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Isuse Of Pkpu (Suspension Of Debt Payment Obligations) As An Instrument Of Pressure Against Debtors: An Analysis Of Legal Certainty And Protection Within Indonesia's Bankruptcy System

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Abstract
The Suspension of Debt Payment Obligations was introduced within Indonesia's bankruptcy regime as a legal mechanism to facilitate debt restructuring, preserve business continuity, and provide financially distressed debtors with an opportunity to negotiate settlement agreements with their creditors. In practice, however, PKPU has increasingly been used as a coercive litigation strategy rather than a genuine restructuring instrument. Creditors frequently file PKPU petitions to pressure debtors into making immediate payments, even in circumstances where the debtors remain financially viable and are capable of fulfilling their obligations through ordinary commercial arrangements. This practice has raised significant concerns regarding legal certainty, procedural fairness, and the balance of interests between creditors and debtors. Previous studies have primarily focused on the procedural aspects of PKPU or its effectiveness in resolving commercial disputes, while relatively little attention has been devoted to the misuse of PKPU proceedings and their implications for debtor protection and the integrity of Indonesia's bankruptcy system. This study addresses that gap through normative juridical research employing statutory, conceptual, and case study approaches to analyze relevant commercial court decisions. The findings reveal that the existing legal framework governing PKPU petitions lacks clear standards for establishing insolvency and good faith, thereby creating opportunities for procedural abuse and inconsistent judicial practice. Accordingly, this study recommends strengthening the regulatory framework by introducing stricter preliminary evidentiary requirements, defining objective indicators of good faith and insolvency, and reinforcing the court's supervisory role during the initial examination of PKPU petitions to ensure greater legal certainty, procedural fairness, and balanced protection for both creditors and debtors.

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Introduction

The increasing complexity of commercial transactions and financing activities has intensified the need for an effective legal framework governing debt settlement. As business relationships become more sophisticated, disputes between debtors and creditors have become increasingly common, requiring legal mechanisms that not only facilitate debt resolution but also ensure legal certainty, procedural fairness, and balanced protection for all parties.[1] In Indonesia, these objectives are principally governed by Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), which establishes a legal framework for resolving insolvency-related disputes while preserving business continuity whenever possible.[2]

The Suspension of Debt Payment Obligations was originally conceived as a restructuring mechanism that enables financially distressed debtors to negotiate a composition plan with their creditors as an alternative to bankruptcy. The PKPU regime reflects the principles of business continuity (going concern), equitable treatment of creditors, and the preservation of economically viable enterprises. In principle, PKPU is intended to provide debtors with a temporary opportunity to reorganize their financial obligations while maximizing the possibility of satisfying creditors' claims through consensual settlement rather than liquidation.[3]

In practice, however, the function of PKPU has increasingly deviated from its original purpose. Rather than serving as a restructuring mechanism, PKPU is frequently employed as a strategic litigation tool by creditors to exert commercial pressure on debtors, including those that remain financially solvent or whose debts are subject to legitimate legal disputes. Conversely, some debtors have also exploited PKPU proceedings to delay the fulfillment of their contractual obligations without genuine prospects for financial restructuring. These practices indicate a growing misuse of the PKPU mechanism and undermine its fundamental objective as an instrument of commercial rehabilitation. The relatively minimal statutory requirements for

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[1] Oksana Shcherbanyuk, Vitalii Gordieiev, and Laura Bzova, "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law," *Juridical Tribune* 13, no. 1 (2023), https://doi.org/10.24818/TBJ/2023/13/1.02.

[2] Giorgio Pino, "Legal Certainty," *Eunomia. Revista En Cultura de La Legalidad*, no. 25 (2023), https://doi.org/10.20318/EUNOMIA.2023.8000.

[3] O. Iarmolenko, "Submission Of Creditor Claims In A Bankruptcy Case," *Law Journal of Donbass*, no. 4 (89) (2024), https://doi.org/10.32782/2523-4269-2024-89-49-52; Ricki Rahmad Aulia Nasution, Iwan Erar Joesoef, and Heru Sugiyono, "Justice in the Administration and Settlement of Bankruptcy Estate by Auction in Relation to the Recovery of Creditors' Claims," *International Journal of Law and Society* 2, no. 3 (2025), https://doi.org/10.62951/ijls.v2i3.616.

filing a PKPU petition namely the existence of at least two creditors and one due and payable debt combined with the limited substantive review conducted by commercial courts during the preliminary examination stage, create significant opportunities for procedural abuse.

The consequences of such misuse extend beyond individual disputes and affect the broader integrity of Indonesia's bankruptcy system. The PKPU proceedings involving PT Garuda Indonesia (Persero) Tbk illustrate how PKPU may evolve from a restructuring mechanism into a strategic instrument capable of influencing corporate reputation, market competition, and business continuity.[4] Disproportionate PKPU petitions may reduce investor confidence, diminish corporate value, disrupt commercial operations, and create unfair competitive advantages. At the same time, ambiguities within the Bankruptcy Law, particularly regarding the administration of bankruptcy assets and the responsibilities of court-appointed administrators and receivers, have contributed to inconsistent judicial decisions and procedural uncertainty. Weak institutional oversight has further increased the risk of procedural irregularities and inconsistent application of bankruptcy law.

These structural and normative deficiencies have significant implications not only for debtors and creditors but also for the overall investment climate and the credibility of Indonesia's commercial justice system. Legal uncertainty in bankruptcy proceedings may discourage investment, weaken commercial confidence, and reduce the effectiveness of commercial courts as institutions responsible for resolving business disputes fairly and efficiently. Despite the growing importance of PKPU in Indonesia's insolvency framework, previous studies have largely concentrated on its procedural aspects or its role in debt restructuring, while relatively limited attention has been devoted to the misuse of PKPU proceedings and their implications for legal certainty, procedural fairness, and debtor protection.[5] Accordingly, this study examines the legal uncertainty arising from the implementation of PKPU and analyzes the reforms necessary to strengthen legal certainty, prevent procedural abuse, and establish a more balanced, transparent, and equitable bankruptcy system in Indonesia.[6]

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[4] Fabien Terpan and Sabine Saurugger, "Explaining the Success of Litigation Strategies in the Schrems Cases," *Nordic Journal of European Law* 7, no. 4 (2025), https://doi.org/10.36969/njel.v7i4.27284; Raphaële Xenidis, "From Critical Theory to Litigation Strategy: Can Intersectionality Transform EU Equality Law?," *European Law Journal* 31, no. 1–2 (2025), https://doi.org/10.1111/eulj.70002.

[5] Try Widiyono and Md Zubair Kasem Khan, "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law," *Law Reform: Jurnal Pembaharuan Hukum* 19, no. 1 (2023), https://doi.org/10.14710/lr.v19i1.48393.

[6] Sri Lestari, "The Legal Certainty for Resolving Consumer and Business Actor Disputes from the Perspective of Social Engineering Justice from Roscoe Pound," *Jurnal IUS Kajian*

Methods

This study employs a normative juridical research method using statutory, conceptual, and case study approaches to examine the legal framework governing the Suspension of Debt Payment Obligations in Indonesia. The research is based on library research utilizing primary, secondary, and tertiary legal materials, including legislation, judicial decisions, legal doctrines, and scholarly publications. These legal materials were analyzed qualitatively through a descriptive analytical approach to evaluate the adequacy of the existing legal framework, identify the factors contributing to the misuse of PKPU proceedings, and assess their implications for legal certainty and the balanced protection of debtors and creditors within Indonesia's bankruptcy system.

Results and Discussion

1. Forms and Patterns of PKPU Misuse as an Instrument of Pressure Against Debtors

The Suspension of Debt Payment Obligations (PKPU), regulated under Law No. 37 of 2004, was established as a restructuring mechanism intended to preserve business continuity by enabling debtors to negotiate repayment arrangements with their creditors.[7] In principle, PKPU reflects a modern insolvency regime that prioritizes corporate rehabilitation over liquidation. However, the existing legal framework requires only two creditors and one due and payable debt to initiate proceedings, without requiring a comprehensive assessment of the debtor's financial condition or insolvency. This relatively low evidentiary threshold, combined with the absence of explicit statutory standards governing good faith and limited judicial scrutiny during the

Hukum Dan Keadilan 11, no. 3 (2023), https://doi.org/10.29303/ius.v11i3.1309; I. Gede Agus Kurniawan, Lourenco de Deus Mau Lulo, and Fradhana Putra Disantara, "Ius Constituendum Of Expert Advisor In Commodity Futures Trading: A Legal Certainty," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023), https://doi.org/10.29303/ius.v11i1.1170.

[7] Nabila Tiara Deviana and Ariawan Gunadi, "Legal Protection for Creditors in Suspension of Debt Payment Obligations (PKPU): A Critique of the Implementation of Law Number 37 of 2004 on Bankruptcy," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 17, no. 1 (2025), https://doi.org/10.32505/jurisprudensi.v17i1.11364; Tul Amiliya Laila and Romi Faslah, "Implementasi Undang - Undang No. 37 Tahun 2004 Tentang Kepailitan : Analisis Yuridis Terhadap Efektivitas Penyelesaian Utang Piutang Di Indonesia," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 1, no. 3 (2025); Billy Jayando Parasian Sinaga and Dewa Gede Pradnya 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* 1, no. 4 (2024), https://doi.org/10.62383/humif.v1i4.656.

preliminary examination stage, has created opportunities for procedural misuse.

The findings reveal four recurring forms of PKPU misuse. First, creditors frequently initiate PKPU proceedings against financially viable debtors, transforming the mechanism from a restructuring tool into an instrument of commercial pressure. Second, PKPU is often used as a bargaining strategy to compel debtors to accept unfavorable settlement terms under the threat of bankruptcy. Third, creditors increasingly resort to PKPU without first pursuing out of court negotiations, contrary to the restructuring objectives of the insolvency regime. Fourth, the formal requirement concerning the plurality of creditors may be manipulated through the inclusion of nominal or affiliated creditors solely to satisfy statutory filing requirements.

These practices have developed into broader patterns within commercial court proceedings. PKPU is frequently employed in ordinary contractual disputes that could otherwise be resolved through civil litigation, while the dominance of majority creditors during creditors' meetings often marginalizes both debtors and minority creditors. In many cases, PKPU functions merely as a procedural gateway to bankruptcy rather than as a genuine restructuring mechanism. Moreover, public disclosure of PKPU proceedings frequently causes significant reputational and commercial harm, increasing pressure on debtors regardless of their actual financial condition.

Overall, these findings demonstrate that the misuse of PKPU is not incidental but reflects structural weaknesses within Indonesia's insolvency framework. The absence of objective insolvency standards, limited judicial review, and unequal bargaining power between creditors and debtors have allowed PKPU to evolve into a coercive legal instrument rather than a balanced mechanism for debt restructuring.[8] Consequently, the current framework has yet to provide adequate legal protection or procedural fairness for debtors.[9]

2. Legal Reform to Prevent PKPU Misuse and Strengthen Balanced Insolvency Protection

Addressing the structural weaknesses of PKPU requires comprehensive legal and institutional reform. A primary priority is the introduction of an

[8] Dikha Anugrah et al., "Equivalence of Protection for Foreign and Domestic Creditors in Debt Restructuring Based on Positive Indonesian Law," *Batulis Civil Law Review* 6, no. 2 (2025), https://doi.org/10.47268/ballrev.v6i2.2918.

[9] Gabriel Loretto Lochagin, "Contributions of Economic Analysis of Law to the Restructuring of Public Debt: The Case of Collective Action Clauses (CACs)," *Law of Justice Journal* 39, no. 2 (2025), https://doi.org/10.5335/rjd.v39i2.15933; Lydia Tsioli, *Viability in Corporate Debt Restructuring Law*, *Viability in Corporate Debt Restructuring Law*, 2025, https://doi.org/10.4337/9781035350261.

objective preliminary insolvency test that enables commercial courts to assess a debtor's financial condition before granting a PKPU petition. Such a mechanism would ensure that PKPU is reserved for genuine financial distress rather than being used as a strategic instrument of commercial pressure.

Legal reform should also establish good faith as a substantive requirement for filing PKPU petitions.[10] Objective indicators such as prior restructuring efforts, financial transparency, and the absence of abusive intent would provide judges with a stronger legal basis for rejecting opportunistic applications. At the same time, the authority of commercial court judges should be strengthened by expanding preliminary judicial review beyond formal procedural requirements to include substantive examination of insolvency, creditor motives, and potential abuse of process.

In addition, the legal framework should impose effective sanctions against parties that misuse PKPU in bad faith, including financial penalties, compensation, or restrictions on future filings. Greater procedural protection for debtors is equally important, including broader opportunities to challenge unfounded petitions and limitations on the premature publication of PKPU proceedings that may cause unnecessary reputational damage.

The experiences of PT Garuda Indonesia (Persero) Tbk and PT Merpati Nusantara Airlines illustrate the practical consequences of the current framework. While PKPU can facilitate genuine corporate restructuring, it may also become a strategic mechanism that accelerates bankruptcy or exerts disproportionate commercial pressure on debtors. These cases demonstrate the urgent need for clearer insolvency standards and stronger judicial oversight.

Ultimately, reform should restore PKPU to its original function as a balanced restructuring mechanism that protects both creditors and debtors. A more adaptive insolvency framework, supported by objective legal standards, effective judicial supervision, and stronger safeguards against procedural abuse, would enhance legal certainty, promote business continuity, and reinforce the fairness and integrity of Indonesia's bankruptcy system.

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[10] Diana Ayu Mardiani et al., "Pilihan Domisili Yurisdiksi Dalam Permohonan PKPU Berdasarkan Asas Lex Specialis Derogat Legi Generalis," *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik* 2, no. 1 (2023), https://doi.org/10.59581/doktrin.v2i1.1898; Rezki Saputra, Jas Yeni Triana, and Indra Afrita, "Akibat Hukum Terhadap Kreditur Dalam Penundaan Kewajiban Pembayaran Utang Berdasarkan Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Yustitia* 11, no. 1 (2025), https://doi.org/10.31943/yustitia.v11i1.320; Devi Andani and Wiwin Budi Pratiwi, "Prinsip Pembuktian Sederhana Dalam Permohonan Penundaan Kewajiban Pembayaran Utang," *Jurnal Hukum Ius Quia Iustum* 28, no. 3 (2021), https://doi.org/10.20885/iustum.vol28.iss3.art9.

Conclusions

The findings demonstrate that the misuse of the Suspension of Debt Payment Obligations (PKPU) in Indonesian commercial court practice has shifted its original function from a debt restructuring mechanism to a strategic instrument of commercial pressure against debtors. This misuse is reflected in petitions filed against financially viable debtors, coercive bargaining practices, premature filings without prior restructuring efforts, and the manipulation of creditor plurality, resulting in PKPU increasingly serving as a gateway to bankruptcy rather than a genuine mechanism for business rehabilitation. These practices undermine legal certainty, procedural fairness, and the balanced protection of debtors and creditors, despite the existence of a relatively well established statutory framework. Accordingly, comprehensive legal reform is essential through the introduction of objective insolvency assessments, the recognition of good faith as a substantive filing requirement, stronger judicial scrutiny during the preliminary examination of petitions, effective sanctions against abusive filings, and enhanced procedural safeguards for debtors. Such reforms are necessary to restore PKPU to its intended role as a restructuring mechanism that promotes business continuity, legal certainty, and substantive justice within Indonesia's bankruptcy system.

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