Multidisciplinary Output Research For Actual and International Issue (MORFAI Journal) ISSN (e): 2808-6635
Volumes 6 No. 6 (2026)

THE URGENCY OF APPLYING THE INSOLVENCY TEST AS A REQUIREMENT FOR BANKRUPTCY PETITIONS IN INDONESIAN BANKRUPTCY LAW

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Received:04/09/2026 | **Revised** : 10/09/2026 | **Accepted:** 25/09/2026 | **Published:** 02/11/2026

Abstract

Article 2(1) of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations requires only that a debtor has two or more creditors and has failed to pay at least one debt that is due and payable. Both requirements can be established through summary proof, so a debtor whose assets far exceed its liabilities may still be declared bankrupt. This study examines these weaknesses and considers why and how an insolvency test should be introduced. It uses normative legal research with statutory, conceptual, and comparative approaches, drawing on Australia, the United States, the Netherlands, and Germany. Without an insolvency test, creditors can use bankruptcy as a debt collection tool against solvent debtors. The law determines insolvency only after the bankruptcy declaration, under Article 178(1), which reverses the logical order. The comparator jurisdictions assess whether the debtor is generally unable to pay through a cash flow test, a balance sheet test, or both before opening proceedings. The study recommends amending Articles 2(1) and 8(4) to make the cash flow test the primary requirement and the balance sheet test a supplement, with examination by a court-appointed independent public accountant and a simpler procedure for micro, small, and medium enterprises.

Keywords: Bankruptcy, Bankruptcy Requirements, Commercial Court, Insolvency Test, Solvent Debtor

INTRODUCTION

Bankruptcy is, in essence, a general attachment of all of the debtor's assets, which a curator manages and liquidates under the supervision of a supervisory judge. This is how Article 1(1) of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (the Bankruptcy Law) defines it. Because its effects reach all of the debtor's assets, bankruptcy should be a last resort for debtors that genuinely can no longer pay their debts. The same reasoning underlies bankruptcy law in many countries: the debtor to be declared bankrupt is an insolvent debtor, not merely one that has failed to pay a single claim (Warsito, 2024).

Article 2(1) of the Bankruptcy Law starts from a different premise. The provision reads (unofficial translation):

> "A Debtor who has two or more Creditors and fails to pay in full at least one debt that is due and payable shall be declared bankrupt by a Court decision, either upon its own petition or upon the petition of one or more of its creditors."

Article 8(4) then requires the Commercial Court to grant the petition if these requirements are proven summarily. None of the elements asks the judge to assess the debtor's overall financial condition. Warsito (2024) gives a striking illustration: a debtor with assets of IDR 1,000,000,000,000 can, as a matter of law, be declared bankrupt over a single unpaid claim of IDR 1,000,000, as long as it has another creditor.

This illustration is not merely hypothetical. The Commercial Court has declared PT Asuransi Jiwa Manulife Indonesia, PT Prudential Life Assurance, and PT Telekomunikasi Selular bankrupt even though all three were financially sound companies, and the Supreme Court later annulled those decisions (Tan, 2022). Annulment on cassation restored the debtors' status, but the reputational damage, operational disruption, and litigation costs had already been incurred.

The problem is not limited to solvent debtors. The bankruptcy of PT Sri Rejeki Isman Tbk (Sritex) shows the opposite side. At the end of 2022, the company's liabilities stood at about USD 1.54 billion, while its assets were about USD 764.55 million (Latri & Sakti, 2025). A company with such an imbalance could still enter a Suspension of Debt Payment Obligations (PKPU), a procedure designed for debtors that still have prospects, because the law does not require any test of financial condition for PKPU either (Latri & Sakti, 2025). An analysis of the Sritex ruling also shows that the judges gave priority to legal certainty for creditors, while the prospects for restructuring and the

continuation of the business received little weight in their reasoning (Gaol & Sastrodiharjo, 2025). In other words, the absence of an insolvency test causes the system to err in both directions: healthy debtors can be declared bankrupt, while debtors beyond rescue can delay liquidation.

Against this background, this study addresses three questions. First, what are the weaknesses of the bankruptcy petition requirements in Article 2(1) of the Bankruptcy Law in the absence of an insolvency test? Second, how is the insolvency test applied in other countries, and what is its relevance for Indonesia? Third, how should a rule on the insolvency test be formulated for Indonesian bankruptcy law?

LITERATURE REVIEW

Previous Studies

Several studies from the past five years have addressed this problem. Tan (2022) argues that an insolvency test could prevent the bankruptcy of debtors acting in good faith, particularly as bankruptcy petitions increased during the Covid-19 pandemic. Tan, Amboro, and Syarief (2023) examine the possibility of adopting the United States model, as well as the obstacles to doing so in Indonesia. Fahamsyah et al. (2024) compare the mechanisms in the Netherlands, Germany, the United States, and the United Kingdom, while Riyanto et al. (2025) compare Indonesia with Australia and conclude that the Indonesian system favors creditors. These studies agree that an insolvency test is needed. Less attention has been paid to the design of the rule: which test to use, who should conduct it, at what stage, and how it should relate to PKPU and to the 60-day time limit in Article 8(5).

The Concept of the Insolvency Test

An insolvency test is an assessment to determine whether a debtor is truly unable to pay its debts. Tan et al. (2023) distinguish three forms. The cash flow test asks whether the debtor can pay its debts as they fall due. The balance sheet test asks whether the debtor's liabilities exceed its assets. The capital adequacy test asks whether the debtor has mismanaged its capital or assets, including through fraud. The first two are the forms most commonly used in bankruptcy legislation.

The two main tests complement each other. The cash flow test is closer to business reality, because a company with a positive balance sheet may still run out of cash, while a company with a negative balance sheet may continue to pay its debts with the support of its shareholders. The balance sheet test is useful for identifying debtors that are still paying but are in fact already imbalanced, so that each payment benefits only certain creditors. Latri and Sakti (2025) also point out that a balance sheet test should take liquidation value into account. Illiquid assets, such as specialized machinery and factories, are often worth far less than their book value in a forced sale.

METHOD

This is normative legal research that examines norms in legislation and legal doctrine. It uses three approaches. The statutory approach is used to analyze the Bankruptcy Law, particularly Article 1(6), Article 2(1), Article 8(4) and (5), Article 57(1), Article 178(1), and Article 222, as well as Law Number 40 of 2007 on Limited Liability Companies. The conceptual approach is used to explain the concepts of insolvency, the cash flow test, and the balance sheet test. The comparative approach is used to examine the rules in Australia, the United States, the Netherlands, and Germany.

The primary legal materials consist of Indonesian legislation and the bankruptcy statutes of the comparator countries. The secondary legal materials consist of journal articles published between 2021 and 2025 in journals accredited by SINTA or indexed in Scopus. The materials were collected through library research and analyzed qualitatively using prescriptive reasoning in order to formulate a proposed rule.

RESULTS AND DISCUSSION

A. Weaknesses of the Bankruptcy Petition Requirements without an Insolvency Test

Article 2(1) of the Bankruptcy Law contains three elements: the existence of a debt, at least one debt that is due and payable, and two or more creditors. The definition of debt in Article 1(6) is very broad, as it covers any obligation that can be expressed as a sum of money, whether it arises from a contract or from statute. As a result, almost any breach of contract dispute, of any value, can be brought before the Commercial Court in the form of a bankruptcy petition.

The method of proof makes the problem worse. Article 8(4) requires only facts or circumstances that are proven summarily, and Article 8(5) requires the decision to be pronounced no later than 60 days after the petition is registered. If the elements of Article 2(1) are met, the judge must grant the petition. The text of the law leaves no

room to reject a petition on the ground that the debtor is still able to pay. In practice, this construction treats a debtor that fails to pay one debt as a debtor that is unable to pay, although the two are different. A debtor may refuse to pay because the amount of the claim is disputed, because it considers that the creditor has not performed its own obligations, or because it is facing a temporary liquidity problem.

The Bankruptcy Law does in fact recognize the concept of insolvency. The Elucidation of Article 57(1) links insolvency to the inability to pay, and Article 178(1) provides that the bankruptcy estate is by law in a state of insolvency if no composition plan is offered at the claims verification meeting, if the plan offered is rejected, or if its ratification is refused by a final and binding decision. This means that insolvency is determined only after the debtor has been declared bankrupt, at the liquidation stage (Warsito, 2024). The order is reversed. The question of whether the debtor can pay is asked only after bankruptcy has been declared, even though that is precisely the question that should decide whether the debtor ought to be declared bankrupt at all. Warsito (2024) also notes that neither Law Number 4 of 1998 nor Law Number 37 of 2004 made an insolvency test a requirement for bankruptcy.

The first weakness of this construction is that it invites abuse. Creditors can use a bankruptcy petition as a means of pressure to obtain faster payment, because the process is quick and the threat to the debtor is severe. Warsito (2024) argues that for solvent debtors, the proper route is a breach of contract claim in the district court, not bankruptcy. Riyanto et al. (2025) note the same concern, namely that bankruptcy petitions are filed against companies that are in fact still solvent.

The second weakness concerns parties other than the petitioning creditor. The bankruptcy of a company that is still healthy harms its employees, consumers, suppliers, and the state's tax revenue. Tan (2022) links the insolvency test to the going concern principle: a company that can still operate should be preserved, not liquidated because of a single claim.

The third weakness is inconsistency in judicial decisions. The Manulife, Prudential, and Telkomsel cases, which the Supreme Court annulled (Tan, 2022), show that at the cassation level the debtor's financial condition was taken into account even though the text of the law does not require it. As a result, the outcome of a case depends on the level of court and the views of the panel. For businesses, this situation is worse than a strict but consistent rule.

The fourth weakness appears in PKPU. Article 222 allows PKPU to be filed by a debtor that cannot, or expects that it will not be able to, continue paying debts that have fallen due, and also by creditors. Because there is no test of financial condition, a debtor whose balance sheet is already severely imbalanced can still pursue PKPU. In the Sritex case, the creditors rejected the composition plan, and Article 289 required the court to declare the debtor bankrupt (Latri & Sakti, 2025). The lengthy process did not save the business; it only delayed liquidation. Gaol and Sastrodiharjo (2025) therefore suggest that the PKPU mechanism should be made more flexible for companies that still have viable prospects, and such companies can only be distinguished from those without prospects through a financial assessment.

B. Application of the Insolvency Test in Other Countries

Australia uses both tests. Under Australian law, the main measure is the ability to pay debts as they fall due, while the balance between assets and liabilities serves as a supporting indicator. Directors can also be held personally liable if the company continues to incur debts while insolvent (insolvent trading) under section 588G of the Corporations Act 2001 (Riyanto et al., 2025). In this way, the insolvency test does not only filter cases in court; it also encourages directors to act earlier.

In the United States, a petition filed by creditors (an involuntary petition) is granted under 11 U.S.C. section 303(h)(1) only if the debtor is generally not paying its debts as they become due, excluding debts that are the subject of a bona fide dispute. The measure is the debtor's general pattern of payment, not a single claim. Tan et al. (2023) consider this approach suitable for adoption in Indonesia, as it would reduce the number of companies declared bankrupt without good reason and limit social consequences such as unemployment.

In the Netherlands, whose bankruptcy law was the origin of the Faillissementsverordening formerly in force in Indonesia, Article 1 of the Faillissementswet requires that the debtor be in a state of having ceased to pay. Germany is more detailed. The Insolvenzordnung lists inability to pay (Zahlungsunfähigkeit) in section 17 as the general ground, impending inability to pay in section 18, which only the debtor itself may invoke, and over-indebtedness (Überschuldung) in section 19 for legal entities. Fahamsyah et al. (2024) compare the Netherlands, Germany, the United States, and the United Kingdom and conclude that an insolvency test should be a prerequisite before a Commercial Court judge declares a debtor bankrupt.

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Table 1. Comparison of bankruptcy petition requirements and forms of the insolvency test

Country	Basis for a bankruptcy petition	Form of test
Indonesia	Two creditors and one debt due and payable, proven summarily (Art. 2(1) in conjunction with Art. 8(4) of Law 37/2004)	None; insolvency is determined only after the bankruptcy declaration (Art. 178(1))
Australia	Inability to pay debts as they fall due	Cash flow test as the main measure, balance sheet test as a supporting indicator; directors' liability for insolvent trading (s 588G Corporations Act 2001)
United States	Creditor petition: the debtor is generally not paying its debts as they become due (11 U.S.C. s 303(h)(1))	Cash flow test based on the general pattern of payment; debts subject to a bona fide dispute are excluded
Netherlands	The debtor is in a state of having ceased to pay (Art. 1 Faillissementswet)	Assessment of the general pattern of payment
Germany	Inability to pay (s 17 InsO); impending inability to pay on the debtor's own petition (s 18); over-indebtedness for legal entities (s 19)	Cash flow test and balance sheet test

Source: compiled from Law 37/2004; Riyanto et al. (2025); Tan et al. (2023); Fahamsyah et al. (2024); and the bankruptcy statutes of the comparator countries.

The comparison in Table 1 reveals a common pattern. Every comparator country assesses the debtor's overall ability to pay before opening bankruptcy proceedings. Indonesia is the only one that treats non-payment of a single debt as a sufficient basis. Riyanto et al. (2025) describe the Indonesian system as more oriented toward creditors and debt recovery. This choice can be understood in light of its history, since the current bankruptcy rules were rewritten during the 1998 monetary crisis and were intended to speed up debt settlement (Warsito, 2024). Those conditions have long passed, while the costs of overly loose requirements continue to arise.

C. The Urgency and Formulation of an Insolvency Test Rule in Indonesia

Based on the analysis above, the urgency of adopting an insolvency test can be seen from four perspectives. In terms of justice, the test balances the protection of creditors and debtors. Creditors keep access to bankruptcy against debtors that are truly unable to pay, while solvent debtors are protected from disproportionate pressure. In terms of legal certainty, criteria written into the statute would reduce the differences in reasoning between the Commercial Court and the Supreme Court. In economic terms, companies that are still viable would not be liquidated prematurely, which protects jobs and tax revenue (Tan, 2022). In terms of the system as a whole, the same test can be used to separate debtors that deserve restructuring through PKPU from debtors that should proceed directly to liquidation (Latri & Sakti, 2025).

Implementation still faces obstacles. Tan et al. (2023) identify five: fraudulent financial reporting, disputes over asset valuation, immature regulation, the lack of standard guidelines, and high costs, especially for small and medium-sized enterprises. These obstacles should be addressed in the design of the rule rather than used as a reason for delay. The proposed formulation is as follows.

1. Amendment of Article 2(1). The element of inability to pay should be added expressly, for example: "A Debtor who has two or more Creditors, fails to pay in full at least one debt that is due and payable, and is generally unable to pay its debts as they fall due shall be declared bankrupt by a Court decision." The word "generally" follows the approach of the United States and the Netherlands, so that what is assessed is the debtor's pattern of payment rather than a single claim.
2. The cash flow test as the primary requirement and the balance sheet test as a supplement. The cash flow test fits the evidentiary process in the Commercial Court better, because it can be assessed from the debtor's payment history with its creditors. The balance sheet test should be used when the debtor is still paying some

creditors but its liabilities are suspected to exceed its assets, taking into account the liquidation value of the assets and not merely their book value (Latri & Sakti, 2025).

3. Examination by an independent public accountant. If the debtor denies that it is unable to pay, the panel of judges should appoint an independent public accountant to examine the debtor's financial condition (Warsito, 2024). The petitioner would advance the cost of the examination, which could be charged to the debtor if the debtor is found to be insolvent. This mechanism also addresses the risk of manipulated financial statements (Tan et al., 2023).
4. Adjustment of the time limit in Article 8(5). The 60-day limit should remain so that bankruptcy does not turn into protracted litigation. However, the law should allow a limited extension, for example 30 days, only for cases that require an accountant's examination.
5. Redirection of cases against solvent debtors. If the debtor is shown to be able to pay, the bankruptcy petition should be rejected and the creditor directed to a breach of contract claim or to PKPU (Warsito, 2024; Tan, 2022). Rejection does not extinguish the debt, so the creditor's interests remain protected through the appropriate route.
6. Application of the same test to PKPU. For PKPU petitions filed by creditors, an assessment of business viability and balance sheet condition is needed so that PKPU is used by debtors that still have prospects (Latri & Sakti, 2025; Gaol & Sastrodiharjo, 2025).
7. A simplified procedure for micro, small, and medium enterprises. The accountant's examination could be replaced by a financial statement supported by simple evidence, so that the cost of the test does not close off access to the courts for small creditors and debtors (Tan et al., 2023).

Until the Bankruptcy Law is amended, the Supreme Court could issue guidelines for commercial court judges on how to assess a debtor's financial condition when the debtor raises an objection. Such guidelines cannot replace a statutory amendment, because Article 8(4) still requires judges to grant petitions that meet the requirements. Even so, they could make judges' assessments more uniform when deciding whether a debt can in fact be proven summarily, for example when the amount of the claim is still in dispute.

CONCLUSION

The requirements for a bankruptcy petition under Article 2(1) in conjunction with Article 8(4) of the Bankruptcy Law do not assess the debtor's overall ability to pay its debts. Insolvency is determined only after the bankruptcy declaration, under Article 178(1). This construction allows bankruptcy to be used as a collection tool against solvent debtors, harms employees and others who depend on the debtor's business continuing, produces inconsistent decisions across levels of the judiciary, and allows debtors with severely imbalanced finances to pursue PKPU.

Australia, the United States, the Netherlands, and Germany assess whether the debtor is generally unable to pay before opening bankruptcy proceedings, with the cash flow test as the main measure and the balance sheet test as a supplement or as an additional ground for legal entities. This pattern is relevant for Indonesia because it restores bankruptcy to its place as a last resort.

The insolvency test should be incorporated into the Bankruptcy Law by amending Articles 2(1) and 8(4). The cash flow test should be the primary requirement, and a balance sheet test based on liquidation value should serve as a supplement. The amendment should also provide for examination by an independent public accountant when the debtor objects, a limited extension of the examination period, the application of a similar test to PKPU petitions filed by creditors, and a simplified procedure for micro, small, and medium enterprises.

Recommendations

Lawmakers should include an insolvency test in the amendment of the Bankruptcy Law, together with technical guidelines for assessing a debtor's financial condition. Until that amendment is enacted, the Supreme Court could prepare guidelines for commercial court judges on assessing a debtor's objection that it is able to pay. Further research should use data from Commercial Court decisions to measure how many bankruptcy petitions are filed against solvent debtors, so that this proposal can be tested empirically.

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