection, MSME supply chain resilience, and the achievement of the SDGs has so far not been widely explored in various studies.[12] This gap is to be filled in this study, by offering a novelty in the form of a proposed integration of an independent and objective criteria-based Going Concern Assessment System into the PKPU regulatory framework.

Based on the above, this study formulates the fundamental weaknesses of the legal framework governing the postponement of debt repayment obligations in Indonesia, in particular related to excessive dependence on creditor-controlled voting systems, in addition, the integration of the PKPU framework can strengthen legal protection for eligible debtor entities, reduce the incidence of mass layoffs, protect MSME supply chains, and contribute to the achievement.

Methods

This study uses a socio-legal method that views law not only as a written norm, but also as a social phenomenon that works in practice (law in action), with three approaches, namely the legislative approach, conceptual approach, and comparative approach to law. The statutory

[11] Ermanto Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied?," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 1 (2024), https://doi.org/10.24090/volksgeist.v7i1.10079.

[12] Xingquan Yang and Lingli Wang, "Bankruptcy Trial Reform and Corporate Labour Employment," *Economic Analysis and Policy*, 2026, https://doi.org/10.1016/j.eap.2026.06.013.

approach is used to examine the provisions of bankruptcy in Indonesia in Law No. 37 of 2004, especially Article 2 Paragraph (1) on the conditions of bankruptcy petition and Article 8 paragraph (4) on simple proof, which is studied not only textually but also in the work in the field. Conceptual approach is used to analyze the concepts, theories, and opinions of experts regarding bankruptcy, going concern, and business sustainability, including its relation to the Sustainable Development Goals (SDGs). The comparative law approach is limited to four jurisdictions, namely the Netherlands (*Wet Homologatie Onderhands Akkoord*/WHOA), Germany (*Insolvenzordnung*/InsO), the United States (Bankruptcy Code Chapter 11), and the United Kingdom (Insolvency Act 1986), in order to formulate an appropriate regulatory model for the application of the principle of going concern in Indonesia.

The Data used included secondary data in the form of Commercial Court decisions, statistical data on bankruptcy cases, literature, policy documents related to bankruptcy in Indonesia and various jurisdictions, as well as literature on the SDGs, and tertiary data in the form of online news articles as a complement. The socio-legal dimension is operationalized by examining the decision empirically, namely the consideration of the judge, the pattern of applying simple evidence, and its impact on business continuity, labor, and stakeholders. All data are analyzed qualitatively with descriptive-analytical techniques, that is, they elaborate the existing legal facts and practices, relate them to the socio - economic context, and then formulate solutions to the legal problems that have been identified.

Results and Discussion

A. Ideal Debt Repayment Obligation Deferment System

One of the main characteristics in the mechanism of postponement of debt repayment obligations (PKPU) in Indonesia is the implementation of a value-based voting system, which is a voting system that bases the

creditor's voting authority on the amount of receivables owned.[13] In this system, the influence of each creditor is not determined based on the principle of one creditor, one vote, but rather based on the number of bills recognized in the PKPU process. Consequently, creditors who have a larger amount of receivables will have a more dominant voting power than creditors with a smaller amount of receivables. This system basically aims to provide a proportional representation of the economic interests of creditors, taking into account that creditors with greater exposure to risk are considered to have a greater interest in the results of debt restructuring.[14] However, on the other hand, this mechanism has the potential to cause inequality because the interests of minority creditors can be ignored when dealing with a majority creditor group that controls most of the value of receivables.[15]

This weakness is rooted in the normative design of Article 281 paragraph (1) of Law No. 37/2004 which requires the approval of the peace plan if it obtains the approval of more than half the number of creditors present simultaneously at the meeting and representing at least two thirds of the total receivables recognized or provisionally recognized.[16] This provision directly reinforces the dominance of creditors with large receivables because the success or failure of the peace plan is ultimately largely determined by the amount of receivables supporting the plan.

These problems reflect patterns that can be identified in commercial justice practice more broadly. A review of PKPU rulings in the aftermath of the homoglation showed that minority creditors' objections relatively

[13] Delvis Patrik, Nulistiowati Suryanti, and Aam Suryamah, "Kedudukan Kreditor Minoritas Dibandingkan Dengan Kreditor Sekaligus Pemegang Saham Dalam Penundaan Kewajiban Pembayaran Utang," *Media Iuris* 4, no. 3 (2021): 397, https://doi.org/10.20473/mi.v4i3.27478.

[14] Matthew Braham and Frank Steffen, "Voting Rules in Insolvency Law: A Simple-Game Theoretic Approach," *International Review of Law and Economics* 22, no. 4 (2002): 421–42, https://doi.org/10.1016/S0144-8188(02)00113-8; Bayu Dwi Anggono et al., "Interrogating the Legal Foundations of Digital Transformation: Balancing Economic Growth and Social Welfare in the Era of Disruption," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (2025): 191–211, https://doi.org/https://doi.org/10.24090/volksgeist.v8i1.12211.

[15] Muhajirin Thohir, *PKPU Sebagai Instrumen Mitigasi Risiko Kreditor: Analisis Praktik Dan Perlindungan Hukum Bagi Kreditur Minoritas*, n.d.

[16] Imam Asmarudin et al., "Initiating the Reform of Principle Norms in the Formation of Laws in Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (2024): 208–26, https://doi.org/10.29303/ius.v12i2.1390.

rarely led to the cancellation or modification of the peace plan, and the majority of rulings examining such objections tended to stop at formal quorum and receivable value compliance checks without going into substance testing. This trend is consistent with the character of the Commercial Court, which has historically been designed to decide bankruptcy cases quickly, so that judges relatively rarely conduct material tests that have the potential to slow down the process or are considered beyond their authority as a formal examination of the terms of homoglation.[17] However, the database of consistently published and publicly accessible commercial court rulings is still limited, making it difficult to measure the prevalence of data on how often minority creditors are harmed.[18]

The general pattern can be illustrated through Decision number 15/PKPU/2018 / PN. Niaga.Jkt.Pst. In this case, there was an objection raised by a minority group of creditors against the peace plan offered by the debtor. Minority creditors argued that the proposed payment scheme did not reflect proportional apportionment and was likely to be burdensome to certain groups of creditors. Nevertheless, the court nevertheless approved the peace plan because of all the formal requirements as specified in Article 281 paragraph (1) of Law No. 39/2004, had been satisfied.[19] The judge's consideration focuses on the procedural aspects in the form of fulfilling the quorum and the majority value of the receivables without conducting further examination of the substance of the objections raised by the minority creditors. A similar formalistic approach can also be seen in decision number 23/PKPU/2022/PN Niaga Jkt.Pst, where the court confines itself to a procedural examination without assessing the feasibility or fairness of the substance of the peace plan. This situation shows that the

[17] Clarita Stefanie Panjaitan, R Kartikasari, and Artaji Artaji, "Keabsahan Keadaan Solven Debitor Sebagai Dasar Pertimbangan Dalam Perkara Kepailitan," *Media Iuris* 5, no. 1 (2022): 19, https://doi.org/10.20473/mi.v5i1.27480.

[18] Dian Ahmad Fauzi, "Implementasi Homologasi Dalam Proses PKPU Terhadap Efektivitas Rencana Perdamaian Untuk Menjaga Keseimbangan Kepentingan Debitur Dan Kreditur," *Jurnal Niara* 18, no. 3 (2026): 819–31, https://doi.org/10.31849/nqpamb44.

[19] Lucky Dafira Nugroho, *Pilar-Pilar Hukum Kepailitan*, 1st ed. (Yogyakarta: Penerbit KBM Indonesia, 2026).

protection of minority creditors in the PKPU system still emphasizes formal aspects rather than substantive justice.[20]

Unlike the previous case, decision Number 11/PKPU/2020 / PN. Niaga.Sby showed a more progressive approach in protecting the interests of minority creditors. In this case, the judge not only assesses the formal eligibility for the vote, but also assesses the substance of the peace plan. The panel of judges judged that there was an imbalance of treatment between separatist creditors, concurrent majority creditors, and minority creditors. The difference in treatment is considered not to reflect the principle of fairness that should be the basis in the debt restructuring process.

Interestingly, despite the fact that Law No. 37 of 2004 does not explicitly regulate the fairness test mechanism recognized in common law jurisdictions, judges still test the fairness of the contents of the peace plan by basing their considerations on Article 1338 paragraph (3) of the Civil Code (KUHPerdata) which requires that any agreement be executed in good faith.[21] This approach suggests that the principle of propriety (the principle of justice) can be used as an instrument of judicial oversight to prevent the birth of peace plans that are discriminatory or detrimental to certain groups of creditors.[22]

Based on these findings, it can be concluded that the normative design of PKPU in Indonesia has not provided sufficient substantive supervisory instruments to guarantee that the peace plan does not harm minority creditors.[23] In contrast to some other jurisdictions that have adopted cram down or cross-class cram down mechanisms that allow courts to test the fairness of restructuring plans in more depth, Indonesia's PKPU system still

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[20] Itok Dwi Kurniawan et al., "Semi-Public Restructuring to Uphold Good Faith and Going Concern in Indonesia Public Company Bankruptcy," *Indonesia Private Law Review* 6, no. 1 (2025): 85–102, https://doi.org/10.25041/iplr.v6i1.4498.

[21] Faris Muhammad Irfan, Hanif Nur Widhiyanti, and Amelia Sri Kusuma Dewi, "The Principle of Justice in the Legal Position of Suretyship in Indonesian Insolvency Law," *International Journal of Business, Law, and Education* 6, no. 2 (2025): 1045–53, https://doi.org/10.56442/ijble.v6i2.1121.

[22] Marlia Sastro, Tan Kammelo, and Azhari Yahya, "Doctrines Affecting the Principle of Propriety in Indonesian Civil Law," *Proceedings of Malikussaleh International Conference on Law, Legal Studies and Social Science (MICoLLS)*, 2023, https://doi.org/10.29103/micolls.v2i.137.

[23] Arijna Nurin Sofia, "Kedudukan Hak Suara Kreditor Preferen Dalam Persetujuan Rencana Perdamaian Penundaan Kewajiban Pembayaran Utang (PKPU)," *Jurist-Diction* 3, no. 4 (2020): 1415, https://doi.org/10.20473/jd.v3i4.20213.

relies on a value-based voting mechanism that is oriented towards the majority of receivables. As a result, minority creditor protections often rely solely on progressive interpretations of judges that in practice are not consistently applied.[24]

Void norm in law No. 37/2004 that orders or even expressly authorizes such substantive testing depends entirely on the interpretative initiative of the judge, not the normative obligation. Furthermore, there are differences in understanding among commercial judges regarding the limits of the court's authority in the homoglation stage, some interpret its role narrowly as a formal requirement verifier, others interpret it more broadly as part of good faith and substantive justice based on general principles of treaty law.[25] Then, the absence of technical guidelines for judges governing the standards and parameters of testing the Justice of the peace plans made this practice entirely dependent on the individual preferences of the assembly, with no mechanism ensuring consistency between verdicts as well as between commercial courts. Reforms are needed so that the debt restructuring process not only meets procedural requirements,[26] but also consistently reflects the principles of fairness, good faith and non-discrimination for the entire creditor group.

B. Criticism of The Principle Going Concern in The Implementation of The Bankruptcy Process in Indonesia

Bankruptcy law does not explicitly define the principle of going concern, so its substance must be extracted from general explanations and norms spread in law No. 37/2004.[27] Based on this concept, there are two

[24] Berlian Pramesthi Cindarbumi and Aam Suryamah, "Kepastian Hukum Pelaksanaan Voting Online Rencana Perdamaian Dalam Penundaan Kewajiban Pembayaran Utang," *JURNAL USM LAW REVIEW* 5, no. 2 (2022): 508–22, https://doi.org/10.26623/julr.v5i2.5235.

[25] Wessel Wijtvliet, "An Analytic Framework for Research on Judicial Decision-Making," in *Judicial Decision-Making*, 2022, https://doi.org/10.1007/978-3-031-11744-2_7.

[26] Amiludin Amiludin, Suhadi Suhadi, and Rofi Wahanisa, "Legal Uncertainty in Land Procurement for Investment in Indonesia: Between Economic Development and Agrarian Justice," *Legality : Jurnal Ilmiah Hukum* 34, no. 2 (2026), https://doi.org/10.22219/ljih.v34i2.44454.

[27] Almas Sultan, "Kewenangan Kurator Atas Implementasi Business Going Concern Principle Dalam Pengurusan Boedel Pailit," *Jurnal Officium Notarium* 3, no. 2 (2023): 101–8, https://doi.org/10.20885/JON.vol3.iss2.art1.

main implications of the principle of going concern in bankruptcy and PKPU.[28] First, companies that meet the criteria to become a company basically still have business prospects and the ability to maintain their operations, so that the sustainability of business activities is not considered a risk.[29] Secondly, this principle confirms that the purpose of bankruptcy proceedings is not simply to liquidate and distribute the debtor's assets to creditors.[30] On the contrary, bankruptcy law should also provide an opportunity for the debtor to continue his business in order to generate income, increase the value of the company, as well as maximize the fulfilment of obligations to creditors. In addition, the principle of going concern serves as an instrument of protection against the actions of parties with bad intentions who seek to terminate the debtor's business, even if the business still has prospects and feasibility to maintain.[31]

The principle of going concern in bankruptcy law not only protects the interests of the debtor and creditors, but also provides protection to third parties on whom the continuity of the debtor's business depends.[32] In the property sector, for example, the sustainability of the developer's business is often more profitable for consumers than the liquidation of the company because it allows the completion of the project and the fulfilment of the buyer's rights.[33] This condition is reflected in the case of PKPU PT

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[28] Elisatris Gultom and Huta Disyon, "The Implementation of the Going Concern Principle in Bankruptcy and The Suspension of Payment to Protect the Economic Rights of the Parties," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 9, no. 3 (2022): 343–64, https://doi.org/10.22304/pjih.v9n3.a3.

[29] Yi Chen, "Judicial Review of Corporate Bankruptcy Reorganization Value in China: A Critical Analysis Based on 590 Judicial Judgments," *Humanities and Social Sciences Communications* 13, no. 1 (2026): 396, https://doi.org/10.1057/s41599-026-06652-y.

[30] James Routledge, "Do Auditors Start the Clock? First-Time Going Concern Opinions and Time to Bankruptcy," *Accounting \& Finance* 66, no. 2 (2026): 1401–11, https://doi.org/10.1111/acfi.70178.

[31] Bernard Nainggolan and Kostruba Anatoliy, "The Going Concern Paradigm in Bankruptcy Process Reviewed from Regulations in Indonesia," *Jurnal Hukum* 40, no. 1 (2024): 272, https://doi.org/10.26532/jh.v40i1.37175.

[32] Aurelio Gurrea-Martinez, "Debtor-in-Possession Financing in Reorganisation Procedures: Regulatory Models and Proposals for Reform," *European Business Organization Law Review* 24, no. 3 (2023): 555–82, https://doi.org/10.1007/s40804-023-00289-z.

[33] Hira Shahid, Lana Sabelfeld, and Jeaneth Johansson, "Sustainability Reporting in Construction and Real Estate Sector: A Conceptualization and a Review of Existing Literature," *Journal of Cleaner Production*, 2024, https://doi.org/10.1016/j.jclepro.2024.143886.

Cowell Development Tbk., where the restructuring and homologation mechanism is seen as a more effective solution to protect consumer interests than the termination of the project due to bankruptcy.[34] Similar benefits apply in the manufacturing and construction sectors, where business continuity allows the company's economic value to be maintained while more optimally fulfilling obligations to creditors, suppliers, workers and the community.[35]

The principle of going concern in bankruptcy law and PKPU applies in both PKPU and Bankruptcy mechanisms, although they have different application goals.[36] In PKPU, this principle serves as a means to save the debtor's business in order to continue to operate, generate income, and fulfill obligations to creditors in order to avoid bankruptcy. At this stage, the management of the business is still in the hands of the debtor with the supervision and approval of the parties specified in the PKPU process.[37]

Meanwhile, in bankruptcy, the principle of going concern is applied as part of the bankruptcy inheritance settlement process. Even if the debtor has been declared bankrupt, business activities can still be continued If they have economic benefits for the assets and creditors are insolvent. This is confirmed in Article 104 paragraph (1) of the bankruptcy law and PKPU which authorizes the curator, with the approval of the interim creditors committee, to continue the business of the bankruptcy debtor even if the decision is submitted for cassation or review. If there is no creditor

[34] Syahrizal Sidik, "Pengembang Cowell Pailit, Bagaimana Nasib Konsumen?," 2026.

[35] First G Riglietti, "Business Continuity Management as a Key Enabler of Supply Chain Resilience: A Conceptual Paper," *IFAC-PapersOnLine* 55, no. 10 (2022): 2197–202, https://doi.org/10.1016/j.ifacol.2022.10.034.

[36] Maruli Simalango, "Inkonsistensi Persyaratan Permohonan Pailit Dihubungkan Dengan Asas Kelangsungan Usaha (Going Concern) Dalam Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Syiar Hukum : Jurnal Ilmu Hukum* 15, no. 1 (2017): 53–64, https://doi.org/10.29313/sh.v15i1.2144.

[37] Nugroho Bayu Aji and Radian Syam, "Legal Protection for Creditors in an Application of Suspension of Debt Payment (PKPU) on the Occurrence of Disputes Over the Value of Creditor's Claims with the Value Determined by the PKPU Administrative Team," *FOCUS* 6, no. 2 (2025): 43–48, https://doi.org/10.37010/fcs.v6i2.2029.

committee, the curator needs permission from the supervising judge to continue the business.[38]

In some countries the application of the principle of going concern can be made before the court declares the company bankrupt. In the Netherlands the insolvency test is carried out through a continuity test and if the company is still able to carry out business activities, it is not possible for the company to restructure, unless the company will cease operations.[39] Furthermore, the liquidity test under Articles 284-362 Faillissementswet the process involves a fairly lengthy process includes a review of the list of assets of the debtor, including mortgages, and other collateral.[40] In Germany itself, the application of the insolvency test is based on the Insolvenzordnung (InsO), in particular Articles 16 to 19, by making the reason for opening bankruptcy proceedings the main prerequisite.[41] Testing is carried out through Cash-flow tests to determine whether the debtor is unable to meet the payment obligations that have been due (illiquidity) and balance-sheet tests to assess the condition of over-indebtedness.[42] In addition, the going concern forecast is used in assessing over-indebtedness to determine whether the debtor's business continuity can still be maintained within the statutory time frame. In the United States, the insolvency test evolved through the Bankruptcy Reform Act of 1978 using three main approaches. Cash flow test to assess the ability of the debtor to meet the obligations that have been due taking into account the current financial condition and financial prospects in the future.[43] The Balance-sheet test determines insolvency based on the condition when the total liabilities of the debtor exceed the value of its assets. Meanwhile, the capital adequacy test assesses whether the debtor has sufficient capital to

[38] I Nyoman Yatna Dwipayana Genta and I Nyoman Suyatna, "Penerapan Konsep Going Concern Bagi Perseroan Terbatas Yang Telah Dinyatakan Pailit," *Acta Comitas* 5, no. 2 (2020): 252, https://doi.org/10.24843/AC.2020.v05.i02.p04.

[39] "European Restructuring Monitor - Netherlands: Rescue Procedures in Insolvency," 2026.

[40] "Restructuring and Insolvency Law in the Netherlands," 2026.

[41] "German Insolvency Law," 2026.

[42] Reinhard Bork, "Recognition of an English Restructuring Plan in Germany," *European Insolvency and Restructuring Journal*, 2026, https://doi.org/10.54195/eirj.25454.

[43] Muhammad Dito Zakharia, "Settlement of Bankruptcy Petition Through Insolvency Test Instrument As Legal Protection For Related Parties In Bankruptcy," *Unram Law Review* 9, no. 2 (2025), https://doi.org/10.29303/ulrev.v9i2.397.

maintain its business activities and faces a possible decline in financial performance. In the UK, the insolvency test is regulated in the Insolvency Act 1986 and uses three main approaches. Cash flow test to assess the debtor's ability to meet payment obligations that have been due based on available cash flow.[44] The Balance-sheet test determines insolvency when the value of the debtor's assets is lower than its total liabilities. In addition, the legal action test is used when the debtor fails to meet the demand for payment or a court decision in the prescribed amount, so it can make the basis for compulsory liquidation.[45]

From the comparison above, it is clear that the insolvency test is a key requirement in the bankruptcy settlement process in the Netherlands, Germany, the United States, and the United Kingdom. Each country uses a different mechanism.[46] For example, the Netherlands with continuity test and liquidity test, then Germany with debtor assets, the United States with cash flow approach, balance sheet bankruptcy Test and capital adequacy test, while in the United Kingdom with cash flow test, balance sheet test and legal action test.

The link between preventing premature liquidation and the sustainable development agenda cannot be stated in general terms, but needs to be mapped to specific targets. In SDGs 1 (No Poverty), the most direct relevance lies in Target 1.2 which targets reducing the proportion of the population living in all forms of poverty, and Target 1.4 which emphasizes access to economic resources including employment.[47] BPS Data shows that 9.48 million middle-class residents have dropped to the vulnerable poor threshold in the last five years, this combined with the figure of 24.06 million poor residents in September 2024, illustrates the

[44] Gerard McCormack, "Insolvency Assistance Outside the Model Law: Section 426 of the UK Insolvency Act 1986," *International Insolvency Review* 34, no. 1 (2025): 31–47, https://doi.org/10.1002/iir.1561.

[45] Ram Mohan M P, "The Role of Insolvency Tests: Implications for Indian Insolvency Law," *Indian Law Review* 6, no. 3 (2022): 387–408, https://doi.org/10.1080/24730580.2022.2129197.

[46] R D Vriesendorp and J M W Pool, "A Comparative Study on the Compensation of Bankruptcy Trustees in Insolvent Estates," *International Insolvency Review* 34, no. 3 (2025): 713–38, https://doi.org/10.1002/iir.70009.

[47] Prof. Dr. Eng Mutambara, "Sustainable Development: Contextualising the SDGs," in *Deploying Artificial Intelligence to Achieve the UN Sustainable Development Goals*, 2025, https://doi.org/10.1007/978-3-031-88423-8_2.

large population of money is right at the vulnerability limit, the most vulnerable population affected by mass layoffs due to early liquidation as happened in the case of Sritex.[48]

In SDG 8 (Decent Work and Economic Growth), the most relevant links lie in Target 8.1 (sustainable economic growth), Target 8.3 (policies that support the creation of decent jobs, including through support for MSMEs), and Target 8.5 (full and productive employment and decent work for all).[49] Liquidation that is not based on an adequate assessment of business viability is directly opposite to these three targets, losing jobs that can actually be maintained, cutting supply chains that support MSMEs, and eliminating economic value that could otherwise be relocated for productive growth.[50]

In contrast, the going concern assessment mechanism proposed in the PKPU framework has the potential to contribute directly to the achievement of these targets in a measurable way where any decision to continue restructuring instead of liquidation, as shown by the 100% versus 70% recovery rate difference in World Bank data represents retained economic value and employment, rather than a normative argument. Therefore, a bankruptcy law reform that strengthens the ongoing application of corporate principles is not only important to protect the interests of creditors and debtors, but is a policy instrument that can be directed directly and measurably to the achievement of SDG 1 and SDG 8 within the framework of inclusive and sustainable economic development.

Conclusion

This study shows that the main weakness of PKPU in Indonesia lies in the absence of an objective mechanism to assess the business viability of

[48] "BPS: 9,48 Juta Penduduk Kelas Menengah Turun Ke Ambang Rentan Miskin | Tempo.Co," 2026.

[49] Ida Wahyuliana et al., "Implementation of Green Constitution in Tourism Development to Support Advanced Indonesia and SDGs," ed. A. Ma'arif et al., *BIO Web of Conferences* 146 (November 2024): 01063, https://doi.org/10.1051/bioconf/202414601063.

[50] Lucky Dafira Nugroho et al., "Tourism SDGs Action Plan from a Regulatory Perspective," ed. A. Ma'arif et al., *BIO Web of Conferences* 146 (November 2024): 01062, https://doi.org/10.1051/bioconf/202414601062.

debtors. Voting based on the value of receivables gives a dominant influence to the majority of creditors, while business continuity has not been the basis for a separate assessment, so that restructuring decisions are more determined by the approval of creditors than business prospects. Comparisons with the Netherlands, Germany, the United States, and the United Kingdom show that insolvency is judged by financial condition, business prospects, and the feasibility of reorganization, not simply the ability to pay debts. Therefore, going concern needs to be changed from a normative principle to an operational assessment mechanism through an independent and objective criteria-based Going Concern Assessment System before the peace plan is voted on, accompanied by the authority of the court to review the rejection of debtors who are still eligible. This mechanism distinguishes debtors who are only experiencing temporary difficulties from those who are not worth maintaining, so that early liquidation can be prevented, workers, supply chains, and economic value are protected, and is relevant for SDGs 1 and 8.

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