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Semi-Public Restructuring and the Principle of Good Faith: Adoption for Indonesian Bankruptcy Law

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Abstract

Various problems related to the effectiveness and efficiency of legal proceedings are still found in the running of insolvency law in Indonesia, such as peace issues. Whereas peace is the key for companies to keep going, including for companies going public. Therefore, might consider new concepts in the Insolvency Law, such as semi-public restructuring. The purpose of this study is to find out the insolvency and PKPU proceedings and their problems in Indonesia and dissect the concept of semi-public restructuring to be a consideration for future legal development. This research uses a normative juridical approach method which is carried out by collecting data and prioritizing legal research as the source. This research shows that semi-public restructuring presents a more flexible restructuring concept so as to strengthen the extension of the principle of good faith and the principle of business continuity.

1. Introduction

Bankruptcy Law represents a significant aspect of the Netherlands' legal heritage in Indonesia, as outlined in Staatblad 1905 Number 21 in conjunction with Staatblad 1906 Number 348. The Bankruptcy Law in Staatblad was subsequently integrated into Indonesia's national legal framework.[1] However, due to poor economic conditions in 1998, the provisions of the Bankruptcy Law in the Staatblad were replaced by Government Regulation instead of Law (Perppu) Number 1 of 1998 concerning Amendments to the Bankruptcy Law, which was later promulgated into Law Number 4 of 1998 concerning Amendments to the Law on Bankruptcy. The implementation of Law Number 4 of 1998 is characterised by its facilitation of creditors in efficiently addressing issues related to debt and receivables via the Commercial Court.[2] This analysis highlights the economic decline in Indonesia, marked by a

[1] Rian Saputra and Resti Dian Luthviati, 'Institutionalization of the Approval Principle of Majority Creditors for Bankruptcy Decisions in Bankruptcy Act Reform Efforts', *Journal of Morality and Legal Culture*, 1.2 (2020), pp. 93–102, doi:10.20961/jmail.17i1.41087.
[2] Rahayu Hartini, 'The Ambiguity of Dismissal of Notary over Bankruptcy in Indonesia', *Legality: Jurnal Ilmiah Hukum*, 29.2 (2021), pp. 269–85, doi:10.22219/ljih.v29i2.15677.

significant rise in bankruptcy filings: 31 applications in 1998, 100 in 1999, 84 in 2000, 61 in 2001, and a consistent 39 in both 2002 and 2003, all submitted to the Commercial Court at the Central Jakarta District Court.[3]

Furthermore, between 1999 and 2002, the Central Jakarta Commercial Court received 23 applications for the Postponement of Debt Payment Obligations (PKPU). These instances illustrate a growing recognition of bankruptcy and PKPU as viable solutions for addressing debt and receivables issues in the corporate sphere.[4] Moreover, the government revised the stipulations of the Bankruptcy Law via Law number 37 of 2004, which pertains to Bankruptcy and the Postponement of Debt Payment Obligations. Following the implementation of the law, from 2003 to 2009, the Central Jakarta Commercial Court received a total of 278 bankruptcy applications, while all Commercial Courts in Indonesia processed 600 bankruptcy and PKPU cases.[5]

The deferral of debt repayment responsibilities may serve as a legitimate strategy to avert bankruptcy. Nonetheless, this endeavour has not entirely ensured the sustained operation of debtors acting in good faith, due to various factors. The duration for which debt payment obligations can be deferred is typically brief. Furthermore, the efficacy of the peace process in deferring debt payment obligations is significantly contingent on creditors' endorsement, rendering their decisions a pivotal element in the success of this mechanism. Furthermore, there remains the potential for specific parties to seek annulment of the peace judgment that the commercial court has duly ratified.[6]

In navigating the bankruptcy process (PKPU), a publicly traded Limited Liability Company must comply with the provisions of Law Number 37 of 2004. An important aspect of this legislation is the stringent time limitation established at each stage of the process, ranging from the submission of the application to the resolution of the bankruptcy estate or the confirmation of peace in the PKPU. A pivotal stage in this process transpires when the debtor is required to submit a plan to the creditor, elucidating the strategies for debt

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[3] Yapiter Marpi, Pujiyono, and Hari Purwadi, 'The Concept of Actio Pauliana Creditor Law Bankruptcy Boedel Dispute Process to Achieve Substantive Justice', *Jurnal IUS Kajian Hukum Dan Keadilan*, 11.3 (2023), pp. 528 – 538, doi:10.29303/ius.v11i3.1305.

[4] Metya Mutiara and Ailly Latiefah, 'The Commercial Court ' s Power to Rule on Bankruptcy Cases Where an Arbitration Clause Is Present', *Wacana Hukum*, 29.1 (2023), pp. 66–76.

[5] Luthvi Febryka Nola, 'Implementasi Putusan Mahkamah Konstitusi Nomor 67/PUU-XI/2013 Terkait Kedudukan Upah Pekerja Dalam Kepailitan (Implementation of Constitutional Court Decision Number 67/PUU-XI/2013 Related to the Position of Workers' Wages in Bankruptcy)', *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 10.2 (2020), p. 152.

[6] Siti Hapsah Isfardiyana, 'Sita Umum Kepailitan Mendahului Sita Pidana Dalam Pemberesan Harta Pailit', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 3.3 (2017), pp. 628–50, doi:10.22304/pjih.v3.n3.a10.

repayment.[7] This is regulated by Article 144 and Article 265 of Law Number 37 of 2004. This peace plan constitutes a fundamental element of debt restructuring efforts, addressing not only entities that have been declared bankrupt but also those presently classified under temporary or permanent PKPU status. The provisions are delineated in Articles 144 and 265 of Law Number 37 of 2004. At this point, debt restructuring is conducted for entities that have been declared bankrupt or have been classified as experiencing temporary or permanent PKPU.[8]

Nonetheless, alongside economic advancement, the approach to debt restructuring has evolved, reflecting the company's need for a more effective and efficient reorganisation process. [9] The modifications are implemented to mitigate the potential risks arising from the restructuring process, particularly concerning the possibility of one party exerting abuse or oppression over another during this period.[10] Semi-public restructuring offers a solution that integrates the application of good-faith principles with business continuity principles, aiming to uphold the enterprise's sustainability while safeguarding creditors' rights. In this context, it is crucial for publicly traded companies to consistently refine their debt restructuring strategies to maintain relevance and effectiveness amid evolving economic dynamics. The modification should consider the relevant legal doctrines and the concerns of all stakeholders, aiming for the most favourable outcomes while mitigating the broader adverse effects of bankruptcy or PKPU.[11]

This study seeks to offer innovative perspectives on the restructuring processes related to bankruptcy and PKPU. In light of the aforementioned context, various problem formulations may be articulated: What is the progression of debt restructuring for corporations that enter the public sphere during the bankruptcy and PKPU proceedings? What is the notion of semi-public restructuring concerning the implementation of the principle of good faith and the principle of business continuity in publicly traded companies?

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[7] Tata Wijayanta, 'Asas Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga', *Jurnal Dinamika Hukum*, 14.2 (2014), pp. 216–26, doi:10.20884/1.jdh.2014.14.2.291.

[8] Raden Besse Kartoningrat and Isetyowati Andayani, 'Mediasi Sebagai Alternatif Dalam Pengurusan Dan Pemberesan Harta Pailit Oleh Kurator Kepailitan', *Halu Oleo Law Review*, 2.1 (2018), p. 291, doi:10.33561/holrev.v2i1.4191.

[9] Oktaviani. F. Tambunan, 'Penyitaan Benda Dalam Kepailitan Oleh Kurator Dan Penyitaan Benda Oleh Kepolisian Dalam Perkara Pidana', *Verstek*, 5.3 (2020), pp. 248–53.

[10] Agustina Ni Made Ayu Darma Pratiwi and Putu Sekarwangi Saraswati, 'Tinjauan Yuridis Undang-Undang Nomor 34 Tahun 2004 Tentang Kepailitan Dan Pkpu Mengenai Pkpu Dalam Hal Debitur Pailit Dimasa Covid 19', *Media Keadilan: Jurnal Ilmu Hukum*, 12.1 (2021), p. 60, doi:10.31764/jmk.v12i1.4197.

[11] Benny Andreas Sinaga and others, 'Tinjauan Konstitusional Keuangan Negara Dalam Kepailitan Badan Usaha Milik Negara (Studi Kasus Putusan Mahkamah Agung Nomor 43 Pk/Pdt.Sus-Pailit/2019)', *Jurnal Hukum Adigama*, 5.1 (2022), pp. 518–41.

2. Research Method

This article employs a research methodology characterised by a normative juridical approach, which involves the systematic collection of data and emphasises legal inquiry grounded in a diverse array of literary sources, including documents, books, journals, magazines, and newspapers pertinent to the field of law. This study employs secondary data from legal statutes and regulations, as well as findings from legal research, in conducting the review. Data collection is conducted through a methodical literature review, in which data is gathered, scrutinised, and interpreted to elucidate and address the legal questions under examination.

3. Results and Discussion

Development of Debt Restructuring for Companies *Going Public* in the Bankruptcy and PKPU Process?

The peace plan constitutes a fundamental aspect of the bankruptcy process, while PKPU serves as a framework for debt restructuring. Throughout this process, both bankruptcy cases and PKPU cases may propose a peace plan, which will subsequently be integrated into the debt restructuring framework, even if creditors reject the debtor's peace plan. Law Number 37 of 2004 offers a significant opportunity for debtors to extricate themselves from the complexities of debt, ensuring legal protection as warranted, particularly for those debtors acting in good faith who still have the potential to remain viable in business. Bankruptcy is governed by Article 144 of Law No. 37 of 2004.[12]

The predominant method of debt restructuring presented by debtors to their creditors, applicable in both bankruptcy scenarios and in Suspension of Debt Payment Obligations (PKPU), is rescheduling. Rescheduling refers to modifying the debt repayment timeline, including the repayment of principal and the disbursement of profit sharing, profit margins, or other expenses that fall under the debtor's responsibilities.[13] The interviewed Supervisory Judge underscored that rescheduling is the most favoured strategy among debtors within the bankruptcy and PKPU process. The rescheduling plan provides a definitive timeline for the refund process to creditors, thereby making this assurance more favourable to them. The execution of this debt restructuring may occur over both short and extended periods; indeed, some debtors advocate for a peace plan that includes rescheduling extending over several decades. In practice, creditors tend to favour rescheduling plans that

[12] Austin Murphy, 'Bond Pricing in the Biggest City Bankruptcy in History: The Effects of State Emergency Management Laws on Default Risk', *International Review of Law and Economics*, 54 (2018), pp. 106–17, doi:https://doi.org/10.1016/j.irle.2017.12.001.

[13] Régis Blazy and others, 'Severe or Gentle Bankruptcy Law: Which Impact on Investing and Financing Decisions?', *Economic Modelling*, 34 (2013), pp. 129–44, doi:https://doi.org/10.1016/j.econmod.2013.02.001.

span a brief duration, typically no longer than 5 to 6 years. This timeframe is deemed acceptable, particularly for those creditors who have fully committed their capital to engage in business with debtors who ultimately encounter payment challenges.[14]

In the context of bankruptcy, the debtor in insolvency who proposes a plan must secure a written assessment from both the curator and the provisional creditors' committee on the plan's viability. Nevertheless, this duty frequently remains unaddressed, despite being codified in Article 146 of Law No. 37 of 2004. In practical terms, upon the insolvent debtor's submission of a plan, the plan is deliberated at a creditors' meeting, where the creditors have previously examined the proposal. Typically, debtors in bankruptcy present a plan during the creditors' meeting rather than before it to reconcile receivables. Consequently, curators frequently lack the time to formulate a written response to the peace plan, as the completion of the receivables-matching agenda swiftly transitions into the subsequent phase of discussing the plan.[15]

In the context of PKPU, the peace plan is set out in Article 265 of Law No. 37 of 2004. In contrast to the peace plan regarding bankruptcy, which serves as an alternative to avert insolvency and facilitate the settlement of bankruptcy assets, PKPU fundamentally aims to attain peace. Consequently, the legislation allows debtors to postpone their obligations to fulfil their debt payments, as well as for creditors to pursue the collection of receivables. The stipulations are outlined in Article 222, specifically in paragraphs (2) and (3) of Law No. 37 of 2004. The peace plan presented in PKPU includes a legal requirement for a response or written opinion from management or appointed experts.[16]

This is a stipulation set out in Article 278, paragraph (1), of Law No. 37 of 2004. In practice, the issuance of written opinions within the PKPU process is infrequent. The subsequent phase involves communicating the peace plan to the creditors for their consideration of approval or rejection. The rationale remains consistent with the PKPU process, in which the debtor presents the peace plan during the creditor assembly. The management appears to have limited time to address the debtor's peace plan. Moreover, the management communicated to the creditors' assembly the matters to be deliberated within the forum, including the decision on whether the PKPU should transition into a permanent status, should it still be in the Temporary PKPU phase, as well as the consideration of an extension

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[14] Amanda E Dawsey, 'State Bankruptcy Laws and the Responsiveness of Credit Card Demand', *Journal of Economics and Business*, 81 (2015), pp. 54–76, doi:https://doi.org/10.1016/j.jeconbus.2015.06.002.
[15] Emanuele Tarantino, 'Bankruptcy Law and Corporate Investment Decisions', *Journal of Banking & Finance*, 37.7 (2013), pp. 2490–500, doi:https://doi.org/10.1016/j.jbankfin.2013.02.007.
[16] Mevliyar Er, 'The German Consumer Bankruptcy Law and Moral Hazard – the Case of Indebted Immigrants', *Journal of Financial Regulation and Compliance*, 28.2 (2020), pp. 161–81, doi:https://doi.org/10.1108/JFRC-04-2018-0064.

of the PKPU duration, should it be in the permanent PKPU phase.[17]

In bankruptcy and PKPU cases involving publicly traded companies, it is noteworthy that creditors typically do not approve peace plans during the bankruptcy process. Conversely, the majority of peace plans receive creditor approval in the PKPU process. When companies pursue public offerings, creditors can evaluate the debtor's solvency. If creditors cannot be convinced by their debtors' solvency or by other conditions that provide certainty, they will tend to choose liquidation.[18]

The Concept of Semi-Public Restructuring in the Context of the Application of the Principle of Good Faith and the Principle of Business Continuity in Companies Going Public

Indonesia possesses its own PKPU mechanism. Given the outstanding issues present, it is imperative to explore alternative models beyond PKPU, particularly those that engage the judiciary in a semi-public capacity. This methodology presents a significant opportunity for the court to impose sanctions, enabling it to focus on the scheme's genuine benefits rather than becoming mired or faltering. For instance, this pertains to a semi-public restructuring in the United Kingdom utilising a scheme of arrangement model. This is governed by the Companies Act 2006.[19]

A scheme of arrangement constitutes a legal framework through which a company may undergo restructuring by negotiating a specific accord with its creditors and/or members (shareholders). This agreement may be characterised as a corporation facing financial challenges, incapable of fulfilling its debt obligations. Moreover, various restructuring alternatives present themselves, including the notion of 'debt for Equity,' in which creditors of the company relinquish their claims to debt in exchange for acquiring Equity in the organisation. This presents the following advantages for organisations: a. The entity can circumvent immediate debt and interest obligations; b. The organisation can maintain its operations. The entity is shielded from the prospect of bankruptcy.[20]

The arrangement in question can prove advantageous for creditors, as steering the company towards bankruptcy may adversely affect its profit valuation. This indicates that

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[17] Inmaculada Aguiar-Díaz and María Victoria Ruiz-Mallorquí, 'Causes and Resolution of Bankruptcy: The Efficiency of the Law', *The Spanish Review of Financial Economics*, 13.2 (2015), pp. 71–80, doi:https://doi.org/10.1016/j.srfe.2015.04.001.

[18] Giacomo Rodano, Nicolas Serrano-Velarde, and Emanuele Tarantino, 'Bankruptcy Law and Bank Financing', *Journal of Financial Economics*, 120.2 (2016), pp. 363–82, doi:https://doi.org/10.1016/j.jfineco.2016.01.016.

[19] Mürüvvet Büyükboyacı and others, 'An Experimental Study of the Investment Implications of Bankruptcy Laws', *Journal of Economic Behavior & Organization*, 158 (2019), pp. 607–29, doi:https://doi.org/10.1016/j.jebo.2019.01.001.

[20] Jochen Mankart and Giacomo Rodano, 'Personal Bankruptcy Law, Debt Portfolios, and Entrepreneurship', *Journal of Monetary Economics*, 76 (2015), pp. 157–72, doi:https://doi.org/10.1016/j.jmoneco.2015.09.001.

the creditor will not obtain what is rightfully due to them. Transforming debt into Equity enables the creditor to retain their stake and, at a future juncture, permits the company to reimburse them in their evolved role as a shareholder.[21] Conversely, the court may scrutinise whether the result of the vote could be swayed by ancillary factors, particularly in instances where a member or creditor possesses a particular interest that diverges from the collective interest of the class. This holds particular significance in light of the inclination towards reduced class sizes, which may result in groups that share identical rights yet possess markedly divergent interests in the scheme's outcomes.[22]

The court may evaluate these matters to ascertain whether the majority adequately represents the class in a vote during a scheme meeting. Although it is uncommon to witness courts neglecting to impose sanctions on schemes, this observation may underappreciate the significance of the courts' involvement. Offering explicit guidance on challenges at an early stage can facilitate correcting shortcomings before imposing penalties, thereby preventing contentious programs from advancing to sanction hearings.[23]

The notion of a scheme of arrangement as a method of semi-public restructuring will enhance the standing of the principle of good faith alongside the principle of business continuity. The principle of good faith holds that each party to an agreement bears the responsibility to furnish comprehensive information that may influence the other party's decision-making regarding acceptance or rejection of the agreement.[24] In the interim, the concept of business continuity may be understood as a prospective debtor entity that remains under consideration. The notion of a scheme of arrangement that alleviates the burden on debtors will enhance a company's capacity to furnish comprehensive information pertinent to the management of debt and receivables agreements. Furthermore, a framework for restructuring debt with greater flexibility will create avenues for enterprises to sustain their operations and avert insolvency. This represents the implementation of the

[21] Phyllis L L Mo, Oliver M Rui, and Xi Wu, 'Auditors' Going Concern Reporting in the Pre- and Post-Bankruptcy Law Eras: Chinese Affiliates of Big 4 versus Local Auditors', *The International Journal of Accounting*, 50.1 (2015), pp. 1–30, doi:https://doi.org/10.1016/j.intacc.2014.12.005.

[22] Udichibarna Bose, Stefano Filomeni, and Sushanta Mallick, 'Does Bankruptcy Law Improve the Fate of Distressed Firms? The Role of Credit Channels', *Journal of Corporate Finance*, 68 (2021), p. 101836, doi:https://doi.org/10.1016/j.jcorpfin.2020.101836.

[23] Nemiraja Jadiyappa and Santosh Shrivastav, 'Bankruptcy Law, Creditors' Rights, and Cash Holdings: Evidence from a Quasi-Natural Experiment in India', *Finance Research Letters*, 46 (2022), p. 102261, doi:https://doi.org/10.1016/j.frl.2021.102261.

[24] Li Gan, Manuel A Hernandez, and Shuoxun Zhang, 'Insurance or Deliberate Use of the Bankruptcy Law for Financial Gain? Testing for Heterogeneous Filing Behaviors in the United States', *Economic Modelling*, 105 (2021), p. 105673, doi:https://doi.org/10.1016/j.econmod.2021.105673.

business continuity principle.[25]

The mechanism of a scheme of arrangement fundamentally facilitates debt restructuring by engaging creditors collectively.[26] The crux of the matter is the feasibility of effectively implementing this scheme in Indonesia. In recent years, Indonesia has witnessed noteworthy instances of this mechanism's potential, particularly in the Garuda Indonesia case, where the airline sought debt restructuring in two jurisdictions: England and Indonesia. Garuda has submitted a scheme of arrangement in the English courts aimed at international creditors, predominantly aircraft lessors, while concurrently commencing a Suspension of Debt Payment Obligations (PKPU) process in Indonesia for domestic creditors. This dual approach underscores the potential to refine the concept of the scheme of arrangement within the Indonesian context.[27]

Nonetheless, the execution of this system encounters obstacles, notably the disparity in legal frameworks between the two nations, which poses a threat of jurisdictional conflicts. For example, the cram-down mechanism present in the English scheme, which enables courts to impose decisions on dissenting minority creditors, is not found within Indonesia's bankruptcy framework.[28] The lack of this element forces organisations to renegotiate with all creditors, resulting in lengthy, complex procedures. The intricacies of cross-jurisdictional matters significantly hinder implementation. Creditors are required to provide their consent to two concurrent legal proceedings, which may result in contradictory obligations. For instance, contractual provisions subject to English law, which are frequently found in international agreements, may not be recognised by Indonesian courts if they are considered to contravene public policy.[29] Implementing the scheme of arrangement in Indonesia necessitates substantial reforms. Essential measures include revising the Bankruptcy Law (Law No. 37/2004) to acknowledge selectively foreign restructuring frameworks that meet defined standards. This revision is essential, as the existing legislation is antiquated and fails to accommodate contemporary cross-border insolvency complexities. By rectifying these legal deficiencies and promoting international collaboration, Indonesia has the potential to adopt mechanisms such as the scheme of arrangement, thereby improving the efficiency of

[25] Ali Sadeghi and Ewald Kibler, 'Do Bankruptcy Laws Matter for Entrepreneurship? A Synthetic Control Method Analysis of a Bankruptcy Reform in Finland', *Journal of Business Venturing Insights*, 18 (2022), p. e00346, doi:https://doi.org/10.1016/j.jbvi.2022.e00346.
[26] Satish Kumar, 'Bankruptcy Law and the Leverage Speed of Adjustment', *Finance Research Letters*, 66 (2024), p. 105673, doi:https://doi.org/10.1016/j.frl.2024.105673.
[27] Geeta Singh, 'Dividend Policy Adjustments under Bankruptcy Law: Insights from Distressed Firms', *Finance Research Letters*, 70 (2024), p. 106253, doi:https://doi.org/10.1016/j.frl.2024.106253.
[28] Xincheng Xu and Buguo Xu, 'The Inhibitory Effect of Personal Bankruptcy Laws on Household Debt: Evidence from a Pilot Program', *Finance Research Letters*, 81 (2025), p. 107533, doi:https://doi.org/10.1016/j.frl.2025.107533.
[29] Bitan Chakraborty and others, 'Bankruptcy Law and Equity Capital: Evidence from India', *Accounting Theory and Practice*, 2 (2025), p. 100007, doi:https://doi.org/10.1016/j.accoth.2025.100007.

corporate restructuring while maintaining a delicate balance between creditor rights and national sovereignty.

4. Conclusion

Indonesia already has Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations as a legal umbrella that underlies the bankruptcy process and PKPU. However, in the course of its implementation, there are still inconsistencies in the substance of the law. Therefore, further legal development is needed to solve these problems. The concept of semi-public restructuring can be considered in the future because it provides a more flexible debt restructuring process and presents the implementation of the principle of good faith and the principle of business continuity that is more real. This can be seen in the provisions of the scheme of arrangement implemented by the United Kingdom.

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