RECONSTRUCTION OF INDONESIAN BANKRUPTCY LAW CONCERNING THE DEFINITION OF INSOLVENCY FROM THE POINT OF VIEW OF ENTREPRENEURS: A STUDY OF LEGAL DOGMATICS

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ABSTRACT

This research intends to explore Indonesian bankruptcy law, particularly Law of the Republic of Indonesia Number 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations (Law 37/2004), the point of view of entrepreneurs in relation to the concept of insolvency. The methodology employed in this study is a legal-dogmatic approach, a specific form of legal research that emphasizes the examination of the normative legal system as both the subject of study and the guiding framework of Indonesian bankruptcy law. Data collection is performed through observations and documentation, including court rulings, with data analysis conducted using systematic grammatical interpretation and deductive reasoning to draw conclusions. The findings of this research aim to promote reforms in Indonesian bankruptcy law regarding the concept of insolvency, making it more ideal and supportive of entrepreneurs. Consequently, this research advocates for the development and modernization of laws to establish a more effective definition of insolvency in Law 37/2004, prioritizing entrepreneurs' needs.

1. INTRODUCTION

Legal dogmatics is an instrument that functions to reconstruct the law (Varga, 2008) and to implement and form legal policies (Narits, 2007). Legal dogmatics is a methodological effort that seeks to provide clarity and certainty to legal norms, which are often guided by legal theories and underlying philosophical principles in making legal policies. According to Narits (2007), legal policy must be interpreted as the formation of social and political life through statutory provisions designed and established by public authorities. includes the implementation of justice in a dogmatic system. A dogmatic system is a rational and logical order used to resolve problems of applying law in certain cases [1], for example, through the application of legal politics in resolving bankruptcy cases [2]. According to Devi et al. (2022), the application of legal policy with the concept of justice in resolving bankruptcy cases can be interpreted as a situation where the debtor stops paying his debts that have matured so that by a commercial court decision his assets are declared as general confiscation to be sold by the curator and distributed to his creditors fairly and equally according to their proportions with the supervision of the supervising judge. Devi et al. (2022) stated that the confiscation carried out based on a commercial court decision on the debtor's assets is declared as general confiscation to guarantee the interests of all creditors and prevent execution requested by individual creditors. Bankruptcy is a system created to provide debt relief to debtors experiencing financial difficulties while at the same time providing some of the debtor's assets to creditors[3].

Bankruptcy only concerns the general seizure of the bankrupt debtor's assets, excluding civil rights outside property law, civil rights, public rights, and social rights in social interactions[4]. Bankruptcy law is crucial for companies related to financial restructuring and business continuity because it provides a structured framework for resolving financial difficulties, balancing the interests of debtors, creditors, and stakeholders, and ultimately

[1] E Bacigalupo, "What Is Dogmatics? Brief Considerations on the Rationality of the Practice of Legal Professions, by Enrique Bacigalupo," n.d., https://thinkfide.com/.

[2] R S Devi et al., "The Bankruptcy Legal Politics in Indonesia Based on Justice Value," *Jurnal Akta* 9, no. 1 (n.d.): 67 – 78, https://doi.org/10.30659/akta.v9i1.20842.

[3] R Robert, A Rosa, and B Nasution, "Punishing The Bankruptcy Fraudsters: What Can Indonesia Learn from United States of America?," *Jurnal Dinamika Hukum* 20, no. 1 (n.d.): 174–190, https://doi.org/10.20884/1.jdh.2020.20.1.2874.

[4] Devi et al., "The Bankruptcy Legal Politics in Indonesia Based on Justice Value."

promoting economic stability and recovery. Bankruptcy law regarding the definition of insolvency from the perspective of entrepreneurs as a study of dogmatic law is an important issue. According to Lee et al. (2007), bankruptcy law regarding the definition of insolvency from the perspective of entrepreneurs is that if bankrupt entrepreneurs are excessively punished for failure, they may miss out on opportunities that have the potential to generate high profits. According to Ratten (2023), an entrepreneur is a person or individual who can create products and services related to goods and services for consumers and focuses on new markets or technological discoveries. Bankruptcy law, which defines insolvency from an entrepreneur's perspective, is expected to act as a crucial safety net that can encourage entrepreneurs to take action, for example, by taking risks and innovating by mitigating the potential financial ruin associated with business failure. Bankruptcy law, which defines insolvency from an entrepreneur's perspective, aims to encourage business transformation and foster a more dynamic and resilient entrepreneurial ecosystem. Bankruptcy law serves to provide a safety net and transparency by offering a structured process for entrepreneurs to address significant debt, preventing disorderly bankruptcies, and providing transparency to all parties involved through court oversight and the appointment of a trustee or administrator [5].

Therefore, the formulation of bankruptcy requirements and the summary of evidence in Law Number 37 of 2004 could adopt a responsive framework, requiring the use of the balance sheet test and requiring judges to proactively evaluate the strength of the evidence, echoing practices in the French and Dutch legal systems [6]. Prusak et al. (2021) stated that bankruptcy law can play a significant role and be a factor influencing the development of entrepreneurship, innovation, and economic growth. According to Nair (2025), bankruptcy law provides solutions for companies experiencing difficulties and helps them recover, providing a framework for companies experiencing financial difficulties to reorganize their operations and debt or liquidate assets, with varying degrees of success depending on the

[5] The Lee Law Firm, "Understanding Bankruptcy as a Legal Safety Net," n.d., https://leebankruptcy.com/bankruptcy_blog/bankruptcy/understanding-bankruptcy-as-a-legal-safety-net/.

[6] D Tan, L Sudirman, and J Fiorentine, "The Urgency to Renew Bankruptcy Law Requirements and Summary Proof in Indonesia," *Legal Spirit* 8, no. 1 (n.d.): 113 – 126, https://doi.org/10.31328/ls.v8i1.5081.

effectiveness of the legal framework and the specific economic context of a country. The theoretical perspective on financial restructuring and bankruptcy law is deeply rooted in economic and legal frameworks[7]. In general, bankruptcy is defined as a state of an entity, whether an individual or a company, that is unable to meet its financial obligations. The bankruptcy process not only impacts the debtor but also has far-reaching consequences for creditors, employees, and the economy as a whole. While the acceleration of technological and informatics advancements has become a driving factor in the economic, business, and investment sectors, it has also paved the way for the evolution of economic law, particularly bankruptcy law[8]. Bankruptcy law significantly influences the development of innovation, the realization of its benefits for society, and the avoidance or limitation of associated risks [9]. In this context, regulatory quality is a priority for enforcement in a context of high uncertainty and rapid change [10].

In Indonesia, bankruptcy law is regulated by Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations or *Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang* or UUK PKPU [11]. In principle, Law 37/2004 provides a fundamental legal framework for addressing corporate solvency and restructuring issues, which are crucial for maintaining national economic stability. However, Indonesian bankruptcy law, which regulates bankruptcy, is outdated [12] and has not been implemented as planned at the implementation level[13]. This is

[7] M Celestin, "& Vedaste,M.(2024).The Impact of Corporate Bankruptcy Laws on Financial Restructuring and Business Continuity Strategies," *Brainae Journal of Business, Sciences and Technology* 8 (n.d.): 10 ,516–527, https://doi.org/10.2139/ssrn.5188095.

[8] E Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied? Volksgeist," *Jurnal Ilmu Hukum Dan Konstitusi* VII, no. 1 (n.d.): 218, https://doi.org/10.24090/volksgeist.v7i1.10079.

[9] O.E.C.D./K.D.I., *Case Studies on the Regulatory Challenges Raised by Innovation and the Regulatory Responses* (Paris: OECD Publishing, n.d.), https://doi.org/10.1787/8fa190b5-en.

[10] O.E.C.D./K.D.I.

[11] Muhammad Fikri and Shelvi Rusdiana, "RUANG LINGKUP PERLINDUNGAN DATA PRIBADI: KAJIAN HUKUM POSISTIF INDONESIA," *Ganesha Law Review* 5, no. 1 (October 27, 2023): 39–57, https://doi.org/10.23887/glr.v5i1.2237.

[12] Robert, Rosa, and Nasution, "Punishing The Bankruptcy Fraudsters: What Can Indonesia Learn from United States of America?"

[13] Aslan Noor et al., "Abuse of Authority in Utilizing Village Funds as an Effort to Win the 2024 Presidential Election in Indonesia Seen from Qualitative Evidence," *Journal of Law,*

due to various weaknesses in the substance of the regulation, including ambiguity in the legislation that ultimately leads to multiple interpretations[14]. Evidence applied in procedural law from bankruptcy applications and suspension of debt payment obligations, or *Penundaan Kewajiban Pembayaran Utang* or PKPU[15]. According to Shubhan (2019a), this problem arises because (1) the requirement for simple evidence actually makes bankruptcy petitions complicated and legally uncertain. Therefore, the norm of simple evidence needs to be reconstructed. This burden is met in bankruptcy petitions and PKPU petitions with two (2) requirements, namely, unpaid debt that is due and collectable and the presence of at least two creditors. In other words, Indonesian bankruptcy law only requires simple evidence and contains provisions that do not definitively set limits on such evidence, which makes the norm unclear; and (3) in practice, judges have rejected bankruptcy petitions with insignificant evidence. Furthermore, differences arise in complex decisions regarding petition requirements. The courts decide that the case is not that simple. Conversely, there are also simple cases that the courts decide are not simple and for which the bankruptcy petition is rejected.

Based on the various previous descriptions, legal dogmatics can be interpreted as a core component of legal studies, involving doctrinal legal studies, which focus primarily on the interpretation, systematisation, and application of applicable law to solve concrete legal problems. Then, the definition of bankruptcy is a general seizure of all assets of a bankrupt debtor whose management and settlement are carried out by a curator under the supervision of a supervising judge as regulated in Article 1 number Law 37/2004. Meanwhile, the definition of insolvency in bankruptcy law is a state of being unable to pay its debts as explained in the Explanation of Article 57 paragraph (1) of Law 37/2004. A company may be unable to pay creditors due to financial difficulties. Indonesian bankruptcy law, which is primarily regulated in Law No. Law No. 37 of 2004 concerning Bankruptcy and

Politic and Humanities 5, no. 1 (October 23, 2024): 108–22, https://doi.org/10.38035/jlph.v5i1.814.

[14] Noor et al.

[15] Shubhan M H, "Deconstructing Simple Evidence in Bankcruptcy Etition for Legal Certainty," *Indonesia Law Review* 9, no. 2 (n.d.): 66–82, https://doi.org/10.15742/ilrev.v9n2.527.

Suspension of Debt Payment Obligations or UU PKPU[16] faces several issues, including a limited focus on liquidation rather than debt restructuring, a lack of detail regarding a comprehensive debt restructuring mechanism, the absence of clear standards for assessing business viability in rescue plans, and inadequate oversight of rescue plan implementation. Furthermore, the ease with which debtors can file for bankruptcy presents challenges, and concerns arise regarding the equitable distribution of assets to concurrent creditors.

Thus, the need for a review of legal dogmatics to reconstruct Indonesian bankruptcy law, particularly regarding the definition of insolvency from the point of view of entrepreneurs, arises from a desire to align the law with evolving economic realities and to provide a more effective and nuanced approach to financial distress and restructuring. This reconstruction is driven by several factors, including the limitations of the current definition of insolvency, which does not fully reflect the complexity of modern business operations and financial distress, potentially leading to inappropriate or ineffective bankruptcy proceedings. Then, there is a recognized need to compare and potentially combine principles from other jurisdictions and international standards, which often include concepts such as the creditor's best interest test and the reasonableness test to protect entrepreneurs and encourage restructuring: In this regard, a clearer and more comprehensive definition of insolvency, especially from the point of view of entrepreneurs, can facilitate timely and appropriate restructuring efforts, offering better recovery opportunities for businesses through the reconstruction of Indonesian bankruptcy law on the definition of insolvency from the point of view of entrepreneurs as a study of dogmatic law.

2. LITERATURE REVIEW

2.1 Legal Dogmatics

Simply put, legal dogmatics is defined as a method that refers to activities and their products[17]. Dogmatics is a system of concepts that aims to

[16] Guillermo O'Donnell, "The Quality of Democracy: Why the Rule of Law Matters," *Journal of Democracy* 15, no. 4 (October 23, 2004): 32–46, https://doi.org/10.1353/jod.2004.0076.

[17] M T Leao, "The Object of Legal Dogmatics: What Do Juristics Do? O Objeto Da Dogmática Jurídica: O Que Fazem Os Estudiosos Do Direito? Rev," *Fac. Direito UFMG, Belo Horizonte* 76 (n.d.): 359–372, https://doi.org/10.12818/P.0304-2340.2020v76p359.

rationalize law enforcement practices and avoid law enforcement based on intuitions of justice that are considered difficult to control[18] . According to Vachev (2023), legal dogmatics can be understood in two ways as follows: (1) Law that is independent of the legal rules that apply at a certain time and place; and (2). The proper meaning of law is clarified and systematizedto reveal and then conceptualize a reality that is not at all limited to the hermeneutical analysis of legal texts but also includes the development of law and the need to find material legitimacy for the use of coercion by the state against citizens. Legal dogmatics is developed with positive law as a limitation and reference and primarily focuses on solving real problems that are claimed to be important guarantees for citizens in avoiding arbitrariness[19]. According to Varga (2008), the purpose of focusing on constructing such a scientific re-representation is to identify essential correlations in the verbal manifestations of legal authority, from its phenomenal expressions considered as aggregates of facts that can be experienced empirically (and therefore can be reconstructed scientifically). Therefore, legal dogmatics plays an important role in identifying legal rules and resolving legal uncertainty[20]. As a type of normative legal research method, legal-dogmatic research is a type of legal research that deals with the principles, rules, and concepts that govern a particular field or institution and analyzes the relationships between them to resolve legal ambiguities and gaps[21]. Dogmatic legal research specifically focuses on the substance and practical function of legal rules to solve a particular legal problem[22]. According to Shidarta (2015),

[18] Bacigalupo, "What Is Dogmatics? Brief Considerations on the Rationality of the Practice of Legal Professions, by Enrique Bacigalupo."

[19] M Díazy García Conlledo, "Criminal Law and Legal Theory: Not Just Legal Dogmatics, but Never Without It," ed. E Demetrio Crespo, A García Figueroa, and G Marcilla Córdoba, *Legal Studies in International, European and Comparative Criminal Law* 6 (n.d.): 83–98, https://doi.org/10.1007/978-3-031-13413-5_5.

[20] M L Manrique, P E Navarro, and J M Peralta, "Criminal Law and Legal Dogmatics," *Journal for Constitutional Theory and Philosophy of Law* 31,1-11 (n.d.), https://doi.org/10.4000/revus.3806.

[21] J M Smits, "What Is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research," in *Rethinking Legal Scholarship: A Transatlantic Dialogue*, ed. Rob Gestel, Hans-W. Micklitz, and Edward L Rubin (New York: Cambridge University Press, n.d.), https://doi.org/10.2139/ssrn.2644088.

[22] M Siems and D Mac Sithigh, "Why Do We Do What We Do? Comparing Legal Methods in Five Law Schools Through Survey Evidence," in *Rethinking Legal Scholarship: A Transatlantic Interchange*, ed. Hans Micklitz and Edward L Rubin (New York: Cambridge University Press, n.d.), https://ssrn.com/abstract=2625473.

Indonesian dogmatic law is a system of positive norms that currently applies within the Indonesian legal jurisdiction. Based on several expert opinions, it can be interpreted that legal dogmatics in law refers to the systematic interpretation and application The legal rules and norms that exist in concrete cases, which often focus on written law and aim to clarify, systematize, and understand normative systems closely related to legal positivism. In this case, legal dogmatics seeks to interpret and apply the law as established by legitimate authorities but can also incorporate philosophical principles and legal theory in its interpretation. Furthermore, the method of legal dogmatics generally uses logical deduction and aims to build a theoretical system based on central dogmas.

2.2 Definition of Insolvency

Definition of the term insolvency and its subspecies (inability to pay debts, cessation of payments, possible or imminent inability to pay[23]. In other words, Stanley (1962) stated that the definition of insolvency is bankruptcy or being unable to pay debts when they fall due. According to ASIC—Australian Securities & Investments Commission (2025), bankruptcy is a condition when a company or individual is unable to pay debts when they fall due, and there are several options available to bankrupt companies or individuals as follows: (1). The most common corporate bankruptcy procedures for bankrupt companies are liquidation, small business restructuring, voluntary administration, and administration; and (2). The personal bankruptcy procedures available to bankrupt individuals are bankruptcy and personal bankruptcy agreements. Garner (2000), in The Blacks Law Dictionary (7th Edition), defines insolvency as a condition of inability to pay debts when they fall due or in the normal course of business. This dictionary also defines bankruptcy as a legal procedure usually triggered by insolvency, in which an individual is relieved of most debts and undergoes a court-supervised reorganization or liquidation for the benefit of its creditors. Insolvency occurs when an individual or business entity is unable to meet its obligations or is unable to pay debts[24], and the bankruptcy/liquidation process

[23] R Bork, M Veder, and B Schuijling, *Definition of Insolvency Proposals for Harmonisation in the European Union* (Antwerp. Brussels: Larcier Intersentia Publishing, n.d.).

[24] H Anderson, *The Meaning of Insolvency. The Framework of Corporate Insolvency Law* (Oxford, UK: Oxford University Press, n.d.).

is used to secure debts from creditors[25]. Based on several expert opinions, it can be interpreted that the definition of insolvency in bankruptcy law is a financial condition in which an individual or entity is unable to meet its financial obligations as they fall due, or where its liabilities exceed its assets. Although the specific legal definition varies by jurisdiction, the core concept centers on the debtor's inability to pay debts as they fall due. For example, a company that fails to pay employees or suppliers on time may be considered insolvent on this basis; however, in some contexts, bankruptcy is defined by a balance sheet in which the total value of the debtor's assets is lower than its total liabilities.

2.3 Bankruptcy Law

The definition of bankruptcy refers to Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations[26] , which states that bankruptcy is a general seizure of all assets of a bankrupt debtor whose management is carried out by a curator under the supervision of a Supervisory Judge as regulated in the Law. In bankruptcy, in addition to the principle of paritas creditorium and the principle of pari passu prorate parte, there are also principles of debt collection and debt forgiveness[27]. According to Mulyadi (2005), the definition of the principle of paritas creditorium is that every action taken by a person in the field of assets will always have an impact on his assets, whether it is increasing the amount of his assets or later reducing the amount of his assets. Meanwhile, the understanding of the principle of pari passu pro rata parte is that all the debtor's assets, by law, are joint guarantees for the creditors, and the proceeds must be distributed proportionally between them, unless there are creditors who, according to the law, must be prioritized in receiving payment of their bills[28]. Bankruptcy is a legal statement of financial insolvency for individuals or companies that provides certain legal protections for debtors and

[25] I O Oyedepo, "The Imperatives of a Vibrant Insolvency Practice in Nigeria. SSRN:,1-14," n.d., https://doi.org/10.2139/ssrn.1089345.

[26] O'Donnell, "The Quality of Democracy: Why the Rule of Law Matters."

[27] F Dirgantara, "Debt Forgiveness Principle in Business Legal Representatives," *Jurnal Notariil* 4, no. 1 (n.d.): 1–7, https://doi.org/10.22225/jn.4.1.894.1-7.

[28] K Mulyadi, "Kepailitan Dan Penyelesaian Utang Piutang Dalam Rudhy A," in *Penyelesaian Utang-Piutang Melalui Pailit Atau Penundaan Kewajiban Pembayaran Utang*, ed. Lontoh (Bandung: P.T.Alumni, n.d.).

creditors[29]. According to Sjahdeini (2008a), bankruptcy law was established to prevent creditors from competitively seizing and liquidating debtor assets, which can result in unfair asset distribution. This legal framework explains the purpose, benefits, and core functions of bankruptcy law: in particular, to prevent creditors from engaging in destructive competition to control and liquidate debtor assets when those assets are insufficient to pay off outstanding debts—in other words, when the debtor's liabilities exceed his assets. This view is in line with Onakoya & Olotu (2017), who stated that the main purpose of bankruptcy law is to provide protection and relief to debtor entities by offering a means of fair distribution of debtor assets among all creditors. Bankruptcy law is designed to prevent potentially fraudulent actions, which can undermine its purpose[30]. Based on several expert opinions, it can be interpreted that bankruptcy law is a specific action that considers the state of the debtor bankrupt, such as failing to pay debts after a final decision or transferring assets for the benefit of creditors, and bankruptcy procedures aim to manage debt settlement, ensure fair payments to creditors, and potentially offer a new start for the debtor.

2.4 Entrepreneur

In terminology, the term entrepreneur comes from French, which has the meaning of identifying brave individuals who drive economic progress by finding new and better ways of doing things[31]. According to Schumpeter (1965) in Tran & Von Korflesch (2016), entrepreneurs are individuals who exploit market opportunities through technical and/or organizational innovation. Leadbeater (2001) states that entrepreneurs have the following characteristics: (1) Having an advantage in finding unmet needs is a person or individual who can mobilize underutilized resources to meet needs; and (2). Driven and determined, ambitious and charismatic to seek change, respond to it, and exploit it as a business opportunity. Then, Bolton and Thompson (2003) define entrepreneurs as those who bring change in every

[29] "Cohen,E.K.(2015). Definition of Bankruptcy. In Wiley Encyclopaedia of Management," *Managerial Economics* 8 (n.d.): 1–2, https://doi.org/10.1002/9781118785317.weom080051.

[30] A B Onakoya and A E Olotu, "Bankruptcy and Insolvency: An Exploration of Relevant Theories," *International Journal of Economics and Financial Issues* 7, no. 3 (n.d.): 706–712, https://www.econjournals.com/index.php/ijefi/article/view/4652.

[31] C Leadbeater, *The Rise of the Social Entrepreneur* (London: DEMOS, The Mezzaniine, Elizabeth House, n.d.).

field of activity, see opportunities, do something different, and multiply the opportunity/opportunity ratio. Filion (2011) defines an entrepreneur as a person or individual who can innovate, recognize business opportunities, and practice good risk management and has the ability to use resources to increase the added value of goods and services. According to Bell (2013), entrepreneurs have five characteristics, including opportunism, genius and creativity, persistence, the ability to connect the dots in the business sector, and courage in taking risks. Meanwhile, Lowrey (2003) states that an entrepreneur can be understood as someone who has the desire to achieve the goals of survival and economic progress, understands the social constitution, and has the flexibility to adjust government policies related to the role of economic institutions to encourage development and economic growth. Based on several expert opinions, it can be interpreted that entrepreneurs are individuals who are drivers of the economy and sources of innovation, where old ideas are replaced by new, innovative ideas in identifying and exploiting new business opportunities, creating new businesses or significantly improving existing businesses, bearing business or company risks and rewards most of the income, and focusing on economic impact to produce valuable goods and services.

3. METHODOLOGY

This research method uses a type of legal-dogmatic research method, a type of legal research that focuses on studying the normative legal system[32], not only as a research subject but also the normative framework of Indonesian bankruptcy law. The legal-dogmatic research method used in this study is to examine the positive norm system currently in force in the Indonesian legal jurisdiction area against secondary data using literature studies[33] and a descriptive qualitative method approach (Keirl and Miller in Moleong, 2004). Meanwhile, data collection techniques are carried out through observation and documentation in the form of court decisions and data analysis using systematic grammatical interpretation, as well as deductive methods to conclude. The results of this study are expected to encourage efforts to reform

[32] Soerjono Soekanto and Sri Mamudji, *Penelitian hukum normatif: suatu tinjauan singkat*, Cet. ke-6. (Jakarta: RajaGrafindo Persada, 2001).
[33] Peter Mahmud Marzuki, *Penelitian hukum* ([Jakarta]: Kencana, 2005).

Indonesian bankruptcy law regarding the definition of ideal and progressive (pro-entrepreneur) insolvency as written in laws and regulations or norms that are considered appropriate benchmarks[34]. Primary legal materials consist of laws and regulations arranged in a hierarchy[35] and are authoritative in the form of laws and regulations relating to bankruptcy law, namely the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) and Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UU 37/2004). Meanwhile, secondary legal materials consist of textbooks, legal journals, and the results of recent symposiums related to the research topic (Ibrahim, 2008), and tertiary legal materials are legal materials that provide guidance and explanations to primary and secondary legal materials, for example, dictionaries & encyclopedias[36]. The focus of this research is to examine the effectiveness of the implementation of Law 37/2004 in the field and identify obstacles and their impact on society, specifically on entrepreneurs in Indonesia. Then, data collection techniques are carried out through observation and documentation in the form of court decisions and reports[37]. Adi (2010) defines observation as a data collection method that uses direct or indirect observation.

Experts state that observation (both direct and participatory) and documentation (such as court decisions and reports) are valid and strategic data collection techniques in research. Creswell (2014) defines observation as a data mining process carried out directly by the researcher by conducting detailed observations of humans and their environment in the research arena. Observation involves direct observation of the phenomena being studied[38], while documentation focuses on the analysis of relevant documents to obtain

[34] Amiruddin and H Z Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, n.d.).

[35] Marzuki, *Penelitian hukum*.

[36] I K Suardita, "Pengenalan Bahan Hukum (PBH) - Hukum Administrasi Negara Bagi Mahasiswa Semester I" (Fakultas Hukum Universitas Udayana, n.d.), https://simdos.unud.ac.id/.

[37] H Taherdoost, "Data Collection Methods and Tools for Research; A Step-by-Step Guide to Choose Data Collection Technique for Academic and Business Research Projects," *International Journal of Academic Research in Management* IJARM),10 (n.d.): 1 ,10–38, https://elvedit.com/journals/IJARM/wp-content/uploads.

[38] Sugiyono, *Metode Penelitian Kualitatif* (Bandung: Alfabet, n.d.).

data[39]. Data analysis uses grammatical and systematic interpretation, as well as deductive methods to conclude[40], and will be carried out qualitatively. Furthermore, the results of this study are expected to provide comprehensive advice on everything that needs to be done to resolve legal problems related to the effectiveness of the application and impact of the definition of insolvency in the Republic of Indonesia Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, or UUK PKPU, or Law 37/2004. Although it has been amended several times, the PKPU Law, or Law 37/2004, still provides insufficient protection, especially for unsecured creditors[41]. Therefore, the government together with the House of Representatives of the Republic of Indonesia or *Dewan Perwakilan Rakyat Republik Indonesia* (DPR RI) is expected to be able to resolve the problem of the definition of insolvency in the PKPU Law or Law 37/2004 through the creation and renewal of the law[42]. Based on the background of the problems in this study, this study is entitled "*Reconstruction of Indonesian Bankruptcy Law Concerning the Definition of Insolvency from the Point of View of Entrepreneurs: A Study of Legal Dogmatics*". Therefore, the researcher tries to emphasize the formulation of the research problem as follows:

1. What is the positive legal framework for the definition of insolvency in Indonesian bankruptcy law from the point of view of entrepreneurs?
2. What is the direct impact of the definition of insolvency in Indonesian bankruptcy law on entrepreneurs?
3. What is the implementation of the positive legal framework for the definition of insolvency in Indonesian bankruptcy law from the point of view of entrepreneurs?

[39] Glenn A Bowen, "Document Analysis as a Qualitative Research Method," *Qualitative Research Journal* 9, no. 2 (October 13, 2009): 27–40, https://doi.org/10.3316/QRJ0902027.

[40] D D Alem, "Review An Overview of Data Analysis and Interpretations in Research," *International Journal of Academic Research in Education and Review* 8, no. 1 (n.d.): 1–27, https://doi.org/10.14662/IJARER2020.015.

[41] "International Insolvency Institute," n.d., https://www.iiiglobal.org.

[42] D A Hakim and M Havez, "Politik Hukum Perlindungan Pekerja Migran Indonesia Dalam Perspektif Fikih Siyasah Dusturiyah," *Tanjungpura Law Journal, Universitas Tanjung Pura, Pontianak* 4, no. 2 (n.d.): 95–116, https://doi.org/10.26418/tlj.v4i2.41913.

4. What is the ideal and progressive legal framework for the definition of insolvency in Indonesian bankruptcy law from the point of view of entrepreneurs?

Therefore, this study aims to reconstruct Indonesian bankruptcy law, Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations[43], regarding the definition of insolvency from the point of view of entrepreneurs: a study of legal dogmatics. The following is the scope of discussion of this research, which consists of (1) The positive legal framework regarding the definition of insolvency in bankruptcy law the point of view of entrepreneurs and (2). The direct impact of the definition of insolvency in bankruptcy law from the point of view of entrepreneurs; (3). The application of a positive legal framework regarding the definition of insolvency in bankruptcy law from the point of view of entrepreneurs; and (4). The ideal and progressive legal framework regarding the definition of insolvency in bankruptcy from the point of view of entrepreneurs. Furthermore, this article ends with conclusions and suggestions as described in Figure 1 below as follows:

Figure 1. Reconstruction of Indonesian Bankruptcy Law Concerning the Definition of Insolvency from the Point of View of Entrepreneurs: A Study of Legal Dogmatics

3.1 The Positive Legal Framework on the Definition of Insolvency in Indonesian Bankruptcy Law From The Point of View of Entrepreneurs

In Indonesia, historically, bankruptcy law has undergone several amendments, including the issuance of *Faillissements-Verordening Staatsblad* 1905 Number 217 in conjunction with Staatsblad 1906 Number 348 (hereinafter referred to as *Faillissements-Verordening*), which was promulgated on November 1, 1906. Then, it was followed by the Government Regulation of the Republic of Indonesia instead of Law Number 1 of 1998 concerning Bankruptcy (Perppu 1/1998), which was subsequently stipulated as Law of the Republic of Indonesia Number 4 of 1998 concerning Bankruptcy (Law 4/1998). Since 2004, the prevailing regulation in Indonesian bankruptcy law is Law of the Republic of Indonesia Number 37

[43] O'Donnell, "The Quality of Democracy: Why the Rule of Law Matters."

of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK PKPU) (hereinafter abbreviated as Law 37/2004). Within the context of Indonesian bankruptcy law, insolvency, from a business perspective, refers to a condition where a debtor (businessperson) is unable to meet its debt payment obligations as they mature, potentially leading to bankruptcy. Although the Bankruptcy Law does not explicitly define insolvency, the concept is implied in various provisions, particularly those related to bankruptcy and Suspension of Debt Payment Obligations (PKPU). The positive legal framework and the business perspective include those described in Table 1 below:

Table 1: The Positive Legal Framework on Insolvency in Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Law 37/2004)

No	Provision	Article	Explanation
1.	Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Law 37/2004) *or Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang* or UUK PKPU (UU 37/2004) - Law 37/2004 is the main legal basis regarding bankruptcy and PKPU in Indonesia.	Article 1 of Law 37/2004	▪ The definition of bankruptcy refers to Article 1, number 1 of Law Number 37 of 2004. Bankruptcy is a general seizure of all assets of a bankrupt debtor whose management and administration are carried out by a curator under the supervision of a supervisory judge as regulated in the law. In bankruptcy, not only do the principle of paritas creditorium and the principle of pari passu prorate parte apply, but also the principle of debt collection and debt forgiveness. ▪ Bankruptcy is a general seizure of all assets of a bankrupt debtor, whose management is carried out by a curator under the supervision of a supervisory judge.
2	Definition of Bankruptcy and Its Legal Implications	Article 2 (1) Law 37/2004	▪ A debtor with two or more creditors who fails to pay at least one debt that is due and payable is declared bankrupt by a court decision, either at their request or at the request of one or more creditors. Law Number 37 of 2004 has further legal implications, such that the concept of bankruptcy and the suspension of debt payment obligations still fall far short of the three legal principles: legal certainty, legal expediency, and legal justice. This, particularly regarding the bankruptcy of a solvent and prospective company, clearly contradicts the principle of the company's recovery from financial difficulties. The principle of debt collection in modern bankruptcy law is manifested in the form of asset liquidation, which involves writing off the debtor's debts if the assets are insufficient, without consideration of the debtor's financial performance or the amount of assets exceeding the debts. The principle of debt forgiveness is realized through debt

cancellation and the possibility of starting a new business without the burden of old debts[44] .

- The PKPU process, which is based on the results of the debtor's peace plan for debt settlement, will have legal consequences if the creditors reject the peace plan. (Article 285 in conjunction with Article 286 in conjunction with Article 289 in conjunction with Article 291 in conjunction with Article 292 of Law No. 37 of 2004). The explanation of Article 292 of Law No. 37 of 2004 states that the decision to declare bankruptcy regarding the rejection of the peace plan results in the debtor in PKPU not being able to submit a peace plan again, and therefore, the debtor's bankruptcy assets are immediately in an insolvent state. The material requirements for bankruptcy in Article 2 paragraph (1) of Law No. 37 of 2004 can give rise to new problems regarding the creation of injustice in bankruptcy cases with solvent debtors[45] . The debtor's solvency must be analyzed and considered by the judge before deciding on a bankruptcy application. Consideration of a debtor's solvency is necessary to prevent bad faith from debtors who intentionally misuse the bankruptcy instruments stipulated in Law No. 37 of 2004[46] . A solvent debtor with good business prospects and the ability to repay debts will significantly harm creditors, including workers/laborers, if the debtor is ultimately declared bankrupt.

- In PKPU (Commission for Payment of Debt) and bankruptcy, creditors also have their respective positions. The creditor's position determines the nature of the claim and the priority order in which the debtor receives debt repayment (Simbolon & Sitorus, 2024). According to Simbolon & Sitorus (2024), in the PKPU process, the creditor's position also plays a crucial role in voting on the restructuring plan. Based on these regulations, debtors sentenced to PKPU or bankruptcy also have legal consequences for creditors' receivables. In essence, the intention and purpose of the legislators to revise Law Number 4 of 1998 is not to change the principles of bankruptcy in Law Number 37 of 2004 to be more comprehensive, but only as a replication of Law Number 4 of 1998. Law Number 37 of 2004 has further legal implications so that the concept of bankruptcy and suspension of debt payment obligations is still very far from the 3 (three) legal principles, namely legal certainty, legal benefit, and legal justice. Especially regarding the bankruptcy of companies that are still solvent and prospective, of course this is contrary to the principle of

[44] E Yuhassarie, *Pemikiran Kembali Hukum Kepailitan Indonesia* (Jakarta: Pusat Pengkajian Hukum, n.d.).

[45] M M Simbolon and Y F Yosef Felix Sitorus, "Ratio Legis of Bankruptcy and Suspension of Debt Payment Obligations in Fulfill the Creditor's Rights," *Jurnal Kajian Pembaruan Hukum* 4(1 (n.d.): 121–150, https://doi.org/10.19184/jkph.v4i1.46303.

[46] H, "Deconstructing Simple Evidence in Bankcruptcy Etition for Legal Certainty."

			the company's exit from financial difficulties (Simbolon & Sitorus, 2024).
3	Debt Payment Suspension (PKPU) - PKPU is an effort to provide debtors facing financial difficulties with the opportunity to develop a repayment plan for their debts to creditors. For entrepreneurs, PKPU can be a way to avoid bankruptcy by restructuring their debt.	Article 8 Law 37/2004 in conjunction with Article 222 in conjunction with Law 37/2004 in conjunction with Article 224 Law 37/2004 in conjunction with Article 225 Law 37/2004 in conjunction with Article 265 Law 37/2004 in conjunction with Article 293 Law 37/2004 in conjunction with Article 294 Law 37/2004	▪ Article 8: Regulates the requirements for filing for bankruptcy. ▪ Article 222: Regulates applications for Suspension of Debt Payment Obligations (PKPU). ▪ Article 224: Explains the procedures for filing a PKPU, including the parties entitled to file, the requirements, and the application procedure. ▪ Article 225: Regulates the duration of temporary and permanent PKPU. ▪ Article 265: Explains the debtor's right to offer a reconciliation proposal to creditors, both at the time of filing a PKPU application and afterwards. ▪ Article 293: Regulates the legal consequences of a reconciliation proposal ratified in a PKPU. ▪ Article 294: Explains the termination of a PKPU after the reconciliation proposal is ratified.
4	The implied definition of insolvency is found in the elucidation of Article 57, paragraph (1) of Law 37/2004, which refers to the state of being unable to pay. The explanation regarding insolvency is then linked and limited to the circumstances mentioned in Article 57, paragraph (1) in conjunction with Article 178, paragraph (1).	Article 57 paragraph (1) in conjunction with Article 178 paragraph (1)	▪ Law 37/2004, namely the state of inability to pay. The explanation of insolvency is then linked and limited to the conditions referred to in Article 178 paragraph (1) of Law 37/2004, namely, if in the receivables verification meeting no reconciliation plan is offered, the reconciliation plan offered is not accepted, or the ratification of the reconciliation is rejected based on a decision that has obtained permanent legal force, by law the bankrupt estate is in a state of insolvency. ▪ Referring to Article 57, paragraph (1), the definition of insolvency is implied. This means that there is no explicit definition; the concept of insolvency is closely related to bankruptcy when a businessman is unable to fulfil his debt payment obligations, and this indicates a state of insolvency, which can lead to a bankruptcy petition.

Source: Law of the Republic of Indonesia Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, along with several other sources (processed)

Referring to Table 1 above, it can be interpreted that in general, Law 37/2004 adopts the concept of insolvency based on the inability to pay debts, but in practice, a declaration of bankruptcy can be decided based on the

presumption of insolvency. This means that a debtor declared bankrupt is not necessarily truly insolvent. However, the challenge in implementing the positive legal framework on insolvency in the Republic of Indonesia Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, or UUK PKPU (Law 37/2004), related to proving insolvency, is that it is not easy to prove with certainty whether the debtor is truly insolvent or simply experiencing liquidity difficulties. Therefore, a recovery mechanism is needed for insolvent debtors, which is not yet optimal in Law 37/2004. For example, the application of the single peace principle in Articles 289 and 292 of Law 37/2004 may prevent a debtor from submitting a second peace plan after the first plan is rejected. Law 37/2004 stipulates that a debtor declared bankrupt may submit a proposal for a peaceful debt settlement (composition plan) to all of its creditors. However, if the proposal is rejected, or if the debtor does not submit a proposal at all, then the debtor is declared definitively insolvent.

Subhan (2008a) states that Indonesian bankruptcy law, Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Law 37/2004), regarding the definition of insolvency from the perspective of entrepreneurs, adopts the concept of insolvency as a presumption of insolvency. In this case, the debtor is declared bankrupt based on suspicion and not necessarily because the entrepreneur is unable to pay their debts. In other words, it is not because the entrepreneur is unable, so the definition of insolvency in Indonesian bankruptcy law has several weaknesses in the application of the concept of insolvency, especially in terms of proving and recovering insolvent debtors[47]. Related to this, Rajagukguk (2001) highlights the lack of an effective mechanism to distinguish between truly insolvent debtors and debtors who are only experiencing temporary liquidity difficulties. Therefore, when financially still capable, a debtor who has been declared bankrupt - based on Article 144 of Law 37/2004 - has the right to submit a proposal for a peaceful debt settlement (composition plan) to all of his creditors, either through cash settlement or through a debt rescheduling scheme or a debt restructuring scheme. However, if he does not submit a proposal for a peaceful debt settlement, or the proposed peace proposal is rejected by the majority of his

[47] *Rajagukguk,E..(2001). Penyelesaian Utang Piutang* (Bandung: PT. Alumni, n.d.).

creditors, then the bankrupt debtor is declared insolvent based on Article 178 of Law 37/2004.

Therefore, Law 37/2004 is expected to better accommodate efforts to recover insolvent debtors, particularly through a composition scheme or debt restructuring, further emphasizing the importance of rehabilitating insolvent corporate debtors in this law. The main objective of this amendment is to create a conducive legal environment for debtor recovery, especially corporate debtors, so as to reduce the negative impact of bankruptcy and provide a second chance to operate again. Therefore, it is hoped that there will be changes to the Law of the Republic of Indonesia No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, or the PKPU Law (Law 37/2004), to focus more on efforts to recover insolvent debtors, especially through peace and debt restructuring schemes, and emphasize the rehabilitation of insolvent corporate debtors, including:

1. Debt Settlement and Restructuring—Law 37/2004, particularly regarding the PKPU (Suspended Debt Suspension), needs to be strengthened with a more effective mechanism to facilitate debt settlement and restructuring between debtors and creditors. This aims to provide debtors, especially corporations, with the opportunity to recover from financial difficulties and resume business activities, rather than simply ending up in liquidation.
2. Corporate Debtor Rehabilitation—The law needs to better accommodate rehabilitation efforts for insolvent corporate debtors, taking into account the social and economic impacts of a company's bankruptcy. This includes providing debtors with the opportunity to submit more flexible and realistic composition plans and providing support during the recovery process.
3. Single Composition Principle—Law 37/2004 adheres to the single composition principle, meaning a debtor can only submit one composition plan during the bankruptcy process. Proposed amendments should consider whether this principle remains relevant or needs to be modified to provide a second opportunity for debtors who fail their first offer, particularly in the context of corporations with broad economic impacts.
4. Legal Consequences—Further explanation of the legal consequences of rejecting a reconciliation plan, as well as a clear

mechanism for declaring a debtor bankrupt following rejection, is necessary. This is important to provide legal certainty for all parties involved in the bankruptcy and PKPU process.

Referring to the provisions contained in Law 37/2004, it can be interpreted that the definition of insolvency in the context of Indonesian bankruptcy law is not explicitly defined as in the Explanation of Article 57 paragraph (1) of Law 37/2004, namely the state of being unable to pay. The explanation of insolvency is then linked and limited to the conditions referred to in Article 178 paragraph (1) of Law 37/2004, namely, if at the receivables verification meeting no reconciliation plan is offered, the offered reconciliation plan is not accepted, or the ratification of the reconciliation is rejected based on a decision that has obtained permanent legal force, by law the bankrupt estate is in a state of insolvency. Therefore, the essence of the problem of the application of Indonesian bankruptcy law that arises regarding the definition of insolvency from the perspective of entrepreneurs as a dogmatic legal study is the existence of a debt relationship phenomenon between debtors and creditors, which includes a very simple bankruptcy filing process, bankruptcy decisions that often use similar legal considerations, and the application of bankruptcy tests that is in a legal vacuum as described in Figure 2 below:

Figure 2. Problems in the Application of Indonesian Bankruptcy Law Regarding the Definition of Insolvency from the Point of View Entrepreneurs Entrepreneurs : A Study of Legal Dogmatics

Referring to Figure 2, it can be understood that the essence of the problem in the application of Indonesian bankruptcy law that arises regarding the definition of insolvency from the point of view of entrepreneurs is a study of legal dogmatics as follows:

1. The very simple bankruptcy filing process in Indonesian Bankruptcy Law - regulated by Article 2 paragraph (1) of Law 37/2004, which stipulates two filing requirements: First, there must be a debt that is due and cannot be paid; and second, there must be at least two creditors. Then, Article 8 paragraph (4) of Law 37/2004 mandates that a bankruptcy filing must be granted if there are facts that can be directly proven, as described in Article 2 paragraph (1) of Law No. 37/2004. Referring to these two articles, it can be understood that the requirements for filing for bankruptcy in Indonesia tend to be very easy. The impact of the ease of the bankruptcy filing process in Indonesia on debtors who are solvent and act in good faith but are involved in bankruptcy disputes with creditors. The implications of Article 2 paragraph (1) of Law 37/2004 and Article 8 paragraph (4) of 37/2004 are likely to have negative potential for the continuity of the company's business and third parties, including consumers and workers. Although Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower or *Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan* (Law 13/2003) in conjunction with Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law or *Undang-Undang Republik Indonesia Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja Menjadi Undang-Undang* (Law 6/2023) follows Decision of the Constitutional Court of the Republic of Indonesia Number 168/PUU-XXI/2023 or *Putusan Mahkamah Konstitusi Republik Indonesia Nomor 168/PUU-XXI/2023*, which mandates priority of workers' wages in the event of company bankruptcy, the livelihoods of these workers remain threatened. Furthermore, these two articles will have a macro impact on national economic growth and also have the potential to deter investors from investing.
2. Bankruptcy decisions in Indonesia - Courts often use similar legal considerations, Article 2 paragraph (1) of Law 37/2004 as the primary legal basis in assessing a bankruptcy petition. For

example: (1). The court will assess whether the debtor has more than one creditor and whether there are debts that are due and collectable based on Article 2 paragraph (1) of Law 37/2004. This article states that a debtor who has two or more creditors and does not pay in full at least one debt that has matured and can be collected can be declared bankrupt by the court; (2) in addition to debts that are due, the court will assess whether the debtor is in a state of bankruptcy, which is generally defined as being unable to pay his debts that are due. The court will assess the debtor's state of bankruptcy, in addition to debts that are due, based on the provisions in Article 2 paragraph (1) of Law 37/2004. This article states that a debtor who has two or more creditors and does not pay in full at least one debt that has matured and can be collected can be declared bankrupt by the Commercial Court.; (3). The bankruptcy decision by the Court is effective immediately and can be implemented first even though there are legal remedies such as cassation, as regulated in Article 10 paragraph (2) of Law 37/2004; and (4). Privileges of Secured Creditors: Indonesian bankruptcy law (Law 37/2004) provides privileges to creditors who have collateral (such as mortgages or pledges) in the process of managing the assets of bankrupt debtors (regulated in several articles, but specifically related to payments from the sale of collateralized assets, Article 189 paragraph (4) of Law 37/2004 and Article 56 of Law 37/2004 are the main references);

3. Implementation of the Bankruptcy Test - To date, the application of the bankruptcy test has been in a legal vacuum (leemten in het recht), but several court decisions have used similar legal considerations in bankruptcy proceedings. The current Indonesian bankruptcy system does not require an insolvency test before filing a bankruptcy petition, often favoring creditors without thoroughly considering the debtor's circumstances. There is no official bankruptcy test instrument explicitly recognized and implemented in Indonesia to measure a debtor's solvency before a bankruptcy petition is filed with the commercial court. Generally, the insolvency test is known as the balance sheet test and the cash flow test. These two instruments are used to assess whether a debtor is

truly unable to pay its debts, both in terms of assets compared to liabilities and in terms of cash flow generation. Therefore, bankruptcy law in Indonesia needs to be updated to include and implement the insolvency test as one of the requirements for filing a bankruptcy petition. Both insolvency test instruments are crucial for supporting the principle of business continuity and ensuring that only truly insolvent debtors are declared bankrupt. Therefore, the implementation of the insolvency test is expected to create a more balanced bankruptcy system in Indonesia, not only favoring creditors but also protecting debtors from potential abuse of bankruptcy petitions.

Based on the previous explanations, the positive legal framework regarding the definition of insolvency in Indonesian Bankruptcy Law can be interpreted as a legal provision that provides a debt resolution mechanism and potentially enables business recovery. However, Indonesian bankruptcy law presents challenges and uncertainties for entrepreneurs undergoing the process. However, the simple definition and procedures of Indonesian bankruptcy law have the potential to harm entrepreneurs. Therefore, insolvency principles are needed to help debtors avoid bankruptcy, because the system applicable in Indonesian bankruptcy law currently often creates conflicting norms when compared to the internationally recognized reorganization and rehabilitation framework. For example, Special Issue Preventive Restructuring 18: Navigating uncharted waters: The implementation of the EU Directive on Preventive Restructuring Frameworks in Luxembourg, the Business Preservation Law (BPL), adopted in August 2023, is modernizing the Luxembourg insolvency framework[48]. According to Lupinu (2025), the BPL has been aligned with Directive (EU) 2019/1023 as an insolvency and restructuring regime, including the following: (1) The BPL introduces provisions for a more streamlined and efficient insolvency regime; (2) the BPL ensures greater protection for creditors and stakeholders while promoting the rehabilitation of viable businesses where insolvency law is applicable; and (3) the BPL was established based on domestic needs and international influence to maintain a strong and effective insolvency system,

[48] P M Lupinu, "Special Issue Preventive Restructurung 18 : Navigating Uncharted Waters: The Implementation of the EU Directive on Preventive Restructuring Frameworks in Luxembourg," n.d., https://www.online-hero.nl/.

as well as to support economic stability and growth in times of geopolitical tension and increasing competitiveness.

Thus, the positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law from the perspective of entrepreneurs is limited to the state of inability to pay. An entrepreneur, as a debtor, can be declared bankrupt by the court if the debtor has at least two creditors and at least one debt is due and collectable. However, in the context of bankruptcy, it is not necessarily the case that the debtor's assets are insufficient to pay all of their debts. A debtor is said to be insolvent if the debtor is unable to pay off all of his debts to all of his creditors and the amount of the debtor's debt exceeds his entire assets[49]. Therefore, Indonesian bankruptcy law is expected to protect both creditors and debtors, offering a path for creditors to collect debts while also allowing debtors to restructure (Debt Payment Suspension or PKPU), where debtors can negotiate with creditors for a more manageable payment plan. So that entrepreneurs as debtors can recover from financial difficulties. In other words, Indonesian bankruptcy law is expected to balance these conflicting interests, recognizing that creditors have the right to be repaid but also recognizing that debtors may face real financial difficulties. Next, Indonesian bankruptcy law is expected to provide a mechanism to manage both sides of this equation, to achieve a fair and efficient resolution of financial difficulties by adopting Special Issue Preventive Restructuring 18: Navigating uncharted waters: The implementation of the EU Directive on Preventive Restructuring Frameworks in Luxembourg.

3.2 The Direct Impact of the Definition of Insolvency in Indonesian Bankruptcy Law on Entrepreneurs

Bankruptcy law offers an orderly reorganization or liquidation mechanism, ensures an automatic stay of creditor action, and facilitates debt resolution while preserving economic value and jobs[50]. Regarding financial restructuring and business continuity, bankruptcy law provides a legal

[49] S R Sjahdeini, *Sejarah, Asas, Dan Teori Hukum Kepailitan: Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, Edisis Ke 2* (Jakarta: Prenadamedia Group, n.d.).

[50] O K Akinsola and F Farinu Hamzah, "Legal Mechanisms for Corporate Restructuring: Understanding the Legal Landscape of Mergers," in *Acquisitions, and Bankruptcy Proceedings*, n.d., 1–21, https://www.researchgate.net/.

pathway for companies facing financial difficulties to restructure their debt and operations, allowing viable businesses to continue operating and potentially recover, thus preserving jobs and economic assets[51]. Meanwhile, to balance the interests of debtors, creditors, and stakeholders, this law aims to create a fair and equitable process by balancing the diverse interests of debtors, creditors, employees, and shareholders, ensuring that solutions are reached in a structured and predictable manner (International Bank for Reconstruction and Development/The World Bank, 2021). According to Méjan (2020), corporate bankruptcy law serves to promote economic stability and recovery, prevent a series of failures for affected businesses, maintain confidence in financial markets, and encourage investment by providing a mechanism to address financial crises and facilitate economic recovery.

One crucial phase in the bankruptcy process from a business perspective is the insolvency phase, when the business owner, as the debtor, is no longer able to pay their debts. This insolvency phase is crucial because it is during this phase that the fate of the bankrupt debtor is determined: whether the debtor's assets will be fully divided to repay the debts, or whether they can be resolved through a debt restructuring plan. If the debtor has been declared bankrupt, they are truly bankrupt, and their assets will be immediately distributed. However, this does not mean that the bankrupt company's business cannot continue. The insolvency phase is crucial because it is during this phase that the fate of the bankrupt debtor is determined. Whether the debtor's assets will be liquidated to cover their debts or whether the debtor can continue their business with the acceptance of a debt restructuring plan. If a debtor is bankrupt, then the debtor is effectively in bankruptcy, and its assets will be liquidated, although this does not mean that the bankrupt company's activities cannot continue. The conditions for debtor bankruptcy regulated in the bankruptcy law are very important, but the conditions regulated in the bankruptcy law are very general and not specifically regulated, so that debtors who are unable to pay their debts will most likely be declared bankrupt by the court. Bankrupting a debtor easily will have an impact on the economic system and the business world in the future. Bankruptcy provisions according to the Indonesian Bankruptcy Law,

[51] F Alarifi, "The Bankruptcy Law of Saudi Arabia: Policy, Operation and Comparison," *SSRN* 1–36 (n.d.), https://doi.org/10.2139/ssrn.3773956.

namely Law Number 37 of 2004 concerning Bankruptcy and PKPU, are regulated in Article 2 paragraph (1). Based on Article 2 paragraph (1), the UUK-PKPU states: "A debtor who has two or more creditors and does not pay at least one debt that has matured and can be collected is declared bankrupt based on a decision of the competent court as referred to in Article 2, either at his request or at the request of one or more of his creditors."

In the Indonesian context, a Limited Liability Company or *Perseroan Terbatas* (PT) is a crucial legal entity that plays a vital role in the national economy. A PT serves as a widely adopted business structure, representing a capital association with legal status, and offers a comprehensive business model for entrepreneurs and business owners. To obtain legal entity status, a sole proprietorship must establish a legal entity such as a Limited Liability Company (PT), which requires a minimum of two shareholders as stipulated in Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (the Company Law). Essentially, a PT is a vital legal structure that underpins much of Indonesia's business landscape, offering a framework for economic activity as well as a mechanism for legal protection and growth. If a limited liability company experiences problems, its role will impact the country's economy. These problems hinder the company's continued operations. The inability of a business to continue operating will have far-reaching consequences, such as the ability to repay business debts, the ability to generate profits (which are the foundation of sustainable business activities), and the ability to support the company's survival. (Ellias & Stark, 2020) (Tung, 2020), According to experts in Lartey (2024), bankruptcy is as follows:

a. Bankruptcy is a sign of financial distress, representing an extreme case of inability to meet obligations as they fall due or to pay or continue to pay business operating expenses;
b. Bankruptcy can generate several important signals and impacts, as it is an economic and social issue that has the potential to affect not only individuals but also businesses. In an economic context, bankruptcies periodically disrupt national economies, disrupt industries, and impact stock markets; and
c. Bankruptcy can lead to the following consequences: lost productivity, accumulation of downtime, and unacceptable ongoing product reductions; premature loss of workers, with

potential pre-charged labor costs; loss of market value, caused by factory scheduling restructuring or, in the case of a major bankruptcy, investment postponement; and testing a company's ability to respond as a going concern.Dalam konteks Indonesia,

Furthermore, the common causes and triggers that lead to business bankruptcy are not spontaneous conditions, nor the result of a single action, but rather the combination of several factors that contribute to business bankruptcy[52]. According to Lartey (2024), the insolvency of an entrepreneur or company is determined by several factors, including:

a. The accumulation of various causes, all of which impact the debtor and culminate in financial distress. The collective nomenclature for these contributing factors encompasses a variety of obstacles and conditions, occurring at both the personal and external levels. Individuals declare bankruptcy because they cannot manage their debt payments or access debt relief. On the other hand, companies file for bankruptcy to obtain tax benefits, restructure their debt, or liquidate their assets. Although the personal experience of bankruptcy is problematically linked to the dual perspectives of stigma and victimhood, its structure allows for an objective disposition of discontinuity. However, studies reveal that financial stress can result from job loss and reduced work hours, high medical expenses and reduced health insurance coverage, inefficient budget planning, and recurring operating losses. Generally, individual debtors file for bankruptcy when they cannot cover their living expenses with their current income. This outcome appears similar to commercial bankruptcy. A business goes bankrupt when net operating income is insufficient to cover payments to its liability holders, let alone provide a return to the owners.
b. Global or national economic uncertainty can be a trigger for bankruptcy filings, with individuals who are more likely to file for bankruptcy exhibiting higher levels of anxiety. Over 90 percent of business bankruptcies result from one or more of a set of seven

[52] S Lartey, "Exploring the Impacts of Bankruptcy on Individuals and Businesses: A Comprehensive Analysis of Budgeting Strategies," n.d., https://www.researchgate.net/.

universal phenomena. Of these phenomena, the triggers are most focused on cash flow and economic clusters affecting specific industries, such as recessions and locally determined economic downturns. Global or national economic uncertainty is a recurring theme that can lead to financial distress or corporate insolvency. Avoiding or taking swift action when detected early is a crucial strategy to combat the consequences of bankruptcy[53].

Meanwhile, Grybinenko (2017) stated that corporate bankruptcy can occur due to several causal factors, including (1). The existence of violations of financial stability, decline in business activity, large debt, low liquidity assets, and others; (2). The existence of socio-economic consequences of corporate bankruptcy is a decrease in GDP, a decrease in industrial and other products, a reduced supply of goods and services in the market, and decreased innovation and capital investment. Then, the relationship between bankruptcy and socio-economic development indicators is quite close, which shows that domestic companies need important curative measures, corporate financial rehabilitation measures, and simplification of the tax regime for small and medium enterprises. (2). The existence of the impact of corporate bankruptcy on the overall economic development of the country is scientific and reasonable, which can occur due to the existence of external and internal factors related to the business subject, factors that influence its activities so that the company is declared bankrupt; and (3). The main types of bankruptcy inherent in national companies in general are fictitious bankruptcy, deliberate bankruptcy, technical failure, and real bankruptcy. In recent years, fictitious bankruptcies have most commonly occurred in companies' production assets that function as cost centers. Meanwhile, actual bankruptcies have occurred in small and medium-sized enterprises; it has been found that the socio-economic consequences of bankruptcy are significant overall[54].

Bankruptcy has significant impacts, including loss of control over the company, potential asset liquidation, and a tarnished reputation. According to

[53] R Yao and J J Xiao, "Financial Capability and Informal Bankruptcy: Comparing Student Loan Holders and Non-Holders," *International Journal of Bank Marketing* 41, no. 1 (n.d.): 34–511, https://doi.org/10.1108/IJBM-05-2022-0207.

[54] O Grybinenko, "Social and Economic Consequences of Bankrupcy of The Companies in Ukraine," *EUREKA: Social and Humanities* 2 (n.d.): 3–10, https://doi.org/10.21303/2504-5571.2017.00298.

Law 37/2004, several provisions govern the role of entrepreneurs in facing insolvency as a preventative measure, as follows:

a. Entrepreneurs need to be proactive in managing company finances to avoid insolvency;
b. Debt Restructuring: In situations of insolvency, entrepreneurs can apply for a PKPU (Debt Suspension) to restructure debt and find the best solution;
c. Negotiation with Creditors: It is crucial for entrepreneurs to communicate and negotiate with creditors to reach an agreement regarding debt repayment; and
d. Fair Settlement: Entrepreneurs must ensure that the bankruptcy or PKPU process is carried out fairly and transparently, in accordance with legal provisions.

According to Robert et al. (2021), ideally the provisions governing criminal acts of bankruptcy are regulated in Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Law 37/2004). As in Law 37/2004 related to the provisions of Indonesian Bankruptcy Law, regarding the criminal act of bankruptcy, it is regulated in the new Indonesian Criminal Procedure Code or *Kitab Undang-Undang Hukum Acara Pidana* (KUHAP), Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (Law 1/2026), which will come into effect on January 2, 2026. The provisions of Indonesian bankruptcy law, including the criminal act of bankruptcy, are not fully regulated in Law 1/2026 or the new KUHAP but are mainly regulated in Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Law 37/2004); however, there is a connection with the new KUHAP. In this case, Law 37/2004 is the main law that regulates bankruptcy and suspension of debt payment obligations (PKPU) in Indonesia. This law regulates various aspects, from bankruptcy requirements, the filing process, and the management of bankrupt assets by the curator to bankruptcy-related actions. For example, there is a link between Law 37/2004 and the new Criminal Procedure Code. Article 39, paragraph (2), of Law 1/2026, or the new Criminal Procedure Code, states that objects seized due to civil or bankruptcy cases can also be seized for the purposes of investigation, prosecution, and criminal trials, indicating a link between general bankruptcy seizures and criminal seizures. However, the Indonesian Criminal Procedure

Code is outdated due to the modus operandi charged against entrepreneurs in every bankruptcy case[55].

Based on the previous explanations, it can be concluded that the direct impact of the definition of insolvency in Indonesian bankruptcy law on entrepreneurs is that it allows them to be declared bankrupt and undergo legal procedures. Bankruptcy can significantly disrupt or halt business operations, particularly if the receiver deems it necessary to liquidate assets crucial to the continuity of business activities. Specifically, an entrepreneur is considered bankrupt under Indonesian law when they are unable to meet their financial obligations, specifically when they have two or more creditors and are unable to pay any debts that are due and payable. The definition of insolvency directly triggers the initiation of bankruptcy proceedings. This definition triggers a series of legal actions, including the potential appointment of a receiver (similar to an administrator) to manage the entrepreneur's assets and the possibility of liquidation if a solution such as a debt restructuring (PKPU) is not achieved. If the debt restructuring plan (PKPU) is not approved or cannot be implemented, the bankruptcy process can result in the liquidation of the entrepreneur's assets to satisfy creditors. If a business owner is unable to pay debts as they fall due, creditors may file for bankruptcy, leading to the involvement of the commercial court and the potential appointment of a receiver. The receiver plays a crucial role in managing the bankrupt estate, with the aim of maximizing asset recovery for creditors. Once declared bankrupt, the business owner loses control of their assets, which are then managed by the receiver (boedel pailit). The Indonesian Bankruptcy Law, specifically Article 24 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law), stipulates that bankrupt debtors lose the right to manage and control their assets included in the bankruptcy estate from the date the bankruptcy declaration decision is pronounced. This means that the debtor no longer has the authority to manage or use their assets for any purpose, except as permitted by the receiver and the court. In other words, the business owner no longer has the authority to manage or use their assets for any purpose, except as permitted by the receiver and the court.

[55] Robert, Rosa, and Nasution, "Punishing The Bankruptcy Fraudsters: What Can Indonesia Learn from United States of America?"

Thus, the definition of insolvency in Indonesian bankruptcy law significantly impacts entrepreneurs by outlining the conditions under which they may be declared bankrupt and the subsequent legal procedures they must follow. When an entrepreneur is declared bankrupt and legal procedures are undertaken, it can significantly negatively impact their reputation, potentially impacting future business opportunities and access to credit. This definition emphasizes the inability to meet financial obligations as a key factor in determining bankruptcy, rather than simply a lack of assets. Even after bankruptcy proceedings are completed, outstanding debts may still need to be repaid, and creditors retain the right to demand repayment. While the Debt Suspension of Payment (PKPU) process provides an opportunity for debt restructuring and potentially avoids bankruptcy, the PKPU process requires the satisfaction of all creditors and can be a complex process. In the PKPU process, the debtor must submit a composition plan acceptable to all creditors, both preferred and concurrent creditors. The Debt Payment Suspension (PKPU) process involves various stages, such as filing an application, appointing an administrator, court hearings, drafting a restructuring plan, and implementing the plan. Therefore, the application of a positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law from the perspective of entrepreneurs is expected to also regulate cross-border bankruptcy, not only focusing on the territorial principle but also adopting the concept of international bankruptcy jurisdiction involving navigating the complexities of different legal systems, balancing competing interests between creditors and debtors, and promoting cooperation to achieve a fair and efficient resolution of cross-border bankruptcy cases. For example, bankruptcy jurisdictions are practiced in various countries, such as Special Issue Preventive Restructuring 18: Navigating uncharted waters: The implementation of the EU Directive on Preventive Restructuring Frameworks in Luxembourg. In essence, this bankruptcy jurisdiction contains provisions related to the uncertainty arising from the maximum duration of the suspension or unilateral suspension of contractual obligations by the debtor and ensures that creditors' rights are fully protected[56]. Unlike Indonesian bankruptcy law, there is potential uncertainty arising from the duration of the

[56] Lupinu, "Special Issue Preventive Restructurung 18 : Navigating Uncharted Waters: The Implementation of the EU Directive on Preventive Restructuring Frameworks in Luxembourg."

suspension; it does not have stricter limits on the extension of the PKPU period or a faster resolution mechanism.

3.3 Implementation of a Positive Legal Framework on the Definition of Insolvency in Indonesian Bankruptcy Law From The Point of View of Entrepreneurs

Indonesia is a state of law (*rechtsstaa*t) and not a state solely based on power (machtstaat). As stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a state of law. The Indonesian state of law is a state of law based on the values of Pancasila, which is the philosophy and foundation of the state. As the foundation of the state, Pancasila, which reflects the soul of the Indonesian nation, should be the source of law for all existing legal regulations. Pancasila, in its position as the source of all sources of law or the source of national basic law, makes Pancasila the benchmark for assessing the laws applicable in Indonesia. The laws made and applied in Indonesia must reflect an awareness and sense of justice by the values of Pancasila. Law in Indonesia must guarantee and embody, and must not conflict with, the values embodied in the formulation of Pancasila, as stated in the preamble to the 1945 Constitution and its interpretation within the Constitution[57]. Therefore, when a case arises involving social, cultural, economic, educational, religious, or political dimensions, the existence of law will inevitably be questioned and even challenged by the public, especially when the law is deemed or evaluated to have failed to fulfill its sacred mission.

In general, the sacred mission of law can be interpreted as upholding justice, promoting equality, and protecting human rights. When laws are perceived to actively violate these principles, it creates a crisis of legitimacy and a strong push for change. For example: (1). Laws perceived to be overly punitive or disproportionate can trigger public outrage and calls for reform; (2). Laws that disproportionately affect certain groups can lead to accusations of systemic bias and calls for equality before the law. (3). Laws perceived to be ineffective in combating crime or social problems: This can lead to demands for more effective solutions; and (4). Laws can lead to social unrest, protests, and ultimately, legal and political reform. These are important

[57] S Usman, *Pokok-Pokok Filsafat Hukum* (Serang, Banten: Suhud Sentrautama, n.d.).

mechanisms for ensuring that laws remain relevant and fair over time. The implication of laws perceived to actively violate the principles of justice, promoting equality, and protecting human rights is that society will question and challenge the law, and it is a natural consequence of the legal system failing to carry out its sacred mission, for example, corporate bankruptcy law. According to Celestin & Vedaste (2024), corporate insolvency law plays a crucial role in determining the financial health and sustainability of businesses worldwide, and historically, the corporate insolvency framework has evolved to balance the interests of debtors, creditors, and stakeholders.

Bankruptcy is a phenomenon that has a significant impact on a country's economy. When a company is declared bankrupt, it affects not only the company itself but also various aspects of the surrounding economy. Bankruptcy is a legal process designed to help individuals and businesses resolve their debts under the protection of a bankruptcy court. When you file for bankruptcy, you are essentially seeking a fresh start, free from the burden of burdensome debt[58]. Meanwhile, insolvency and bankruptcy apply to individuals and partnerships[59]. According to Onakoya & Olotu (2017), liquidation applies to companies and is the process of dissolving a company due to its inability to meet its obligations on time. A legal entity that is unable to pay its creditors is said to be bankrupt, and as a result, its assets can be seized to settle its debts (Onakoya, Olotu, 2017). According to Lee et al. (2007), a lenient and pro-entrepreneurial bankruptcy law is needed to encourage entrepreneurs to take risks and thus allow entrepreneurship to flourish. Components of a pro-entrepreneurial bankruptcy law are (1) availability of reorganization bankruptcy options, (2) time spent on bankruptcy procedures, (3) costs of bankruptcy procedures, (4) opportunity to restart liquidation bankruptcy, (5) opportunity to obtain automatic asset suspension, (6) opportunity for managers to continue working after filing for bankruptcy, and (7) protection of creditors during bankruptcy. The legal system in bankruptcy law is expected to be able to resolve debtors' debts to creditors through bankruptcy law. Indonesian bankruptcy law, Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, or UUK PKPU (Law 37/2004), in

[58] Firm, "Understanding Bankruptcy as a Legal Safety Net."
[59] Onakoya and Olotu, "Bankruptcy and Insolvency: An Exploration of Relevant Theories."

principle contains various provisions, which include bankruptcy requirements, filing procedures, legal consequences, and the principles of bankruptcy law (such as the Balance Principle: Maintaining a balance between the interests of debtors and creditors; the Business Continuity Principle: Providing opportunities for prospective debtor companies to continue operating; the Justice Principle: Ensuring fair treatment for all creditors; Integration Principle: Bankruptcy law is an integral part of the civil law system and civil procedural law, in comparison with other systems (Indonesian bankruptcy law adheres to a civil law system, which is different from the bankruptcy law system in common law countries such as Europe, the United States, and other countries), and the existence of legal remedies (legal remedies available in bankruptcy are cassation and judicial review.) Although it has been regulated through various provisions, in practice, there are still obstacles, including a lack of funds for the management and settlement of bankrupt assets[60]. According to Basri et al. (2024), bankruptcy law in Indonesia has not yet demonstrated a unified and comprehensive legal system that can guarantee the implementation of excellent bankruptcy management, including:

a. From a legal perspective, bankruptcy law encompasses the provisions governing the distribution of the bankruptcy estate (the assets of an individual or entity declared bankrupt after the Commercial Court has declared the debtor bankrupt). The bankruptcy estate is diverse, encompassing elements from the general Criminal Procedure Code (KUHAP) and the Civil Code, bankruptcy law, the suspension of debt payments, and various subordinate regulations, sometimes even based on policy elements; and
b. The implementation of several legal provisions as positive bankruptcy law, particularly those governing the distribution of bankruptcy assets to creditors, has resulted in difficulties for the curator in managing and settling the bankruptcy estate. This is addressed by the curator providing loans to creditors or the debtor's family. The bankrupt debtor is uncooperative. This can be

[60] H Basri et al., "Bankruptcy Legal System Reform in Settlement of Debtors' Debt According to the Bankruptcy Law," *Nagari Law Review* 7, no. 3 (n.d.): 567–577, https://doi.org/10.25077/nalrev.v.7.i.3.p.567-577.2024.

addressed by coordinating directly or by letter with the relevant agencies/institutions regarding the bankrupt debtor's assets and taking decisive action, such as requesting the judge to detain the debtor. Bankrupt debtors sell/hide their assets before being declared bankrupt. The solution is to report the matter to the police and file a lawsuit. Depending on the good faith of the parties, the bankruptcy process will quickly and efficiently resolve the debtor's obligations to creditors (Basri et al., 2024).

Furthermore, the application of the positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law from the perspective of entrepreneurs: a study of legal dogma can be described as follows:

Table 2. Application of the Positive Legal Framework Regarding the Definition of Insolvency in Indonesian Bankruptcy Law From The Point of View of Entrepreneurs : A Study of Legal Dogmatics

No	The Application of a Positive Legal Framework Regarding the Definition of Insolvency in Indonesian Bankruptcy Law From The Point of View of Entrepreneurs:A Study of Legal Dogmatics	Explanation
1	Lack of Responsive Laws	▪ According to Husendro (2024), this framework fails to address the evolving needs and aspirations of businesses. In particular, Law of the Republic of Indonesia Number 4 of 1998 concerning Amendments to the Bankruptcy Law (Law 4/1988), as amended by Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Law 37/2004), has proven to be an unresponsive legal system. This is evident in its inability to effectively accommodate the needs of the business world and its ineffectiveness in resolving related issues. ▪ A clear reflection of this unresponsiveness is found in Article 2, Paragraph (1) of Law No. 37/2004. This provision specifically omits a detailed definition of the ratio between a debtor's assets and their total debts that have matured. Crucially, this provision also fails to establish insolvency as a prerequisite for declaring a debtor bankrupt. This omission creates a bias in Indonesian bankruptcy law, primarily protecting the interests of creditors seeking immediate access to all of a

		debtor's assets. Consequently, it excludes opportunities for debtors who, while solvent, are experiencing temporary financial difficulties. These debtors may be able to continue their business but are instead declared bankrupt, with the management of their assets then handed over to a receiver. In common law jurisdictions, bankruptcy proceedings often rely on an insolvency test to determine a debtor's financial condition.
2	There are no standards, guidelines, or references regarding the formulation of peace plans based on Law 37/2004.	▪ According to Heriani (2021), bankruptcy and suspension of debt payments (PKPU) are legal situations in which a debtor, who owes debts to two or more creditors, one of whose debts is due and payable, is declared bankrupt or PKPU by the Commercial Court upon the request of the creditor or the debtor themselves. However, the PKPU and bankruptcy processes involve several stages before a debtor is released from bankruptcy/PKPU proceedings or is settled by a receiver. One of these processes is the discussion of a reconciliation proposal to maintain the company's continuity. ▪ The peace plan, or what is often known as a peace proposal, is not regulated clearly and in detail either in Chapter 2 of Law 37/2004 concerning bankruptcy or in Chapter 3 of Law 37/2004 concerning PKPU. There are no standard rules, guidelines, or references regarding the formulation of a peace plan based on Law 37/2004, which regulates the preparation of a peace proposal. However, usually the peace proposal submitted must be detailed and open to convince creditors that the debtor is serious about resolving their debt[61] . This view is in line with Foo & Lim & Silalahi (2022), who stated that there are no standards, guidelines, or references regarding the formulation of a peace plan based on the Indonesian Bankruptcy Law.
3	There are no reliable public records regarding financial information relating to the entity as a private company.	• According to the International Insolvency Institute (n.d.), Indonesian bankruptcy law, primarily regulated by Law No. 37 of 2004, does not explicitly address the lack of transparency regarding private company financial information, creating gaps in creditor protection. Creditors may have difficulty verifying a debtor's assets, liabilities, and overall financial position, potentially impacting their ability to participate effectively in the bankruptcy process and potentially leading to unfair outcomes. • In this context, Indonesian bankruptcy law does not require debtors to provide financial statements to creditors. This situation implies that it makes it difficult for creditors to understand the debtor's financial condition, especially in cases where the debtor is a private company entity, because there are no reliable public records regarding financial information related to that entity (International Insolvency Institute, n.d.). This condition is caused by many businesses in Indonesia being structured as private limited liability companies (PT), which are not subject to disclosure requirements as stringent as public companies.

[61] F N Heriani, "Perdamaian Dalam PKPU Dan Pailit," n.d., https://www.hukumonline.com/.

		• In Indonesia, private limited liability companies (PT) are regulated by Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (UU 40/2007), which has been amended several times, including through Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Omnibus Law on Job Creation or UU 11/2020) in conjunction with Law of the Republic of Indonesia Number 2 of 2022 concerning the Perppu on Job Creation in conjunction with Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Perppu Number 2 of 2022 into Law (Law 6/2023) in conjunction with Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (Law 1/2023). This change primarily concerns the ease of establishing a PT, particularly for Micro and Small Enterprises (MSEs). This means their financial information is not routinely published or available for public scrutiny.
4	There is no obligation for debtors to appoint an independent financial advisor or auditor to explain the debtor's financial situation in Law 37/2004, and this has the potential to harm the rights and interests of creditors.	▪ According to the International Insolvency Institute (n.d.), debtors are not legally required to appoint independent financial advisors or auditors to explain their financial situation regarding the application of the transparency principle. This transparency issue is not explicitly mandated under Indonesian bankruptcy law. The obligation to disclose their financial information honestly and accurately to creditors is a fundamental element of the transparency principle in credit relations. ▪ However, appointing independent financial advisors or auditors is not legally required, as this could potentially jeopardize creditors' rights and interests. Without adequate knowledge of the debtor's financial condition, creditors may be unable to make informed decisions as they vote to approve or reject the debtor's proposed composition plan. Creditors may lack this knowledge and be unable to weigh the advantages of approving or rejecting the composition plan and obtaining payment from the liquidation of the debtor's bankruptcy estate (International Insolvency Institute, n.d.).
5	No insolvency testing procedure—The bankruptcy of solvent debtors who remain unable to meet their financial obligations is an undeniable problem that results in a variety of negative consequences that go beyond the losses to the debtor.	▪ According to Lembang & Anwar (2025), several countries, including the United States, Thailand, Japan, and the United Kingdom, have implemented insolvency testing procedures that must be completed before a bankruptcy judgment can be issued against a debtor. ▪ An insolvency test is a comprehensive assessment of a debtor's ability to repay its debts, consisting of cash flow and balance sheet analysis. The cash flow test evaluates solvency by comparing cash inflows and outflows in relation to debt service obligations. A company's solvency status can be determined through the results of the cash flow test: a negative result indicates insolvency, while a positive result indicates solvency. The balance sheet test evaluates a company's solvency by comparing total liabilities to total assets. A company's solvency status is determined by this comparison: if total liabilities exceed total assets, the

company is classified as insolvent; conversely, if total assets exceed total liabilities, the company is considered solvent. Indonesian bankruptcy law does not include an insolvency testing requirement for bankruptcy applications, meaning asset valuation is not considered when evaluating bankruptcy applications. This negligence has been proven to be detrimental to the interests of debtors, as evidenced by several cases where solvent companies were declared bankrupt[62].

Source: From various sources (processed)

Referring to Table 2 above, it can be interpreted that the application of a positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law from the point of view of entrepreneurs is a study of legal dogmatics that Indonesian bankruptcy law only provides a framework for resolving the debts of individuals and business entities or companies that are unable to fulfill their financial obligations. Indonesian bankruptcy law, Law 37/2004, only describes bankruptcy procedures (seizure of assets) and suspension of debt payment obligations (PKPU) where the intent and purpose is to balance the interests of debtors and creditors. However, the results of legal dogmatic studies from experts related to the application of a positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law from the point of view of entrepreneurs entrepreneurs are assessed as follows: (1) Law 37/2004 does not have responsive laws; (2). Law 37/2004 does not have standards, guidelines, or references related to the formulation of a peace plan based on (3). Law 37/2004 does not provide reliable public records regarding financial information related to entities as private companies. 4. The lack of transparency principles in Law 37/2004 has the potential to jeopardize creditors' rights and interests. Therefore, current legal reforms are needed that focus on simplifying the process, particularly for small businesses, and ensuring faster and more transparent resolutions. This requires reviewing key aspects of Indonesian bankruptcy law, including the legal framework for bankruptcy, the suspension of debt payments (PKPU), and the creditor hierarchy, particularly in efforts to make the bankruptcy process more efficient, transparent, and effective, particularly for entrepreneurs with private companies in Indonesia.

[62] N Lembang and I Anwar, "The Urgency of Implementing the Insolvency Test in Bankruptcy Cases in Indonesia," *Jurnal Ilmu Hukum Kyadiren* 6, no. 2 (n.d.): 36–52, https://doi.org/10.46924/jihk.v6i2.219.

Furthermore, Law 37/2004 is considered to be ambiguous, leading to differing interpretations and potentially hampering the law's effectiveness. This has resulted in a gap between the practical application of Law 37/2004, including issues with the capacity and resources of the Commercial Court. Furthermore, Law 37/2004 is expected to align with internationally recognized bankruptcy laws to better handle cross-border insolvency cases. Therefore, the government, together with the legislative body, the House of Representatives of the Republic of Indonesia (DPR RI) Law 37/2005, is expected to make efforts to create and update Indonesian bankruptcy law regarding the definition of insolvency from the perspective of entrepreneurs. This effort includes simplifying the process for entrepreneurs who want to restructure debt and potentially extend the payment period. As follows: (1). Legal Framework—Law 37/2004 is the main law, but other regulations and court decisions also play a role in the bankruptcy and PKPU process. In this case, bankruptcy involves the seizure and management of the debtor's assets by a curator under the supervision of a judge to distribute assets to creditors. (2) Suspension of Debt Payment Obligations (PKPU) is to allow debtors to restructure their debts and propose a payment plan to avoid bankruptcy. and (3). Creditor Hierarchy—Although Law 37/2004 recognizes various classes of creditors (separatist, preferential, and concurrent) with different rights to claim assets.

Based on the previous explanations, the application of the positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law From the point of view of entrepreneurs can be interpreted as the concept of the inability to fulfil financial obligations (debts) when they fall due. Indonesian bankruptcy law does not prioritize insolvency as a primary requirement for bankruptcy due to two factors: the judge's passive role in gathering challenging financial evidence for companies in debt collection and the lengthy resolution time. The simple concept of proof in Law 37/2004 allows for bankruptcy if cumulative requirements are met, regardless of the debtor's financial health. Essentially, if an entrepreneur's business cannot pay its debts, it is considered insolvent. This triggers the bankruptcy process, which involves the court-supervised seizure and distribution of the debtor's assets to creditors. From the perspective of entrepreneurs, the definition of insolvency in Indonesian bankruptcy law, Law 37/2004, must meet the following requirements: (1) Declaration of Bankruptcy (provisions regarding

two or more creditors: entrepreneurs must have at least two creditors 2). Unpaid Debts (provisions that entrepreneurs fail to pay at least one debt that is due and payable); and (3). Application to the Court (provisions of the Declaration of Bankruptcy can be filed by the entrepreneur alone or by one or more creditors). Then, the bankruptcy process includes provisions for the seizure of assets; the court appoints a curator (a legal professional) to manage and distribute the assets of the bankrupt entrepreneur, and all assets of the entrepreneur are seized and used to pay off debts, following a certain priority order (secured creditors, preferred creditors, then non-secured creditors).

Thus, the application of a positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law From the point of view of s entrepreneurs can be interpreted to mean that Indonesian bankruptcy law contains legal provisions that are burdensome for entrepreneurs. For example, there is no debt forgiveness: Indonesian bankruptcy law does not automatically write off debts. Even after the bankruptcy process is completed, entrepreneurs may still be required to pay off the remaining debt. The impact of this provision for entrepreneurs is as follows: (1) Loss of control over their business assets during the bankruptcy process; and (2) Damage to the entrepreneur's reputation when declared bankrupt, which also impacts the entrepreneur's future business opportunities. On the other hand, the application of a positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law from the perspective of entrepreneurs is the potential for rehabilitation. Although bankruptcy is a serious legal process, bankruptcy can also offer an opportunity for entrepreneurs to finally rehabilitate their financial situation and potentially return to the business world. Then, the application of a positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law from the perspective of entrepreneurs can be interpreted as meaning that Indonesian bankruptcy law contains legal provisions that are burdensome for entrepreneurs, namely the existence of protection from arbitrary actions that may be taken by creditors. For example, the bankruptcy process can provide a temporary halt to creditor actions and collection efforts, thereby giving entrepreneurs time to restructure or negotiate. Furthermore, if bankruptcy is handled properly, entrepreneurs may be able to pay off some of their debts and potentially rebuild their business under a new entity.

3.4 An Ideal and Progressive Legal Framework on the Definition of Insolvency in Bankruptcy Law From The Point of View of Entrepreneurs

Bankruptcy law, particularly those provisions related to the bankruptcy process, has a direct impact on entrepreneurs and the entrepreneurial ecosystem in Indonesia. It is a crucial element in the life cycle of a business entity, particularly when the company faces significant financial challenges. According to Devi et al. (2022), Law 37/2004, in resolving debtor debt problems, provides a solution, not a means of bankrupting a business. On the one hand, the creditor's goal of collecting their debts can be achieved quickly, while on the other hand, the debtor's business continuity is guaranteed. With legal mechanisms that allow for restructuring, companies experiencing financial difficulties have the opportunity to recover and maintain economic stability, especially in the face of crises[63]. This view differs from Fahamsyah et al. (2024), who state that Law 37/2004 contains provisions that have the potential to create problems in the application of bankruptcy law in Indonesia, particularly regarding the resolution of bankruptcy disputes.

According to Fahamsyah et al. (2024), the problem with resolving bankruptcy disputes in Indonesia is that Indonesian bankruptcy law, Law 37/2024, tends to be very simple in regulating the provisions for filing for bankruptcy for debtors, even if they can continue business operations and pay their debts to creditors, as follows:

a. The provisions of Article 2, paragraph (1) of Law 37/2004, which only stipulates two requirements for declaring bankruptcy: the existence of a debt that has matured and the presence of at least two creditors; and
b. The provisions of Article 8, paragraph (4) of Law 37/2004 fail to account for simple facts and circumstances. Meanwhile, the United States and several European countries, including the United Kingdom, Germany, France, Finland, Norway, and Sweden, have implemented provisions regarding the insolvency test mechanism in their bankruptcy legal systems. The insolvency test mechanism is based on three tests as legal instruments for bankruptcy testing: the continuity test, the cash flow test, and the balance sheet test. The application of bankruptcy testing as a legal instrument for

[63] Devi et al., "The Bankruptcy Legal Politics in Indonesia Based on Justice Value."

bankruptcy testing aims to prevent bankruptcy of debtors who are still able to fulfill their financial obligations.

The provisions of bankruptcy testing in Indonesian bankruptcy law have not been regulated[64]. Referring to the two provisions of Article 2 paragraph (1) of Law 37/2004 and Article 8 paragraph (4) of Law 37/2004, Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations regulates simple proof in bankruptcy cases. This paragraph states that a request for a declaration of bankruptcy must be granted if there are facts or circumstances that simply prove that the requirements for being declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled. These two articles can be interpreted to mean that entrepreneurs are aware that there is no legal protection in situations of financial difficulty, and entrepreneurs tend not to dare to take risks in doing business. This is driven by uncertainty in bankruptcy law, which can create an unsupportive climate for entrepreneurs. Entrepreneurs often feel trapped in a difficult situation, having to choose between continuing their business with high risks or considering restructuring options that may not always be profitable. Entrepreneurs' anxiety arises from the uncertainty about when they can be declared bankrupt. In difficult financial situations, entrepreneurs may struggle to meet their debt obligations. This legal uncertainty can leave them feeling trapped in a complex situation, as their actions could lead to bankruptcy. Law 37/2004 has a rigid framework that often fails to provide balanced protection for creditors and debtors, ignoring the reality of business difficulties[65].

According to Husendro (2024), this creates an urgent need for insolvency principles to help debtors avoid bankruptcy, as the current system often creates conflicting norms when compared to the internationally recognized reorganization and rehabilitation frameworks in Chapters 11, 12, and 13 of the United States Bankruptcy Code. reflecting a debtor-centered approach. The US Bankruptcy Code defines bankruptcy as a state in which the debtor's debts exceed the value of all his or her assets[66]. Unlike Indonesian

[64] Lembang and Anwar, "The Urgency of Implementing the Insolvency Test in Bankruptcy Cases in Indonesia."

[65] "Deconstructing Insolvency: Challenging Inequities in Legal Protection," *Nurani Hukum Jurnal Ilmu*, no. ukum,7 (n.d.): 2 ,213–235, https://doi.org/10.51825/nhk.v7i2.33364.

[66] R Syahla, D M Satriawan, and S Kurniawan, "Urgensi Minimal Utang Sebagai Persyaratan Permohonan Pailit (Perbandingan Pengaturan Minimal Utang Dengan Hukum Kepailitan .

bankruptcy law, which currently focuses on assets, rehabilitation, based on the guidelines of Chapters 11, 12, and 13 of the US Bankruptcy Code, assesses the debtor's future earning potential, offering a fairer path to debt resolution and business recovery. With increasing uncertainty, investor confidence can also decline, further worsening the financial situation of many companies. Furthermore, Article 2 of Law 37/2004 also identifies legal uncertainty, causing concern among companies. The lack of clarity regarding the minimum debt threshold that can be used as a basis for a bankruptcy petition has caused unrest among entrepreneurs. They worry that creditors with relatively small debts could file for bankruptcy, ultimately disrupting company operations and worsening their financial condition. In addition, the lengthy legal process and high costs of resolving bankruptcy cases also add to the burden on entrepreneurs who are struggling to maintain their businesses.

In connection with the above, there are several concrete examples of cases that occurred due to the application of Article 2 of Law 37/2004, as follows:

a. The bankruptcy case of PT. Telkomsel in 2012, where the Central Jakarta Commercial Court issued a bankruptcy declaration against PT. Telekomunikasi Seluler with decision number 48/PAILIT/2012/PN.NIAGA.JKT.PST. dated September 14, 2012, with the consideration that the bankruptcy applicant could prove the existence of facts or circumstances that simply proved that the requirements for being declared bankrupt as referred to in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payments had been met (Kushartanti, 2014). In this case, PT. Prima Jaya Informatika filed a bankruptcy petition against PT. Telkomsel on the grounds of unpaid debts. Bankruptcy Petition. PT Prima Jaya Informatika filed a bankruptcy petition against PT Telkomsel with the Central Jakarta Commercial Court, and the Central Jakarta Commercial Court's bankruptcy ruling granted the petition. Although the debts were relatively small compared to PT Telkomsel's assets and

Amerika Serikat," *Lex Renaissance* 9, no. 1 (n.d.): 41–61, https://doi.org/10.20885/JLR.vol9.iss1.art3.

revenue, the court still granted the bankruptcy petition based on Article 2 of Law 37/2004. However, PT Telkomsel filed an appeal to the Supreme Court to challenge the bankruptcy decision, despite having been declared bankrupt by the Commercial Court. PT Telkomsel successfully won the appeal in the Supreme Court and avoided bankruptcy status. The decision was overturned, and the bankruptcy petition filed by PT Prima Jaya Informatika was rejected.

b. Bankruptcy cases applying the Business Judgment Rules (BJR) doctrine—BJR is one of the fundamental doctrines of limited liability company law. BJR is basically the most important legal assessment standard in corporate law to protect the Board of Directors from lawsuits, unless it can be adequately proven that the Board of Directors has violated the duties mandated to it or if the decision-making process has violated the principle of independence and the principle of avoiding personal interests[67]. According to Wijaya (2019), the Business Judgment Rules (BJR) doctrine in bankruptcy law in Indonesia still contains confusion due to differences in interpretation from law enforcers. The results of Wijaya's study (2019) on bankruptcy cases of the application of the Business Judgment Rules (BJR) doctrine in Indonesia can be seen in the case of the Supreme Court Decision Number 01 PK / N / 2004, which was read in an open session on March 23, 2004, namely in the case between PT Karunia Wana Ika Wood Industrial and Tobeng Mahatani (as debtor and debtor director) against PT Wijaya Indah Permai (as creditor). Supreme Court Decision Number 01 PK N/2004 dated March 23, 2004, has annulled Supreme Court Decision Number 030 K/N/2003 dated November 20, 2003, which stated that PT Karunia Wana Ika Wood Industrial and Tobeng Mahatani were declared bankrupt with all the legal consequences.

Referring to the two cases above, the bankruptcy case of PT. Telkomsel in 2012 and the bankruptcy case of the application of the Business Judgment Rules (BJR) doctrine in 2012 tended to psychologically cause anxiety among

[67] B S Sharfman, "The Importance of the Business Judgment Rule," *New York University Journal of Law And* Business,14(1 (n.d.): 27– 69, https://doi.org/10.2139/ssrn.2888052.

entrepreneurs in Indonesia, because it showed that even large companies could be filed for bankruptcy by creditors with a small amount of debt due to the application of the Business Judgment Rules doctrine in Indonesian bankruptcy law. This strengthens the argument that the provisions in Article 2 of Law 37/2004 need to be improved to provide better legal certainty for the business world in Indonesia. In addition, Article 266 of Law 37/2004, which addresses the consequences of failed debt repayment plans, including the potential for automatic bankruptcy, poses a significant risk to businesses seeking to restructure their debts. Article 266 of Law Number 37 of 2004 regulates the Suspension of Debt Payment Obligations (PKPU). More precisely, this article relates to the peace plan that can be submitted by debtors during the PKPU period. Fear of unwanted bankruptcy can prevent entrepreneurs from engaging in necessary legal proceedings, even when such action may be urgently needed to save their businesses. This creates a climate of greater uncertainty, as entrepreneurs are reluctant to take the necessary steps to maintain their business continuity.

Therefore, a comparative analysis of Law 37/2004, as Indonesian bankruptcy law, is necessary with the bankruptcy laws of countries known to support entrepreneurial frameworks, such as the United States and Sweden, revealing disparities in protection and support for entrepreneurs during periods of insolvency. These countries tend to offer entrepreneurs more flexibility and options to restructure their debt, which in turn can support business continuity and innovation[68]. For example, the US Bankruptcy Code requires debtors to provide disclosure statements containing sufficient information regarding their financial status and proposed reorganization plans[69]. Chapter 11 of the US Bankruptcy Code allows managers/entrepreneurs to retain some degree of control over the assets and operations of the company while in bankruptcy, and they are encouraged to choose court-supervised debt renegotiation under Chapter 11 rather than filing for liquidation under Chapter 7 of the US Bankruptcy Code[70].

[68] Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied? Volksgeist."

[69] I Bastiaansen et al., "Court Disclosures of Firms in Chapter 11 Bankruptcy," *Journal of Accounting Research* 63, no. 1 (n.d.): 57–112, https://doi.org/10.1111/1475-679X.12576.

[70] K S Thorburn, "Bankruptcy Auctions: Costs, Debt Recovery, and Firm Survival," *Journal of Financial Economics* 58, no. 3 (n.d.): 337–368, https://doi.org/10.1016/S0304-405X(00)00075-1.

According to Thorburn (2000), the Swedish Bankruptcy Code contains pro-debtor legal provisions, such as provisions increasing the company's survival rate, provisions for bankruptcy costs, and provisions related to debt recovery rates comparable to the US reorganization system. Overall, the evidence presented here suggests that auctions are a very efficient mechanism for restructuring small companies in bankruptcy (Thorburn, 2000).

According to Thorburn (2000), over the past 20 years, the implementation of the legal framework on the definition of insolvency in bankruptcy law from an entrepreneur's perspective in several European countries, including the United Kingdom, Germany, France, Finland, Norway, and Sweden, has changed, and they are proposing changes to their bankruptcy regulations, largely aligning with the US Chapter 11. Referring to Thorburn's (2000) study on the process, costs, and procedures for filing for bankruptcy under Swedish bankruptcy law, the following conclusions can be drawn:

a. Auction Process—Every Swedish company filing for bankruptcy is then auctioned, either as a functioning company or partially, under the supervision of an independent, court-appointed trustee. In Sweden, a quarter of sales of functioning companies, accounting for 20% of all filings, are pre-auction sales, where buyers negotiate the purchase of the company's assets before filing for bankruptcy. The probability of a sale of a functioning company increases with the increasing fraction of intangible assets. Interestingly, pre-auction sales are more likely to occur when the firm is run by an owner-manager, possibly reflecting managerial concerns about post-bankruptcy reputation.
b. Partial Liquidation and Pre-Auction Sales Practices for Firms Declaring Bankruptcy - Direct bankruptcy costs are found to decrease with firm size and are lower in partial liquidations and pre-auction sales. The percentage costs, measured as a fraction of pre-filing assets, average 6.4% for the total sample and 3.7% for the largest third of firms. The latter estimate is similar to costs reported for much larger, US-listed firms in Chapter 11. Direct costs also increase when the industry is depressed, likely reflecting higher sales efforts by trustees when industry demand is low. Importantly, indirect costs are almost certainly lower in auction

bankruptcies, due to the much shorter operating time of a firm in bankruptcy. This period can last from 1 to 2 months in Sweden and can extend to approximately two years in the US.

c. Debt Recovery Rates—Debt holders recover an average of 35% of their debt in auction bankruptcies. Secured creditors recover an average of about 70%, with a median of 80%, while junior unsecured creditors recover virtually nothing. Using market values and avoiding a potential upward bias in face value, overall debt recovery rates appear to be similar among small companies in auction bankruptcies and U.S.-listed companies filing for Chapter 11. For companies that survive as operating entities in both cases, the average recovery rate is about 40%. However, junior creditors receive a relatively smaller share of the pie in auction bankruptcies, reflecting the strict adherence to the absolute priority afforded by cash settlements in auctions.

Furthermore, a study by Prusak et al. (2021) confirmed that, from an entrepreneur's perspective, bankruptcy law in countries characterized by efficient legal systems and pro-debtor bankruptcy laws is associated with higher levels of risk acceptance among entrepreneurs, which is reflected in higher levels of entrepreneurship and innovation. The findings of this study are crucial from the perspective of legislators responsible for drafting amendments to bankruptcy law, as incorporating specific pro-debtor provisions can, in the long run, encourage increased entrepreneurship and innovation, ultimately driving economic development[71].

Based on the previous discussion, the ideal and progressive legal framework for defining insolvency in bankruptcy law from the point of view of entrepreneurs is a pro-entrepreneur bankruptcy law that includes provisions that are pro-entrepreneur-friendly and adaptable to the accelerated development of information and communication technology. Bankruptcy law, for example, is the United States Bankruptcy Code, which reflects a debtor-centered approach. Furthermore, developments in information and communication technology significantly impact the way businesses operate,

[71] "Prusak,B.,Morawska,S.,Łukowski,M.,& Banasik,P.(2021).The Impact of Bankruptcy Regimes on Entrepreneurship and Innovation. Is There Any Relationship?," *International Entrepreneurship and Management Journal* 18, no. 1 (n.d.): 473, https://doi.org/10.1007/s11365-021-00773-3.

communicate, and manage information, which in turn impacts bankruptcy and restructuring processes. The increased use of ICT can result in more efficient data management, faster communication, and new business models, but it also poses challenges related to data privacy. cybersecurity, and the digital divide. Therefore, an ideal and progressive legal framework for defining insolvency in Indonesian bankruptcy law from the perspective of entrepreneurs is one that addresses the availability of reorganization bankruptcy options, the efficiency and effectiveness of bankruptcy procedures and costs, the availability of opportunities for entrepreneurs to restart in liquidation bankruptcy and to obtain automatic asset suspension during reorganization bankruptcy, and the opportunity for entrepreneurs to continue working after filing for bankruptcy.

Therefore, efforts are needed to reconstruct Indonesian bankruptcy law regarding the definition of insolvency from the point of view of entrepreneurs because, in the realm of corporate bankruptcy, spillover effects refer to unexpected and unintended economic impacts that may spread across regions and industries closely related to the bankrupt company[72]. According to Song & Zhao (2024), corporate bankruptcy can elicit diverse responses from suppliers, creditors, employees, and the local community. Furthermore, a sudden decline in economic activity can negatively impact local property values, tax revenues, and community well-being (Song & Zhao, 2024). Furthermore, the importance of legal certainty in determining the priority of the debtor's debt distribution to preferred and secured creditors if the amount of available bankruptcy assets is insufficient to pay off the debts of preferred and secured creditors. For parties who are also preferred creditors of the bankrupt firm, legal certainty regarding the priority of bankruptcy asset distribution must be obtained through statutory regulations (Basri et al., 2024). Furthermore, insolvency testing in bankruptcy cases in Indonesia is expected to provide a comprehensive analysis of how the principles of insolvency testing are applied in Indonesian bankruptcy law considerations. Therefore, the reconstruction of Indonesian bankruptcy law is expected to be updated by including an ideal and progressive legal framework regarding the definition of insolvency in bankruptcy law from the perspective of

[72] H Song and X Zhao, "The Unexpected Consequences of Company Bankruptcy: An Investigation into the Spillover Effect of Local Economic Liquidation," *Finance Research Letters* 61 (n.d.): 104992, https://doi.org/10.1016/j.frl.2024.104992.

entrepreneurs. This is expected to have an impact on entrepreneurs so that they will be able to take the necessary risks to recover their businesses. Furthermore, this condition will create a positive cycle because more entrepreneurs will be brave enough to take risks and will increasingly drive national economic growth.

4. CONCLUSION

Based on the findings of this study, Indonesia's current bankruptcy law tends to lack detail regarding debt restructuring, including clarity regarding which companies qualify, the form of restructuring, and sanctions for violations. These issues contribute to the potential for exploitation and protracted legal disputes faced by entrepreneurs. Despite amendments and new laws, the practical application of bankruptcy law faces challenges due to ambiguity and multiple interpretations, requiring further refinement for better implementation and effectiveness. In this regard, the government, together with the House of Representatives of the Republic of Indonesia (DPR RI), is expected to have a more responsible perspective in drafting amendments to Indonesian bankruptcy law and including certain pro-debtor provisions. Therefore, a reconstruction of Indonesian bankruptcy law regarding the definition of insolvency that is ideal and progressive (pro-entrepreneur) from the point of view of entrepreneurs is needed. This includes the positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law, the direct impact of the definition of insolvency in Indonesian bankruptcy law through the lens of entrepreneurs, the application of a positive legal framework regarding the definition of insolvency in Indonesian bankruptcy law from the point of view of entrepreneurs, as well as an ideal and progressive legal framework regarding the definition of insolvency in Indonesian bankruptcy law from the point of view of entrepreneurs. This is deemed necessary due to several factors as follows: (1) The inadequacy of existing laws in handling debt restructuring mechanisms; (2) The need for legal certainty and greater protection for entrepreneurs and the business world; and (3) The development of the economic landscape that requires a more comprehensive framework for managing bankruptcy.

Thus, the results of this study are expected to: (1) provide solutions that may arise in cases of insolvency, provide more efficient control over the

debtor's bankruptcy estate, and provide stronger protection from unilateral actions by creditors; (2). Give local courts discretion to allow any form of relief to the curator; and (3). Provide a legal mandate to work together to ensure adequate protection for the debtor and its creditors. All of this can be done through legislative reform of Indonesian bankruptcy law, the aim of which is to realize the following changes: (1). Increased creditor confidence in the enforcement of their claims; (2). Increased entrepreneurship and new beginnings; and (3). Reduced bankruptcy cases and easier out-of-court debt rescheduling. Various improvements in Indonesian bankruptcy law are expected to be seen in some areas, but not in others. Therefore, the results of this study recommend that it is necessary to create and update Indonesian bankruptcy law regarding the definition of insolvency that is ideal and progressive from the perspective of entrepreneurs (pro-entrepreneurs). This can be done by the government together with the Indonesian House of Representatives by adopting Special Issue Preventive Restructuring 18: Navigating uncharted waters: The implementation of the EU Directive on Preventive Restructuring Frameworks in Luxembourg and Chapter 11 of the United States Bankruptcy Code. The aim is to ensure legal certainty and legal benefits as guaranteed in the constitution, which can be derived from more general constitutional rights, such as the right to recognition, guarantee, protection, and fair legal certainty, as well as equal treatment before the law as regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

5. NOVELTY

The reform of Indonesia's bankruptcy law is crucial for creating an ideal and innovative definition of insolvency that aligns with the point of view of entrepreneurs. The goal is to foster legal certainty and advantages, facilitate business transformation, and improve the overall business environment in Indonesia, as guaranteed by the constitution. These rights stem from wider constitutional provisions, including the entitlements to recognition, guarantees, protection, fair legal certainty, and equal treatment under the law, as outlined in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

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7. CONFLICTS OF INTEREST

The authors declare that they have no conflicts of interest, financial or otherwise, regarding the publication of this article.

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Appendix

Faillissements- Verordening Staatsblad 1905 Nomor 217 jo. Staatsblad 1906 Nomor 348 (selanjutnya disebut Faillissements-Verordening) yang diundangkan pada tanggal 1 November 1906.

Peraturan Pemerintah Republik Indonesia Pengganti Undang-Undang Nomor 1 Tahun 1998 tentang Kepailitan

Putusan Mahkamah Konstitusi Republik Indonesia Nomor 168/PUU-XXI/2023

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Undang-Undang Reublik Indonesia Nomor 4 Tahun 1998, tentang Perubahan atas Undang-Undang tentang Kepailitan Menjadi Undang-Undang

Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan

Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 tentang Perseroan Terbatas

Undang-Undang Republik Indonesia Nomor 11 Tahun 2020 tentang Cipta Kerja

Undang-Undang Republik Indonesia Nomor 2 Tahun 2022 tentang Perppu Cipta Kerja

Undang-Undang Republik Indonesia Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang

Undang – Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana