

## Postponement of debt payment obligations through semi-public restructuring

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### Abstract

**Introduction to the Problem:** The COVID-19 pandemic has driven many companies in Indonesia to seek Postponement of Debt Payment Obligations (PKPU) and bankruptcy, highlighting the need for more adaptive legal frameworks. Current PKPU mechanisms are viewed as outdated, failing to address conflicts of interest and broader economic impacts. This research proposes a semi-public restructuring model to enhance fairness and inclusivity.

**Purpose/Study Objectives:** This study analyzes the urgency of deconstructing the PKPU framework by introducing semi-public restructuring, which integrates judicial oversight and equitable consideration for all parties involved.

**Design/Methodology/Approach:** This research includes normative legal research. Data analysis uses descriptive methods, deconstruction hermeneutic approaches, cases, legislation, and deduction-syllogism analysis. The legal materials used in this study consist of primary legal sources such as laws and court rulings, as well as secondary materials such as academic literature and legal commentary.

**Findings:** The findings reveal that implementing a semi-public restructuring model in PKPU cases is essential for creating a more balanced and fair resolution process. Unlike current mechanisms that overly favor creditors, this model offers a comprehensive solution by involving the courts in approving restructuring plans, ensuring that all creditors are treated equally. Additionally, the semi-public restructuring model adapts successful principles from other countries, like the UK, to Indonesia's legal framework. It is important to understand that semi-public restructuring differs from PKPU, which is commonly affirmed in debt restructuring. Semi-public restructuring goes beyond mere debt adjustment, encompassing broader corporate reorganization. This model can provide legal certainty, maintain business continuity, and promote long-term financial stability by considering broader socio-economic impacts. This semi-public restructuring approach aligns with Indonesia's Pancasila values and has the potential to make the bankruptcy legal system more adaptive and responsive to the nation's economic challenges.

**Paper Type:** Research Article

**Keywords:** Deconstruction; Postponement; Debt Payment; Semi-public Restructuring; PKPU



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## Introduction

The COVID-19 pandemic has caused significant uncertainty to economic growth and the business world, including in Indonesia. This ambiguity is forcing companies to become more resilient and take bold steps to maintain business continuity amid a sharp decline in profits. For companies experiencing financial difficulties, in addition to relying on efficiency efforts, restructuring debt payment obligations is a relevant alternative. In 2020, no less than 100 companies filed applications for postponement of PKPU and bankruptcy (Budyono, 2021). However, following the end of the pandemic, there was an increase in the number of bankruptcy and PKPU (Debt Suspension) filings, reaching a total of 563 cases (Muchtar, 2023).

Despite its importance, the existing of PKPU mechanism in Indonesia is often criticized for being outdated and lacking the flexibility needed to address modern financial challenges (Wibowo, 2025). The current legal framework primarily focuses on protecting creditor rights, often at the expense of debtor companies' ability to reorganize effectively and continue their operations. This imbalance creates a situation where smaller creditors may be marginalized, and companies are forced into bankruptcy, even when restructuring could provide a more viable solution for both debtors and creditors.

In response to these challenges, the Supreme Court issued Decree No. 109/KMA/SK/IV/2020, which aims to enhance the restructuring process by allowing it to be overseen by judicial institutions. This decree offers an important opportunity for banks and businesses to restructure their debt obligations under judicial supervision, thus providing greater legal certainty and supporting business continuity (Yudhi, 2020). While restructuring is not a new concept in Indonesia particularly in the banking sector, which is regulated by the Financial Services Authority (OJK), its integration into the PKPU process marks a significant shift toward a more progressive legal framework. This restructuring model not only benefits debtors by providing them a lifeline during financial crises but also ensures greater fairness and legal clarity, particularly for creditors who may otherwise suffer significant losses in liquidation scenarios. However, the current PKPU framework still requires substantial revision to align with the evolving economic landscape and international best practices. The introduction of a semi-public restructuring model, where courts play a central role in approving restructuring plans, could address these deficiencies. This model, adapted from successful implementations in other jurisdictions, such as the United Kingdom, has the potential to create a more balanced

and just restructuring process that benefits both debtors and creditors, while also fostering long-term economic stability.

In practice, the UK system, as outlined in Part 26A of the Companies Act 2006, allows courts to summon all creditors involved in debt and receivables processes, ensuring equal treatment for all creditors. This method aligns with the principle of *paritas creditorum* (creditor parity), a principle already embedded in Indonesian bankruptcy law ([Martinez, 2024](#)). However, despite this theoretical similarity, the practical application in Indonesia often falls short. While Indonesia's bankruptcy law ostensibly aims to protect creditors equally, it lacks procedural safeguards to ensure this outcome, particularly in cases involving PKPU, where the rights of smaller creditors may be marginalized by larger, more influential creditors. Moreover, the Indonesian system does not provide sufficient legal clarity regarding the role of courts in supervising restructuring plans, leaving gaps in judicial oversight that can lead to unequal treatment among creditors ([Anzward et al., 2019](#)). The semi-public restructuring model proposed in this paper seeks to close these gaps by strengthening the role of the courts in the restructuring process, drawing from the UK model's emphasis on judicial involvement and creditor fairness. This adaptation aims to harmonize creditor rights with broader economic goals, such as business continuity and long-term financial stability, thus offering a more robust and fair solution compared to the current practice.

However, before its implementation so as not to cause further problems, PKPU procedure that takes place in the courtroom needs to be legislated first. Therefore, Law No. 37 of 2004 as *ius constitutum* needs to be revised. The revision model chosen by the author is a deconstruction of the French philosopher, Jacques Derrida. Derrida's philosophy of deconstruction was never defined, because this is what makes his theory unique. Deconstruction is a progressive thinking that does not stop only at the stage of criticizing, but to the stage of remodeling and looking for contradictions in a building that is left irregular or stable so that it is impossible to rebuild ([Siregar, 2019](#)).

Speaking of justice, Derrida argues that justice can be understood in law even though the law itself is sometimes unfair. This means that justice cannot be ensured for its existence, but its influence can force the law to change ([Ruhupatty, 2023](#)). Representation in showing the existence of justice in the ever-changing law is through the law. For this reason, the main material of the work of deconstruction philosophy is text. However, it does not mean that what is meant by the text is only a law. Behavior, values, content, thoughts, conversations, cultural objects, historical objects, and so on can also be interpreted as texts ([Hardiman, 2015](#)).

The theory of deconstruction when compared with the theory of legal positivism has little similarity. Deconstruction views justice as being in the law represented in the law itself so that it tends to be more critical and contextual. While in the positivistic

school, justice lies outside the law so that it has a more formalistic and normative impression ([Aprita & Adhitya, 2020](#)). This view implies that the law has the possibility of being unfair in substance. It is this uncertainty that then makes it the same as the theory of deconstruction.

Based on this view, it can be concluded that the adian in the deconstruction paradigm is contained in the law. This means that Law No. 37 of 2004 could be considered unfair. For example, rules that contain ambiguity, such as the definition of bankruptcy which is not related to the financial condition or the debtor's company, but is related to general foreclosure or related to creditors who can file for bankruptcy on the debtor even though the debtor's debt to the creditor is only one rupiah. These rules are often considered to lack consideration of fairness for one or more parties involved in bankruptcy disputes. For this reason, deconstruction will overhaul the text listed in the law while still leaving the building in an unstable position as an effort to bring out the potential for justice in the law. This is different from reconstruction which seeks to rebuild by recreating or rearranging laws ([Pribadijanto, 2022](#)).

In the global context, economic instability and various financial crises have shown the weakness of the existing debt payment obligation deferral model. Often, this delay process is not transparent and does not involve all stakeholders well enough, creating mistrust and prolonged conflict. In an effort to find a fairer and more sustainable solution, the concept of semi-public restructuring has emerged as an interesting alternative.

This model proposes a more inclusive approach, in which semi-public entities such as government agencies or independent bodies play an active role in the restructuring process. This approach is expected to bridge the interests between creditors and debtors, as well as consider the broader social and economic impacts. By involving an independent third party, this process can become more objective and reduce potential conflicts of interest. In addition, the involvement of semi-public entities opens up opportunities to include policies that support long-term economic stability and community welfare.

If this theory is applied in PKPU case through semi-public restructuring, then the author will try to answer the urgency of implementing deconstruction through semi-public restructuring in the PKPU case and see how the model is applied in PKPU case in the future. It is hoped that this study will be able to analyze the urgency of implementing deconstruction in PKPU cases through semi-public restructuring and be able to develop research on the postponement of debt payment obligations by adapting the semi-public restructuring model in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations in Indonesia.

### **Methodology**

This research uses normative legal research or doctrinal legal. focusing on the interpretation and application of legal principles and regulations ([Marzuki, 2007](#))

related to the PKPU and the semi-public restructuring model. The study adopts a hermeneutic approach to interpret legal texts and a legislative approach to examine relevant laws, particularly Law No. 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligations (PKPU). Additionally, a case study approach is employed to analyze relevant court decisions concerning debt restructuring in Indonesia. The legal materials used in this study consist of primary legal sources such as laws and court rulings, as well as secondary materials like academic literature and legal commentaries. The analysis is conducted through deductive reasoning, utilizing syllogism to derive conclusions from general principles of bankruptcy law and applying them to specific restructuring cases. Descriptive analysis is employed to highlight the current legal landscape, and a hermeneutic approach is used to deconstruct and propose improvements to the existing legal framework. This methodological framework aims to critically examine the shortcomings in Indonesia's current PKPU system and suggest reforms that align with both national legal principles and international best practices.

## **Results and Discussion**

### ***The Urgency of Implementing the Semi-Public Restructuring Model in the Debt Payment Obligation Suspension Procedure***

World economic growth has an impact on many aspects of life that not only have an impact on economic and business aspects, but also on legal aspects, especially economic law. One of the economic legal instruments that continues to develop and undergo changes in order to be able to accommodate the latest economic practices is the bankruptcy law.

The development and renewal of rules in EU countries, although there are some differences, is broadly focused on the *corporate rescue procedure* as another way out of the liquidation procedure. Most of the EU countries in bankruptcy take reference to Chapter 11 of the United States Bankruptcy Code (Baird, 2017). Meanwhile, the improvement began with the establishment of the Replacement Regulation No. 1 of 1998 concerning Amendments to the Bankruptcy Law as a reaction to the monetary crisis that occurred that year (Muallif & Gultom, 2023). As an improvement with a wider scope of discussion to answer needs and developments, Law No. 37 of 2004 concerning Bankruptcy and PKPU was enacted.

In supporting the ease of doing business in Indonesia, the settlement of bankruptcy cases plays a crucial role. Bankruptcy can be a reference for investors to ensure the completion of debt payments, especially for those who have financial difficulties to have an alternative mechanism for resolving their debts through bankruptcy or restructuring. In addition, the settlement of bankruptcy cases is able to provide an overview of the settlement of liquidation in a transparent manner with the best results (Kiemas et al., 2023).

Improvements in the business world continue to be made, especially with globalization that is happening today. Indonesia as a developing country must always be able to adapt to the current situation, especially by issuing policies and legal rules that can accommodate interests in the country's economic development. Policies and rules are one of the legal aspects that have a direct role in competitiveness, trade, investment, or other economic scopes. Although in practice, the laws and regulations that are issued today generally have many problems that need to be solved such as: too many regulations (hyper-regulation), overlapping, contradictions, inconsistency, multiple interpretations, ineffectiveness, creating a high-cost economy, and creating unnecessary burdens (Amin & Achmad, 2020).

In particular, Law No. 37 of 2004 concerning Bankruptcy and PKPU has also begun to have many problems that can harm the parties (Sinaga & Sulisrudatin, 2016). The bankruptcy settlement mechanism is considered irrelevant and contrary to the law of judges' freedom in assessing cases because anyone can be declared bankrupt as long as the proof is simply fulfilled. If the conditions are that easy, then many companies that were initially healthy can become bankrupt due to the insolvency system that is not yet established. The parties can suffer losses by it, especially creditors who may get a lower debt return compared to the nominal they should have. The debtor is also not spared from losses, with the practical bankruptcy decision, the authority to manage the assets he owns has shifted to the curator as the debtor's bankruptcy asset settler. Therefore, bankruptcy is often stigmatized in a negative connotation compared to its role as an alternative way out.

Furthermore, the author then found several weaknesses contained in Law No. 37 of 2004 related to the regulation on the PKPU, as follows:

#### 1. PKPU Requirements

In the current legal framework, it was previously mentioned that the law does not specify the requirements for PKPU, but this needs to be corrected. Article 222 of Law No. 37 of 2004 indeed sets forth specific requirements for submitting a PKPU petition. The article clearly stipulates that debtors who have two or more creditors and whose debts have matured and are collectible can submit a PKPU petition. This provision highlights the legal criteria necessary for initiating PKPU process, thus providing a foundation for both creditors and debtors to seek restructuring options before resorting to bankruptcy. However, while these requirements are formally in place, practical challenges remain in their application. The article focuses on formalities and simple evidentiary procedures without addressing the deeper financial condition of the debtor or ensuring that the restructuring process benefits all parties involved equitably. Therefore, despite the existing legal provisions, a more nuanced and comprehensive approach is needed to better address the complexities of modern financial restructuring.

#### 2. Parties applying for PKPU

While the Bankruptcy Law does indeed prioritize the protection of creditors' rights, it must be acknowledged that PKPU is increasingly being used as a tool for debt collection rather than its intended purpose of facilitating corporate restructuring and enabling debtors to continue business operations. In practice, creditors often utilize PKPU process to pressure debtors into immediate payments or liquidation, particularly when the debtor fails to meet payment obligations. This approach undermines the original intent of PKPU, which is to provide a mechanism for debtors to reorganize their businesses and negotiate fair repayment plans. Although the law grants debtors the ability to propose a restructuring plan, the process is often manipulated by creditors seeking a quick resolution to their claims. This misuse of PKPU as a debt collection tool diminishes its role as a means of achieving balanced justice between debtors and creditors. Therefore, there is an urgent need to reform the legal framework to ensure that PKPU serves its intended purpose, facilitating corporate rescue and promoting business continuity, while still protecting the legitimate interests of creditors.

3. Simple proof as a legal consideration of PKPU

Simple proof in Law No. 37 of 2004 is conveyed in the provisions of Article 8 paragraph (4) which states that every bankruptcy application must be granted as long as the simple proof requirements have been met. However, the simple article does not have a standard definition or explanation so that judges often find it difficult to interpret. In addition, the judge's authority to find the material truth substantively is reduced.

4. Stay after PKPU decision

During PKPU, without the approval of the management, the debtor cannot carry out actions of ownership and management of the assets he owns. This means that after the temporary PKPU decision, the debtor can still control and manage his assets. Thus, the debtor can still control his own assets, even though he has to collaborate with the administrator. This raises legal problems, namely when the PKPU process begins if there are no silent conditions. If there is no condition of silence, the debtor can transfer his assets to another party without the knowledge of the commercial court judge. The appointment of the board of trustees takes at least three days. Due to unlawful transfers, debtors have already lost the amount of money they have, so this situation will be detrimental to creditors.

With various probelmatics that are still rooted in the body of Law No. 37 of 2004, the author argues that there needs to be a breakthrough that can anticipate and improve problems, especially about PKPU. Looking at the history of bankruptcy and PKPU laws and regulations prepared during the monetary crisis, for this reason, referring to the criteria for legal types developed by Nonet and Selznick (Antasari, 2019) rules related to bankruptcy and PKPU in Indonesia have responsive legal theory criteria. The weakness is that the justice achieved in the theory is only procedural, while substantive justice has not been carefully considered. This happens because the orientation of regulation formation is only limited to fulfilling social needs and

aspirations for companies that are experiencing difficulties during the crisis. In order to reach a point of balance, between substantive and procedural justice, legal breakthroughs are needed.

### **Adaptation of the Semi-public Reestructualization Model in PKPU**

Semi-public restructuring is something new for law in Indonesia. Meanwhile, several countries such as the United Kingdom and the Netherlands have already adapted this restructuring model. The essence of the restructuring implemented in the UK is to help companies that are struggling to pay their debt obligations to creditors. If it is fair and equitable in the opinion of the judge, even if the creditors have a vote, the court can still give approval to the restructuring plan that forces creditors to bind even if it is not approved by the creditors.

The restructuring plan in the UK requires at least 75 percent of creditors of each type and court approval to be realized. Even if the creditors do not agree, the restructuring plan continues to run and for those who do not agree, they remain bound by the plan, as long as it is approved by the court ([Narayanan, 2024](#)). Likewise with guaranteed creditors. Even the secured creditors along with the creditors who accept the plan will have the opportunity to obtain a satisfactory outcome from the court in liquidation or bankruptcy. The restructuring plan found in Part 26 of the Companies Act 2006 is similar to the scheme of agreement in the UK ([Eu, 2021](#)). This method of agreement is very effective for business restructuring, but it has shortcomings in forcing dissenting creditors. Nonetheless, since this restructuring plan aims to help companies overcome debt structure issues, it is more beneficial to creditors who disagree. The reorganization process in Part 26A of the Companies Act 2006 allows for the reorganization of a company's share capital by combining shares of different classes, dividing shares into different classes, or both. This process involves the courts to assist in the reorganization process.

Not only that, the concept of this scheme of arrangement is similar to Chapter 11 of Bankruptcy US which emphasizes the corporate rescue model on the Company's business continuity ([Sitompul, 2021](#)). Chapter 11 uses the concept of reorganization, which is actually part of restructuring. The chapter offers a solution to overcome the financial problems faced by a debtor by creating a restructuring plan.

It should be understood that semi-public restructuring is different from PKPU which is often affirmed in debt restructuring. If we adapt to Chapter 11 of the US Bankruptcy, semi-public restructuring is not only restructuring debt, but more broadly than that to reorganizing companies ([Bharath et al., 2010](#)).

According to Roscoe Pound, law is a tool to prosper and develop society or law *as a tool of social engineering* ([Yahya, 2023](#)). If the law can be a tool to renew society, then semi-public restructuring can be a tool to update the law in the bankruptcy process in Indonesia. The current problem lies in its implementation in the institution of postponement of debt payment obligations based on Law No. 37 of 2004. However,

before entering the implementation, there needs to be a paradigm change first on the definition of bankruptcy and debt. Basically, bankruptcy is a different concept from the liquidation of the dissolution of the Company. Bankruptcy is actually a concept of saving the Company which still has the prospect of continuing the business, not a concept in the dissolution of the Company.

Bankruptcy and liquidation are not the same in many ways. According to Sutan Remy Sjahdeini, there are four public interests that must be considered by the Bankruptcy Law: 1) A country that lives on taxes paid by debtors; 2) People who need job opportunities from debtors; 3) People who supply goods and services to debtors; and 4) People who depend on the supply of goods and services to debtors (Dewi et al., 2023). The liquidation process begins if the bankrupt company is still in the solvent category or only experiences a temporary liquidity drought and its operations are still promising. If liquidation starts, the value of the company's assets will drop drastically and other intangible assets, such as the company's good relationships, reputation, and reputation, will also be wiped out. Law Number 37 of 2004, which is used for the settlement of bankruptcy and PKPU cases, still does not contain this weakness. As a result, new concepts or paradigms must be created to address this problem. This paradigm includes the basic principle that liquidation is a last resort and is only carried out in forced situations (Irwanti & Sitoresmi, 2019). In addition, the paradigm about debt also needs to be shifted, even changed. Bankruptcy requirements related to bankruptcy measurement need to be changed because to determine the debtor's ability to pay debts not only through the assumption of insolvency, but also calculated using solvency and liquidity methods (Kafi, 2018).

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) does not explicitly define the concept of insolvency in a substantive sense. The definition of insolvency adopted remains simplistic, referring only to a debtor's inability to pay debts that are due and collectible. This leads to a lack of distinction between debtors who are genuinely financially distressed (economically insolvent) and those who are merely unwilling to pay, despite still being technically solvent. (Fahamsyah et al., 2024) Moreover, the law does not incorporate liquidity-based assessments, as it follows a presumption of unwillingness to pay rather than a presumption of inability (Ismail & Budiarti, 2022).

In the context of semi-public restructuring, the role of the Commercial Court judge becomes crucial. Judges are expected not only to interpret the PKPU mechanism narrowly as a means of debt restructuring but also to open the space for alternative restructuring models as part of a broader reform of bankruptcy law. In this way, judges play a factual role in developing judge-made law that expands the interpretation of restructuring beyond conventional PKPU procedures and toward more adaptive reorganization systems (Kusmawardi & Roisah, 2018).

The paradigm change in the scope of bankruptcy has a big impact on the dynamics of judge made law so that bankruptcy becomes the ultimate remedium. Thus, judges are transformed into institutions that observe justice rather than just being the mouths of the law. As stated by Roscoe Pound, commercial court judges not only consider the elements of bankruptcy as mentioned in Article 2 Paragraph (1) of Law Number 37 of 2004, but also find the law ([Pamungkas et al., 2024](#)). The current bankruptcy paradigm can allow for a new legal creation process that involves insolvency testing, consideration of solvency, insolvency, and liquidity, as well as considering the prospects of future debtor companies.

In semi-public restructuring, the object of restructuring is not only limited to debt, but also the corporation or its company, majority share ownership, to corporate ownership through the divestment method. The financial condition of the company in the restructuring mechanism must be considered and considered by the judge. In the case of a semi-public restructuring that will be adjusted to the Bankruptcy and PKPU procedural law, the issue of valuation of debtors' assets and liabilities must be carefully considered. Judges are indeed given the freedom to decide what is right. To decide whether a debtor is entitled to a semi-public restructuring scheme, the judge must also examine the evidence submitted by the creditor and debtor, whether related or consistent ([Payne, 2018](#)). Despite efforts to change the bankruptcy paradigm from liquidation to reorganization, the judge still ruled that the company could undertake a semi-public restructuring without considering the valuation of the debtor's assets and liabilities. This is because if the judge only decides on reorganization as an option to avoid an insolvency verdict, it could raise new problems.

Basically, the step of postponing debt payment obligations has the main orientation to realize peace with the submission of a peace plan ([Leonard & Panjaitan, 2023](#)). In Law No. 37 of 2004, the peace plan is similar to the scheme of arrangement where creditors must agree so that the restructuring plan can be realized. At least 75 percent of creditors must agree together with the court. According to the author, the scheme of arrangement can be adapted in PKPU and settlement plans, especially in the aspect of justice between creditors.

Finally, semi-public restructuring involves various parties, at least creditors, debtors, and courts. In order to achieve peace, the three must support each other and restructuring must be based on honesty, ethics, and justice.

### **Towards a Just and Dignified Semi-Public Restructuring According to the Theory of Dignity Justice**

Based on the Theory of Dignity Justice, the author investigates whether this semi-public restructuring contains the values of justice. According to this theory of justice, punishment must be carried out in a humane way. This theory of Dignity Justice comes from the thoughts of Indonesians themselves, not from other countries

(Disantara, 2021). In accordance with the spirit of the Indonesian nation (Volkgeist), or Pancasila, this theory of justice plays a greater role in contemporary legal thought.

Professor Teguh Prasetyo defines the Theory of Dignity Justice as a tug-of-war between *lex eterna* (upper current) and *volkgeist* (lower current) in understanding the law as an effort to approach God's mind in the Legal System based on Pancasila (Prasetyo, 2019). In the discussion on the Theory of Dignity Justice, the basic values of Pancasila have always been the main concern in efforts to achieve justice. Values such as justice, divinity, humanity, unity, and populism must be associated with justice. In other words, dignified justice is justice imbued with the Volkgeist values of the Indonesian nation or Pancasila (Prasetyo & Handayani, 2017).

Returning to the original question, has the semi-public restructuring process achieved the value of justice in the context of dignified justice? To understand this, researchers will study semi-public restructuring methods related to the values of Pancasila, which is the *volkgeist* of the Indonesian nation.

The Theory of Dignity Justice is also based on the idea that law exists where society exists. Therefore, the law exists in society, especially civilized society. So, there is nothing wrong with comparing the Pancasila legal system with the legal system of other civilized countries.

#### 1. Divine Values

The source of ethics and spirituality is divine values, and both are important components in the ethics of state life (Amelya et al., 2024). Because every human action will be accountable to God Almighty, the law must also contain divine values. As a result, the law is expected to provide protection for every citizen, and the people who do so can play a role in achieving justice. Changing the restructuring procedure to semi-public is one of the efforts to achieve justice in the settlement of bankruptcy and PKPU disputes. Both creditors and debtors can be protected by this procedure. Semi-public restructuring protects creditors by providing precise information about the debtor's condition through an insolvency test. It also protects debtors by ensuring that they can continue their business even if the results of the insolvency test show that the value of the debt is greater than the value of their assets.

Neither the debtor nor the creditor should commit any adverse actions because they recognize the existence of God Almighty. Semi-public restructuring can overcome the debtor's lies by obstructing the debtor's intention to go bankrupt or transfer the Company's assets. With an insolvency test as long as the debtor company is still considered to have prospects, then semi-public restructuring can be carried out. Although this semi-public restructuring does not originate from Indonesia or is included in the Pancasila legal system, it can still be used in Indonesia because it contains the basic value of divinity, namely that Indonesians believe and fear God Almighty in accordance with their respective religions and

beliefs according to the basis of a just and civilized humanity. This is in accordance with the Theory of Dignity Justice, which humanizes human beings.

## 2. Human Values

The Theory of Dignity Justice depends on human values. This is in line with the meaning of humanity itself which states that humans are cultured creatures who have creation, taste, and *karsa* (Hutagalung et al., 2023). Therefore, humans are above all other living beings.

Semi-public restructuring is the result of human efforts to achieve justice. Semi-public restructuring is made by humans to avoid the liquidation process of debtors whose debt value is greater than the value of their assets. However, if managed carefully, they have a bright future (Richard, 2012). Although the semi-public restructuring plan has been approved by creditors and debtors, the judge is the party responsible for passing it. The judge is also a human being who has feelings. Taste is not only a sensory response to nervous stimuli, but also a perception of what is good and what is bad included in deciding on a semi-public restructuring that is only known for the first time in the Pancasila legal system.

Creditors and debtors are individuals who have the *karsa* to carry out a semi-public restructuring. The desire of creditors and debtors to resolve bankruptcy disputes and delay debt payment obligations must be in accordance with general habits and their commitment to law enforcement, in particular bankruptcy law enforcement and postponement of debt payment obligations. Thus, semi-public restructuring also has humanitarian value. First, providing opportunities for debtors to continue their business. Second, allowing only debtors to submit a semi-public restructuring plan avoids debtors from going bankrupt because restructuring will be carried out if the insolvency test evidence shows that the value of the assets is less than the value of the debt (van Dijck et al., 2020).

## 3. The Value of Unity

The Theory of Dignity Justice stipulates that legal science is separate from legal philosophy, legal theory, legal dogmatics, and legal practice (Prasetyo, 2015). However, indirectly, the four are interconnected and dialectical systemically. Therefore, the Theory of Dignity Justice does not want conflicts between each of these aspects, but encourages harmony and complementarity in achieving dignified justice in accordance with the values of Pancasila.

From the perspective of legal philosophy, semi-public restructuring is related to elements of ontology, epistemology, and axiology. Based on the ontological perspective, semi-public restructuring is a need for progress as a complement or substitute in bankruptcy law and the postponement of debt payment obligations. This restructuring is considered important to create a mechanism that is more adaptive and responsive to the dynamics of the modern economy. According to the epistemological aspect, Law Number 37 of 2004 is the main reference for

semi-public restructuring to meet the development and legal needs of society. This law is the basis for understanding how restructuring can be applied effectively in the context of Indonesian law (Akbar, 2024). Meanwhile, from an axiological perspective, semi-public restructuring discusses the values it carries, one of which is to solve the problem of insolvency tests where the value of assets is smaller than the value of debt. This reflects efforts to achieve justice by providing opportunities for debtors to overcome financial difficulties without having to go through liquidation that can harm many parties (Prasetyo & Handayani, 2017).

From the perspective of legal theory, semi-public restructuring will be studied in more depth through the merger of various disciplines. Semi-public restructuring is very close to economics because it focuses on returning debtors' liabilities rather than liquidating them. This approach shows that the law not only functions as a tool of social control, but also as an instrument to achieve economic stability and business sustainability. The incorporation of economics and law in semi-public restructuring allows for a more comprehensive analysis of the financial and legal implications of such policies.

Dogmatically, semi-public restructuring means reviewing positive legal rules in a particular legal system. Law Number 37 of 2004 is the main object in interpreting or adapting the restructuring model in PKPU arrangements and peace plans. This positive legal interpretation is important to ensure that restructuring is carried out in accordance with applicable regulations, as well as to ensure legal certainty for all parties involved. It also reflects how positive law can evolve and adapt to the needs of the times without overriding the basic principles of justice (Prasetyo & Handayani, 2017).

Finally, through the practice of law, semi-public restructuring is closely related to legal theory. A judge can solve legal problems by using strong legal theories, including understanding real events, making legal problems, solving them, and ultimately making judgments. Although semi-public restructuring is new, the principle of "the judge must know the law" means that he must not reject cases, including those related to PKPU. Judges must be able to adapt and apply legal theories in concrete cases to achieve dignified justice, as mandated by Pancasila.

According to the Theory of Dignity Justice, legal practitioners cannot work without paying attention to legal theory, legal philosophy, legal dogmatics, and legal practice. These four things must be considered comprehensively. This shows that to achieve dignified justice, a holistic and integrative approach is needed, which is able to combine various aspects of law with human values and social justice contained in Pancasila. Thus, semi-public restructuring not only functions as a legal mechanism, but also as an effort to create a more just and dignified social order in accordance with the spirit of the Indonesian nation.

#### 4. Values of Citizenship

The philosophy of populism is the basis of consultative democracy, a principle formulated by the founders of the Indonesian nation to define democracy in a national context (Monitasari et al., 2021). Within this framework, semi-public restructuring is carried out through a deliberative process to reach a mutual agreement. Semi-public restructuring requires the approval of three-quarters of the total number of creditors based on the total value of the debt and three-quarters of the number of creditors according to their class.

Although the semi-public restructuring process must be decided through voting, consensus is still needed because the decision is binding on creditors who disagree. This consensus reflects how creditors and debtors bargain openly and transparently. In consultative democracies, democratic majorities often concentrate power in the hands of majority groups, such as creditors, who have privileges due to their competitive and often conflicting nature. However, the consultation allows for the widest possible participation of all parties involved to reach a fair and balanced agreement.

The deliberative process in this semi-public restructuring reflects the spirit of mutual cooperation and togetherness that is the hallmark of the people's philosophy. Every decision is taken with the common interest in mind, not just the interests of the majority. This ensures that every voice is heard and every interest is considered in the decision-making process. Furthermore, this deliberation is also a forum to strengthen the relationship between creditors and debtors. Through constructive and participatory dialogue, both sides can reach mutually beneficial and sustainable solutions. The consensus reached is not only formal, but also reflects a shared commitment to work together in solving the financial problems faced.

In addition, this approach also reflects the values of Pancasila, especially the fourth precept which emphasizes the importance of deliberation to reach consensus. Thus, semi-public restructuring is not only a legal mechanism for debt settlement, but also a means to implement the values of deliberative democracy that are the basis of the Indonesian state.

Thus, semi-public restructuring carried out through the deliberative process not only reflects the principles of deliberative democracy and the philosophy of the people, but also provides a strong foundation for achieving dignified justice in the settlement of financial problems. This process ensures that every decision is taken with full responsibility and awareness of the importance of common interests, thus creating a fairer and more harmonious legal order in accordance with the values of Pancasila (Nurfransiska & Prasetyo, 2024).

#### 5. The Value of Justice



Finally, through the practice of law, semi-public restructuring is closely related to legal theory. A judge can solve legal problems by using strong legal theories, including understanding real events, making legal problems, solving them, and ultimately making judgments. Although semi-public restructuring is new, the principle of "the judge must know the law" means that he must not reject cases, including those related to PKPU. Judges must be able to adapt and apply legal theories in concrete cases to achieve dignified justice, as mandated by Pancasila (Rohman et al., 2023).

According to the Theory of Dignity Justice, legal practitioners cannot work without paying attention to legal theory, legal philosophy, legal dogmatics, and legal practice. These four things must be considered comprehensively. This shows that to achieve dignified justice, a holistic and integrative approach is needed, which is able to combine various aspects of law with human values and social justice contained in Pancasila. Thus, semi-public restructuring not only functions as a legal mechanism, but also as an effort to create a more just and dignified social order in accordance with the spirit of the Indonesian nation (Aldyan & Negi, 2022).

According to the Theory of Dignity Justice, justice, utility, and legal certainty do not contradict each other. When justice is achieved, the benefits and certainty of the law are also fulfilled. The value of justice is the most obvious manifestation of the principles of Pancasila, which underlines justice for all Indonesian people in all areas of life, both material and spiritual. Therefore, every Indonesian citizen has the right to fair treatment in the legal, political, social, economic, and cultural fields. The Theory of Dignity Justice places justice as a *lex eterna* and embodies justice in the *volkgeist* sense of the Indonesian nation, or Pancasila, which defines justice as social justice in a broad sense (Gurindro, 2022). The measurement method is described in the Preamble to the 1945 Constitution, which identifies justice and the improvement of public welfare as the goals of the Indonesian state. Thus, justice is considered important and beneficial when public welfare improves.

The main question is whether semi-public restructuring can improve public welfare according to the criteria of Theory of Dignity Justice. This theory is similar to John Rawls' Theory of Justice, which considers justice for the most disadvantaged. Not all parties benefit from a semi-public restructuring; Creditors may be harmed because the payment of the debtor's obligations is stopped, while debtors may face liquidity difficulties if the decision is not prudent.

However, not all creditors are in a disadvantaged position. Separatist creditors and preferred creditors have the right to receive payments in advance because their debts are secured by the debtor's assets. While concurrent creditors do not have the same rights. Therefore, three-quarters of the number of creditors based



on class type and three-quarters based on total debt value should approve a semi-public restructuring plan to protect concurrent creditors. Concurrent creditors can form a committee or representative. In the case of PKPU PT Sritex, individual concurrent creditors still get repayment according to the amount of their receivables for one year. For concurrent creditors, both corporate and syndicated, debt is divided into three parts: a secured working revolver or working capital debt, a secured long-term revolver or new debt with new collateral, and an unsecured long-term revolver (if selected). This semi-public restructuring prevents concurrent debtors and creditors from going bankrupt, maintaining balance and fairness in the process (Indah & Prasetyo, 2020).

To implement semi-public restructuring in a fair and dignified manner, partial reform of Indonesia's positive legal system is required. The initial step can be pursued through the issuance of implementing regulations or judicial interpretation by the Supreme Court, which would define the procedures and legal requirements for a valid semi-public restructuring process. This implementation must involve active participation by judges as interpreters of Pancasila values, alongside the establishment of deliberative forums between creditors and debtors to ensure equitable and transparent participation. The process should also include bankruptcy testing mechanisms based on full disclosure of assets and liabilities, overseen by receivers, commercial courts, and financial authorities to prevent abuse by fraudulent debtors or predatory creditors.

Nonetheless, several legal and institutional challenges must be anticipated. First, there is currently no explicit recognition of semi-public restructuring under Indonesian law, which may lead to legal disputes regarding its validity. Second, the success of such restructuring depends heavily on the integrity of stakeholders and the readiness of legal infrastructure, including the competency of judges and the reliability of the debtor's financial disclosures. Additionally, resistance from dominant creditors, who may prioritize their individual interests over collective consensus, could obstruct the deliberative nature of the process. Therefore, legal education and institutional capacity building must be integral to the implementation strategy, ensuring that semi-public restructuring can be applied consistently and fairly, while reflecting the values of dignified justice as embedded in the Pancasila-based legal system

### **Conclusion**

The current PKPU framework in Indonesia, while essential for debt repayment and restructuring, has significant flaws that hinder its ability to balance the interests of creditors and debtors. PKPU has often been misused as a tool for debt collection rather than facilitating a genuine restructuring process, leading to unfair outcomes for smaller creditors and the forced liquidation of debtor companies. The semi-public restructuring model proposed in this paper offers a more balanced solution by emphasizing fairness, inclusivity, and judicial oversight. Drawing from successful

models like the UK's Part 26A and aligning with Indonesia's legal principles rooted in Pancasila, this model provides a more equitable and transparent restructuring process, ensuring that both debtor survival and creditor rights are protected.

Reforming Indonesia's bankruptcy laws to integrate a semi-public restructuring model is essential for modernizing the PKPU system. The proposed model would introduce greater judicial oversight and third-party involvement, addressing the deficiencies of the current framework, such as the marginalization of smaller creditors and the lack of clarity in restructuring procedures. This approach ensures legal certainty, supports business continuity, and promotes long-term financial stability. By addressing these issues, the semi-public restructuring model aligns with both economic goals and broader social justice, offering a fairer and more adaptive solution that reflects the evolving needs of Indonesia's socio-economic landscape.

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Author contribution : Author 1: initiated the research ideas, instrument construction, data collection, analysis, and draft writing;  
Author 2: revised the research ideas, literature review, data presentation and analysis, and the final draft.  
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