JGSP
Jurnal Greenation Sosial dan Politik
+62 81210467572 https://greenationpublisher.org/JGSP greenation.info@gmail.com
GREENATION PUBLISHER

DOI: https://doi.org/10.38035/jgsp.v3i2.

Reconstruction of Bankruptcy Law for State-Owned Enterprises and Private Enterprises in the Perspective of Economic Justice

Naek Mampetua Siringoringo[1], Evita Isretno Israhadi[2]
[1]Universitas Borobudur, Indonesia, naek1969@mail.com
[2]Universitas Borobudur, Indonesia, evita_isretno@borobudur.ac.id

Corresponding Author: naek1969@mail.com[1]

Abstract: The current bankruptcy legal system in Indonesia shows inequality in treatment between State-Owned Enterprises (SOEs) and private companies, especially in terms of filing bankruptcy applications. In practice, SOEs often receive stronger legal protection than private companies, both because of their status as managers of public interest and government policy interventions, which give rise to economic injustice and inequality. The purpose of this study is to critically examine the differences in regulation, implementation, and propose legal reforms that ensure fairness in bankruptcy filings for SOEs and private companies. This research uses a juridical-empirical approach with reference to the theory of legal minds, legislation theory, and development law reform theory. The results of the study show that the bankruptcy arrangement for SOEs and the private sector does not reflect the principles of justice and equality before the law, because there are significant differences in treatment in submission procedures and requirements, as well as the intervention of state actors against SOEs. Legal reconstruction is needed so that bankruptcy regulations are fairer and more accommodating to dynamic economic needs, while maintaining national stability and legal certainty. The conclusion of this study is that Indonesia's bankruptcy system requires comprehensive reform based on substantive justice values, so that law is not only a technical instrument, but also a social engineering tool towards national economic balance.

Keyword: SOEs, Bankruptcy, Regulatory Reconstruction

Abstrak: Sistem hukum kepailitan di Indonesia saat ini menunjukkan adanya ketimpangan perlakuan antara Badan Usaha Milik Negara (BUMN) dengan perusahaan swasta, terutama dalam hal pengajuan permohonan pailit. Dalam praktiknya, BUMN kerap kali memperoleh perlindungan hukum yang lebih kuat dibandingkan perusahaan swasta, baik karena statusnya sebagai pengelola kepentingan umum maupun intervensi kebijakan pemerintah yang menimbulkan ketidakadilan dan ketimpangan ekonomi. Tujuan dari penelitian ini adalah untuk mengkaji secara kritis perbedaan pengaturan, pelaksanaan, dan mengusulkan reformasi hukum yang menjamin keadilan dalam pengajuan permohonan pailit bagi BUMN dan perusahaan swasta. Penelitian ini menggunakan pendekatan yuridis-empiris dengan mengacu pada teori legal mind, teori perundang-undangan, dan teori reformasi hukum pembangunan.

Hasil penelitian menunjukkan bahwa pengaturan kepailitan bagi BUMN dan swasta belum mencerminkan asas keadilan dan persamaan di hadapan hukum, karena terdapat perbedaan perlakuan yang signifikan dalam tata cara dan persyaratan pengajuan, serta adanya intervensi aktor negara terhadap BUMN. Rekonstruksi hukum diperlukan agar pengaturan kepailitan lebih adil dan akomodatif terhadap kebutuhan ekonomi yang dinamis, dengan tetap menjaga stabilitas nasional dan kepastian hukum. Kesimpulan dari penelitian ini adalah bahwa sistem kepailitan Indonesia memerlukan reformasi yang menyeluruh berdasarkan nilai-nilai keadilan substantif, sehingga hukum bukan hanya sebagai instrumen teknis, tetapi juga sebagai alat rekayasa sosial menuju keseimbangan ekonomi nasional.

Kata Kunci: BUMN, Kepailitan, Rekonstruksi Regulasi

INTRODUCTION

Bankruptcy is a situation in which the debtor is unable to make payments on the debts of its creditors, namely a situation in which the debt obligations have matured and the debtor is considered unable to pay and can be interpreted as freezing business activities due to the inability to pay. Unable to pay is usually caused by difficult financial conditions (Financial Distress) of the debtor's business that has suffered setbacks refers to the principle of insolvency that short-term liabilities exceed current assets. Meanwhile, bankruptcy is a court decision that results in the general confiscation of all assets of the bankruptcy debtor, both existing and in the future, in accordance with the provisions of Law No. 37 of 2004 concerning Bankruptcy and PKPU which regulates the terms, procedures, and legal effects of bankruptcy judgments. The management and settlement of bankruptcy is carried out by the Curator under the supervision of the supervisory judge with the main purpose of using the proceeds of the sale of the assets to pay all debts of the bankruptcy debtor proportionately (prorate parte) and in accordance with the basic creditor structure-in the distribution of bankruptcy proceeds.

In the event that the government establishes a limited liability company that can be classified into private companies and State-Owned Enterprises (SOEs). A private company is a company where all its shares are held by a private party without any government shares in it. Meanwhile, a State-Owned Enterprise (BUMN) is a company in which there are shares owned by the government following up on the mandate of Article 33 paragraphs (2) and (3) of the 1945 Constitution that production branches are important to be controlled by the state through SOEs to prosper the people.

Indonesia has goals as stated in the 4th Paragraph of the Preamble to the 1945 Constitution, one of which is to advance public welfare. In order to realize the goals of the State of Indonesia, State-Owned Enterprises (SOEs) were formed. SOEs as a business entity established and managed by the state, to carry out national economic activities, as mandated in Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Thus, it is very clear that the state's goal of forming SOEs is as one of the efforts to improve the economic activities of the Indonesian nation, as well as to prosper the Indonesian people. SOEs were formed as state management or nationalization of companies in the Dutch era which were still operating at that time in Indonesia. In 2000, the development of SOEs was returned to the Minister of Finance. However, in 2001, the President established the Ministry of SOEs, which in this case is a financier of SOEs.

SOEs as business entities can also have bankruptcy status, this status will result in the general confiscation of all assets of bankrupt SOEs. Persero as a state-owned enterprise also has a relationship with the state, the bankruptcy of the Persero SOEs also raises debates, as in Article 2 letter g of the Republic of Indonesia Law No. 17 of 2003 concerning State Finance

(State Finance Law), explained related to the scope of state finance, not only from state income and expenditure, but also from the wealth of SOEs. However, in the Indonesian Law No. 19 of 2003 concerning State-Owned Enterprises (UU BUMN) explains the definition of SOE wealth is state wealth that is separated even though there is capital participation in state finance, in addition to that the difference between Perum and Persero in terms of capital participation causes confusion, related to state wealth, especially in terms of bankruptcy of state-owned enterprises Perum and Persero. In handling SOE bankruptcy cases, there are often inconsistencies in legal considerations.

In the context of private company bankruptcy in Indonesia, many companies face various economic challenges that cause them to go bankrupt. Some cases of private companies experiencing injustice in bankruptcy requirements in Indonesia are often related to the procedure for filing for Suspension of Debt Payment Obligations (PKPU) and bankruptcy. One of the problems that often arises is the unclear threshold of debt value which is a requirement for submitting PKPU, as stipulated in Article 222 paragraph (3) of the Bankruptcy Law (does not contain a minimum debt value threshold) so that creditors can easily apply for PKPU even for a small amount of debt.

The inequity in bankruptcy requirements between State-Owned Enterprises (SOEs) and private companies is increasingly a concern in Indonesia, especially in the context of a developing economy. SOEs often have a stronger legal status, thanks to ongoing government support. In a financial crisis situation, this better legal protection provides significant benefits for SOEs, which are expected to maintain national economic stability. However, this treatment raises questions about fairness in the application of bankruptcy law, which should be based on the principle of equality before the law. This is where problems start to arise, as different treatments can create inequities in the market. The bankruptcy of SOEs is a complex issue, especially related to the legal status of all assets in public confiscation. When a SOE is declared bankrupt, all of its assets will be confiscated to pay off debts, but this protection against assette is often stricter than that of private companies. State assets managed by SOEs are considered part of the public interest, thus raising a debate about whether such actions are in line with the principles of justice. The bankruptcy process involving SOEs involves not only creditors but also the state, which has the potential to affect the economy as a whole.

One of the striking aspects of this injustice is the difference in legal treatment between SOEs and private companies. In many cases, SOEs get better facilities and protection than private companies. For example, when it comes to debt restructuring, SOEs often get softer policies, while private companies have to face stricter processes and are at high risk of bankruptcy. Article 2 paragraph (5) of the Bankruptcy Law provides a special exception for State-Owned Enterprises (SOEs), where bankruptcy applications can only be filed by the Minister of Finance. The explanation of the article states that in order for SOEs to be categorized as engaged in the public interest, they must meet two important conditions: first, all of the SOEs' capital is wholly owned by the state, and second, the capital is not divided into shares. This gives SOEs different legal protection compared to private companies in general.

The application of bankruptcy law also shows a striking difference. The bankruptcy process for SOEs tends to run faster and more efficiently, often with government intervention to speed up the restructuring process. In contrast, private companies are often caught up in lengthy and complicated procedures, which can lead to further losses. This shows that there is a bias in the legal system that should be fair to all parties. The unfairness in the bankruptcy requirements not only impacts the companies involved, but also on the overall economic growth. With reduced investment interest in the private sector, the potential for innovation and job creation will be hampered. In addition, these conditions can create uncertainty in the broader market, affecting long-term economic stability. Therefore, efforts are needed to

create a fairer and more balanced legal environment, so that all business entities, both state-owned and private, can contribute optimally to national economic growth.

METHOD

This research uses a juridical-empirical approach with reference to the theory of legal minds, legislation theory, and development law reform theory. Injustice in bankruptcy proceedings is a complex issue that requires serious attention to achieve a fairer and more transparent legal system. By understanding the differences in legal treatment, the impact on investors, and the need for reform, civil society can drive significant change. The existence of a balanced business environment will provide benefits for all parties, including private companies and state-owned enterprises, as well as contribute to sustainable economic growth. The right reforms can create an ecosystem that supports innovation and competitiveness, thus bringing a positive impact on the economy as a whole.

With increasing economic dynamics and global challenges, it is important to reconstruct bankruptcy law to be fairer and more responsive to the needs of all parties. This is becoming increasingly relevant in the context of countries that are committed to creating a healthy and sustainable business climate.

RESULT AND DISCUSSION

Regulation of Submission of Bankruptcy Requirements Between State-Owned Enterprises (SOEs) and Private Companies

Bankruptcy is a situation in which the debtor is unable to make payments on the debts of his creditors. Unable to pay is usually caused by difficult financial conditions (Financial Distress) of the debtor's business that has experienced setbacks. Meanwhile, bankruptcy is a court decision that results in a general confiscation of all assets of the bankruptcy debtor, both existing and those that will exist in the future. The management and settlement of bankruptcy is carried out by the curator under the supervision of the supervisory judge with the main purpose of using the proceeds of the sale of the assets to pay all debts of the bankruptcy debtor proportionally (prorateparte) and in accordance with the creditor structure.

Bankruptcy is a legal instrument that provides a way out for creditors to get receivables repaid when the debtor is unable to fulfill his financial obligations. In Indonesia, bankruptcy regulation is regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUKPKPU). Although it is generally applicable, the application to State-Owned Enterprises (SOEs) cannot be equated with private companies. This is due to the characteristics of SOEs that carry out strategic functions and/or public services, so they require additional requirements in filing for bankruptcy. This article discusses in depth the differences in procedures, legal basis, and legal implications of filing bankruptcy applications against SOEs and private companies.

The terms and applications for filing for bankruptcy are regulated in the provisions of Article 2 of the Bankruptcy Law which stipulates that:

1) A debtor who has two or more creditors and does not pay in full at least one debt that has become due and can be collected, is declared bankrupt by the decision of the Court, either at his own application or at the request of one or more of his creditors.
2) Applications as intended in paragraph (1) may also be submitted by the prosecutor's office in the public interest.
3) In the event that the Debtor is a bank, an application for a declaration of bankruptcy can only be submitted by Bank Indonesia.
4) In the event that the Debtor is a Securities Company, Stock Exchange, Clearing and Guarantee Institution, Depository and Settlement Institution, an application for a declaration of bankruptcy can only be filed by the Capital Market Supervisory Agency.

5) In the event that the Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise engaged in the public interest, an application for a declaration of bankruptcy can only be submitted by the Minister of Finance.

Article 1 number 1 of the SOE Law defines "SOEs are business entities whose all or most of their capital is owned by the state through direct participation derived from separated state wealth". For the Persero SOE itself based on Article 1 number 2 of the SOE Law, "Persero is a SOE in the form of a limited liability company whose capital is divided into shares, where at least 51% of the shares are owned by the Indonesian state, with the main purpose of pursuing profits".

The explanation of Article 2 paragraph (5) of the UUKPKPU states that "SOEs engaged in the public interest" are SOEs whose entire capital is owned by the state and is not divided into shares. From this provision, SOEs that meet the criteria are SOEs in the form of Public Companies (Perum), which according to Article 1 number 4 of the SOE Law "are SOEs whose entire capital is owned by the state and is not divided into shares, aiming to provide high-quality goods/services while pursuing profits".

Based on Article 2 paragraph (1) of the UUK-PKPU, SOEs can be filed for bankruptcy if:

1) Have two or more creditors;
2) Not paying at least one debt that is due and can be collected.

However, this requirement is formal in general, and is not enough if the subject is a state-owned enterprise. Additional administrative and substantial needs are needed, especially for SOEs in the form of Persero.

Bankruptcy applications for SOEs in the form of Persero can only be submitted if there is written approval from the Minister of SOEs and the application for bankruptcy without this approval document will be rejected by the court because it is considered not to meet the formal requirements. The filing of bankruptcy applications against SOEs, especially in the form of Persero, cannot be equated with the mechanism applicable to private companies. The obligation to obtain written approval from the Minister of SOEs indicates that there is special protection for state entities. Meanwhile, SOEs in the form of Perum cannot be bankrupt because of their function as public servants. Therefore, this special arrangement is a form of compromise between creditor protection and public interest protection.

Private companies are legal subjects that can be filed for bankruptcy when they meet the requirements as stipulated in the UUKPKPU. The purpose of the bankruptcy regime is to provide legal protection for creditors and maintain economic stability through a fair and efficient debt settlement mechanism.

Private companies, both in the form of Limited Liability Companies (PT), Firms, CVs, or legal entity individual businesses, are subject to the provisions of the UUKPKPU [10]. Private debtors can apply for bankruptcy by parties who have a civil relationship with debts that have matured and are not paid.

Based on Article 2 paragraph (1) of the UUK-PKPU, a company can be applied for bankruptcy if a debtor who has two or more creditors and does not pay in full at least one debt that has been due and can be collected, can be declared bankrupt by a court decision.

Bankruptcy Application Submission Procedure, as follows:

1) The application is submitted to the Commercial Court (part of the District Court);
2) Registration is carried out by the applicant (creditor or debtor);
3) The judge examines the formality and material of the application;
4) If the conditions of Article 2 paragraph (1) are met, then a bankruptcy judgment can be issued;
5) The Court appoints the Supervisory Judge and the Curator;

6) Followed by verification of receivables, settlement of assets and payments to creditors based on their level.

The bankruptcy arrangement of private companies in Indonesia follows the general principle in civil law, which is when the creditor has a valid bill basis and the debtor is negligent in paying its obligations. The UUK-PKPU is a legal framework that is quite clear and firm in determining the terms and processes. Private companies as legal subjects are fully subject to commercial courts and do not have the same preferential treatment as state entities.

Implementation of the Value of Legal Certainty in Regulating the Submission of Bankruptcy Requirements Between State-Owned Enterprises (SOEs) and Private Companies in Indonesia

The principle of legal certainty in the context of bankruptcy aims to provide a clear regulatory framework for the parties (debtors and creditors) so that the process of filing, examination, and bankruptcy judgment can be predicted. At the normative level, Law No. 37 of 2004 concerning Bankruptcy and PKPU regulates the general requirements of bankruptcy debtors, namely having two or more creditors with two separate bills, the debtor does not pay on time within a five-day grace period after being duly warned, and there is a legal act that harms creditors. Meanwhile, for SOEs, Article 2 paragraph (5) of the Bankruptcy Law emphasizes that bankruptcy applications can only be submitted by the Minister of Finance if SOEs are engaged in the public interest. This difference reflects the legislator's efforts to provide certainty about who has the right to apply, but at the same time creates uncertainty regarding cases of switching the status of SOEs from Perum to Persero. The weak explanation of the separated state capital and the status of SOE shares obscures the limits of the legal capacity to file for bankruptcy.

In practice, the provision that only the Minister of Finance can file for the bankruptcy of SOEs has an impact on the slow process. Triyana Kartika Swandhani et al. found that SOE bankruptcy procedures in court are often hampered by the ministry's internal bureaucracy, including verification of state funds and inter-agency coordination, so that the restructuring or liquidation process takes longer than for private companies. As a result, bankruptcy decisions on SOEs are often delayed even though the substantial elements of bankruptcy have been met, while private companies can be directly filed by creditors without the same mechanism of deferral of obligations, so that it can be faster to reach the stage of determining the curator. This delay creates market uncertainty and can cause losses for creditors and SOE workers, leading to criticism that the value of legal certainty in the context of SOEs has not been implemented effectively.

In contrast to SOEs, private companies have a more flexible judicial mechanism. Private creditors can apply for Suspension of Debt Payment Obligations (PKPU) or bankruptcy in accordance with Article 222 paragraph (3) of the Bankruptcy Law without the need for the approval of any government agency. The threshold for the value of debt in PKPU is Rp2 billion, where the unclear definition of "matured debt" often gives rise to different interpretations between district courts. Ahmad and Widjadja highlighted that this condition creates uncertainty for private debtors because asset confiscation can be initiated even though the debt dispute is still in the process of review, so that the principal Audi and Alteram Partem are less awake. In addition, the difference in the standard of proving creditors' losses in each district court causes the results of bankruptcy decisions to vary, violating the spirit of equality before the law and procedural certainty.

Supervision of the supervisory judge (Judicial oversight) is an important instrument to ensure legal certainty in the bankruptcy process, both SOEs and private sectors. However, various studies show the inconsistency of court decisions regarding the validity of creditors' bills and the validity of evidence warning of default. Siska Windu Natalia and Henry Darmawan Hutagaol assessed that the state's prerogative over SOEs' assets is often used as a

reason to postpone the implementation of public confiscation, even though legally there is no basis for suspending bankruptcy other than a cassation or review decision. Differing decisions between courts of first instance and appeals regarding formal requirements such as summonses and proof of bills indicate a weak standard of application of the principle of legal certainty. The derivatives of this kind of practice create investment uncertainty, especially for foreign creditors who demand certainty about the enforcement of contract laws.

Efforts to reform bankruptcy law need to focus on harmonizing the provisions between the Bankruptcy Law, the SOE Law, and the State Finance Law. Andriani Nurdin suggested the addition of a special clause in the Bankruptcy Law that describes the mechanism for SOE bankruptcy in detail: for example, the definition of "public interest", procedures for verifying the value of state receivables, and the deadline for completing ministry administration. In addition, it is necessary to clearly regulate the requirements for state capital separated in SOE assets, so that it does not become a formal reason for bankruptcy applications to be rejected. The standardization of this procedure is expected to increase transparency and prevent bureaucratic maneuvers that slow down legal certainty.

Bankruptcy Law Reform to Realize Justice in Submissions for State-Owned Enterprises and Private Enterprises

Fundamental reforms need to start with rearranging the legal capacity for SOEs. Article 2 paragraph (5) of the Bankruptcy Law currently only gives the right to file for bankruptcy to the Minister of Finance for SOEs that are "engaged in the public interest" without clarity on the definition of separate state capital and share status. This condition results in inconsistencies in decisions and delays in handling SOEs bankruptcy in commercial courts, because the ministry's internal verification process takes longer than requests from private creditors. Therefore, it needs to be clarified by adding an objective formulation of "separate state capital" and a "public interest" qualification that contains a list of critical sectors (e.g. energy, basic infrastructure) so that the jurisdiction of the commercial court becomes definite without waiting for lengthy bureaucratic approval.

Furthermore, the system Insolvency Test needs to be strengthened so that bankruptcy does not rely solely on short-term financial defaults. Law 37/2004 currently emphasizes the existence of two creditors and a default on payment after five days, without assessing the fundamental condition of the debtor's performance. Renewal can include three-dimensional criteria: (a) a sustainable negative balance sheet (Balance Sheet Test), (b) inability to meet operating cash flows (Cash flow test), and (c) the minimum debt value limit of the PKPU threshold adjusted to the scale of business and inflation. This model is inspired by the practice of bankruptcy law in the UK after the Enterprise Act 2002 and the UNCITRAL Guide to Enactment which adopts the definition of insolvent in its entirety. With Insolvency Test Comprehensive, abuse of the bankruptcy process by opportunistic creditors can be minimized while providing restructuring opportunities for fundamentally sound debtors.

The institutional aspect also needs improvement: the establishment of an integrated Electronic-Based Commercial Court (PNBE) in each province, equipped with a national bankruptcy registry that is connected in real time with the Supreme Court's Case Tracking Information System (SIPP). PNBE must have special supervisory judges and curators who are trained to handle SOEs and the private sector, ensuring standard operating procedures (SOPs) that contain a maximum of 120 days from the deadline for handling bankruptcy applications from registration, including the appeal and cassation process. The use of blockchain technology for creditor bill registration can increase the transparency of claims ranking, thereby reducing disputes regarding the accuracy of receivables and encouraging the speed of asset distribution.

The next reform must touch on harmonization across regulations, especially the Bankruptcy Law, Law 19/2003 on SOEs, and Law 17/2003 on State Finance. Currently, there

is an overlap in the definition of separate state wealth that confuses the practice of public confiscation of the assets of state-owned enterprises Persero and Perum. The draft amendment needs to include a synchronization clause for the definition of "separate state wealth" based on government accounting standards so that when SOE assets are declared bankrupt, there is no unilateral veto by the supervisory ministry regarding the value of the assets to be confiscated. As a result, the process of implementing the bankruptcy decision can run without administrative obstacles and in accordance with the principle of prorate parte.

Another crucial recommendation is to adopt the UNCITRAL Model Law on Cross-Border Insolvency to address cross-jurisdictional asset challenges. Indonesia has not ratified the Model Law, even though more and more state-owned enterprises and private companies are involved in global supply chains with assets abroad. This adoption allows Indonesian curators and courts to access recognition procedures and cooperation with foreign courts without having to go through multiple legalizations, thus ensuring the protection of the value of assets and the rights of foreign and local creditors. On the other hand, the UNCITRAL judicial perspective guidelines contain the best practices for judges in interpreting cross-border applications, mitigating the risk of legal conflict decisions that can harm the national economy.

To ensure effective implementation, continuous training is needed for judicial actors (supervising judges, curators, clerks) on the principles of modern restructuring, commercial mediation, and digital forensics, especially in complex corporate cases. Collaboration with professional curator associations and law colleges through certification programs can ensure competence according to international standards. Furthermore, the establishment of the National Capital Market and Bankruptcy Safety Council as a coordination forum between the Ministry of SOEs, the Ministry of Finance, the prosecutor's office, the OJK, and the Curators Association will strengthen policy synergy in handling SOE and private sector bankruptcy.

Amendments to the law must be supported by the issuance of the Supreme Court Regulation (Perma) on Electronic Procedures in Bankruptcy and PKPU, as well as the Circular Letter of the Chief Justice of the Supreme Court (SEKMA) which regulates the deadline and standard format for summonses and bankruptcy filing documents. This Perma can contain an integrated electronic form, a requirement checklist, and Flowchart process, thus minimizing interpretation varies between commercial courts.

Overall, this draft bankruptcy law reform will bring Indonesia closer to global best practices while maintaining a balance between creditor protection, debtor rehabilitation, and the public interest. With the harmonization of regulations, modernization of procedures, and the adoption of the UNCITRAL Model Law, it is hoped that the bankruptcy process will be faster, more transparent, and fairer for SOEs and private companies, while increasing investor confidence and supporting national economic growth.

CONCLUSION

Based on the discussion of the regulation of bankruptcy requirements between SOEs and private companies, the implementation of the principle of legal certainty, and the proposed reform of bankruptcy rules, it can be concluded that the current Indonesian legal framework still contains misalignments that have the potential to cause economic injustice. Differences in the legal capacity to file for bankruptcy where SOEs can only be filed by the Minister of Finance while private companies are open to any creditor as well as inconsistencies in the definition of ‘public interest’ and ‘separate state capital’ result in the slow process of resolving SOE bankruptcy and rigid procedures. Meanwhile, private companies face ambiguity in the PKPU debt threshold and variations in the application of due process principles between commercial courts. This condition not only creates a bias in the

protection of certain debtors but also risks undermining investor confidence and hampering inclusive economic growth.

To realise economic justice and equal legal certainty for all business entities, it is necessary to carry out comprehensive reform of the Bankruptcy and PKPU Laws and synchronise them with the BUMN Law and the State Finance Law. The definitions of 'public interest' and 'segregated state capital' for SOEs should be clearly formulated, along with a time-limited verification mechanism for approval by the Minister of Finance. In addition, electronically integrated specialised commercial courts, a three-dimensional insolvency test model (balance sheet, cash flow, and debt threshold), and the adoption of the UNCITRAL Model Law on Cross Border Insolvency will improve the transparency and efficiency of bankruptcy handling. The training of supervisory judges, curators, and the development of integrated SOPs are also crucial for the implementation of bankruptcy procedures to be fast, accountable, and bias-free, so that all business actors, both state-owned and private, can contribute optimally to national economic stability and growth.

REFERENCES

A. Dwi, 'Pailit dan Dasar Hukum Kepailitan', Pascasarjana UMSU. Accessed: May 14, 2025. [Online]. Available: https://pascasarjana.umsu.ac.id/pailit-dan-dasar-hukum-kepailitan/

A. Nurdin, *Kepailitan BUMN Persero Berdasarkan Asas Kepastian Hukum*. Bandung: Alumni, 2012.

A. Pernando and E. Suwignyo, 'Badai PKPU di Meja Hijau, Modus Apa Serius?', Bisnis Plus. Accessed: May 14, 2025. [Online]. Available: https://plus.bisnis.com/read/badai-pkpu-di-meja-hijau-modus-apa-serius?utm_source=chatgpt.com

A. Surono, *Penerapan Prinsip Keadilan Dalam Penyelesaian Perkara Kepailitan*. Jakarta: Badan Penerbit Fakultas Hukum UI, 2018.

A. Sutedi, *Hukum Keuangan Negara*. Jakarta: Sinar Grafika, 2022.

B. J. P. Sinaga and D. G. P. Yustiawan, 'Analisis Yuridis Insolvency Test dalam Penyelesaian Kepailitan dan PKPU Ditinjau dari UU No 37 Tahun 2004', *Hukum Inovatif : Jurnal Ilmu Hukum Sosial Dan Humaniora*, vol. 1, no. 4, pp. 186–193, 2024.

C. D. Hasrina, U. Khairani, and Azlim, 'Financial Distress Ditinjau Dari Return on Asset, Debt to Asser Ratio, dan Current Ratio', *Jurnal Humaniora*, vol. 9, no. 7, pp. 205–213, 2025, doi: https://doi.org/10.30601/humaniora.v.

D. Budiono, 'Analisis Pengaturan Hukum Acara Kepailitan dan Penundaan Kewajiban Pembayaran Utang', *ADHAPER Jurnal Hukum Acara Perdata*, vol. 4, no. 2, p. 109, 2019, doi: http://dx.doi.org/10.36913/jhaper.v4i2.81.

D. D. Ananda, 'Analisis Hukum Larangan Rangkap Jabatan Dewan Komisaris Badan Usaha Milik Negara (BUMN) Persero', *Innovative: Journal Of Social Science Research*, vol. 3, no. 3, 2023.

E. Christy, W. Wilsen, and D. Rumaisa, 'Kepastian Hukum Hak Preferensi Pemegang Hak Tanggungan dalam Kasus Kepailitan', *Kanun Jurnal Ilmu Hukum*, vol. 22, no. 2, pp. 323–344, 2020, doi: 10.24815/kanun.v22i2.14909.

F. Hs, S. A. Manangin, I. O. Nasirun, and D. M. Pasla, 'Urgensi Pembaharuan Undang-Undang Kepailitan Demi Efisiensi dan Keadilan dalam Penyelesaian Kepailitan dan PKPU', *Zaaken: Journal of Civil and Business Law*, vol. 5, no. 2, pp. 277 – 288, 2024, doi: https://doi.org/10.22437/zaaken.v5i2.33099.

F. N. Heriani, 'Hal-hal yang Perlu Diperhatikan dalam Proses PKPU dan Kepailitan', Hukumonline. Accessed: May 14, 2025. [Online]. Available:

https://www.hukumonline.com/berita/a/hal-hal-yang-perlu-diperhatikan-dalam-proses-pkpu-dan-kepailitan-lt655da93659ac7/?utm_source=chatgpt.com

J. S. P. Sihombing, *Permasalahan Kasus Perkara PKPU dan Kepailitan*. Kabupaten Bogor: Mitra Wacana Media, 2024.

L. ayu M. Prabaningsih and M. Nurmawati, 'Pengaturan Insolvensy Test Dalam Penjatuhan Putusan Pailit Terhadap Perusahaan', *Kertha Semaya Journal Ilmu Hukum*, vol. 7, no. 8, p. 1, 2019.

L. Hakim and N. D. Saputra, 'Politik Hukum Insolvency Test Dalam Pembaharuan Hukum Kepailitan di Indonesia', *Madani: Jurnal Ilmiah Multidisiplin*, vol. 1, no. 8, 2023, doi: https://doi.org/10.5281/zenodo.8383474.

M. Doni, *Politik Hukum Berkeadilan dan Penegakan Konstitusi*. Jakarta: Rajawali Pers, 2016.

M. Fuady, *Hukum Pailit dalam Teori dan Praktek*. Bandung: Citra Aditya Bakti, 2017.

M. H. Subhan, *Hukum Kepailitan Prinsip, Norma, dan Praktik di Peradilan*. Jakarta: Kencana, 2014.

N. Munawaroh, 'Apa Perbedaan Pailit dan Likuidasi?', Hukumonline. Accessed: May 14, 2025. [Online]. Available: https://www.hukumonline.com/klinik/a/apa-perbedaan-pailit-dan-likuidasi-lt4bfb70d601097/

P. N. Suhantri, J. Sondakh, and F. H. Anis, 'Pengaturan Pertanggungjawaban Holding Badan Usaha Milik Negara Sektor Asuransi dan Penjaminan pada Sistem Hukum Nasional di Indonesia', *Journal on Education*, vol. 5, no. 2, pp. 4303–4311, 2023, doi: 10.31004/joe.v5i2.1145.

R. Christiawan, 'Menggagas Pembaharuan Aturan Kepailitan', Hukumonline. Accessed: May 14, 2025. [Online]. Available: https://www.hukumonline.com/berita/a/menggagas-pembaharuan-aturan-kepailitan-lt5dbf8781bf17c/

R. IS, 'Perbedaan Antara Kepailitan dan PKPU', ILS Law Firm. Accessed: May 14, 2025. [Online]. Available: https://www.ilslawfirm.co.id/perbedaan-kepailitan-dan-pkpu/?utm_source=chatgpt.com

R. N. F. Hanif, 'Kepailitan dan Akibat Kepailitan Terhadap Kewenangan Debitur Pailit Dalam Bidang Hukum Kekayaan', Kemenkeu. Accessed: May 14, 2025. [Online]. Available: https://www.djkn.kemenkeu.go.id/artikel/baca/13451/Kepailitan-dan-Akibat-Kepailitan-Terhadap-Kewenangan-Debitur-Pailit-Dalam-Bidang-Hukum-Kekayaan.html

R. Saija, 'Perlindungan Kreditur Atas Pailit Yang Diajukan Debitur Dalam Proses Peninjauan Kembali Di Pengadilan Niaga', *Sasi*, vol. 24, no. 2, p. 114, 2019, doi: 10.47268/sasi.v24i2.126.

Republik Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.

Republik Indonesia, *Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan PKPU*. 2024.

Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara*. 2003.

S. Sudiana, *Perlindungan Hukum Bagi Kreditor Konkuren Dalam Kepailitan Dan Penyelesaian Serta Akibat Hukum Kepailitan*. Kabupaten Bogor: Allsysmedia, 2023.

S. Windu Natalia and H. Darmawan Hutag, 'Menyoal Tanggung Jawab Negara dalam Kepailitan BUMN-Persero', *Jurnal Supremasi*, pp. 16–34, Sep. 2024, doi: 10.35457/supremasi.v14i2.2849.

Subekti, *Pokok-Pokok Hukum Perdata*. Jakarta: lntermasa, 2017.

T. K. Swandhani, S. Ahmad, and S. Sadino, 'Efektivitas Prosedur Kepailitan Badan Usaha Milik Negara (BUMN) dalam Putusan Pengadilan', *Binamulia Hukum*, vol. 13, no. 2, pp. 573–587, 2024, doi: https://doi.org/10.37893/jbh.v13i2.966.

U. N. C. on I. T. Law, *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment*. Vienna UN, 1997.

V. Widjaja and G. P. Soemartono, 'Implementasi UU Perlindungan Konsumen dan UU Kepailitan terhadap Konsumen Properti Pemegang PPJB', *Syntax Literate: Jurnal Ilmiah Indonesia*, vol. 8, no. 10, 2023.

W. Y. Wardani, 'Problematika Kepailitan dan Pembubaran BUMN Persero serta Perlindungan Hukum terhadap Kreditor', *Jurnal Kepastian Hukum dan Keadilan*, vol. 6, no. 2, 2024, doi: https://doi.org/10.32502/khk.v6i2.9103.

Z. Asikin, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*. Jakarta: Pustaka Reka Cipta, 2013.