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Application of the Principle of Commercial Exit from Financial Distress in Corporate Bankruptcy Applications and its Implications for Creditor Protection

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ABSTRACT

This research is motivated by the increasing misuse of bankruptcy mechanisms in Indonesia, where solvent debtors exploit bankruptcy as a strategy to evade obligations rather than as a genuine solution for financial distress. The study aims to analyze the regulation of corporate bankruptcy applications that reflect the principle of Commercial Exit from Financial Distress and to examine creditor protection in cases that deviate from this principle. Using a normative juridical approach through statute, case, and conceptual methods, this research relies on primary legal materials including Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and two court decisions: Number 04/Pdt.Sus-Pailit/2023/PN Niaga Medan (PT Ricky Kurniawan Kertapersada) and Number 41/Pdt.Sus-Pailit/2025/PN Niaga Central Jakarta (PT Teknik Lancar Mandiri). The analysis was conducted qualitatively using sociological interpretation to link legal norms with judicial practice. The findings reveal that Indonesia's bankruptcy system remains formalistic because it does not apply an insolvency test as a substantive basis for determining financial failure. The PT RKK case demonstrates bankruptcy abuse to avoid debt, while the PT TLM case exemplifies fair application of the Commercial Exit from Financial Distress principle. Hence, reform of bankruptcy law is essential to achieve substantive justice and equitable legal protection for creditors.

Keywords : Commercial Exit from Financial Distress, Bankruptcy, Legal Protection of Creditors.

INTRODUCTION

Bankruptcy as a Legal Mechanism in Indonesia

Bankruptcy constitutes a legal action in the form of a general seizure (*sita umum*) of all the debtor's assets based on a court decision that is immediately enforceable. This seizure includes all assets owned by the debtor at the time of and after being declared bankrupt, for the benefit of all creditors in a fair and proportional manner. The main purpose is to prevent unilateral execution by individual creditors and to ensure the equitable distribution of the debtor's estate under the supervision of a receiver (*kurator*).

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The legal basis for bankruptcy is stipulated in Articles 1131 and 1132 of the Indonesian Civil Code (KUHPerdata), which affirm that all of a debtor's property serves as collateral for the fulfillment of all their debts (*pari passu prorata parte*). This principle guarantees that every creditor has equal and proportional rights to the debtor's assets.

Bankruptcy regulations in Indonesia were first established under Law No. 4 of 1998, later refined through Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU). The main objective of this law is to prevent disorganized competition among creditors over the debtor's assets while ensuring an orderly, fair, and efficient distribution process.

Concept of Bankruptcy and the Role of the Receiver

According to Article 1(1) of Law No. 37 of 2004, bankruptcy is a general attachment (*sita umum*) of all the debtor's assets to be distributed among creditors under the supervision of a receiver. Once a bankruptcy decision is rendered, the debtor loses the right to manage and dispose of their property, which is thereafter administered by the appointed receiver.

The receiver is appointed by the Commercial Court simultaneously with the declaration of bankruptcy, as provided in Article 15(3) of the same law. The duties of the receiver must be carried out independently and free from any conflict of interest, in accordance with the principles of transparency and accountability.

The requirements for declaring bankruptcy under Article 2(1) include:

1. The existence of at least two creditors (*concursus creditorum*);
2. The presence of at least one debt that is due and payable; and
3. The filing of a petition by an authorized party.

The Principle of Commercial Exit from Financial Distress

The principle of *Commercial Exit from Financial Distress* emphasizes that bankruptcy is not an instrument for destroying a business, but a commercial mechanism for resolving financial difficulties faced by a company. According to Ricardo Simanjuntak, bankruptcy should serve as a "commercial exit" from financial pressure rather than a legal tool for deliberately terminating a business.

Ross & Westerfield explain that a high degree of *financial leverage* is the main indicator of financial distress, where excessive dependence on debt increases the risk of default and

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potential insolvency. Therefore, this principle provides an opportunity for debtors to fulfill their obligations fairly and transparently through a legal process supervised by the court. However, in practice, this principle is often misused by companies that are still solvent but seek to avoid their debt obligations. Consequently, an audit by a public accountant becomes essential as objective evidence to determine whether an entity is truly insolvent or still capable of meeting its financial liabilities.

Distinction Between Insolvency And Bankruptcy

Conceptually, *insolvency* refers to a financial condition in which a debtor is unable to fulfill its obligations, whereas *bankruptcy* is a legal status that can only be declared by a court. Insolvency tests generally include two components:

1. The cash flow test, which measures the ability to meet short-term obligations, and
2. The balance sheet test, which compares total assets against total liabilities.

Implementation of the Principle in Practice

The application of the *Commercial Exit from Financial Distress* principle in Indonesia can be categorized into two forms:

1. Consistent implementation, where bankruptcy is used as a solution for companies genuinely experiencing financial distress; and
2. Improper implementation, where bankruptcy is used manipulatively for particular interests without genuine financial hardship.

Case 1: PT Ricky Kurniawan Kertapersada (RKK)

The decision of the Medan Commercial Court No. 04/PDT.SUS-PAILIT/2023/PN.Niaga.MDN, dated March 21, 2023, illustrates weak implementation of the principle of justice. Although the bankruptcy petition against PT RKK met the formal requirements, the execution of the decision neglected the rights of the Ministry of Environment and Forestry (KLHK) as one of the largest creditors, holding a claim exceeding IDR 191 billion in environmental damage compensation due to land fires.

The receiver failed to include KLHK's claim in the List of Fixed Debts (Daftar Piutang Tetap, DPT), violating the transparency principle stipulated in Article 100 of the Bankruptcy Law. As a result, the state risked losing its right to recover the claim, undermining substantive justice. Furthermore, the publication and notification of the

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decision were inadequately carried out, contradicting the announcement and notification obligations required of the receiver.

Case 2: PT Teknik Lancar Mandiri

Conversely, in the Central Jakarta Commercial Court decision regarding PT Teknik Lancar Mandiri, the bankruptcy petition was deemed consistent with the *Commercial Exit from Financial Distress* principle. Based on the Extraordinary General Meeting of Shareholders (EGMS) held on June 23, 2025, the company declared its inability to continue operations due to deteriorating financial conditions.

The court found that the bankruptcy requirements under Article 2(1) had been met, and that the company acted in good faith in filing for bankruptcy as a form of legal and economic responsibility. In this decision, the panel of judges appointed Marper Pandiangan, S.H., M.H. as the supervising judge and Paulus Sinatra Wijaya, S.H. as the receiver. The process demonstrated a transparent and fair implementation of bankruptcy principles, balancing the interests of both debtor and creditor.

RESEARCH METHODS

The normative legal research method is a scientific research procedure to find the truth based on the logic of legal science from its normative side. This qualitative research analyzes a problem-solving issue by collecting data as research material. The legal sources used in the research can be data obtained through literature and/or directly from the community. Data obtained directly from the community is called primary data, while data obtained through literature and documentation is called secondary data.

RESULTS AND DISCUSSION

Arrangements for Fair Company Bankruptcy Applications with the Principle of Commercial Exit From Financial Distress Based on Article 2 Paragraph (1) Jo. Article 8 Paragraph (4) of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations.

(Based on Article 2 Paragraph (1) Jo. Article 8 Paragraph (4) of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations)

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The Indonesian bankruptcy system presents a paradox between accessibility and vulnerability to misuse. Law No. 37 of 2004 establishes very simple criteria for bankruptcy—requiring only two or more creditors and one overdue debt—which, although intended to expedite debt resolution, has opened opportunities for abuse. Consequently, even solvent companies can exploit bankruptcy proceedings to evade financial and legal responsibilities.

In essence, bankruptcy should function as a commercial remedy for genuine financial distress, not as a legal escape for debtors acting in bad faith. The principle of commercial exit from financial distress emphasizes that bankruptcy must be applied only when a company faces real liquidity problems.

Three fundamental concepts underpin a fair bankruptcy system:

1. Cessation of Payment (Stop Payment Conditions) — a situation where the debtor faces objective financial difficulty in meeting obligations, not merely an unwillingness to pay.
2. Insolvency — a verifiable inability to pay debts where liabilities exceed assets. Under Indonesian law, insolvency relates to the bankruptcy estate rather than the debtor as a person, occurring when reconciliation efforts fail or are rejected.
3. Bankruptcy as Ultimum Remedium — bankruptcy must serve as a last resort after other settlement mechanisms are exhausted, given its wide economic and social repercussions.

The key weakness of Indonesia's bankruptcy regime lies in its formalistic orientation, as seen in Article 2(1) jo. Article 8(4). Commercial courts often limit their examination to formal requirements—existence of multiple creditors and overdue debts—without assessing the debtor's actual financial health. As a result, companies that remain productive and solvent can still be declared bankrupt, contradicting the philosophical aim of bankruptcy as a genuine crisis-resolution tool.

Although the law provides mechanisms to protect creditors—such as the right to petition, verification, and supervision by a judge—these are often ineffective in practice. The absence of mandatory notification to all creditors in voluntary bankruptcy allows manipulation, where debtors involve only cooperative creditors while excluding major ones. Weak supervision of curators further undermines fairness, as some fail to record all

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legitimate claims or properly inventory assets, rendering creditor protection merely procedural.

Comparative Cases:

- PT Rumbai Kapuas Kencana (PT RKK) illustrates misuse of bankruptcy to avoid obligations, including environmental and tax liabilities. The Medan Commercial Court granted bankruptcy without assessing financial conditions, and the curator excluded major creditors, violating the *pari passu prorata parte* principle.
- PT Tirta Langgeng Mandiri (PT TLM) exemplifies proper implementation. The judges conducted a substantive insolvency review using audited financial statements, and the curator ensured transparency and equal treatment for all creditors.

In conclusion, the Indonesian bankruptcy system requires a shift from formal to substantive justice, ensuring that bankruptcy serves its intended purpose—as a fair and commercial means of resolving genuine financial distress, not a legal instrument for avoidance or manipulation.

Legal Protection for Creditors in Bankruptcy Applications That Do Not Comply with the Principles of Commercial Exit From Financial Distress

(Based on Article 2 Paragraph (1) Jo. Article 8 Paragraph (4) of Law Number 37 of 2004)

Law functions as a tool to ensure order, peace, and justice, grounded in the recognition of human dignity. According to Satjipto Rahardjo, legal protection means safeguarding violated human rights so that individuals can truly enjoy the rights guaranteed by law. In the context of bankruptcy, protection for creditors extends beyond debt repayment—it must also ensure timely and proportionate settlement.

Bankruptcy, as defined in Article 1(1) of Law No. 37 of 2004 (UUK-PKPU), is a general seizure of all the debtor's assets, managed by a curator under judicial supervision. Although the law adopts a pro-creditor orientation with simple procedural requirements—only two or more creditors and one overdue debt—this simplicity often leads to abuse. Solvent debtors can misuse bankruptcy proceedings to avoid their obligations, as illustrated in the case of PT Ricky Kurniawan Kertapersada (RKK), which contradicts the principle of commercial exit from financial distress.

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Articles 2(1) and 8(4) of UUK-PKPU emphasize a formalistic approach, allowing bankruptcy to be established through simple proof without assessing the debtor's true solvency. From an ius constituendum perspective, bankruptcy should apply only to debtors genuinely experiencing financial distress. As Ricardo Simanjuntak notes, Indonesia's system prioritizes administrative evidence, enabling misuse and transforming bankruptcy into a means of legal evasion rather than commercial resolution.

Yahya Harahap views bankruptcy as a collective mechanism to protect all creditors through fair and proportional distribution. John Rawls's theory of justice as fairness reinforces three key principles relevant to bankruptcy law:

1. Equality — equal rights for all creditors;
2. Proportionality — debt distribution based on the size of receivables;
3. Good faith — moral integrity of debtors. These principles align with Articles 1131–1132 of the Civil Code, emphasizing that all debtor assets serve as joint collateral distributed proportionally.

In Decision No. 04/Pdt.Sus-Pailit/2023/PN Niaga Medan, PT RKK was declared bankrupt not due to insolvency, but to avoid state compensation obligations totaling over Rp250 billion. The court only examined formal elements without verifying financial distress, while the Ministry of Environment and Forestry (KLHK)—a legitimate state creditor—was excluded from the Permanent Receivables List, violating the pari passu prorata parte principle and Rawls's difference principle. This represents a distortion of bankruptcy law, transforming it from a commercial exit into a legal exit.

Conversely, the PT Trisula Lestari Mandiri (TLM) case in Decision No. 41/Pdt.Sus-Pailit/2025/PN Niaga Jakarta Pusat exemplifies a just application of the law. The judges evaluated audited financial statements to confirm insolvency, while the curator transparently managed assets and ensured equal opportunities for all creditors to file claims. This reflects Rawls's fair equality of opportunity and Satjipto Rahardjo's "living law", where legal protection materializes substantively rather than merely procedurally.

A comparison of both cases shows that the effectiveness of creditor protection depends more on judicial integrity than on the text of the law itself. Although Law No. 37 of 2004 provides adequate legal norms, weak implementation and the absence of a rigorous insolvency test have led to injustice—where solvent companies may be declared bankrupt, undermining the balance between legal certainty and substantive justice.

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CONCLUSION

Indonesia's bankruptcy legal system (Law 37/2004, Article 2, paragraph 1, in conjunction with Article 8, paragraph 4) remains formalistic and does not reflect substantive justice. Bankruptcy requirements, which require only two creditors and one maturing debt, without a comprehensive examination of financial distress, open up opportunities for abuse.

In Decision 04/Pdt.Sus-Pailit/2023/PN Niaga Medan (PT Ricky Kurniawan Kertapersada), bankruptcy was misused to avoid legal obligations to the state, harming creditors and violating the principle of pari passu prorata parte. Conversely, Decision 41/Pdt.Sus-Pailit/2025/PN Niaga Central Jakarta (PT Teknik Lancar Mandiri) applied the principle of commercial exit from financial distress by assessing objective insolvency based on audited financial reports, reflecting substantive fairness.

Indonesia's current bankruptcy legal system remains formalistic, based on Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) of Law No. 37/2004, which creates an imbalance between legal certainty and substantive justice. This approach opens up loopholes for insolvent debtors to abuse bankruptcy mechanisms to avoid legal responsibility.

The PT RKK case demonstrates the weak protection of state creditors due to the lack of application of the commercial exit from financial distress principle and the insolvency test, while the PT TLM case reflects fairer and more transparent bankruptcy practices. In conclusion, legal protection for creditors in Indonesia is substantively ineffective and still relies on the integrity of judges and curators.

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