

Clashing Legal Realities: A Comparative Analysis of Insolvency Tests in Australia and Indonesia's Bankruptcy Law

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Abstract

This comparative study explores the insolvency test frameworks in Australia and Indonesia, focusing on the legal perspectives within their respective bankruptcy laws. In Australia, the insolvency test is governed by the Corporations Act 2001, which employs a dual approach: the balance sheet test, assessing whether liabilities exceed assets, and the cash flow test, evaluating a company's ability to meet debts as they fall due. This combination aims to offer a comprehensive picture of a company's financial health, facilitating early intervention to prevent insolvency. In contrast, Indonesia's insolvency regime, regulated by the Insolvency and Suspension of Debt Payment Obligations Law (UUPK), adopts a more creditor-centric approach, emphasizing the debtor's ability to meet debt obligations rather than focusing on asset-liability balances or cash flow. This disparity reflects differing legal frameworks and economic contexts, which in turn affect the efficiency and effectiveness of insolvency proceedings in each country. The study utilizes a comparative legal research approach, analyzing primary legal texts, case law, and secondary literature to examine the procedural differences, particularly in the initiation of bankruptcy claims and the protection of creditors' rights. It also explores how these divergent insolvency tests shape the resolution of financial distress, considering both legal and practical implications in the respective jurisdictions. The findings highlight key contrasts in how insolvency is defined and addressed, with Australia prioritizing preventative measures and a holistic view of financial health, while Indonesia's system places more emphasis on creditor protection and debt repayment capacity. The study concludes with recommendations aimed at improving alignment and efficacy

within each legal framework, proposing adjustments that could enhance financial stability and optimize outcomes for stakeholders in both countries.

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1. Introduction

In general, Insolvency Test refers to a set of criteria or parameters used to determine whether a company can be considered solvent or insolvent. The basic concept behind the Insolvency Test is to measure a company's ability to meet its financial obligations. When a company is considered solvent, it means that the value of its assets is sufficient to cover its obligations and can pay its debts on schedule.¹ Conversely, when a company is considered insolvent, the value of its liabilities may exceed the value of its assets, signifying that the company is facing serious financial difficulties. The exam includes an evaluation of cash flow, balance sheet, and comparison of the value of assets to debt, all of which provide a comprehensive picture of the company's financial situation.² In the context of bankruptcy law, the results of the Insolvency Test can affect the steps taken by the company, creditors, and courts, including potential debt restructuring, liquidation, or other legal settlements.³

The purpose and function of the Insolvency Test is to provide a clear and standardized framework for assessing the financial condition of a company. In general, the Insolvency Test aims to determine whether the company is solvent or insolvent. Its main function is to protect the interests of creditors, shareholders, and other related parties by providing an objective assessment of the company's ability to pay its debts. The Insolvency Test also aims to prevent the risk of bankruptcy that can harm various parties involved in the company's business activities.⁴ In addition, the Insolvency Test

¹ Raju Moh Hazmi et al., "Paradoks Kewenangan Dalam Permohonan Penundaan Kewajiban Pembayaran Utang Terhadap Perusahaan Asuransi," *Amnesti: Jurnal Hukum* 5, no. 1 (February 2, 2023): 51–65, <https://doi.org/10.37729/amnesti.v5i1.2486>.

² Nanda Diyan Saputra Luqman Hakim, "Politik Hukum Insolvency Test Dalam Pembaharuan Hukum Kepailitan Di Indonesia," September 27, 2023, <https://doi.org/10.5281/ZENODO.8383474>.

³ Andriyanto Adhi Nugroho et al., "Urgensi Penerapan Tes Insolvensi Atas Perusahaan Yang Akan Diputus Pailit," *Deposisi: Jurnal Publikasi Ilmu Hukum* 1, no. 4 (November 22, 2023): 231–46, <https://doi.org/10.59581/deposisi.v1i4.1810>.

⁴ Charina Putri Besila, Tazkya Salsabila, and Shrishti Shrishti, "Urgensi Terhadap Pelaksanaan Insolvency Test Dalam Penetapan Status Pailit Di Indonesia," *Prosiding Serina* 1, no. 1 (2021): 85–92.

serves as an important tool in the financial restructuring process, providing a basis for decision-making related to debt settlement, and providing an accurate view of a company's financial stability.⁵

While the concept of insolvency is universally acknowledged, different legal systems adopt varying approaches to implementing insolvency tests, influenced by their unique economic and legal contexts. This study examines and compares the insolvency test frameworks of two distinct jurisdictions: Australia and Indonesia. Australia uses a dual approach that includes the balance sheet and cash flow tests, reflecting a comprehensive strategy to assess a company's solvency. In contrast, Indonesia adopts a more creditor-focused perspective, centering on the debtor's ability to fulfill debt obligations. These differences highlight distinct priorities and challenges faced by each legal system in addressing insolvency.

Furthermore, the comparative analysis of insolvency tests in Australia and Indonesia reveals distinct legal frameworks that significantly impact the initiation and management of bankruptcy proceedings in each jurisdiction. In Indonesia, the insolvency test is notably absent from the statutory framework, which has led to critical discussions about its potential introduction. According to Fahamsyah,⁶ Indonesia's bankruptcy law, specifically Law 37 of 2004, allows for a bankruptcy declaration based solely on the existence of overdue debt and the presence of two or more creditors, without requiring an insolvency test to assess the debtor's financial solvency. This lack of a structured insolvency test has raised concerns about its misuse by creditors with malicious intent, who may exploit this provision to initiate bankruptcy proceedings against solvent companies.⁷ Consequently, scholars like Shubhan argue for reforming Indonesia's bankruptcy laws to include a comprehensive insolvency test, one that would assess the financial condition of a debtor before

⁵ Rizqi Muallif and Elfrida Ratnawati Gultom, "Aspek Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Dalam Pembangunan Ekonomi Nasional," *UNES Law Review* 5, no. 4 (n.d.): 1744–55, <https://doi.org/10.31933/unesrev.v5i4.491>.

⁶ Ermanto Fahamsyah, "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied?," *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 1 (2024): 199–218.

⁷ M. Hadi Shubhan, "Misuse of Bankruptcy Petitions by Creditors: The Case of Indonesia," *International Journal of Innovation, Creativity and Change* 10, no. 6 (2019): 195–207.

bankruptcy proceedings are initiated, thus preventing wrongful bankruptcies and protecting solvent companies.⁸

In contrast, Australia employs a more structured and detailed approach in its insolvency framework. The Australian Corporations Act 2001 outlines specific insolvency tests, including the Commercial Cash Flow Test and the Balance Sheet Test, both of which provide a thorough assessment of a company's ability to meet its debt obligations. The Commercial Cash Flow Test evaluates whether the company can pay its debts as they fall due, while the Balance Sheet Test assesses the overall financial position of the company. This dual approach provides a more nuanced view of insolvency, aiming to protect both creditors and the company from financial mismanagement. In addition, the insolvent trading provisions under Section 588G of the Corporations Act hold directors personally liable if they allow the company to incur debts while insolvent.⁹ Australia's more robust insolvency framework has been subject to ongoing refinement, with recent inquiries into its effectiveness signaling a commitment to improve the management of insolvency cases and enhance the protection of creditors.¹⁰

The novelty of this article lies in its direct comparison of these two divergent insolvency frameworks, emphasizing the legal and practical implications of their differences. While previous studies have explored insolvency laws in individual countries,¹¹ this article makes a significant contribution by juxtaposing the insolvency

⁸ Shubhan; Yapiter Marpi, Pujiyono Pujiyono, and Hari Purwadi, "The Implementation of Actio Pauliana Creditor Law Bankruptcy Boedel Dispute Process to Achieve Substantive Justice," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (December 26, 2023): 528–38, <https://doi.org/10.29303/ius.v11i3.1305>; Rahayu Hartini, "The Ambiguity of Dismissal of Notary Over Bankruptcy in Indonesia," *Legality : Jurnal Ilmiah Hukum* 29, no. 2 (July 11, 2021): 269–85, <https://doi.org/10.22219/ljih.v29i2.15677>.

⁹ Andrew Key and Michael Murray, "Making Company Directors Liable: A Comparative Analysis of Wrongful Trading in the United Kingdom and Insolvent Trading in Australia," *International Insolvency Review* 14, no. 1 (March 2005): 27–55, <https://doi.org/10.1002/iir.125>.

¹⁰ Lynne Taylor, "A Comparative Analysis of the Australian and New Zealand Liquidation Schemes," *International Insolvency Review* 32, no. 1 (March 2023): 60–92, <https://doi.org/10.1002/iir.1492>.

¹¹ Shubhan, "Misuse of Bankruptcy Petitions by Creditors: The Case of Indonesia"; See also Ram Mohan M P, "The Role of Insolvency Tests: Implications for Indian Insolvency Law," *Indian Law Review* 6, no. 3 (September 2, 2022): 387–408, <https://doi.org/10.1080/24730580.2022.2129197>; Ivida Dewi Amrih Suci, Murjiyanto Raden, and Sudiyan Sudiyan, "The Principle of Utility in Revoking a Bankruptcy Adjudication in Bankruptcy Law," *Journal of Private and Commercial Law* 8, no. 1 (2024): 43–74; Zalna Tiara and Kukuh Tejomurti, "Efficiency of Implementation of Alternative Dispute Settlement for Fintech Lending Users," *Jurnal Scientia Indonesia* 8, no. 1 (April 30, 2022): 37–52, <https://doi.org/10.15294/jsi.v8i1.35951>.

tests in Australia and Indonesia, providing insights into how these tests reflect broader legal, economic, and cultural contexts. The lack of an insolvency test in Indonesia and its potential implications for corporate stability stand in stark contrast to Australia's structured insolvency regime, which integrates preventive measures such as the liability of company directors. By critically evaluating these differences, this study offers new perspectives on the strengths and weaknesses of each system and proposes recommendations for enhancing both frameworks. These insights contribute to the broader discussion on the reform of bankruptcy laws, particularly in emerging economies, and offer valuable lessons for improving legal protections against wrongful bankruptcies.

This comparative study seeks to contribute to the ongoing discourse on bankruptcy law by critically analyzing these divergent approaches. It highlights how these differing insolvency frameworks shape the legal and economic environment in each country, with particular attention to procedural differences, creditor protection, and the effectiveness of insolvency proceedings. By doing so, this article offers novel insights into the implications of these disparities for the resolution of financial distress, proposing recommendations to enhance the alignment and efficiency of insolvency laws. Ultimately, the article aims to deepen understanding of how the insolvency test serves as a tool for both preventing financial failure and ensuring equitable outcomes for all stakeholders involved in corporate distress.

This article's primary contribution is to bridge the gap in comparative insolvency literature, offering a unique analysis that not only highlights the theoretical underpinnings of each legal system but also provides practical recommendations for policy and legal reform in both jurisdictions.

2. Problem Statement

The effectiveness of insolvency tests plays a critical role in determining the efficiency and fairness of bankruptcy laws. In Australia, insolvency tests are primarily based on cash flow and balance sheet assessments, focusing on a debtor's ability to meet obligations as they fall due and the overall solvency of the entity. Conversely, Indonesia's bankruptcy law employs a "two-creditor rule" that allows creditors to file

for bankruptcy if a debtor has at least two creditors and fails to meet a due obligation, irrespective of broader financial health considerations. This dichotomy raises questions about the equity and predictability of insolvency proceedings in the two jurisdictions.

Indonesia's insolvency framework has faced criticism for being overly creditor-friendly, often leading to premature bankruptcy declarations and potential misuse by creditors. On the other hand, Australia's system, while robust, has been critiqued for complexity and potentially delayed creditor relief. The comparative study of these systems is crucial to identifying strengths and weaknesses in addressing insolvency equitably and efficiently. Understanding these differences can guide reforms, ensuring a balance between debtor protection and creditor rights, and promoting a more harmonized insolvency approach. This study seeks to address gaps in the existing scholarship by providing insights into the comparative effectiveness of these insolvency tests.

3. Methods

This study employs a comparative legal research method to investigate the procedural differences in bankruptcy frameworks between Australia and Indonesia. The analysis specifically focuses on the initiation of bankruptcy claims and the mechanisms for protecting creditors' rights, with an emphasis on the insolvency tests used in each jurisdiction. By examining primary legal texts, including the Australian Corporations Act 2001 and Indonesia's Bankruptcy Law (Law No. 37 of 2004), as well as relevant case law and secondary literature, the research aims to identify the variations in legal principles and practices across the two systems.

The study begins with a comprehensive literature review to understand the legal frameworks and the insolvency tests used in both countries. It will then conduct a comparative legal analysis, systematically evaluating the conceptual and procedural differences between the cash flow and balance sheet tests in Australia and Indonesia's two-creditor rule. This comparison will examine how each jurisdiction defines insolvency, the thresholds for bankruptcy filings, and the broader implications for debtor-creditor relationships. Case law analysis will be integrated to explore how these

legal principles are applied in practice and to highlight the procedural challenges in each jurisdiction.

4. Discussion and Results

A comparison between bankruptcy law in Australia and Indonesia provides an interesting picture of the specific legal framework of the Insolvency Test (hereinafter referred to as the insolvency test) used in both countries. The difference in the legal system applied by the two countries has an impact on the insolvency test, which is different. Insolvency test is a method used to determine whether a company can be considered solvent (able to pay its debts) or insolvent (unable to pay its debts). The two main bankruptcy tests that are often used are the cash flow test and the balance sheet test.¹² Australia, with its mature legal system, relies on two main tests, namely the cash flow test and the balance sheet test, to assess the financial sustainability of companies. The cash flow exam helps determine whether a company can meet its financial obligations on schedule, while the balance sheet exam evaluates the balance between assets and liabilities.¹³

On the other hand, Indonesia adopts a more centralized approach to the role of the courts in handling bankruptcy, which is reflected in Law No. 37 of 2004. While there are fundamental differences, this comparison is even more interesting as we delve further into the implementation of the bankruptcy exam in both countries. How these bankruptcy exams are applied in day-to-day practice, and the extent to which these differences affect the results of a company's solvency assessment. Through a further understanding of implementation aspects and their impact on test outcomes, we can gain a more holistic view of how Australia and Indonesia are managing the financial and business challenges arising from insolvency.

4.1. Insolvency Law Framework in Australia

The regulations governing the Insolvency Test in Australia are mainly contained in the

¹² Miranda Lufti Nasution, Sunarmi Sunarmi, and Robert Robert, "Analisis Yuridis Putusan Mahkamah Konstitusi Dalam Upaya Hukum Kasasi Terhadap Putusan Penundaan Kewajiban Pembayaran Utang (Studi Putusan No. 23/PUU-XIX/2021)," *Recht Studiosum Law Review* 2, no. 2 (November 3, 2023): 20–37, <https://doi.org/10.32734/rslr.v2i2.12105>.

¹³ Stefan HC. Lo, "Corporate Governance in the Context of Insolvent Companies," *Journal of International and Comparative Law* 10, no. 1 (2023): 113–32.

(Bankruptcy Act) 1966.¹⁴ In addition, there are also several rules and guidelines issued by supervisory bodies and regulators such as the Australian Financial Security Authority (AFSA) that play an important role in the supervision and enforcement of insolvency laws in Australia. In practice, the Insolvency Test is also influenced by legal practices, court decisions, and legal interpretations that evolve over time.¹⁵

4.1.1. Insolvency test di Australia

In Australia, the bankruptcy examination system is an important foundation in assessing the financial health of a company. The two main exams used are the Cash flow test and the Balance sheet test. Cash flow tests focus on a company's ability to pay debts according to a specified payment schedule. It involves evaluating the company's cash flow and ensuring that the company can meet its financial obligations within a certain period of time. On the other hand, the Balance sheet test is more concerned with the relationship between the company's assets and liabilities. This test evaluates whether the value of a company's assets exceeds the value of liabilities or vice versa, and this is the main determinant of a company's solvency. Both of these exams provide a strong framework to measure a company's ability to manage its financial obligations and provide a holistic view of the company's financial situation. The implementation and interpretation of the results of these two exams play an important role in the bankruptcy decision-making process in Australia.¹⁶

1) Cash Flow Test

The cash flow test is one of the main tests in assessing the financial condition of a company in Australia. This exam specifically refers to the company's ability to generate sufficient cash flow to pay its debts according to a predetermined repayment schedule. In this context, cash flow evaluation is key to ensuring the continuity of the company's operations as well as its financial viability. Cash flow testing involves an in-depth

¹⁴ Lidia Xynas and Alexander Xynas, "Insolvency and the Australian Safe Harbour Reforms of 2017–Do They Adequately Support All Australian Directors in Fulfilling Their Role as a Fiduciary of Their Company in 2021?," *Australian Journal of Corporate Law* 37, no. 1 (2021): 46–78.

¹⁵ Lucinda O'Brien et al., "More to Lose: The Attributes of Involuntary Bankruptcy," *Economic Papers: A Journal of Applied Economics and Policy* 38, no. 1 (March 2019): 15–26, <https://doi.org/10.1111/1759-3441.12237>.

¹⁶ Xiaomeng Chen, Andreas Hellmann, and Safdar R. Mithani, "The Effect of Fair Value Adjustments on Dividend Policy Under Mandatory International Financial Reporting Standards Adoption: Australian Evidence," *Abacus* 56, no. 3 (September 2020): 436–53, <https://doi.org/10.1111/abac.12180>.

analysis of a company's cash inflows and outflows, including receipts from sales, loan receipts, debt payments, operational costs, and investments. This assessment not only considers current cash flows, but also projects future cash flows to ensure that the company is able to meet its financial obligations within the relevant timeframe. Factors such as market fluctuations, regulatory changes, and economic conditions are also important considerations in the analysis of the Cash Flow Test. As such, the results of this exam provide an in-depth view of a company's ability to manage and maintain its financial health over the long term, as well as serve as a solid foundation for bankruptcy-related decision-making.¹⁷

2) Balance sheet test

Balance sheet test (BST) is a financial analysis method used to test the balance and accuracy of a company's balance sheet. This test is conducted by comparing the value of a company's assets and liabilities in two different periods, usually the current period and the previous period. BST is a simple but effective tool for analyzing a company's finances. This test can help investors and analysts to assess the financial health of companies and make better investment decisions.¹⁸

4.1.2. Analysis of Insolvency Test Implementation in Australia

The implementation of the Insolvency Test in Australia is an integral part of the company's legal system in the country. This bankruptcy exam aims to assess whether a company is financially able to pay its debts according to the set schedule. There are two types of bankruptcy tests that are commonly used in Australia: the cash flow test and the balance sheet test. The cash flow test measures a company's ability to pay its debts by considering its projected future cash flows, while the balance sheet test focuses more on the company's financial position at any given moment.

In addition, the implementation of the Insolvency Test in Australia also refers to the laws governing the bankruptcy and restructuring process of companies. The law provides a clear framework for companies facing financial difficulties, either to undergo a restructuring or liquidation process. In addition, regulatory bodies such as

¹⁷ Aurelio Gurrea-Martinez, "The Avoidance of Pre-Bankruptcy Transactions: An Economic and Comparative Approach," *Chicago Kent Law Review* 93, no. 3 (2018): 711-50.

¹⁸ M P, "The Role of Insolvency Tests."

the Australian Securities and Investments Commission (ASIC) are responsible for overseeing and enforcing rules related to bankruptcy examinations as well as the general bankruptcy process.¹⁹

Through the effective implementation of the Insolvency Test, Australia seeks to protect the interests of all parties involved in business relationships, including creditors, shareholders and workers. The main goal is to ensure that companies experiencing financial difficulties can be managed properly so that they can continue to operate sustainably or terminate in a fair and transparent manner. Through strict regulation and careful supervision, Australia strives to minimize the negative impact of bankruptcy on the economy and society as a whole.

4.2. Legal Framework for Insolvency Test in Indonesia

The Legal Framework of the Insolvency Test in Indonesia is based on the Bankruptcy and Suspension of Debt Payment Obligations (PKPU) Law. This regulation provides a comprehensive legal basis for regulating the bankruptcy assessment process of a company and the steps that must be taken if a company is deemed incapable of meeting its debt obligations. In the context of corporate law, the Insolvency Test is an important instrument to assess the financial health of a company, focusing on aspects such as liquidity, solvency, and the company's ability to pay off its debts in accordance with applicable regulations. The Insolvency Test procedure involves an authority, such as a court or a financial supervisory agency, who conducts an assessment based on certain standards and criteria to determine whether or not a company is considered insolvent.

In addition to providing a legal basis for the Insolvency Test, Bankruptcy regulations also regulate restructuring and bankruptcy procedures for companies that are considered incapable of meeting their debt obligations. The restructuring process allows the company to make adjustments to its financial structure in a way that allows for business continuity, while the bankruptcy process can involve liquidating assets to pay off debts that are still unfulfilled. This legal framework provides legal protection guarantees for creditors and gives companies the opportunity to recover their

¹⁹ James Edelman, Henry Meehan, and Gary Cheung, "The Evolution of Bankruptcy and Insolvency Laws and the Case of The Deed of Company Arrangement," *Lloyd's Maritime and Commercial Law Quarterly* 4 (2019): 571-602.

condition or undergo an orderly bankruptcy process.

Furthermore, the implementation of the Insolvency Test Legal Framework in Indonesia also pays attention to broader social and economic aspects. The failure of a large company can have a significant impact on the economy and employment, therefore, the Insolvency Test process also considers options that can minimize its negative impact, such as restructuring or transfer of ownership. In addition, this legal framework must also pay attention to ethical and professional aspects, including maintaining the integrity of the bankruptcy testing process, providing fair treatment to all parties involved, and preventing abuse or manipulation of the system for the benefit of certain individuals or groups.

4.2.1. Insolvency Test in Indonesia

The Insolvency Test, or often referred to as the bankruptcy test, is an important process in bankruptcy law in Indonesia. This test aims to determine whether a company or individual is declared unable to meet its financial obligations that are due. In the legal context, there are two types of bankruptcy tests that are commonly used, namely the fulfillment test and the bankruptcy test. The solvency test refers to the ability of a company or individual to pay its financial obligations when they are due, while the bankruptcy test assesses whether the company or individual has enough assets to cover those obligations.²⁰

The Insolvency Test process has a significant impact on all parties involved, including creditors, debtors, and shareholders. For creditors, a bankruptcy test is an important step to protect their interests in recovering unpaid debts. Meanwhile, for debtors, the results of the bankruptcy test can have an impact on their reputation and business continuity. Therefore, it is important for all parties to understand the Insolvency Test process well and prepare the right strategies to deal with it.

4.2.2. Analysis of Insolvency Test Implementation in Indonesia

The implementation of the Insolvency Test in Indonesia is an integral part of the

²⁰ Isis Ikhwansyah and Lambok Marisi Jakobus Sidabutar, "The Implementation of Insolvency Test on Debtors' Bankruptcy in Performing the Principle of Justice," *Jurnal Media Hukum* 26, no. 2 (2019), <https://doi.org/10.18196/jmh.20190137>.

company's legal system which aims to assess the financial health of the company and ensure business continuity. Insolvency test or bankruptcy test is an instrument used to assess whether a company is financially able to meet its debt obligations. This is usually done by checking whether the company's assets are sufficient to pay its debts that are due. In its implementation in Indonesia, the Insolvency Test is regulated in the Bankruptcy and Suspension of Debt Payment Obligations (PKPU) Law.

The Insolvency Test in Indonesia takes into account various factors which include liquidity, solvency, and the ability of a company to pay off its debts. The process involves an assessment from an authority, such as a court or financial supervisory agency, which uses certain standards and criteria to determine whether or not a company is considered insolvent. These criteria typically include a company's financial ratios, cash flow, and ability to pay its debts within a certain period of time.

The implementation of the Insolvency Test in Indonesia also involves an orderly legal process, which allows companies that are considered insolvent to undergo a restructuring or bankruptcy process in accordance with applicable legal provisions. This provides legal protection for creditors and provides an opportunity for the company to recover its condition or undergo liquidation in an orderly manner. While the Insolvency Test aims to protect the interests of creditors, its implementation also considers the broader social and economic impacts.

The failure of large companies can have a significant impact on the economy and employment, so the Insolvency Test process also considers options that can minimize its negative impact, such as restructuring or transfer of ownership.²¹ While continuing to refer to the principles of fairness and transparency, the implementation of the Insolvency Test in Indonesia must also pay attention to aspects of ethics and professionalism. This includes maintaining the integrity of the bankruptcy testing process, providing fair treatment to all parties involved, and preventing abuse or manipulation of the system for the benefit of specific individuals or groups.

Table 1. *Comparison Table of Insolvency Tests in Australia and Indonesia*

²¹ Serlika Aprita and Rio Adhityab, "Restructuring the Justice-Based Business Continuity Principle: Effort to Actualise Legal Protection for Bankrupt Debtors in the Legal Instrument of Insolvency Test," *International Journal of Innovation, Creativity and Change* 8, no. 4 (2019): 403–18.

No	Indicator	Australia	Indonesia
1	Legal Instruments	Bankruptcy Act 1966	Law Number 37 of 2004 concerning Bankruptcy and Regulation on the Postponement of Debt Payment Obligations (PKPU)
2	Mechanism of Insolvency Test	The applicant (usually a creditor) applies to the Bankruptcy Court to test the debtor's ability to pay his debt	The applicant (can be a creditor or debtor) submits an application to the Commercial Court to test the debtor's ability to pay his debt.
3	Required evidence	The application must be supported by sufficient evidence regarding the debtor's financial condition.	The application must be supported by sufficient evidence regarding the debtor's financial condition, such as financial statements, debts, and assets.
4	Debtor Protection	The debtor has the right to provide a defense and response to the bankruptcy application filed against him.	The debtor has the right to provide a defense and response to the bankruptcy application filed against him.
5	Delay Mechanism	The court may grant a deferral of debt payments to the debtor who can demonstrate a viable restructuring plan.	The court can grant a deferral of debt payment obligations (PKPU) to debtors who can show a viable restructuring plan.
6	Type of Insolvency Test	<i>Cash Flow Test</i> and <i>Balance Sheet Test</i>	Fulfillment test and bankruptcy test
7	Implementation Time	Usually 3-6 months for first decision	Depending on the complexity of the case, it can be months to years
8	Reabynation Opportunities	Providing opportunities for restructuring and business sustainability	Depends on court decisions and creditors
9	Procedure Setup	Processed by Federal Courts and Agencies (AFSA)	Processed by the Commercial Court

In the table that has been presented, a comparison of the Insolvency Test in bankruptcy law between Australia and Indonesia reveals significant differences in the approaches and procedures applied by the two countries. In Australia, the Insolvency Test focuses on the debtor's ability to pay his or her financial obligations or to avoid a state of bankruptcy. This process is supported by the Australian Financial Security Authority (AFSA) and provides 2 types of tests, namely the Cash Flow Test and the Balance Sheet Test, an opportunity for debtors to get temporary protection from creditors' demands with Automatic Stay. On the other hand, in Indonesia, the Insolvency Test is handled by the Commercial Court and there are two types of tests, namely the fulfilment test and the bankruptcy test. Resolving bankruptcy cases in Indonesia can take longer, depending on the complexity. Nonetheless, both countries share a common focus on

maintaining a balance between protection against defaulting debtors and creditors' interests in debt settlement. However, Australia tends to encourage more business restructuring and innovation, while Indonesia puts the interests of creditors as a top priority. Thus, this comparison shows that while Australia emphasizes on efforts to provide opportunities for debtors to improve their financial condition, Indonesia tends to focus more on debt recovery for the benefit of creditors.

5. Conclusion

A comparison of the bankruptcy laws of Australia and Indonesia, particularly regarding the "Insolvency Test," highlights significant differences in their approach to handling corporate financial distress. Australia employs a clear, objective framework, relying on tests such as the balance sheet and cash flow tests to assess a company's ability to meet its obligations. This provides legal certainty by basing insolvency decisions on concrete financial evidence. In contrast, Indonesia's approach is more subjective, focusing on the debtor's ability to pay debts as they fall due, with more room for debt restructuring before bankruptcy is declared. This flexibility, while offering recovery opportunities, also increases the risk of misuse by creditors, as insolvency can be declared without a formal financial assessment.

The novelty and urgency of this research lie in its exploration of these contrasting approaches, which reflect the legal, economic, and cultural contexts of each country. While both systems aim to address insolvency, Australia's focus on legal certainty contrasts with Indonesia's emphasis on flexibility and creditor protection. This study contributes to the broader discourse on insolvency law reform by offering insights into the strengths and weaknesses of each system, emphasizing the need for clear, fair, and adaptive laws to balance the interests of both creditors and distressed companies in a globalized financial environment

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Aprita, Serlika, and Rio Adhityab. “Restructuring the Justice-Based Business Continuity Principle: Effort to Actualise Legal Protection for Bankrupt Debtors in the Legal Instrument of Insolvency Test.” *International Journal of Innovation, Creativity and Change* 8, no. 4 (2019): 403–18.

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