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Constraining Bankruptcy as an *Ultimum Remedium*: Evidence from Indonesia in Comparative Perspective with the United States and Singapore

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ABSTRACT
Bankruptcy law is fundamentally designed as an *ultimum remedium* due to its severe legal and economic consequences for debtors, creditors, and broader market stability. However, Indonesian bankruptcy law continues to rely on minimal formal requirements, which may facilitate the misuse of bankruptcy petitions against solvent debtors. This article examines how the principle of *ultimum remedium* and proportionality has been operationalized in judicial practice through Indonesian Supreme Court Decision No. 1714 K/Pdt.Sus-Pailit/2022. Using a normative legal approach combined with jurisprudential analysis, this study evaluates the Court's reasoning in limiting bankruptcy despite the formal statutory requirements being satisfied. The analysis is complemented by a comparative perspective with involuntary bankruptcy regimes in the United States and the rehabilitative-oriented insolvency framework in Singapore. The findings demonstrate a judicial shift from formalistic application toward substantive justice, emphasizing economic impact, proportionality, and the availability of non-bankruptcy alternatives. This development signifies an emerging judicial constraint on bankruptcy as a last resort and provides a normative foundation for future reform of Indonesian bankruptcy law.

Keywords: *Ultimum Remedium*; Proportionality; Bankruptcy; Judicial Discretion; Indonesian Insolvency Law

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INTRODUCTION

Bankruptcy law is fundamentally designed as an instrument of last resort in the resolution of debt disputes, given its profound consequences for the continuity of the debtor's business, the interests of creditors, and broader economic stability. Bankruptcy not only entails the loss of the debtor's authority to manage and control its assets but also has the potential to terminate business activities that may still possess economic viability and prospects for continuity. Accordingly, within modern bankruptcy law regimes, bankruptcy is not merely understood as a debt collection mechanism, but rather as a collective process that must take into account the principles of proportionality, the balance of interests among the parties, and substantive justice (Asy'arie, Wibowo, Rahmanda, & Irawati, 2025).

Nevertheless, the regulatory reality of bankruptcy law in Indonesia reveals a gap between this ideal conception and the prevailing normative framework. Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UU KPKPU) continues to emphasize highly simplified formal requirements, namely the existence of two or more creditors and at least one debt that is due and payable (Irfan, Widhiyanti, & Dewi, 2025). While this simplicity is intended to ensure legal certainty and procedural efficiency, in practice, it has created opportunities for the abuse of bankruptcy proceedings, particularly where bankruptcy petitions are filed based on

relatively small claims without a comprehensive assessment of the debtor's overall financial condition (Lesmana, Lie, & Syailendra, 2024).

Numerous prior studies have criticized this formalistic character and proposed various normative solutions. Rana Syahla et al., for example, emphasize the urgency of introducing stricter bankruptcy requirements through the establishment of a minimum debt threshold, referring to the Semarang District Court Decision Number 26/Pdt.Sus-Pailit/2021/PN Smg as well as developments in the Academic Draft of the Amendment Bill to the UU KPKPU (Rana Syahla, Dimas Mahardhika Satriawan, & Syahrul Kurniawan, 2024). This study underscores the significant impact of bankruptcy on debtors and argues that bankruptcy should be treated as an *ultimum remedium*, while also demonstrating that United States bankruptcy law is more responsive in this regard, having introduced differentiated minimum debt thresholds based on the type of debtor.

In a similar vein, Hendra Parulian et al. argue that the absence of a minimum debt threshold in the UU KPKPU has the potential to disadvantage debtors and generate an imbalance in legal protection (Hendra Parulian, Handar Subhandi Bakhtiar, & Atik Winanti, 2025). Through a comparative analysis of Indonesian and Malaysian bankruptcy law, this study shows that the regulation of a minimum debt threshold in the Malaysian legal system provides more proportionate protection for debtors and encourages the optimization of restructuring mechanisms through debt moratorium proceedings (PKPU) prior to bankruptcy.

Meanwhile, Lilik Warsito advances a more fundamental critique concerning the absence of an insolvency test within Indonesia's bankruptcy requirements (Warsito, 2024). According to this view, the simplification of bankruptcy requirements without an assessment of the debtor's ability to pay creates the risk of declaring bankruptcy against debtors who are in fact still solvent. Such a practice not only harms debtors but also negatively affects the investment climate and overall economic stability. Consequently, the study recommends reinstating the insolvency test as a prerequisite for bankruptcy to prevent its misuse as a rapid debt-collection instrument.

Although these studies consistently emphasize the importance of restricting bankruptcy use, whether through the introduction of minimum debt thresholds, the reinforcement of the *ultimum remedium* principle, or the application of an insolvency test, the existing literature generally remains focused on normative analysis and regulatory comparison. The primary limitation of prior research is the absence of an in-depth examination of how these principles have begun to be internalized and operationalized in judicial practice, particularly through the development of Supreme Court jurisprudence that indicates a shift from a formalistic approach toward substantive justice.

Departing from this limitation, this article aims to analyze Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 as a concrete representation of the application of the *ultimum remedium* principle and the principle of proportionality in Indonesian bankruptcy adjudication. This article offers novelty by demonstrating that, although the Supreme Court does not explicitly apply a minimum debt threshold or employ the terminology of an insolvency test, the judicial reasoning in the decision reflects a substantive limitation on the use of bankruptcy through an evaluation of economic impact, the availability of non-bankruptcy alternative mechanisms, and the balancing of interests between creditors and debtors.

This analysis is further enriched through a comparative study of the involuntary bankruptcy regime in the United States and the rehabilitative–proportional approach embodied in Singaporean bankruptcy law. Accordingly, this article not only contributes to the development of normative discourse in bankruptcy law but also provides an argumentative foundation for reforming the UU KPKPU by consistently positioning bankruptcy as an *ultimum remedium* that is just, proportionate, and aligned with evolving judicial practice and international standards.

METHOD

This study employs a normative juridical approach combined with jurisprudential analysis, focusing on Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 as the primary object of examination. The primary legal materials consist of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), while the secondary legal materials include doctrinal writings and recent academic studies addressing the *ultimum remedium* principle, limitations on the use of bankruptcy, and debtor protection. The research is further complemented by a comparative legal study of the involuntary bankruptcy regime in the United States and the rehabilitative approach embodied in Singaporean bankruptcy law.

Data was collected through library-based research, with legal materials selected for their direct relevance to the issue of restricting bankruptcy use. The data were analyzed qualitatively through legal interpretation and a systematic examination of the Supreme Court's legal reasoning, using the following criteria: consideration of economic impact and the sustainability of the debtor's business, the availability of non-bankruptcy alternative mechanisms, and the balance of interest between creditors and debtors. The analysis's findings are then used to formulate recommendations for bankruptcy law reform aligned with judicial practice and international standards.

RESULTS AND DISCUSSION

1. Operationalization of the *Ultimum Remedium* Principle and Proportionality in Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022

This study aims to examine how the principles of *ultimum remedium* and proportionality are operationalized in Indonesian bankruptcy adjudication. The principal finding demonstrates that Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 represents a significant shift from a mechanical application of bankruptcy law toward a substantive approach oriented toward impact and utility. The Supreme Court unequivocally held that bankruptcy is a measure of last resort, notwithstanding the fact that the formal requirements stipulated under Article 2, paragraph (1), and Article 8, paragraph (4), of the UU KPKPU had been fulfilled under the principle of simple proof. This approach is consistent with critiques of the Indonesian bankruptcy regime, which has long been characterized by excessive formalism and a tendency to disregard the debtor's actual financial condition, including whether the financial distress is temporary or reflects structural insolvency (Sutjahjo & Elnina, 2025).

The central significance of this finding lies in the Supreme Court's legal reasoning, which consciously distinguishes between fulfilling normative requirements and substantively justifying the invocation of bankruptcy as a legal instrument. By acknowledging that the elements of "two or more creditors" and "a debt that has

matured and is collectible" were satisfied, yet nevertheless rejecting the bankruptcy petition, the Supreme Court implicitly introduced an additional layer of substantive evaluation. Within this framework, formal requirements are treated as necessary conditions but do not, in themselves, constitute sufficient grounds for declaring bankruptcy. This reasoning reflects a reconceptualization of bankruptcy not merely as a logical consequence of formal compliance, but as a legal mechanism with systemic implications that must be assessed contextually.

The consideration of the relatively small amount of the claim—IDR 75,000,000—serves as a central indicator of the implicit application of the proportionality principle. The Supreme Court assessed that the consequences of bankruptcy, including restrictions on the debtor's civil rights, social stigma, and broader economic implications, were disproportionate to the benefits obtained by the creditor in the case at hand. This reasoning further underscores that simple proof should not be reduced to a purely administrative examination, but must be situated within a framework that weighs the legal benefits and burdens generated by bankruptcy proceedings (Shubhan, 2019). This finding reinforces the argument that bankruptcy should not serve as an overly inclusive debt-collection mechanism, particularly when alternative procedures that are less burdensome, faster, and more cost-effective are available. In relation to the research objectives, these results confirm a shift in bankruptcy orientation from procedural certainty toward substantive justice, accounting for rationality and the real-world impact of judicial decisions.

Compared with prior studies that emphasize the need for legislative revision to curb potential abuses of bankruptcy, this study reveals a different dynamic. Such limitations have begun to emerge from judicial practice itself, particularly in the Supreme Court's law-finding. Consequently, the development of Indonesian bankruptcy law is not driven solely through legislative channels, but also through the formation of judicial standards that function as a corrective mechanism against the rigidity of written norms.

Another important aspect reinforcing the proportional character of this decision is the Supreme Court's explicit reference to small-claims procedures as an alternative dispute-resolution mechanism. By directing the parties to mechanisms regulated by Supreme Court Regulation Number 4 of 2019, the Court not only rejected the bankruptcy petition but also provided concrete, operational procedural guidance. This integration between bankruptcy law and civil procedural law affirms that bankruptcy is not the default forum for debt disputes, but rather a last resort after other mechanisms have been deemed inadequate or ineffective.

Accordingly, this decision embodies three critical layers of legal reasoning. First, it affirms the *ultimum remedium* principle as an operational doctrine in bankruptcy law, restricting its use to circumstances that are genuinely urgent and justified. Second, it applies the principles of utility and proportionality to assess the balance between the value of the claim and the legal and economic consequences of bankruptcy. Third, it integrates civil procedural law, particularly small claims litigation, as a legitimate, rational, and proportionate alternative for resolving low-value debt disputes.

Ultimately, this decision may be understood as a form of judicial correction of the rigidity of bankruptcy norms, as well as a preventive effort to avert the use of bankruptcy as a coercive debt-collection instrument. Through this approach, the

Supreme Court not only resolves a concrete case, but also sends a broader normative signal regarding the trajectory of Indonesian bankruptcy law toward a more equitable, impact-oriented framework aligned with the fundamental purpose of bankruptcy as an extraordinary collective remedy.

2. Comparative Perspective, Policy Implications, and Contributions to the Development of the Bankruptcy Regime

The United States' involuntary bankruptcy regime, as regulated under §303 of the U.S. Bankruptcy Code, demonstrates that limitations on bankruptcy are not merely technical choices, but the product of a long historical evolution rooted in tensions between creditor interests and debtor protection. From the coercive and punitive debtor-oriented bankruptcy laws of sixteenth-century England, the American system gradually evolved toward a balance between the two primary objectives of bankruptcy: collective asset distribution and protection against unjustified forced bankruptcy. This evolution explains why §303 is designed as an extraordinary creditor's remedy, rather than as an ordinary debt collection mechanism (Shachmurove, 2017).

Within this context, the first principle relevant to Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 clearly distinguishes between formal compliance and substantive justification for bankruptcy. Sections 303(b) and (h) require not only a minimum number of creditors and claims, but also proof that the debtor is "generally not paying debts as they become due" (Wilder, 2017). This requirement constitutes a functional insolvency test that evaluates the debtor's overall financial condition rather than the mere existence of debt. Thus, like the Supreme Court's acknowledgment of formal compliance while rejecting bankruptcy, U.S. law has long rejected the logic of automatic bankruptcy.

The second principle—proportionality between creditor interests and the impact of bankruptcy—is institutionally reinforced through the sanction mechanism under §303(i). This provision not only shifts litigation costs to creditors whose petitions are dismissed but also allows for punitive damages where bad faith is established. Its normative function is clear: to prevent bankruptcy from being used as a tool of pressure, intimidation, or coercive collection. This approach aligns with the Supreme Court's reasoning that bankruptcy based on small-value claims is disproportionate to the systemic harm imposed on the debtor and other creditors.

Furthermore, the U.S. system reflects a third principle relevant to Supreme Court Decision Number 1714/2022, namely the protection of non-bankruptcy alternatives and the preservation of the debtor's business continuity. Debtor protections during the *gap period*, the continuation of business operations prior to an *order for relief*, and the high burden of proof imposed on creditors demonstrate that bankruptcy is not a default forum, but a last-resort mechanism reserved for situations where the risks of asset depletion and distributive injustice are genuinely present (Mullin, 1994). In this sense, U.S. law institutionalizes the *ultimum remedium* principle through statutory design rather than solely through judicial discretion.

Singapore adopts a different configuration but pursues a similar normative objective. Its bankruptcy system is explicitly designed to balance debtor accountability, creditor protection, and broader social interests. The *ultimum remedium* principle is internalized through minimum debt thresholds, relatively high administrative costs and requirements, and the development of the Debt Repayment Scheme (DRS) as the primary mechanism to prevent bankruptcy over small debts (Min & Nordin, 2019).

The DRS reflects a concrete application of the third principle evident in Supreme Court Decision 1714/2022, namely the prioritization of proportionate non-bankruptcy alternatives. The scheme is deliberately designed to maintain debtor productivity, preserve employment, and facilitate debt repayment through state-supervised payment plans, while ensuring that creditors are not placed in a worse position than they would be under bankruptcy. In this framework, bankruptcy is positioned as a failure of rehabilitative mechanisms rather than as the starting point for dispute resolution.

The 2015 reforms further reinforced this proportional and rehabilitative orientation through increased bankruptcy thresholds, the introduction of a differentiated discharge framework, and the removal of post-bankruptcy stigma (Gardner, 2016). These measures demonstrate that Singapore limits access to bankruptcy not only quantitatively but also qualitatively manages its consequences. Proportionality thus operates not only at the entry stage, but also at the exit stage of the bankruptcy regime.

When compared with Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022, a substantial alignment emerges across three core strands of legal reasoning. The Supreme Court, like the legal systems of the United States and Singapore, rejects the mechanical application of bankruptcy, evaluates the imbalance between debt value and bankruptcy impact, and directs parties toward lighter and more rational alternative mechanisms. The distinction, however, is structural: in Indonesia, such limitations remain dependent on judicial law-finding, whereas in the United States and Singapore they are explicitly institutionalized within statutory design.

This distinction carries important normative implications. Reliance on judicial discretion risks generating inter-decisional inconsistency and legal uncertainty, even where judicial progressivism is evident. Accordingly, this comparative analysis reinforces the argument that Supreme Court Decision 1714/2022 should be understood not merely as a case-specific precedent, but as a normative blueprint for reforming the UU KPKPU. Such reform should go beyond adding formal requirements and instead explicitly institutionalize the three key principles already practiced by the Supreme Court: separation between formal compliance and substantive justification, proportionality of impact, and prioritization of non-bankruptcy alternatives.

CONCLUSION

Supreme Court Decision Number 1714 K/Pdt.Sus-Pailit/2022 marks an important development in Indonesian bankruptcy adjudication, particularly in the substantive operationalization of the *ultimum remedium* principle and the principle of proportionality. Through this decision, the Supreme Court not only affirms that the fulfillment of formal bankruptcy requirements does not automatically legitimize a declaration of bankruptcy, but also introduces an additional evaluative standard focused on economic impact, the debtor's business sustainability, and the balance of interests among the parties. These findings demonstrate that bankruptcy is increasingly being repositioned as an extraordinary instrument whose use must be rationally and contextually constrained.

The principal contribution of this article lies in its demonstration that limitations on the use of bankruptcy in Indonesia do not rely solely on statutory reform but have begun to emerge through Supreme Court jurisprudence as a form of judicial correction

to the rigidity of the UU KPKPU. By integrating proportionality and explicit references to non-bankruptcy alternatives—particularly small claims litigation—the analyzed decision reflects an emerging harmonization between bankruptcy law and civil procedural law. From a comparative perspective, this approach aligns normatively with the regimes of the United States and Singapore, although it remains structurally distinct due to the absence of explicit statutory institutionalization.

Nevertheless, this study has limitations that warrant critical reflection. First, the analysis focuses on a single Supreme Court decision, thereby limiting the generalizability of the findings and rendering them susceptible to case-specific reasoning. Second, the normative juridical approach employed does not empirically test the consistency of proportionality across other bankruptcy decisions at either the cassation or commercial court levels. These limitations do not constitute methodological flaws but rather reflect constraints on external validity that warrant caution when drawing general conclusions.

Based on these findings and limitations, future research is encouraged to conduct broader and more systematic jurisprudential analyses to identify patterns in the application of *ultimum remedium* and proportionality in bankruptcy cases. Empirical studies incorporating the perspectives of commercial court judges, curators, and practitioners would also be valuable in assessing the extent to which these substantive standards have influenced judicial practice. For policymakers, the findings of this study provide a basis for reforming the UU KPKPU by not merely adding formal requirements, but by explicitly institutionalizing proportionality and bankruptcy limitations so that they do not depend entirely on progressive judicial law-finding.

Accordingly, this article is expected to enrich the academic discourse on bankruptcy law while simultaneously offering practical contributions to the development of a more equitable, proportionate, and responsive Indonesian bankruptcy regime aligned with judicial practice and international standards.

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