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Insolvency Test As Protection For Public Companies From Declaration Of Bankruptcy

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Abstract

The ease of filing a bankruptcy petition in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law & PKPU) creates vulnerabilities for public companies, even though the public companies have good intentions and healthy financial conditions. The absence of insolvency test regulations creates a legal vacuum that has the potential to be misused by creditors. This study aims to examine the urgency of implementing an insolvency test in Indonesian bankruptcy law and to analyze the need for legal protection for public companies that are still solvent from the potential misuse of bankruptcy petitions through the application of an insolvency test. The research method used is normative law, which uses a legal norm system, which includes research on legal principles and legal rules, in addition this study uses a descriptive inductive approach. Public companies whose shares are owned by many investors need legal protection so that the shareholder community is also protected. The use of insolvency tests such as the balance sheet insolvency and cash flow insolvency methods can be an objective basis for the court in deciding on bankruptcy petitions against public companies. The absence of regulation on insolvency test in Bankruptcy Law & PKPU is the impetus to reform bankruptcy law in Indonesia. Therefore, there needs to be a provision that requires bankruptcy test before a public company can be filed for bankruptcy, to ensure that its financial condition is truly insolvent.

Keywords: Public Company; Bankruptcy; Insolvency Test.

A. Introduction

The application for a declaration of bankruptcy in Indonesia as regulated by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the "Bankruptcy & PKPU Law") is quite easy and simple, where a debtor who has a minimum of 2 (two) Creditors and of the 2 (two) Creditors one of which

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is due and can be collected and the debt is simple, can apply for a declaration of bankruptcy to the Commercial Court in the jurisdiction of the debtor.

Bankruptcy as regulated in the Bankruptcy Law & PKPU states that Bankruptcy is a general seizure of all assets of the Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervising Judge.[1]

Bankruptcy results in the debtor who is declared bankrupt losing control of all the assets he owns, although there are exceptions as referred to in Article 22 of the Bankruptcy & PKPU Law.

Bankruptcy is an elaboration of two principles contained in Article 1131 and Article 1132 of the Civil Code. Article 1131 of the Civil Code stipulates that all of a person's assets, both existing and future, both movable and immovable, become collateral for all of his obligations. To implement this provision, Article 1132 of the Civil Code orders that all of the debtor's assets be sold at public auction based on a judge's decision, and the proceeds be distributed equally to the creditors, unless among the creditors there is a creditor whose debt is given priority in fulfilling his debts.[2]

In fact, the principle of commercial exit from financial distress from bankruptcy gives the meaning that bankruptcy is a solution to the problem of debt settlement of debtors who are experiencing bankruptcy and not the other way around that bankruptcy is actually used as a legal institution to bankrupt a business. The ease of bankrupting a debtor does not actually conflict with this principle as long as the ease of bankruptcy is in the context of debt settlement due to financial difficulties of the debtor's business. [3]

However, the ease of prerequisites in filing a bankruptcy statement application will certainly cause danger and panic in the capital market environment and can have an impact on public companies, considering the fairly easy requirements in filing a bankruptcy application for public companies, making public companies in a vulnerable position to be filed for bankruptcy even though the bankruptcy applicant (creditor) must be able to prove that the debt submitted in the bankruptcy application is a debt that can be proven simply and has matured.

In addition to seeking funding through public offerings of capital (equity), public companies will also seek funding for company management through debt instruments, so it is certain that public companies have at least 2 (two) creditors and it is very reasonable and possible that one of its debts to one of its creditors will mature and can be collected.

Public companies according to Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (hereinafter referred to as the P2SK Law) are companies with the number of shareholders and paid-up capital stipulated in the Financial Services Authority Regulation, this definition is different from what is stated in Law Number 8 of 1995 concerning the Capital Market (hereinafter referred to as the Capital

[1] See Article 2 Number 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.
[2] Erna Widjajati, *Corporate Law and Bankruptcy in Indonesia*, (Jakarta: Jalur, 2016), p. 66.
[3] M. Hadi Subhan, *Banckruptchy Law, Principle, Norm dan Practices in Court*, (Jakarta: Kencana, 2008), p. 64.

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Market Law) Article 1 number 22 which explains that a public company is a company whose shares are owned by at least 300 (three hundred) shareholders and has paid-up capital of at least IDR 3,000,000,000 (three billion rupiah) or a number of shareholders and paid-up capital stipulated in a Government Regulation.

Public companies are subject to obligations including:[4]:

1. Implementing the principles of good corporate governance.
2. Implementing the principle of openness (disclosure principle).
3. Submitting financial reports and/or certain conditions to the Financial Services Authority or the stock exchange, as regulated in the Financial Services Authority Regulations or stock exchange regulations

However, even though the implementation of good corporate governance principles, the principle of transparency (disclosure principle) and submission of reports to regulators have been implemented and carried out properly and consistently, it is difficult for public companies not to file for a bankruptcy statement, because Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy & PKPU Law) only requires that a bankruptcy application be submitted by 1 (one) creditor where the creditor can prove that the public company has a minimum of 2 (two) creditors, one of which has matured.

Bankruptcy is a challenge for a public company in managing and establishing good relations with creditors, no matter how small the public company's debt to one of its creditors is, considering the Bankruptcy Law & PKPU.does not limit the value of debt for which a bankruptcy petition or a request for suspension of debt obligations may be filed which could lead to bankruptcy, so that in this case it is very possible for a public company with a very large asset value to be filed for bankruptcy by a creditor who actually has very small receivables from the public company, even though the public company in question is a party with good intentions.

Because in Indonesian bankruptcy law there is no regulation regarding insolvency (condition of being unable to pay) as a requirement to declare the debtor bankrupt. Insolvency is a financial condition, namely a financial condition that is in a situation where the debt owned by the debtor exceeds its assets. Therefore, the state of insolvency can be the basis for the requirements for a debtor to be declared bankrupt, so it can be thought that every debtor who has been declared bankrupt is certainly insolvent.[5]

Insolvency test is needed to ensure that bankruptcy is applied as a last resort after all other debt settlement options, such as restructuring or renegotiation, have been explored. This process is also in line with the principle of fairness and balance in bankruptcy law, where the creditor's right to receive payment must be balanced with the protection of debtors who still have the potential to recover their financial condition. In international

[4] See Consideration letter b of the Regulation of the Financial Services Authority of the Republic of Indonesia Number 43/POJK.04/2020 concerning Obligations for Disclosure of Information and Corporate Governance for Issuers or Public Companies that Meet the Criteria of Issuers with Small-Scale Assets and Issuers with Medium-Scale Assets.

[5] Ni Luth Gede Sri Suariyanti Laksmi et al.,*Debtor's Efforts to Avoid Bankruptcy,* Kertha Wicara 8, No.3, 2019.

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practice, the insolvency test serves as an instrument to avoid unfair bankruptcy decisions, which can harm not only debtors, but also other parties such as workers, investors, and business partners. 6

The insolvency test itself has been implemented in several countries, such as in the UK in the Insolvency Act 1986 with the mechanisms used, namely the Cash Flow Test, Balance Sheet Test, and Legal Action Test. Then Thailand uses two test methods, namely the balance sheet test and the reorganization test. 4 The need for an insolvency test is related to proof of the debtor's negligence in carrying out his obligations, such as the absence of good faith from the debtor to pay his debts (unwillingness to pay) or the state of being unable to pay his debts (unable to pay).7

However, the deficiency in Indonesian bankruptcy law accommodated in the KPKU Law is that it does not provide clarity regarding the meaning of bankruptcy itself, namely whether it is limited to unable to pay or also includes indications of unwillingness to pay. So in reality, there is a legal vacuum in Indonesian bankruptcy law.8

On the above basics, there is an urgency to apply an insolvency test before or during the examination of a bankruptcy application as a form of legal protection for debtors who have good solvency and good faith in paying debts. An insolvency test is a test of the debtor's ability to pay their debts, which includes testing the company's cash flow and testing the company's balance sheet.9In testing a company's cash flow, the amount of cash inflow is compared with cash outflow and is associated with the ability to pay as much as its debt obligations. If the cash flow test presents a negative number, it means that the company is classified as an insolvent company. Conversely, if the cash flow test presents a positive number, it means that the company is classified as a solvent company. In addition to the cash flow test method, there is also a balance sheet test method that is useful for proving that the assets owned by the debtor are smaller than their debt obligations.10

In relation to the above, several problems arise that should be answered and explained in the discussion of this research. The problem in this research is that the Bankruptcy Law & PKPU does not regulate the Insolvency Test before the debtor is declared bankrupt and the Insolvency as referred to in the Bankruptcy Law & PKPU is different from the insolvency practice as referred to in the accounting standard practice and insolvency practice in other countries, for that the researcher in conducting this research has determined the right title to be included in this research, namely "Insolvency Test as Protection for Public Companies from Bankruptcy Declaration".

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[6] Lingga Nugraha, Binsar Jon Vic, *Urgency of Implementing Insolvency Test in Bancruptcy and PKPU Settlement in Indonesia Based On Law Number 37 of 2004, Jurnal Retentum*, No. 1, Volume:07 2025.

[7] ReisarAlka et al.,*Insolvency Test as a Basis for Bankruptcy Application in Bankruptcy Law in Indonesia*, Gloria Justitia Journal 2, No. 2, 2022, p 182.

[8] Putri Rahmawati and Wardani Rizkianti, *Insolvency Test as a Preventive Solution in Bankruptcy Law Construction in Indonesia*, Jurnal Yuridis Vol. 10.2, December 2023, pp. 95-112.

[9] M. Hadi Shubhan, *Insolvency Test: Protecting Solven Companies with Good Faith from Bankruptcy Abuse*, Jurnal Hukum Bisnis 33, No. 1, 2014).

[10] Putri Rahmawati and Wardani Rizkianti, Insolvency Test as a Preventive Solution in Bankruptcy Law Construction in Indonesia, Jurnal Yuridis Vol. 10.2, December 2023, pp. 95-112.

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B. Research Methods

This study uses a normative legal research method, where this legal research uses a legal norm system, which includes research on legal principles and legal rules. The approach method used by researchers in conducting this research is an inductive descriptive approach. The legal materials that researchers process in conducting this research are primary, secondary, and tertiary legal materials.

C. Results And Discussion

M. Hadi Subhan explained that if there is no peace effort in the bankruptcy process because the bankrupt debtor does not offer peace, the bankrupt debtor offers peace but is rejected by the creditors, or the bankrupt debtor offers peace which is then approved by the creditors but is rejected by the commercial court judge, then the next process is the insolvency stage.[11]

Regarding the meaning of being unable to pay and unwilling to pay, H. Man S. Sastrawidjaja also expressed this by stating that:

"the state of being unable to pay is a state where the Debtor does not have funds or is insufficient to pay off his debt, while not wanting to pay is a state where the Debtor has sufficient funds to carry out his obligations, only the Debtor may have certain considerations so as not to make payments"[12]

The two definitions of insolvency are based on the definition as stated in the Bankruptcy & PKPU Law in the explanation of Article 57 paragraph (1), which explains as follows:

"What is meant by insolvency is a state of being unable to pay."

However, the insolvency formulated in the explanation of Article 57 paragraph (1) of the Bankruptcy & PKPU Law does not provide a more detailed explanation regarding the follow-up, implementation, circumstances, procedures and consequences of the insolvency itself.

The consequences of insolvency according to the Bankruptcy Law & PKPU must be understood in conjunction with several other articles contained in the Bankruptcy Law & PKPU, namely:

Article 178 paragraph (1) which states:

"If in the receivables verification meeting no peace plan is offered, the peace plan offered is not accepted, or the ratification of the peace is rejected based on a decision that has obtained permanent legal force, by law the bankrupt estate is in a state of insolvency."

[11] M. Hadi Subhan, *Op. cit*, p. 144.

[12] Ministry of Law and Human Rights of the Republic of Indonesia, *Academic Manuscript of the Draft Law on Amendments to Law of the Republic of Indonesia Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations*, (Jakarta: National Legal Development Agency, 2018), p. 15.

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Article 187 paragraph (1) which states:
"After the bankrupt estate is in a state of insolvency, the Supervisory Judge may hold a Creditors' meeting on a specified day, time and place to hear them as necessary regarding the method of settling the bankrupt estate and, if necessary, to verify receivables which were entered after the end of the grace period as referred to in Article 113 paragraph (1) and have not yet been verified as referred to in Article 133."

Article 184 paragraph (2), paragraph (3) and paragraph (4) which states:

1. While still paying attention to the provisions of Article 15 paragraph (1), the Curator must begin the settlement and sell all bankrupt assets without needing to obtain the Debtor's approval or assistance if:
   a. The proposal to manage the Debtor's company was not submitted within the time period as stipulated in this law, or the proposal was submitted but rejected.
   b. Management of the Debtor's company is terminated.
2. In the event that the company is continued, the sale of objects included in the bankrupt's assets, which are not needed to continue the company, can be carried out.
3. Bankrupt debtors may be given household furniture and equipment, medical equipment used for health purposes, or office furniture as determined by the Supervising Judge.

After reading the expert opinion and definition of insolvency as referred to in the explanation of Article 57 paragraph (1) of the Bankruptcy & PKPU Law, in connection with Article 178 paragraph (1), Article 184 and Article 187 paragraph (1) of the Bankruptcy & PKPU Law, it can be ascertained that the determination of insolvency according to the Bankruptcy & PKPU Law is not determined using an economic approach such as the insolvency test, insolvency ratio, debt to equity, liquidity, profitability, leverage and solvency, so that in this case it can be ascertained that Indonesian bankruptcy law is different from bankruptcy law in countries with a Common Law system in general.

In countries with a Common Law system, bankruptcy decisions are generally made by the court based on an economic approach by making insolvency the main requirement for a person or legal entity to be declared bankrupt with all its legal consequences. Therefore, the debtor can be declared bankrupt as of the time the bankruptcy petition is filed with the Court, because only debtors who have been declared insolvent by a court decision may be petitioned for bankruptcy. The requirement that the debtor has been proven insolvent in order to be declared bankrupt indicates that when the debtor is filed for bankruptcy in court, the debtor has actually been in a state of de facto bankruptcy before being declared bankrupt by the court de jure. Thus, in countries with a Common Law system, a petition to be declared bankrupt in court is solely for the administrative purposes of managing and settling the bankrupt's estate.[13]

[13] Elyta Ras Ginting, *Bankruptcy Law and Creditor Meetings,* (Jakarta: Bumi Aksara, 2016), p. 131.

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In Singapore, debtors or creditors who file a bankruptcy petition must fulfill the requirements set out in the Singapore Insolvency Law, including that a bankruptcy petition must be filed if the debtor is domiciled in Singapore, has been domiciled or has done business in Singapore within 1 year since the petition was filed, has debts of SGD15,000 to be paid, and is unable to pay off the debts.[14]

According to Atman and Hotchkiss in their book entitled "Corporate Financial Distress and Bankruptcy", they convey that in the view of United States law, Bankruptcy is another term that indicates negative corporate performance and is generally used in a more technical way. Technical bankruptcy occurs when a company is unable to meet its current obligations, indicating a lack of liquidity. Walter (1957) discussed the measurement of technical bankruptcy and proposed the theory that net cash flow relative to current liabilities should be the primary quote used to describe technical bankruptcy, rather than the traditional working capital measurement. Technical bankruptcy may be a temporary condition, although it is often the immediate cause of a formal bankruptcy declaration.[15]

Still according to Atman and Hotchkiss that bankruptcy in the sense of bankruptcy is more critical and usually indicates a chronic condition rather than temporary. A company finds itself in this situation when its total liabilities exceed the fair valuation of its total assets. Therefore, the company's real net worth is negative. Technical bankruptcy is easy to detect, while the more serious bankruptcy condition requires a comprehensive valuation analysis, which is usually not done until the liquidation of assets is contemplated. Finally, a relatively recent concept that has emerged in court concerns a condition known as deep bankruptcy. This involves a company that is finally bankrupt that is thought to remain alive and harm creditors.[16]

In the UK, the regulation s.123 IA 1986 contains two tests. First, the debtor is considered bankrupt if he fails to meet the legal demands for payment of debts exceeding £750 within 3 weeks after the debt is due or if the execution order for the creditor is not fulfilled in whole or in part. Second, through cash flow insolvency or cash flow test and balance sheet test or balance sheet test. So, looking at the UK, Indonesia can apply a similar method as a determinant of the debtor's inability to pay off his debts. So, the condition of

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[14] Hasaziduhu Moho, *Law Enforcement in Indonesia According to the Aspects of Legal Certainty, Justice and Benefit*, Dharmawangsa News Journal 13, No. 1, 2019.

[15] *"In the United States law view Insolvency is another term depiticting negative firm performance and is generallay used in a more technical fashion. Technical insolvency exists when a firm cannot meet itus current obligations, signifying a lack of liquidity. Walter (1957) discussed the measurement of technical insolvency and advanced the theory that net cash flows relative to current liabilities should be the primary citerrion used to describe technical insolvency, not the traditional working capital measurement. Technical insolvency may be a temporary condition, although it often is the immediate cause of formal bancrupty declaration."* Edward L Atman, Edith Hotchkiss, *Corporate Financial Distress and Bankruptcy*, (Newjersey: John Wiley & Sons, Inc, 2006), p. 5.

[16] *"Insolvency in a barkruptcy sense is more critical and usually indicates a chronic rather than temporary condition. A Firm finds itself in this situation when its total liabilities exceed a fair valuation ot its total assets. The real net worth of the firm is, therefore, negative. Technical insolvensy is easily detectable, whereas the more serious bankruptcy insolvency condition requires a comprehensive valuation analysis, which usually not undertaken until asset liquidation is contemplated. Finally, a relatively recent concept that has appeared in judicial courts concerns the condition known as deepening insolvency. This Involves an eventually bankrupt company that si alleged to be kept alive and to the detriment creditors", Ibid.*

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insolvency is not merely an assumption of the legal consequences of bankruptcy on the status quo, but there is a definite method as a basis for evidence used in practice. Therefore, legal certainty as one of the objectives of the law can be better accommodated.[17]

Based on the legal system in force in Indonesia, bankruptcy decisions issued by commercial courts are not based on an economic approach. Commercial court decisions declaring a debtor bankrupt do not consider the conditions of the debtor's financial ratios such as liquidity, profitability, leverage and solvency or the results of a public accountant's audit of the debtor's balance sheet for the current year. Bankruptcy decisions issued by commercial courts will also not consider whether the debtor's liquidation value is still greater than the going concern value or vice versa, or the debtor's liabilities are greater than its assets, the debtor's business profitability ratio, leverage ratio and so on. In short, commercial court decisions declaring a debtor bankrupt do not assess the debtor's solvency at all.[18]

It is clear that there is a difference in the application of insolvency according to the Bankruptcy Law & PKPU with the application of insolvency according to accounting standards and other countries that apply the common law system, but in fact the researcher is of the opinion that with the development of law today, the adoption of both legal systems is not prohibited and in fact the combination of legal systems is a way out of the shortcomings that exist in the application of a legal system.

In fact, there is an example of a combination of legal applications in Indonesia, this can be seen in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law) which adopts legal concepts originating from the Common Law legal system, namely the Fiduciary Duty principle, the Piercing the Corporate Veil principle, the Business Judgement Rule principle, the Ultra Vires and Intra Vires principles.

The adoption of the principles contained in the Common Law legal system, so that they are applied in the PT Law, is proof that the Republic of Indonesia has not applied the civil law legal system absolutely, meaning that as long as it is useful and in accordance with the norms that exist in the Indonesian nation, the combination of the 2 (two) legal systems is not a problem.

According to Prof. Mahfud in a public lecture, Indonesia is not a Common Law (Anglo Saxon) or Civil Law (Continental Europe) legal state but a Prismatic legal state, where the state is based on the ideals (ideas about law) of Indonesian law. So the existence of these two systems is as a "balancer" and its adoption is not absolute, there is still a filtering process in it.[19]

Because the State of Indonesia in its development has not implemented the civil law legal system absolutely, for example the enactment of Law Number 40 of 2007 concerning

[17] Putri Rahmawati and Wardani Rizkianti, *Insolvency Test as a Preventive Solution in Bankruptcy Law Construction in Indonesia*, Jurnal Yuridis Vol. 10.2, December 2023, 95-112.

[18] Elyta Ras Ginting, *Op. Cit*, p. 132.

[19] Bernadetha Aurelia Oktavaria, *Understanding the Differences Between Civil Law and Common Law, Online Law*, https://www.hukumonline.com./clinic/a/civil-law-i-and-icommon-law-i-find-the-difference-here-lt58f8174750e97, accessed April 21, 2023.

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Limited Liability Companies which contains concepts in the Common Law legal system, the application of the insolvency test in bankruptcy law in Indonesia is also reasonable and based, for that reason the definition of Insolvency should be explained with economic approaches.

Sutan Remy Sjahdeini stated that the Debtor's insolvency is a requirement for the Debtor to be filed for bankruptcy, or can be called a financial condition. Based on the above, in theory there are two types of insolvency:

a) Balance sheet insolvency, is a state of inability of the Debtor to pay his debts, where the value of all debts exceeds the value of all his assets. Or commonly called the value of the Debtor's debt exceeds the value of his assets.
b) Cash flow insolvency, is a financial condition where the Debtor is unable to pay his debts due to the temporary state of the Debtor's finances, because the Debtor cannot pay his debts after they are due and collectible, or because at that time the Debtor does not have or does not have enough liquidity to pay his debts or debts. Cash flow insolvency condition where the Debtor experiences a cash flow deficit, namely the cash out flow is greater than the cash in flow. This occurs a mismatch (imbalance) between the amount of income inflow and expenditure because the amount of outflow is smaller than the inflow. Debtors who can be filed for bankruptcy to the Commercial Court are only Debtors who have experienced balance sheet insolvency, and not cash flow insolvency. Insolvency or a condition where the Debtor is unable to pay debts can also be interpreted as a failure. Bankruptcy as a failure can be interpreted in several ways, namely economic failure and financial failure. Economic failure means that the company has a lower profit level than the liabilities. Economic failure occurs when the actual cash flow of the company is far below the expected cash flow. While financial failure can be interpreted as a state of insolvency, namely in terms of negative net worth in a conventional balance sheet or the present value of expected cash flow is less than the liabilities.[20]

Hikmahanto emphasized that if the prerequisite for declaring a debtor bankrupt is only based on the debtor's failure to pay off one of his debts, then it will be very easy for a debtor to be declared bankrupt, which will then be followed by the liquidation of his assets, even though the debtor may still be technically in a "solvent" state, for that reason Prof. Hikmahanto, among other things, suggests that bankruptcy status should be determined for debtors who can be proven to be insolvent, or based on the insolvency test doctrine.[21]

Dr. Hadi Subhan explained that the application of the insolvency test doctrine is a form of legal protection for debtors who are still solvent and have good intentions before or during the examination of the bankruptcy petition filed against them.[22]

[20] Ministry of Law and Human Rights of the Republic of Indonesia, *Academic Manuscript of the Draft Law on Amendments to Law of the Republic of Indonesia Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations*, (Jakarta: National Legal Development Agency, 2018), p. 194.

[21] Ricardo Simanjuntak, *Indonesian Bankruptcy and PKPU Law: Theory and Practice*, (Jakarta: Kontan Publishing, 2023), p. 99.

[22] *Ibid*, p. 100.

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Apart from the concept of insolvency with an accounting standard approach which according to researchers can be applied in the bankruptcy legal system in Indonesia, it is hoped that the technical implementation of bankrupt debtors with the status of public companies will first be declared insolvent based on the accounting standard approach and only then can this be followed up with a bankruptcy statement application to the Commercial Court.

The insolvency test method can also be used with the aim of reducing legal uncertainty arising in the application of the KPKPU Law. Where this considers the importance of analyzing the debtor's solvency by considering many factors including financial statements, capital adequacy, the amount of existing debt, and others so that this is a complex matter. A company is considered Cash Flow insolvent if it is unable to pay its debts "when due". Along with the inability to pay, failure to pay debts at the time of notification of demand by creditors within the specified period is also an application of cash flow insolvency.23

The application of the insolvency test can provide a clearer framework for the court in determining whether the debtor is truly insolvent or not, thus the bankruptcy filing process will be more transparent and fair, and reduce the risk of bankruptcy decisions against companies that still have the potential to survive and develop.24

The implementation of an insolvency test before filing for bankruptcy for legal protection for public companies is unfortunately still hampered by the bankruptcy legal system in Indonesia, where the Bankruptcy Law & PKPU do not provide space for an insolvency test to be carried out first for public companies before filing for bankruptcy.

Due to the absence of regulations regarding insolvency tests before a bankruptcy petition is filed against a public company, the researcher sees the need for regulations or at least a change that expands the Bankruptcy & PKPU Law, by requiring the Commercial Court to first examine the results of the insolvency test of the public company as a consideration before issuing a bankruptcy statement decision, therefore before submittingIn the case of a bankruptcy application for a public company, the creditor requesting the bankruptcy statement must first ensure that the public company has undergone an insolvency test.

D. Conclusion and Recommendations

Public Companyis a company whose shares are owned by at least 300 (three hundred) shareholders, meaning that quite a lot are owned by investors, so that legal protection for public companies automatically also provides protection for the public as mandated byArticle 4 of the Capital Market Law.

[23] MP Ram Mohan, *The Role of Insolvency Tests: Implications for Indian Insolvency Law*, (India: India Institue of Management Ahmedabad Working Paper, 2021).

[24] Hasudungan Sinaga, *Insolvency Test as an Instrument for Preventing Bankruptcy Applications for Debts under Five Hundred Million Rupiah*, J-CEKI: Jurnal Cendekia Ilmiah, Vol.4, No. 1, December 2024.

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The use of insolvency test with an economic approach or accounting standards with the Balance sheet insolvency or Cash flow insolvency method, of course, will be a consideration for the commercial court in making a decision for a public company that is being filed for bankruptcy, so that it is expected that the decision of the commercial court in question will be based on the conditions of the debtor's financial ratios such as liquidity, profitability, leverage and solvency or the results of a public accountant's audit of the public company's current year financial balance sheet.

The absence of insolvency test regulation in the Bankruptcy Law & PKPU, can be a trigger and become a new idea to improve the current bankruptcy legal system in Indonesia. Therefore, it is necessary to make changes and updates to the Bankruptcy Law and PKPU, the Capital Market Law, and the P2SK Law, which are expected to be able to apply the insolvency test as a bankruptcy test, where this bankruptcy test can be believed as a protection for public companies.

For that, there must be a rule that is made firmly in protecting public companies from bankruptcy by conducting a bankruptcy test. This means that before a public company is filed for bankruptcy, a bankruptcy test must first be carried out to determine whether the public company is insolvent or truly in a state of solvency. If the results state that the public company is indeed insolvent, then the public company can be requested to be declared bankrupt.

BIBLIOGRAPHY

A. Legislation

Volume 11, Number 02, April-Juni 2025, Pages 1-13
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i2
Sinta 3; decree No. 0173/C3/DT.0500/2025

Indonesia. The 1945 Constitution of the Republic of Indonesia .
_____. Law on Capital Markets . Law Number 8 of 1995 .
_____. Law on Bankruptcy and Suspension of Debt Payment Obligations . Law Number 37 of 2004 .
_____. Law on Limited Liability Company. Law Number of 2007.
_____. Regulation of the Financial Services Authority of the Republic of Indonesia concerning Obligations for Disclosure of Information and Corporate Governance for Issuers or Public Companies that Meet the Criteria of Issuers with Small-Scale Assets and Issuers with Medium-Scale Assets. Regulation Number 43/POJK.04/2020 of 2020.

B. Book

Atman, Edward L and Edith Hotchkiss. Corporate Financial Distress and Bankruptcy. New Jersey: John Wiley & Sons. Inc. 2006.
Subhan, M. Hadi. Bankruptcy Law, Principles, Norm dan Practices in Court. Jakarta: Kencana, 2008.
Ginting, Elyta Ras. Bankruptcy Law Meetings of Creditors. Jakarta: Bumi Aksara. 2016.
Mohan, MP Ram. T he Role of Insolvency Tests: Implications for Indian Insolvency Law. India: Indian Institute of Management Ahmedabad Working Paper. 2021.
Simanjuntak , Ricardo. Indonesian Bankruptcy and PKPU Law: Theory and Practice. Jakarta: Kontan Publishing. 2023.
Widjajati, Erna. Corporate Law and Bankruptcy in Indonesia Jakarta: Jalur. 2016.

C. Journal

Alka, Reisar, et al. Insolvency Test as a Basis for Bankruptcy Application in Bankruptcy Law in Indonesia. Gloria Justitia Journal 2. No. 2. 2022.
Oktavaria, Bernadetha Aurelia. Understanding the Differences between Civil Law and Common Law. Hukum Online. https://www.hukumonline.com./klinik/a/icivil-law-i-dan-icommon-law-i-temukan-bedanya-di-sini-lt58f8174750e97 .
Ministry of Law and Human Rights of the Republic of Indonesia. Academic Manuscript of the Draft Law on Amendments to Law of the Republic of Indonesia Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. Jakarta: National Legal Development Agency. 2018.
Laksmi, Ni Luh Gede Sri Suariyanti, et al. Debtor's Efforts to Avoid Bankruptcy. Kertha Wicara 8. No. 3. 2019.
Moho, Hasaziduhu. Law Enforcement in Indonesia According to the Aspects of Legal Certainty, Justice and Benefit. Warta Dharmawangsa Journal 13. No. 1. 2019.
Rahmawati, Putri and Wardani Rizkianti. Insolvency Test as a Preventive Solution in Bankruptcy Law Construction in Indonesia. Juridical Journal Vol. 10.2. December 2023.
Shubhan, M. Hadi. Insolvency Test: Protecting Solven Companies with Good Faith from Bankruptcy Abuse. Journal of Business Law 33. No. 1. 2014.
Sinaga, Hasudungan. Insolvency Test as an Instrument to Prevent Bankruptcy Applications for Debts under Five Hundred Million Rupiah. J-CEKI: Jurnal Cendekia Ilmiah. Vol. 4. No. 1. December 2024.

Volume 11, Number 02, April-Juni 2025, Pages 1-13
e-ISSN:2614-1485
p-ISSN:2716-0440
Doi: https://doi.org/10.33751/palar.v11i2
Sinta 3; decree No. 0173/C3/DT.0500/2025

Nugraha, Lingga and Binsar Jon Vic, Urgency of Implementing Insolvency Test in Bancruptcy and PKPU Settlement in Indonesia Based On Law Number 37 of 2004, Jurnal Retentum, No. 1, Volume:07 2025.