


Equivalence of Protection for Foreign and Domestic Creditors in Debt Restructuring Based on Positive Indonesian Law

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Abstract

Introduction: This article analyzes the legal implications of excluding foreign creditors in corporate debt restructuring in Indonesia. The study highlights the challenges faced by foreign creditors in securing their rights within the Indonesian legal framework, particularly in bankruptcy and Suspension of Debt Payment Obligation (PKPU) proceedings. The case of PT Visi Media Asia serves as a reference to illustrate these challenges and their legal consequences.

Purposes of the Research: The purpose of this study is to examine the legal impact of excluding foreign creditors in debt restructuring processes and to compare their legal position with domestic creditors under Indonesian law. By identifying regulatory gaps and inconsistencies, this study aims to provide recommendations for improving creditor protection and ensuring equal treatment in debt resolution mechanisms.

Methods of the Research: This research employs a normative legal methodology, utilizing a statutory, conceptual, and analytical approach. Legal materials are collected through document studies, including legislation, court rulings, and scholarly literature. The qualitative analysis is applied to interpret legal norms and evaluate their implementation in real cases, particularly focusing on the case of PT Visi Media Asia.

Results Main Findings of the Research: The findings reveal that Indonesia's current legal framework does not fully safeguard foreign creditors in debt restructuring, often favoring domestic creditors in judicial and regulatory practices. The study contributes to the discourse on legal reform by recommending clearer regulations and stricter enforcement to ensure fairness in debt restructuring, fostering investor confidence in Indonesia's financial system.

Keywords: Debt Restructuring; Foreign Creditors; Bankruptcy Law; Legal Protection.

Submitted: 2025-03-03

Revised: 2025-07-23

Accepted: 2025-07-28

Published: 2025-07-31

How To Cite: Dikha Anugrah, Suwari Akhamddhian, Sri Mulyani, and Uche Nnawulezi. "Equivalence of Protection for Foreign and Domestic Creditors in Debt Restructuring Based on Positive Indonesian Law." *Batulis Civil Law Review* 6 no. 2 (2025): 84-95.
<https://doi.org/10.47268/ballrev.v6i2.2918>

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INTRODUCTION

Debt restructuring has become an important mechanism for overcoming financial problems experienced by companies in the era of economic globalization. This process allows companies to reorganize their financial obligations in order to survive and continue operating. Amidst the dynamics of the global market, readjusting the debt structure not only impacts the company's survival but also the confidence of creditors.¹ In this context, legal instruments such as Bankruptcy and Suspension of Debt Payment Obligations (PKPU) play a key role in providing a framework for resolving debt disputes. These regulations are expected to guarantee equal protection for all parties, both domestic and foreign creditors.

¹ Sutan Remy Sjahdeini, *Sejarah, Asas, Dan Teori Hukum Kepailitan Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran* (Jakarta: Kencana, 2016).

A historical approach to bankruptcy law also shows significant evolution in line with global economic developments.²

In Indonesia, PKPU is one of the main legal instruments used to avoid direct bankruptcy. Through the PKPU mechanism, debtors are given the opportunity to restructure their debts under court supervision. This process emphasizes the importance of fairness and transparency in resolving debt disputes.³ The regulations underlying PKPU provide a strong legal basis for balancing the rights between debtors and creditors. However, the implementation of these procedures still faces various practical challenges in the field. Fairness in this process is very important to maintain the stability of the national financial system.⁴

From the perspective of positive Indonesian law, the principle of non-discrimination is the main foundation that guarantees equal protection for all creditors. Every creditor, regardless of origin, should have the same rights in demanding legal certainty. However, in practice, there is a tendency for differential treatment between domestic and foreign creditors. This difference often arises from the complexities of differences in legal cultures and administrative procedures. This condition results in uncertainty in the enforcement of the rights of foreign creditors. Equal treatment between foreign and domestic creditors in debt restructuring is a fundamental issue in a fair and efficient economic legal system. In Indonesia, this issue is relevant considering the increasing integration of the national economy with the global financial market. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) is the main legal framework governing corporate debt restructuring in Indonesia. However, the implementation of this law in practice often raises questions about the extent to which foreign creditors receive protection equal to that of domestic creditors.

Equal legal protection for creditors, both foreign and domestic, is essential to create a conducive investment climate and maintain economic stability. Smith (2012)⁵, emphasizes that effective creditor protection is key to increasing investor confidence and the economic stability of a country. Lack of legal certainty and transparency can hinder foreign investment and harm creditors in general. Nguyen (2016)⁶, adds that legal certainty and transparency are key to attracting foreign investors. One of the main challenges in realizing equality of protection is the potential for domestic bias in the Indonesian legal system. Ilmy⁷ highlights that the position of foreign creditors in PKPU cases is often less favorable compared to domestic creditors. This is due to various factors, including differences in cross-country legal systems, lack of information available to foreign creditors, and potential discrimination in the decision-making process by the courts. This finding is reinforced by Allivah's research,⁸ which analyzes the case of the Commercial Court of Central Jakarta

² Louis Edward Levinthal, *The Early History Of Bankruptcy Law* (Dublin: Creative Media Partners, 2022).

³ Rachmadi Usman, *Dasar-Dasar Hukum Beracara Di Pengadilan Niaga*, 1st ed. (Jakarta: Kencana, 2023).

⁴ Krista Yitawati, Pujiyono, and Adi Sulistiyono, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU)* (Yogyakarta: Deepublish, 2022).

⁵ Deny Haspada, "Implementasi Perlindungan Hukum Terhadap Kreditor Dalam Kebangkrutan: Studi Komparatif Antara Indonesia Dan Negara-Negara Asean," *AKSELERASI: Jurnal Ilmiah Nasional* 5, no. 1 (2023).

⁶ *Ibid.*

⁷ Besty Dyah Qorina Ilmy, Iswi Hariyani, and Bhim Prakoso, "Kedudukan Kreditor Asing Dalam Perkara Penundaan Kewajiban Pembayaran Utang Terhadap Debitor Yang Berkedudukan Di Indonesia," *Mimbar Yustitia* 7, no. 2 (December 2023): 163–80.

⁸ Andini Nurul Allivah, "Analisis Perlindungan Kreditor Asing Dalam Persoalan Kepailitan Berdasarkan Hukum Positif Indonesia (Studi Kasus Terkait Putusan Pengadilan Niaga Jakarta Pusat 7/PDT.SUSPKPU/2016/PN.NIAGA.JKT.PST JO. Putusan Mahkamah Agung 482K/PDT.SUS-PAILIT/2016)" (Undergraduated Thesis, Universitas Katolik Parahyangan, 2024).

Decision Number: 7/PDT.SUS-PKPU/2016/PN.NIAGA.JKT.PST, which shows problems in the protection of foreign creditors in bankruptcy cases.

Credit restructuring is a mechanism designed to protect the interests of creditors and debtors in the face of financial difficulties.⁹ This process involves adjusting credit terms, such as lowering interest rates, extending repayment periods, to reducing principal debt.² Credit restructuring is regulated by the Financial Services Authority (OJK) and Bank Indonesia, providing a legal basis for ensuring fair and transparent restructuring.¹⁰ In the context of debt restructuring, the PKPU mechanism provides an opportunity for debtors to submit a peace plan to creditors. This plan must be approved by a majority of creditors, both those with preferential rights (separatist creditors) and those without (concurrent creditors). However, this approval mechanism can become an arena for conflicts of interest, especially if there are significant differences between the interests of foreign and domestic creditors. According to Utami et al,¹¹ the imbalance of negotiating power between related parties can hinder the achievement of a fair agreement.

Comparative legal studies also provide valuable insights into how other countries address the issue of equality of creditor protection. Alfianti compared the legal protection for creditors in cross-border insolvency in Indonesia with South Korea, and found that South Korea has a more inclusive legal protection mechanism for foreign creditors through the application of the principle of universalism.¹² On the other hand, Indonesia still adheres to the principle of territoriality which limits the recognition of foreign court decisions.

It is important to note that debt restructuring is not only a legal matter, but also an economic and social matter. The economic crisis caused by the COVID-19 pandemic has increased the urgency to find effective and fair debt restructuring solutions for all parties.¹³ Credit restructuring is also part of the government's efforts to prevent non-performing loans during the pandemic. One example of a striking case is that experienced by PT Visi Media Asia. The company faced a complex PKPU process, in which there were attempts to exclude foreign creditors from the debt restructuring process. This action caused controversy and legal disputes that raised debates about the protection that should be given to all creditors. This case provides a real illustration of the conflict of interest between protecting domestic and foreign creditors. Thus, the case of PT Visi Media Asia becomes a focal point for examining the equality of creditor protection in the context of positive Indonesian law.

The case of PT Visi Media Asia specifically shows how public companies can be involved in practices of exclusion against foreign creditors. This company, which has a significant international creditor base, sought to restructure its debt through the PKPU mechanism in a way that benefited domestic creditors. This decision raises serious legal implications because it is contrary to the principle of equality enshrined in positive Indonesian law. The court then had to decide whether the action was legally acceptable. The court's decision,

⁹ Serlika Aprita, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang* (Makassar: Pena Indis, 2016).

¹⁰ *Ibid.*

¹¹ Nabil Ratu Utami et al., "Strategi Restrukturisasi Utang Dalam Kasus Garuda Indonesia: Pendekatan PKPU," *DOKTRINA Journal of Law* 7, no. 1 (2024), <https://doi.org/10.31289/doktrina.v7i1.10939>.

¹² Mutiara Bella Alfianti and Wiwin Yulianingsih, "Analisis Perbandingan Perlindungan Hukum Bagi Kreditur Dalam Kepailitan Lintas Batas Di Indonesia Dengan Korea Selatan" 3, no. 3 (2023).

¹³ Allivah, "Analisis Perlindungan Kreditor Asing Dalam Persoalan Kepailitan Berdasarkan Hukum Positif Indonesia (Studi Kasus Terkait Putusan Pengadilan Niaga Jakarta Pusat 7/PDT.SUSPKPU/2016/PN.NIAGA.JKT.PST JO. Putusan Mahkamah Agung 482K/PDT.SUS-PAIIT/2016)."

which favored equality of protection, underscored the importance of fairness in resolving debt disputes. This case provides an important precedent in the context of foreign creditor protection in Indonesia.

This research aims to conduct a comparative analysis of the legal position of foreign and domestic creditors in debt restructuring based on positive Indonesian law. Using the case of PT Visi Media Asia as an illustration, this study will examine in depth how efforts to exclude foreign creditors impact the debt settlement mechanism. The novelty of this research lies in its focus on the analysis of the equality of legal protection for foreign and domestic creditors in debt restructuring in Indonesia. This research will provide theoretical and practical contributions to the development of a more inclusive and fair bankruptcy law system. This research differs from previous studies that tend to focus on the procedural aspects of PKPU or general legal comparisons.

The significance of this research lies in its implications for legal policy and business practices in Indonesia. With increasing cross-border investment, it is important for Indonesia to have a bankruptcy law system that can provide equal protection for all creditors. The results of this research are expected to provide input for policymakers, legal practitioners, and business actors in efforts to improve legal certainty and the investment climate in Indonesia.

LITERATURE REVIEW

Previous literature shows various efforts in examining debt restructuring mechanisms and protection for creditors. Research by Ilmy reveals differences in the treatment of foreign creditors in PKPU (Suspension of Debt Payment Obligations) cases,¹⁴ while Amboro highlights the challenges of debt restructuring in publicly listed companies.¹⁵ A comparative study by Alfianti provides an overview of the comparison of legal protection for cross-border creditors between Indonesia and other countries.¹⁶ The analysis conducted by Allivah emphasizes that although a legal framework exists, its implementation is often inconsistent.¹⁷ These studies make important contributions to understanding the complexities of debt resolution in Indonesia. However, the existing literature tends to be fragmented and lacks a holistic integration of perspectives between foreign and domestic creditors.

In addition, research on arbitration clauses in bankruptcy cases has provided alternative dispute resolution outside formal judicial channels. Hutajulu emphasizes that the use of arbitration can accelerate dispute resolution if implemented in accordance with the principles of justice.¹⁸ However, there are obstacles in drafting these clauses that can create bias in the arbitration process. The arbitration approach is also often seen as a partial

¹⁴ Ilmy, Hariyani, and Prakoso, "Kedudukan Kreditor Asing Dalam Perkara Penundaan Kewajiban Pembayaran Utang Terhadap Debitor Yang Berkedudukan Di Indonesia."

¹⁵ F. Yudhi Priyo Amboro, "Restrukturisasi Utang Terhadap Perusahaan Go Public Dalam Kepailitan Dan PKPU," *Masalah-Masalah Hukum* 49, no. 1 (January 2020).

¹⁶ Alfianti and Yulianingsih, "Analisis Perbandingan Perlindungan Hukum Bagi Kreditor Dalam Kepailitan Lintas Batas Di Indonesia Dengan Korea Selatan."

¹⁷ Allivah, "Analisis Perlindungan Kreditor Asing Dalam Persoalan Kepailitan Berdasarkan Hukum Positif Indonesia (Studi Kasus Terkait Putusan Pengadilan Niaga Jakarta Pusat 7/PDT.SUSPKPU/2016/PN.NIAGA.JKT.PST JO. Putusan Mahkamah Agung 482K/PDT.SUS-PAILIT/2016)."

¹⁸ Marihot Janpieter Hutajulu, "Kajian Yuridis Klausula Arbitrase Dalam Perkara Kepailitan," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019), <https://doi.org/10.24246/jrh.2019.v3.i2.p175-192>.

solution that does not fully accommodate the interests of all parties involved.¹⁹ This raises questions about the effectiveness of the legal protection provided to foreign creditors in alternative resolution mechanisms. Studies on this aspect confirm the importance of integrating the principle of equality in every debt resolution mechanism.

Efforts by companies to exclude foreign creditors in debt restructuring raise various significant legal impacts. Normatively, equal legal protection should be given to all creditors without exception, which is a basic principle in bankruptcy law. Such exclusions not only harm foreign creditors but can also reduce the level of international investor confidence in the Indonesian legal system.²⁰ This impacts Indonesia's reputation as a safe and stable investment destination. This lack of protection results in legal uncertainty that can affect foreign capital flows. Therefore, there is an urgent need to evaluate and improve existing legal mechanisms to comply with the principle of non-discrimination.

The implementation of alternative dispute resolution mechanisms, such as arbitration, is also expected to reduce obstacles in debt dispute resolution. However, the drafting of arbitration clauses must refer to the principles of equality and justice so as not to create bias in the resolution process. The practice of arbitration in bankruptcy cases has shown that there is still room for improvement in terms of transparency and procedure. The use of arbitration in debt cases must be adapted to the characteristics of the case, especially those involving foreign creditors. This is because differences in legal culture and contract interpretation can affect the outcome of arbitration. Therefore, it is important to integrate the arbitration mechanism with the formal judicial system to ensure comprehensive protection.²¹

Various studies have proposed solutions to overcome the differences in protection between foreign and domestic creditors in debt restructuring. Some researchers emphasize the importance of bankruptcy regulatory reform to accommodate global dynamics and guarantee equal protection. Research by Amboro shows that the integration of international principles into national law can improve the effectiveness of debt resolution mechanisms.²² In addition, efforts to harmonize regulations in debt dispute resolution are key to reducing disparities in treatment between creditors. The application of international standards is also expected to increase foreign investor confidence. These proposals indicate that although solutions exist, there are still limitations that must be addressed to achieve equality of protection.²³

The existing literature reveals that previous research often discusses individual aspects of creditor protection without integrating the overall perspective. Saija and Asra highlight the differences in implementation between foreign and domestic creditors but do not holistically examine the overall impact on the national financial system.²⁴ This fragmentation of studies creates a significant gap in a comprehensive understanding of equality of protection. This limitation creates a need for a more comprehensive study,

¹⁹ Asra, *Key Concept Kepailitan Korporasi* (Jakarta: Kencana, 2024).

²⁰ Yitawati, Pujiyono, and Sulistiyono, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU)*.

²¹ Hutajulu, "Kajian Yuridis Klausula Arbitrase Dalam Perkara Kepailitan"; Aprita, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

²² F Yudhi Priyo Amboro, "Pengaturan Hukum Kepailitan Indonesia: Kajian Perbandingan Hukum Amerika Serikat Dan Inggris," *Lex Prudentium Law Journal* 1, no. 2 (2023), <https://doi.org/10.61619/lexprudentium.v1i2.6>.

²³ Aprita, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

²⁴ Ronald Saija, *Perspektif Pailit Dalam Perusahaan* (Yogyakarta: Deepublish, 2024); Asra, *Key Concept Kepailitan Korporasi*.

integrating juridical and empirical analysis. A more thorough approach is expected to identify aspects that have been neglected so far. Thus, this study seeks to fill this gap through a comprehensive comparative analysis.

METHODS OF THE RESEARCH

This research uses a normative juridical research method, which is focused on the analysis and interpretation of legal norms related to debt restructuring in Indonesia. The approaches used include a statute approach to examine laws and regulations, a conceptual approach to understand the basic concepts of creditor protection, and an analytical approach to evaluate the application of norms through case studies, particularly the case of PT Visi Media Asia. This method allows researchers to develop a systematic framework of analysis and identify gaps in the implementation of the principle of non-discrimination between foreign and domestic creditors. Data collection techniques were carried out through document studies by tracing primary legal sources such as laws and court decisions, as well as secondary sources in the form of relevant journals and books. The data obtained were then analyzed qualitatively to integrate findings from various literature sources.²⁵

RESULTS AND DISCUSSION

A. Legal Impacts of Indonesian Companies' Attempts to Exclude Foreign Creditors in Debt Restructuring Processes

Attempts by companies to exclude foreign creditors in debt restructuring processes have significant legal impacts on the principle of non-discrimination enshrined in positive Indonesian law. Such actions threaten the principle of equal protection for all creditors, which should guarantee equal rights for foreign and domestic parties. This inequality erodes international investors' confidence in the legal certainty in Indonesia. Thus, the practice of exclusion not only affects the debt restructuring process but also influences the reputation of the national legal system. This becomes a strategic issue, especially amidst global competition for attracting investment. A study by Ilmy emphasizes that such practices can undermine the integrity of the PKPU (Suspension of Debt Payment Obligations) mechanism, which was designed to protect all parties equally.²⁶

According to the literature reviewed by Yitawati et al., PKPU is designed to create a fair legal framework for all creditors.²⁷ However, attempts to exclude foreign creditors indicate a discrepancy between theory and practice. This discrepancy creates legal uncertainty, where foreign creditors feel disadvantaged despite having rights that are normatively recognized. These legal impacts are not only symbolic but also have direct implications for debt dispute resolution mechanisms at the court level. The existence of this gap can create a precedent that endangers the confidence of foreign investors in the future. Thus, strengthening legal mechanisms becomes crucial to ensure that the principle of non-discrimination is truly implemented.

²⁵ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Jakarta: Prenada Media Group, 2018).

²⁶ Ilmy, Hariyani, and Prakoso, "Kedudukan Kreditor Asing Dalam Perkara Penundaan Kewajiban Pembayaran Utang Terhadap Debitor Yang Berkedudukan Di Indonesia."

²⁷ Yitawati, Pujiyono, and Sulistiyono, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU)*.

Allivah's literature reveals that in several court decisions, including cases at the Central Jakarta Commercial Court, there is a tendency to recognize the claims of foreign creditors even when companies attempt to exclude them. These decisions show that the judicial system strives to maintain equal protection despite pressure from debtors. The legal impact of these decisions is increased legal certainty for foreign creditors, which in turn increases international investor confidence in the Indonesian legal system.²⁸ This also proves that despite discriminatory efforts, the courts tend to adhere to the principles of justice. Nevertheless, the decisions also highlight an imbalance in practices at the operational level. Thus, this precedent demands further improvements in regulations so that legal protection is not selective.²⁹

Another legal impact is seen in the potential distortions in renegotiating debt payment terms. When foreign creditors are excluded, negotiations tend to be more in favor of domestic creditors, which ultimately can create disparities in debt settlement. This implies injustice for foreign creditors who have invested with the expectation of equal legal protection. This practice also has broader economic impacts, as it can trigger a decline in foreign investors' interest in investing their capital in Indonesia. Legally, this situation indicates a failure to implement the principle of equality as mandated in bankruptcy and PKPU regulations. Therefore, regulatory reform is needed to address these distortions and ensure that debt settlement negotiations are fair.

The case of PT Visi Media Asia is a real illustration of the legal impacts of efforts to exclude foreign creditors. In this case, the company attempted to restructure its debt through the PKPU mechanism in a way that favored domestic creditors. These efforts triggered a legal dispute that was eventually resolved through a court decision affirming the rights of foreign creditors. The legal impact of this decision includes increased legal certainty and the stricter application of the principle of non-discrimination. The court rejected the discriminatory approach as a form of protection for foreign investors. Thus, this case not only provides a legal precedent but also underscores the importance of enforcing the principle of justice in debt restructuring. A further legal impact is seen in the potential emergence of instability in the national debt settlement system. Efforts to exclude foreign creditors can create the perception that the Indonesian legal system is unable to guarantee the rights of international investors. This has the potential to affect foreign capital flows, which are an important indicator in the national economy. Furthermore, such policies can lead to similar practices in the future, where companies attempt to unilaterally rearrange debt requirements. As a result, the emergence of legal uncertainty will damage the reputation of the Indonesian capital market. Therefore, there is a need to strengthen regulations to ensure that every creditor receives equal treatment.

Differences in treatment between foreign and domestic creditors also impact the effectiveness of dispute resolution mechanisms. In the context of PKPU, the clarity of the dispute resolution mechanism depends heavily on the application of the principle of impartial justice. When discrimination occurs, it can prolong the debt settlement process

²⁸ Allivah, "Analisis Perlindungan Kreditor Asing Dalam Persoalan Kepailitan Berdasarkan Hukum Positif Indonesia (Studi Kasus Terkait Putusan Pengadilan Niaga Jakarta Pusat 7/PDT.SUSPKPU/2016/PN.NIAGA.JKT.PST JO. Putusan Mahkamah Agung 482K/PDT.SUS-PAILIT/2016)."

²⁹ Rai Mantili and Putu Eka Trisna Dewi, "Penundaan Kewajiban Pembayaran Utang (Pkpu) Terkait Penyelesaian Utang Piutang Dalam Kepailitan," *Jurnal Aktual Justice* 6, no. 1 (2021), <https://doi.org/10.47329/aktualjustice.v6i1.618>.

and reduce the efficiency of the judicial system. The resulting legal impacts not only harm foreign creditors but also affect the credibility of judicial institutions. As a result, investor confidence in the national legal system declines, which ultimately impacts investment flows. Thus, improving procedural standards in dispute resolution is crucial.

From an international perspective, comparisons with practices in other countries, that legal systems in developed countries are more consistent in guaranteeing protection for foreign creditors. In South Korea, for example, debt settlement and bankruptcy mechanisms are more integrated with international standards that emphasize fairness for all parties. These differences reveal that efforts at exclusion in Indonesia are an obstacle to alignment with global practices. As a result, discerning foreign investors will consider the high legal risks before investing their capital. This comparative study confirms that the Indonesian legal system needs to be improved to compete internationally. The consistent application of the principle of equality is key to attracting foreign investment.

Legal impacts are also seen from an operational perspective on the ground, where the enforcement of court decisions in cases of foreign creditor exclusion becomes a benchmark for the effectiveness of the legal system. The implementation of decisions in the Commercial Court shows that despite discriminatory efforts, the courts tend to prioritize the principle of justice, which requires equal treatment. The lengthy and complex litigation process is expected to deter discriminatory efforts in the future. However, the reality on the ground shows that there is still a gap between court decisions and practical implementation at the operational level. This demands improvements in the procedures for executing decisions so that the results can be directly felt by the creditors. Thus, equality of protection is not only a normative principle but must be realized in practice.

Overall, a company's attempts to exclude foreign creditors have broad legal impacts, ranging from declining investor confidence to uncertainty in debt settlement. Analysis from various literature sources reveals that such discriminatory approaches are contrary to the principle of non-discrimination that should underlie every debt restructuring mechanism. The case of PT Visi Media Asia is a real example that confirms that the judicial system plays an important role in upholding justice through decisions that support the protection of foreign creditors. These findings indicate the need for reform in the implementation of PKPU so that every creditor receives their rights equally. Thus, improvements in regulations and dispute resolution procedures are imperative to maintain the integrity and credibility of the national legal system. Emphasis on equality of legal protection is a strategic step that will increase investor confidence and economic stability.

B. The Legal Position of Foreign Creditors in Indonesia's Debt Restructuring System Compared to Domestic Creditors

Theoretically, positive Indonesian law guarantees that all creditors have equal protection in the debt restructuring process. This principle is reflected in various bankruptcy and PKPU (Suspension of Debt Payment Obligations) regulations that promote non-discrimination. However, in practice, the legal position of foreign creditors often differs from that of domestic creditors due to various administrative obstacles and differences in legal interpretation. Domestic creditors generally have easier access to the national judicial system due to familiarity with local procedures. On the other hand, foreign creditors face

more complex obstacles, including differences in language, legal culture, and verification mechanisms. This creates a significant difference in the implementation of their rights.

Literature from Saija highlights that although normatively all creditors have the same rights, in practice domestic creditors often receive more favorable treatment. This is due to easier access to information, closer relationships with local financial institutions, and better legal infrastructure support.³⁰ Meanwhile, foreign creditors must go through a longer process to gain access to relevant documents and legal channels. This difference is further reinforced by internal company policies that tend to support domestic interests. This situation creates a gap between the theory of legal protection and its implementation in practice. Therefore, the legal position of foreign creditors needs to be reviewed to comply with the principle of equality mandated by positive law.

The debt restructuring process in publicly listed companies places foreign creditors in a more vulnerable position, as they must adapt to rapid and often non-transparent market dynamics. Procedural uncertainties and differences in international standards for dispute resolution further exacerbate their position. This has implications for the decline in foreign investor confidence, which is an important factor in corporate capitalization. Amboro's research confirms that the protection gap between foreign and domestic creditors can negatively impact the sustainability of debt restructuring. Nevertheless, the courts have shown a tendency to restore balance through decisions that recognize the rights of foreign creditors. Therefore, the legal position of foreign creditors needs to be taken seriously so that there are no imbalances that harm international investment.

Comparisons with legal systems in other countries, that countries with more advanced bankruptcy regulations tend to provide more consistent protection for foreign creditors. In South Korea, for example, debt settlement mechanisms have been integrated with international standards to minimize differences in treatment. The system provides fairer and more transparent access for all creditors, regardless of their nationality. Thus, this comparison reveals that the system in Indonesia still has room for improvement in equalizing the position between foreign and domestic creditors. The application of international principles in bankruptcy reform is an important agenda to reduce this gap.

Practical experience in the Commercial Court shows that domestic creditors are often faster and more efficient in claiming their rights compared to foreign creditors. Complex judicial processes and convoluted bureaucracy are the main obstacles for foreign creditors. This is not only due to differences in legal systems but also to limited access to adequate legal resources. As a result, foreign creditors have to spend more money and time to obtain comparable judgments. These findings indicate that although regulations normatively provide equal protection, their implementation is still less than optimal. Thus, there is an urgent need to simplify legal procedures so that all parties have fair access.

In addition, differences in legal culture between foreign and domestic creditors also influence their legal position in debt restructuring. Domestic creditors tend to have stronger networks and a deeper understanding of local practices, which makes it easier for them in the negotiation and dispute resolution processes. Meanwhile, foreign creditors are often hampered by differences in language and legal interpretation that are not always in line

³⁰ Saija, *Perspektif Pailit Dalam Perusahaan*.

with international standards. These obstacles put them in a weaker position when facing the national judicial process. Therefore, the literature suggests the need to harmonize legal standards so that cultural differences do not become a major obstacle in debt dispute resolution. Integrating cultural aspects of law into regulatory reform can help strengthen the position of foreign creditors.

The use of alternative dispute resolution mechanisms, such as arbitration, has also been identified as one way to bridge the gap between foreign and domestic creditors. Hutajulu argues that arbitration, when applied with principles of justice and transparency, can provide a faster solution and reduce the burden on the courts. However, this mechanism still faces challenges in adjusting to the characteristics of international disputes, especially regarding arbitration clauses that are sometimes ambiguous. The use of arbitration is expected to open the way for more equal negotiations, although it still requires adjustments so as not to create bias. The application of this mechanism must be accompanied by reforms in the drafting of contract clauses so that they can be universally accepted. Thus, arbitration can be an effective alternative to overcome protection inequality.

Literature by Sjahdeini and Levinthal underscores the importance of the historical development of bankruptcy law as a basis for understanding the dynamics of creditor protection. History shows that the bankruptcy system has always evolved in line with changing economic conditions and international needs. Learning from this history emphasizes that legal reform must be carried out comprehensively, so that the protection of foreign creditors is not merely rhetoric but is actually implemented. These historical studies also reveal that regulatory changes in the past have brought significant improvements in the efficiency of debt resolution. Therefore, the reform of Indonesia's bankruptcy system needs to refer to best practices from international legal systems. This aims to create a more conducive legal environment for all creditors.

The regulations concerning bankruptcy and PKPU in Indonesia imply that these regulations are designed to protect all parties in a balanced manner. However, differences in implementation show a gap between normative provisions and reality on the ground. Domestic creditors often have easier access to information and legal support, while foreign creditors face administrative and linguistic barriers. This requires procedural reform to simplify dispute resolution mechanisms. Evaluations of existing regulations show the need for technology integration and bureaucratic simplification to improve accessibility. Thus, equality of position between foreign and domestic creditors must be a priority in future legal policy development. Overall, the legal position of foreign creditors in Indonesia's debt restructuring system still shows disparities compared to domestic creditors. Although regulations theoretically provide equal rights, their implementation is often not optimal due to various practical and cultural constraints. Literature studies emphasize that improving the judicial system and harmonizing international standards are key to overcoming these differences. The case of PT Visi Media Asia provides a real picture of the impact of these differences in practice, which shows that the enforcement of the principle of equality still requires further improvement. By integrating solutions from previous literature and adapting international best practices, the Indonesian legal system is expected to provide fairer protection for all creditors. These findings confirm that in-depth reforms in regulations and dispute resolution procedures are an important step towards achieving equality of protection.

CONCLUSION

The conclusions of this research indicate that attempts by Indonesian companies to exclude foreign creditors in the debt restructuring process have significant legal impacts. This practice can create legal uncertainty, particularly concerning the principle of equal creditor protection within Indonesia's bankruptcy and PKPU (Suspension of Debt Payment Obligations) system. The case of PT Visi Media Asia reflects the challenges faced by foreign creditors, where existing legal mechanisms do not fully provide equal protection for all parties involved in debt restructuring. This demonstrates gaps in regulatory implementation that can disadvantage foreign creditors in asserting their rights. Furthermore, within the Indonesian bankruptcy legal system, the position of foreign creditors is often less accommodated compared to domestic creditors. Although the principle of non-discrimination should be applied in the debt restructuring process, practices on the ground still show obstacles, both from a regulatory aspect and in their application by the courts. Therefore, clearer legal reforms and more stringent implementation are needed to ensure that foreign creditors receive protection comparable to that of domestic creditors. Thus, this research recommends improvements in regulations and law enforcement mechanisms so that the debt restructuring system in Indonesia can be more equitable, transparent, and in line with the principle of justice for all creditors.

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Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

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