



Bankruptcy as a Corporate Restructuring Mechanism and Its Implications for Corporate Governance and Stakeholder Protection

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Abstract. Bankruptcy can no longer be understood solely as a mechanism for liquidating assets to meet debtor obligations, but has evolved into a restructuring instrument that directly impacts corporate governance and stakeholder protection. This study aims to analyze how bankruptcy functions as a corporate restructuring mechanism, how this process influences the redistribution of power in corporate governance, and the extent to which the bankruptcy legal system provides balanced protection for various stakeholders. The research method used is normative legal research with a statutory, conceptual, and limited comparative approach. The analysis is conducted on the provisions of Law Number 37 of 2004 concerning Bankruptcy and PKPU (Investment Suspension) and regulations related to corporate governance, combined with theoretical studies on fiduciary duty, stakeholder theory, and the corporate rescue paradigm. The results illustrate that bankruptcy functions as a governance restructuring mechanism that transfers control from the board of directors to the curator and creditor forum, thereby creating a redistribution of power within the company. The dominant creditor primacy orientation has the potential to create an imbalance in protection for non-creditor stakeholders, including workers and other economically impacted parties. These conditions indicate the need for normative reconstruction, including redefining fiduciary obligations during the insolvency phase, strengthening stakeholder protection, and harmonizing corporate governance principles with the insolvency law regime. This research is expected to contribute academically to the development of a bankruptcy model that is not solely focused on debt resolution but also considers aspects of business sustainability and substantive justice in modern corporate governance.

Keywords: Bankruptcy; Corporate Governance; Corporate Restructuring; Fiduciary Duty; Stakeholder Protection.

1. INTRODUCTION

The transformation of the bankruptcy function represents a significant shift in the development of modern business law (Nasyith, 2025). Previously, bankruptcy was synonymous with an asset liquidation mechanism designed to quickly and effectively meet creditors' obligations (Yusuf, 2024). This paradigm evolved in response to the need to maintain economic stability and provide legal certainty for creditors. Over time, there has been a growing realization that a liquidation approach alone is not always the best solution for business sustainability. Legal systems in various countries have begun to accommodate restructuring approaches that allow companies to maintain operational activities while resolving debt issues (Mariana, 2026).

This shift in orientation has influenced the way bankruptcy is understood as a legal instrument that transcends repressive force. Bankruptcy can serve as a means of reorganizing companies experiencing financial difficulties, especially when the company still has viable economic potential (Saebani, 2024). It highlights bankruptcy as a tool for recovery, rather than simply the end of a corporation. (Wibowo, 2024). Academic discourse then developed to assess whether bankruptcy regulations could provide space for effective restructuring. This debate

raised questions about the balance between creditor protection and business sustainability. Bankruptcy also gives rise to dynamics of redistribution of power within the corporate structure. When bankruptcy status is declared, the company's decision-making structure undergoes significant changes that are not always apparent during normal operations. Directors, who previously held strategic control, lose some or all of their authority, while curators and judicial bodies assume a more dominant role (Fauziyah, 2025). These changes impact the direction of company policy, including decisions related to asset management and business continuity. This perspective fosters the understanding that bankruptcy is not simply a legal procedure, but rather a mechanism for reorganizing power within the company.

Disruption to corporate governance is one important implication of bankruptcy. The governance structure, previously based on the relationship between directors, commissioners, and shareholders, undergoes adjustments due to the presence of new actors with specific legal authority (Muzacky, 2025). The curator is mandated to manage the bankruptcy estate, while the court oversees the process (Sibarani, 2025). The fiduciary relationship between management and the company is being redefined, particularly regarding decision-making responsibilities (Pasyah, 2025). This change can trigger conflicts of interest if not regulated equitably through clear legal norms.

The shift in control from directors to curators and creditors is often a crucial point in bankruptcy practices. The takeover of company assets and strategies creates a new reality that differs from conventional governance (Wulandari, 2025). Creditors wield significant influence through creditor meetings and through determining the direction of debt settlement (Simanjuntak, 2019). This situation can expedite the settlement process, but it also raises questions about the protection of other parties with interests in the company. An analysis of this shift in control helps understand bankruptcy as a complex space for negotiating interests.

The dominance of the creditor-oriented approach to insolvency is frequently highlighted in bankruptcy law literature. A system that focuses too much on creditor interests can potentially neglect the interests of other stakeholders, such as workers, suppliers, or affected communities (Nursaid, 2020). The debt repayment hierarchy often places certain creditors in a more advantaged position than others (Hermawan, 2026). Academic discourse highlights the need to strike a balance between certainty of debt repayment and social justice. An evaluation of creditor orientation is relevant for understanding the future direction of bankruptcy law policy. The lack of a stakeholder protection approach in the bankruptcy system is an issue of increasing concern. Many regulations emphasize efficient debt resolution over the protection of multi-stakeholder interests. Workers may face uncertainty regarding their

rights, while minority shareholders have limited room to influence the process. Strengthening the stakeholder perspective opens up discussion about how the law can accommodate diverse interests more equitably. This approach has the potential to expand bankruptcy's function as an inclusive socio-economic mechanism.

2. LITERATURE REVIEW

The absence of an explicit *ultimum remedium* paradigm in the normative design of bankruptcy raises fundamental questions regarding the philosophical direction of regulation. Bankruptcy should ideally be considered a last resort after restructuring or other resolution efforts have failed. Without this principle, the legal system could potentially encourage the use of bankruptcy as a quick fix (Putri, 2023). Affirming the function of *ultimum remedium* can help establish a more proportional framework between execution and business rescue. This discourse opens up space for reexamining the basic assumptions currently used in bankruptcy regulations (Santosa, 2026).

The evolution of bankruptcy philosophy can be traced through developments in economic, legal theory, and global business practices. The classic debt collection model emphasizes the equitable distribution of debtor assets to creditors through collective mechanisms (Permatasari, 2025). This approach arose from the need to prevent individual asset seizures that could potentially harm other creditors. As the economic structure changes, attention has shifted from mere asset distribution to system efficiency and market stability. This transformation broadens the purpose of bankruptcy from merely debt resolution to a corporate crisis management instrument.

Collective enforcement theory introduced the idea that bankruptcy is not merely a tool for individual creditors, but a shared mechanism involving the interests of various parties. The collective system aims to create fair distribution while reducing coordination costs among creditors (Albab, 2025). This theory also seeks to prevent individual actions that could worsen the debtor's situation and harm the creditor group as a whole. Subsequent developments show that the effectiveness of collective mechanisms depends on balancing legal certainty and restructuring flexibility. Debates arose when collective approaches were deemed to place too much emphasis on liquidation rather than business rescue.

The emergence of a modern rescue culture marked a significant shift in global bankruptcy philosophy. Legal systems began to recognize that companies experiencing financial distress do not necessarily lose their economic value (Saebani, 2024). Debt restructuring, business reorganization, and temporary protection from creditor actions became

important instruments in this new paradigm (Masruroh, 2025). The focus was no longer solely on debt resolution, but also on preserving economic value and protecting workers. This shift encouraged the establishment of legal mechanisms that were more adaptive to the dynamics of the business world.

The concept of *ultimum remedium* is deeply rooted in legal theory, which places certain interventions as a last resort after other efforts have failed. This term is widely recognized in criminal law as a principle limiting the use of the most severe sanctions (Ginting, 2024). The adaptation of this concept to bankruptcy law presents a new approach to understanding the function of bankruptcy. Bankruptcy can be positioned as a last resort after negotiations, restructuring, or other rescue mechanisms have failed (Wibowo D.P., 2024). This approach shifts the focus from punishment for financial failure to a more rational management of economic risk.

The transformation of *ultimum remedium* from the realm of criminal law to economic law reflects the increasingly interdisciplinary development of legal thought. Modern business law requires a framework that balances market efficiency and social justice. The principle of final intervention provides a normative basis for avoiding the use of overly repressive legal mechanisms against debtors. The application of this concept is also related to efforts to maintain the stability of the financial system as a whole. Its relevance is increasingly felt as the bankruptcy system faces the pressures of globalization and the complexity of business transactions.

The creditor protection paradigm is rooted in the need to maintain trust in the financing system. The *pari passu* principle aims to ensure the distribution of assets is fair and proportional. Legal certainty is crucial for creditors to guarantee that their rights will be protected (Puspitasari, 2024). A system that is too lax has the potential to encourage moral hazard from debtors who fail to fulfill their obligations responsibly. Challenges arise when overly dominant creditor protection actually reduces the chances of rescuing a viable business.

The debtor's business continuity paradigm introduces economic and social dimensions into bankruptcy discourse. Preserving economic value is a crucial consideration, particularly when the company contributes to employment and the supply chain. The social impact of liquidation, such as job losses and local economic disruption, is often a factor that cannot be ignored. Modern bankruptcy systems strive to strike a balance between payment certainty and business continuity. The dialectic between liquidation and rescue reflects a normative conflict that continues to evolve with changing economic needs and the dynamics of legal policy.

3. RESEARCH METHODE

This study employs a normative legal research method that focuses on the analysis of norms, principles, and legal constructions governing bankruptcy and their implications for corporate governance and stakeholder protection. The approach used includes a statute approach to examine the provisions of relevant laws and regulations, especially Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and Law Number 40 of 2007 concerning Limited Liability Companies; a conceptual approach to examine the concepts of corporate governance, fiduciary duty, and stakeholder protection within a theoretical framework; and a limited comparative approach to gain additional perspectives on the development of the modern insolvency regime. Primary legal materials consist of relevant laws and court decisions, while secondary legal materials include academic literature, scientific journals, and legal doctrines discussing bankruptcy and corporate governance. The analysis was conducted qualitatively using interpretive and prescriptive methods, namely systematically examining legal norms while formulating normative argumentation constructions that can answer the research problems. This approach allows research not only to outline the applicable rules but also to assess the coherence between bankruptcy practices, governance theory, and stakeholder protection needs more critically and reflectively.

4. RESULTS AND DISCUSSION

Bankruptcy as a Restructuring Mechanism and Its Impact on Corporate Governance

Bankruptcy is often positioned as a legal instrument with a strategic role in responding to a company's financial difficulties. The Indonesian legal system, through Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law and PKPU), provides two main paths: bankruptcy and PKPU. Bankruptcy tends to be understood as a mechanism that results in the liquidation of the debtor's assets, while PKPU provides room for restructuring through negotiations with creditors. This difference in orientation creates dynamics in practice, particularly when the debtor has a chance of business recovery. Analyzing the relationship between these two mechanisms is crucial to understanding whether the law provides a balanced instrument for debt resolution and corporate rescue. PKPU is designed as a preventative measure to prevent bankruptcy by providing time for the debtor and creditors to develop a restructuring plan. Article 222 of Law No. 37 of 2004 stipulates that a debtor or creditor may apply for PKPU if the debtor is expected to be unable to continue paying maturing debts. The primary objective of this mechanism is the restructuring of obligations

through a collective agreement binding on the parties. Judicial practice shows that a PKPU (Debt Recovery Order) is often the initial step before bankruptcy if a reconciliation plan fails. This situation demonstrates the close relationship between PKPU and bankruptcy as two stages in the same debt resolution spectrum.

Bankruptcy, on the other hand, has distinct characteristics due to the general seizure of all of the debtor's assets, as stipulated in Article 1, number 1, of Law No. 37 of 2004. The commercial court determines bankruptcy status based on the presence of two or more creditors and the debt being due and collectible, as stipulated in Article 2, paragraph (1). This normative orientation is considered a debt enforcement mechanism that provides certainty for creditors in obtaining payment through a collective process. Academic debate arose when bankruptcy was viewed as too easily used as a means of pressure on debtors. This discourse opened up space for reflection on whether bankruptcy remains relevant as a restructuring instrument or instead functions more as an execution tool.

The corporate rescue approach views bankruptcy as not always synonymous with company dissolution. Some legal systems utilize the bankruptcy process as a means of business reorganization through the structured remanagement of assets and liabilities. This perspective assumes that a company has value beyond simply a collection of assets, especially if it still has economic prospects. Indonesian law actually opens up the possibility of business continuity through certain mechanisms, such as a bankruptcy settlement. Articles 144 to 177 of Law No. 37 of 2004 regulate the possibility of achieving a settlement between debtors and creditors, which can halt the settlement process.

The shift in management control is one of the most obvious implications of a bankruptcy decision. Article 24, paragraph (1) of Law No. 37 of 2004 states that from the date the bankruptcy declaration is pronounced, the debtor loses the right to control and manage the assets included in the bankruptcy estate. This authority is transferred to a curator, who acts under the supervision of a supervisory judge. This change shifts the governance structure, which was previously centered on the board of directors. The impact is not only administrative but also affects business strategy and the direction in which the company's obligations are settled.

The legal status of directors after a company is declared bankrupt is a complex issue in practice. The board of directors does not automatically lose its position as a company organ under Law Number 40 of 2007 concerning Limited Liability Companies (PT Law). Management functions related to the bankruptcy estate are transferred to the curator, while the board of directors may retain its role in certain matters not directly related to the management

of the bankruptcy estate. Article 92 of the PT Law regulates the board of directors' authority in managing the company, but this authority is limited due to the company's bankruptcy status. The interaction between the PT Law and the Bankruptcy Law creates interesting interpretations regarding the position of directors.

Changes in fiduciary duties are a logical consequence of this shift in authority. Under normal circumstances, directors have an obligation to act in the interests of the company and its shareholders, as reflected in the principles of duty of care and duty of loyalty. When a company is insolvent, the orientation of the board of directors' obligations may shift toward protecting the interests of creditors. The corporate law literature raises debates regarding when this transition occurs and how directors' liability standards should apply. This shift in orientation poses challenges to governance practices because the lines of responsibility are not always clear.

The curator, as the manager of the bankruptcy estate, holds a unique position, resembling temporary management. Article 69 of Law No. 37 of 2004 authorizes the curator to manage and settle the bankruptcy estate from the date the bankruptcy decision is pronounced. The curator's responsibilities include maintaining asset value and maximizing returns for creditors. It makes the curator a governance actor who determines policy direction during the bankruptcy period. This broad authority requires high standards of professionalism and accountability to avoid harming any party.

Oversight of the curator's actions is carried out through a judicial control mechanism involving the supervising judge and the commercial court. The supervising judge is tasked with overseeing the bankruptcy process and approving certain actions taken by the curator. This oversight structure aims to maintain a balance between process efficiency and protecting the interests of the parties. The judicial oversight system positions the court as a governance actor with a strategic role in ensuring compliance with the law. The relationship between the curator and the supervising judge creates a dynamic that differs from normal corporate governance. The role of creditors in bankruptcy governance has also significantly increased through the introduction of creditor meetings. Creditor meetings have the authority to approve specific plans, including asset sales or reconciliation. This mechanism provides a space for collective participation previously unavailable under conventional corporate structures. Creditor dominance in the decision-making process can influence the direction of a company's restructuring or liquidation. This situation is often controversial because creditor interests do not always align with those of other stakeholders.

The conflict between bankruptcy as debt enforcement and corporate rescue is evident in how the procedures are implemented in practice. Bankruptcy can serve as a pressure tool to accelerate debt repayment, but it can also be used to restructure a company's financial structure. The choice between liquidation and restructuring often depends on the strategies of the parties and the judge's interpretation of the debtor's circumstances. The tension between these two orientations reflects the complexity of the objectives of bankruptcy law. Analysis of judicial practice is crucial to understanding the true direction of policy.

Judicial control in bankruptcy governance creates a different governance model than for companies not subject to legal proceedings. The court acts not only as an adjudicator but also as a supervisor, ensuring the process adheres to the principles of justice and legal certainty. This judicial oversight creates a mechanism of checks and balances on the authority of the curator and creditors. The presence of the court as a governance actor legitimizes every decision made during the bankruptcy process. The structure demonstrates that bankruptcy is not simply a legal procedure, but rather a corporate management system that fundamentally changes during insolvency.

Implications of Bankruptcy on Stakeholder Protection and Normative Reconstruction

Bankruptcy has significant implications for stakeholder protection because the legal mechanisms used often place creditors as the primary actors in the debt resolution process. The bankruptcy system is fundamentally designed to ensure collective payment of debtor obligations through the distribution of bankruptcy assets. This orientation tends to favor the dominance of creditor interests, particularly secured and preferred creditors, who have a stronger legal position. Legal structures that assign certain payment priorities shift the balance of interests between the parties involved. An analysis of this dominance is crucial to understanding how the protection of other stakeholders may be affected during the bankruptcy process.

Creditors wield significant influence through creditor meetings and decisions related to the settlement of bankruptcy assets. Law No. 37 of 2004 provides creditors with the authority to determine the direction of the process, including approval of curatorship actions and composition plans. This collective authority is designed to ensure certainty of debt repayment, but it often raises questions about the representation of the interests of other parties. Non-creditor stakeholders, such as workers or small suppliers, have limited participation in strategic decision-making. This situation can lead to inequities in the distribution of benefits and risks during the bankruptcy process. The position of workers in bankruptcy is a sensitive issue because it directly relates to the right to a livelihood. Law No. 13 of 2003 concerning

Manpower, as amended by Law No. 6 of 2023 concerning the Stipulation of the Job Creation Regulation instead of Law (Perppu), regulates workers' rights, which must remain in place even when a company is experiencing financial difficulties. The right to wages and severance pay is often part of a preferred claim, which has priority for payment. Bankruptcy practices demonstrate the challenges of ensuring the fulfillment of these rights when the debtor's assets are limited. The tension between settlement efficiency and social protection is one aspect that requires attention.

Other non-creditor stakeholders, such as suppliers, consumers, and local communities, are often less protected. Complex contractual relationships mean that the impact of bankruptcy extends beyond those with formal receivables. Many economically impacted parties lack direct access to the decision-making mechanisms in bankruptcy. This situation highlights the limitations of a legal approach that focuses too much on debt-receivable relationships. Broadening the stakeholder perspective opens up discussion about corporate social responsibility, even during the insolvency stage.

The payment hierarchy in bankruptcy is clearly regulated through various legal provisions classifying creditor types. Article 55 of Law No. 37 of 2004 grants secured creditors the right to enforce their collateral as if the bankruptcy had not occurred, although with certain limitations. Preferred creditors receive payment priority under the law, while concurrent creditors are placed last in the distribution of assets. This hierarchical structure is designed to create legal certainty, but it often gives rise to debates about distributive justice. The question of whether this hierarchy is still relevant to modern stakeholder protection needs is an interesting issue to analyze.

The issue of justice arises when the distribution of bankruptcy assets results in significant inequality between parties. Creditors with material collateral have a greater chance of receiving repayment than other stakeholders who are significantly affected. The economic legal perspective often views efficiency as the primary goal, while the social justice approach emphasizes the need to protect vulnerable parties. These differing perspectives create space for debate regarding the primary purpose of bankruptcy law. Striking a balance between efficiency and fairness is a growing challenge. Conflicts of interest are a difficult phenomenon to avoid in the bankruptcy process. The curator, creditors, directors, and shareholders have interests that are not always aligned. The curator is required to manage the bankruptcy estate professionally and independently, but the decisions made may impact different stakeholder groups. Supervisory judge oversight aims to minimize the risk of abuse of authority, although its effectiveness often depends on judicial practice. This conflict of interest emphasizes that

bankruptcy is not simply a technical procedure, but rather a complex arena of negotiating interests. Strategic decisions such as asset sales or business continuity can spark debate between creditors seeking rapid liquidation and those seeking restructuring. These policy choices impact the company's future and its impact on the workforce and the broader business ecosystem. Receivers and courts must weigh various factors before making a final decision. This assessment process requires an approach that goes beyond short-term economic value. Business continuity considerations are often a key factor in modern bankruptcy discourse.

The stakeholder-oriented insolvency model emerged in response to criticism of a system that is too creditor-oriented. This approach seeks to integrate the interests of various parties in the bankruptcy decision-making process. Employee protection, business continuity, and social impact are elements that are beginning to be considered in the design of legal policies. Legal systems in several countries are beginning to adopt this principle through regulatory reforms that provide greater participation for stakeholders. This development demonstrates a new direction in modern bankruptcy legal thinking.

Normative reconstruction is needed to adapt bankruptcy law to changing economic and social realities. Analysis of existing practices can provide the basis for formulating a new, more balanced approach. The integration of corporate governance principles with insolvency law has become a growing topic in academic literature. Strengthening transparency and accountability mechanisms can help create a fairer process for all parties. Legal reforms should not only target written norms but also their implementation practices at the judicial level.

Proposed normative reforms could include adjusting the payment hierarchy to be more responsive to the protection of specific stakeholders. Increasing the supervisory role of curators and stakeholder participation mechanisms could also be considered as improvements. A preventative approach through strengthening restructuring mechanisms before bankruptcy is a relevant option to mitigate negative impacts on other parties. Developing clearer fiduciary duty standards in insolvency situations can help mitigate conflicts of interest. Targeted reforms are expected to strike a balance between legal certainty and substantive justice.

An analysis of the implications of bankruptcy on stakeholder protection opens up space for reflection on the objectives of bankruptcy law itself. Bankruptcy is not only related to debt resolution but also concerns economic stability and broader social relations. A paradigm shift toward a more inclusive approach requires synergy between legal theory, public policy, and judicial practice. Academic discourse can act as a catalyst for developing legal models that are more adaptive to societal needs. This discussion serves as a foundation for developing more comprehensive normative recommendations at a later stage.

5. CONCLUSION AND SUGGESTIONS

Bankruptcy can be understood as a corporate governance restructuring mechanism that changes the authority structure and distribution of responsibilities within a corporation. Bankruptcy status not only impacts financial aspects but also shifts the locus of decision-making from the board of directors to the curator, the court, and the creditor forum. This change creates a governance model that differs from normal corporate governance, primarily because the primary focus shifts to managing the bankruptcy estate and fulfilling debt obligations. This redistribution of power has significant normative implications, particularly regarding the legitimacy of new actors in governance and the limits of the responsibilities of previous management. Creditor primacy bias is evident in legal structures that prioritize certain creditors, raising questions about the balance of protection for other stakeholders affected directly and indirectly.

Normative recommendations address the need to reconstruct the legal framework so that bankruptcy functions not only as a debt enforcement instrument but also as a fair and sustainable governance mechanism. Redefining fiduciary duties is crucial to ensure that the obligations of directors and curators accommodate broader interests, particularly when the company is insolvent. Strengthening stakeholder protection can be achieved through more inclusive participation arrangements and adjusting the payment hierarchy so that it is not entirely oriented towards the interests of dominant creditors. Harmonizing corporate governance principles and the insolvency law regime is necessary to reduce the fragmentation of norms that has led to interpretive uncertainty. It is expected to create a bankruptcy system that is more responsive to the dynamics of the modern economy while maintaining a balance between legal certainty and substantive justice.

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