

Balancing Legal Certainty and Substantive Justice in Indonesian Bankruptcy Law: Simple Proof, Judicial Responsibility, and Curator Accountability

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ABSTRACT

Indonesia's Law Number 37 of 2004 was designed to provide a rapid, simple, and collective mechanism for resolving unpaid debts. Nevertheless, the combination of a low statutory threshold for bankruptcy and the open-textured requirement of "simple proof" continues to generate tension between legal certainty and substantive justice. This article examines how those principles are regulated and applied, and evaluates the responsibilities of commercial judges and curators in protecting creditors and debtors. The study uses normative legal research with statutory, conceptual, and case approaches. Primary materials comprise bankruptcy legislation, judicial-power rules, selected Constitutional Court and Supreme Court materials, and relevant commercial-court reasoning; secondary materials consist mainly of recent peer-reviewed legal scholarship. The analysis finds that certainty is weakened not by the absence of procedural rules, but by the lack of operational standards for disputed debt, maturity, creditor plurality, proportionality, and financial distress. Justice is also vulnerable after adjudication when estate administration is insufficiently transparent or effectively supervised. The article proposes a two-stage judicial screening model, a structured proportionality test, clearer statutory indicators of simple proof, and digital, periodic curator reporting. These reforms would preserve procedural speed while reducing strategic petitions and strengthening balanced protection for all parties.

ABSTRAK

Undang-Undang Nomor 37 Tahun 2004 Indonesia dirancang untuk menyediakan mekanisme yang cepat, sederhana, dan kolektif untuk menyelesaikan utang yang belum dibayar. Namun demikian, kombinasi ambang batas hukum yang rendah untuk kepailitan dan persyaratan "bukti sederhana" yang bersifat terbuka terus menimbulkan ketegangan antara kepastian hukum dan keadilan substantif. Artikel ini mengkaji bagaimana prinsip-prinsip tersebut diatur dan diterapkan, serta mengevaluasi tanggung jawab hakim dan kurator komersial dalam melindungi kreditur dan debitur. Studi ini menggunakan penelitian hukum normatif dengan pendekatan hukum, konseptual, dan kasus. Materi primer terdiri dari

undang-undang kepailitan, aturan kekuasaan yudisial, materi Mahkamah Konstitusional dan Mahkamah Agung terpilih, dan penalaran pengadilan komersial yang relevan; materi sekunder sebagian besar terdiri dari kajian hukum terkini yang telah ditinjau oleh rekan sejawat. Analisis menemukan bahwa kepastian melemah bukan karena tidak adanya aturan prosedural, tetapi karena kurangnya standar operasional untuk utang yang disengketakan, jatuh tempo, pluralitas kreditur, proporsionalitas, dan kesulitan keuangan. Keadilan juga rentan setelah putusan ketika administrasi harta pailit kurang transparan atau diawasi secara efektif. Artikel ini mengusulkan model penyaringan yudisial dua tahap, uji proporsionalitas terstruktur, indikator hukum yang lebih jelas tentang bukti sederhana, dan pelaporan kurator digital secara berkala. Reformasi ini akan menjaga kecepatan prosedural sekaligus mengurangi petisi strategis dan memperkuat perlindungan yang seimbang bagi semua pihak.

INTRODUCTION

Bankruptcy law performs a difficult institutional function. It must transform a fragmented contest among creditors into an orderly collective proceeding while simultaneously preventing a debtor's assets from being dissipated, concealed, or seized through competing individual enforcement. In Indonesia, this function is principally governed by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (the Bankruptcy and PKPU Law). The statute defines bankruptcy as a general attachment over all assets of the bankrupt debtor, administered and liquidated by a curator under the supervision of a supervisory judge. The design promises speed, simplicity, openness, and effectiveness. Yet those same procedural virtues can become sources of injustice when the legal threshold is applied without sufficient attention to the substance of the debt relationship, the economic condition of the debtor, or the consequences of a bankruptcy order.

The statutory entry test is formally straightforward. Under Article 2(1), a debtor may be declared bankrupt when it has at least two creditors and has failed to pay at least one due and collectible debt. Article 8(4) adds that the petition must be granted when facts or circumstances proving those requirements can be established simply. The formulation creates a predictable procedural gateway, but it does not expressly require a minimum debt value, a balance-sheet insolvency test, a cash-flow insolvency test, or a showing that bankruptcy is proportionate to the dispute. Recent scholarship therefore questions whether the existing test can distinguish genuine collective insolvency from an ordinary contractual disagreement that should be resolved through a conventional civil action (Shubhan, 2019; Syahla et al., 2024).

The problem is not merely theoretical. A bankruptcy declaration transfers control over the relevant estate from the debtor to the curator and may affect business continuity, employment, contractual networks, reputation, and the practical position of every creditor. For corporate

debtors, the order can interrupt productive activity even when the underlying dispute concerns only one contested claim. For individual debtors, the regime remains comparatively harsh because Indonesian law does not yet provide a comprehensive discharge or fresh-start mechanism comparable to those found in several modern insolvency systems (Robert et al., 2022; Toha & Retnaningsih, 2020). A legal rule that is easy to invoke but difficult to calibrate can therefore satisfy formal certainty while producing disproportionate substantive effects.

Legal certainty and justice are sometimes presented as competing values. Certainty requires clear standards, consistent interpretation, and predictable consequences. Justice requires that the legal result be fair in context, that similarly situated parties be treated alike, and that the burdens imposed by a legal mechanism are not excessive in relation to its legitimate objective. Radbruch's account of law's core values warns against treating certainty as the only juridical purpose, particularly when rigid application creates intolerable injustice (Radbruch, 2006). In bankruptcy, the challenge is not to choose one value over the other. The challenge is to construct an institutional method in which certainty guides decision-making while proportionality, good faith, and balanced protection prevent the procedure from becoming an instrument of pressure.

Existing Indonesian scholarship has identified several dimensions of this tension. Shubhan (2019) demonstrates that the undefined boundary of simple proof produces inconsistent judicial treatment. Andani and Pratiwi (2021) show that the concept also creates uncertainty in PKPU proceedings, where the statute does not formulate the same evidentiary requirement with equal clarity. Fedhitama and Anisah (2023) document disparity in bankruptcy petitions based on the assignment of part of a receivable, illustrating how divergent interpretation of the same legal construction can undermine predictability. Syahla et al. (2024) argue for a minimum debt threshold because the severe consequences of bankruptcy are not matched by any statutory monetary floor. Together, these studies reveal that procedural simplicity has not automatically generated uniformity.

A second stream of research concerns the role of judges. Commercial judges are not passive registrars of formal conditions. They must determine whether a debt exists, whether it has matured and is collectible, whether a second creditor is legally established, and whether the evidentiary dispute remains sufficiently simple for the specialized summary process. Their reasoning also shapes the practical meaning of good faith, the separation between breach-of-contract litigation and insolvency proceedings, and the relationship between speed and accuracy. The supervisory judge continues to play a central role after the bankruptcy order by overseeing the curator, receiving reports, and authorizing or reviewing important estate-management steps (Aprita & Qosim, 2022; Hendrial et al., 2022).

A third stream focuses on curators and creditor protection. The curator possesses extensive authority over the bankruptcy estate, including inventory, preservation, administration,

verification of claims, sale of assets, and distribution. Such authority is indispensable because collective administration would fail if every creditor could act independently. However, authority without accessible reporting, verifiable valuation, conflict-of-interest controls, and effective supervision can reduce trust in the proceeding. The publicity principle is therefore more than a technical publication requirement; it is a condition for accountability. Anggoro (2021) argues that digital transformation of bankruptcy publicity and curator reporting can reduce costs and improve access to information. This concern is especially important for workers, concurrent creditors, and other parties with limited capacity to monitor proceedings.

The justice problem also extends to the classification and treatment of creditors. Secured, preferred, and concurrent creditors occupy different positions under private law and bankruptcy law. The interaction between security rights and estate administration may generate conflicting interpretations about execution periods, registration, and the transfer of collateral to the curator (Ariyanto, 2022; Sari & Gunadi, 2025). Meanwhile, creditors who do not register claims on time, or whose claims are affected by a composition plan, may lose procedural opportunities or face substantial reductions. Pertiwi et al. (2025) show how an excessively formal approach to voting and registration can legitimize a composition term that materially harms unregistered creditors. Justice in bankruptcy must consequently be evaluated across the entire process, not only at the moment the debtor is declared bankrupt.

This article develops an integrated analysis of legal certainty and substantive justice by connecting three institutional stages: the statutory gateway, judicial adjudication, and curator administration. Unlike analyses confined to a single provision or creditor category, it asks how legal norms, judicial discretion, and estate governance interact. The first research question is how the Bankruptcy and PKPU Law regulates and operationalizes legal certainty in the examination and proof of a bankruptcy petition. The second is how commercial judges and curators should exercise their authority to produce substantive justice for creditors and debtors. The third is what normative and institutional reforms are required to reconcile procedural speed with proportional and transparent outcomes.

The article's contribution is a structured balancing framework. It proposes that a bankruptcy petition should pass two stages. The first stage is a legal-certainty screen focused on jurisdiction, creditor plurality, the existence and maturity of debt, and the evidentiary suitability of the summary process. The second is a justice-and-proportionality screen focused on good faith, the degree of dispute, the availability of a less destructive remedy, the debtor's financial condition, and the collective benefit of bankruptcy. After an order is issued, the same balancing logic should continue through measurable curator duties, digital reporting, meaningful creditor access, and active supervision. This approach does not replace statutory requirements with unlimited judicial discretion; rather, it disciplines discretion through transparent factors and reasoned decisions.

METHOD

This study employs normative legal research. The object of analysis is the coherence, interpretation, and practical operation of legal norms governing bankruptcy, rather than statistically measured behavior or interview-based perceptions. Normative legal research is appropriate because the central questions concern the meaning of statutory conditions, the boundaries of simple proof, the institutional duties of commercial judges and curators, and the principles that should guide legal reform.

Three complementary approaches are used. First, the statutory approach examines Law Number 37 of 2004, the Indonesian Civil Code, Law Number 48 of 2009 concerning Judicial Power, and Supreme Court Circular Letter Number 2 of 2016. Second, the conceptual approach uses legal certainty, substantive justice, proportionality, good faith, creditor equality, business continuity, publicity, and accountability as analytical concepts. Third, the case approach examines selected constitutional and commercial-court reasoning discussed in official judicial materials and recent scholarship. The case approach is illustrative rather than empirical: it identifies recurring interpretive patterns and institutional risks rather than estimating the frequency of particular outcomes.

Primary legal materials consist of legislation, constitutional adjudication, judicial administrative guidance, and selected decisions referred to in the academic literature. Secondary materials consist mainly of peer-reviewed journal articles published between 2019 and 2025 on simple proof, minimum-debt requirements, creditor classification, homologation, judicial review, supervisory judges, curators, digital publicity, business continuity, and debt discharge. Materials were selected for relevance to the two research questions and for their ability to represent different stages of the bankruptcy process.

The legal materials were analyzed in four steps. The first step was norm inventory: identifying the provisions that create the entry conditions, procedural timetable, judicial responsibilities, curator powers, creditor rights, and supervisory mechanisms. The second was systematic interpretation: reading those provisions as an integrated process rather than as isolated commands. The third was principle testing: assessing whether each rule promotes predictability, equal treatment, proportionality, and effective access to information. The fourth was reconstructive analysis: formulating operational standards and institutional reforms that remain compatible with the statute's objectives of speed and collective settlement.

The study has two limitations. It does not claim to provide a complete quantitative mapping of all bankruptcy judgments, and it does not evaluate curator performance through confidential estate files. Its conclusions are therefore doctrinal and prescriptive. Nevertheless, the method is suitable for identifying ambiguity, internal inconsistency, and governance gaps, and for constructing a transparent decision framework that can later be tested empirically.

Balancing Legal Certainty and Substantive Justice in Indonesian Bankruptcy Law: Simple Proof, Judicial Responsibility, and Curator Accountability

(Pradipta et al.)

Table 1. Analytical framework, legal materials, and evaluation criteria

Analytical component	Primary legal materials	Evaluation criterion	Expected output
Bankruptcy entry	Law Number 37 of 2004, Articles 2(1) and 8(4)	Clarity of debt, maturity, collectibility, creditor plurality, and evidentiary suitability	Operational findings for the entry decision
Judicial responsibility	Judicial Power Law, Constitutional Court and Supreme Court materials	Reasoned interpretation, proportionality, good faith, equal treatment, and access to review	Structured judicial screening model
Estate administration	Bankruptcy and PKPU Law provisions on curators and supervisory judges	Inventory accuracy, value preservation, transparent sales, claim verification, and conflict controls	Minimum curator accountability standards
Institutional reform	Reviewed legal scholarship and digital-publicity policy	Feasibility, sequencing, accessibility, measurable outcomes, and protection of weaker stakeholders	Legislative and institutional reform agenda

Source: Author's research design, 2026.

RESULTS AND DISCUSSION

1. The Normative Architecture of Legal Certainty and Justice

The Bankruptcy and PKPU Law contains a strong architecture of procedural certainty. It specifies the competent commercial court, identifies who may petition, defines the basic conditions for bankruptcy, establishes short procedural periods, regulates publication, and places estate administration under a curator and supervisory judge. These elements reduce the risk of uncoordinated execution and provide creditors with a single forum. They also reflect the principle embodied in Articles 1131 and 1132 of the Civil Code: the debtor's property serves as a common guarantee, and creditors share proportionally unless a lawful priority exists.

However, procedural detail does not by itself guarantee substantive certainty. A rule may be clear at a high level yet indeterminate at the point of application. The phrases "debt," "due and collectible," and "simply proven" require legal characterization. A payment obligation may arise from a loan, sale, service, guarantee, damages claim, court judgment, or complex reciprocal contract. A debt may be admitted but subject to set-off, condition, novation, assignment, arbitration, or a dispute over performance. The existence of a second creditor may be supported by documents of varying reliability. When the statute does not specify how much complexity is compatible with simple proof, judges must construct the boundary case by case.

This interpretive space explains why apparently similar petitions can receive different outcomes. Legal certainty is not achieved merely because every court recites Article 2(1) and Article 8(4). It requires a consistent method for deciding whether the facts satisfy those provisions. Shubhan (2019) identifies this as norm obscurity: the statute requires simple proof but does not define its limits. Fedhitama and Anisah (2023) show how differences in judicial interpretation of partial receivable assignment can produce disparity. The resulting uncertainty affects both sides. Creditors cannot predict whether the summary forum will accept their claim,

while debtors cannot predict whether a disputed commercial relationship will be transformed into a collective liquidation process.

Justice is present in the statutory scheme, although it is not concentrated in a single provision. It appears in creditor verification, the recognition of secured and preferred claims, opportunities to object to distributions, judicial supervision, curator liability, composition procedures, and the requirement that judges uphold law and justice under the Judicial Power Law. The problem is one of coordination. A formal bankruptcy test may be satisfied before the system considers whether the remedy is excessive. Conversely, a broad appeal to fairness without structured legal criteria can undermine predictability and invite inconsistent discretion. The appropriate solution is therefore not to abandon the statutory threshold, but to supplement it with operational safeguards.

The relationship between certainty and justice can be expressed as a sequence. Certainty determines whether the court has a legally cognizable and procedurally suitable petition. Justice determines whether the legal mechanism is being used in good faith, whether its burdens are proportionate, and whether affected interests receive meaningful protection. The two values become mutually reinforcing when the court gives reasons tied to identifiable factors. A well-reasoned refusal to use bankruptcy for a deeply contested bilateral dispute increases certainty because it clarifies the forum boundary. A well-reasoned grant supported by clear evidence and collective necessity likewise strengthens certainty because it demonstrates predictable application.

Table 2. Normative tension between legal certainty and substantive justice

Dimension	Certainty Function	Justice Risk	Operational Safeguard
Bankruptcy entry	Objective conditions: two creditors and one due debt	A small or seriously disputed debt may trigger severe collective consequences	Minimum threshold, genuine plurality test, and financial-distress indicators
Simple proof	Rapid determination from concise evidence	Undefined limits create judicial disparity	Four explicit findings: debt, maturity, plurality, and procedural suitability
Judicial discretion	Allows application to diverse transactions	Unstructured discretion reduces predictability	Standard proportionality matrix and reasoned judgment
Estate administration	Centralized control prevents individual seizure	Opaque valuation, fees, or sales may harm stakeholders	Digital reporting, conflict disclosure, and active supervision
Distribution	Applies statutory ranking and collective equality	Formal classification can disadvantage weak creditors	Written claim reasons, effective notice, and accessible objections

Source: Author's normative analysis, 2026.

2. Simple Proof as a Procedural Filter

Simple proof should be understood as a procedural filter, not as a reduction of the substantive legal requirements. The creditor still bears the burden of establishing a due and collectible debt and the existence of at least one additional creditor. What becomes “simple” is

the mode and depth of proof appropriate to a rapid petition, not the legal validity of the elements themselves. A court should therefore ask whether the decisive facts can be reliably established from concise, direct, and internally consistent evidence without resolving a complex merits dispute.

The first component is the existence of debt. Written acknowledgments, invoices accepted without objection, final judgments, payment schedules, bank records, and clear contractual provisions can support simple proof. By contrast, a claim that depends on extensive expert accounting, contested completion of reciprocal obligations, allegations of fraud, unresolved set-off, or interpretation of multiple interdependent agreements may exceed the summary forum. This does not mean that the creditor has no claim. It means that a full civil action, arbitration, or another merits-based proceeding may be the proper route before bankruptcy is considered.

The second component is maturity and collectibility. The court should identify the contractual or statutory event that makes payment due and should address any credible evidence of extension, suspension, condition precedent, or settlement. The phrase “collectible” should not be treated as a mere synonym for a date on a document. It requires that no legal barrier prevents enforcement. A reasoned decision should specify the debt instrument, maturity date, amount relied upon for the bankruptcy test, and the basis for rejecting any defense that can be assessed within the summary procedure.

The third component is creditor plurality. The second creditor requirement protects the collective character of bankruptcy. It should not be satisfied by an artificial or collusive construction that merely creates the appearance of plurality. Partial assignment of a single receivable is especially sensitive because it may be used to manufacture a second creditor. Fedhitama and Anisah (2023) demonstrate that judicial responses to partial assignment have varied. A consistent approach should examine the legal validity, notice, economic substance, timing, and good faith of the assignment. The court need not conduct a full fraud trial, but it should not ignore obvious indicators that the plurality requirement has been engineered.

The fourth component is evidentiary simplicity itself. A useful standard is decisional sufficiency: after considering the petition, response, core documents, and limited oral explanation, can the court determine the statutory elements without adjudicating a substantial merits controversy? This standard avoids two extremes. It prevents judges from rejecting a petition merely because the debtor raises any objection, and it prevents them from granting bankruptcy merely because the creditor produces a facially valid invoice. The quality and centrality of the dispute matter more than the number of documents.

Andani and Pratiwi (2021) note that simple proof has also been applied in PKPU practice even though its statutory formulation is not identical. This illustrates the broader need for procedural coherence. Bankruptcy and PKPU are related but distinct mechanisms: bankruptcy is principally collective execution and liquidation, while PKPU is designed to create time and a

forum for restructuring. The evidentiary threshold should reflect those functions. A restructuring petition may justify preliminary relief on a different basis than a final bankruptcy declaration, but both require protection against strategic misuse.

A minimum debt threshold could support the filter, but it should not be treated as a complete solution. Syahla et al. (2024) persuasively argue that the absence of a minimum value is difficult to reconcile with the severe legal consequences of bankruptcy. A calibrated threshold could deter petitions based on economically trivial debts. Yet a fixed figure can become obsolete, can disadvantage small creditors, and cannot by itself distinguish a genuine collective default from a strategic dispute. The better approach is a combination of a periodically adjustable minimum threshold, exceptions for particular debtor categories or public interests, and a proportionality assessment.

The lack of an express insolvency test is another structural issue. Article 2(1) focuses on non-payment, not the debtor's overall financial condition. This makes the system accessible and fast, but it permits a solvent debtor with a disputed or temporarily unpaid debt to face bankruptcy. Kiemas et al. (2023) argue that business continuity and financial examination should receive greater legislative recognition. A limited financial-distress screen would not require a full forensic audit in every case. It could ask whether there is *prima facie* evidence of general payment difficulty, multiple defaults, negative liquidity, failed restructuring, asset dissipation, or other collective-risk indicators.

The proposed interpretation therefore treats Article 8(4) as a gateway with four findings: clear debt, clear maturity and collectibility, genuine creditor plurality, and procedural suitability. Each finding should appear expressly in the judgment. This format would improve appellate review, facilitate doctrinal consistency, and allow future judicial guidelines to identify recurring patterns. It also gives parties notice of what evidence matters, thereby increasing both certainty and fairness.

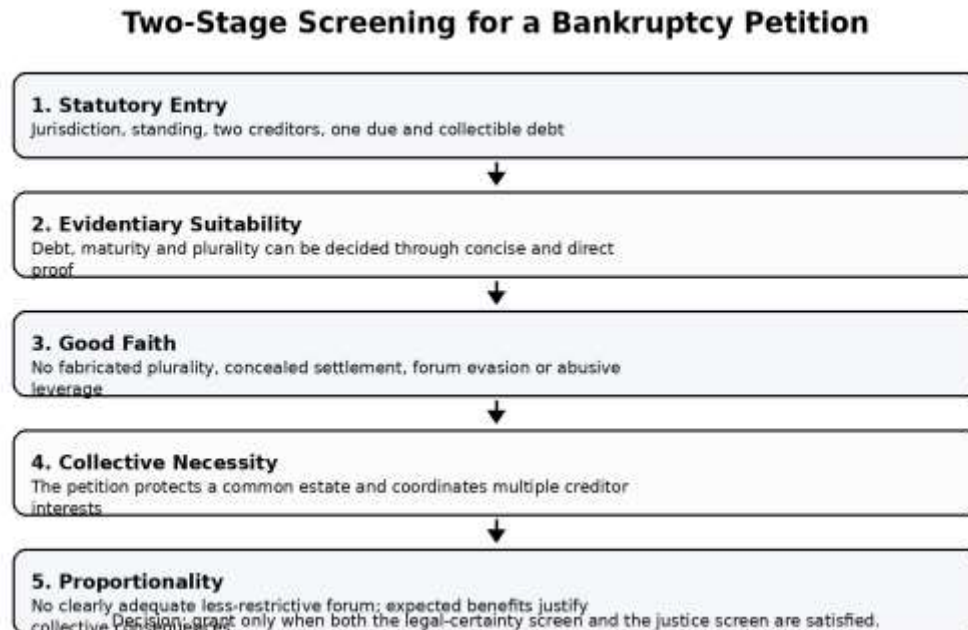


Figure 1. Judicial Decision Flow for Simple Proof and Proportionality

Source: Author's reconstruction based on the statutory entry test and proportionality analysis, 2026.

3. The Commercial Judge: Formal Gatekeeper and Guardian of Proportionality

The commercial judge's role begins with fidelity to statutory text. The court may not invent an entirely different bankruptcy test or substitute an unrestricted equitable inquiry for Article 2(1). At the same time, judicial responsibility under the Judicial Power Law requires more than mechanical box-checking. The judge must interpret open-textured terms, assess the credibility and legal significance of evidence, and explain why the specialized remedy is appropriate. The legitimate space for judgment lies within the statutory elements and the principles that organize them.

A structured proportionality review can discipline this task. The first question is legitimacy: is the petition directed toward collective debt settlement rather than harassment, reputation damage, forum avoidance, or leverage in an unrelated dispute? The second is suitability: would bankruptcy actually protect a common estate and coordinate multiple creditors? The third is necessity: is there an obvious less restrictive procedure capable of resolving the core issue, such as a civil claim, arbitration, execution of a final judgment, or a negotiated restructuring? The fourth is balance: are the expected collective benefits reasonably proportionate to the consequences for the debtor, employees, contractual partners, and other creditors?

Proportionality should not become an excuse for indefinite proceedings. The inquiry must be based on concise indicators and should remain compatible with the statutory timetable. It can be performed through focused questions, written submissions, and a standardized judgment matrix. The aim is not to prove the debtor's entire financial condition beyond doubt, but to identify clear signs that the bankruptcy mechanism is being used for a purpose inconsistent with its collective function. A petition founded on an admitted, overdue debt amid multiple unpaid creditors will normally pass quickly. A petition founded on a deeply contested reciprocal contract with no evidence of broader default should receive closer scrutiny.

Good faith is central to this review. Creditors have a legitimate right to use bankruptcy when statutory conditions and collective interests are present. They do not act in bad faith merely because the petition creates commercial pressure. Bad faith arises when legal form is manipulated to obtain an advantage unrelated to fair debt settlement—for example, manufacturing creditor plurality, concealing a settlement, relying on a debt known to be disputed on substantial grounds, or using the petition to bypass an agreed dispute-resolution mechanism without justification. Debtors are likewise bound by good faith and should not be permitted to manufacture complexity, hide assets, create fictitious defenses, or selectively pay insiders to defeat collective proceedings.

The Constitutional Court's intervention in Decision Number 23/PUU-XIX/2021 illustrates the constitutional dimension of access to justice in the bankruptcy-PKPU framework. The decision opened a limited cassation route in circumstances connected with creditor-filed PKPU petitions and rejection of a composition, responding to concerns that the absence of any corrective mechanism could produce unequal and unjust outcomes. The subsequent scholarly discussion emphasizes that procedural finality must be balanced with protection against serious judicial error (Ihsan & Widyaningrum, 2023). The lesson is broader than appeals: speed is legitimate only when accompanied by minimum safeguards of reasoned adjudication and review.

Consistency also requires institutional learning. Commercial courts and the Supreme Court should systematically publish anonymized or searchable decisions, identify recurring interpretive questions, and issue guidance where disparities become visible. Supreme Court Circular Letter Number 2 of 2016 already emphasizes efficiency and transparency in bankruptcy and PKPU case handling. That policy can be developed into a more detailed bench guide addressing simple proof, partial assignment, disputed reciprocal obligations, second-creditor evidence, minimum documentation, and indicators of strategic petitions.

Judicial reasons are themselves a form of procedural justice. A party that loses a bankruptcy petition should be able to understand whether the decision turned on debt existence, maturity, creditor plurality, evidentiary complexity, good faith, or proportionality. Generic statements that the matter is "simple" or "not simple" are insufficient. They do not

guide future conduct, do not facilitate meaningful review, and do not build coherent jurisprudence. A concise but structured explanation would serve the statute's demand for speed while strengthening legitimacy.

The supervisory judge has a different but equally important function after the bankruptcy order. This judge should not replace the curator's operational judgment, yet must ensure that estate management complies with law, protects value, avoids conflicts, and provides information. Aprita and Qosim (2022) argue that the supervisory judge's authority and responsibility require optimization, while Hendrial et al. (2022) demonstrate the practical importance of supervision in a major corporate bankruptcy. Effective supervision requires timely reports, clear escalation triggers, and the ability to require corrective measures before irreversible asset loss occurs.

Table 3. Proposed two-stage judicial screening model

Stage	Question	Key Indicators	Required Judicial Statement
I. Legal-certainty screen	Are the statutory conditions established through a suitable summary process?	Jurisdiction; standing; debt existence; maturity; collectibility; genuine second creditor; direct evidence	Identify the debt instrument, due date, second creditor evidence, and why the dispute is or is not simple
II. Justice and proportionality screen	Is bankruptcy a good-faith, necessary, and proportionate collective remedy?	Collective default; financial distress; alternative forum; business continuity; petition purpose; effect on stakeholders	Explain collective necessity, alternatives considered, and why consequences are proportionate

Source: Author's reconstruction based on Law Number 37 of 2004 and the reviewed literature.

4. Curator Accountability and Substantive Justice

Once bankruptcy is declared, the center of gravity moves from adjudication to administration. The curator becomes responsible for identifying, securing, managing, and liquidating the estate. This role is fiduciary in character even though the curator does not act as the private agent of a particular creditor or of the debtor. The curator must protect the estate as a legal whole and must respect the statutory ranking and procedural rights of all stakeholders. Substantive justice at this stage depends on professional independence, competence, neutrality, and verifiable decision-making.

The first accountability requirement is an accurate and timely inventory. Uncertainty about what assets exist, who controls them, what encumbrances attach, and whether transactions can be challenged undermines every later step. The curator should document the source, location, legal status, estimated value, and preservation needs of each material asset. Where ownership is disputed, the record should distinguish estate property from third-party property. The inventory should be updated when new assets are discovered or when litigation changes their status.

The second requirement is value preservation. Immediate liquidation is not always the most just or economically rational response. A functioning business may be worth more as a going concern than as disconnected assets. Saija and Sudiarawan (2021) emphasize protection of bankrupt companies and the relevance of business continuity, while Kiemas et al. (2023) call for explicit incorporation of the going-concern principle. The curator should therefore evaluate whether temporary continuation, controlled operation, or a sale as a going concern would maximize the estate without imposing unreasonable risk. The analysis should be documented and subject to creditor and supervisory review.

The third requirement is transparent valuation and sale. Asset sales create particular risks of undervaluation, insider advantage, and irreversible loss. The curator should disclose the valuation method, appraiser identity, material assumptions, marketing process, bids received, reasons for selecting the winning proposal, and any relationship between bidders and interested parties. Confidentiality may be justified during negotiation, but it should not eliminate post-transaction accountability. Competitive procedures should be the default unless a reasoned exception is approved.

The fourth requirement is fair claim verification. Creditors differ in legal rank, documentation, bargaining power, and access to information. The curator must apply the same evidentiary standards to comparable claims and must explain rejections or classification decisions. The tension between security law and bankruptcy law is especially visible for secured creditors. Ariyanto (2022) and Sari and Gunadi (2025) show that registration and execution periods can significantly affect secured rights and that inconsistent interpretation creates uncertainty. A transparent claims register and written classification reasons can reduce disputes and improve predictability.

The fifth requirement is meaningful publicity. Traditional publication in newspapers or physical court records may formally satisfy a notice rule while remaining practically inaccessible. Anggoro (2021) proposes digital transformation of the publicity principle to reduce cost and improve information access. A national insolvency portal could publish key orders, curator identity, claim deadlines, verified-claim lists, meeting schedules, periodic estate reports, asset-sale announcements, distribution plans, and closure reports. Sensitive personal or commercial data can be protected through tiered access without sacrificing accountability.

The sixth requirement is accessible periodic reporting. Reports should not be written only for specialists. A standard report can include an executive summary, opening and closing cash positions, receipts, expenses, professional fees, litigation, asset realizations, outstanding tasks, expected timeline, and risks. Creditors and the debtor should receive electronic notice when a report is filed. This measure is consistent with the principle that estate information must be open, but it converts formal openness into usable access.

The seventh requirement is conflict-of-interest control. Before appointment and throughout the case, curators should disclose relationships with the petitioning creditor, debtor, major creditors, appraisers, auctioneers, buyers, and retained professionals. A conflict does not always require automatic removal, but undisclosed conflicts erode confidence. The supervisory judge should have clear standards for waiver, information barriers, replacement, and sanctions. Professional associations can support this system through ethics guidance and continuing education.

The eighth requirement is proportional remuneration and expense control. Curator fees must reward skill and effort, but they also reduce the amount available for distribution. Reports should separate professional fees, operational expenses, external advisers, and transaction costs. Creditors should have an opportunity to object, and the court should assess complexity, results, time, value preserved, and efficiency. Transparent remuneration protects both the profession and the estate.

The ninth requirement is protection of weaker stakeholders. Workers, consumers, small suppliers, and individual creditors may lack the resources to monitor proceedings or challenge decisions. Ridduwan and Fitriah (2022) highlight worker protection in bankruptcy and PKPU. Pertiwi et al. (2025) demonstrate how a formally approved composition can impose severe losses on unregistered creditors when judicial scrutiny is excessively positivistic. Curators and judges should ensure that notice is effective, that claim procedures are understandable, and that formal default does not become a vehicle for manifestly abusive treatment.

The tenth requirement is closure accountability. A bankruptcy should end with a comprehensible final account explaining assets collected, claims admitted, disputes resolved, distributions made, fees paid, assets remaining, and the legal status of the debtor. Closure is not merely administrative. It determines whether parties can assess the fairness of the process and whether institutional lessons can be drawn. For individual debtors, the absence of a broad discharge policy also raises questions about what closure truly means. Robert et al. (2022) and Toha and Retnaningsih (2020) argue that a humane fresh-start policy should become part of future reform.

Table 4. Minimum curator accountability standards

Area	Minimum Record	Access and Oversight
Estate inventory	Asset identity, legal status, location, valuation, encumbrance, preservation action	Periodic update to supervisory judge and electronic notice to stakeholders
Asset sale	Valuation method, marketing, bids, selected buyer, related-party disclosure	Advance announcement; reasoned approval for exceptions; post-sale report
Claims	Claimant, amount, basis, rank, admission or rejection reasons	Searchable claims register and objection mechanism
Cash and fees	Receipts, expenses, professional fees, adviser costs, balance	Standard periodic financial report and court review

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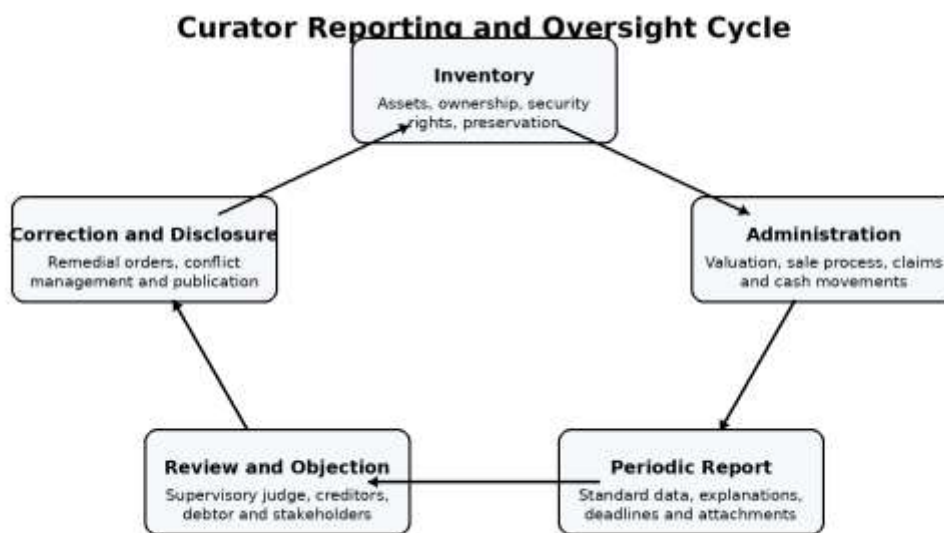
Area	Minimum Record	Access and Oversight
Conflicts	Relationships with parties, professionals, appraisers, and buyers	Continuing disclosure, waiver or replacement decision
Closure	Total realization, distributions by class, unresolved matters, final fees	Final account, creditor access, and archived digital record

Source: Author's normative analysis, 2026.

Table 5. Financial-distress and proportionality indicators

Indicator	Evidence that supports collective necessity	Evidence requiring closer scrutiny
Payment behavior	Repeated missed payments to several unrelated creditors; failed execution; admitted arrears	Isolated delay; temporary administrative error; payment withheld under a serious reciprocal dispute
Financial condition	Persistent cash-flow deficit; asset insufficiency; cessation of operations; multiple enforcement actions	Solvent operating business with a single contested liability and no broader default pattern
Creditor structure	Independent creditors with separate transactions and genuine economic exposure	Artificial or partial assignment designed principally to manufacture creditor plurality
Alternative remedies	Individual enforcement is fragmented or ineffective; restructuring requires collective coordination	Civil action, arbitration, or execution of a final judgment can resolve the core dispute without collective seizure
Stakeholder impact	Proceeding preserves going-concern value or prevents unequal dissipation	Bankruptcy would predictably destroy viable operations while adding little collective benefit

Source: Author's operationalization of the legal-certainty and proportionality tests, 2026.



Every cycle creates a dated, searchable record and permits timely intervention before irreversible loss.

Figure 3. Curator Reporting and Oversight Cycle

Source: Author's accountability model, 2026.

5. An Integrated Balancing Framework

The preceding analysis supports an integrated framework in which legal certainty and justice operate at every stage. The framework has four layers: statutory clarity, judicial screening, supervised administration, and outcome review. Statutory clarity identifies the legal elements and evidentiary indicators. Judicial screening determines whether the summary collective forum is suitable and proportionate. Supervised administration ensures that the estate is managed transparently and professionally. Outcome review allows objections, reasoned approval of distributions and fees, and learning from completed cases.

At the statutory layer, the law should define simple proof through indicative criteria rather than an exhaustive list. The criteria should include direct documentary evidence of debt, identifiable maturity, legally sufficient proof of creditor plurality, and the absence of a substantial dispute requiring full merits adjudication. The law should also authorize a periodically adjusted minimum debt threshold and a *prima facie* financial-distress assessment. These additions would not transform bankruptcy into a lengthy insolvency trial. They would provide a rational filter against trivial or strategically constructed petitions.

At the judicial layer, a standardized two-stage order can improve consistency. Stage one contains findings on jurisdiction, standing, debt, maturity, collectibility, second creditor, and evidentiary simplicity. Stage two contains findings on good faith, collective necessity, alternative remedies, business continuity, and proportionality. The second stage should not override a clear statutory command; it should guide interpretation where the facts fall within the open texture of the statute. Each factor should be addressed briefly and expressly.

At the administration layer, curator duties should be converted into measurable reporting obligations. A national digital platform can create standard forms and timestamps, reducing administrative burden while improving access. Reports should be searchable by case and should record key financial events. The platform can also support electronic claim submission, creditor meetings, voting, and notifications, building on the experience of online processes discussed by Cindarbumi and Suryamah (2022). Digitalization must include identity verification, audit logs, cybersecurity, and alternatives for parties with limited digital access.

At the outcome layer, the system should evaluate whether bankruptcy produced a lawful and reasonable collective result. Relevant indicators include time to resolution, percentage of estate value consumed by costs, recovery by creditor class, preservation of going-concern value, number and outcome of objections, and compliance with reporting deadlines. These indicators should not determine legal rights mechanically, but they can reveal systemic weaknesses and guide policy. Aggregate, anonymized data would also support evidence-based revision of thresholds, fees, and procedural rules.

The framework can be illustrated through a disputed commercial debt. Suppose a creditor presents an invoice and contract, while the debtor alleges defective performance and substantial

counterclaims. Under a purely formal approach, the court might focus on the invoice date and evidence of another creditor. Under the proposed approach, the court first asks whether the debt can be established without adjudicating the underlying performance dispute. If not, the petition fails the procedural-suitability element. If the debt is admitted but payment was withheld as pressure in a broader dispute, the court then considers good faith, alternative remedies, and collective necessity. The reasoning remains legal, concise, and predictable.

Consider a different case in which the debtor admits several matured debts, has stopped ordinary payments, has transferred assets to related parties, and faces multiple enforcement actions. The petition would pass the certainty screen because debt, maturity, and plurality are clear. It would also pass the justice screen because collective administration is necessary to prevent dissipation and unequal execution. The curator would then be required to inventory assets, investigate avoidable transactions, report digitally, and select a realization strategy that maximizes value. In this setting, speed and justice point in the same direction.

The framework also clarifies the treatment of secured creditors. Their substantive priority should be respected, but execution must be coordinated with estate administration and statutory time limits. Clear digital notice of deadlines, asset status, and curator requests would reduce disputes. Written reasons should accompany any transfer of collateral into the estate or challenge to separate execution. This approach addresses the uncertainty identified by Ariyanto (2022) and Sari and Gunadi (2025) without eliminating the collective character of bankruptcy.

For composition and PKPU, the framework requires more than counting votes. The court must verify statutory quorums, but it should also examine legality, good faith, discrimination, feasibility, and whether the plan was obtained through dishonest means. Athirah and Sugiyono (2023) emphasize the need for certainty in homologation, while Pertiwi et al. (2025) show that formal approval can conceal substantive injustice. A plan that imposes extreme loss on a category created to exclude less informed creditors warrants heightened scrutiny even if the numerical voting requirements are met.

The framework ultimately protects the legitimacy of the commercial court. Business actors need a fast process, but they also need confidence that bankruptcy will not be granted on an artificial basis and that the estate will not disappear into opaque administration. Predictability is strongest when legal actors know both the rule and the method by which the rule will be applied. Structured discretion, accessible information, and reasoned supervision provide that method.

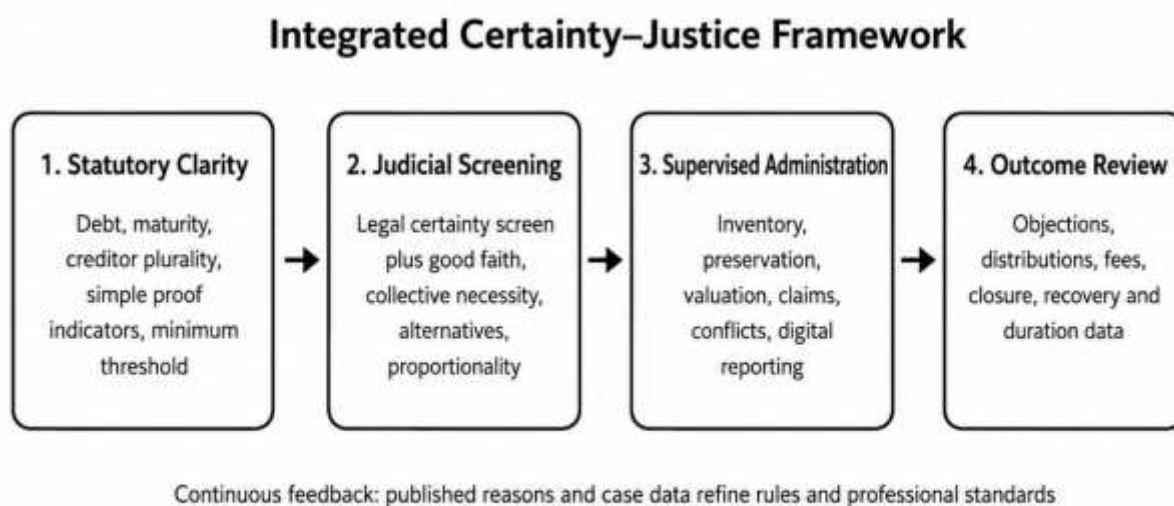


Figure 2. Integrated Legal Certainty–Justice Framework

Source: Author's conceptual model, 2026.

6. Normative and Institutional Reform Agenda

The first reform priority is amendment of the entry test. Article 2(1) should retain creditor plurality and non-payment but should be supplemented by a minimum debt requirement, authority to adjust the threshold periodically, and differentiated rules where necessary for natural persons, micro and small enterprises, regulated financial institutions, or public-interest debtors. The threshold should be designed through empirical study so that it deters abusive petitions without excluding legitimate small-creditor claims. Multiple creditors could be permitted to aggregate claims to satisfy the threshold.

The second priority is a statutory explanation of simple proof. The explanation should define it as reliable establishment of the bankruptcy elements without resolution of a substantial merits dispute. It should identify non-exhaustive indicators of simple and complex cases. The Supreme Court can complement legislation with a bench book and model judgment. This dual approach preserves flexibility while creating shared interpretive discipline.

The third priority is a limited financial-distress and proportionality screen. The petitioner should provide a short statement of collective necessity supported by available indicators such as multiple unpaid obligations, failed execution, payment cessation, financial statements, creditor demands, or asset dissipation. The debtor should be allowed a concise response. The court should record why bankruptcy, rather than ordinary litigation or execution, is

appropriate. This reform would align the remedy with its collective purpose and support business continuity where restructuring remains viable.

The fourth priority is strengthened case-management transparency. Court filings, hearing dates, core orders, claim deadlines, curator appointments, and distribution notices should be available through a unified electronic system. Online voting and meetings can increase participation when supported by secure identity verification and clear procedural rules (Cindarbumi & Suryamah, 2022). Digital access should supplement, not eliminate, alternative notice for parties who cannot use the system.

The fifth priority is curator governance. Legislation or implementing regulations should establish minimum reporting intervals, standardized financial statements, asset-sale disclosure, conflict-of-interest declarations, document-retention rules, and consequences for noncompliance. Supervisory judges should receive automated alerts when deadlines are missed or when transactions exceed defined thresholds. Professional associations should harmonize ethics, competence standards, and disciplinary coordination.

The sixth priority is stronger protection for individual debtors and weaker stakeholders. Indonesia should continue developing a conditional discharge or fresh-start policy for honest individual debtors who cooperate with the process. Such a policy can include exceptions for fraud, maintenance obligations, and other protected claims. At the same time, notice and claim procedures for workers, consumers, and small creditors should be simplified. These reforms would reduce the punitive character of bankruptcy while preserving accountability (Robert et al., 2022; Toha & Retnaningsih, 2020).

The seventh priority is systematic jurisprudence monitoring. The Supreme Court should identify recurrent disparities, publish thematic summaries, and update guidance. Universities and professional organizations can contribute through case databases and empirical studies of recovery, duration, costs, and business survival. Reform should not rely solely on isolated high-profile cases. A transparent evidence base is necessary to evaluate whether new thresholds and procedures improve outcomes.

The final priority is a cultural shift from creditor-versus-debtor formalism toward collective problem solving. Creditors require enforceable rights; debtors require protection from disproportionate procedure; employees and other stakeholders require continuity and information; and the court requires manageable standards. These interests are not always aligned, but the legal system can make their conflicts visible and reasoned. Legal certainty and justice are best understood as institutional achievements produced by clear rules, disciplined interpretation, transparent administration, and reviewable decisions.

Reform should be sequenced rather than introduced as an undifferentiated package. The first phase can be achieved through Supreme Court guidance, standardized judgment forms, and uniform curator reports without waiting for a complete statutory revision. The second

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phase should amend the entry test, define indicative factors for simple proof, and authorize a limited financial-distress and proportionality screen. The third phase should consolidate digital publication, professional supervision, and outcome evaluation. Sequencing reduces transition risk and permits each institution to learn from implementation before more demanding obligations take effect.

Evaluation must focus on both speed and quality. Relevant indicators include the proportion of petitions rejected because the debt dispute is unsuitable for summary adjudication, the time between petition and final decision, the number of successfully resolved creditor objections, the duration and cost of estate administration, recovery rates by creditor class, the proportion of going-concern sales, and compliance with reporting deadlines. These indicators should be published in aggregate and anonymized form. They would not replace legal reasoning, but would reveal whether reforms improve predictability and stakeholder protection in practice.

Transitional safeguards are equally important. New debt thresholds should be periodically indexed and should contain reasoned exceptions for small creditors and public-interest claims. Digital reporting should offer assisted access for parties with limited technological capacity. Professional discipline should distinguish good-faith commercial judgment from negligence, undisclosed conflict, and intentional misconduct. These safeguards ensure that modernization does not create new barriers while attempting to correct existing ones.

Table 6. Phased legislative and institutional implementation roadmap

Phase	Priority measures	Lead institutions	Review indicators
Immediate (0–12 months)	Bench guide for simple proof; structured judgment form; standard curator report; searchable decision publication	Supreme Court, commercial courts, curator associations	Reason quality, reporting compliance, decision accessibility, recurring interpretive issues
Medium term (1–3 years)	Minimum debt threshold with exceptions; statutory indicators of simple proof; limited financial-distress screen; digital case portal	Legislature, Supreme Court, Ministry of Law, court administration	Petition patterns, rejection grounds, duration, stakeholder access, system reliability
Long term (3–5 years)	Fresh-start rules for honest individual debtors; integrated insolvency statistics; strengthened professional discipline and continuing education	Legislature, judiciary, professional bodies, universities	Recovery by class, cost, going-concern preservation, repeat insolvency, disciplinary outcomes

Source: Author's reform proposal, 2026.

7. Limitations, Validation, and Future Research

This article is a normative legal study and its claims must be understood within that methodological boundary. It identifies doctrinal ambiguity, reconstructs institutional duties, and proposes standards that are compatible with the objectives of the Bankruptcy and PKPU Law. It does not measure the frequency of strategic petitions, calculate average recovery by creditor class, or determine whether particular curators systematically outperform others. Those

questions require a reliable empirical dataset and access to case records that are not yet consistently available in a structured public format.

The proposed two-stage screening model should therefore be validated against a representative body of commercial-court judgments. Future research can code decisions according to debt type, disputed or admitted status, evidence of maturity, source of creditor plurality, presence of financial-distress indicators, petition outcome, appellate treatment, and the reasons expressly stated by the court. Inter-coder review would be needed because concepts such as evidentiary complexity and good faith involve legal characterization. The resulting analysis could test whether the model explains existing disparities and whether structured reasons improve consistency without extending statutory time limits.

Curator accountability also requires empirical examination at estate level. A future study could compare inventory completion, asset-preservation measures, valuation methods, sale procedures, creditor access, professional fees, objection rates, distribution timing, and closure reports across completed cases. Confidential commercial information can be protected through anonymization and aggregate reporting. Interviews with supervisory judges, curators, creditors, workers, and debtor representatives would add institutional context, but they should supplement rather than replace documentary verification.

Comparative research is another priority. The relevant question is not whether Indonesia should copy a foreign insolvency statute, but which functions are performed by minimum debt thresholds, insolvency tests, restructuring gateways, discharge rules, digital registers, and professional regulation in different systems. Functional comparison can help calibrate reforms to Indonesian procedural capacity and business conditions. A later pilot program in selected commercial courts could then evaluate the screening form and reporting standards before nationwide adoption. Such staged validation would convert the present normative framework into an evidence-informed reform program.

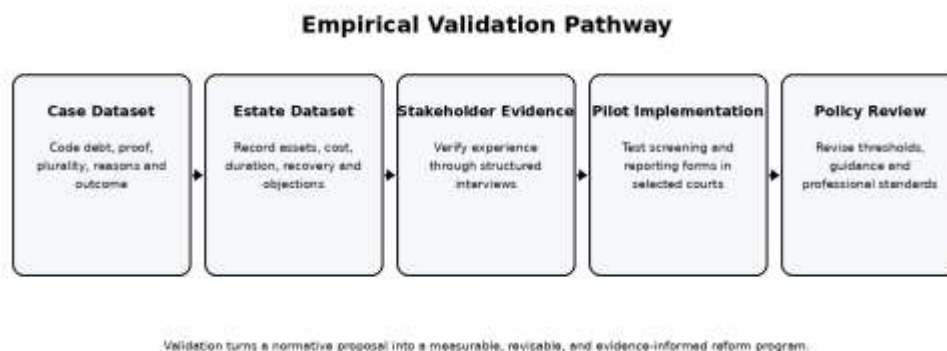


Figure 4. Empirical Validation Pathway for the Proposed Reform Framework

Source: Author's future-research design, 2026.

CONCLUSION

The Bankruptcy and PKPU Law provides a clear formal structure for collective debt settlement, but its practical ability to deliver legal certainty and substantive justice remains limited by open-textured entry conditions and uneven estate governance. The central weakness is not the absence of procedure. It is the absence of sufficiently operational standards for simple proof, disputed debt, maturity, creditor plurality, financial distress, good faith, and proportionality. As a result, similar disputes may be characterized differently, and a mechanism intended for collective insolvency may be used in circumstances better suited to ordinary civil adjudication.

Commercial judges should therefore apply a two-stage framework. The first stage verifies the statutory elements and the suitability of summary proof. The second evaluates good faith, collective necessity, available alternatives, business continuity, and proportionality. This framework preserves the statutory commitment to speed because it relies on focused factors rather than a full insolvency trial. It also strengthens certainty by requiring the same questions and explicit reasons in every case.

Justice must continue after the bankruptcy order. Curators should be subject to standardized duties concerning inventory, preservation, valuation, sale, claim verification, conflict disclosure, remuneration, and periodic digital reporting. Supervisory judges should actively monitor compliance without displacing professional management. Creditors, debtors, workers, and other stakeholders should receive usable access to estate information, not merely formal publication.

Legislative reform should introduce a calibrated minimum debt threshold, define simple proof through indicative criteria, authorize a limited financial-distress screen, strengthen digital publicity, and develop a conditional fresh-start policy for honest individual debtors. These measures would reduce strategic petitions, support viable business continuity, and increase confidence in the commercial court. The proper objective is not certainty at the expense of justice or justice without rules. It is a predictable legal process whose speed, reasons, and outcomes remain proportionate, transparent, and accountable.

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