

The Problematic of Bankruptcy Offenses in Affirming the Parameters Between Business Failure and Fraudulent Bankruptcy in Indonesia

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Abstract: Bankruptcy criminal offenses are legal instruments that function to maintain trust in economic activities and to protect the interests of creditors from fraudulent acts by debtors. In the Indonesian legal system, regulations concerning bankruptcy are related to Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, which is oriented towards civil and procedural aspects, as well as the National Criminal Code through Law Number 1 of 2023, which links criminal liability to bankruptcy conditions, including for business actors and corporations. Nevertheless, these regulations still give rise to fundamental problems in the form of a normative gap regarding the absence of clear parameters to distinguish between legitimate business failure and bankruptcy involving elements of fraud. This normative gap has implications for legal uncertainty in determining the limits of criminal liability, and it has the potential to lead to the criminalization of entrepreneurs acting in good faith or to suboptimal law enforcement against fraudulent acts in bankruptcy. This research aims to (1) analyzing the normative gaps in the regulation of criminal bankruptcy offenses related to the distinguishing parameters between business risk and criminal acts, as well as (2) Studying the concept of reforming bankruptcy criminal offenses in a fair manner within the Indonesian legal system. The research method used is normative juridical with a statutory approach and a conceptual approach. Therefore, it is necessary to add and reinforce regulations regarding indicators of bad faith as well as distinguishing parameters between business failure and fraudulent bankruptcy, accompanied by the development of an adaptive and proportional law enforcement mechanism, in order to realize legal certainty and justice within the bankruptcy legal system.

Keywords: Bankruptcy, Criminal Offense, Legal Reform, Legal Certainty, Justice

Introduction

The development of business activities and the dynamics of the modern economy indicate that the risk of business failure is an inseparable part of business activities. In practice, bankruptcy is no longer regarded solely as a negative condition, but rather as a legitimate legal mechanism to resolve a debtor's inability to fulfill obligations to creditors. In such circumstances, bankruptcy law is necessary to regulate the settlement of debt disputes between the debtor and their creditors (Dan et al., 1997). In addition, bankruptcy also serves to maintain the balance of interests among the parties and to ensure the

continuity of a healthy economic system. Therefore, the existence of bankruptcy legal instruments becomes important in creating certainty and trust in business relationships.

Normatively, regulations regarding bankruptcy in the Indonesian legal system have been accommodated through Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which is oriented towards resolving debts in a civil and procedural manner. On the other hand, national criminal law through Law Number 1 of 2023 also links bankruptcy conditions with the potential emergence of criminal liability, particularly in cases where there are actions that harm the interests of creditors. Bankruptcy is not only a financial phenomenon but also a legal phenomenon that changes the ownership status of assets from the debtor's personal control to public control by a curator under the authority of the state (Idris 2026). Thus, the Indonesian legal system has essentially placed bankruptcy within two different legal regimes, namely civil and criminal, each having its own functions and characteristics.

To ensure the effectiveness of legal protection in this regard, clarity is needed regarding the distinction between bankruptcy as a business risk and bankruptcy involving elements of fraudulent conduct. This clarity is important because not every business failure can be classified as a criminal act. In practice, linking bankruptcy status with criminal liability requires parameters capable of identifying bad intent or abuse of circumstances. This provision does not explicitly require that the debtor is financially incapable, or insolvent, which in the practice of bankruptcy law in some other jurisdictions is considered an important prerequisite (Nasyith et al., 2025). Without clear parameters, law enforcement has the potential to proceed disproportionately and create legal uncertainty.

In practice, the current regulations have not provided clear normative boundaries to distinguish between legitimate business failures and fraudulent bankruptcies. This situation creates a gray area in law enforcement practices, which may lead to the potential criminalization of well-intentioned business actors, as well as suboptimal action against genuinely fraudulent activities. Fraudulent actions, in fact, constitute intentional deceit that causes damage or loss with the aim of providing benefit to the perpetrator of the fraud (Cong, L., & Hasan 2025). Therefore, a legal reform is needed that can formulate clear and operational parameters, so that bankruptcy criminal offenses can be applied more proportionally, provide legal certainty, and reflect justice within the Indonesian legal system.

The issue regarding the absence of clear parameters in distinguishing between business failure and fraudulent bankruptcy raises serious legal implications, particularly from the perspective of legal certainty and justice. In the realm of criminal law, the determination of the limits of criminal responsibility must be based on clear and measurable criteria, so as not to create multiple interpretations in its application. When the law does not provide clear boundaries, there is a potential for the criminalization of entrepreneurs acting in good faith, while simultaneously creating the possibility of suboptimal enforcement against fraudulent acts that actually harm creditors. Bankruptcy legal instruments are strategically used to avoid legal and financial responsibility (Fauziyah, D. K. 2025). Therefore, clearer and more operational regulations are needed to ensure that the application of bankruptcy criminal offenses can be carried out appropriately, proportionally, and justly.

On the other hand, the development of increasingly complex modern business practices also enlarges the potential for abuse of bankruptcy mechanisms. Layered corporate structures, increasingly complicated financial transactions, and the possibility of legal and financial engineering make the line between business risk and fraudulent conduct increasingly difficult to identify. This condition not only complicates the evaluation by law enforcement agencies but also increases the risk of inconsistency in court decisions. The lack of legal substance as well as gaps in legal protection practices for bankrupt creditors create legal loopholes that disadvantage creditors (Ababil 2025). Therefore, a legal construction is required that is capable of addressing this complexity through the formulation of clearer, measurable parameters that can be applied consistently in practice.

This condition indicates that the issue of bankruptcy criminal offenses is not solely confined to normative aspects, but is also related to the need for renewing approaches in law enforcement. In this context, the development of more adaptive mechanisms, including approaches that are not purely repressive, becomes relevant to consider, particularly in cases involving corporations. Such an approach is expected to be able to distinguish more proportionally between administrative errors, business risks, and actions that truly meet the elements of criminal offenses, thereby enabling law enforcement to operate more effectively and fairly.

This study aims to analyze the legal regulation regarding bankruptcy criminal offenses in Indonesia, particularly concerning the normative gaps in defining the distinguishing parameters between business failure and fraudulent bankruptcy, as well as to examine the issues arising in law enforcement practices due to the ambiguity of these boundaries. In addition, this study also aims to formulate a concept for the reform of bankruptcy criminal offenses that can provide clarity of parameters, enhance legal certainty, and realize justice in its implementation. The research method used is the normative juridical method with a statutory approach and a conceptual approach, based on primary legal materials in the form of legislation, as well as secondary legal materials in the form of relevant literature and scientific journals (Marzuki 2019). With this approach, it is expected that this research will be able to provide academic and practical contributions in the development of a clearer, more proportional, and just bankruptcy legal system in Indonesia.

However, it does not adequately explain how doctrinal interpretation and normative gap analysis were systematically conducted to formulate the proposed legal reform. While the methodology outlines the legal materials examined and the relevant legal concepts considered, it offers limited detail regarding the analytical process used to identify inconsistencies, deficiencies, or gaps within the existing legal framework. Furthermore, it does not clearly describe the interpretive methods or doctrinal techniques employed to evaluate legal norms and derive the proposed reform recommendations. As a result, the connection between the normative analysis and the formulation of legal reform remains insufficiently elaborated. A more detailed explanation of the interpretive framework and the steps used to identify and assess normative gaps would enhance the methodological rigor, transparency, and credibility of the study.

Result and Discussion

Legal Regulation of Criminal Offenses in Bankruptcy in the Indonesian Legal System

The legal regulation concerning bankruptcy offenses within the Indonesian legal system is an integral part of the legal framework aimed at maintaining a balance between the interests of debtors and creditors in economic activities. Bankruptcy is not only understood as a mechanism for settling debts, but also as a legal instrument that functions to protect trust in the business world. In every country, bankruptcy has three main objectives: first, to secure the debtor's assets and ensure the fair distribution of the proceeds of their sale among creditors; second, to prevent insolvent debtors from harming the interests of their creditors; and lastly, to ensure balanced protection for both debtors and creditors (Sitompul 2025). In this regard, bankruptcy law has a dual dimension, namely as a civil regime that regulates the distribution of debtor assets and as a criminal regime that anticipates fraudulent acts that harm creditors. Therefore, the regulation of criminal offenses in bankruptcy becomes important to ensure that the bankruptcy mechanism is not misused as a means to evade legal responsibility.

Normatively, the regulation of bankruptcy in the Indonesian legal system is governed by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which emphasizes civil and procedural aspects. This law regulates the requirements, procedures, as well as the legal consequences of a bankruptcy declaration, including the mechanism for managing and settling bankrupt assets by a curator. On the other hand, the new national criminal law through Law Number 1 of 2023 concerning the National Criminal Code provides a basis for criminal liability in the event of bankruptcy. Thus, the Indonesian legal system has established a normative framework that links bankruptcy with the potential for criminal consequences.

Bankruptcy law is fundamentally built on the principle of protection for creditors as well as the fair and proportional settlement of debts. Principles such as *paritas creditorum* and *pari passu prorata parte affirm* that all of the debtor's assets serve as a collective guarantee for the creditors and must be distributed fairly according to their standing. This principle requires that the proceeds from liquidation be allocated proportionally without giving special treatment to any particular creditor (Waruwu et al., 2025). In addition, the provisions regarding the classification of creditors, whether preferential, separate, or concurrent, indicate that the bankruptcy system is designed to create a balance in the fulfillment of parties' rights. Thus, bankruptcy law not only functions as a tool for dispute resolution but also as an instrument that ensures legal certainty in economic relationships.

In order to protect the interests of creditors from fraudulent acts, the bankruptcy legal system also recognizes various legal instruments such as the *actio pauliana*, which allows for the annulment of the debtor's legal actions that harm the creditors. This instrument serves as a form of preventive protection against the potential misuse of circumstances by the debtor before being declared bankrupt. If the board of directors deliberately fails to settle payments to its creditors despite knowing that the company's financial condition is still healthy, such actions of the board can be considered acts of bad faith (Dalle et al., 2023). In addition, the existence of the curator institution and supervisory judges also constitutes an important part in ensuring that the bankruptcy process proceeds in accordance with the

applicable legal provisions. Thus, normatively, the bankruptcy legal system has provided sufficient mechanisms to anticipate actions that could harm creditors.

The existing legal framework still places more emphasis on the procedural and administrative aspects of bankruptcy, and therefore has not fully provided a clear affirmation regarding the boundary between acts of a civil nature and acts that can be qualified as criminal offenses. In practice, bankruptcy conditions are often used as a basis for assessing the existence of unlawful acts without being supported by clear parameters regarding elements of fraud or bad faith. It is sometimes found that one of the causes of bankruptcy of a Limited Liability Company is unlawful acts committed by the Board of Directors (Siahaan et al., 2024). This indicates that although there is a connection between bankruptcy and criminal law, the normative construction governing this relationship has not yet been formulated comprehensively. As a result, the scope of interpretation becomes too broad and has the potential to cause inconsistencies in the application of the law.

The absence of clear parameters has implications for the emergence of legal uncertainty in determining whether a bankruptcy condition is the result of reasonable business risks or the result of fraudulent actions. In this case, criminal law has the potential to be applied disproportionately due to the lack of clear boundaries regarding the elements that must be met to qualify an act as a bankruptcy crime. Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations regulates criminal sanctions, but does not elaborate in detail on the independence and criteria of actions considered illegal (Vigianto 2024). This condition not only has the potential to harm businesses with good intentions, but it can also weaken the effectiveness of law enforcement against acts that are truly fraudulent. Therefore, this norm vacuum becomes a fundamental issue that needs immediate attention in legal development.

The development of increasingly complex modern business practices also demands legal regulations that are more adaptive and responsive. The complexity of corporate structures, financial transactions, as well as the potential for legal and financial engineering makes it increasingly difficult to identify fraudulent actions in bankruptcy. Under such conditions, legal regulations that are not equipped with clear parameters will further enlarge the gray areas in law enforcement. Therefore, a normative framework is needed that can respond to these dynamics systematically, measurably, and integrated with the development of modern business practices.

The regulation of criminal bankruptcy offenses in the Indonesian legal system fundamentally has a sufficient normative foundation, but still leaves fundamental problems related to the unclear parameters distinguishing business failure from fraudulent bankruptcy. This condition indicates a need to strengthen and clarify the norms so that bankruptcy law does not only function as a debt resolution mechanism, but also as a legal instrument capable of providing certainty and justice in determining the limits of criminal liability. Therefore, legal reform becomes an unavoidable step to comprehensively address this normative gap. The modern legal system in the law-making process has the characteristic of always producing legal products that can reach all issues and social phenomena in modern society (Al Kautsar dan Muhammad, 2022).

The problem of unclear parameters in criminal offenses in bankruptcy essentially reflects a substantive normative gap, not merely a technical regulatory deficiency. This gap lies in the absence of clearly formulated indicators regarding when an act in a bankruptcy situation can be qualified as a criminal act. As a result, the boundary between civil law and criminal law becomes blurred, opening wide room for interpretation in law enforcement practice. This condition has the potential to create disparities in law enforcement and weaken the function of law as a tool of social control in economic activities. This legal vacuum creates widespread legal uncertainty, which can hinder investment, innovation, and sustainable business growth (Putra, N. A. 2026).

This condition, from the perspective of the theory of legal certainty, shows that the existing legal norms do not fully meet the characteristics of clear, firm, and predictable norms. The meaning of legal certainty contains several implications, including clarity, not causing multiple interpretations, not being contradictory, and being enforceable (Remaja 2014). Thus, legal certainty here not only demands the existence of regulations, but also requires the clarity of norm formulations that can provide concrete guidance for law enforcement officers as well as business actors. When the distinguishing parameters between business risks and criminal acts are not explicitly formulated, the law loses its predictability. Therefore, it is necessary to strengthen norms that are operational and implementable to provide certainty in determining the limits of criminal liability.

From the perspective of law enforcement practice, the ambiguity of these parameters implies the emergence of inconsistencies in the process of assessing and proving criminal elements. Law enforcement officers often face difficulties in distinguishing between reasonably expected business mistakes and acts containing elements of fraud. The evidentiary system is an essential component in the criminal justice process, aiming to ensure that justice is upheld based on facts and legitimate evidence (Pratama, F., & Saputra 2024). This causes a tendency to use a subjective approach in determining the existence of criminal elements, which ultimately can harm one of the parties. Therefore, a normative standard is needed that can be used as a common reference in the law enforcement process to create consistency and justice.

From an institutional perspective, the role of actors in the bankruptcy process such as curators, supervising judges, and law enforcement officers becomes very crucial in determining the direction of case resolution. The goal of establishing an independent state institution is due to increasingly complex state duties that require sufficient independence for its operationalization (Dewa et al., 2024). However, without being supported by clear norms, such authority has the potential to be exercised inconsistently and may even lead to deviations. Under such conditions, strengthening the system of supervision and institutional accountability becomes important to ensure that every action in the bankruptcy process remains within the legal framework. Therefore, an integration between normative regulations and institutional mechanisms that can guarantee transparency and accountability in practice is needed.

The development of increasingly complex modern business practices also increases the challenge of identifying elements of fraud in bankruptcy. The increasingly diverse

transaction patterns, the use of sophisticated financial instruments, and complex corporate structures make it more difficult to distinguish between failed business decisions and deliberate actions to harm creditors. In this situation, the law is required to be able to adapt to these developments through the formulation of more contextual and responsive norms. Therefore, legal reform is not only normative but must also consider the dynamics of continuously evolving business practices.

Through legal rules, essentially it is aimed at realizing the values of justice and utility as part of the fundamental objectives of law in regulating the interests of the parties (Afdhali et al., 2023). Thus, from the perspective of justice and utility, the lack of clear parameters in bankruptcy criminal offenses has the potential to cause injustice for both debtors and creditors. On one hand, well-intentioned debtors may get entangled in criminal proceedings due to business failures that are actually business risks. On the other hand, fraudulent acts that should be punishable may escape law enforcement due to the absence of clear parameters. Therefore, a balance is needed between protecting well-intentioned business actors and enforcing the law against those who commit fraud, so that the law can provide optimal benefits for all parties.

Progressive law essentially places law as an instrument oriented towards human interests, so that law is not understood as an end in itself, but as a means to realize justice, welfare, and human dignity (Siregar 2024). Thus, within the framework of progressive law, the reform of bankruptcy criminal offenses must be directed towards the creation of laws that are not only formal in nature, but also capable of addressing the needs of society substantively. Law should not stop at rigid normative texts, but must be able to provide solutions to real problems encountered in practice. Therefore, innovation is needed in the formulation of norms that can integrate aspects of legal certainty, justice, and utility in a balanced manner. In this way, the regulation of bankruptcy criminal offenses in the future is expected to be able to provide a clear boundary between business failure and fraudulent bankruptcy, as well as create a legal system that is more adaptive, responsive, and just.

The Problem of Clarifying Parameters between Business Failure and Fraudulent Bankruptcy in Law Enforcement Practice

The issue of establishing parameters between business failure and fraudulent bankruptcy in law enforcement practice is a fundamental issue in the bankruptcy law system in Indonesia. Within the existing legal framework, bankruptcy is essentially positioned as a civil debt resolution mechanism, but under certain conditions can develop into a criminal matter. The shift from a civil to a criminal regime largely depends on the presence of fraud or bad intentions from the debtor. However, the absence of clear parameters regarding this boundary causes uncertainty in determining when a business failure can be qualified as a criminal act. As a result, the impact of this legal vacuum can be very significant, particularly concerning legal uncertainty (*rechtsonzekerheid*) and regulatory uncertainty in society, which can lead to legal confusion (*rechtsverwarring*) (Ariel et al., 2025).

The main problem lies in the absence of normative regulations that explicitly formulate distinguishing indicators between business risks and fraudulent acts in bankruptcy.

Although there are provisions that allow for criminal liability, these norms have not provided operational and measurable criteria. As a result, the assessment of fraudulent elements often depends on the interpretation of law enforcement officers. This condition indicates a normative void that has the potential to cause inconsistencies in the application of the law.

From the perspective of legal certainty, the condition reflects the unfulfilled principle of clarity of norms, which is a primary requirement in a sound legal system. Legal certainty demands that every regulation have a clear formulation, be unambiguous, and be predictable in its application. When the boundary between business failure and fraudulent bankruptcy is not clearly formulated, the law loses its predictive function. This impacts the uncertainty for business actors in understanding the legal risks of every business decision they make.

In law enforcement practice, the ambiguity of these parameters results in disparities in the handling of bankruptcy cases. Law enforcement officers may have different interpretations in assessing whether an act contains criminal elements or not. These differences in interpretation occur not only at the investigation stage but also during the judicial process. As a result, the resulting decisions may show significant inconsistencies, thereby weakening confidence in the judicial system.

This ambiguity also affects the aspect of proof in criminal law, particularly regarding the proof of the element of fault. In criminal law, proof is not only limited to the existence of an act, but must also include the element of fault in the form of intent or negligence (Jailani et al., 2024). Without clear parameters regarding fraud indicators, proving these elements becomes difficult to carry out objectively. This has the potential to cause injustice, either in the form of overcriminalization or under-enforcement.

From an institutional perspective, this problem is also related to the roles of various actors in the bankruptcy system, such as trustees, supervisory judges, and law enforcement officers. Each actor has different authority in handling bankruptcy cases, but without clear normative guidelines, the implementation of that authority has the potential to be inconsistent. This can lead to conflicts of authority or differences in standards in assessing an act. Conflicts of authority among law enforcement agencies generally arise due to overlapping legal norms and unclear boundaries of constitutional functions regulated by legislation (Progresif, P. 2025). Therefore, harmonization between legal norms and institutional practices is necessary.

The development of modern business practices has also increased the complexity in determining the boundary between business failure and fraudulent bankruptcy. Complex corporate structures, the use of sophisticated financial instruments, and the possibility of transaction manipulation make it increasingly difficult to identify elements of fraud. In such conditions, laws that are not equipped with clear parameters will be increasingly difficult to apply effectively. Therefore, a more adaptive approach is needed in formulating legal norms.

The theory of legal protection implies that the law should function as an active means to protect the rights of individuals from potential harm due to the imbalance of positions

between parties in a legal relationship (Hukum, P. 2024). Thus, from the perspective of legal protection, the ambiguity of these parameters has the potential to harm debtors who act in good faith. Business actors who experience business failure may be threatened with criminal sanctions even though there are no elements of fraud in their actions. This contradicts the principle of justice, which demands proportionality in the application of the law. The principle of proportionality is an important concept in criminal law that requires that the punishment imposed be balanced with the level of fault and the impact of the criminal act committed (Setiawan et al., 2024). Therefore, protection for business actors who act in good faith must be one of the considerations in the formulation of norms.

The absence of clear parameters also has the potential to weaken law enforcement against acts that are truly fraudulent. Perpetrators who manipulate or misuse circumstances can exploit legal loopholes to avoid criminal accountability. This situation shows that the lack of regulations not only harms debtors but also creditors as the injured party. Therefore, strengthening regulations becomes important to ensure the effectiveness of law enforcement.

The theory of legal utility posits that the main purpose of law is to provide the greatest possible benefit for society, especially in realizing collective welfare and happiness (Yuniawaty 2025). Thus, from the perspective of the utility of law, unclear regulations regarding the boundary between business failure and fraudulent bankruptcy can hinder the development of the business world. Legal uncertainty can create fear among business actors in making business decisions, thereby potentially hindering innovation and investment. On the other hand, overly repressive laws can also create an unfavorable business climate. Therefore, a balance between legal certainty and flexibility in regulation is needed.

Within the framework of the law, bankruptcy is part of the market mechanism that functions to filter out business actors who are unable to fulfill their obligations. However, when bankruptcy is associated with criminal liability without clear parameters, this function becomes disrupted. Bankruptcy is no longer seen as a reasonable economic mechanism, but rather as a potential criminal risk. This can disturb the overall stability of the economic system.

Conceptually, this problem indicates the existence of a gap between legal norms and practical needs. The existing norms have not been able to address the complexity of problems that arise in modern bankruptcy practice. This gap reflects the need for legal reform that is not only textual but also substantive. Therefore, a reconstruction of norms is needed that can provide clarity of parameters operationally.

The issue of clarifying the parameters between business failure and fraudulent bankruptcy is a problem that is systematic and multidimensional. This problem is not only related to normative aspects, but also encompasses aspects of practice, institutions, and economic development. The mismatch between the applicable legal regulations and the needs of society indicates the importance of forming new laws to address the development and complexity of issues in business activities in Indonesia (Romadhoni et al., 2025). Therefore, a comprehensive legal reform is needed, focusing on the formulation of clear,

measurable, and consistently applicable parameters. In this way, bankruptcy law can function optimally in providing certainty, justice, and benefits for all parties.

Conclusion

The legal regulation concerning criminal offenses in bankruptcy within the Indonesian legal system has essentially provided a normative foundation through the linkage between the bankruptcy regime and criminal liability, particularly in cases where actions harm creditors. However, this regulation has not yet provided adequate clarity regarding the distinguishing parameters between business failure as a business risk and bankruptcy containing elements of fraud. This condition indicates the existence of a substantive norm gap, due to the lack of clearly formulated indicators concerning elements of bad faith, abuse of circumstances, or manipulative actions in the context of bankruptcy. Consequently, the application of criminal law in bankruptcy has the potential to create legal uncertainty and inconsistency in law enforcement practices, thus requiring the strengthening of norms that are more operational and measurable to ensure certainty and justice.

The problem of establishing parameters between business failure and fraudulent bankruptcy in law enforcement practice is essentially a consequence of a lack of norms and the suboptimal integration between normative, institutional, and modern business practice aspects. The absence of clear parameters causes difficulties in proving criminal elements, opens opportunities for the criminalization of well-intentioned business actors, and weakens the effectiveness of action against fraudulent acts. Furthermore, the complexity of business practices, weak institutional coordination, and the absence of uniform assessment standards further increase the uncertainty in law enforcement. Comprehensive legal reform is needed through the formulation of clear parameters, clarification of bad intent indicators, and the development of adaptive and proportional law enforcement mechanisms, so that bankruptcy offenses can be applied more certainly, fairly, and beneficially within the Indonesian legal system.

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