

## INSOLVENCY TEST AS LEGAL PROTECTION FOR SOLVENT DEBTOR (COMPARISON OF US AND UK BANKRUPTCY LAW)

**Muhammad Dito Zakharia**

Universitas Airlangga

[muhammad.dito.zakharia-2025@fh.unair.ac.id](mailto:muhammad.dito.zakharia-2025@fh.unair.ac.id)

**Ahmad Syaifudin**

Universitas Islam Malang

[ahmad\\_syaifudin@gmail.com](mailto:ahmad_syaifudin@gmail.com)

**Benny Krestian Heriawanto**

Universitas Islam Malang

[bennyheriawanto@unisma.ac.id](mailto:bennyheriawanto@unisma.ac.id)

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### **ABSTRACT**

*Indonesian law has undergone several revisions. Still, with the various revisions, according to the author, it has not provided maximum legal protection and legal certainty to the parties involved in bankruptcy law itself, on the other hand, the Indonesian bankruptcy law regulation is more likely to favor the interests of creditors, can prove this that the bankruptcy law regulation in Indonesia does not require a minimum amount of receivables and does not regulate insolvency requirements. Regarding the lack of regulation of insolvency requirements in bankruptcy applications, this harms debtors who are still solvent as they can be filed for bankruptcy. There is a need for an insolvency test to determine whether the debtor is solvent or insolvent. With the implementation of the insolvency test the bankruptcy legal regime is appropriate because, under it only debtors who are genuinely unable to pay debts can be terminated by bankruptcy given the principle of insolvency. Therefore, implementing the insolvency test in bankruptcy law in Indonesian will provide legal certainty for debtors and protection to solvent debtors. In conducting this legal research, a normative juridical methodology was employed, drawing on statutory conceptual, and comparative approaches.*

**Keywords:** Bankruptcy; Insolvency Test; Debtor.

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### **INTRODUCTION**

Indonesia is a country with a pretty good economic growth in recent years, but that does not mean that Indonesia has never experienced a crisis in the financial sector, as in 1997-1998, there was a monetary crisis in Indonesia, which had an unfavorable effect on the national economy, such as the decline in the rupiah exchange rate.<sup>1</sup> Therefore, it causes significant difficulties for the business world in meeting its obligations, especially the obligation to pay its debts and continue its business activities, and has a detrimental impact on society. The parties most affected by the monetary crisis are, both individuals and companies, as almost all business actors have debts to multiple creditors. In the business world, if a debtor is unable or unwilling to pay his debts to creditors, an “emergency exit” has been prepared to resolve the problem, the institutions of “bankruptcy” and “postponement of payment”.<sup>2</sup>

1 Lepi T. Tarmidi. (1999). “KRISIS MONETER INDONESIA: SEBAB, DAMPAK, PERAN IMF DAN SARAN”. *Bulletin of Monetary Economics and Banking*, 1(4): 1–25. <https://doi.org/10.21098/bemp.v1i4.183>

2 Zainal Asikin. (2022). *Hukum Kepailitan*. Jakarta: Penerbit Andi, p. 27

Currently, the bankruptcy legal regime provided in Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as UUKPKPU). However, UUKPKPU seems more inclined to protecting the rights of creditors, as in the case of being able to file for bankruptcy debtors as stipulated in Article 2 Section (1) UUKPKPU debtors who have at least two or more creditors, do not pay in full at least one debt that has passed the due date and is collectible and can be proven simply against the facts or circumstances referred to in Article 8 Section (4) UUKPKPU, thus the debtor can be declared bankrupt by a court decision either at his own request or at the request of his creditors. The law does not require a minimum amount of receivables, nor does require that only debtors who are supposed to be incapable of paying their debts be petitioned for bankruptcy.<sup>3</sup>

If a debtor who still has assets or can be said to be still in a solvent state is then sentenced to bankruptcy, of course this will be very detrimental to many parties as well as to companies that are still solvent, the requirement to determine the state of insolvency is a requirement according to bankruptcy law in general so that the debtor can be declared bankrupt.<sup>4</sup> For example, the United States and the United Kingdom have adopted the insolvency test. If it is not required whether the debtor is solvent or insolvent, then the possibility that will occur is that there is almost no difference between a bankruptcy petition and a lawsuit for default in the District Court, indeed in bankruptcy itself two or more creditors are required, while in a lawsuit for default this is not required. However, the requirement of two or more creditors in bankruptcy has weaknesses and can be done legal smuggling by using a cessio mechanism, namely giving the right to collect or receivables to third parties or new creditors to fulfill the requirements of the two creditors or commonly referred to as the principle of concursus creditorium.<sup>5</sup> Considering the large number of cases in which debtors still can pay their debts but are declared bankrupt, such as in the case No. 48/Pailit/2012/PN.Niaga.Jkt.Pst between PT Prima Jaya Informatika and PT Telekomunikasi Selular, the application of the insolvency test itself also poses problems because it is considered contrary to the principle of simple proof. However, simple evidence is essentially limited to whether the debtor actually has debts, which is entirely unrelated to the debtor's total assets. Therefore, an insolvency test mechanism is needed to measure whether the debtor is solvent or insolvent. Thus, the writing of this article will discuss the main issues, among others:

1. How is the insolvency test in various countries?
2. How can the insolvency test be used as a condition of bankruptcy in Indonesia?

## METHOD

The method in this research uses normative juridical methods or library methods. Where it requires processing in the form of written legal materials aimed at legal norms, it requires analysis of primary, secondary, and tertiary legal materials related to the legal issues.

In legal research, there are several approaches; in this study, a statutory approach is used, examining laws and regulations related to the legal issues studied. The statutory approach is an approach that refers to the provisions of rules and regulations such as UUKPKPU and other related laws and regulations, conceptual approach is an approach used to understand the theories and concepts that can be used as the basis for this research by using the theory of bankruptcy law and a comparative approach which is carried out by comparing bankruptcy laws or legal regulations in Indonesia with other countries such as the United States regulated

<sup>3</sup>M. Hadi Shubhan. (2019). *Hukum Kepailitan Prinsip, Norma Dan Praktik Di Pengadilan*. Jakarta: Kencana, p. 82

<sup>4</sup>Sutan Remy Sjahdeini. (2018). *Sejarah, Asas, Dan Teori Hukum Kepailitan*. Jakarta: Prenada Media Group, p. 64

<sup>5</sup>Sutan Remy Sjahdeini. (2018). *Sejarah, Asas, Dan Teori Hukum Kepailitan*. Jakarta: Pranada Media Group, p. 132

in the Bankruptcy Reform Act of 1978 and the United Kingdom regulated in the Insolvency Act 1986.<sup>6</sup>

The legal material analysis technique used in this research is descriptive. This is due to the need to thoroughly understand a regulation regarding the bankruptcy legal regime, after which the legal material obtained is analyzed with a focus on the relevant theoretical basis.

## ANALYSIS AND DISCUSSION

### Insolvency Test in Various Countries

A bankruptcy legal regime in a country that adheres to both common law and civil law systems has a universal principle; cannot decide bankruptcy against debtors who are still solvent (the insolvency principle). If we reflect on the UUKPKPU, debtors can be filed for bankruptcy only if there are at least two creditors, have not paid in full at least one debt that is overdue and collectible and can be proven simply, as for one of the impacts of the easy conditions for filing for bankruptcy debtors is threatening debtors who are still in a solvent state and have good intentions to pay off their debts, thus companies that have good prospects and are still able to fulfill their debt payment obligations will be vulnerable to being filed for bankruptcy.

This is undoubtedly detrimental to the company, as the bankruptcy decision affects many parties such as other creditors, the community, workers, consumers, the state, and other related parties, including will be harmed because the debtor has filed for bankruptcy. So, one form of legal protection for debtors who are still solvent and in good faith to pay their debts is to apply the insolvency test mechanism.<sup>7</sup> The insolvency test itself is a mechanism to test the ability or solvency of debtors to pay their debts, which includes tests such as cash flow and balance sheet test.

However, the insolvency test is not yet applicable in Indonesia because there is still no absolute rule to measure whether a debtor in bankruptcy is still solvent or insolvent. So, this article aims to explain insolvency tests that have been implemented in various countries as a comparison, while the countries that will be used as comparisons are the United States and the United Kingdom, both of which both adhere to the common law legal system (Anglo Saxon), by comparing with these two countries, it is hoped that Indonesia as a countries with a civil law system can take a positive angle adopted in the two countries, especially in the bankruptcy legal regime.

Let's look from the point of view of the United States, which is a common law country where it is often used as a reference for the formation of laws. The current law in the United States is the Bankruptcy Reform Act of 1978 (usually known as the bankruptcy code and hereinafter referred to as well). The bankruptcy code was enacted on October 1, 1979, and replaced the bankruptcy act of 1898 (commonly known as the Nelson Act). The Bankruptcy Code is a federal law that governs all states of the United States.<sup>8</sup> The bankruptcy code itself has regulated the provisions regarding the insolvency test, related to the insolvency test method that is often used is as follows:

A. Cashflow insolvency test is a test in which the debtor is considered unable to pay if can prove that the debtor's cash is in deficit, which means that there are more expenses than income, basically this test is a test that is not enough to see the current financial condition, but this test also focuses on looking ahead of the debtor's financial condition because it will be closely

<sup>6</sup>Peter Mahmud Marzuki, (2019), *Penelitian Hukum*, Jakarta: Kencana, p. 134

<sup>7</sup>M. Hadi Shubhan. (2014). "Insolvency Test: Melindungi Perusahaan Solven Yang Beritikad Baik Dari Penyalahgunaan Kepailitan". *Jurnal Hukum Bisnis*, 33(1): 11–20

<sup>8</sup>Sutan Remy Sjahdeini, (2018). *Sejarah, Asas, Dan Teori Hukum Kepailitan*. Jakarta: Prenada Media Group, p. 68

related to the debtor's capacity to fulfill its liabilities in the future. This cashflow test relates to the company's capacity to finance its ongoing operations;<sup>9</sup>

B. The balance sheet insolvency test is a test under which a debtor is considered insolvent if its debts exceed its assets, as regulated in the US Bankruptcy Code Chapter 11 § 101 (32). This test relates to continuing business or going concern. When the balance sheet test is applied there are two stages. In the first stage, a valuation analysis is carried out to calculate the fair amount of the debtor's assets by analyzing the best and highest expenditure on the company, at this stage it can be concluded about the company's prospects in the future, then the second stage is the process of analyzing and comparing the total assets (movable and immovable) with the amount of debt owned by the debtor; and

C. Capital adequacy tests or transactional analysis to determine whether a company has sufficient capital to pay its debts, but this method is rarely used.

Under the insolvency test mechanism in the United States, debtors with financial problems can be declared bankrupt. A person or legal entity can be sentenced to bankruptcy if it is not possible to pay debt obligations, because the debtor does not have enough assets to pay off their debts. However, it is not that easy to conduct an insolvency test on a debtor. There is a process for proving insolvency, one of a financial audit, ideally carried out by a public accountant. One of the objectives of this financial audit is to determine the overall economic condition, including financial performance, and changes in financial position.<sup>10</sup> In this case, it means the audit aims to ensure that the bankruptcy process is applied only for the benefit of debtors who are unable to pay, not for improper purposes.

In conducting an audit of the company's condition, this must be done through structured and detailed steps. The audit process begins with the appointment of an auditor, in this case usually submitted by creditors or debtors to conduct an insolvency test application. However, the appointed auditor must have sufficient qualifications, expertise, and experience in the field of company solvency analysis. In the United States, there are several institutions related to auditing, one of the most famous, the American Institute of Certified Public Accountants (AICPA), which offers certification for auditors seeking competence in this field.

After that, determine the audit that aligns with the type of insolvency test to be used. In general the audit includes an examination of the financial statements, analysis of future cash, valuation of the company's assets and liabilities. The auditor in this case will examine all accounting records and financial documents of the company to obtain accurate information, the audit process must of course be based on applicable financial auditing standards, such as in the United States which has a standard called generally accepted auditing standards set by The Public Company Accounting Oversight Board (PCAOB), on the other hand the PCAOB defines audit quality or the possibility that the auditor will find or report audit results to clients in the form of financial statements, internal controls, and going concern warnings.<sup>11</sup>

Furthermore the United Kingdom, which is the forerunner of the common law legal system, bankruptcy law from the UK itself is basically regulated in the insolvency act 1986 which has

<sup>9</sup>Assyifa Fuad and Parulian Paidi Aritonang. (2024). "Implementasi Insolvency Test Dalam Menyatakan Debitur Pailit Berdasarkan Hukum Kepailitan Di Indonesia". *UNES Law Review*, 6(4): 11777–86namely having at least 2 (two. <https://doi.org/10.31933/unesrev.v6i4.2007>

<sup>10</sup>Firnanda Maulana and Agus Suwarno. (2022). "Pengaruh Likuiditas, Profitabilitas, Ukuran Perusahaan, Dan Umur Perusahaan Terhadap Ketepatan Waktu Penyampaian Laporan Keuangan (Studi Empiris Pada Perusahaan Manufaktur Yang Terdaftar Di Bursa Efek Indonesia Tahun 2016-2019)". *Review of Accounting and Business*, 3: 103–14. <https://doi.org/10.52250/reas.v3i2.558>

<sup>11</sup>Devianti Harahap et al., (2017). "PENGARUH PELAKSANAAN STANDAR AUDIT BERBASIS INTERNATIONAL STANDARDS ON AUDITING (ISA) TERHADAP KUALITAS AUDIT". *Jurnal ASET (Akuntansi Riset)*, 9(1): 55–72. <https://doi.org/10.17509/jaset.v9i1.5444>

been effective since December 29, 1986, in terms of determining whether the debtor is still solvent or insolvent, the UK often applies the insolvency test method, among others, such as:

- A. The cash flow test is regulated in Article 123 Section (1) letter (e) of the insolvency act 1986, which explains that a debtor can be classified as unable to pay its debts if it has been proven that the company is unable to fulfill its debt payment obligations at maturity due to the unhealthy cash flow owned by the debtor;<sup>12</sup>
- B. The balance sheet test is regulated in Article 123 Section (2) of the Insolvency Act 1986 which means that a debtor company can be declared unable to pay its debts if it is proven that the asset value owned by the debtor is smaller than the total liabilities or debts, this includes liabilities that will arise in the future;<sup>13</sup> and
- C. The legal action test is set out in Article 123 Section (1) letter (a), which explains that the test is used to determine whether a company has bills amounting to at least £750 if so, the company is likely to be subject to wind-up. According to this test, the number of bills is evidence of the company's inability to pay its debts, and it will be the basis for the company to file for bankruptcy.

In addition to regulating various insolvency tests, several theories are used to assess a company's bankruptcy such as the Univariate Model, Degree of Relative Liquidity (DRL), Lambda Index, and Altman Z Score. Given the existence of these various theories the Altman Z Score is often used is the Altman Z Score itself, this is because the Altman Z Score can accurately predict bankruptcy potential, with an 80% to 90% accuracy rate.<sup>14</sup> For the Altman Z Score theory itself there are several types or formulas that can be used, the use of different formulas depends on the type of company, such as public manufacturing company, nonpublic manufacturing company, and for company with small business such as retail and service sector. The Altman Z Score formula for public manufacturing companies contains five different variables that are not described in detail in previous research, for example:

$$\text{Altman Z Score} = 1.2X_1 + 1.4X_2 + 3.3X_3 + 0.6X_4 + 1.0X_5$$

$X_1$  = Working Capital ÷ Total Asset

$X_2$  = Retained Earning ÷ Total Asset

$X_3$  = Earning Before Interest Taxes ÷ Total Asset

$X_4$  = Market Value of Equality ÷ Total Liabilities

$X_5$  = Sales ÷ Total Asset

To understand how the formula works clearly, we discuss it using the following example:

- A. Working Capital = Rp 700.000
- B. Retained Earning = Rp 200.000
- C. Earning Before Interest Taxes = Rp 250.000
- D. Market Value of Equality = Rp 1.400.000
- E. Sales = Rp 3.500.000

<sup>12</sup>Tivana Arbiani Candini and Reisar Alka. (2022). "INSOLVENSI TES SEBAGAI DASAR PERMOHONAN PAILIT DALAM HUKUM KEPAILITAN DI INDONESIA". *Gloria Justitia*, 2(2): 181–93. <https://doi.org/10.25170/gloriajustitia.v2i2.3900>

<sup>13</sup>Fransiskus Stefan Sunur. (2024) "Atasi Tantangan: Memahami Pentingnya Uji Insolvensi dalam Kepailitan di Indonesia". *ARBITER: Jurnal Ilmiah Magister Hukum*, 6(1): 132–41. <https://doi.org/10.31289/arbiter.v6i1.3833>

<sup>14</sup>Pasaman Silaban. (2024). "ANALISIS KEBANGKRUTAN DENGAN MENGGUNAKAN MODEL ALTMAN(Z-SCORE) STUDI KASUS DI PERUSAHAAN TELEKOMUNIKASI". *Jurnal Akuntansi*, 18(3): 322–34. <https://doi.org/10.24912/ja.v18i3.268>

F. Total Asset = Rp 4.500.000  
G. Total Liabilities = Rp 2.500.000

Table 1. Altman Z Score Calculation Formula

Variable	Formula	Calculation	Result
X <sub>1</sub>	Working Capital ÷ Total Asset	Rp 700.000 ÷ Rp 4.500.000	0.155
X <sub>2</sub>	Retained Earnings ÷ Total Asset	Rp 200.000 ÷ Rp 4.500.000	0.044
X <sub>3</sub>	Earnings Before Interest Taxes ÷ Total Asset	Rp 250.000 ÷ Rp 4.500.000	0.055
X <sub>4</sub>	Market Value of Equity ÷ Total Liabilities	Rp 1.400.000 ÷ Rp 2.500.000	0.56
X <sub>5</sub>	Sales ÷ Total Asset	Rp 3.500.000 ÷ Rp 4.500.000	0.777

So, we can input the value of each variable into the Altman Z Score formula as follows:

$$\begin{aligned}
 &= 1.2X_1 + 1.4X_2 + 3.3X_3 + 0.6X_4 + 1.0X_5 \\
 &= 1.2(0.155) + 1.4(0.044) + 3.3(0.055) + 0.6(0.56) + 1.0(0.777) \\
 &= 0.186 + 0.0616 + 0.1815 + 0.336 + 0.777 \\
 &= 1.542
 \end{aligned}$$

After calculating with this example, we need to know the level of bankruptcy risk based on the score obtained, as for the risk vulnerability based on the assessment score according to the Altman Z Score theory as follows:

Table 2. Risk Level of Possible Bankruptcy

Score	Risk
Under 1.81 (Distress Zone)	Company in financial distress with high risk of bankruptcy
1.81 to 2.99 (Grey Zone)	Company in balanced risk of bankruptcy
More than 2.99 (Safe Zone)	The company is in stable condition with a low probability of bankruptcy.

If the sample score is 1.542, then according to the Altman Z Score formula, this company is in financial distress which has a high risk of bankruptcy because the calculation score is below 1.81, in other words, a company with this condition can already be declared insolvent and eligible for bankruptcy.<sup>15</sup>

### Insolvency Test Can Be Used as a Condition of Bankruptcy in Indonesia

Bankruptcy in Indonesia can be filed by creditors or debtors themselves, in terms of filing a bankruptcy petition as previously explained, the bankruptcy petition in Indonesia does not require an insolvency test. This certainly makes UUKPKPU not in line with the principle of insolvency, the implementation of the insolvency test is a stage carried out in the bankruptcy process which is used to ensure that the debtor is indeed worthy of filing for bankruptcy, which means that the debtor is insolvent. The implementation of the insolvency test in Indonesia is

a step to create a legal structure that has a high value of justice, more broadly than that the insolvency test is also an effort as legal protection for debtors who have good faith and debtors who are still in a solvent state.

Insolvency is a stage where the debtor will definitely be cleansed of his property which will later be distributed to all his creditors.<sup>16</sup> Insolvency in bankruptcy law in Indonesia can occur due to several things such as:

- A. During the receivables matching meeting the debtor did not offer a composition plan; or
- B. The composition plan was offered by the debtor to the creditors, but the composition plan was rejected by the creditors;
- C. A composition plan has been offered and approved by the creditors, but the composition plan is not ratified or homologated by the Commercial Court.<sup>17</sup>

So, the cause of a debtor being declared insolvent according to the Indonesian bankruptcy law regime is not that the debtor is unable to pay his debts or that his debts are greater than his assets, therefore we can conclude that the UUKPKPU does not recognize instruments that measure whether the debtor is insolvent or solvent. By not regulating the insolvency test, it will have a negative impact on debtors who are still solvent, furthermore it will have a broad impact on the parties related to the bankrupt debtor, this is because the impact of a bankruptcy decision is very large, as an example of a case where the debtor is still solvent but is decided to be bankrupt such as the case in Decision Number 48/Pailit/2012/PN. Niaga.Jkt.Pst between PT Prima Jaya Informatika and PT Telekomunikasi Selular, Decision Number 10/Pailit/2002/PN.Niaga.Jkt.Pst Between PT Dharmala Sakti Sejahtera and PT Asuransi Jiwa Manulife Indonesia, and Decision Number 13/Pailit/2004/PN.Niaga.Jkt.Pst Between Lee Bong Siong Against PT Prudential Life Assurance.

If we look at the three decisions that have been described, it can be said that the company can be legally bankrupt but financially the company still has good prospects and can continue its business properly, this happens because the insolvency situation is not used as a consideration for judges in deciding bankruptcy cases, against the bankruptcy requirements in Indonesia which are still quite loose, not only does the insolvency test not regulate. However, there are also rules that should be regulated but are not regulated, such as minimum debt requirements. Meanwhile, in Indonesian bankruptcy law there is a principle of balance which states that bankruptcy law must be able to ensure balanced protection between creditors and debtors, uphold justice and pay attention to the interests of both of them, including the aspects that are considered necessary to realizing the settlement of debt and credit problems in a fast, fair, open and effective.<sup>18</sup>

The insolvency test mechanism itself is an important mechanism that should be provided for in Indonesia's bankruptcy regulations, this is because bankruptcy should act as a solution for debtors who have debts instead of being a means to bankrupt the company, thus bankruptcy is one way out for debtors who are crushed by debt where the debtor is no longer able to fulfill debt payment obligations.<sup>19</sup> The absence of an insolvency test mechanism in Indonesia's

<sup>16</sup>Munir Fuady. (1999). *Hukum Pailit Dalam Teori Dan Praktek*. Bandung: Citra Aditya Bakti, p. 127

<sup>17</sup> Sutan Remy Sjahdeini. (2018). *Sejarah, Asas, Dan Teori Hukum Kepailitan*. Jakarta: Prenada Media Group, p. 470

<sup>18</sup>Susanti Adi Nugroho. (2020). *Hukum Kepailitan Di Indonesia Dalam Teori dan Praktik Serta Penerapan Hukumnya*. Jakarta: Prenada Media Group, p. 40

<sup>19</sup>Heri Anto Simanjuntak. (2020). "PRINSIP PRINSIP DALAM HUKUM KEPAILITAN DALAM PENYELESAIAN UTANG DEBITUR KEPADA KREDITUR". *JURNAL JUSTIQA*, 2(2): 17–28debt and credit is a common and natural thing if a business actor wants to develop his business more advanced, namely by seeking loans from other company partners to get business capital with an agreement to be paid later, and if able to pay according to the specified time then the company is in a "Solvable" state and vice versa if the company is unable to pay its debt in such a situation it is called "Insolvable" meaning that it is unable to pay its debts and the condition continues to decline and to the nadir it stops paying until it is finally declared bankrupt by the Court. Bankruptcy is one of the commercial solutions to get out of the debt problem that crushes a debtor, where the debtor is no longer able to pay his debt owed to the creditor so that if the debtor is aware of the inability to

bankruptcy regulations will harm the fate of debtors who are still in a solvent condition and debtors with good intentions to pay their debts. In connection with the absence of an insolvency test in Indonesian bankruptcy regulations, this of course poses a serious risk because basically insolvency is an important aspect in the event that the debtor is to be terminated by bankruptcy, so to minimize this risk, an insolvency test is needed. However, the application of the insolvency test in Indonesia cannot be applied immediately, this is because to apply what insolvency test instrument is suitable we must conduct a deeper study by considering regulatory aspects and customs and other matters related to bankruptcy that apply in Indonesia.

Thus, the insolvency test must be applied at the right stage of the bankruptcy process, in this case the stage that is suitable for implementing the insolvency test is during the court hearing. The implementation of the insolvency test during the court hearing is not without consideration, as for the consideration that it is applied before the bankruptcy decision because ideally the debtor must be determined to be insolvent at the beginning, this is because if the debtor is sentenced to bankruptcy but it is not certain that the debtor is insolvent or still solvent, this will result in the degradation of legal certainty regarding the fate of the debtor himself, of course this will be very detrimental to the debtor himself, the next consideration is so that the state of insolvency becomes a consideration for the judges in deciding bankruptcy cases. Thus, the application of the insolvency test in the court hearing stage is the burden of proof of the bankruptcy applicant, this is due to the legal principle that whoever argues, then he proves the argument. In other words, if the petition is filed by the debtor, the insolvency shall be proven by the debtor itself. However, if the application is made by a creditor, it is the creditor who must determine the insolvency. Then, to make it easier for creditors to prove the debtor's inability to pay, creditors can stipulate in the credit agreement between the debtor and the creditor that the debtor must submit company reports covering the amount of assets and finances periodically to the creditor, which have been audited by a Public Accounting Firm. Creditors have the right to add this clause to credit agreements, whether they are banking or non-banking creditors, based on the principle of freedom of contract.

The implementation of the insolvency test in the court hearing stage does not mean that it has no shortcomings, as for the shortcomings that may occur are the distortion of the court hearing period, but it is better to sacrifice time efficiency than to sacrifice legal certainty for the debtor. With the implementation of the insolvency test in the bankruptcy legal regime in Indonesia, of course this will have a good impact on many parties, especially for the debtors themselves, as for the positive impact of the application of the insolvency test according to the author as follows:

- A. Debtors who are still solvent are not at risk of being sentenced to bankruptcy;
- B. Maximize the principle of balance, which provides protection between debtors and creditors in bankruptcy cases; and
- C. Protecting workers in companies that are still solvent from the possibility of mass layoffs due to bankruptcy verdicts.

The application of the insolvency test in Indonesia to be realized must of course be revised to the UUKPKPU, by applying the insolvency test in Indonesia as has been explained that a suitable type of insolvency test must be determined, so that with the implementation of the insolvency test the bankruptcy law regime in Indonesia becomes in sync with the universal philosophy of the bankruptcy law.

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pay the maturing obligation, the debtor is aware of the steps. To apply for a voluntary petition for self-bankruptcy is a possible step, or the Court's determination of bankruptcy against the debtor if it is later found that the debtor is no longer able to pay his debts that are due and can be collected as the description above (involuntary petition bankruptcy. <https://doi.org/10.36764/justiqa.v2i2.458>

## CONCLUSION

According to the discussion above, it can be concluded that insolvency tests in the insolvency law system have been implemented in various countries such as the United States and the United Kingdom. The insolvency tests implemented in these two countries have different types of methods. In the United States, the insolvency test is applied in the form of a cash flow test, balance sheet test, and capital adequacy test, while in the United Kingdom, the insolvency test is applied in the form of a cash flow test, balance sheet test, and legal action test. The insolvency test itself needs to be applied in the insolvency law system in Indonesia, which will have a positive impact, namely that only debtors who are unable to pay or are insolvent can be sentenced to insolvency. Meanwhile, it will also prevent the insolvency of debtors who are still solvent and avoid the abuse of the insolvency law system for personal gain. However, the implementation of insolvency tests in Indonesia also has shortcomings and obstacles, as explained above, creditors can request debtors to submit financial reports that have been audited by public accountants. However, this does not rule out the possibility of debtors submitting false financial report data to public accounting firms, which could lead to inaccurate audit results. However, despite these obstacles to the implementation of the insolvency test in Indonesia, it is in line with the universally applicable principle in bankruptcy law, namely the principle of bankruptcy.

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