



Reassessing Creditor-Initiated Debt Restructuring in Indonesia through the Islamic Law Concept of Ta'assur

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Abstract

This study aims to examine Indonesia's Suspension of Debt Payment Obligations (PKPU) through the Islamic legal concept of *ta'assur* (financial distress), focusing on the operation of the current framework as a genuine distress-based restructuring mechanism or creditor-driven outcomes. Even though existing studies have analyzed PKPU from doctrinal and procedural perspectives, limited attention has been given to the evaluation through an integrated Islamic insolvency framework, particularly in relation to debtor capacity and proportionality. A normative juridical method is adopted with statutory, conceptual, and comparative approaches. Furthermore, legislation, selected commercial court decisions, and classical Islamic jurisprudence are analyzed using qualitative doctrinal reasoning. The results show that the absence of a substantive financial-distress test and limited judicial scrutiny permit creditor-initiated PKPU proceedings to contribute to inefficient liquidation, even though Article 222(1) sets out basic eligibility requirements. Insolvency mechanisms should incorporate proportionality, feasibility, and debtor-capacity assessment by applying *ta'assur* as a normative evaluative framework. This study contributes to insolvency law theory by operationalizing Islamic jurisprudential principles into modern restructuring standards and offers policy implications, including the need for distress-based entry criteria, enhanced judicial oversight, and proportionality-based evaluation of creditor decisions, to support a more balanced and sustainable regime in Indonesia.

Kata Kunci:

PKPU; Ta'assur; Restrukturisasi Utang; Hukum Kepailitan; Kesulitan Keuangan

Abstrak

Penelitian bertujuan untuk mengkaji Penundaan Kewajiban Pembayaran Utang (PKPU) di Indonesia melalui konsep hukum Islam *ta'assur* (kesulitan keuangan), dengan fokus pada penerapan kerangka kerja saat ini sebagai mekanisme restrukturisasi yang benar-benar didasarkan pada kesulitan keuangan atau hasil yang didorong oleh kreditor. Meskipun studi yang ada telah menganalisis PKPU dari perspektif doktrinal dan prosedural, perhatian yang diberikan terhadap evaluasi melalui kerangka kerja kepailitan Islam yang terintegrasi masih terbatas, terutama terkait dengan kapasitas debitur dan proporsionalitas. Metode yuridis normatif diadopsi dengan pendekatan yuridis, konseptual, dan komparatif. Selain itu, undang-undang, putusan pengadilan niaga terpilih, dan fiqh Islam klasik dianalisis menggunakan penalaran doktrinal kualitatif. Hasil menunjukkan bahwa ketidakhadiran uji kesulitan keuangan substantif dan pengawasan yudisial yang terbatas memungkinkan proses PKPU yang diinisiasi kreditor berkontribusi pada likuidasi yang tidak efisien, meskipun Pasal 222(1) menetapkan persyaratan kelayakan dasar. Mekanisme kepailitan harus memasukkan proporsionalitas, kelayakan, dan penilaian kapasitas debitur dengan menerapkan *ta'assur* sebagai kerangka kerja evaluatif normatif. Penelitian memberikan kontribusi terhadap teori hukum kepailitan dengan mengimplementasikan prinsip-prinsip fiqh Islam ke dalam standar restrukturisasi modern, serta menawarkan implikasi kebijakan, termasuk perlunya kriteria masuk yang didasarkan pada kondisi kesulitan keuangan, pengawasan yudisial yang lebih ketat, dan evaluasi keputusan kreditor berdasarkan prinsip proporsionalitas, guna mendukung sistem yang lebih seimbang dan berkelanjutan di Indonesia.

INTRODUCTION

In the context of insolvency law, academic discussions increasingly focus on the regulation of debtor–creditor relations, particularly in situations of corporate financial distress. These discussions suggest a fundamental tension between creditor enforcement and debtor protection, raising broader constitutional concerns. In the Indonesian legal system, insolvency mechanisms must be assessed in relation to Article 28D(1) of the 1945 Constitution, which guarantees legal certainty and equal treatment before the law, Article 28H concerning property rights, and Article 28E(3) regarding the freedom to conduct economic activities. Insolvency law must be evaluated as a framework that implicates both procedural justice and substantive economic rights.¹

In Indonesian positive law, the Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang* – PKPU) is regulated under Law No. 37 of 2004 concerning Bankruptcy and PKPU. Article 222(1) allows PKPU to be initiated by debtors or creditors, provided that the debtor has more than one creditor and at least one due and payable debt. This requirement constitutes a formal eligibility threshold but does not include a substantive assessment of financial distress, such as cash-flow or balance-sheet insolvency. The feature distinguishes PKPU from restructuring regimes in other jurisdictions, such as the United States Chapter 11 and certain European preventive restructuring frameworks, where access to restructuring procedures is increasingly connected to an assessment of financial viability and judicial oversight.²

The mechanism of PKPU is designed to provide a statutory opportunity for debtors and creditors to negotiate a composition plan under judicial supervision. In this process, the debtor proposes a plan that may offer full or partial repayment, subject to approval by a statutory majority of creditors. The process may proceed to a declaration of bankruptcy under Articles 285–292 of Law No. 37 of 2004 when the plan is rejected. Even though the declaration is not automatic and requires a judicial decision, the court’s role is largely procedural, with limited examination of the substantive feasibility of the restructuring proposal. In this context, the outcome of PKPU proceedings is significantly influenced by creditor voting rather than an independent assessment of the debtor’s financial condition.³

The evolution of PKPU within the insolvency framework shows a structural gap between procedural design and substantive justice. Existing studies indicate that PKPU does not incorporate a clear insolvency test to distinguish between debtors experiencing temporary liquidity problems (cash-flow insolvency) and those facing structural financial distress (balance-sheet insolvency). This absence has significant implications for the fairness of legal outcomes since the context allows restructuring mechanisms to be invoked without

¹ Christine Mitter, “Bankruptcy Law As A Corporate Governance Mechanism: Issues and Evidence,” *European Journal of Management* 15, no. 2 (June 2015): 57–84, <https://doi.org/10.18374/EJM-15-2.4>; Tia Choliza and Muhammad Aziz Zakiruddin, “Legal Protection For Customers In Murabahah Transactions Within Islamic Banking,” *Mu’amalah: Jurnal Hukum Ekonomi Syariah* 4, no. 2 (November 2025): 257–72, <https://doi.org/10.32332/muamalah.z28svr77>.

² Emanuele Teti et al., “The Efficiency of Preventive Restructuring Procedures: Evidence from France,” *Strategic Change* 33, no. 2 (March 2024): 79–93, <https://doi.org/10.1002/jsc.2564>.

³ Muhammad Fitratallah Dahlan, Oky Deviany, and Muhammad Aswan, “Analisis Hukum Terhadap Penolakan Perdamaian Oleh Kreditor Yang Diajukan Debitur Pada Penundaan Kewajiban Pembayaran Utang,” *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (May 2023): 537–46, <https://doi.org/10.37680/almanhaj.v5i1.2650>.

regard to the debtor's actual economic condition. Therefore, debtors who remain economically viable may be exposed to outcomes that undermine the capacity for recovery.⁴

The creditor-centric design of PKPU raises concerns regarding legal certainty and distributive fairness. The law permits creditors to initiate PKPU proceedings and reject the debtor's proposed composition plan, which may lead to bankruptcy following judicial declaration without substantive evaluation of financial viability. This institutional arrangement places significant control in the hands of creditors and may create conditions in which restructuring procedures are used strategically rather than as genuine mechanisms for economic rehabilitation. The dynamics raise important questions regarding the compatibility of PKPU with constitutional principles of fairness, proportionality, and equal legal protection.⁵

Comparative legal scholarship has emphasized that insolvency regimes lacking objective financial-distress assessments are more vulnerable to opportunistic use and may deviate from the intended function as collective restructuring mechanisms. Even though many modern systems have introduced safeguards such as insolvency thresholds, feasibility tests, and enhanced judicial review to ensure that restructuring serves the rehabilitative purpose, the Indonesian PKPU framework remains relatively formalistic in the entry requirements. This condition suggests the existence of a broader normative gap that warrants critical examination.⁶

Based on the description above, this study aims to address the gap by analyzing the structural and normative implications of creditor-initiated PKPU and creditor rejection of debtor-proposed composition plans within Indonesian insolvency law. The concept of *ta'assur* (financial hardship) is introduced as a normative analytical framework derived from Islamic jurisprudence to evaluate the fairness of debtor-creditor relations. Existing studies have not examined PKPU through an integrated Islamic insolvency perspective, and this absence constitutes a significant gap. Therefore, this study aims to analyze the structural characteristics of PKPU, evaluate the concept through *ta'assur*, and develop legal reform proposals contributing to the theoretical development of insolvency law and policy-oriented improvements in the Indonesian restructuring regime.⁷

RESEARCH METHODS

This study adopts a normative legal and doctrinal method using three main methods, namely statutory, conceptual, and case approaches. The statutory approach examines the 1945 Constitution of the Republic of Indonesia and Law Number 37 of 2004 on Bankruptcy and PKPU, focusing on provisions governing creditor-initiated PKPU applications, voting

⁴ Stephan Madaus, "Leaving the Shadows of US Bankruptcy Law: A Proposal to Divide the Realms of Insolvency and Restructuring Law," *European Business Organization Law Review* 19, no. 3 (September 2018): 615–47, <https://doi.org/10.1007/s40804-018-0113-7>.

⁵ R. Benny Riyanto et al., "Clashing Legal Realities: A Comparative Analysis of Insolvency Tests in Australia and Indonesia's Bankruptcy Law," *Jambura Law Review* 7, no. 1 (December 2024): 88–104, <https://doi.org/10.33756/jlr.v7i1.27327>.

⁶ Frédéric Closset et al., "Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms," *Journal of Banking & Finance* 149 (April 2023): 106756, <https://doi.org/10.1016/j.jbankfin.2022.106756>.

⁷ Putri Rahmawati and Wardani Rizkiyanti, "Insolvency Test Sebagai Solusi Preventif Dalam Konstruksi Hukum Kepailitan Di Indonesia," *Jurnal Yuridis* 10, no. 2 (December 2023): 95–112, <https://doi.org/10.35586/jyur.v10i2.6381>.

mechanisms, and the legal consequences of rejecting a composition plan. The conceptual approach analyses ta'assur in Islamic jurisprudence as a normative analytical framework for assessing financial distress and fairness in debt enforcement. In this study, ta'assur is treated as a normative framework derived from classical Islamic legal thought that emphasizes proportionality, debtor protection, and the avoidance of undue hardship. The use is justified based on providing a context-specific evaluative lens, particularly relevant to restructuring mechanisms, compared to more general theories such as distributive justice or international soft-law frameworks like the UNCITRAL Legislative Guide.

The case approach is conducted through the analysis of selected Commercial and Supreme Court decisions, including creditor-initiated PKPU proceedings and the rejection of debtor-proposed composition plans. Furthermore, the cases are selected using purposive sampling, based on three criteria, namely (i) creditor-initiated PKPU petitions, (ii) rejection of composition plans, and (iii) subsequent bankruptcy outcomes, covering decisions from 2018 to 2025. This approach allows the study to capture recent developments in PKPU practice while avoiding purely illustrative analysis. In addition, the study accounts for potential divergences in judicial reasoning by examining differences in the interpretation of creditor voting, restructuring feasibility, and the transition to bankruptcy. The secondary legal materials include legislation, case law, and scholarly literature, which are analyzed using qualitative normative legal analysis through interpretation, comparison, and evaluation against the ta'assur framework to identify gaps between the formal design of PKPU and the practical application.

RESULTS AND DISCUSSION

PKPU as a Creditor-Driven Restructuring Mechanism: Structural Deficiencies and Legal Implications

The PKPU is a core instrument of Indonesian insolvency law intended to enable financially distressed debtors to negotiate a court-supervised composition before liquidation. Law No. 37 of 2004 frames PKPU as a rescue-oriented procedure and operates as a creditor-controlled pathway that can lead to bankruptcy outcomes, potentially deviating from modern corporate-rescue paradigms.⁸ From the perspective of *ta'assur*, these outcomes raise concerns regarding whether PKPU adequately functions as a mechanism for genuine financial distress resolution. In classical Islamic jurisprudence, the concept is reflected in doctrines concerning financial hardship and debtor protection, as discussed by jurists such as al-Sarakhsi in *al-Mabsut* and Ibn Rushd in *Bidayat al-Mujtahid*. These sources emphasize that enforcement of debt obligations must be proportionate to the debtor's capacity and coercive measures should be limited due to excessive hardship.⁹ Comparative insolvency scholarship shows that rescue regimes perform more effectively when access to moratoria is conditioned

⁸ Bhavna Mahadew and Tinotenda Ganga, "A Comparative Analysis of Corporate Rescue and Insolvency Laws in Zimbabwe and Mauritius," *International Journal of Law and Management* 67, no. 2 (January 2025): 210–29, <https://doi.org/10.1108/IJLMA-02-2024-0040>.

⁹ Edith S. Hotchkiss, David C. Smith, and Per Strömberg, "Private Equity and the Resolution of Financial Distress," *The Review of Corporate Finance Studies* 10, no. 4 (December 2021): 694–747, <https://doi.org/10.1093/rcfs/cfab015>.

on financial distress rather than procedural triggers.¹⁰

A central flaw of PKPU is the absence of an objective insolvency or financial distress test. Article 222 of Law No. 37 of 2004 permits PKPU upon the existence of multiple creditors and one due and payable debt, without any inquiry into cash-flow or balance-sheet insolvency.¹¹ This requirement constitutes a minimal legal threshold but does not ensure that the debtor is experiencing genuine financial distress. Under the framework of *ta'assur*, the approach is normatively problematic, allowing coercive collective procedures to be imposed without verifying the level of hardship. This purely formal gateway contrasts with restructuring frameworks that require proof of distress before granting collective remedies.¹²

Doctrinal and limited empirical analyses suggest that creditor-initiated PKPU may be used strategically to extract concessions rather than to facilitate rehabilitation. After PKPU is granted, moratorium effects, reputational harm, and operational constraints may weaken the debtor's bargaining position. In the framework of *ta'assur*, this dynamic reflects a potential imbalance in which creditor rights are exercised without sufficient regard to the debtor's capacity and the proportionality of enforcement. Procedural formalism may overshadow substantive financial evaluation, increasing the risk that PKPU outcomes are driven by bargaining power rather than equitable considerations.¹³

The lack of a statutory insolvency test increases the risk of opportunistic filings. In many modern systems, access to collective proceedings depends on evidence of genuine distress, such as declining cash flows, over-indebtedness, or imminent default, to deter tactical abuse. In contrast, PKPU allows entry based on formal criteria. From the perspective of *ta'assur*, this represents a structural imbalance since the principle requires that legal consequences be proportionate to the debtor's actual financial condition. PKPU risks imposing collective constraints on debtors who may be economically viable without a mechanism to assess the condition.¹⁴

The voting architecture of the peace plan reinforces creditor dominance. Approval depends on creditor majorities, and bankruptcy may follow through judicial declaration without a substantive inquiry into the delivery of superior collective value when rejected. In the framework of *ta'assur*, creditor rejection of restructuring proposals should be evaluated against standards of proportionality and fairness, particularly where rejection may lead to greater loss. The absence of evaluative standards allows creditor veto power to operate

¹⁰ Riyanto et al., "Clashing Legal Realities."

¹¹ Lydia Tsioli, "Rescue Financing under a 'Viability Spotlight,'" *Journal of Corporate Law Studies* 22, no. 2 (July 2022): 843–85, <https://doi.org/10.1080/14735970.2022.2157469>.

¹² Fatimah Hs et al., "Urgensi Pembaharuan Undang-Undang Kepailitan Demi Efisiensi Dan Keadilan Dalam Penyelesaian Kepailitan Dan PKPU," *Zaaken: Journal of Civil and Business Law* 5, no. 2 (June 2024): 277–88, <https://doi.org/10.22437/zaaken.v5i2.33099>.

¹³ Michi Nishihara, Takashi Shibata, and Yuan Tian, "Investment, Financing, Strategic Debt Service, and Liquidation," *Quantitative Finance* 25, no. 10 (October 2025): 1639–55, <https://doi.org/10.1080/14697688.2025.2528693>.

¹⁴ Udichibarna Bose, Stefano Filomeni, and Sushanta Mallick, "Does Bankruptcy Law Improve the Fate of Distressed Firms? The Role of Credit Channels," *Journal of Corporate Finance* 68 (June 2021): 101836, <https://doi.org/10.1016/j.jcorpfin.2020.101836>; Muhammad Syarif and Khamim, "Antar Pakatan and the Reproduction of Social Solidarity: A Cultural Strategy for Addressing the Economic Burden of Customary Marriage in the Sambas Malay Community," *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 1 (May 2025): 94–110, <https://doi.org/10.24260/ijssls.1.1.12>.

without normative constraints.¹⁵

Procedural developments following Constitutional Court Decision No. 23/PUU-XIX/2021, which expanded access to cassation in PKPU cases, have introduced additional complexity. This development may enhance procedural safeguards, but does not directly address the substantive issue identified through *ta'assur*. Therefore, procedural expansion may not resolve the underlying imbalance.¹⁶

From a legal protection perspective, Indonesian scholars argue that honest but financially distressed debtors remain inadequately safeguarded. The combined effect of the absence of an insolvency test and creditor-controlled voting may expose viable firms to bankruptcy outcomes even where restructuring remains feasible.¹⁷ This situation reflects a failure to distinguish between debtors who are genuinely unable to pay and those who recover under appropriate restructuring conditions. Differentiation is central to ensuring that legal outcomes do not impose excessive hardship.¹⁸

Cases such as the restructuring of Garuda Indonesia suggest that PKPU can function effectively under certain conditions, particularly where stakeholder coordination and credible financial projections are present.¹⁹ However, these outcomes depend on external factors rather than on a consistent legal framework that ensures proportional treatment of debtors. This indicates that the consistency between PKPU and the principles of financial hardship remains inconsistent.²⁰

The paradox of creditor-initiated PKPU becomes more pronounced when viewed through *ta'assur*. The process risks imposing disproportionate consequences on the debtor when a creditor initiates PKPU and rejects restructuring proposals feasible under a proper financial assessment. PKPU may function inconsistently with the principle that enforcement should not exceed the debtor's capacity.²¹ This structural vulnerability is compounded by the absence of an explicit good-faith requirement for creditors in Indonesian PKPU proceedings. From the perspective of *ta'assur*, creditor actions should be guided by considerations of fairness and avoidance of undue harm. The absence of obligations may allow procedural rights to be exercised by prioritizing individual recovery over collective and proportionate outcomes.²² This Indonesian model deviates significantly from modern restructuring theory, which views insolvency proceedings as a coordination mechanism designed to overcome

¹⁵ Vinicius Augusto Brunassi Silva and Richard Saito, "Corporate Restructuring: Empirical Evidence on the Approval of the Reorganization Plan," *RAUSP Management Journal* 53, no. 1 (January 2018): 49–62, <https://doi.org/10.1016/j.rauspm.2017.12.008>.

¹⁶ Yong Zhou, Siting Liu, and Wei Song, "Can Bankruptcy Court Establishment Drive Enterprise' Entrepreneurial Orientation?," *International Review of Economics & Finance* 103 (October 2025): 104540, <https://doi.org/10.1016/j.iref.2025.104540>.

¹⁷ Ashwini Agrawal, Juanita González-Urbe, and Jimmy Martínez-Correa, "Measuring the Ex-Ante Incentive Effects of Creditor Control Rights during Bankruptcy Reorganization," *Journal of Financial Economics* 143, no. 1 (January 2022): 381–408, <https://doi.org/10.1016/j.jfineco.2021.09.020>.

¹⁸ Nicolae Stef, "How Does Legal Design Affect the Initiation of a Firm's Bankruptcy?," *Economic Modelling* 114 (September 2022): 105918, <https://doi.org/10.1016/j.econmod.2022.105918>.

¹⁹ Kristina Stoiber et al., "Open Strategy as Turnaround: The Impact of Openness in Restructuring under Financial Distress," *Academy of Management Perspectives* 39, no. 2 (May 2025): 250–73, <https://doi.org/10.5465/amp.2023.0363>.

²⁰ Aliif Ahmad Akbar, "Application of the Corporate Rescue Concept in Indonesian Bankruptcy Law: Urgency and Reform," *Justice Voice* 3, no. 2 (December 2024): 75–85, <https://doi.org/10.37893/jv.v3i2.1138>.

²¹ Andrian, "Mekanisme Insolvency Test Dalam Mencegah Iktidak Buruk Pemailitan Korporasi Oleh Kreditor," *Krtha Bhayangkara* 17, no. 2 (2023): 409–24, <https://doi.org/10.31599/krtha.v17i2.2358>.

²² Remgijus Jokubauskas, "Discharge of Debts of Insolvent Entrepreneurs Under the Restructuring and Insolvency Directive," *Utrecht Journal of International and European Law* 38, no. 1 (May 2023): 64–75, <https://doi.org/10.5334/ujiel.606>.

collective action problems among creditors. In the absence of legal safeguards against opportunistic rejection of plans, PKPU amplifies the bargaining power of dominant creditors. Empirical studies from jurisdictions with creditor-controlled restructuring frameworks show that the systems produce higher liquidation rates and lower going-concern recoveries. This is because creditors prioritize individual enforcement over collective value preservation.²³

The doctrinal weakness of PKPU is reflected in the formalistic method of voting on restructuring plans. Indonesian law relies almost exclusively on numerical thresholds, without empowering judges to scrutinize whether a plan rejection is economically irrational or abusive. A legal vacuum is created where creditors may veto a plan to obtain higher recoveries than bankruptcy, trigger insolvency, and seize collateral more rapidly. This regime contradicts the core economic logic of insolvency law, which aims to maximize the total value of the debtor's estate for the benefit of all stakeholders.²⁴

The dynamics raise broader constitutional concerns, particularly in relation to property rights and economic freedom. From the perspective of *ta'assur*, the destruction of viable enterprises through procedurally valid but substantively disproportionate outcomes reflects an imbalance between legal mechanisms and principles of fairness and economic sustainability.²⁵ This legal imbalance is evident in several high-profile Indonesian PKPU cases, where debtors presented restructuring plans offering higher net present value than liquidation. The outcomes reflect what financial economists describe as "hold out behavior," in which certain creditors block efficient restructurings to extract strategic advantages. PKPU becomes a platform for value-destroying veto power, rather than a forum for cooperative debt resolution without judicial tools to override the behavior.²⁶

Modern insolvency systems have responded to the problem through cram-down mechanisms, allowing courts to impose a restructuring plan on dissenting creditors when the plan is fair, equitable, and economically superior to bankruptcy. The absence of an effective cram-down rule in Indonesian PKPU explains the collapse of creditor-initiated proceedings into bankruptcy. This institutional design flaw effectively rewards strategic rejection and promotes meaningful negotiations, undermining the rehabilitative purpose of PKPU.²⁷

The Indonesian approach contrasts with the United States Chapter 11 model, where courts exercise broader supervisory authority. Even though Indonesian courts retain a role in homologation, this review remains largely procedural. In the framework of *ta'assur*, the absence of substantive judicial evaluation limits the ability of courts to ensure fair and proportionate outcomes.²⁸ This creditor dominance has broader implications for financial

²³ Samuel Antill, "Do the Right Firms Survive Bankruptcy?," *Journal of Financial Economics* 144, no. 2 (May 2022): 523–46, <https://doi.org/10.1016/j.jfineco.2021.07.006>.

²⁴ Reka Dewantara and I. Gusti Ngurah Parikesit, "Insolvency Without Bankruptcy: The Dissolution of Viable State-Owned Banks," *Jurisdictie: Jurnal Hukum Dan Syariah* 16, no. 2 (December 2025): 582–616, <https://doi.org/10.18860/j.v16i2.36034>.

²⁵ Diah Nurafifah et al., "The Impact of Bankruptcy Law and PKPU on Business Continuity and Indonesia's Economic Recovery," *Abdurrauf Law and Sharia* 2, no. 2 (2025): 240–60, <https://doi.org/https://doi.org/10.70742/arlash.v2i2.427>.

²⁶ Selamat Lumban Gaol and Istianingsih Sastrodiharjo, "Commercial Court Rulings on PKPU and Bankruptcy: The Ratio Decidendi in Balancing Creditor and Debtor Rights," *KRTHA BHAYANGKARA* 19, no. 1 (2025): 272–84, <https://doi.org/https://doi.org/10.31599/krtha.v19i1.3739>.

²⁷ Selamat Lumban Gaol and Istianingsih Sastrodiharjo.

²⁸ Faishal Fatahillah and Atik Winanti, "Perbandingan Konsep Hukum Kepailitan Amerika (Chapter 11) Dan Hukum Kepailitan Indonesia," *JURNAL USM LAW REVIEW* 6, no. 3 (December 2023): 1262–78, <https://doi.org/10.26623/julr.v6i3.7906>.

markets and investment behavior. From the perspective of *ta'assur*, a system that permits disproportionate outcomes may undermine trust and prevent cooperative restructuring. This may lead to increased reliance on enforcement rather than rehabilitation, with broader economic consequences.²⁹

The Indonesian PKPU regime requires a conceptual and legislative reorientation toward a more balanced restructuring framework. Integrating principles derived from *ta'assur* would require the introduction of financial-distress assessment, proportionality-based judicial review, and mechanisms to prevent opportunistic creditor behavior. These reforms are consistent with PKPU as well as normative principles of fairness and economic sustainability.³⁰

***Ta'assur* and the Islamic Perspective on PKPU in Indonesia – Integrated with International References**

Islamic jurisprudence emphasizes that financial obligations must be approached with equity, fairness, and consideration of the debtor's capacity, a principle reflected in doctrines of hardship within classical Islamic law. Even though the term *ta'assur* is often used descriptively to denote hardship, the normative substance is grounded in established doctrines such as *taflīs* (insolvency) and debtor relief, as elaborated by jurists including al-Sarakhsi (Hanafi) in *Al-Mabsut* and Ibn Rushd (Maliki) in *Bidayat al-Mujtahid*.³¹ In these doctrines, insolvency is a legal status that limits enforcement, requiring suspension or adjustment of debt obligations when repayment exceeds the debtor's capacity. Classical jurists further recognize that coercive enforcement in situations of genuine hardship constitutes *darar* (harm), which must be avoided under the broader principles of Islamic commercial law (*mu'āmalāt*). The interpretive extension is consistent with the principles of *uṣūl al-fiqh*, particularly the application of *maslahah mursalah* in the domain of *mu'āmalāt*. This permits the adaptation of classical doctrines to contemporary commercial practices where explicit textual rules are absent.³²

The doctrinal foundations imply a capacity-based model of obligation, in which creditor rights are not absolute but conditioned by proportionality and the prevention of excessive hardship. In the Indonesian context, PKPU under Law No. 37/2004 provides a procedural framework for debt restructuring, but the design often prioritizes creditor discretion over debtor protection. The absence of a substantive assessment of financial distress allows formal eligibility to substitute for material insolvency, enabling outcomes that may conflict with the proportionality inherent in classical doctrines. *Ta'assur* serves as a normative lens to

²⁹ Óscar J. Guevara and Julio Riutort, "Strengthening Secured Creditors: Implications on Debt Financing and Investment," *Journal of Corporate Finance* 84 (February 2024): 102537, <https://doi.org/10.1016/j.jcorpfin.2023.102537>.

³⁰ Frangky Jonatan and Richard C. Adam, "Validity of Suspension of Debt Payment Petition Rejected Due to Claim Value," *Indonesian Journal of Law and Economics Review* 20, no. 4 (2025): 1–13, <https://doi.org/https://doi.org/10.21070/ijler.v20i4.1332>.

³¹ Abbas Ahsan, "Transcending Ibn Rushd's Methods of Reasoning," *Asian Philosophy* 35, no. 3 (July 2025): 236–68, <https://doi.org/10.1080/09552367.2024.2403816>.

³² Satish Kumar, "Bankruptcy Law and the Leverage Speed of Adjustment," *Finance Research Letters* 66 (August 2024): 105673, <https://doi.org/10.1016/j.frl.2024.105673>; Ubaidillah, Dede Nurrohman, and Ahmad Muhtadi Anshor, "Sharia Microfinance Reformulation Towards an Inclusive Economy: An Approach Maqashid al-Shariah Fi Hifdz al-Mal," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 4, no. 2 (November 2025): 273–302, <https://doi.org/10.32332/muamalah.epmex470>.

evaluate the adequate reflection of fairness and debtor capacity, transforming ethical principles into operational standards such as capacity assessment, feasibility review, and limits on coercive enforcement. In international insolvency discourse, similar concerns have been articulated through the growing recognition that restructuring regimes must incorporate fairness, proportionality, and economically grounded evaluation in creditor-debtor relations.³³

The principle calls for assessing formal debt obligation and actual capacity of the debtor to honor commitments without compromising ongoing operations, employee welfare, or the broader economic ecosystem. Under current practice, creditors may initiate PKPU proceedings even when the debtor can service debts under feasible terms. This practice may be inconsistent with the normative implications of *ta'assur*, which emphasizes proportionality and avoidance of harm. Jurisprudential analyses in comparative jurisdictions also report the importance of distress assessments in preventing creditor opportunism.³⁴

Integrating *ta'assur* into PKPU requires judicial consideration of financial, social, and operational realities before granting moratoriums or approving creditor petitions. Courts should evaluate the debtor's cash flow, asset liquidity, and long-term viability, ensuring that the moratorium facilitates rehabilitation rather than increasing liquidation. The approach may be justified within Islamic legal methodology (*usul al-fiqh*), particularly through the application of *maslahah mursalah* in the domain of *mu'āmalāt*, allowing ethical principles to inform contemporary insolvency regulation. In global insolvency law scholarship, this is consistent with comprehensive insolvency tests to determine access to relief mechanisms.³⁵

The application of *ta'assur* contributes to procedural fairness by preventing creditor opportunism and strategic abuse. A normative boundary is also imposed where creditors must act, transforming PKPU from a purely procedural tool into a mechanism capable of delivering substantive justice. In operational terms, proportionality may be reflected in standards where a restructuring plan offers greater value than liquidation and avoidable loss. Indonesian courts can harmonize PKPU's procedural architecture with the Sharia objectives of equity, harm prevention, and social welfare by embedding evaluative criteria. International insolvency commentators also stress that restructuring frameworks should integrate fairness and economic rationality into judicial discretion.³⁶ However, the relationship between PKPU and *ta'assur* cannot be framed as a direct comparison between a positive legal procedure and an ethical principle. In this context, *ta'assur* should be understood as a normative framework for evaluating the structural features of PKPU, particularly in relation to creditor dominance, the absence of a financial-distress test, and the limited scope of judicial review. This evaluative standard is used to assess the fairness and

³³ Bob Wessels, "Energising Courts to Continue Breaking New Ground in Insolvency and Restructuring Cases," *International Insolvency Review* 29, no. 3 (December 2020): 393–417, <https://doi.org/10.1002/iir.1393>.

³⁴ Klemens Katterbauer et al., "Insolvency and Bankruptcy Based on Islamic Principles Within China – An Data-Driven Analysis and Framework," *Revista de Gestão Social e Ambiental* 17, no. 3 (June 2023): e03118, <https://doi.org/10.24857/rgsa.v17n3-030>.

³⁵ Irut Mevorach and Adrian Walters, "The Characterization of Pre-Insolvency Proceedings in Private International Law," *European Business Organization Law Review* 21 (2020): 855–94, <https://doi.org/https://doi.org/10.1007/s40804-020-00176-x>.

³⁶ Jennifer L. L. Gant, "Optimising Fairness in Insolvency and Restructuring: A Spotlight on Vulnerable Stakeholders," *International Insolvency Review* 31, no. 1 (March 2022): 3–7, <https://doi.org/10.1002/iir.1448>.

proportionality of insolvency mechanisms.³⁷

A more appropriate comparison may be drawn by situating PKPU alongside restructuring regimes in other jurisdictions, such as Malaysia under the Companies Act 2016, where access is conditioned on financial distress. These mechanisms are not explicitly framed in Islamic legal terminology, but reflect principles analogous to capacity-based assessment and proportionality found in Islamic jurisprudence. The comparative perspective shows that the limitations of PKPU reflect a broader imbalance with international restructuring standards and the proportionality-based principles underlying *ta'assur*.³⁸

The Islamic doctrine of *ta'assur* emphasizes mutual consideration and balanced obligations between parties in financial transactions. This principle advocates for judicial oversight that ensures creditor actions do not inflict disproportionate harm on debtors. Under Article 222 of Law No. 37/2004, creditor-initiated PKPU allows a single strategic creditor to trigger proceedings and control outcomes, including rejection of feasible restructuring plans. From a Sharia perspective, this creates an ethical imbalance that contravenes *ta'assur*, since the context subjects debtors to undue stress and financial burden.³⁹

Ta'assur extends beyond contractual obligations to include social and economic responsibilities. Creditors are expected to maintain business continuity, protect employment, and prevent systemic harm. The social dimension of Islamic ethics is rejected when PKPU allows dominant creditors to veto restructuring plans without substantive review. These outcomes undermine economic stability and ethical norms, reporting the need for judicial mechanisms that enforce proportionality and fairness. Ethical restructuring norms have also gained traction in international literature that treats insolvency as a social welfare tool rather than a pure enforcement regime.⁴⁰ The selected Qur'anic verse, Surah Al-Baqarah (2:286), provides a general ethical foundation, which in Islamic legal theory must be interpreted within the domain of *mu'āmalāt* (commercial transactions) rather than *ibādāt* (worship), and extended through the doctrine of *maslahah mursalah* to address contemporary legal issues.

“Allah does not burden a soul beyond that it can bear. It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned...” (2:286).

The verse does not operate as a direct procedural rule, but as a normative principle informing the development of legal standards that ensure obligations remain proportionate

³⁷ Bambang Sugeng Ariadi Subagyono et al., “Contemporary Islamic Economic Law on Legal Protection for Bankrupt Guarantors: Comparative Insights from Common Law and Asian Jurisdictions,” *MILRev: Metro Islamic Law Review* 4, no. 2 (December 2025): 1449–70, <https://doi.org/10.32332/milrev.v4i2.11897>.

³⁸ Thim Wai Chen, Ruzita Azmi, and Rohana Abdul-Rahman, “The Path to Judicial Management in Malaysia Is Paved with Obstacles: Lessons from Singapore and the United Kingdom,” *Asian Journal of Comparative Law* 19, no. 1 (April 2024): 68–88, <https://doi.org/10.1017/asjcl.2024.3>.

³⁹ Kenneth Ayotte, Jason Roderick Donaldson, and Giorgia Piacentino, “Bankruptcy’s Trilemma: A Unifying Framework,” *Journal of Legal Analysis* 18, no. 1 (February 2026): 51–79, <https://doi.org/10.1093/jla/laaf015>.

⁴⁰ Yury Yu. Karaleu, “Interaction between Institutional Technologies, Wage Guarantee Schemes and Corporate Social Responsibility in Respect of the Protection of Workers’ Benefits in Case of Company Insolvency,” *RUDN Journal of Economics* 28, no. 2 (December 2020): 225–38, <https://doi.org/10.22363/2313-2329-2020-28-2-225-238>.

to capacity. The application of insolvency law is mediated through juristic reasoning, allowing courts to translate ethical importance into operational criteria such as debtor-capacity assessment, feasibility analysis, and proportionality in creditor decision-making. This verse states the principle that legal and financial systems should avoid imposing obligations exceeding a debtor's capacity. In PKPU, when creditors reject a feasible peace plan and push debtors into bankruptcy despite manageable obligations, the procedure contravenes the Qur'anic guidance. Applying this principle requires courts to assess debtor capability rigorously. This may include analyzing repayment schedules, asset liquidity, and cash flow projections to determine how to meet debt obligations under structured moratoriums. PKPU can transition from a creditor-dominated process into a debt-rehabilitation mechanism in line with Sharia ethical imperatives by integrating these assessments. Comparatively, international insolvency systems with built-in debtor capacity reviews achieve higher plan acceptance and lower unnecessary liquidation.⁴¹

From a jurisprudential perspective, *ta'assur* reinforces the ethical obligation to balance creditor rights with debtor protection. In PKPU, the current framework allows creditors to control the initiation of proceedings and the rejection of peace plans, creating a structural conflict of interest. Furthermore, Sharia ethics mandates that courts ensure creditor actions are just, proportionate, and non-oppressive, particularly when rejecting feasible repayment plans.⁴²

The implementation of *ta'assur* includes judicial evaluation of the fairness of creditor conduct, including examination of rejections concerning collective interests or individual advantage. This method follows PKPU with Islamic ethical objectives while simultaneously promoting economic efficiency since feasible restructuring preserves firm value more than forced bankruptcy. Similar ethical scrutiny frameworks are recommended in international insolvency literature to balance dominant creditor influence.⁴³ *Ta'assur* emphasizes social welfare and equity, requiring that restructuring procedures consider the interests of employees, suppliers, and other stakeholders affected by debtor financial distress. Dominant creditor control, absent ethical constraints, leads to value destruction and broader social harm. The integration of *ta'assur* ensures that judicial oversight mitigates risks by embedding ethical evaluation into the procedural framework of PKPU.⁴⁴ In this context, courts gain a normative standard to mediate between contractual rights and moral obligations. This method ensures that PKPU resolves disputes and balances outcomes with ethical principles central to Islamic finance, including justice (*adl*), benevolence (*ihsan*), and harm prevention (*mafsadah*). International comparative insolvency law similarly recognizes

⁴¹ Suhartono Suhartono, "Insolvency Test As An Evidence Instrument In Sharia Bankruptcy Case," *Jurnal Justisia Ekonomika: Magister Hukum Ekonomi Syariah* 8, no. 2 (December 2024): 1121–34, <https://doi.org/10.30651/justeko.v8i2.22246>.

⁴² Yapiter Marpi et al., "From Classical Fiqh to Commercial Court: Reconciling Taflis and Actio Pauliana in Indonesian Legal Practice," *Juris: Jurnal Ilmiah Syari'ah* 24, no. 2 (2025): 295–310, <https://doi.org/https://doi.org/10.31958/juris.v24i2.15863>.

⁴³ Tuo Ji and Dong Cai, "How Does Creditor Protection Improve Access to Corporate Credit?," *International Review of Economics & Finance* 104 (December 2025): 104759, <https://doi.org/10.1016/j.iref.2025.104759>.

⁴⁴ Annah Beauty Kgohe, Marius Pretorius, and Wesley Rosslyn-Smith, "Exploring Salient Creditor Perspectives on Support for Business Rescue Plans for Decision-Making," *Southern African Business Review*, ahead of print, October 24, 2025, <https://doi.org/10.25159/1998-8125/17938>.

the importance of ethical balancing in restructuring systems.⁴⁵

The operationalization of *ta'assur* requires specific procedural and normative reforms. First, courts must implement objective assessment criteria to evaluate debtor repayment capacity before granting moratoriums or accepting creditor petitions. These criteria should include cash flow analysis, asset valuation, and realistic repayment schedules, providing a foundation for fair judicial discretion.⁴⁶ Second, *ta'assur* mandates ethical obligations for creditors, ensuring that actions do not exploit procedural privileges to force bankruptcy for tactical gain. Creditors should be bound by principles of proportionality, fairness, and social responsibility, reflecting Sharia objectives of justice and harm prevention. In operational terms, proportionality may be assessed by evaluating the extent to which rejection of a restructuring plan yields a lower recovery than acceptance, as reflected in indicators such as net present value, repayment feasibility, and the avoidance of unnecessary liquidation. This approach requires creditors to ensure that decisions are based on rational economic grounds and do not produce avoidable loss. The principle resonates with international calls for ethical restructuring practices in creditor behavior.⁴⁷

Third, judicial discretion must include the authority to enforce equitable restructuring plans even when facing creditor objection, preventing value-destroying vetoes and ensuring that PKPU fulfills the rehabilitative function. This integration transforms PKPU from a procedural mechanism into an ethically informed tool for economic rescue, consistent with Islamic principles and international restructuring standards.⁴⁸

The application of *ta'assur* strengthens public trust in insolvency law, balancing PKPU with social expectations of fairness, corporate rehabilitation, and ethical creditor behavior. This normative grounding promotes compliance, reduces adversarial disputes, and promotes long-term financial stability, fulfilling Sharia objectives and practical policy goals. International insolvency literature also reports the importance of trust and fairness in restructuring outcomes.⁴⁹

A critical extension of *ta'assur* in PKPU analysis is the application to judicial interpretation of creditor objections. In current Indonesian practice, Article 285–292 UU 37/2004 allows creditors to reject debtor-proposed peace plans without substantive evaluation of financial capacity. From a Sharia perspective, this procedural allowance may contravene ethical obligations since the concept permits the imposition of undue financial burdens and potential societal harm. *Ta'assur* emphasizes that creditor influence should not override the principle of proportionality in debt recovery. Ethical restructuring protocols in international practice also call for judicial oversight over creditor vetoes.⁵⁰ Operationalizing

⁴⁵ Gant, "Optimising Fairness in Insolvency and Restructuring."

⁴⁶ Johnson Sahat Maruli Tua Maruli et al., "From Failure to Future Reconstructing Intellectual Property in Bankruptcy Law," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (May 2025): 279–318, <https://doi.org/10.53955/jhcls.v5i1.569>.

⁴⁷ Jake Cepec, Peter Grajzl, and Barbara Morec, "The Impact of Institutionalized Representation: Creditors' Committees and the Resolution of Corporate Liquidation Bankruptcies," *European Journal of Law and Economics* 58 (2024): 397–425, <https://doi.org/https://doi.org/10.1007/s10657-024-09823-x>.

⁴⁸ Jake Cepec, Peter Grajzl, and Barbara Morec.

⁴⁹ Gant, "Optimising Fairness in Insolvency and Restructuring."

⁵⁰ Charles Zhen Qu and Andrew Godwin, "Does the Common Law Power to Grant Cross-border Insolvency Assistance Apply to an Insolvency Winding-up That Is Voluntary? The Reaction to *Singularis* from Singapore and Hong Kong," *International Insolvency Review* 28, no. 3 (December 2019): 305–19, <https://doi.org/10.1002/iir.1348>.

this principle requires courts to adopt standardized criteria for evaluating objections. This transforms PKPU from a tool of procedural leverage into a mechanism in line with ethical equity, preserving debtor viability and creditor rights.⁵¹

The application of *ta'assur* extends to debt prioritization and restructuring fairness. Courts should ensure that peace plans proposed by debtors distribute obligations equitably among creditors, rather than favoring certain parties with procedural influence. In current PKPU practice, creditor dominance can skew distributions, which contradicts the ethical principle of *ta'assur*. Islamic finance literature emphasizes that fairness in financial transactions is substantive, ensuring that all stakeholders bear responsibilities proportionally to claims. Comparative international studies show the principle, indicating the effect of ethical oversight in insolvency on strategic manipulation and preserving enterprise value.⁵²

Ta'assur requires courts to evaluate the long-term economic consequences of accepting or rejecting peace plans. Procedural compliance cannot justify outcomes that may destroy viable businesses or jobs. This principle is reflected in the ethical injunction from Surah Al-Baqarah 2:286, which guides financial obligations within the capacity of the debtor. PKPU can fulfill rehabilitative purposes and Sharia-based ethical mandates by considering economic sustainability. International insolvency literature recommends embedding similar impact assessments in creditor-veto decisions to ensure restructuring success.⁵³

The transparency and accountability of the judicial review process under PKPU are critical in the application of *ta'assur*. Courts must justify decisions regarding peace plan approvals or rejections, explicitly evaluating debtor capacity and creditor fairness. This procedural transparency reduces risks of arbitrary decisions and balances with Sharia principles and international standards of judicial ethics. The International Insolvency Review suggests that ethical restructuring frameworks depend on credible judicial discretion to reconcile creditor rights with debtor protection.⁵⁴

A further dimension includes risk mitigation for future financial distress. *Ta'assur* promotes mechanisms that prevent recurring insolvency crises, including structured repayment schedules, oversight of creditor behavior, and early-warning detection of liquidity problems. PKPU lacks explicit mechanisms for long-term monitoring, which can undermine debtor rehabilitation and economic stability. International comparative law emphasizes the importance of early intervention and structured monitoring to balance creditor incentives with ethical standards.⁵⁵

⁵¹ Kristin van Zwieteren, "Mid-Crisis Restructuring Law Reform in the United Kingdom," *European Business Organization Law Review* 24 (2023): 287–315, <https://doi.org/https://doi.org/10.1007/s40804-023-00288-0>.

⁵² Rozita Abd Hafiz, Zariah Abu Samah, and Rusni Hassan, "Challenges of Islamic Debt Restructuring in a Multi Creditor Environment," *Journal of Islamic Finance* 6 (December 2017): 054–072, <https://doi.org/10.31436/jif.v6i0.256>.

⁵³ Necmeddin Güney, "Maqāsid Al-Shari'a in Islamic Finance: A Critical Analysis of Modern Discourses," *Religions* 15, no. 1 (January 2024): 114, <https://doi.org/10.3390/rel15010114>.

⁵⁴ Andra Reinhard R. S, Fauzie Yusuf Hasibuan, and Pattharawadee Rangsimanop, "Judicial Discretion and the Limits of Homologation in Cross-Border Insolvency: Rethinking Legal Certainty and Creditor Protection from a Comparative Perspective," *Journal Evidence Of Law* 4, no. 2 (August 2025): 983–92, <https://doi.org/10.59066/jel.v4i2.1596>.

⁵⁵ Matthias Frieden and Stefan Wielenberg, "Insolvency Administrator's Incentives and the Tradeoff between Creditor Satisfaction and Efficiency in Bankruptcy Procedures," *Business Research* 10, no. 2 (October 2017): 159–87, <https://doi.org/10.1007/s40685-017-0047-x>; Muhammad Deni Putra et al., "When the Sacred Meets the Market: The Commodification of Islamic Housing in Lima Puluh Kota, West Sumatra," *Journal of Islamic Law* 6, no. 1 (February 2025): 135–54, <https://doi.org/10.24260/jil.v6i1.3539>.

Ta'assur informs ethical negotiation and mediation practices between debtors and creditors. Courts facilitate negotiations in a manner that ensures fair treatment and proportional obligations, rather than deferring to creditor discretion. This is consistent with PKPU and Islamic jurisprudence, which values consensus (*shura*) and mutual consideration. International insolvency study emphasizes mediated restructuring as a mechanism to balance power asymmetries and preserve firm value.⁵⁶

The implementation of *ta'assur* necessitates judicial guidelines and procedural reforms. Guidelines may include mandatory assessment of debtor financial capacity, verification of creditor claims, and clear criteria for approving or rejecting peace plans. This approach ensures that PKPU functions as an ethically grounded tool for economic rehabilitation. Comparatively, jurisdictions that incorporate ethical criteria and structured insolvency tests report higher rates of successful corporate recovery.⁵⁷

From a normative perspective, *ta'assur* enhances creditor accountability. Creditors are obligated to act within ethical bounds, preventing coercive or predatory behaviors during PKPU proceedings. Courts can reduce litigation, promote feasible restructuring, and promote systemic stability by embedding ethical standards into law and practice. International insolvency commentary supports the idea that creditor conduct regulation is integral to sustainable restructuring regimes.⁵⁸

Ta'assur supports stakeholder-inclusive restructuring, considering employees, suppliers, and other parties affected by financial distress. Courts can require that peace plans respect the broader obligations, integrating social welfare into procedural outcomes. The principles are consistent with Sharia objectives of justice (*adl*), benevolence (*ihsan*), and prevention of harm (*mafsadah*). However, this approach does not necessarily displace the absolute priority rule, which remains a foundational principle in insolvency law. *Ta'assur* may inform the qualified application by requiring creditor priority to be exercised in a manner that avoids disproportionate harm or unnecessary value destruction, particularly in circumstances where restructuring yields superior outcomes. In this context, stakeholder considerations are incorporated by guiding judicial assessment of fairness, feasibility, and proportionality within the existing priority framework. International comparative literature recognizes that structured inclusion of stakeholder interests can improve restructuring outcomes and preserve economic ecosystems.⁵⁹

Embedding *ta'assur* into PKPU enhances legitimacy, predictability, and trust in the insolvency system. Debtors and creditors develop confidence in the fairness of proceedings when courts consistently apply structured standards such as debtor-capacity assessment, feasibility analysis, and proportionality in evaluating creditor decisions. The combination of procedural fairness, debtor capacity assessment, and ethically constrained creditor behavior

⁵⁶ Ana Maria Fagetan, "Corporate Insolvency Laws in Selected Jurisdictions: US, England, France, and Germany—A Comparative Perspective," *Laws* 14, no. 2 (March 2025): 21, <https://doi.org/10.3390/laws14020021>.

⁵⁷ Manuel Rico and Francisco Puig, "Successful Turnarounds in Bankrupt Firms? Assessing Retrenchment in the Most Severe Form of Crisis," *BRQ Business Research Quarterly*, July 2019, S2340943618303803, <https://doi.org/10.1016/j.brq.2019.06.002>.

⁵⁸ World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes, 2021 Edition* (World Bank, Washington, DC, 2021), <https://doi.org/10.1596/35506>.

⁵⁹ Blażej Prusak, "Review of Research into Enterprise Bankruptcy Prediction in Selected Central and Eastern European Countries," *International Journal of Financial Studies* 6, no. 3 (June 2018): 60, <https://doi.org/10.3390/ijfs6030060>.

is consistent with PKPU, Sharia principles, and global practices in restructuring law. Therefore, the integration of international insights with Islamic jurisprudence provides a normative foundation, as well as a functional and comparative framework for creditor–debtor relations in Indonesia.⁶⁰

CONCLUSION

In conclusion, the structural design of Indonesia’s PKPU under Law No. 37/2004, particularly creditor-initiated access, the absence of a financial-distress test, and limited substantive judicial review, creates a creditor-dominated restructuring process that may lead to inefficient liquidation and insufficient debtor protection. This study shows that insolvency mechanisms should be assessed on procedural compliance, proportionality, feasibility, and debtor capacity by using *ta’assur* as a normative evaluative framework. The novelty is in repositioning *ta’assur* from a general ethical concept into an operational analytical standard capable of informing modern insolvency law. The result proposes several reforms, including the introduction of objective financial-distress criteria as a condition for PKPU initiation, enhanced judicial authority to assess the feasibility and fairness of restructuring plans, and the development of proportionality-based standards to evaluate creditor decisions in cases of plan rejection. However, this study is limited by the doctrinal nature and reliance on secondary sources, without extensive empirical analysis of court practices or quantitative assessment of restructuring outcomes. Future investigations must examine judicial behavior in PKPU cases, conduct comparative empirical analyses across jurisdictions, and explore the integration of Islamic jurisprudential principles into contemporary insolvency systems. This study contributes to insolvency law and Islamic economic law by offering a framework that bridges normative principles with legal practice, supporting the development of a more balanced, efficient, and ethically grounded restructuring regime in Indonesia.

CONFLICT OF INTEREST

The authors declare no conflict of interest.

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⁶⁰ Sa’id Adekunle Mikail et al., “Framework for Financial Hardship Indebtedness Management in Abandoned Housing Projects in Malaysia,” *ISR-A International Journal of Islamic Finance* 10, no. 1 (June 2018): 102–10, <https://doi.org/10.1108/IJIF-03-2018-0027>.

REFERENCES

- Abd Hafiz, Rozita, Zariah Abu Samah, and Rusni Hassan. "Challenges of Islamic Debt Restructuring in a Multi Creditor Environment." *Journal of Islamic Finance* 6 (December 2017): 054–072. <https://doi.org/10.31436/jif.v6i0.256>.
- Agrawal, Ashwini, Juanita González-Urbe, and Jimmy Martínez-Correa. "Measuring the Ex-Ante Incentive Effects of Creditor Control Rights during Bankruptcy Reorganization." *Journal of Financial Economics* 143, no. 1 (January 2022): 381–408. <https://doi.org/10.1016/j.jfineco.2021.09.020>.
- Ahmad Akbar, Aliif. "Application of the Corporate Rescue Concept in Indonesian Bankruptcy Law: Urgency and Reform." *Justice Voice* 3, no. 2 (December 2024): 75–85. <https://doi.org/10.37893/jv.v3i2.1138>.
- Ahsan, Abbas. "Transcending Ibn Rushd's Methods of Reasoning." *Asian Philosophy* 35, no. 3 (July 2025): 236–68. <https://doi.org/10.1080/09552367.2024.2403816>.
- Andrian. "Mekanisme Insolvency Test Dalam Mencegah Iktikad Buruk Pemailitan Korporasi Oleh Kreditor." *Krtha Bhayangkara* 17, no. 2 (2023): 409–24. <https://doi.org/10.31599/krtha.v17i2.2358>.
- Antill, Samuel. "Do the Right Firms Survive Bankruptcy?" *Journal of Financial Economics* 144, no. 2 (May 2022): 523–46. <https://doi.org/10.1016/j.jfineco.2021.07.006>.
- Ayotte, Kenneth, Jason Roderick Donaldson, and Giorgia Piacentino. "Bankruptcy's Trilemma: A Unifying Framework." *Journal of Legal Analysis* 18, no. 1 (February 2026): 51–79. <https://doi.org/10.1093/jla/laaf015>.
- Bambang Sugeng Ariadi Subagyo, Ermanto Fahamsyah, Hariyanto Sururi, and Amaliyah. "Contemporary Islamic Economic Law on Legal Protection for Bankrupt Guarantors: Comparative Insights from Common Law and Asian Jurisdictions." *MILRev: Metro Islamic Law Review* 4, no. 2 (December 2025): 1449–70. <https://doi.org/10.32332/milrev.v4i2.11897>.
- Bose, Udichibarna, Stefano Filomeni, and Sushanta Mallick. "Does Bankruptcy Law Improve the Fate of Distressed Firms? The Role of Credit Channels." *Journal of Corporate Finance* 68 (June 2021): 101836. <https://doi.org/10.1016/j.jcorpfin.2020.101836>.
- Chen, Thim Wai, Ruzita Azmi, and Rohana Abdul-Rahman. "The Path to Judicial Management in Malaysia Is Paved with Obstacles: Lessons from Singapore and the United Kingdom." *Asian Journal of Comparative Law* 19, no. 1 (April 2024): 68–88. <https://doi.org/10.1017/asjcl.2024.3>.
- Choliza, Tia, and Muhammad Aziz Zakiruddin. "Legal Protection For Customers In Murabahah Transactions Within Islamic Banking." *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 4, no. 2 (November 2025): 257–72. <https://doi.org/10.32332/muamalah.z28svr77>.
- Closset, Frédéric, Christoph Großmann, Christoph Kaserer, and Daniel Urban. "Corporate Restructuring and Creditor Power: Evidence from European Insolvency Law Reforms." *Journal of Banking & Finance* 149 (April 2023): 106756. <https://doi.org/10.1016/j.jbankfin.2022.106756>.

- Dahlan, Muhammad Fitratallah, Oky Deviany, and Muhammad Aswan. "Analisis Hukum Terhadap Penolakan Perdamaian Oleh Kreditur Yang Diajukan Debitur Pada Penundaan Kewajiban Pembayaran Utang." *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (May 2023): 537–46. <https://doi.org/10.37680/almanhaj.v5i1.2650>.
- Dewantara, Reka, and I. Gusti Ngurah Parikesit. "Insolvency Without Bankruptcy: The Dissolution of Viable State-Owned Banks." *Jurisdictie: Jurnal Hukum Dan Syariah* 16, no. 2 (December 2025): 582–616. <https://doi.org/10.18860/j.v16i2.36034>.
- Diah Nurafifah, Iskandar Iskandar, Taupik Hidayat, and Santi Suryani. "The Impact of Bankruptcy Law and PKPU on Business Continuity and Indonesia's Economic Recovery." *Abdurrauf Law and Sharia* 2, no. 2 (2025): 240–60. <https://doi.org/https://doi.org/10.70742/arlash.v2i2.427>.
- Fagetan, Ana Maria. "Corporate Insolvency Laws in Selected Jurisdictions: US, England, France, and Germany—A Comparative Perspective." *Laws* 14, no. 2 (March 2025): 21. <https://doi.org/10.3390/laws14020021>.
- Fatahillah, Faishal, and Atik Winanti. "Perbandingan Konsep Hukum Kepailitan Amerika (Chapter 11) Dan Hukum Kepailitan Indonesia." *JURNAL USM LAW REVIEW* 6, no. 3 (December 2023): 1262–78. <https://doi.org/10.26623/julr.v6i3.7906>.
- Frangky Jonatan and Richard C. Adam. "Validity of Suspension of Debt Payment Petition Rejected Due to Claim Value." *Indonesian Journal of Law and Economics Review* 20, no. 4 (2025): 1–13. <https://doi.org/https://doi.org/10.21070/ijler.v20i4.1332>.
- Frieden, Matthias, and Stefan Wielenberg. "Insolvency Administrator's Incentives and the Tradeoff between Creditor Satisfaction and Efficiency in Bankruptcy Procedures." *Business Research* 10, no. 2 (October 2017): 159–87. <https://doi.org/10.1007/s40685-017-0047-x>.
- Gant, Jennifer L. L. "Optimising Fairness in Insolvency and Restructuring: A Spotlight on Vulnerable Stakeholders." *International Insolvency Review* 31, no. 1 (March 2022): 3–7. <https://doi.org/10.1002/iir.1448>.
- Guevara, Óscar J., and Julio Riutort. "Strengthening Secured Creditors: Implications on Debt Financing and Investment." *Journal of Corporate Finance* 84 (February 2024): 102537. <https://doi.org/10.1016/j.jcorpfin.2023.102537>.
- Güney, Necmeddin. "Maqāsīd Al-Sharī'a in Islamic Finance: A Critical Analysis of Modern Discourses." *Religions* 15, no. 1 (January 2024): 114. <https://doi.org/10.3390/rel15010114>.
- Hotchkiss, Edith S., David C. Smith, and Per Strömberg. "Private Equity and the Resolution of Financial Distress." *The Review of Corporate Finance Studies* 10, no. 4 (December 2021): 694–747. <https://doi.org/10.1093/rcfs/cfab015>.
- Hs, Fatimah, Susi Aryani Manangin, Indrasatya Octavianus Nasirun, and Delma Marlina Pasla. "Urgensi Pembaharuan Undang-Undang Kepailitan Demi Efisiensi Dan Keadilan Dalam Penyelesaian Kepailitan Dan PKPU." *Zaaken: Journal of Civil and Business Law* 5, no. 2 (June 2024): 277–88. <https://doi.org/10.22437/zaaken.v5i2.33099>.

- Irut Mevorach and Adrian Walters. "The Characterization of Pre-Insolvency Proceedings in Private International Law." *European Business Organization Law Review* 21 (2020): 855–94. <https://doi.org/https://doi.org/10.1007/s40804-020-00176-x>.
- Jake Cepec, Peter Grajzl, and Barbara Morec. "The Impact of Institutionalized Representation: Creditors' Committees and the Resolution of Corporate Liquidation Bankruptcies." *European Journal of Law and Economics* 58 (2024): 397–425. <https://doi.org/https://doi.org/10.1007/s10657-024-09823-x>.
- Ji, Tuo, and Dong Cai. "How Does Creditor Protection Improve Access to Corporate Credit?" *International Review of Economics & Finance* 104 (December 2025): 104759. <https://doi.org/10.1016/j.iref.2025.104759>.
- Jokubauskas, Remgijus. "Discharge of Debts of Insolvent Entrepreneurs Under the Restructuring and Insolvency Directive." *Utrecht Journal of International and European Law* 38, no. 1 (May 2023): 64–75. <https://doi.org/10.5334/ujiel.606>.
- Karaleu, Yury Yu. "Interaction between Institutional Technologies, Wage Guarantee Schemes and Corporate Social Responsibility in Respect of the Protection of Workers' Benefits in Case of Company Insolvency." *RUDN Journal of Economics* 28, no. 2 (December 2020): 225–38. <https://doi.org/10.22363/2313-2329-2020-28-2-225-238>.
- Katterbauer, Klemens, Hassan Syed, Sema Yilmaz Genc, and Laurent Cleenewerck. "Insolvency and Bankruptcy Based on Islamic Principles Within China – An Data-Driven Analysis and Framework." *Revista de Gestão Social e Ambiental* 17, no. 3 (June 2023): e03118. <https://doi.org/10.24857/rgsa.v17n3-030>.
- Kgobe, Annah Beauty, Marius Pretorius, and Wesley Rosslyn-Smith. "Exploring Salient Creditor Perspectives on Support for Business Rescue Plans for Decision-Making." *Southern African Business Review*, ahead of print, October 24, 2025. <https://doi.org/10.25159/1998-8125/17938>.
- Kristin van Zwieten. "Mid-Crisis Restructuring Law Reform in the United Kingdom." *European Business Organization Law Review* 24 (2023): 287–315. <https://doi.org/https://doi.org/10.1007/s40804-023-00288-0>.
- Kumar, Satish. "Bankruptcy Law and the Leverage Speed of Adjustment." *Finance Research Letters* 66 (August 2024): 105673. <https://doi.org/10.1016/j.frl.2024.105673>.
- Madaus, Stephan. "Leaving the Shadows of US Bankruptcy Law: A Proposal to Divide the Realms of Insolvency and Restructuring Law." *European Business Organization Law Review* 19, no. 3 (September 2018): 615–47. <https://doi.org/10.1007/s40804-018-0113-7>.
- Mahadew, Bhavna, and Tinotenda Ganga. "A Comparative Analysis of Corporate Rescue and Insolvency Laws in Zimbabwe and Mauritius." *International Journal of Law and Management* 67, no. 2 (January 2025): 210–29. <https://doi.org/10.1108/IJLMA-02-2024-0040>.
- Maruli, Johnson Sahat Maruli Tua, Eddy Damian, Bernard Nainggolan, Hulman Panjaitan, and Christopher J. Johnstone. "From Failure to Future Reconstructing Intellectual Property

- in Bankruptcy Law.” *Journal of Human Rights, Culture and Legal System* 5, no. 1 (May 2025): 279–318. <https://doi.org/10.53955/jhcls.v5i1.569>.
- Mikail, Sa’id Adekunle, Noor Suhaida Kasri, Saba Radwan Elatrash, and Abideen Adeyemi Adewale. “Framework for Financial Hardship Indebtedness Management in Abandoned Housing Projects in Malaysia.” *ISRA International Journal of Islamic Finance* 10, no. 1 (June 2018): 102–10. <https://doi.org/10.1108/IJIF-03-2018-0027>.
- Mitter, Christine. “Bankruptcy Law As A Corporate Governance Mechanism: Issues and Evidence.” *European Journal of Management* 15, no. 2 (June 2015): 57–84. <https://doi.org/10.18374/EJM-15-2.4>.
- Muhammad Syarif and Khamim. “*Antar Pakatan* and the Reproduction of Social Solidarity: A Cultural Strategy for Addressing the Economic Burden of Customary Marriage in the Sambas Malay Community.” *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 1 (May 2025): 94–110. <https://doi.org/10.24260/ijssls.1.1.12>.
- Nishihara, Michi, Takashi Shibata, and Yuan Tian. “Investment, Financing, Strategic Debt Service, and Liquidation.” *Quantitative Finance* 25, no. 10 (October 2025): 1639–55. <https://doi.org/10.1080/14697688.2025.2528693>.
- Prusak, Błażej. “Review of Research into Enterprise Bankruptcy Prediction in Selected Central and Eastern European Countries.” *International Journal of Financial Studies* 6, no. 3 (June 2018): 60. <https://doi.org/10.3390/ijfs6030060>.
- Putra, Muhammad Deni, Akhmad Rofiki, Ana Toni Roby Candra Yudha, Ivan Riyadi, and Siti Fadilla. “When the Sacred Meets the Market: The Commodification of Islamic Housing in Lima Puluh Kota, West Sumatra.” *Journal of Islamic Law* 6, no. 1 (February 2025): 135–54. <https://doi.org/10.24260/jil.v6i1.3539>.
- Qu, Charles Zhen, and Andrew Godwin. “Does the Common Law Power to Grant Cross-border Insolvency Assistance Apply to an Insolvency Winding-up That Is Voluntary? The Reaction to *Singularis* from Singapore and Hong Kong.” *International Insolvency Review* 28, no. 3 (December 2019): 305–19. <https://doi.org/10.1002/iir.1348>.
- Rahmawati, Putri, and Wardani Rizkianti. “Insolvency Test Sebagai Solusi Preventif Dalam Konstruksi Hukum Kepailitan Di Indonesia.” *Jurnal Yuridis* 10, no. 2 (December 2023): 95–112. <https://doi.org/10.35586/jjur.v10i2.6381>.
- Rico, Manuel, and Francisco Puig. “Successful Turnarounds in Bankrupt Firms? Assessing Retrenchment in the Most Severe Form of Crisis.” *BRQ Business Research Quarterly*, July 2019, S2340943618303803. <https://doi.org/10.1016/j.brq.2019.06.002>.
- Riyanto, R. Benny, Ridwan Arifin, Nurul Fibrianti, Emmanuel Laryea, and Bearlly Deo Syahputra. “Clashing Legal Realities: A Comparative Analysis of Insolvency Tests in Australia and Indonesia’s Bankruptcy Law.” *Jambura Law Review* 7, no. 1 (December 2024): 88–104. <https://doi.org/10.33756/jlr.v7i1.27327>.
- S, Andra Reinhard R., Fauzie Yusuf Hasibuan, and Pattharawadee Rangsimanop. “Judicial Discretion and the Limits of Homologation in Cross-Border Insolvency: Rethinking Legal

- Certainty and Creditor Protection from a Comparative Perspective.” *Journal Evidence Of Law* 4, no. 2 (August 2025): 983–92. <https://doi.org/10.59066/jel.v4i2.1596>.
- Selamat Lumban Gaol and Istianingsih Sastrodiharjo. “Commercial Court Rulings on PKPU and Bankruptcy: The Ratio Decidendi in Balancing Creditor and Debtor Rights.” *KRTHA BHAYANGKARA* 19, no. 1 (2025): 272–84. <https://doi.org/https://doi.org/10.31599/krtha.v19i1.3739>.
- Silva, Vinicius Augusto Brunassi, and Richard Saito. “Corporate Restructuring: Empirical Evidence on the Approval of the Reorganization Plan.” *RAUSP Management Journal* 53, no. 1 (January 2018): 49–62. <https://doi.org/10.1016/j.rauspm.2017.12.008>.
- Stef, Nicolae. “How Does Legal Design Affect the Initiation of a Firm’s Bankruptcy?” *Economic Modelling* 114 (September 2022): 105918. <https://doi.org/10.1016/j.econmod.2022.105918>.
- Stoiber, Kristina, Daniel Degischer, Julia Hautz, and Kurt Matzler. “Open Strategy as Turnaround: The Impact of Openness in Restructuring under Financial Distress.” *Academy of Management Perspectives* 39, no. 2 (May 2025): 250–73. <https://doi.org/10.5465/amp.2023.0363>.
- Suhartono, Suhartono. “Insolvency Test As An Evidence Instrument In Sharia Bankruptcy Case.” *Jurnal Justisia Ekonomika: Magister Hukum Ekonomi Syariah* 8, no. 2 (December 2024): 1121–34. <https://doi.org/10.30651/justeko.v8i2.22246>.
- Teti, Emanuele, Alberto Tron, Federico Colantoni, and Edoardo Celani. “The Efficiency of Preventive Restructuring Procedures: Evidence from France.” *Strategic Change* 33, no. 2 (March 2024): 79–93. <https://doi.org/10.1002/jsc.2564>.
- Tsioli, Lydia. “Rescue Financing under a ‘Viability Spotlight.’” *Journal of Corporate Law Studies* 22, no. 2 (July 2022): 843–85. <https://doi.org/10.1080/14735970.2022.2157469>.
- Ubaidillah, Dede Nurrohman, and Ahmad Muhtadi Anshor. “Sharia Microfinance Reformulation Towards an Inclusive Economy: An Approach Maqashid al-Shariah Fi Hifdz al-Mal.” *Mu’amalah: Jurnal Hukum Ekonomi Syariah* 4, no. 2 (November 2025): 273–302. <https://doi.org/10.32332/muamalah.epmex470>.
- Wessels, Bob. “Energising Courts to Continue Breaking New Ground in Insolvency and Restructuring Cases.” *International Insolvency Review* 29, no. 3 (December 2020): 393–417. <https://doi.org/10.1002/iir.1393>.
- World Bank. *Principles for Effective Insolvency and Creditor/Debtor Regimes, 2021 Edition*. World Bank, Washington, DC, 2021. <https://doi.org/10.1596/35506>.
- Yapiter Marpi, Haris Purwadi, Pujiyono Suwadi, and Hazeem Moutawally Elsyafei. “From Classical Fiqh to Commercial Court: Reconciling Taflīs and Actio Pauliana in Indonesian Legal Practice.” *Juris: Jurnal Ilmiah Syari’ah* 24, no. 2 (2025): 295–310. <https://doi.org/https://doi.org/10.31958/juris.v24i2.15863>.
- Zhou, Yong, Siting Liu, and Wei Song. “Can Bankruptcy Court Establishment Drive Enterprise’ Entrepreneurial Orientation?” *International Review of Economics & Finance* 103 (October 2025): 104540. <https://doi.org/10.1016/j.iref.2025.104540>.



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