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INSOLVENCY WITHOUT BANKRUPTCY: Rethinking The Dissolution of Viable State-Owned Banks

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Abstract

This article examines the normative inconsistency between the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK–PKPU) and the Company Law (UU PT), which creates a risk of premature dissolution of state-owned banks that are still economically viable. The study aims to conduct an epistemological and normative analysis of the bankruptcy regime applicable to state-owned banks in Indonesia by examining insolvency tests through a comparative law perspective and elaborating the concept of epistemic failure within the framework of Lon Fuller's legal philosophy. This research employs a normative juridical method, using statutory, conceptual, and comparative approaches. Legal norms and principles are analysed through hermeneutic interpretation to assess their coherence and practical implications. The findings reveal that Indonesia's current bankruptcy framework fails to distinguish clearly, both conceptually and operationally, between balance-sheet insolvency and cash-flow insolvency. As a result, banks experiencing temporary liquidity problems may be treated as insolvent, leading to premature liquidation despite their underlying economic soundness. This condition highlights a significant normative inconsistency between the UUK–PKPU and the Company Law. Furthermore, Indonesian bankruptcy law remains predominantly liquidation-oriented and relies heavily on procedural formalism. This approach contrasts with the legal frameworks of the European Union and common law jurisdictions, which prioritise rescue and rehabilitation mechanisms as primary responses to financial distress. Accordingly, this article strengthens the argument for regulatory harmonisation and advocates the adoption of a dual insolvency test, as well as the institutionalisation of rescue and rehabilitation mechanisms as mandatory priorities before liquidation in Indonesia's bankruptcy law.

Artikel ini menganalisis adannya inkonsistensi normatif antara Undang-Undang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (UUK-PKPU) dan Undang-Undang Perseroan Terbatas (UU PT) yang berpotensi menimbulkan pembubaran prematur bank yang secara ekonomi masih layak. Tujuan penelitian adalah melakukan pendekatan epistemologis dan normatif terhadap regulasi kepailitan Bank BUMN di Indonesia, melalui analisis uji insolvabilitas dengan pendekatan hukum perbandingan, serta memperdalam konsep epistemic failure menggunakan kerangka filosofi hukum Lon Fuller. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan komparatif, di mana norma dan prinsip hukum dianalisis melalui metode interpretasi hermeneutik. Hasil penelitian menunjukkan bahwa kerangka regulasi kepailitan di Indonesia saat ini gagal membedakan secara konseptual dan operasional antara insolvabilitas neraca dan insolvabilitas arus kas. Kegagalan tersebut mengakibatkan pembubaran prematur terhadap bank-bank BUMN yang sejatinya masih sehat secara ekonomi, serta mempertegas inkonsistensi normatif antara UUK-PKPU dan UU PT. Hukum kepailitan Indonesia masih berorientasi pada likuidasi berbasis formalitas procedural, berbeda dengan pendekatan Uni Eropa dan negara-negara common law yang menempatkan mekanisme penyelamatan dan rehabilitasi sebagai respons utama terhadap kesulitan likuiditas. Artikel ini berkontribusi pada penguatan argumentasi perlunya harmonisasi regulasi dan adopsi dual insolvency test untuk membedakan kesulitan likuiditas dari insolvabilitas struktural, serta guna melembagakan mekanisme penyelamatan dan jalur rehabilitasi sebagai prioritas sebelum likuidasi dalam hukum kepailitan Indonesia.

Keywords: *epistemology, persero, state-owned bank, insolvency.*

Introduction

Indonesia's regulatory approach to the insolvency of state-owned banks (SOEs) in the form of Persero is marked by a unique epistemological and normative inconsistency. State-owned banks in Indonesia serve as essential instruments in advancing national development, especially by channelling state capital to strategic sectors such as infrastructure, mining, and telecommunications. These institutions, often established as *Persero* type State-Owned Enterprises (SOEs), embody dual functions: pursuing profit and upholding public interest. However, this hybrid nature presents a regulatory dilemma when such banks encounter financial distress. SOEs are referred to as *Public Enterprises* which contain elements of Government

(*Public*) and business elements (*enterprise).*[1] BUMN has been clearly regulated in Article 1 Number 1 of Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law) which states that business entities whose capital ownership is wholly or mostly owned by the State which is directly equalized through separated State assets.[2] The BUMN Law also regulates the form of a *Persero* to be subject to all the provisions and principles governing Limited Liability Companies (PT) which have been regulated in Law Number 40 of 2007 concerning Limited Liability Companies, but the difference lies in the shareholder, namely the Government.[3]

Under Indonesia's Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (*UUK-PKPU*), SOEs that operate in the public interest and are wholly owned by the state (*PERUM*) are protected from arbitrary bankruptcy filings, as only the Minister of Finance may initiate such proceedings (Article 2 paragraph 5). In contrast, *PERSERO* SOEs which are formally limited liability companies with majority but not total state ownership are subject to ordinary bankruptcy rules, rendering them vulnerable to legal dissolution initiated by private creditors. This legal inconsistency generates significant uncertainty for public institutions operating as corporations. More critically, Indonesia's insolvency regime lacks conceptual clarity in distinguishing between *cash flow insolvency* temporary liquidity shortfalls and *balance sheet insolvency* a state where liabilities exceed assets. The failure to apply insolvency tests in bankruptcy procedures allows solvent yet illiquid companies to be declared bankrupt. Consequently, viable SOE banks may face premature dissolution, not because of economic unviability, but due to procedural rigidity and legal misinterpretation. Once declared bankrupt, these institutions are subject to automatic dissolution and liquidation under Article 142 of the Company Law (*UU PT*), even though their balance sheets remain fundamentally sound.

The absence of integrated legal safeguards such as restructuring frameworks, rehabilitation mechanisms, and going concern models further exacerbates the risk. Although *UUK-PKPU* provides for restructuring through *PKPU* proceedings, such mechanisms often fail due to formalistic requirements and the absence of credible creditor protections. Moreover,

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[1] Panji Anoraga, *State-Owned Enterprises, Private Enterprises and Cooperatives: Three Economic Actors*, (Jakarta: Dunia Pustaka Jaya ,1995), 1.

[2] Article 1 Number 1 of Law Number 19 Year 2003 concerning State-Owned Enterprises, State Gazette of the Republic of Indonesia Year 2003 Number 70.

[3] Panji Anoraga, *State-Owned Enterprises, Private Enterprises and Cooperatives: Three Economic Actors*, 2.

corporate rescue is rarely pursued, as neither the Bankruptcy Law nor the Company Law accommodates a full-fledged rehabilitation scheme for state-owned financial entities. This legal vacuum reflects a deeper epistemic issue: the laws governing bankruptcy and corporate dissolution rest on outdated assumptions that do not reflect contemporary economic realities or institutional complexities.

Empirical evidence underscores the vulnerability of this framework. Bank Dagang Bali (BDB) was a small private bank whose license was revoked by Bank Indonesia/OJK in mid-2004 after evidence of fraud. By June 2003 BDB's Capital Adequacy Ratio (CAR) had fallen below the 6% minimum and was negative. Its massive nonperforming loans (mostly to fictitious firms) caused this collapse. The Finance Ministry later liquidated BDB (and other banks) for "gagal bayar" (insolvency). This case illustrates a bank closed under regulation for financial irregularities (CAR breach)[4] rather than any question of viability; it had virtually no capital cushion by the time of shutdown. Bank Pembiayaan Rakyat Syariah (BPRS) Gebu Prima (Medan) was a small Islamic rural bank. OJK placed it under special supervision in May 2024 for failing capital/health requirements and by March 2025 it escalated to *Bank Dalam Resolusi*. On 17 April 2025 OJK revoked Gebu Prima's license (Dewan Komisioner KEP-23/D.03/2025) and LPS moved to liquidate it. OJK had noted shareholders' remediation plan (BDP status) failed, so no viable turnaround was found. (No exact CAR/NPL data are published, but its quick move from "sehat" to "tidak sehat" and resolution status suggests serious shortfalls.) Gebu Prima's closure shows even a bank whose shareholders tried recapitalization can be shut down once it breaches regulatory thresholds.[5]

PT BPR Disky Surya Jaya (North Sumatra) faced a similar fate. OJK put it into "Bank Dalam Penyehatan" status in Aug 2024 because its CAR had dropped below 12% and overall health was "tidak sehat". In July–Aug 2025, after owners failed to cure the deficits, OJK revoked its license (KEP-58/D.03/2025 on 19 Aug 2025) and LPS began liquidation. Key metric: CAR under regulatory minimum (no value stated but cited as "under 12%". Disky's case likewise shows a bank shut down for failing capital adequacy and liquidity rules; again, this was done via regulatory process despite any remaining book equity. PT BPR Dwicahaya Nusaperkasa (East Java) was

[4] https://news.detik.com/berita/d-418171/sidang-korupsi-rp-1-3-t-bank-dagang-bali-digelar, accessed 23 October 2025.

[5]https://beritaperbankan.id/ojk-tutup-tiga-bank-sepanjang-2025-lps-siapkan-proses-likuidasi-dan-bayar-simpanan-nasabah, accessed 23 October 2025.

declared troubled in late 2024. OJK noted its CAR had fallen below 12% and its cash ratio averaged only ~5% over three months (well under regulatory requirements). It was formally classified as Under Rehabilitation in Nov 2024. Despite management's recapitalization efforts, by July 2025 OJK concluded the bank could not be saved: its license was revoked (OJK KEP-47/D.03/2025) and LPS took over liquidation. Key financials: CAR under regulatory floor and critically low liquidity (~5% cash ratio). This case was closed on "bank cannot be recovered" grounds essentially a cash-flow/capital problem even though on paper the bank still held assets; it was deemed unviable to operate under the law.[6]

A contrasting example is Bank Papua (BPD Papua), a provincial government-owned bank. In 2017 it had the highest NPL ratio of any Indonesian bank (around Rp359 billion in bad loans from two defaulters). However, the OJK publicly declared its liquidity position was sound and urged depositors *not* to withdraw funds. Intensive oversight and new management were put in place, and no bankruptcy proceedings were initiated. (OJK spokesman Misran Pasaribu said "liquidity is safe" despite the NPLs) In other words, a state-linked bank with very poor asset quality was rescued through support rather than liquidated. This highlights the contrast: viable operations (good liquidity) saved BPD Papua, whereas smaller banks with rule-book breaches were shut[7]. Notably, the financial resilience of major state-owned banks suggests that some entities facing short-term liquidity issues are far from insolvent in economic terms. Reports from the Financial Services Authority (OJK) and Bank Indonesia (BI) indicate that Capital Adequacy Ratios consistently exceed 20% and Non-Performing Loan ratios remain below 3%, well above prudential requirements. Yet, under the current UUK-PKPU regime, such banks could be legally dissolved if unable to meet procedural debt maturity requirements, regardless of underlying solvency.

From the perspective of legal epistemology, the misalignment between *UUK-PKPU* and the Company Law (*UU PT*) reflects a deeper epistemic failure in Indonesia's legal system. The regulation of bankruptcy assumes a purely positivist framework relying on formal definitions, statutory thresholds, and procedural triggers without sufficient engagement with the substantive financial condition of the debtor, such as distinctions between

[6] https://beritaperbankan.id/ojk-tutup-tiga-bank-sepanjang-2025-lps-siapkan-proses-likuidasi-dan-bayar-simpanan-nasabah, accessed 23 October 2025.
[7] https://www.medcom.id/ekonomi/mikro/nN9V2W5b-likuiditas-aman-ojk-imbau-nasabah-tidak-tarik-dana-bpd-papua, accessed 24 October 2025.

cash flow insolvency and *balance sheet insolvency*. This reflects a *detachment between legal form and economic reality*; an issue long debated in the philosophy of law. Based on Gustav Radbruch's postulate, the law must reconcile three key values: justice, certainty, and utility (*Rechtssicherheit, Gerechtigkeit, Zweckmäßigkeit*). The Indonesian bankruptcy regime currently overemphasizes legal certainty through rigid proceduralism at the expense of justice and economic utility. A company may be declared bankrupt and dissolved not because it lacks economic viability, but because it fails to meet procedural thresholds under Article 2(1) UUK-PKPU. This results in a *formal justice* approach that undermines *substantive justice* where viable companies, including SOE's banks serving the public, are liquidated despite still being capable of recovery. Furthermore, from a Dworkinian interpretive lens, law must be treated not merely as a system of rules but as a manifestation of principles including fairness, proportionality, and protection of legitimate expectations. The automatic dissolution of viable state-owned banks due to technical insolvency fails to reflect the principle of fairness, especially when the state's interest and broader economic impact are disregarded.

Additionally, Fuller's inner morality of law, which includes the principles of clarity, coherence, and congruence between law and its application, is also relevant. The disjunction between *UUK-PKPU* and *UU PT* particularly the failure to integrate a rehabilitation path for SOEs violates these inner moral standards by creating incoherent and conflicting obligations for public corporate debtors. Considering these philosophical considerations, the issue at hand is not merely regulatory but epistemological. The bankruptcy regime, in its current form, constructs a legal "truth" that equates procedural compliance with insolvency, thereby justifying dissolution. This epistemic construct fails to accommodate the ontological condition of modern public corporations that are viable, socially necessary, and economically strategic. This article undertakes an epistemological and normative inquiry into Indonesia's bankruptcy regulation of SOE banks in the form of *Persero*. A comparative law analysis of how insolvency tests (cash flow vs balance sheet) are applied in the EU, specifically regarding state-owned or public banks. A deeper elaboration of the concept of "*epistemic failure*" using Lon Fuller's legal philosophy especially his framework of the inner morality of law to highlight its difference from ordinary normative flaws.

Previous studies on bankruptcy and insolvency of state-owned enterprises (SOEs) in Indonesia have predominantly adopted a doctrinal and

normative perspective, focusing on statutory interpretation and sectoral regulation. Much of the literature examines the tension between Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) and Law No. 40 of 2007 on Limited Liability Companies (UU PT), particularly concerning the vulnerability of Persero-type SOEs to bankruptcy petitions initiated by private creditors. These articles generally conclude that the current legal framework insufficiently protects SOEs performing public functions and recommend regulatory harmonization or special procedural safeguards for state-owned entities. Several scholars have explored bankruptcy within SOE holding structures, emphasizing corporate group liability, state ownership, and the ambiguity of public versus private legal status. This line of research highlights structural weaknesses in Indonesian corporate law but tends to treat insolvency as a legally given condition rather than a contested economic concept. As a result, insolvency is often assumed to justify liquidation once procedural requirements under Article 2(1) UUK-PKPU are met, without interrogating whether such legal conclusions correspond to the debtor's actual financial condition.

Comparative studies in the Indonesian context have largely relied on civil law jurisdictions, particularly European Union frameworks, to argue for stronger restructuring mechanisms and preventive restructuring models. While these works contribute valuable institutional insights, they remain focused on regulatory design and compliance, leaving unexamined the deeper conceptual assumptions that inform how insolvency is legally constructed and operationalized. The distinction between cash-flow insolvency and balance-sheet insolvency is frequently mentioned yet rarely developed as a foundational epistemological problem within bankruptcy adjudication. In contrast, extensive literature from common law jurisdictions especially the United Kingdom and the United States demonstrates a more nuanced understanding of insolvency as a spectrum of financial distress rather than an automatic indicator of economic failure. Studies on UK insolvency law emphasize the functional separation between cash-flow insolvency and balance-sheet insolvency, alongside the prioritization of corporate rescue through administration and restructuring mechanisms. Similarly, U.S. scholarship on Chapter 11 bankruptcy underscores the primacy of the going concern principle and rejects the equation of default with corporate death. However, these insights have not been systematically integrated into Indonesian bankruptcy scholarship, particularly in relation to state-owned banks.

Notably, existing research has not approached the dissolution of viable SOE banks through the lens of legal epistemology. The way insolvency is "known," defined, and validated within Indonesian law namely through procedural triggers detached from economic substance has largely escaped critical examination. Consequently, the normative conflict between UUK-PKPU and UU PT is often treated as a technical legislative flaw, rather than as an epistemic failure that shapes judicial reasoning, institutional behaviours, and systemic outcomes. This article seeks to move beyond doctrinal reconciliation by interrogating the epistemological foundations of bankruptcy regulation for Persero-type state-owned banks. By integrating legal philosophy with comparative analysis across civil law and common law systems, this study positions itself distinctly from prior research and addresses a conceptual gap that has thus far remained unexplored.

This article departs from prevailing doctrinal analyses by framing the dissolution of viable state-owned banks not merely as a regulatory inconsistency, but as an *epistemic failure* in insolvency law where legal cognition conflates procedural default with economic collapse. By integrating Lon Fuller's inner morality of law with a comparative insolvency analysis across civil law and common law systems, this study offers a novel reconstruction of bankruptcy epistemology that challenges the liquidation-centric paradigm embedded in Indonesian insolvency regulation.

Research Methods

This research used a normative juridical approach, focusing on the analysis of legal norms and principles derived from statutory regulations and doctrinal legal theories. As a doctrinal legal study, the research aims to identify inconsistencies, normative gaps, and epistemological misalignments in the regulation of bankruptcy for state-owned banks, particularly those established as *Persero* entities.[8] Two primary legal approaches are utilized: (1) Statute Approach: This method involves the systematic examination of relevant legal instruments, including Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (*UUK-PKPU*), Law No. 40 of 2007 on Limited Liability Companies (*UU PT*), and Law No. 19 of 2003 on State-Owned Enterprises (*UU BUMN*). The analysis focuses on the interaction and conflicts among these statutes, particularly in their

[8] Peter Mahmud Marzuki, *Legal Research* (Jakarta: Prenada Media Group, 2007), for a comprehensive explanation of doctrinal research as a normative method in legal.

application to corporate insolvency and dissolution procedures.[9] (2) Conceptual and Philosophical Approach: In cases where statutory interpretation alone is insufficient to resolve legal ambiguities, the research applies legal doctrines and theories derived from jurisprudential thought, including epistemology, legal hermeneutics, and the philosophy of justice.[10]

The analytical technique employed is hermeneutic interpretation, which seeks to uncover the underlying meanings, assumptions, and normative constructions within legal texts. This method allows the researcher to interpret statutory provisions not only in their literal form but within their broader economic, institutional, and philosophical contexts.[11] Primary legal materials include statutes, judicial decisions, and official government documents, while secondary materials consist of academic journals, books, and commentaries by legal scholars. These sources are critically examined to formulate a coherent argument for legal reform and to propose a more just and effective framework for the insolvency of state-owned banks.

Discussion

Epistemology of Bankruptcy Arrangements for State-Owned Bank Group Companies.

Epistemology in the context of SOE bankruptcy arrangements is not directly related to epistemology, which is a branch of philosophy that studies knowledge. However, in the context of law and regulation, we can discuss aspects related to legal knowledge and SOE bankruptcy arrangements. SOE bankruptcy arrangements are governed by Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations. This law stipulates that SOEs that are engaged in the public interest and wholly owned by the state can only be bankrupted by the Minister of Finance. The authority to file for bankruptcy of SOEs is very limited. Only the Minister of Finance is authorized to file a bankruptcy petition against an SOE whose entire capital is owned by the state. If the shares of the SOE are not wholly owned by the state, then this authority is different and must be regulated under the Bankruptcy Law.

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[9] *Statute analysis is a fundamental tool in legal research, particularly in systems with codified laws such as Indonesia*

[10] Conceptual legal approaches are crucial when laws are ambiguous, incomplete, or contradictory; see Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali, 1985).

[11] Hermeneutic analysis is common in interpretive legal research to reveal implicit assumptions within legal texts

The current bankruptcy legal framework in Indonesia, as stipulated in Law No. 37 of 2004 (*UUK-PKPU*), creates a regulatory vacuum for *Persero*-type State-Owned Enterprises (SOEs). Article 2(5) of the UUK-PKPU restricts bankruptcy petitions for certain public-interest SOEs to the Minister of Finance[12]. However, this provision applies only to *PERUM*, SOEs whose capital is entirely owned by the state. Meanwhile, *Persero* entities, although majority-owned by the government, are treated under the same regime as private corporations and may be subject to bankruptcy by any qualified creditor[13] This legal asymmetry is problematic, especially for state-owned banks that despite their formal classification function in practice to serve national economic interests. The lack of explicit protections exposes viable yet temporarily illiquid SOE banks to arbitrary bankruptcy and liquidation, disregarding their economic and public utility[14].

Discussing restructuring as a *premium remidium* aims to provide a reasonable grace period and ratelessness activities for debtors who are still *viable* and only experiencing *cash flow insolvency*, where through the provision of grace periods and continuing the business, it is hoped that the debtor will be able to meet the payment of overdue debts and can be collected to the maximum as a result of the *income* he gets, rather than having his assets liquidated through a bankruptcy mechanism.[15] Through restructuring, the company is expected not to be declared bankrupt and not to have its assets liquidated, because it is not feasible to bankrupt corporate debtors who are

[12] Article 2(5) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UUK–PKPU), *State Gazette of the Republic of Indonesia No. 131 of 2004, Supplement No. 4443*, which provides that a bankruptcy petition against State-Owned Enterprises operating in the public interest may only be filed by the Minister of Finance. In practice, this provision has been interpreted as applying exclusively to Public Enterprises (PERUM), whose capital is wholly owned by the state.

[13] Article 1(2) and Article 11 of Law No. 19 of 2003 on State-Owned Enterprises, *State Gazette of the Republic of Indonesia No. 70 of 2003, Supplement No. 4297*, in conjunction with Law No. 40 of 2007 on Limited Liability Companies, which stipulates that Persero-type SOEs are subject to the general corporate law regime. Consequently, Persero entities may be subjected to bankruptcy proceedings initiated by any qualified creditor under the general provisions of the UUK–PKPU.

[14] See also OECD, *State-Owned Enterprises and the Principle of Public Interest* (OECD Publishing, 2015), emphasizing that insolvency regimes for state-owned enterprises should account for public service obligations and systemic importance, particularly in the financial sector, to avoid value-destructive liquidation of economically viable but temporarily illiquid entities.

[15] M. Hadi Subhan, *Hukum kepailitan: prinsip, norma, dan praktik di peradilan* (Jakarta: Kencana 2009), 134.

still *viable* and only experience *cash flow insolvency*.[16] This is because the economic activities of the debtor are still efficient, but are poorly managed by its management, resulting in a deficit of cash outflows with cash inflows, which causes the debtor to be unable to pay its matured debts. For such debtors, restructuring should be accommodated so that the debtor is able to regain income and stay alive.[17]

In recent years several Indonesian state-owned banks (Persero-type) faced temporary cash-flow squeezes while remaining fundamentally solvent. For example, in September 2025 the government placed Rp200 trillion in special deposits across the five "HIMBARA" state banks to bolster liquidity[18]. Under that program Bank Mandiri, BRI and BNI each received Rp55 trillion, BTN Rp25 trillion and the state Islamic bank BSI Rp10 trillion[19]. Bank executives emphasized these were prudential liquidity measures, not signs of insolvency. The funds "will strengthen BRI's liquidity" and enable more lending to priority sectors. BNI's Corporate Secretary Okki Rushartomo likewise noted that with the Rp55 trillion injection, BNI's "financing capacity will become larger" for productive sectors[20]. In each case the banks' capital positions remained strong (e.g. regulatory capital ratios well above minimums) and their assets still exceeded liabilities; they simply needed more cash to honour incoming credit demands. In short, these state banks had *liquidity shortages* but no balance-sheet insolvency – the government support and active OJK supervision helped them avoid bankruptcy. Other smaller examples exist. For instance, in 2024 OJK placed dozens of troubled rural banks under "rehabilitation" status for failing capital or liquidity metrics, then oversaw mergers or liquidations before insolvency worsened.[21] In each case OJK's action hinged

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[16] This is similar to the legal considerations of the Judges of Judicial Review in Decision No. 024PK/N/1999, which is described as follows:
"*The potential and prospects of the debtor's business must also be considered properly. If the debtor still has potential and prospects, so that it is a bud that can still develop, it should still be given the opportunity to live and develop. Therefore, the imposition of bankruptcy is the ultimum remidium."*

[17] Subhan, *Hukum kepailitan: prinsip, norma, dan praktik di peradilan,* 203.

[18]https://www.ayobatang.com/umum/3715939892/likuiditas-bri-makin-kuat-pemerintah-percayakan-dana-rp55-triliun, accessed 24 October 2025.

[19]https://keuangan.kontan.co.id/news/btn-optimistis-penempatan-dana-pemerintah-rp-25-triliun-bisa-terserap-optimal, accessed 23 October 2025.

[20]https://mediaindonesia.com/ekonomi/811083/dapat-rp55-triliun-dari-pemerintah-bni-salurkan-ke-umkm-dan-sektor-produktif, accessed 23 October 2025.

[21] https://finance.detik.com/moneter/d-8104913/ojk-cabut-izin-usaha-bpr-syariah-gayo-ini-alasannya, accessed 24 October 2025.

on risk indicators (see below), and any capital shortfalls were ultimately covered (e.g. by shareholders or LPS), preserving positive net worth.

Restructuring can be done either without involving the court, or vice versa, namely with the participation of the court, which is usually called the Debt Payment Obligation Delay Application (PKPU).[22] One form of restructuring without court intervention is credit restructuring, which in practice is often used in the banking sector, which only involves the customer as a debtor with the bank, and utilizes agreements and agreements between the parties.[23] However, in relation to internal legal protection, it is more appropriate if the restructuring is interpreted as a restructuring carried out without the participation of the court, which is similar in nature and example to credit restructuring in banking practice.

Restructuring through PKPU although the existence of a peace proposal as the core of PKPU reflects the principle of freedom of contract and is in the form of an agreement that must be agreed upon by the debtor and creditors, but in order for the agreed peace proposal to bind the parties and cause legal consequences for the parties, it must go through the homologation procedure by the Commercial Court.[24] Because it must be homologated by the Commercial Court, there is a possibility that if the debtor and creditor have agreed on a peace proposal, but it turns out that the Commercial Court did not homologate the peace proposal,[25] so it can be understood that the creation of legal protection for the parties is through the

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[22] Hasdi Hariyadi, Debt Restructuring as an Effort to Prevent Bankruptcy in Limited Liability Companies. *Journal of Law*, 1(2), 119-135. https://jurnal.penerbitsign.com/index.php/sjh/article/view/v1n2-119-135.

[23] Sutan Remy Sjahdeini, *Hukum Kepailitan : Memahami Undang-Undang No.37 Tahun 2004 Tentang Kepailitan*, (Jakarta: Pustaka Utama Grafiti, 2009), 173.

[24] Susanti Adi Nugroho, *Hukum Kepailitan Di Indonesia: Dalam Teori dan Praktik Serta Penerapan Hukumnya* (Prenadamedia Grup, 2018), 298.

[25] Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. State Gazette of the Republic of Indonesia Year 2004 Number 131. Supplement to State Gazette Number 4443. Article 285 paragraph (2) of Law No. 37 of 2004 concerning Bankruptcy and PKPU, reads as follows:

"a. The debtor's assets, including property for which the right to withhold property is exercised, are substantially greater than the amount agreed in the settlement;

b. the implementation of the peace is not sufficiently secured;

c. the settlement was reached through fraud or collusion with one or more Creditors or through the use of other dishonest means and regardless of whether the debtor or other parties co-operated to achieve this; and/or

d. compensation for services and expenses incurred by experts and administrators have not been paid or no guarantee has been given for their payment."

homologation of the Commercial Court[26] and not the agreement of the parties, which is not in accordance with the elements of internal legal protection, which bases the creation of legal protection through the agreement of the parties.

Restructuring in addition to preventing debtors who experience *cash flow insolvency* and are still *viable* from being declared bankrupt, will indirectly prevent the company from being dissolved, liquidated, and terminated its legal entity existence, because without bankruptcy for the company, insolvency will not occur (keep in mind, the determination of insolvency is carried out after the debtor company is declared bankrupt), meaning that the provisions of Article 142 paragraph (1) letter e of the PT Law as an opening way for the process of terminating the company's existence will not accommodate the elements of circumstances that result in the dissolution of the company. Companies that experience *cash flow insolvency* and are still *viable* can continue their business activities and continue to contribute to the development of the national economy.

However, it is important to note that restructuring is based on an agreement that must be agreed upon by the parties (debtor and creditor). Sometimes a debtor who is experiencing *cash flow insolvency* and is still *viable* has made a good faith offer to restructure his debts to his creditors, but the offer is not agreed upon by his creditors, especially if those who do not agree are creditors whose portion of receivables is minimal compared to the portion of receivables of other creditors, where in addition to harming the interests of the debtor, it also harms the interests of other creditors, especially those with a larger portion of their receivables.[27] Such creditors also have an interest in the company's debtors continuing to operate and not being liquidated, because the fulfilment of their debts will be more optimal than if the company is liquidated.

Against the potential of creditors with a minimal portion of receivables who deliberately do not agree to the proposed payment offer because their goal is to bankrupt their debtor, external legal protection is needed here, in the form of regulations made by the government. Specifically, the government can formulate a minimum amount of debt that

[26] This is what distinguishes peace in bankruptcy from peace in HIR/RBg, because peace in bankruptcy has the intervention of the Commercial Court and can be assessed by the Commercial Court.

[27] The disadvantage is in the case of creditors with a minimal portion of receivables, if they do not agree to the payment offer proposed by their debtors, then these creditors can file a bankruptcy petition against their debtors, because UUK-PKPU does not require a minimum amount of debt as a basis for filing a bankruptcy petition.

can be used as a basis for filing a bankruptcy petition. In fact, this issue has been addressed in the preparation of an academic paper related to the amendment of UUK-PKPU.[28] If there is a regulation regarding the minimum amount of debt that can be used as a basis for filing a bankruptcy petition, then this will be able to better protect the interests of debtors and creditors, so that restructuring efforts made by debtors can prevent debtors from bankruptcy and creditors with a minimal portion of receivables will indirectly be directed to resolve their debts through restructuring, in the form of *rescheduling* or *reconditioning*.

There is also the potential for creditors to deliberately reject restructuring offers from debtors, due to business competition between the two, so that creditors have an interest in making the debtor bankrupt.[29] It can be seen here that restructuring efforts, which are expected to be a legal protection for debtors who are still *viable* and experiencing *cash flow insolvency*, are not as expected, because creditors often take advantage of their higher *bargaining power* than debtors, so that restructuring is not achieved or implementation fails in the middle of the road, which ultimately results in the debtor being declared bankrupt.

To overcome the above problems, external legal protection is needed, in the form of making changes to Article 8 paragraph (4) of the UUK-PKPU[30] , these changes are in the form of not imperatively requiring Commercial Court judges to grant the submitted bankruptcy declaration, even though Article 2 paragraph (1) of the UUK-PKPU has been proven simply, because Article 8 paragraph (4) of the UUK-PKPU limits the judge's authority to make considerations in deciding the debtor's bankruptcy.[31] By

[28] There is a proposal to set the minimum application value to Rp 500,000,000 (five hundred million rupiah) per application

[29] Hasdi Hariyadi, Debt Restructuring as an Effort to Prevent Bankruptcy in Limited Liability Companies. *Journal of Law*, 1(2), 119-135. https://jurnal.penerbitsign.com/index.php/sjh/article/view/v1n2-119-135.

[30] Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. State Gazette of the Republic of Indonesia Year 2004 Number 131. Supplement to State Gazette Number 4443. Article 8 paragraph (4) of Law No. 37 of 2004 concerning Bankruptcy and PKPU, reads as follows:
'(4) An application for a declaration of bankruptcy must be granted if there are facts or circumstances that are proven simply that the requirements for a declaration of bankruptcy as referred to in Article 2 paragraph (1) have been fulfilled'.

[31] Pirena Putri, Revita and Endang Prasetyawati., The Urgency of Setting the Minimum Debt Principle as a Condition of Bankruptcy for Debtors. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 3(1), 507-517. https://bureaucracy.gapenas-publisher.org/index.php/home/article/view/197.

making changes, this aims to provide more space for judges to be able to consider the debtor's financial condition or ratio, so that in the event that there are creditors who are in bad faith, by taking advantage of bankruptcy institutions to deliberately bankrupt debtors who experience *cash flow insolvency* and are still *viable* as a result of business competition, such potential can be minimized. Not only that, but the judge can also order restructuring efforts to settle debts and receivables between the two parties.

In addition, restructuring may not occur or not reach an agreement, due to errors or omissions from debtors who experience *cash flow insolvency* and are still *viable*. Restructuring does not occur because the debtor does not respond in good faith when the creditor has taken the initiative to hold a meeting to negotiate payment plans that benefit both parties (usually this meeting plan is included in the summons sent by the creditor to the debtor), even though the implementation of restructuring is very important for debtors who experience *cash flow insolvency* and are still *viable*. Meanwhile, restructuring does not meet an agreement, either because during the negotiation process, the debtor proposes a payment offer that does not protect creditors, or there is negligence from debtors who experience *cash flow insolvency* and are still *viable* to provide assurance of the fulfilment of the proposed payment offer.

Through the obstacles encountered in the restructuring implementation effort, it resulted in debtors, especially debtors who experienced *cash flow insolvency* and were still *viable*, not being able to take maximum advantage of the restructuring as legal protection, which in the end, the debtor was bankrupted and was in a state of insolvency because it fulfilled Article 178 paragraph (1) of UUK-PKPU, which means that at the same time the company has been in the status of a company "in liquidation" so that there are no provisions or circumstances that can stop the process of dissolution, liquidation, leading to the revocation of the existence of the company's legal entity. This also further proves that there are several weaknesses in the UUK-PKPU arrangement and also as a reinforcement if the bankrupt and insolvent company is not necessarily the company that factually experiences *balance sheet insolvency* and is not prospective, so it is not feasible if the bankrupt and insolvent company is automatically faced with a state of dissolution, liquidation, and termination of the existence of a legal entity.

BUMN Bank in the form of Persero as a *recht persoon* can be clearly interpreted through the process of establishment and termination of its existence as a legal entity that cannot be separated from the provisions of

Law No. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law). Through the definition of a limited liability company which is expressly stated in Article 1 number 1 of the PT Law[32], it can be seen that the establishment of a limited liability company must fulfil the provisions stipulated in the PT Law and its implementing regulations, not only that, so that a limited liability company can hold the status of a legal subject besides humans (*natuurlijke persoon*), the company's deed of establishment must be ratified by the state, which in this case is represented by the Minister of Law and Human Rights and the limited liability company holds the status of a legal entity since the issuance of the Decree of the Minister of Law and Human Rights concerning the Ratification of the Company's Legal Entity.[33] This shows that the birth or establishment process of a limited liability company must go through a predetermined legal step or process.

Not much different from the birth process (in this case the establishment) of a limited liability company, the cessation of the existence of a limited liability company must also go through a legal step or process that has been expressly regulated through Chapter X of the Company Law on Dissolution, Liquidation, and Termination of the Status of a Company Legal Entity.[34] When described, the death of a limited liability company as a legal entity must go through 3 (three) processes that are interconnected with each other to form an integrated whole, namely dissolution, liquidation, and termination of the status of a limited liability company. Without one of the three processes, there will be no termination of the status of a limited

[32] Law of the Republic of Indonesia Number 40 Year 2007 on Limited Liability Companies. State Gazette of the Republic of Indonesia Year 2007 Number 106. Supplement to State Gazette Number 4756. Article 1 number 1 of Law No. 40 of 2007 on Limited Liability Companies reads as follows:

'A Limited Liability Company, hereinafter referred to as a Company, is a legal entity constituting an alliance of capital, established by agreement, conducting business activities with authorised capital which is entirely divided into shares and fulfils the requirements set out in this Law and its implementing regulations.'

[33] Law of the Republic of Indonesia Number 40 Year 2007 on Limited Liability Companies. State Gazette of the Republic of Indonesia Year 2007 Number 106. Supplement to State Gazette Number 4756. Article 7 paragraph (4) of Law No. 40 of 2007 on Limited Liability Companies reads as follows:

'The Company obtained the status of a legal entity on the date of issuance of the Decree of the Minister of Law regarding the legalisation of the Company's legal entity'

[34] Priscila Patricia Yosephin, Juridical Analysis of the Dissolution of a Non-Operating Limited Liability Company (PT). *Recital Review*, 3(2), 2021, 314-330. https://online-journal.unja.ac.id/RR/article/view/15290/12520. .

liability company, which means that each of these processes, apart from being related to each other, also stands on its own, the liquidation phase cannot be equated with the dissolution phase, as well as the dissolution phase cannot be equated with the termination of the status of the company's legal entity.[35]

The Company Law does not regulate the definition of dissolution, liquidation, and termination of legal entity status, resulting in many mistakes in understanding the process of death of a limited liability company.[36] One example is through the definition and process of liquidation which is equated with the dissolution of the company, whereas liquidation is not always a result of dissolution, but can also be a result of bankruptcy. Then the liquidation process is only accommodated after being preceded by the dissolution of a limited liability company, this proves that the dissolution and liquidation processes are 2 (two) different processes.[37] Even Article 1 point 14 of PP No. 45 of 2005 concerning the Establishment, Management, Supervision, and Dissolution of BUMN, basically equates the term dissolution with the termination of a PERSERO.[38] Whereas when examined from the provisions of the PT Law, especially Article 143 paragraph (1) of the PT Law, it is clear that dissolution does not touch the status of a limited liability company legal entity, so dissolution cannot be equated with termination.

Dissolution is more appropriate when defined as a process that aims to stop the business activities of the company and as a basis for conducting liquidation actions that lead to the disappearance of the company's legal entity status.[39] There are 2 (two) things behind the dissolution of the company, namely due to the voluntary process and due to external circumstances. The voluntary process here refers to the dissolution of a limited liability company due to the decision of the GMS or the expiration of

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[35] Andhika Prayoga, *Solusi Hukum Ketika Bisnis Terancam Pailit Bangkrut* (Jakarta: Pustaka Yustisia, 2014), 3.

[36] Rudhi Prasetya*, Limited Liability Company Theory and Practice,* (Jakarta: Sinar Grafika, 2021), 161.

[37] Article 142 paragraph (2) letter a of Law No. 40 of 2007 concerning Limited Liability Companies.

[38] Government Regulation of the Republic of Indonesia Number 45 of 2005 concerning Establishment, Management, Supervision, and Dissolution of State-Owned Enterprises. State Gazette of the Republic of Indonesia Year 2005, Number 117. Supplement to State Gazette Number 4556. Article 1 number 14 reads: *'Dissolution is the termination of Persero or Perum which is determined by government regulation'*

[39] Prayoga, *Solusi Hukum Ketika Bisnis Terancam Pailit,* 12.

its term, while the external circumstances refer to a court decision or stipulation.[40] The circumstances that result in the dissolution of a limited liability company have been expressly and imitatively regulated in Article 142 paragraph (1) of the Company Law.

One of the circumstances that causes the company to be dissolved is that the company has become bankrupt and insolvent in accordance with the provisions stipulated in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as UUK-PKPU).[41] There is no provision of the PT Law that defines or regulates the insolvency situation that causes the company to be dissolved, so the regulation (insolvency regulation) refers to the provisions of Article 178 paragraph (1) of UUK-PKPU. Meanwhile, the party who conducts liquidation in the state of PT bankruptcy and insolvency is not the liquidator but the curator who has been appointed in the bankruptcy declaration decision. The curator will be supervised by the Supervisory Judge.[42] Dissolution because the company has been in a state of insolvency must refer to 2 (two) provisions, namely UUK-PKPU (insofar as it concerns the process of administration or liquidation, as a result of the company's previous state of insolvency) and the PT Law (insofar as it relates to the course of administration and announcement of the dissolution of the company along with the process of terminating the existence of the company's legal entity, because UUK-PKPU does not regulate the process of terminating the existence of a bankrupt company).[43]

If Article 142 paragraph (1) letter e of UU PT is elaborated, there are 2 (two) elements of circumstances that must first be fulfilled, before the company is in a state of dissolution, namely corporate bankruptcy (henceforth referring to limited liability companies) and insolvency. Discussing corporate bankruptcy, UUK-PKPU does not distinguish bankruptcy procedures or provisions for individual debtors and corporate debtors, this results in corporations being easier to declare bankruptcy,[44]

[40] Andhika Prayoga and Muhammad Sya'roni Rofii, Dissolution of Limited Liability Companies by the Attorney as an Effort to Strengthen National Resilience. *Scientific Journal of Law Enforcement*, 7(1), 78-87. https://mail.ojs.uma.ac.id/index.php/gakkum/article/view/3432 .

[41] Article 142 paragraph (1) letter e of Law No. 40 of 2007 concerning Limited Liability Companies.

[42] Article 152 paragraph (2) of Law No. 40 of 2007 on Limited Liability Companies.

[43] Prayoga, *Solusi Hukum Ketika Bisnis Terancam Pailit Bangkrut* , 101.

[44] Creditors can easily bankrupt a company and under the UUK-PKPU, even a small creditor can bankrupt a large company. In addition, if the debtor (company) has just 1

because the provisions of bankruptcy arrangements for corporations are basically different from individual bankruptcy.[45] One of the differences lies in the authority of the limited liability company organ that does not disappear even though the company has been bankrupted as stated in the explanation of Article 24 paragraph (1) UUK-PKPU, the limited liability company organ is still functioning, except in the implementation of these functions related to or related to the limited liability company's assets, then in carrying out these functions, it must obtain approval from the curator.[46]

Article 2 paragraph (1) of the UUK-PKPU, which regulates the requirements for filing a bankruptcy petition, only focuses on the quantity of creditors and not the quality of creditors, because without a minimum requirement for the amount of debt to be used as the basis for a bankruptcy petition, minority creditors who have a lower amount of debt than other creditors (majority creditors),[47] on the basis that their debts have matured and have not been paid in full by the debtor, making their minimal debt can be used as a basis for filing a bankruptcy petition.[48] UUK-PKPU does not require the debtor to be in a state of insolvency in order to be declared bankrupt, so it is possible for a debtor to be declared bankrupt because it fulfils Article 2 paragraph (1) of UUK-PKPU, but factually the company's assets are still greater when compared to its liabilities.[49] It is understandable if the provisions of Article 2 paragraph (1) UUK-PKPU do not provide protection to debtors who only experience *cash flow insolvency* or are still *solvable* and *viable* from the bankruptcy of the debtor.

The company being declared bankrupt does not result in the company being in a state of dissolution, because the company must first fulfil the state of insolvency which will result in the dissolution of the company. It has been previously stated that the state of insolvency refers to Article 178 paragraph (1) of UUK-PKPU. In short, UUK-PKPU places insolvency after the debtor

(one) day to pay the debt to the creditor, the creditor can file for bankruptcy. This is very risky and dangerous for the business continuity of the company. 2 (two) creditors whose debts have been paid by the debtor can be their condition for bankrupting the company.

[45] Asra, *Key Concept Kepailitan Korporasi* (Jakarta: Prenadamedia Grup, 2024), 7.

[46] Elyta Ras Ginting, *Hukum Kepailitan : Teori Kepailitan*, (Jakarta: Sinar Grafika, 2018), 253. 253.

[47] Majority creditors are those creditors holding the majority of receivables.

[48] Sjahdeini, *Hukum Kepailitan : Memahami Undang-Undang No.37 Tahun 2004 Tentang Kepailitan*, 106.

[49] Retnaningsih, Sonyendah, Legal Protection of Individual Bankrupt Debtors in the Resolution of Bankruptcy Cases in Indonesia. *Journal of Civil Procedure Law*, 3(1), https://www.jhaper.org/index.php/JHAPER/article/view/41/48, 5.

is declared bankrupt, then the determination of the state of insolvency is not based on financial statements or a comparison of the ratio of debts and assets of the debtor, but only based on the existence of a peace proposal proposed by the debtor (which if not submitted until the end of the receivables matching meeting, The UUK-PKPU does not recognize *cash flow insolvency* and *balance sheet insolvency*, even though each type of debt payment difficulty has a different solution.

Therefore, it can be understood, if a debtor (in this case referring to a limited liability company debtor) is in a state of insolvency, it does not necessarily give an assessment if the debtor has been in a state of being unable to pay debts to its creditors and the ratio of debts is greater than its assets, on the contrary, it is very likely that the debtor factually still has prospects and the ratio of its assets is still greater than its debts, but because it meets the requirements of Article 2 paragraph (1) and Article 178 paragraph (1) of the UUK-PKPU, the debtor is in bankruptcy and insolvency by law.[50] The provisions regarding insolvency in UUK-PKPU have the same weaknesses as the provisions of Article 2 paragraph (1) of UUK-PKPU, these weaknesses include the absence of protection for debtors who still have prospects (*viable*) and only experience *cash flow insolvency* or are still *solvable* from the insolvency of the debtor. Article 2 paragraph (1) of UUK-PKPU and the determination of insolvency are both far from the approach of economics and business practice. This will result in the abuse of the bankruptcy institution by creditors who are not in good faith.

A company that is declared bankrupt and insolvent does not indicate that the company has experienced *balance sheet insolvency* and it is even possible that the company (referring to the company declared bankrupt and insolvent), factually only experiences *cash flow insolvency*. With UUK-PKPU which does not always indicate that bankrupt and insolvent debtors have experienced *balance sheet insolvency*, the PT Law is faced with a state of dissolution as stipulated in Article 142 paragraph (1) letter e of the PT Law, where the state of dissolution aims to stop the business activities of the company and become the basis for conducting liquidation, as if the company that has been bankrupt and insolvent has been in a state of *balance sheet insolvency* so that it deserves dissolution.[51] Whereas UUK-PKPU does not

[50] Ginting, *Hukum Kepailitan: Teori Kepailitan*, 262.

[51] The provisions regarding *insolvency* in UUK-PKPU do not describe the debtor as being in a state of *balance sheet insolvency* because it is only based on the circumstances regulated in Article 178 paragraph (1) of UUK-PKPU, allowing debtors who are still *solvable* and *viable*

distinguish whether the company will experience *balance sheet insolvency* or *cash flow insolvency* to determine bankrupt and insolvent companies, so this will be very detrimental to corporate debtors who experience *cash flow insolvency* and are still *viable* because the corporate debtors must stop their business activities due to entering a state of dissolution, even though the business activities of the company still have prospects. [52]

Debtor companies that experience *balance sheet insolvency* or debts greater than their assets, in order to protect the interests of creditors and keep the assets of debtor companies from getting minimal, then the debtor companies (which experience *balance sheet insolvency*) are carried out to stop business activities.[53] This construction is brought by Article 142 paragraph (1) letter e of UU PT. This construction does not see the determination of bankruptcy and insolvency from UUK-PKPU which is far from the approach of economics and business practices, even UUK-PKPU does not recognize *balance sheet insolvency* and *cash flow insolvency*. If the determination of bankruptcy and insolvency in UUK-PKPU has explicitly determined that bankrupt and insolvent corporate debtors are debtors who are experiencing *balance sheet insolvency*, then the state of dissolution for the corporate debtor is a feasible situation and the last option or *ultimum remidium*, even the best option that can be applied to the condition of the corporate debtor. But if on the contrary, namely a bankrupt and insolvent corporate debtor there is still the possibility of experiencing *cash flow insolvency* but because it fulfils the legal provisions resulting in the debtor being in a state of bankruptcy and insolvency, by being faced with a condition of dissolution, it is not feasible, because dissolution or termination of business activities should be the *ultimum remidium* or the last option.

Article 142 paragraph (1) letter e of the Company Law is the result of a revision of the previous provision, namely Article 117 paragraph (1) letter c of Law No. 1 of 1995 concerning Limited Liability Companies. The

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to be declared insolvent. Where this is not in accordance with the direction of the regulation of the dissolution of a PT for reasons of *insolvency* in Article 142 paragraph (1) letter e of the PT Law, because the *insolvency* referred to in the PT Law tends to accommodate the principle of *balance sheet insolvency* because once the company is bankrupt and insolvent, the PT Law regulates that the debtor is automatically in a state of dissolution. Or it can be interpreted that the PT Law considers that debtors who are bankrupt and insolvent are debtors who experience *balance sheet insolvency* so that the PT Law provides an automatic state of dissolution since they are in a state of insolvency.

[52] Prayoga, *Hukum Kepailitan : Teori Kepailitan*, 98.

[53] Elyta Ras Ginting, *Hukum Kepailitan: Rapat-Rapat Kreditor,* (Jakarta: Sinar Grafika, 2018), 180.

difference lies in when the company is in a state of dissolution due to bankruptcy and insolvency. When referring to Article 142 paragraph (1) letter e of UU PT, the company will be in a state of dissolution, since the limited liability company that has been declared bankrupt by law fulfils one of the conditions as stipulated in Article 178 paragraph (1) of UUK-PKPU. Whereas in Article 117 paragraph (1) letter c of Law No. 1 of 1995 concerning Limited Liability Companies, the company will be in a state of dissolution, in addition to having to fulfil the conditions of bankruptcy and insolvency, it is also required that there is a request for dissolution of the company from one of its creditors to the District Court. It can be concluded that the regulation of dissolution in the Company Law is automatically applicable since bankruptcy and insolvency, while in Article 117 paragraph (1) letter c of Law No. 1 of 1995 an application is required first.

Being in a state of dissolution automatically since *insolvency*, this makes bankrupt and insolvent company debtors who only experience *cash flow insolvency*[54] and are still *viable* have no other choice but to enter a state of dissolution, even though when examined more deeply it is not feasible for the company debtor to be dissolved. If the company has fulfilled the conditions of dissolution as stipulated in Article 142 paragraph (1) of the Company Law, then there are no provisions or circumstances that can stop the process of terminating the existence of the company's legal entity until the revocation of the company's legal entity status by the Minister of Law and Human Rights.[55] Which means that the status of the company "in liquidation" cannot be revoked.[56]

The provisions of the two articles are imperative, because there is the word 'wajib' in the formulation and the provisions regarding the consequences of dissolution here are general, in the sense that whatever the circumstances behind the dissolution (as stipulated in Article 142 paragraph (1) of the PT Law) are faced with the same consequences, namely that the company must be liquidated and the company cannot perform legal acts unless the legal acts are carried out in order to support the liquidation process. In the event of dissolution, the company's obligations to third parties do not necessarily disappear, the company is still obliged to fulfil its

[54] Because this possibility is very large, because as previously explained, if UUK-PKPU does not determine whether the debtor is experiencing *balance sheet insolvency* or *cash flow insolvency*, because the determination of insolvency is by law, namely referring to Article 178 paragraph (1) UUK-PKPU.

[55] Prayoga, *Hukum Kepailitan: Teori Kepailitan*, 137.

[56] Subhan, *Hukum kepailitan: prinsip, norma, dan praktik di peradilan*, 200.

obligations to third parties, therefore in order to fulfil obligations to third parties, a process called liquidation is accommodated, because the liquidation process here is defined as the process of disbursing the company's assets into cash or *liquid* assets either by means of public sales (auction) or sales under the hand, where the proceeds of the disbursement are distributed to fulfil obligations to its creditors. [57]

Companies that are dissolved because they are in a state of bankruptcy and insolvency, in the liquidation process refer to the provisions of UUK-PKPU, because the Company Law only regulates liquidation procedures for PTs that are dissolved due to circumstances outside bankruptcy.[58] UUK-PKPU does not recognize the term liquidation, but the definition of liquidation that has been described previously has the same meaning as the definition of dissolution as stipulated in the explanation of Article 16 paragraph (1) of UUK-PKPU.[59] Before the curator conducts liquidation, the curator must first fulfil the administration of the dissolution of the company, namely within a period of 30 (thirty) days from the occurrence of the state of dissolution, the curator must announce the dissolution of the limited liability company along with the reasons and other matters that must be contained in the announcement of the dissolution to be announced in a national newspaper and the State Gazette of the Republic of Indonesia (BNRI). Evidence of the announcement is then submitted to the Minister of Law and Human Rights. Failure of the curator to perform these administrative obligations will result in the dissolution not being valid for third parties.[60] It is understandable if in addition to the curator acting to conduct the administration, the curator also acts to terminate the existence of a limited liability company.[61]

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[57] Paula, Responsibility of Limited Liability Company in Liquidation. *Journal of Kenotariatan Law Science, Faculty of Law, Padjadjaran* University. 4(2), pp. 332-349. https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/595, 335.

[58] Ginting, *Hukum Kepailitan: Teori Kepailitan*, 230.

[59] What is meant by "pemberesan" in this provision is the disposal of assets to pay or settle debts.

[60] Paula, Responsibility of Limited Liability Company in Liquidation. *Journal of Kenotariatan Law Science, Faculty of Law, Padjadjaran* University. 4(2), pp. 332-349. https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/595.

[61] The announcement of the dissolution of the company, which must be made by the curator, means that the liquidation process is not only for bankruptcy purposes, but also relates to the process of terminating the existence of a limited liability company, which begins with the dissolution, liquidation, and termination of the existence of a limited liability company.

Between Article 142 paragraph (2) letter a and Article 142 paragraph (2) letter b are connected by the word 'and', which indicates a cumulative nature, which means that the provisions of both cannot be separated from one another, in the sense that if there is liquidation, it will also result in the company only being able to carry out legal acts in the context of liquidation.[62] To find out the legal actions that can be carried out by the company, as referred to by Article 142 paragraph (2) letter b of the PT Law, must be connected to the provisions of Article 149 paragraph (1) of the PT Law.[63] But what needs to be noted, Article 149 paragraph (1) of the PT Law, only applies if the dissolution of the company occurs due to circumstances outside of bankruptcy and insolvency. The liquidation process stipulated in Article 149 paragraph (1) of the PT Law is different from the liquidation process known in bankruptcy. The liquidation process in UU PT, in fact, also includes recording and collecting the company's assets, whereas in the bankruptcy process, recording and collecting the company's assets are included in the management process. This is because in the bankruptcy process, liquidation only covers the sale of assets and their distribution to creditors. It can be understood here, although when viewed from the angle of the bankruptcy process, it turns out that there are still elements of management in the liquidation process according to Article 149 paragraph (1) of the PT Law, but the management is only limited in nature, namely the collection and recording of the company's assets.

Whereas in the case of a company dissolved due to bankruptcy and insolvency, the task of the curator is facilitated and summarized, because in a situation outside of bankruptcy and insolvency, the liquidator still has to collect and record assets, while for the curator, the task of collecting and recording has been carried out since the company was in a state of

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[62] Maria Farida Indrati, *Ilmu Perundang-undangan 1: Jenis, Fungsi, dan Materi Muatan*, (Yogyakarta: Kanisius, 2020), 220.

[63] Law of the Republic of Indonesia Number 40 Year 2007 on Limited Liability Companies. State Gazette of the Republic of Indonesia Year 2007 Number 106. Supplement to State Gazette Number 4756. Article 149 paragraph (1) of the Limited Liability Company Law reads as follows:

'(1) The liquidator's obligations in administering the assets of the Company in the liquidation process shall include implementation:

a. recording and collecting the Company's assets and debts.

b. the announcement in the Newspaper and the State Gazette of the Republic of Indonesia of the plan to distribute the liquidation proceeds.

c. payments to creditors.

d. payment of the remaining assets of the liquidation proceeds to shareholders; and

e. other actions that need to be taken in the implementation of the administration of assets.'

bankruptcy as a form of action for the management of bankruptcy assets, So that when the company is insolvent, at the same time the company is in a state of dissolution, which results in the company being unable to carry out business activities for any reason, the curator has been able to sell the company's assets that have been collected and recorded and distribute the proceeds to its creditors, because the provisions of Article 184 paragraph (1) UUK-PKPU have indirectly been fulfilled.[64]

It can be understood, if the dissolution is motivated by bankruptcy and insolvency, then Article 142 paragraph (2) letter b of the PT Law which regulates, the excluded legal actions that can be carried out by a dissolved limited liability company is to carry out actions in the context of the arrangement, then the curator in this case only remains to sell or dispose of assets that have been managed since the company was declared bankrupt and distribute the results of the arrangement. Therefore, there is an argument, if bankruptcy accelerates the process of terminating the existence of a limited liability company, because the curator has first carried out management, since the company was declared bankrupt, so that when the company is in a state of dissolution, the curator only performs the act of arrangement or liquidation, which refers to the sale or disposal and distribution of assets, in accordance with the provisions of Article 142 paragraph (2) letter b of the PT Law.

This result, when connected to the problem of bankrupt and insolvent companies, does not necessarily mean that companies that have experienced *balance sheet insolvency* will result in losses for bankrupt and insolvent company debtors who only experience *cash flow insolvency* and are still *viable*, because in addition to the company having to stop its business activities (dissolved), the company is also obliged to liquidate its assets and can only carry out legal actions in the context of liquidation. This result not only proves the series of losses (starting from being bankrupted, declared insolvent, dissolved, and liquidated) experienced by bankrupt and insolvent corporate debtors who only experience *cash flow insolvency* and are still *viable, but* also further indicates

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[64] Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. State Gazette of the Republic of Indonesia Year 2004 Number 131. Supplement to State Gazette Number 4443. Article 184 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU, reads as follows:
'(1) Subject to the provisions of Article 15 Paragraph (1), the curator shall commence the administration and sell all bankruptcy assets without the need to obtain the debtor's consent or assistance if:
a. the proposal to manage the debtor company was not submitted within the period as stipulated in this Law, or the proposal was submitted but rejected; or
b. the management of the debtor company is terminated.'

that the provisions of Article 142 paragraph (1) letter e Jo. Article 142 paragraph (2) of the PT Law generalizes that a bankrupt and insolvent company is a company that has obviously experienced *balance sheet insolvency*.

The Financial Services Authority (OJK) is mandated by law to supervise banks and pre-empt failures. Under the OJK Law (UU No.21/2011, as amended) and the Banking Law (UU No.10/1998, as amended), OJK has broad authority to assign banks' health ratings and compel corrective action. Bank regulations (e.g. POJK 15/2017 for commercial banks and POJK 28/2023 for rural banks) explicitly allow OJK to designate a troubled bank as "under rehabilitation" or "Special Surveillances," and require turnaround plans. OJK circulators (e.g. SEOJK No.11/2022) set the rating criteria (capital adequacy, asset quality, liquidity, etc.) that trigger supervisory status changes.

In practice, OJK continuously monitors banks' metrics and issues "warning letters" or status changes when risks emerge. A recent case illustrates this closely: PT BPR Dwicahaya Nusaperkasa (a small regional bank) was put under intensive supervision after its capital adequacy (KPMM) fell below 12% and its cash ratio averaged under 5%. OJK formally designated it as "under rehabilitation" on Nov 8, 2024, and gave management time to recapitalize. When the bank failed to fix its capital and liquidity, OJK escalated the status to "under resolution" on July 9, 2025. Ultimately, after LPS intervention, OJK revoked the bank's license on July 24, 2025[65]. Throughout this sequence OJK cited its regulations: it pointed to the sub-12% capital and sub-5% cash ratios as grounds for intervention. Similarly, in late 2024 OJK revoked the license of BPR Syariah Gayo PERSERODA based on persistently low capital and cash ratios[66]. These examples show OJK exercising its legal powers: assigning "unhealthy" status, issuing demands, and if necessary, facilitating resolution or liquidation, before a full-blown insolvency arises. The cited laws (Banking Act and UU OJK) require banks to maintain sound operations and authorize OJK to enforce early warnings. For instance, POJK 15/2017 (Bank Umum) and POJK 28/2023 (BPR) empower OJK to order recapitalizations, changes in management, or mergers for undercapitalized banks. When those steps fail, OJK can elevate the bank to "resolution" and involve the Deposit Insurance Corporation (LPS).

[65] https://keuangan.kontan.co.id/news/ojk-cabut-izin-usaha-bpr-dwicahaya-nusaperkasa, accessed 23 October 2025.

[66] https://finance.detik.com/moneter/d-8104913/ojk-cabut-izin-usaha-bpr-syariah-gayo-ini-alasannya, accessed 23 October 2025.

Reconceptualizing Bankruptcy and Insolvency of State-Owned Banks: Bridging the Normative Gap between the UUK–PKPU and the Company Law Regime

The UUK-PKPU does not regulate the content of the peace proposal, which means that in relation to the peace proposal, it is left to the agreement between creditors and debtors to bargain with each other on how to pay obligations that benefit both parties.[67] Often the rejection or non-homologation of peace proposals is due to formal technical factors. In addition, there is a factor of legal vacuum regarding the assessment of the requirements if the peace proposal is sufficiently secured or not, resulting in different views from the concurrent creditors.[68]

It is understandable that reaching an agreement in a peace proposal is a mission that is not easy to do, therefore accommodating an *on-going concern* action as a last resort that can be done to continue the business of a debtor that still has prospects with the main objective being to increase the value of the bankruptcy estate or benefit its creditors.[69] Through this goal, creditors often prefer to take an *on-going concern* action rather than accept a peace proposal, because it could be that the payment term proposed in the peace proposal is too long when compared to the fulfilment of obligations when the debtor's business is continued through an on-going *concern* action. Then, both the *on-going concern* action and the peace proposal have in common that is to continue the debtor's business that is still prospective, the difference is in the status of the debtor, if the *on-going concern* action, the debtor is still in bankruptcy status and business activities are continued under the control of the curator.

Another effort that can be made by debtors who experience *cash flow insolvency* and are still *viable* is to take advantage of *going concern* actions as regulated in Articles 104, 179 paragraph (1), and 181 paragraph (1) of UUK-PKPU.[70] In short, *ongoing concern* action, also known as continuing business, is an action to save debtors whose business still has prospects, so that their business continues, which aims to obtain better *asset recovery*, where the *asset recovery* will be used to pay the receivables of concurrent creditors who are not secured by any property rights. The purpose of the *on-going concern* action

[67] Ginting, *Hukum Kepailitan: Rapat-Rapat Kreditor,* 150.
[68] Liony Gracia Chrstiani Purba, Criteria for a Sufficiently Guaranteed PKPU Peace Proposal in the Case of KSP Indosurya Cipta. *Trisakti Law Reform.* 4(3), pp. 607-616. https://e-journal.trisakti.ac.id/index.php/refor/article/view/13846.
[69] Ginting, *Hukum Kepailitan: Rapat-Rapat Kreditor,* 190.
[70] Subhan, *Hukum kepailitan: prinsip, norma, dan praktik di peradilan*, 202.

is to increase the value of liquidity, so this is a very important option for concurrent creditors to obtain maximum fulfilment of their obligations from the bankruptcy estate. An *on-going concern* action can be proposed after the debtor has been declared bankrupt (Article 104 UUK-PKPU), after the debtor has become insolvent (Article 179 paragraph (1) UUK-PKPU), or after the debtor has become insolvent as a result of the Supreme Court at the Cassation level not upholding the validation of the peace proposal that has been approved by the Commercial Court at first instance (Article 181 paragraph (1) UUK-PKPU). [71]

The closure of the possibility for corporate debtors who only experience *cash flow insolvency* and are still factually *viable*, but are declared to be in a state of insolvency by law after fulfilling Article 178 paragraph (1) UUK-PKPU, from efforts to act *on going concern*, seems to make corporate debtors forced to be dissolved and end with the elimination of the status of a limited liability company, even though it is not feasible for the corporate debtor to be dissolved. Even though in fact the bankrupt company debtor only experiences *cash flow insolvency* and is still *viable*, the debtor must still stop its business activities (dissolution) and liquidate its assets,[72] which ends with the revocation of the company's legal entity status, this further explains if there is no protection for bankrupt company debtors who only experience *cash flow insolvency* and are still *viable* from the threat of company dissolution. [73]

It is understandable if Article 142 paragraph (1) letter e Jo. Article 142 paragraph (2) of UU PT applies the concept of liquidation,[74] because once the bankrupt company is in a state of insolvency (Article 178 paragraph (1) UUK-PKPU) there is no other way or other efforts accommodated by UU PT other than liquidating the assets of the bankrupt and insolvent company.[75] The concept of liquidation should be used as the *ultimum remidium*, especially by looking at UUK-PKPU which does not determine

[71] Ginting, *Hukum Kepailitan: Rapat-Rapat Kreditor,* 202-203.

[72] This is as a result of there being no provision that can stop the state of dissolution until the PT is abolished by the Minister of Law and Human Rights, which means that, since insolvency, there is no provision that can stop the dissolution, liquidation, and termination of the existence of a limited liability company.

[73] Prayoga, *Hukum Kepailitan: Teori Kepailitan*, 137.

[74] The concept of liquidation is more directed towards maximally fulfilling obligations to creditors as the main goal, without considering efforts to maintain the existence of the company. This is in line with the PT Law that there is no way for a PT that is in the status of a company "in liquidation" other than ending with the revocation of the legal entity status of the PT.

[75] Asra, *Key Concept Kepailitan Korporasi*, 83.

bankruptcy and insolvency from an economic science approach or business practices of the debtor. If the concept of liquidation is only used as the only option without accommodating the concept of *corporate rescue*[76] through *on-going concern* actions as an *exit strategy* in this case is a *premium remidium*, then this will harm the interests of bankrupt company debtors who only experience temporary liquidity difficulties and are still *viable*, because such debtors should be accommodated with *on-going concern* actions that lead to an increase in liquidity value for full payment to concurrent creditors.[77] Companies that are still *viable* if given the opportunity to continue their business, will have an impact on the potential for fulfilling obligations to their creditors in full, inversely if the company is liquidated, it is likely to experience losses as a result of its assets not being sold.[78]

If the dissolution and liquidation process has been carried out, the next phase is the termination of the existence of the company's legal entity, which is marked by the revocation of the company's legal entity status. In brief, the process of terminating the company's legal entity status, because the company is in a state of bankruptcy and insolvency, is carried out by the curator, where the curator first announces the end of bankruptcy[79] in a national newspaper and Berita Negara Republik Indonesia (BNRI). After that, within a period of 30 (thirty) days after the end of bankruptcy is announced, the curator is obliged to conduct accountability to the supervisory judge. The provisions of Article 202 UUK-PKPU are related to the provisions of Article 152 paragraph (2) of the Company Law, both of which regulate the curator's responsibility after the end of the bankruptcy to make an accountability report to the supervisory judge regarding the management and management actions he has taken. [80]

Since the curator's accountability report is accepted by the supervisory judge, the provisions of Article 143 paragraph (1) of the Company Law are

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[76] The concept of *corporate rescue* is intended as a concept to prevent the company from being liquidated, but rather aims to maintain the existence of the company by continuing its business which still has prospects, because in this way, it can protect the interests of creditors, especially so that creditors can obtain full payment through *asset recovery* from the company that continues its business activities.

[77] Asra, *Key Concept Kepailitan Korporasi,* 59.

[78] Serlika Aprita, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (Perspektif Teori)*, (Makassar: Pena Indis, 2016), 275.

[79] The end of bankruptcy here is due to the payment of the full amount of their receivables (creditors) or as soon as the closing distribution list becomes binding. (Article 202 UUK-PKPU).

[80] M. Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta: Sinar Grafika, 2016), 579-580.

fulfilled.[81] Until this process, the termination of the existence of the company's legal entity is only binding on the internal parties of the company, namely the curator and the supervisory judge. In order for the termination of the existence of the company's legal entity to bind third parties, the curator is obliged to notify the final results of the liquidation process to the Minister of Law and Human Rights and announce the final results of the liquidation process in a national newspaper.[82] Based on the notification, the Minister of Law and Human Rights will record the end of the company's legal entity status, delete the company in the company register, and announce it in the State Gazette of the Republic of Indonesia. Since then, the existence of the company has been erased. [83]

This shows that if the company is bankrupt and insolvent, the end of the company is certain, namely the company will end with the revocation of the company's legal entity status and deletion in the company register. This view, when faced with the condition of a bankrupt and insolvent company debtor, which is most likely factually only experiencing temporary liquidity difficulties and is still *viable*, shows that there is no protection for company debtors who only experience *cash flow insolvency* and are still *viable*, because companies with such conditions should be accommodated by the rehabilitation institution known in UUK-PKPU, to restore the company's condition in the realm of property law so that it can be capable of carrying out legal acts again, through a rehabilitation application to the Commercial Court, so that the *viable* company can resume its business activities.[84]

It is understandable that if a state-owned bank is in the status of a company "in liquidation", apart from there being no effort to act *on going concern*, there is also no effort to rehabilitate. Whereas a company with the status of a company "in liquidation" does not necessarily mean that the company is in a state of *balance sheet insolvency* so that it is suitable for dissolution, liquidation, and termination of the company's legal entity status. By being in a state of dissolution from the time the company fulfils the conditions as stipulated in Article 178 paragraph (1) UUK-PKPU, the interests of the company's debtors who only experience *cash flow insolvency* and are still *viable* are very disadvantaged. On the other hand, if the bankrupt

[81] The dissolution of the Company does not result in the Company losing its legal entity status until the completion of the liquidation and the liquidator's accountability is accepted by the GMS or the court.

[82] Article 152 paragraph (3) of Law No. 40 of 2007 on Limited Liability Companies.

[83] Harahap, *Hukum Perseroan Terbatas*, 581.

[84] Sjahdeini, *Hukum Kepailitan: Memahami Undang-Undang No.37 Tahun 2004 Tentang Kepailitan*, 498.

and insolvent company is not automatically in a state of dissolution, then the company is still open to the possibility of taking *on-going concern* actions which can later increase the value of liquidity and lead to the maximum fulfilment of receivables from concurrent creditors, where the debtor company will be very possible to rehabilitate and operate normally. This construction should be brought by the PT Law in the face of bankruptcy and insolvency provisions of the UUK-PKPU, which do not signify if the bankrupt and insolvent company is a company that experiences *balance sheet insolvency*.

Indonesia's insolvency framework under UUK-PKPU does not differentiate between *cash-flow insolvency* and *balance-sheet insolvency*. As a result, even solvent yet illiquid SOEs risk dissolution once declared bankrupt. This contrasts sharply with modern jurisdictions where regulators distinguish between liquidity distress and economic insolvency, and where *bank-resolution mechanisms* prevent premature liquidation.

Table. Comparative Perspectives on Bank Insolvency Stimuli and Resolution Tools between Indonesia and the EU.

Category	Indonesia (Bankruptcy Law & Company Law)	European Union (Bank Recovery and Resolution Directive 2014/59/EU)
Insolvency Trigger	Procedural "inability to pay" test (Article 2(1) of Bankruptcy Law)	Economic viability test and "failing or likely to fail" assessment
Institutional Competence	Commercial Court with reactive authority after default	Single Resolution Board / European Central Bank with preventive intervention authority
Resolution Tool	Liquidation under Company Law, Article 142 (e)	Recovery, resolution, or trudge-bank tools applied prior to liquidation
Supervisory Approach	OJK conducts oversight without a statutory rescue mandate	EU-level crisis management with early-intervention powers

Sources: Processed by the Author, 2025.

The United Kingdom clearly separates the two insolvency tests under the *Insolvency Act 1986*, s. 123. The *cash-flow test* concerns the inability to pay debts

when due, whereas the *balance-sheet test* examines whether liabilities exceed assets. In *BNY Corporate Trustee Services Ltd. v. Euro sail-UK 2007-3BL PLC* [2013] UKSC 28, the Supreme Court held that balance-sheet insolvency does not imply inevitable collapse, emphasizing that temporary liquidity deficits do not justify dissolution[85]. These comparative models show that Indonesia's insolvency regime requires recalibration: adopting a dual-test system like the UK, embedding preventive-resolution mechanisms like the EU, and introducing streamlined restructuring procedures would ensure that state-owned banks facing temporary distress remain *going concerns* rather than victims of legal formalism.

Unlike Indonesia's UUK-PKPU, which relies solely on formal triggers, the UK Insolvency Act 1986 s.123 distinguishes between cash-flow insolvency and balance-sheet insolvency, as clarified in the Euro sail decision. The EU's Directive (EU) 2019/1023 further strengthens the rescue-first paradigm through preventive restructuring frameworks. Together, these approaches prevent premature liquidation of companies that remain economically viable. For banks, international standards emphasize resolution regimes, not ordinary corporate dissolution. The FSB Key Attributes and BRRD require authorities to apply tools such as bail-in, bridge banks, and P&A under the principle of "no creditor worse off." Indonesia's P2SK Law 2023, by expanding LPS powers, signals a domestic shift toward going concern resolution, aligning national law with global best practice.

The incompatibility between UUK-PKPU and the Company Law should therefore be understood not merely as a legislative inconsistency, but as a manifestation of epistemic failure within Indonesia's insolvency regime. The law constructs insolvency as a binary legal event rather than a continuum of financial distress, thereby erasing the analytical space necessary for rehabilitation, proportionality, and institutional preservation. This failure violates Fuller's principles of coherence and congruence, as the legal consequences of insolvency no longer align with its economic meaning.

Conclusion

The regulatory epistemology of *Persero*-type state-owned banks disclosures how Indonesia's insolvency regime conflates procedural default with economic failure. Both internal and external protections such as restructuring, *PKPU*, and *going concern* mechanisms remain ineffective due to legal and procedural inconsistencies between UUK-PKPU and UU PT. The

article's novelty deceits not merely in identifying regulatory inconsistencies but in introducing an epistemological framework rarely used in Indonesian bankruptcy studies. It reveals how legal "knowledge" about insolvency has been constructed on positivist assumptions that neglect economic substance an epistemic failure undermining the coherence, fairness, and sustainability of bankruptcy law. This article concludes that the dissolution of viable state-owned banks in Indonesia is not an inevitable legal consequence, but the product of an epistemologically flawed insolvency framework. By equating procedural default with economic failure, Indonesian bankruptcy law institutionalizes premature liquidation and undermines both public interest and creditor value. Comparative analysis with common law jurisdictions demonstrates that insolvency law can and should function as a rehabilitative instrument grounded in economic reality. Accordingly, this article advocates for the adoption of a dual insolvency test, judicial discretion to mandate restructuring, and a fundamental reorientation of insolvency law from liquidation toward institutional preservation.

Future research should pivot from normative analysis to empirical impact studies to quantitatively measure the effectiveness of the proposed reforms, specifically: investigating the real economic effects of adopting a dual insolvency test (distinguishing between balance-sheet insolvency and cash-flow insolvency) on the survival rates and capital market performance of temporarily illiquid State-Owned Enterprise (SOE) banks, and further comparing these findings with corporate rescue mechanisms applied in other jurisdictions (e.g., U.S. Chapter 11 or the European Union resolution regimes).

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