

# Restructuring the Justice-Based Business Continuity Principle: Effort to Actualise Legal Protection for Bankrupt Debtors in the Legal Instrument of Insolvency Test

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The arrangement of the business continuity principle in bankruptcy law, has an important role in providing legal protection for debtors, who have an ability to conduct corporate restructuring to actualise the justice principle for all parties. The concept of legal protection provided by the Government of the Republic of Indonesia, in providing a guarantee to all parties related to the debtors, to be able to perform their right and legal interest in the capacity as a legal subject, has not been maximal. To explore these regulatory issues, the researcher conducted prescriptive normative legal research, by discussing issues regarding the application of restructuring the justice-based business continuity principle, to actualise the legal protection for bankrupt debtors in the legal instrument of insolvency test. The bankruptcy law in the future should regulate the insolvency test in order to actualise the justice principle, as the concept of justice principle arranged in the UUK and PKPU. The restructuring justice-based business continuity principle can be used as one of the hopes to make a legal protection system for bankrupt debtors, who can maintain the climate in which the prospective debtor company runs its activities, so that it can continue to be carried out.

**Key words:** *Business Continuity Principle, Insolvency Test and Legal Protection, Debtor.*

## Introduction

The regulation of the business continuity principle in bankruptcy law has an important role in providing legal protection for the debtor who has the ability to conduct corporate restructuring as an effort to realise the principle of justice for all parties (Adrian 2009). The application of the principle of business continuity based on the restructuring justice value in the context of legal protection for a bankrupt debtor in resolving dispute in a commercial court that has not been realised, must be considered because it is related to the value of justice and the value of legal certainty for the debtor (Dijan 2012). It is important because, as stated by Gustav Radbruch, law should contain justice, usefulness and legality as the basic values of law. But in fact, legal protection provided by the Government of the Republic of Indonesia in providing a guarantee to all parties, in this case is related to the debtor to be able to execute their legal right and interest in their capacity as legal subject, is not maximal. It occurs because in reality often a clash happens between legal certainty with expediency, or a clash between justice with expediency. In fact, often a clash happens in realising justice and legal certainty (Marwan 2004). So, the duty to provide a harmonious way between those three values of law is a must.

The legal basic values in the form of justice, expediency and legal certainty have been balanced, regulated in Law Number 37 year 20, that concerning Bankruptcy and Delaying Obligation of Debt Payment (it is referred to as UUK and PKPU), specifically concerning the implementation of the principle of business continuity based on restructuring justice, as the effort to realise legal protection for a bankrupt debtor in the insolvency testing legal instrument (Hadi 2014).

The implementation of the principle of restructuring justice-based business continuity as an effort to realise legal protection for a bankrupt debtor in future insolvency testing, legal instrument can be one of the hopes of becoming a legal protection system for a bankrupt debtor, who can maintain the activity of a company operation of the prospective debtor company in order that the company can remain and take place (Hermayulis 2002). This hope can be used to support the growth and the development of the national economy, in order to secure and to support the result of national development. One of legal tools needed to support the development of the national economy is the regulation on bankruptcy and postponement of debt repayment obligation based on several principles. These principles include: a. The principle of balance; b. the continuity of the business; c. The principle of justice; and D. The principle of integration.

The violation of the debtor's right because of the absence of testing the debtor's ability to pay debt (insolvency test), is a major problem that must be immediately resolved. The future bankruptcy law should provide better legal protection to a debtor. Legal protection for debtors is also an obligation of the state to preserve the welfare of the debtor's life by helping the debtors continue their business continuity, considering the number of interested parties in the debtor company (Sri 1997).



Creditors tend not to pay attention to the right of debtors and tend to take advantage of the debtor's weaknesses by asking for the quick repayment of debt payment. The UUK and PKPU explicitly state that bankruptcy is a general confiscation which covers all debtors' assets, which are managed and administered by a curator. General confiscation applies to all debtors' assets that were already in existence at the time the bankruptcy statement was determined and assets obtained during bankruptcy. The existence of the bankruptcy decision caused all confiscations that have been made, to be deleted and if necessary, the supervising judge must order the deletion.

This provision shows that the bankruptcy law is still used as a tool for a bankrupt debtor even though the debtor is still in a solvent condition. This provision is very detrimental to the debtor, because the debtor does not have the opportunity to carry out company restructuring. (Siti 2009) Therefore, it is necessary to draft a law governing debt restructuring because the current bankruptcy law prefers to bankrupt a debtor, rather than has the policies to conduct company restructuring or debtor debt restructuring. In addition, in the UUK and PKPU, the application of the principle of business continuity is based on restructuring justice in the framework of legal protection for a bankrupt debtor, in the resolution of disputes in commercial court if it judges carefully and implicitly. This already exists in the UUK and PKPU, which requires courage from judges to make a breakthrough to interpret the law for the achievement of a decision that provides a sense of justice, if the debtor then demands justice through a formal channel or litigation that is not mutually harmful. The balanced state between the debtor and creditor is an interconnected condition to form material harmony and not just formal harmony.

Based on the substance of the theory of legal protection by Fitzgerald and Salmond, the rule of law can protect the interest, including the right of the debtor to obtain compensation due to the action of creditor to obtain debt repayment quickly (Fitzgerald & Salmon 2000). The theory of legal protection is then elaborated to form the rule of law through Roger Cotterell's legal system theory, which interprets the legal system as a whole. In its formation process, there cannot be contradiction both vertically and horizontally in shaping the law as a single unit, requiring an internal relationship that can predict consistency between elements in the legal system (norms, principles, concepts, etc.) (Roger 1992). Then there is also a consistent and predictable external relationship between those in the system and those outside the system, so that the normative weaknesses of the concretisation of the rule of law in a national positive legal regulation, especially at the level of implementing regulation that substantively protects the debtor's right to an arbitrary act of creditor, in obtaining debt repayment. It is then necessary to do normative reinforcement which legally refers to UUK and PKPU.

### **Research Methodology**

The type of research in writing this journal is prescriptive normative legal research. The research in this journal is intended to conduct a study of the principles, legal concepts, doctrines and norms relating to the implementation of the principle of restructuring justice-based business continuity as an effort to realise legal protection for a bankrupt debtor in an insolvency

testing legal instrument. In this research, the writer will give a prescriptive statement on the implementation of the principle of restructuring justice-based business continuity in an effort to realise legal protection for a bankrupt debtor in the insolvency testing legal instrument.

## **Discussion**

Indonesia's bankruptcy law (Indonesian Bankruptcy Law Act Number 37 year 2004), needs to be improved and perfected (Sri 2016). These improvements need to be done to create a bankruptcy law that guarantees justice, legal certainty, effectiveness, and provides balanced protection for debtor and creditor and ensures the prospective debtor's business continuity. One of the alternatives in law enforcement in the field of debtor protection, is to include the principle of absolute responsibility of the creditor, for the actions of the creditor that harm the interests of debtor in the UUK and PKPU, especially in Article, which regulates testing the ability of debtor to pay debt (insolvency test). This is to prove that the debtor is truly unable to pay (insolvent) from the financial side so the debtor's bankruptcy is in accordance with the philosophy of bankruptcy law

The bankruptcy law in other countries determine that a debtor can be declared bankrupt only if the debtor is in an insolvent condition, but on the contrary, UKK and PKPU do not adhere that principle. That is why in Indonesia, the bankruptcy decision against the debtor handed down by the Indonesian commercial court, based on the law, is very disappointing for the business world and foreign investment in Indonesia. In a broader sense, it is said to become a barrier to foreign investment in Indonesia. So, the author suggests that the bankruptcy conditions according to Article 2 paragraph 1 of the UUK and PKPU, be changed so that they adhere to the principle of insolvency (Sutan, 2002) and changed to as follows:

“Debtors who have two or more concurrent creditors, and have good debt to all their creditors, both to all concurrent creditors, preferred creditors and creditors with privileges, whose value exceeds the liquidation value of all assets that have existed at the date of the bankruptcy petition registered in court, both tangible and intangible assets can be declared bankrupt by the competent court, to render a bankruptcy decision both at its own request or at the request of a concurrent creditor, or at the request of the parties specified in this law”

## **Explanation:**

Article 2 paragraph 1 of the UUK and PKPU requires that only a debtor whose financial condition has been insolvent, namely the value of all debtor's debts to all their creditors without discriminating the types of creditors, namely concurrent creditor, preferred creditor and creditor with special privileges, have exceeded the liquidation value of all their assets. The value of the assets is valued according to the value of liquidation, which is a fair value and can be sold quickly, if the assets must be sold or liquidated because the debtor is declared bankrupt by the court, not valued at market price. The liquidation value is lower than the market value because even though these assets can be valued at market price, it is difficult and even impossible to sell these assets by reaching market price.

The provision in UUK and PKPU regarding reorganisation, needs to add a provision:

This law only applies to corporate bankruptcy in form of legal entity. Bankruptcy for individual and for corporation, that are not legal entities, will be governed by a separate law. Aside from the debtor, only the concurrent creditor and parties specified in this law have the right to submit a bankruptcy request.

**Explanation:**

The preferred creditor and creditor with special privileges, are not entitled to request for bankruptcy. The reason is because the preferred creditor has guaranteed repayment of their debt from the result of the execution of the collateral right of their receivable income. However, as is evident from the provisions in this law, preferred creditors are given the authority to approve or reject a peace agreement in the form of a debtor debt restructuring. If the preferred creditor refuses the restructuring of the debtor's debt, then the preferred creditor can immediately execute his guarantee right, as long as it meets the requirements to execute.

It is also added provisions that read:

Before a court examines a request for bankruptcy, the court should first attempt a peace agreement between debtors and creditors in form of the concurrent creditor and preferred creditor agreeing on a peace agreement in the form of a debtor's debt restructuring, by appointing a public accountant and an independent financial consultant office, to determine the debt restructuring that allows debtors to be able to taken by the parties, so that the debtor comes out of the insolvency condition.

**Explanation:**

What is meant by "what is possible to be reached by the parties" is feasible (workable) and viable (whose lives can continue). The debtor who has great hope that his or her financial situation will come out of being unable to pay their debt (insolvent). A peace agreement in form of a debtor debt restructuring, is not required to be approved by creditors with special privileges. Creditors with special rights have the right to submit a bill at any time and must be paid off their receivables during the period of the restructuring. What is meant by an insolvent situation is a condition of debtor who has debt, both to a concurrent creditor, preferred creditor and creditor with privileges whose value exceeds the value of all their assets.

In connection with the previous provisions, the following provision was also added:

A peace agreement in form of a debt restructuring is reached only if it is agreed by at least 75% of the total credit of the concurrent creditor and all preferred creditors, guaranteed by the assets of productive debtors. What is meant by productive debtor assets is assets directly related to and needed to carry out the debtor's business activities for the success of the restructuring.

**Explanation:**

The amount is at least 75%, in this provision, of the amount of the debt, not the number of creditors. Determination of the amount of at least 75% of the total receivables is to avoid the dominance of a minority of creditors.

It also added the following provision:

The time period for the peace agreement in form of debt restructuring must not exceed two years, from the time the peace agreement was signed, either by the debtor or his proxy and concurrent creditors or their proxies and preferred creditors or their proxies.

**Explanation:**

The two-year period for the restructuring period is a period that is considered sufficient for the debtor to prove that the debtor is successful, or at least shows an indication towards the success, in recovering the financial condition, so that all debtor's debts can be repaid and the debtor is out, or showing an indication of going out, of a condition of inability to repay debts (insolvency).

The following provision is also added:

If, after the restructuring period is over and the debtor's financial condition has exited or at least shows indications that the insolvency will emerge, the restructuring agreement can be negotiated between the debtors and the creditors to be extended for a period, in accordance with the agreement between the debtor and the creditors. If the preferred creditor approves the restructuring agreement, the preferred creditors that have not yet been paid their receivables, must approve the extension of the restructuring period.

**Explanation:**

During the restructuring, the value of the debtor's productive assets, that is, assets that are directly related to and needed to carry out the debtor's business activities, in order to successfully restructure the business, should not be reduced. What needs to be examined is the lack of these types of assets, but it is possible that their value will decrease due to changes in the business market condition. If the preferred creditors are allowed to execute their collateral right in the form of productive assets, which means selling the portion of the debtor's productive assets, which is pledged with collateral right, the type of productive assets of the debtor will be reduced. A provision is also added that reduces the interest rate of a previous loan, debt repayment schedule, additional debt, additional loan, and conversions of one or more debtor debts, and terms that regulate additional new loans from both existing creditors and from new creditors. Also, that new loan creditors are allowed to obtain a guarantee in the last three years about the company's financial condition.

In examining the request, the court is obliged to decide on the bankrupt debtor only if the debtor is in a condition of being unable to repay debt (insolvency), namely all debt of the debtor both to the preferred creditors, concurrent creditors and creditors with privileges, whose value is



smaller than the value of all debtor assets which existed at the time the petition for bankruptcy was submitted. If the court examining the request for bankruptcy is of the opinion that the debtor has not been able to repay its debts (insolvency), the court is obliged to reject the request for bankruptcy and issue a decision so that the application is submitted to the district court as a case of breach of promise in an ordinary civil case. If the restructuring agreed by the debtor and creditor fails in the middle of its implementation, or the debtor remains in an insolvent condition after the end of the restructuring period then the debtor becomes bankrupt and the court is obliged to give a verdict confirming the debtor's bankruptcy without having to examine the case.

The problem that has not yet been overcome, is the possibility of debt restructuring has not been regulated. Bankruptcy law amendment only refers to the problem of the time period effectively. The overall problem is that the current bankruptcy law amendment still does not provide a legal framework for an effective debtor reorganisation and as a result after three years of this process, all parties have only submitted to the commercial court for the issue of payable debt. So there is no possibility of debt restructuring except through Deferment of Debt Payment Obligations (PKPU) (Ricardo 2002).

A company reorganisation system is an inseparable part of good bankruptcy law. Bankruptcy laws should be able to determine which companies are categorised, as not able to operate so they must end their existence, and which prospective companies must be maintained. The bankruptcy law should also be made to determine how to distribute the losses suffered by the debtor, not only increase the return of debts to creditors. Bankruptcy law plays a unique role in resolving so many complex problems that arise due to the difficult financial situation of the debtor (Robertus 2002). The problems are such as taxation, unpaid employees and suppliers.

To provide legal certainty on the implementation of the principle of business continuity, as a philosophical basis for legal protection for a bankrupt debtor, in the settlement of bankruptcy-dispute oriented with restructuring justice value in the commercial court in the future, is to make positive the Law on testing the ability of the debtor to pay debt (insolvency test). Next is an explanation of the parts considered to be the most important part of the law concerning testing the debtor's ability to pay debts (insolvency test) in the future (Dimiyati 1998). The next is about the norm of the Implementation of the Principle of Business Continuity Using Insolvency Test: The Effort to Realise Restructuring Justice-Based Legal Protection for a Bankrupt Debtor in a Bankruptcy Dispute Settlement, which is only implicit in the UUK and PKPU, the researcher offers an alternative normative implication. The offer of short-term normative implication from researchers is to amend the UUK and PKPU:

## 1. Article 2 paragraph (1) of Law Number 37 year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations

**Problem:** Bankruptcy requirements make it easy for the debtors to declare bankruptcy both by themselves and by the creditors, which would cause various problems for the Indonesian business climate.

### **Researcher Recommendation:**

The regulation of bankruptcy requirements in Article 2 paragraph (1) of the UKK and PKPU should be amended. The need for this change is because the requirement to declare a bankrupt debtor is too easy, especially the number of creditors with debts that are past the due date and the absence of a minimum debt limit, that can be applied for bankruptcy. Therefore, to overcome the existing problem regarding bankruptcy conditions, is done by changing the bankruptcy condition with several alternatives such as:

**a. Additional conditions for the number of creditors whose debts are due and collectible**, where previously one debt becomes two debts which are due and collectible, and add a minimum debt requirement that can be requested for bankruptcy is minimally Rp.200,000,000.00 (two hundred million rupias).

**b. Change the bankruptcy requirement by conducting an insolvency test.** Amendment to Article 2 paragraph (1) of the UUK and PKPU becomes "Debtors who have experienced insolvency, namely the value of all assets is smaller than the value of the debt, based on the result of an audit of an independent Public Accountant Office and which has more than one creditor, both concurrent and preferred creditors, one of the creditors has a bill that is due date and collectible, the debtor can be declared bankrupt by the court on the request of the debtor, or one of the concurrent creditors, whose bills are due and collectible, and the bankrupt applicant is obliged to prove the debtor has experienced insolvency and has more than one creditor"

## 2. Article 1 paragraph (3) of UUK and PKPU

**Problem:** Understanding debt in the UUK and PKPU must adhere to the notion of debt in a comprehensive interpretation, so the notion of debt does not lead to various interpretations (Paripurna 2002). The understanding of debt in the UUK and PKPU should be understood in a comprehensive interpretation. The definition of debt is not only in form of debt that arises because of the debt agreement between the debtor and creditor (Fred 2005).

**Researcher's recommendation:** Amendment to article 1 paragraph (3) of UUK and PKPU should be "debt in a comprehensive interpretation is an obligation that arises

because of the loan agreement or other agreements, because of the provisions of the law and because the judge's decision must and has permanent legal force, and the obligation has existed and the magnitude is certain, when the debtor is filed for bankruptcy to the court”

### **3. Article 8 paragraph (4) of Law Number 37 year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations**

**Problem:** Simple proof is contained in Article 8 paragraph 4, but the UUK and PKPU do not provide an explanation of how this simple proof is applied. Simple evidence in practice is often misused and causes harm to both debtors and creditors, where a debtor with bad intentions can file for bankruptcy as long as it meets bankruptcy requirements (Erma & Tata 2010). Conversely, creditors can easily request a debtor's bankruptcy as long the condition of debt can be proven simply. The "must" provision in the UUK and PKPU cause the judge to have no other choice but to grant a request for bankruptcy which should consider the multiple effects of the implementation for bankruptcy.

**Researcher Recommendation:** Based on these problems, it is necessary to improve the concept of bankruptcy simple proof by considering the solutions that can be offered as follows:

Protection for debtor, the simple proof adhered by the Indonesian bankruptcy law is no longer relevant, because the proof is too simple and easy to declare a debtor bankrupt. Thus, it is necessary to make a revision that is making a simple proof into factual proof. Factual proof is proof of the conditions contained in Article 2 paragraph 1, with the addition of the financial statement of the solvent debtor or not through insolvency testing. In UUK and PKPU, the implication of changing the norm in Article 8 paragraph (4) of the UUK and PKPU by changing the word "must be granted" to be "can be granted". This was chosen to provide space for the judge to decide whether or not there is evidence of debt and due date debt.

### **4. Article 222 paragraph (3) of Law Number 37 year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations**

**Problem:** Article 222 paragraph (3) of the UUK and PKPU states that "the paying creditor estimates that the debtor cannot continue to pay the debts that are due date and can be collected, may request that the debtor be given a postponement of the debt payment obligation to allow the debtor to submit a peace plan includes offering to pay part or all of the debt to their creditors." It is proposed to make change by removing Article 222 paragraph 3 of the UUK and PKPU.

**Researcher Recommendation:** Considering that PKPU draft bill aims to provide an opportunity for debtors to offer a peace plan in the context of debt repayment, the authority to submit PKPU request must be available only to debtors and creditors and should not be given the authority to submit PKPU because they have provided bankruptcy effort.

## 5. Article 222 of UUK and PKPU

**Problem:** Bankruptcy can only be examined and decided by the commercial court after the debtor and creditor previously made effort to reorganise both the debtor's debt (debt restructuring) and the debtor's company (company restructuring). Fundamentally, UUK and PKPU have adopted a reorganisation called PKPU, but UUK and PKPU do not hold PKPU as the first choice (premium remedium).

**Researcher's Recommendation:** According to the principle of good bankruptcy, a bankruptcy law should explicitly specify that a bankruptcy court can only examine bankruptcy request if the debtors and creditors have first resorted to a peace effort, in the form of negotiating and agreeing on a reorganisation which according to the UUK and PKPU is called PKPU.

## 6. Article 185 of Law Number 37 Year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations

**Problem:** Provision regarding the sale of bankruptcy assets as regulated in Article 185 of the UUK and PKPU states that the sale can be done through public sales (auction) in accordance with statutory regulation, selling under the hand with the permission of the supervising judge. The problem that arises is that in practice, there is no notification of the sale made by the curator to the debtor that gives the debtor no information about the status of the assets sold by the curator. This condition can be detrimental to the material side of the debtor if the sale is done unfairly.

**Researcher Recommendation:** In amendment to the provision of Article 185 of UUK and PKPU, the KPKPU draft Bill, a provision was added regarding the notification to the debtor, regarding the sale of the debtor's assets transparently related to any legal action in form of selling material belonging to the creditor, whether selling in public, selling under the hand or other sales that are permitted by law in order to secure the debtor's assets.

## 7. Article 74 paragraph (1) of Law Number 37 year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations

**Problem:** According to the Law on Business Administration and PKPU, bankruptcy debt is conducted by the curator and supervised by a supervisory judge appointed by the commercial court. In line with the supervision, in Article 74 paragraph 1 of UUK and PKPU states that the curator must submit a report to the supervisory judge about the state of bankruptcy assets and the implementation of their duties every 3 months. However, in practice, the supervision by a supervisory judge actually complicates the existing bankruptcy process. In carrying out their duties, the curator is supervised by the supervisory judge and in carrying out some actions, the curator requires the approval of a supervisory judge. The UUK and PKPU gave too much authority to the supervisory judge. However, the ideal condition of the role of the supervisory judge is not in line with the implementation of the practice. In practice it is very difficult for the supervisory judge to supervise the curator. Cases that have to be monitored by a supervisory judge are a lot, while the position of curator and supervisor judge is also different. A location difference will hamper the supervision conducted by the supervisor of judge to the curator (Man 2008).

**Researcher Recommendation:** The supervisory authority toward the curator should be the institution that has the authority to carry out the supervision of the professional curator, and an institution that gives permission and has a broad scope of supervision. This supervision model is found in several other professions such as notaries and public accountants.

By referring to the meaning of the principle of balance as stated in the General Explanation of UUK and PKPU, shows that the function of the principle of business continuity can be said to run well if the function of the bankruptcy institution can run well too. This is due to the concept of the business continuity principle, as explained in the General Explanation of the UUK and PKPU which shows the effectiveness or failure of the functions of the bankruptcy institution (Sri 1999). Indonesia's bankruptcy law through the UUK and PKPU can be said still not to be called as a solution for debtors, who are truly unable to pay their debt, but the debtor company is still in the prospect for continuing (Rudhi 1996). The UUK and PKPU also do not mention in more detail about the condition in which the debtor gets legal protection, in line with the requirement to declare a bankrupt debtor that is only based on the provision of Article 2 paragraph (1) of UUK and PKPU. This does not explain the form of legal protection for the debtor, if there is a fact that the debtor is still solvent. In addition, the application of the bankruptcy law in Indonesia through the UUK and PKPU, is also not regulated further in the implementing regulation, so every process of hearing and trial implementation is only referring to the UUK and PKPU. Furthermore, for the long term in the future, to complete the UUK and PKPU regulations, it is better to make an Implementing Regulation, for example a Government Regulation to explain further about testing the debtor's ability to pay debt (insolvency test).

In accordance with the normative idea of legal protection arrangement for a bankrupt debtor, as stipulated in UUK and PKPU, as the protection law, in the field of bankruptcy law, is to protect the interest of the bankrupt debtor in connection with the absence of testing the debtor's ability to pay debt (insolvency test), which makes it easy for the debtor to be declared bankrupt, only by referring that it is based on the provision of Article 2 paragraph (1) of the UUK and PKPU (Fred 2005). In the absence of special law, implicitly contained regarding legal protection for bankrupt debtor in UUK and PKPU, the effect of the absence of testing the ability of debtor to pay debt (insolvency test) on business continuity of the debtor, who still has a prospect of being saved, but unable to pay off debt. This makes the debtor's debt very detrimental to the debtor and further weaken the position of the debtor. For this reason, it is necessary to improve the articles in UUK and PKPU, especially Article 2 paragraph (1) of the UUK and PKPU.

For the long-term condition, it is necessary to establish a special law concerning the mechanism for testing the ability of debtor to pay debt (insolvency test), as an effort to provide legal protection for a bankrupt debtor whose company still has the prospect of being saved. The effort to bring about the improvement and formation of positive legal protection for a bankrupt debtor in line with the absence of testing the ability of debtor to pay debt (insolvency test), requires government involvement to take several actions:

1. The realisation of an idealistic legal form concretisation as input from the Government of the Republic of Indonesia as the regulator, in this case the relevant department and other relevant ministries to form laws that violate the law, especially by amending Article in Law Number 37 year 2004 and forming law specifically regarding the mechanism for testing the ability of debtor to pay debt (insolvency test). This originates from the ideal value of Pancasila law and the 1945 Constitution of the Republic of Indonesia and the reference to the principles and legal norms, that have also been contained in the Laws and Regulations as an umbrella law for legal protection for a bankrupt debtor, to be used as product liability law based on the principle of legal protection for a bankrupt debtor.
2. The realisation of the idealistic formulation of legal form as input for the legislator who is occupied in the House of Representatives of the Republic of Indonesia at the time, it will formulate principles that will become legal norms in the form of a proposal for the establishment of laws and regulations, revocation, refinement and addition of certain articles for the development of UUK and PKPU, in the form of a radical concept of applying the principle of business continuity in line with the absence of a mechanism for testing the ability of debtor to pay debt (insolvency test) in the future being systematic and comprehensive, as an effort to gain legal protection for a bankrupt debtor in Indonesia.



## **Conclusion**

The principle of business continuity based on restructuring justice should be elaborated (concretised) on a positive legal norm in a legal instrument, testing the ability of a debtor to pay debt (insolvency test). The legal protection for debtor and disputed resolution in insolvency courts were: (a) Legal values underpinning the principle of business continuity as a basis for regulating and applying insolvency testing (b) The elaboration of legal principles that underlied the principle of business continuity as the basis for regulating and applying insolvency testing; Law No. 37 year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations governing the requirements for declaring bankrupt debtor in the context of perfecting the Bankruptcy Law in the future.

## **Suggestion**

The Bankruptcy Law of Indonesia did not yet reflect the provision that should be the basis for regulation in a Bankruptcy Law. Therefore, bankruptcy law in the future should regulate the following matters: a) Insolvency Test as a Requirement for Requesting Bankrupt Declaration; b) A comprehensive understanding of debt in UUK and PKPU requires proof that is not simple; c) Appointment of Expert Consultant Team, d) Commercial Court Judge Authority in Insolvency Test; e) Court Decision that Protect Workers or Company Workers; and f) The need for Reorganisation to Increase Prospective Company Value.



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