

Internalising Bankruptcy Externalities: A Judicial Framework for Proportional Insolvency Intervention in Indonesia

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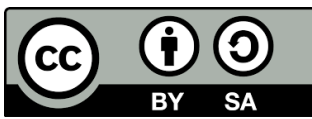
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ABSTRACT

Bankruptcy remedies can impose costs on employees, consumers, suppliers, and other stakeholders beyond the immediate debtor–creditor relationship. In Indonesia, scholarly debate has largely focused on bankruptcy eligibility, leaving the consequences of remedy design comparatively underexamined. This study aimed to develop a judicial framework for identifying and mitigating external costs attributable to insolvency remedies while preserving creditor protection. Prescriptive normative legal research was conducted using statutory, conceptual, case-based, and functional comparative approaches. The analysis examined the Telkomsel, Batavia Air, and Sritex cases, with Garuda Indonesia’s restructuring serving as a comparator, drawing on legislation, judicial decisions, issuer disclosures, institutional reports, and published sources. The findings indicated that remedy-attributable externalities varied according to the debtor’s financial condition and the manner in which the remedy was implemented. The Telkomsel case illustrated the potential costs of imposing bankruptcy on a solvent company; Batavia Air highlighted the disruption associated with an abrupt cessation of operations; and Sritex demonstrated the importance of distinguishing externalities arising from underlying business failure from potentially avoidable costs attributable to the implementation of insolvency remedies. Garuda Indonesia’s restructuring illustrated how restructuring mechanisms can preserve operational continuity. The study proposed the Bankruptcy Externality Internalisation Test, comprising stakeholder identification, counterfactual attribution, remedy design, and a reasoned externality statement. This framework provides a basis for transparent and proportionate judicial intervention in insolvency proceedings without altering bankruptcy eligibility requirements or granting affected stakeholders veto rights. However, whether the proposed framework can effectively reduce remedy-attributable external costs while preserving creditor recovery remains subject to empirical validation.



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INTRODUCTION

Bankruptcy decisions rarely concern only the debtor and the petitioning creditor. When a court declares a company bankrupt, annuls a composition plan, or confirms a restructuring, the consequences may extend to employees, suppliers, consumers, other creditors, local governments, and social security providers. Bankruptcy scholarship has long recognized that

bankruptcy is not merely a mechanism for preventing a race among creditors (Jackson, 1986), but also a mechanism for distributing losses that may be borne by parties outside the debt relationship (Korobkin, 1991; Warren, 1987). What remains underdeveloped is how, in operational terms, a court should account for the costs borne by these parties when selecting and designing an insolvency remedy.

The problem is particularly significant in Indonesia. Article 2(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (the Bankruptcy Law) requires only the existence of two or more creditors and at least one debt that has matured and remains unpaid, while Article 8(4) requires the petition to be granted when these facts are summarily proven. Moreover, a bankruptcy decision is immediately enforceable [Article 8(7)], the debtor loses the right to manage and dispose of assets included in the bankruptcy estate [Article 24(1)], and the receiver may terminate employment relationships [Article 39(1)]. Consequently, far-reaching legal, economic, and social consequences may arise from a comparatively narrow statutory threshold.

Three cases illustrate the range of these consequences. Telkomsel—with assets of approximately IDR 58.93 trillion and more than 122 million subscribers—was declared bankrupt in 2012 over a disputed claim of IDR 5.3 billion before the Supreme Court subsequently reversed the bankruptcy decision (Direktorat Jenderal Kekayaan Negara [DJKN], 2012); the receivers' fees subsequently determined by the court amounted to approximately IDR 293.6 billion (Kontan, 2013). Batavia Air ceased operations at midnight after being declared bankrupt on January 30, 2013, placing approximately 3,500 employees at risk of losing their jobs (Detik.com, 2013a; Liputan6.com, 2013). Sritex and three of its subsidiaries were declared bankrupt in 2024 following the annulment of a composition plan at the request of a single creditor whose outstanding claim amounted to approximately IDR 101.3 billion, or roughly 0.38% of total liabilities (CNBC Indonesia, 2024); in early 2025, 10,665 workers lost their jobs (Katadata, 2025b).

Prior scholarship has extensively addressed the question, “When should bankruptcy be available?” Irianto (2015) and Gaol et al. (2021) affirm the status of the business continuity principle; Kiemas et al. (2023) argue for strengthening this principle through legal reform; Aprita (2021), Shubhan (2019), and Warsito (2024) criticize the absence of an insolvency test; Sihombing and Meliala (2026) propose parameters for assessing the prospects of bankrupt debtors; and Santosa et al. (2026) examine bankruptcy as an ultimum remedium through Supreme Court Decision No. 1714 K/Pdt.Sus-Pailit/2022. This article does not revisit the debate concerning the statutory requirements for declaring bankruptcy. Instead, it addresses a subsequent question: when a court must select and design an insolvency remedy, how should it identify, distinguish, and account for external costs attributable to the remedy itself?

This distinction is important because not all third-party losses arising in the context of bankruptcy are caused by the judicial decision or the remedy imposed. A company that has experienced prolonged losses and exhausted its working capital may eliminate jobs regardless of the remedy selected. Attributing all such losses to the bankruptcy decision would therefore be analytically inaccurate and normatively problematic because it could encourage courts to preserve economically nonviable enterprises. Conversely, disregarding losses that genuinely arise from the manner or timing of a remedy—for example, an abrupt cessation of operations

that leaves passengers stranded—would tolerate potentially avoidable external costs. This article refers to the process of distinguishing these categories of loss as counterfactual attribution.

Accordingly, this article addresses three questions: (1) what external costs are typically associated with each remedy available under the Bankruptcy Law; (2) to what extent judicial decisions in high-impact cases identify and attribute those costs; and (3) how a judicial framework can internalize remedy-attributable external costs without altering the statutory requirements for bankruptcy or diminishing creditor protection. The article makes three principal contributions: it develops the concept of a remedy-attributable externality; proposes a Bankruptcy Externality Internalization Test (BEIT) to operate at the remedy-design stage; and introduces a requirement for a reasoned externality statement that makes judicial reasoning transparent and reviewable.

METHOD

This study employed prescriptive normative legal research (Marzuki, 2017) using statutory, conceptual, case-based, and functional comparative approaches (Zweigert & Kötz, 1998). Primary legal materials included the Bankruptcy Law, Law No. 40 of 2007 on Limited Liability Companies, Law No. 48 of 2009 on Judicial Power, Commercial Court and Supreme Court decisions, and comparative insolvency instruments. Secondary materials included books, journal articles, institutional documents, issuer disclosures, and other relevant published sources.

The unit of analysis was the consequences attributable to the insolvency remedy rather than the debtor's eligibility for bankruptcy. Cases were purposively selected to represent different baseline financial and operational conditions: Telkomsel as a solvent debtor, Batavia Air as a debtor whose operations ceased immediately following bankruptcy, and Sritex as a deeply insolvent corporate group. Garuda Indonesia's restructuring was used as a comparator. Each case was analyzed by comparing the consequences of the remedy imposed with a counterfactual scenario reflecting the likely consequences of an alternative lawful remedy or a different manner of implementation. Impact data were obtained from judicial decisions, issuer disclosures, official reports, and cited legal news sources. Where sources reported different figures, the data were attributed to their respective sources. The cases were analyzed as evidence of judicial reasoning and remedy-related consequences rather than as a statistical sample.

RESULTS AND DISCUSSION

Case Analysis through BEIT

Telkomsel: Externalities Almost Entirely Attributable to the Remedy

PT Prima Jaya Informatika petitioned for Telkomsel's bankruptcy, alleging a debt of IDR 5.3 billion arising from unfulfilled voucher orders; Telkomsel denied the debt (Bisnis.com, 2012). The Central Jakarta Commercial Court, in Decision No. 48/Pailit/2012/PN.Niaga.Jkt.Pst, declared Telkomsel bankrupt (Hukumonline, 2012), and the Supreme Court reversed in Decision No. 704 K/Pdt.Sus/2012 of 21 November 2012 (Pratama, 2021).

From BEIT's perspective, this case is the purest example of a remedy-attributable externality. Stage 1 identifies more than 122 million subscribers, a distribution-partner network, and the parent company's capital market. Stage 2 shows that the comparator scenario is a company continuing to operate at a large profit, so that practically all costs stem from the decision. Those costs were real even though the decision was reversed: the court subsequently fixed receivers' fees of IDR 293.6 billion, being 0.5 percent of total assets of about IDR 58.72 trillion, split between Telkomsel and the petitioner (Detik.com, 2013b; Kontan, 2013). Stage 4 reveals the lesson: an honest externality statement would have obliged the panel to write that a single disputed claim was being used to trigger costs of hundreds of billions of rupiah on a company that was not failing. The duty to write down that comparison is itself a safeguard.

Batavia Air: Externalities Concentrated in the Manner of Closure

International Lease Finance Corporation petitioned for the bankruptcy of PT Metro Batavia over lease arrears, maintenance reserves, and interest of USD 4,688,064.07 for a single Airbus A330 (Hukumonline, 2013a, 2013b). The panel in Decision No. 77/Pailit/2012/PN.Niaga.Jkt.Pst declared the debtor bankrupt on 30 January 2013, and all flights were suspended from 00:00 that night (Detik.com, 2013a). Some 3,500 employees were at risk of losing their jobs (Liputan6.com, 2013), and passengers holding tickets ranked only as unsecured creditors (Hukumonline, 2013c).

BEIT's analysis of this case does not depend on whether Batavia Air should have been declared bankrupt. Even assuming bankruptcy was appropriate, Stage 2 separates two kinds of loss. Medium-term job losses might have occurred under the comparator scenario if the airline was indeed non-viable. But passengers stranded at airports, prepaid tickets extinguished overnight, and other airlines absorbing passengers without preparation are consequences of a simultaneous midnight shutdown. That part is attributable to the remedy. Stage 3 points to an available instrument: temporary continuation of the business by the receiver under Article 104 for a few days to complete flights already sold or arrange passenger transfers, together with adequate public notice. Such an instrument would not meaningfully reduce creditor recovery and thus satisfies the necessity test. The judgment contains no such assessment, and positive law does not require it.

Sritex: Bankruptcy Possibly Appropriate, Implementation Could Be More Orderly

Sritex and its subsidiaries completed a PKPU with a composition plan confirmed in Decision No. 12/Pdt.Sus-PKPU/2021/PN Niaga Smg of 25 January 2022 (CNBC Indonesia, 2024; Firmansyah et al., 2025). PT Indo Bharat Rayon later sought annulment of the plan, alleging that it had received no instalments since July 2023; the outstanding debt owed to it was about IDR 101.3 billion, or 0.38 percent of total liabilities as at 30 June 2024 (Bisnis.com, 2024b; CNBC Indonesia, 2024). On 21 October 2024, the panel in Decision No. 2/Pdt.Sus-Homologasi/2024/PN Niaga Smg annulled the plan and declared four companies bankrupt; the Supreme Court rejected the cassation appeal in Decision No. 1345 K/Pdt.Sus-Pailit/2024 of 18 December 2024 (Bisnis.com, 2024a). The receivers recorded admitted claims of about IDR 29.8 trillion (Katadata, 2025a), decided not to propose continuation of the business (Kompas.id, 2025), and 10,665 workers lost their jobs before operations ceased on 1 March 2025 (Katadata, 2025b).

Sritex is an important stress test precisely because its BEIT outcome differs from first intuition. Stage 2 must record that as at 30 June 2024 the group's total liabilities were about USD 1.59 billion, far exceeding total assets of about USD 617.33 million, with a capital deficiency of about USD 980.55 million (Bisnis.com, 2024b). In such circumstances, the realistic comparator is not a company continuing to operate as before; most job losses would likely have occurred under any remedy. To say that the annulment "caused" the loss of 10,665 jobs is therefore inaccurate.

What is attributable to the remedy is narrower, but still real. First, the annulment erased the payment schedule of all other plan creditors, not only the petitioner. Second, dismissals took place en masse within a short period, before any open testing of the possibility of selling the plants as a going concern to a party able to re-employ some of the workers. Stage 3 identifies the available instruments: the Article 170(3) grace period as transition time, and a sale of the business as a whole under Article 184 after bankruptcy. This article does not conclude that Sritex should not have been declared bankrupt. Its conclusion is that, even if bankruptcy was appropriate, reasoning containing an externality statement would have encouraged a more orderly implementation and opened space to test a going-concern sale before simultaneous mass dismissals.

Garuda Indonesia: Internalisation through Restructuring

Garuda Indonesia's PKPU was initiated by a creditor during the pandemic. Throughout the process, the airline kept flying, so that passengers, employees, and national connectivity suffered no abrupt interruption. The plan was confirmed on 27 June 2022 in Decision No. 425/Pdt.Sus-PKPU/2021/PN.Niaga.Jkt.Pst, and the Supreme Court rejected the cassation appeals of two lessors because their objections did not fall within the grounds for refusal under Article 285(2) (CNN Indonesia, 2022; Ferguson, 2024); a later attempt at annulment also failed at cassation (Liputan6.com, 2024). From BEIT's perspective, the case shows internalisation achieved through the design of the remedy rather than through an externality statement: PKPU preserved operations while creditors assessed the plan. The lesson is that internalisation can be achieved through the type of remedy as well as through the manner of its implementation; BEIT requires both to be considered openly.

Table 5. Attribution of Externalities by Case

BEIT element	Telkomsel (2012)	Batavia Air (2013)	Sritex (2024)	Garuda (2022) – comparator
Remedy	Bankruptcy order	Bankruptcy order	Plan annulment and bankruptcy	PKPU and plan confirmation
Baseline (comparator scenario)	Solvent, profitable company	Airline with difficulty on one lease; viability not assessed	Deeply insolvent group; capital deficiency ±USD 980.55 million	Airline in severe pandemic-related distress
Stage 1: affected stakeholders	±122 million subscribers; partners; market	±3,500 employees; ticket-holding passengers; other airlines	10,665 employees; other plan creditors; suppliers; region	Employees; passengers; lessors; national connectivity

BEIT element	Telkomsel (2012)	Batavia Air (2013)	Sritex (2024)	Garuda (2022) – comparator
Stage 2: remedy-attributable share	Almost all; including receivers' fees ±IDR 293.6 billion	Concentrated in the simultaneous midnight shutdown	Limited to the manner and timing of dismissals and the loss of other creditors' schedules	Low; operations continued
Stage 3: available instruments	Dismissal and referral to ordinary litigation	Temporary continuation (Article 104) and public notice	Article 170(3) grace period; going-concern sale (Article 184)	Supervision of plan performance
Stage 4: stated in the reasoning?	No	No	Not apparent	Partly, through the Article 285(2) assessment

Source: compiled from the decisions, issuer disclosures, and sources cited in Section 7.

The comparison shows that the size of the impact is not the same as the size of the remedy-attributable externality. Telkomsel had an almost total remedy externality even though no employee was dismissed; Sritex had the largest social impact but a relatively small remedy-attributable share. Without counterfactual attribution, courts and critics alike risk misreading: ignoring costs that could have been prevented, or blaming the decision for a failure that had already occurred.

Externality Map for Stages One and Two

To allow Stages 1 and 2 to be applied consistently, Table 6 sets out stakeholder categories, foreseeable forms of loss, ordinarily available evidence, and the relevant attribution question. The map works in both directions. It can reveal preventable remedy costs, but it can also show that continuation increases external costs—for example, where a composition plan defers severance and supplier payments without prospect of recovery, as in the case of PT Merpati Nusantara Airlines, which was ultimately declared bankrupt and dissolved by Government Regulation No. 8 of 2023 (Bisnis.com, 2026; CNN Indonesia, 2023).

Table 6. Externality Map and Attribution Questions

Stakeholder	Foreseeable loss	Ordinarily available evidence	Attribution question (Stage 2)
Employees	Dismissal; delayed severance; loss of skills	Payroll, social-security data, regional employment concentration	Would dismissals occur under the comparator scenario, or only because of the manner and timing of the remedy?
Suppliers and SMEs	Unpaid unsecured claims; loss of a major buyer	Trade payables, sales dependence	Would a sale of the business as a whole preserve supply relationships?

Stakeholder	Foreseeable loss	Ordinarily available evidence	Attribution question (Stage 2)
Consumers	Service interruption; loss of prepayments	Customer numbers, ongoing service obligations	Could a phased shutdown fulfil obligations already paid for?
Other creditors	Lower recovery; loss of plan schedule	List of plan creditors, value comparison	Does the remedy sacrifice creditors who did not petition?
Regions and the state	Lower tax revenue; higher social-security burden	Regional fiscal and employment data	Does this burden stem from business failure or from the speed of closure?
Going-concern value	Organisational value destroyed if assets are sold separately	Buyer offers, valuation reports	Is there a buyer for the business as a whole?

Comparative Perspective: Mechanisms that Make Consequences Visible

Comparative insolvency systems do not solve the externality problem by giving third parties a veto, but by providing mechanisms that make consequences for them visible at the moment of decision. Table 7 summarises several such mechanisms. The comparison is functional: it looks for functions, not rules to transplant.

Table 7. Comparative Mechanisms that Make Third-Party Consequences Visible

Jurisdiction and instrument	Core content	Function for externality internalisation
United Kingdom: Insolvency Act 1986, Schedule B1, paragraph 3	The administrator must prioritise rescuing the company as a going concern, then a better result for creditors than winding up	Makes sale or continuation of the business the first question before piecemeal realisation
United States: 11 U.S.C. § 1129(a)(11), §§ 1113–1114	Plans must be feasible; rejecting collective bargaining agreements and retiree benefits requires a process and court findings	Consequences for employees must be assessed openly by the court
United States: WARN Act, 29 U.S.C. § 2101 et seq.	Sixty days' notice before plant closings or mass layoffs by large employers	Regulates the timing of closure so that workers and regions can prepare
Germany: Insolvenzordnung § 157	The creditors' meeting at the report hearing decides whether the business is closed or continued	Closure is decided deliberately after a report on prospects
European Union: Directive (EU) 2019/1023, Article 13	Workers' information and consultation rights are preserved in preventive restructuring	Workers receive information before restructuring decisions

Jurisdiction and instrument	Core content	Function for externality internalisation
Indonesia: Bankruptcy Law	Continuation and sale of the business are available (Articles 104, 179–184) but left to the receiver after the decision	No duty to state consequences when the remedy is imposed

The lesson of the table is that mature systems separate two questions: whether insolvency proceedings are opened, and how they are conducted so that value and third-party consequences are taken into account. Indonesia already has some instruments for the second question but places them entirely in the receiver's hands after the decision. BEIT moves the point of attention to the moment the remedy is imposed, without moving the receiver's powers. The element transferable to other jurisdictions is the sequence: identification, attribution, design, and statement.

Discussion: What BEIT Changes

From "Whether" to "How"

Indonesian bankruptcy debate has centred on whether a debtor may or should be declared bankrupt. BEIT adds a different question: how is the chosen remedy to be implemented so that preventable costs are not imposed on third parties? The second question remains relevant when the answer to the first is "yes".

From the Size of Impact to the Attribution of Impact

Criticism of bankruptcy decisions often rests on the size of their social impact. Counterfactual attribution shows that size can mislead. The measure relevant to the court is the share of impact that stems from its own decision. That measure is fairer to creditors, more honest about the debtor's economic reality, and more useful for remedy design.

From Silent to Reviewable Reasoning

Judges may well consider the consequences of their decisions without writing them down. But unwritten reasoning cannot be reviewed, cannot be followed, and does not form consistent practice. The externality statement makes third-party consequences part of the grounds of judgment, as Article 50(1) of Law 48/2009 requires, so that higher courts can assess whether preventable costs were considered.

Policy and Institutional Implications

First, in cases involving a large workforce, services to the public, or significant supply-chain dependence, judgments declaring bankruptcy, annulling plans, and confirming plans could contain a short externality statement following BEIT's four stages. Second, petitions and answers in such cases could be accompanied by a concise impact annex—such as the number of employees, ongoing service obligations, and prepaid consumer contracts—so that information is available without prolonging the examination. Third, for businesses serving consumers directly or providing essential services, an orderly-shutdown protocol could be developed that may be ordered together with the bankruptcy judgment, for instance the completion or transfer of prepaid service obligations. Fourth, manpower offices and local governments could be notified promptly after high-impact decisions are pronounced so that worker assistance does not start from scratch. Fifth, publication of externality statements and

receivers' reports would allow further research to test whether internalisation changes creditor recovery, duration, and employment outcomes.

Limitations

This article is normative and does not measure causal economic effects across the population of cases. The counterfactual attribution in the case analysis is qualitative and relies on public information, including issuer disclosures and legal news, rather than direct examination of case files. Comparator scenarios always involve uncertainty, and their assessment may be contested. These limitations underline the need for empirical research combining decisions with employment, creditor-recovery, and business-sale data, to test whether frameworks such as BEIT reduce external costs without lowering creditor recovery.

CONCLUSION

This study concluded that proportional insolvency intervention requires courts to distinguish losses arising from underlying business failure from preventable external costs attributable to the choice, timing, and implementation of an insolvency remedy. The qualitative case analysis illustrated distinct patterns: Telkomsel highlighted costs imposed on a solvent debtor; Batavia Air demonstrated the consequences of an abrupt cessation of operations; and Sritex underscored the need to distinguish losses arising from underlying financial distress from potentially avoidable disruption associated with liquidation. Garuda Indonesia provided a comparator illustrating how restructuring can preserve operational continuity while allowing creditors to consider a proposed repayment plan. Accordingly, the proposed Bankruptcy Externality Internalization Test (BEIT) integrates stakeholder identification, counterfactual attribution, remedy design, and a reasoned externality statement. As a normative framework, BEIT provides a basis for enhancing the transparency of judicial reasoning and directing attention toward existing legal mechanisms for mitigating preventable third-party losses without altering bankruptcy eligibility requirements or granting affected stakeholders veto rights.

Future research should empirically examine whether the application of BEIT reduces remedy-attributable external costs while preserving creditor recovery and procedural efficiency. A broader sample of bankruptcy and restructuring cases should be examined using comprehensive court records, receivers' reports, employment data, creditor recovery data, and evidence concerning business or asset sales. Interviews with judges, receivers, creditors, employees, and affected consumers could clarify implementation constraints and strengthen the reliability of counterfactual scenarios. Further studies should develop practical indicators for identifying high-impact cases and assess the feasibility of concise impact annexes, reasoned externality statements, and orderly shutdown protocols. Comparative research could also examine how these mechanisms operate across different institutional settings, thereby providing evidence to refine BEIT and assess its potential adoption in Indonesian insolvency practice.

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AUTHORCONTRIBUTION

The author fully contributes to the formulation of the main idea idea, collects library data, analyzes and interprets the primary text of the figure, and prepares the manuscript. All authors have agreed on the final version of the manuscript.

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The author states that generative artificial intelligence (AI) was used in the preparation of this manuscript. The author acknowledges the use of generative AI to help improve language clarity and improve the grammatical structure of the manuscript. The use is done in compliance with the applicable ethical guidelines regarding the use and disclosure of generative AI in scientific research. Each author has made substantial intellectual contributions to this work. The entire manuscript content has been carefully reviewed to ensure its accuracy, and the author is solely responsible for the integrity and final content of the manuscript.

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