

# Problems of Bankruptcy Applications for Solvent Companies from the Perspective of Simple Proof and Substantive Justice

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**Abstract:** *The development of bankruptcy practices in Indonesia reveals the emergence of bankruptcy petitions for companies that are still in a state of insolvency, which raises serious questions about the balance between procedural certainty and substantive justice. The simple evidentiary standard as stipulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations makes it easier for creditors to file bankruptcy petitions with relatively minimal formal requirements, namely the presence of two creditors and one debt that is due and collectible. This characteristic accelerates the commercial justice process, but at the same time has the potential to create a gap between procedural norms and the economic reality of the debtor. This article aims to analyze the concerns of bankruptcy petitions for solvent companies, identify distortions in the function of bankruptcy as a collective mechanism for resolving insolvency, and formulate a normative reconstruction of a more balanced evidentiary standard. The research method employs normative legal research with statutory, conceptual, case, and comparative approaches. The analysis is conducted on bankruptcy regulations, legal doctrine, and commercial justice practices to assess the tension between legal formalism and substantive justice. The study's findings demonstrate that the dominance of simple evidentiary procedures has the potential to disregard the assessment of real financial conditions, thus opening up the opportunity for bankruptcy to be used as a strategic pressure tool. The proposed normative reconstruction includes the integration of insolvency assessment as an additional parameter, strengthening judicial interpretation guidelines, and reformulating evidentiary standards to accommodate procedural efficiency while more proportionately considering economic implications. This approach is expected to strengthen bankruptcy's function as a fair, rational, and responsive debt resolution mechanism, aligned with the dynamics of the modern business world.*

**Keywords:** *bankruptcy; simple evidentiary procedures; solvency; insolvency test; substantive justice; normative reconstruction.*

## Introduction

Bankruptcy emerged as a legal instrument designed to collectively address debt issues when debtors are no longer able to meet their financial obligations (Idris 2026). The modern bankruptcy system stems from the need to create a structured mechanism to prevent debt resolution from proceeding individually and sporadically through individual creditor executions (Mariana 2026). The collective approach allows for a more equitable distribution of assets and prevents disputes over debtor assets that could harm other parties

(Permatasari 2025). This principle is also closely related to protecting a company's economic value from being immediately lost due to the pressure of individual litigation (Yuliana 2022). The development of this concept has transformed bankruptcy from a mere instrument for punishing debtors into a systemic mechanism for managing financial crises.

Changing global economic dynamics have shifted the function of bankruptcy from initially focusing on insolvency to an enforcement tool often used as a means of pressure on debtors (Indrakusuma 2025). The practice of filing bankruptcy petitions despite the debtor's financial capacity has become an increasingly discussed issue. This reality reflects a shift in focus from economic recovery to a creditor litigation strategy. Bankruptcy is sometimes viewed as a quick way to enforce payment compared to more lengthy civil procedures (Ningtyas 2024). This shift has sparked debate over whether the bankruptcy mechanism still aligns with its original purpose.

Indonesian bankruptcy regulations introduced the concept of simple evidentiary burden as a standard for examining bankruptcy petitions (Rongkonusa 2023). This standard emphasizes process efficiency by limiting the examination scope to the fulfillment of certain formal elements, such as the existence of a past-due debt and multiple creditors. The basic idea of simple evidentiary burden relates to the speed of the process and legal certainty for creditors claiming their rights (Sutrisno 2025). This characteristic facilitates the commercial court's expeditious handling of cases, but also raises the issue of the depth of evaluation of the debtor's financial condition (Dewi 2023). Debate arises when procedural standards meet more complex economic realities.

The phenomenon of bankruptcy petitions filed against solvent companies has become a crucial point in the development of national bankruptcy practices. Companies that are still operational and have sufficient assets may still face the risk of bankruptcy if formal requirements are met (Safirah 2025). This situation raises questions about the relevance of solvency testing as part of legal considerations. When bankruptcy is applied to entities that still have financial capacity, concerns arise that the legal mechanism is transformed into an aggressive negotiation tool. This phenomenon also raises questions about the balance between creditor protection and the debtor's business continuity.

The impact of this practice is not only felt by the parties directly involved but also affects business certainty in general. The threat of bankruptcy petitions can create psychological pressure for business actors and affect the company's reputation with business partners and investors. Contractual stability becomes vulnerable because a company's legal status can change drastically in a short period of time (Hasibuan 2025). This situation has the potential to create uncertainty in a business environment that is supposed to rely on legal predictability. Academic debate then focuses on how the bankruptcy system can maintain a balance between procedural certainty and economic stability. Business sustainability, or going concern, is a crucial aspect that is often overlooked when simple evidence is the primary parameter (Sahidal 2024). Companies with potential for growth can lose momentum due to the stigma of bankruptcy and the accompanying operational restrictions (Warsito 2024). Stakeholders such as workers, suppliers, and local economic communities are also impacted by the process. Systemic risk arises when bankruptcy no longer reflects the actual state of insolvency. This situation has sparked discussions about

the role of judges in assessing economic aspects more comprehensively without neglecting the principle of process efficiency.

Macroeconomic stability is also closely related to how bankruptcy is implemented in practice. The easier filing of bankruptcy petitions against solvent companies can have a domino effect that harms other business sectors (Sudhana 2025). Investors may perceive the legal system as providing insufficient protection for companies that remain financially healthy. This perception has the potential to impact the investment climate and the level of trust in the national legal system (Marzuki 2024). Academic discourse is beginning to highlight the need for a more balanced approach between procedural flexibility and the protection of economic value.

The tension between legal formalism and substantive justice has become a central issue in discussions of modern bankruptcy. The formalistic approach focuses on the textual fulfillment of legal elements, while substantive justice considers the real impact on the parties (Sutjahjo 2025). This difference in orientation often creates a dilemma in commercial court practice. Judges are faced with the choice between adhering to technical standards of proof or considering the debtor's broader economic reality. This discourse opens up space for a reassessment of the extent to which procedures can ensure deeper justice.

The evolution of the concept of bankruptcy in modern legal systems reflects a paradigm shift from a repressive approach to a managerial one. Bankruptcy is no longer viewed as the end of business activity, but rather as a means of restructuring that enables economic recovery (Wibowo 2025). Many jurisdictions are developing mechanisms that balance the interests of creditors and debtors through reorganization procedures. These changes emphasize the importance of preserving company value to prevent premature loss. This conceptual transformation provides a theoretical basis for evaluating bankruptcy practices in Indonesia.

The debate over insolvency and inability to pay has become a crucial conceptual aspect in understanding bankruptcy. Insolvency is often associated with a more profound financial condition, while inability to pay can be temporary or technical (Hadibroto 2023). This distinction influences how the law assesses whether a company is eligible for bankruptcy. An approach that focuses too much on temporary inability to pay can overlook the potential for economic recovery. A more comprehensive understanding of both concepts helps clarify the primary purpose of bankruptcy as a collective protection mechanism.

The standard of proof in bankruptcy law has unique characteristics compared to ordinary civil litigation. The simplified burden of proof is designed to expedite the process and avoid overly complex examinations (Jenifer 2024). The legislators' rationale stems from the practical need to minimize protracted debt disputes. A comparison with civil litigation standards demonstrates that bankruptcy cases have a unique nature that demands high efficiency. These differences form the basis for discussions about whether existing standards are still relevant in addressing the complexities of the modern economy.

The concepts of solvency and insolvency have various analytical approaches used in international practice, such as the cash flow test and the balance sheet test. The cash flow test focuses on the ability to pay short-term obligations, while the balance sheet test examines the overall ratio of assets to liabilities (Puspita 2024). The distinction between economic insolvency and legal insolvency adds another layer of complexity to assessing a

debtor's condition. A legal system that focuses solely on formal legal aspects risks ignoring real economic conditions. Substantive justice is a concept that seeks to bridge this gap through the principle of proportionality and balanced protection for both debtors and creditors.

## **Method**

This research employs a normative legal research method with a doctrinal approach that focuses on the analysis of positive legal norms, conceptual construction, and the development of bankruptcy legal doctrine. The statute approach is used to systematically examine the provisions of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, especially regarding simple evidentiary standards and the requirements for bankruptcy applications as stipulated in Article 2 paragraph (1) and Article 8 paragraph (4). The conceptual approach is used to examine the ideas of solvency, insolvency, substantive justice, and the principle of proportionality as a framework for normative analysis. This research also utilizes a case approach through a study of relevant commercial court decisions to understand the judges' reasoning patterns and the practical implications of implementing norms. In addition, a comparative approach is used selectively to examine best practices from other jurisdictions regarding the integration of insolvency tests in bankruptcy proceedings. Primary legal materials in the form of statutory regulations and court decisions are analyzed qualitatively using systematic and teleological interpretation methods, while secondary legal materials such as academic literature and expert doctrines are utilized to strengthen theoretical arguments and provide a critical perspective on the proposed normative reconstruction.

## **Result and Discussion**

### **Problematic Analysis of Bankruptcy Applications for Solvent Companies**

The ambivalence of simple proof is one of the most crucial issues in bankruptcy applications for solvent companies. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law), through Article 2 paragraph (1), requires two creditors and one debt that is due and collectible as the basis for a bankruptcy application. This standard is reinforced in Article 8 paragraph (4), which emphasizes that the application will be granted if the required facts or circumstances are proven simply. This formulation creates a relatively quick and efficient procedural pathway. This simplicity implies that companies that are still economically healthy can remain in bankruptcy if the formal elements are met.

The minimalist nature of simple proof often reduces the judge's opportunity to comprehensively assess the debtor's actual financial condition. The examination is focused more on the existence of debts and their maturity status, rather than on a comprehensive analysis of the company's solvency. It creates a situation where economic indicators such as cash flow, asset structure, and potential business sustainability are not always the primary focus. Commercial court judges face a dilemma between maintaining procedural efficiency and providing a substantive assessment of the debtor's financial health. This ambivalence has given rise to debate over whether simple evidentiary measures are still relevant given the increasing complexity of the modern economy.

The distortion of bankruptcy functions arises when a mechanism originally designed as a means of collective debt resolution shifts into a strategic tool in business conflicts. Strategic bankruptcy filing occurs when creditors use bankruptcy petitions as a tactic to pressure debtors into immediate payment or restructuring. This practice exploits the speed of the bankruptcy process, which is not always available in conventional civil litigation mechanisms. Bankruptcy becomes an instrument of leverage in business negotiations. This shift in function blurs the line between insolvency resolution and commercial litigation strategy.

Bankruptcy as a tool of pressure is often associated with the risk of abuse of process, especially when the purpose of the petition is more tactical than the collective needs of the creditors. The Bankruptcy Law does grant creditors the right to file a petition, but it does not explicitly require proof of economic insolvency. This loophole can be exploited to create reputational pressure on debtors. The social and business stigma associated with bankruptcy often becomes an effective negotiating tool. This situation raises the need to reassess the balance between creditors' access to legal mechanisms and protection against potential abuse.

The tension between legal certainty and substantive justice becomes even more apparent when simple evidentiary requirements are rigidly applied. Legal certainty is reflected in clear and predictable standards, so creditors know the requirements they must meet to file for bankruptcy. Substantive justice demands a broader evaluation of the decision's actual impact on the debtor and related parties. A formalistic approach can produce procedurally valid decisions but raises questions of economic justice. This debate is closely related to the judge's role in balancing written norms with business realities.

Overly formalistic decisions risk ignoring more complex economic realities. Companies with substantial assets or good business prospects can still be declared bankrupt if they fail to meet certain obligations within a specific timeframe. This situation raises questions about whether bankruptcy law is still aligned with the goal of protecting economic value. Commercial courts are often caught between following the text of the law and considering the long-term economic implications. Academic discourse is evolving as the need for broader interpretations emerges to better respond to real-world conditions.

The systemic impact on the business world cannot be ignored when bankruptcy is aggressively used against solvent companies. Reputational risk is one direct consequence, impacting the trust of business partners and financial institutions. Bankruptcy can hinder access to financing and damage established contractual relationships. Companies may experience operational disruptions disproportionate to the value of the disputed debt. These impacts demonstrate how legal procedures can have far-reaching economic consequences.

An economic domino effect occurs when bankruptcy triggers disruptions in supply chains and employment relationships. Workers, suppliers, and consumers are impacted, even if they were not parties to the initial dispute. A single bankruptcy filing can trigger instability in the broader business sector. This situation is concerning because bankruptcy should function as a resolution mechanism, not as a source of additional instability. Systematic analysis is needed to understand how individual decisions can impact the entire business ecosystem.

Investment uncertainty is a further consequence of the application of simplistic evidence that does not consider solvency in depth. Investors tend to factor in legal risks when assessing the viability of a jurisdiction. When a healthy company can be declared bankrupt relatively easily, the perception of investment security can decrease. This factor relates to the principle of predictability, a crucial element of the economic legal system. A stable business environment requires a balance between creditor protection and ensuring business continuity.

Analysis of the problematic nature of bankruptcy filings for solvent companies opens up space for reflection on the direction of development of national bankruptcy law. Article 2, paragraph (1) and Article 8, paragraph (4) of the Bankruptcy Law provide a normative basis for simple proof, but their implementation faces challenges as economic realities become increasingly complex. The discourse on legal certainty and fairness is part of the ongoing legal evolution. Bankruptcy not only concerns the relationship between creditors and debtors, but also touches on broader economic stability. Efforts to understand this ambivalence are the first step in assessing whether the existing system balances procedural efficiency and substantive justice.

### **Normative Reconstruction of the Standard of Proof in Bankruptcy**

Doctrinal criticism of the simplified model of proof stems from the assumption that the standard places too much emphasis on fulfilling formal requirements without providing adequate space for a comprehensive evaluation of the debtor's economic condition. Article 2, paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations requires two creditors and one debt that is due and collectible as the basis for a bankruptcy petition. This provision is combined with Article 8 paragraph (4), which stipulates that a petition can be granted if the relevant facts are simply verified. This normative structure is indeed designed for efficiency, but it unlocks room for criticism because it does not explicitly include economic insolvency parameters. Doctrinal criticism sees the potential for a reduction in the objectives of bankruptcy when procedure is more dominant than substance.

The normative weakness of the simplified model of proof is evident in the absence of objective financial indicators in the assessment process. Judges tend to focus on the existence of debt and the number of creditors without conducting a comprehensive assessment of the debtor's financial health. The absence of a clear solvency test leaves the evidentiary standard vulnerable to abuse. This situation raises questions about whether the legal system provides a sufficient balance between procedural certainty and protecting a company's economic value. Academic criticism often points to the need to expand the scope of interpretation so that judges can assess economic facts more proportionately.

The inconsistency of the objectives of bankruptcy is highlighted in criticism of the simple evidentiary model. Bankruptcy theoretically functions as a collective mechanism for debtors who are no longer able to meet their financial obligations. The practice of filing bankruptcy against solvent companies creates the impression that bankruptcy has become a tool for individual debt enforcement. The initial goal of maintaining a balance between creditors and debtors has the potential to be displaced by certain strategic interests. This debate raises the need to reconstruct the concept of evidentiary responsibility to align with the basic philosophy of bankruptcy.

The integration of a solvency test into the bankruptcy process is seen as a normative solution that can strengthen the quality of decisions. Insolvency tests, such as the cash flow test or the balance sheet test, can provide additional parameters for assessing whether a debtor is truly in a financial position worthy of bankruptcy. The use of economic indicators allows judges to obtain a more realistic picture of the debtor's situation. This approach does not aim to replace simple evidence but rather to enrich judicial analytical tools. Combining procedural standards and economic indicators can strike a balance between efficiency and accuracy.

Judicial economic assessment is a crucial part of the proposed normative reconstruction. Judges not only function as assessors of formal legal aspects but also need to understand the economic implications of bankruptcy decisions. Analysis of financial statements, cash flow, and debt structure can help produce fairer decisions. This approach requires strengthening institutional capacity, including the possible use of economic experts in court proceedings. Commercial court systems in various jurisdictions have developed similar practices to ensure that bankruptcy decisions align with business realities.

The balance between procedural efficiency and substantive justice requires a paradigm shift from legal formalism to a more adaptive approach. Efficiency remains a crucial value because bankruptcy concerns debt resolution, which requires certainty of time. Substantive justice requires consideration of the social and economic impacts of bankruptcy decisions. The principle of proportionality can be used as a tool to assess whether a bankruptcy application is a proportional step towards the goal of debt settlement. This approach allows judges to consider various factors without sacrificing legal certainty.

Multi-layered judicial scrutiny is a concept that can enrich the bankruptcy petition examination process. The initial examination remains focused on meeting the formal requirements as stipulated in Article 2 paragraph (1) and Article 8 paragraph (4) of the Bankruptcy Law. Subsequent stages can include a more in-depth economic evaluation to assess the debtor's solvency. The multi-layered examination structure provides judges with the opportunity to systematically balance procedural and substantive aspects. This model can even reduce the risk of misuse of the bankruptcy mechanism as a means of pressure.

Bankruptcy regulatory reform can begin by reinterpreting existing norms without directly amending the law. Judges can adopt a teleological approach, considering the purpose of bankruptcy as a collective debt resolution mechanism. A more progressive interpretation allows for the integration of economic considerations, even if they are not explicitly stipulated in the statutory text. This approach can be a first step toward a more balanced practice. The role of jurisprudence is crucial in shaping more responsive interpretative standards.

Alternative legislative changes can also be considered to strengthen normative reconstruction. The addition of an insolvency test clause as an additional requirement in a bankruptcy petition can provide normative clarity. Legislative reforms could include guidelines for evaluating solvency or requiring courts to consider the debtor's financial condition. Such changes require in-depth analysis to avoid hindering creditors' access to legitimate legal mechanisms. The legislative process must also consider the balance between flexibility and certainty.

Comparative best practices from other jurisdictions inspire more thoughtful reform designs. Some countries combine an economic insolvency test with procedural standards to prevent premature bankruptcy. Systems that adopt reorganization or restructuring as alternatives to bankruptcy provide additional protection for viable companies. Comparative studies demonstrate various models that can be adapted to the characteristics of national legal systems. The comparative approach does not aim to copy directly, but rather to enrich the discourse on the direction of fairer and more effective bankruptcy law reform.

## Conclusion

The synthesis of findings reveals a significant gap between the construction of procedural norms in simple proof and the economic realities faced by debtors in bankruptcy practice. Proof standards oriented toward fulfilling formal elements as stipulated in Article 2 paragraph (1) and Article 8 paragraph (4) of Law Number 37 of 2004 provide a high degree of procedural legal certainty, but do not always fully capture the complexity of a company's financial condition. The practice of filing bankruptcy petitions against solvent companies reflects a distortion of the bankruptcy function, which was originally designed as a collective mechanism for resolving insolvency but, in some situations, has become a tool of strategic pressure on creditors. The tension between legal formalism and economic reality produces decisions that are normatively valid but raise questions from a substantive justice perspective. Substantive justice has not been fully internalized as a primary evaluation parameter, resulting in a balance between creditor protection and the debtor's business sustainability often not being optimally achieved.

Normative recommendations point to the need to integrate insolvency assessment as an additional element in the bankruptcy petition examination process to provide judges with a more comprehensive basis for evaluating the debtor's condition. Strengthening interpretive judicial guidelines can be a strategic step to expand judges' discretion without having to wait for structural legislative changes, particularly through a teleological approach that prioritizes the objectives of bankruptcy. Reformulation of evidentiary standards should also be considered, ensuring they focus not solely on procedural convenience but also allow for a proportional, fact-based economic analysis. Integrating procedural efficiency with protecting a company's economic value is expected to create a more balanced bankruptcy model that is responsive to the dynamics of modern business. The direction of this reform is not only related to normative changes but also a paradigm shift in understanding bankruptcy as a legal instrument oriented toward substantive justice and economic stability.

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