



## Strategies for Preventing Bankruptcy: Adopting Insolvency Tests from the United States Perspective to Indonesia

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### Abstract

Companies don't always make a profit and taking loans from banks or other companies to ensure smooth business operations can put a company's existence in danger. Failure to repay loans can lead to bankruptcy, declared by the competent commercial court upon request of the creditor or debtor. The ease with which bankruptcy requirements are regulated under Indonesian law can lead to economic problems. This study seeks to examine the differences between bankruptcy laws in Indonesia and the United States, the challenges in implementing an insolvency test in Indonesia, and the benefits of such a test. The research method used is normative-juridical, employing a conceptual and statutory approach to assess the benefits and obstacles of implementing insolvency tests in Indonesia. The findings suggest that applying insolvency tests can have a positive impact on economic growth, including reducing the number of bankrupt companies and decreasing unemployment, which contributes to development. As a result, it's necessary to modify Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations to enable the use of insolvency tests in bankruptcy applications in Indonesia.



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### A. INTRODUCTION

Indonesia, being a developing country, has been implementing various policies to improve different aspects of life, particularly in the economic sector. One area of development in Indonesia's economy is the establishment of companies or business entities. The country has seen a growing diversity and number of business entities. Many of these variations have their roots in Dutch law, which have been adapted and translated into Indonesian terms. Some terms for business entities in Dutch that are still in use include *maatschap* (partnership), *firm*, and *commanditaire vennootschap (CV)*. The term limited liability company is derived from the Dutch *Naamzole Vennootchap (NV)* (Widjajati, 2012). According to Article 1 Letter B of Law No. 3 of 1982 concerning compulsory company registration in Indonesia, companies are defined as follows "Company is any form of business that conducts any type of permanent and continuous business and is established,

operates, and is domiciled within the territory of the State of Indonesia with the aim of obtaining profits and/or gains”.

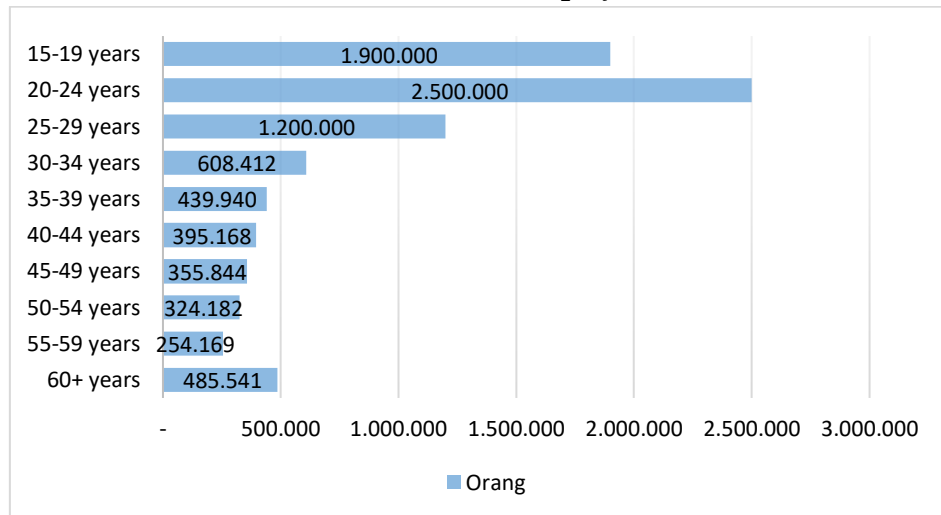
Business entities are divided into two categories: legal entities, such as foundations, PTs (limited liability companies), and cooperatives; and non-legal entities, such as partnerships, CVs (commanditaire vennootschap), and firms (Utami, 2020). Based on ownership, business entities can be divided into 4 (four) categories, among others State Company; Private Company; National Company and Foreign Company (Widjajati, 2012). The most developed and popular legal entity in Indonesia is the limited liability company (PT (Perseroan Terbatas)) form, which is extensively regulated in the Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as Law No. 40 of 2007). Article 1 Number 1 of the law states “A limited liability company, hereinafter referred to as a company, is a legal entity that is a capital partnership, established based on an agreement, conducting business activities with authorized capital that is entirely divided into shares and fulfills the requirements stipulated in this law and its implementing regulations”.

In running its business, a company will not always generate profits. There is a possibility that the company's existence will be threatened by loans obtained from banks or other companies to facilitate the smooth operation of the business. Taking loans is a common practice for companies to sustain their operations, as long as the company is able to repay the debt. However, if a company has obtained a loan and fails to repay it, it may be declared bankrupt by the competent commercial court upon the request of the creditor or the debtor itself (Siahaan, 2008). Not all companies that are insolvent can be declared bankrupt; insolvency may only be a temporary situation that can be overcome. In other words, insolvency does not automatically result in a company being declared bankrupt, but all companies declared bankrupt are certainly insolvent. The insolvency test is an essential tool that should be conducted before making a bankruptcy decision for a company. This is because the reason a debtor fails to repay a debt is not always due to an inability to pay; there are also debtors who intentionally refuse to fulfill their obligations to creditors, even though they are capable of doing so. Law No. 37 of 2004 does not require debtors to be insolvent in order to be declared bankrupt. The essence of bankruptcy lies in the debtor's inability to repay their debts due to insufficient assets. Upon closer examination, it can be observed that Law No. 37 of 2004 is more inclined to protect the interests of creditors. This clearly violates the principle of fair legislation, as laws and regulations should provide adequate legal protection to all parties without discrimination (Surjanto, 2018).

The ease of bankruptcy for companies can contribute to an increase in the unemployment rate in Indonesia. According to data from the Central Statistics Agency (BPS), the number of unemployed individuals in Indonesia reached 8.4

million in August 2022. Although this figure has decreased compared to August 2021, when it was 9.1 million people, it remains a significant number in Indonesia.

Tabel I. Number of Unemployed in Indonesia



Source: Databoks

(<https://databoks.katadata.co.id/datapublish/2023/01/12/mayoritas-pengangguran-indonesia-berusia-muda-pada-agustus-2022>)

Based on the table above, it can be observed that 2.54 million individuals in the age group of 20–24 are unemployed. This figure is equivalent to 30.12% of the total national unemployment rate (Kusnandar, 2023). According to data from the International Monetary Fund (IMF) in the Visual Capitalist report, Indonesia is projected to experience a decrease in the unemployment rate in 2023, reaching 5.3 percent. This indicates a decline from the unemployment rate reported by BPS, which stood at 5.86 percent as of August 2022, corresponding to approximately 8.37 million Indonesians who are unemployed (Puspapertiwi, 2023). Even though it is predicted that the number of unemployed individuals in Indonesia will decrease, the unemployment rate in the country remains relatively high when considering the total number of unemployed people. High unemployment rates can contribute to increased levels of depression in Indonesia and give rise to social problems, such as an increase in crime. Unemployment is frequently cited as a motivating factor for individuals to engage in criminal activities as a means to meet their needs (Sabiq & Apsari, 2021).

One of the most effective ways to reduce unemployment in Indonesia is by creating more job opportunities and maintaining existing ones. Maintaining existing jobs means avoiding bankruptcy of companies that are still capable of paying their debts but are experiencing financial crises at that time (Fitri, 2022). To prevent the bankruptcy of solvent companies, a thorough analysis of the company's financial statements is required (Letizia & Cakranegara, 2022). Hence,

the use of insolvency tests in bankruptcy cases in Indonesia is necessary, as applied in the bankruptcy law of the United States. Bankruptcy in the United States is detailed in the U.S. Code Chapter 7 and 11. The most fundamental difference between bankruptcy laws in Indonesia and the United States lies in the approach used to regulate bankruptcy. The approach used in U.S. bankruptcy law involves an insolvency test that essentially analyzes the assets and the debtor's ability to repay their obligations (Robert, Agustina, & Nasution, 2022). In contrast, Indonesian bankruptcy law does not clearly regulate the Insolvency Test because it adopts an approach that prioritizes debtor rehabilitation, focusing on the continuity of the debtor's business (Halim, 2021).

Previous studies that have been conducted on the use of insolvency tests in the United States include "Urgensi Pengaturan Syarat Insolvensi Dalam Undang-Undang Kepailitan dan Penundaan Kewajiban Pembayaran Utang" by Diana Surjanto. This study utilized a legislative, conceptual, and comparative approach to understand and analyze the relationship between bankruptcy and insolvency, as well as the regulation of insolvency in the Indonesian Bankruptcy and Debt Payment Delay Law (KPKPU) (Surjanto, 2018). Another study titled "Keabsahan Keadaan Solven Debitor sebagai Dasar Pertimbangan Dalam Perkara Kepailitan" was conducted by Clarita Stefanie, R. Kartikasari, and Artaji. This study employed a normative legal research method to explore the relationship between solvent debtor status in bankruptcy cases and the protection of business interests (Panjaitan, Kartikasari, & Artaji, 2022). Additionally, "Comparison Of The Use Principles Of Business Continuity In Bankruptcy Law And The Judge's Consideration Decides The Bankruptcy Case Between Indonesia And The United States" by Kukuhpribadijanto, Adi Sulistiyono, and Pujiyono Suwadi examined the differences in bankruptcy laws between Indonesia and the United States, focusing on the principle of business continuity (Kukuhpribadijanto, Sulistiyono, & Suwadi, 2023). Furthermore, "The Rationalization of Debt Discharge Policy for Individual Debtors in the Indonesian Bankruptcy Regime" by Robert, Rosa Agustina, and Bismar Nasution conducted a comparative legal research between Indonesia, the United States, the United Kingdom, the Netherlands, and France regarding debt discharge policies for well-intentioned debtors within the Indonesian bankruptcy system (Robert et al., 2022). Lastly, "Reform of Plan Termination in the Suspension of Debt Payment Obligations (PKPU) in Indonesia" by Farih Romdoni Putra compared Indonesia's bankruptcy laws with those of the United States, the Netherlands, and Singapore, highlighting the need for legal reform in the Indonesian bankruptcy system to introduce flexibility in its implementation (Putra, 2021). Law No. 37 of 2004 is a legislative regulation that governs bankruptcy and the postponement of debt payment obligations. While it has brought about positive outcomes in its implementation, various issues have

emerged over time as a result of its enactment. The legal declaration of bankruptcy for a company carries significant implications for debtors, employees, and the state.

## B. RESEARCH METHOD

The research method used in this study is the normative juridical method. This method examines the law from an internal perspective, focusing on legal norms. The object of research in this paper is secondary data collected by the researchers (Diantha, 2016). Researchers conducting research on the issues raised use a conceptual approach (conceptual approach) and a statutory approach (statute approach). The statutory approach involves examining laws and regulations related to the subject matter raised, while the conceptual approach involves studying the collected materials and providing meaningful solutions to the existing issues (Bachtiar, 2018).

Secondary data, consisting of primary, secondary, and tertiary legal materials, is used in conducting this research (Marzuki, 2005). The primary legal materials used include Pancasila, the 1945 Constitution of the Republic of Indonesia, and Law No. 37 of 2004. The secondary legal materials utilized in this research comprise explanations of the laws and regulations, books, articles, journals, expert opinions, and electronic media pertaining to the subject matter. Tertiary legal materials, on the other hand, consist of data that provide further clarification on the primary and secondary legal materials. The data used were obtained through library collection techniques or library research. This method involves conducting a comprehensive review of laws and regulations, as well as research materials relevant to the subject matter (Soekanto & Mamudjo, 2001). The data analysis method used in conducting research for this paper is qualitative descriptive analysis. This method involves systematically presenting and analyzing data in a comprehensive manner, including facts, characteristics, and the interrelationships between the phenomena being investigated, in order to obtain a clear and comprehensive understanding of the issues at hand (H, 2017).

## C. RESULTS AND DISCUSSIONS

### Differences Between Bankruptcy Laws In The United States And Indonesia

The monetary crisis that occurred in Indonesia in 1998 led to an increase in bankruptcy cases in Indonesia, so changes were made to the laws and regulations governing bankruptcy in Indonesia at that time. Government Regulation in Lieu of Law Number 1 of 1998 Concerning Amendments to the Bankruptcy Law (hereinafter referred to as Bankruptcy *Perpu*) was promulgated to address bankruptcy problems in Indonesia. Furthermore, the Bankruptcy *Perpu* was strengthened by its promulgation into a law, which was amended in 2004 to become the statutory regulations used to date, namely Law No. 37 of 2004. Several

things have been changed to ensure legal certainty in bankruptcy in Indonesia, namely *Failissementsverordening* does not specify a definite timeframe for settling cases; *Perpu* Bankruptcy stipulates the existence of a private curator and an inheritance hall; Appeals have been removed; and In Law No. 37 of 2004, additional parties that can specifically apply for bankruptcy are Bank Indonesia, the Ministry of Finance, and the Financial Services Authority (Yuhelson, 2019). The hope in amending these laws and regulations is, of course, to be able to address the problems facing the Indonesian economy. However, in the researcher's opinion, the amendments made are still related to matters that have not been regulated in Law No. 37 of 2004 in Indonesia. In this case, the researchers will compare the bankruptcy laws in Indonesia and the United States to provide a clearer picture of the matters that have not been regulated in Law No. 37 of 2004 in Indonesia

Bankruptcy conditions are regulated in Law No. 37 of 2004 in Indonesia, determining the criteria under which a bankruptcy case can be granted in the commercial court for having two or more creditors and have at least one debt that is due and collectible. In contrast to the simple bankruptcy requirements in Indonesia, the bankruptcy requirements regulated in American bankruptcy law that govern by U.S Code Chapter 7 and 11 are more complex when it comes to filing a bankruptcy application, particularly when the application is made by the creditor. The bankruptcy filing process in the United States has specific requirements that need to be fulfilled. Firstly, in order for a bankruptcy petition to be accepted, it must be submitted by a minimum of three debtors who have outstanding debts that can be collected. These debts should have a minimum principal amount of \$14,425. However, if the total number of debtors is less than 12 (excluding employees and stakeholders in the company) and their combined debts do not meet the minimum amount specified by US bankruptcy law, the debts owed by these individuals can be combined to reach the required nominal debt threshold. In the case of a debtor being a partnership, the bankruptcy action is carried out by a small part of the partnership. The responsibility of filing for bankruptcy on behalf of the partnership lies with the main partners, the curator appointed by the main partners, or the debtor itself if mitigating measures have been ordered in accordance with the existing regulations in the US bankruptcy law. Moreover, it is possible for foreign representatives to be involved in managing assets and initiating foreign bankruptcy proceedings against debtors. These representatives are appointed to handle the affairs and proceedings related to the bankruptcy of foreign entities. It is important to note that bankruptcy laws and regulations may vary between jurisdictions, and it is advisable to consult legal professionals or reference the specific laws in place for accurate and up-to-date information. If the application is made by the debtor himself, the debtor should analyze other potential alternatives to the liquidation process, such as debt reduction, payment period extension, or restructuring (Danisworo, 2013).

American bankruptcy law includes provisions that specify certain parties who are ineligible for bankruptcy filing, such as railroad companies, domestic insurance companies, banks, savings and loan associations, building and lending associations, homestead associations, New Market Venture Capital companies, foreign insurance companies, foreign banks with branches or institutions in the United States of America, growers, not-for-profit companies, and trading companies under United States bankruptcy laws. In contrast, bankruptcy law in Indonesia does not have regulations regarding parties who are ineligible for bankruptcy filing (Sp, 2019). Bankruptcy law in Indonesia separates parties who can apply for bankruptcy, which is clearly regulated in Article 2 of Law No. 37 of 2004, Paragraphs (2) to (5), which reads (Rochmawanto, 2015): “ 2) *The application as referred to in paragraph (1) may also be submitted by the Attorney General's Office. in the public interest;* 3) *In this case, the debtor is a bank, and the application for a declaration of bankruptcy can only be submitted by Bank Indonesia;* 4) *In this case, if the debtor is a securities company, stock exchange, clearing and guarantee institution, depository, or settlement institution, the application for a declaration of bankruptcy can only be submitted by the capital market supervisory agency;* and 5) *In the event that the debtor is an insurance company, reinsurance company, pension fund, or a state-owned enterprise operating in the public interest, the application for a declaration of bankruptcy can only be submitted by the minister of finance”.*

Bankruptcy law in the United States regulates the possibility of reorganization, aiming to restructure debtors with a new capital structure, enabling them to emerge from bankruptcy with proper attention. Reorganization is conducted in the best interest of both debtors and creditors. However, Law No. 37 of 2004 in Indonesia does not explicitly regulate reorganization. Upon closer examination, it can be observed that the reorganization mentioned in American bankruptcy law shares similarities with the PKPU (Penundaan Kewajiban Pembayaran Utang) process referred to in Law No. 37 of 2004. PKPU is a facility provided by the law to settle unpaid debts due to financial difficulties, allowing debtors to avoid bankruptcy and continue their business operations. The goal of PKPU is to improve the economic situation and enable debtors to generate profits to fulfill their obligations. Thus, PKPU is an action taken to prevent a debtor's bankruptcy, caused by temporary economic difficulties, from being declared by the court, as long as the debtor remains solvent. In essence, PKPU shares similarities with reorganization under U.S. Code Title 11, where debtors are given the opportunity to restructure their companies and/or debts, enabling them to continue their business operations and repay their debts prior to a court declaring bankruptcy. Reorganization and PKPU undoubtedly have positive impacts on debtors, creditors, and other parties involved, such as employees and company stakeholders (Sunarmi, 2004).

Law No. 37 of 2004 in Indonesia does not establish a minimum nominal limit for filing bankruptcy applications. This legal gap represents a weakness in the law

as it can be exploited by creditors who lack good faith. In contrast, developed countries like Singapore and the United States have implemented regulations that set minimum debt limits for filing bankruptcy. Singapore's bankruptcy law sets a minimum threshold of \$15,000, while the United States has established a minimum of \$14,425. Sutan Remy Sjahdeini argues that the introduction of a minimum nominal debt limit is necessary to ensure legal certainty for all stakeholders involved in the debtor's case (Ronald Saija, 2018).

The insolvency test is an important requirement and tool utilized by the United States in evaluating bankruptcy applications from debtors. This test involves analyzing whether the debtor is facing temporary financial difficulties or has debts exceeding their assets. However, Indonesia has yet to establish regulations regarding the insolvency test as a requirement for bankruptcy. Implementing an insolvency test can assist companies in assessing their financial condition and taking appropriate measures to prevent bankruptcy. Through business restructuring, negotiations with creditors, seeking external funding, or applying for bankruptcy protection, companies can improve their financial standing and avoid bankruptcy. The insolvency test can be categorized into three main tests, namely cash flow test, balance sheet test and capital adequacy test. The cash flow test is employed to evaluate the debtor's ability to fulfill their obligations when the debts become due and payable. It focuses on determining whether the debtor has the financial capacity to pay their debts at the appropriate time. This test examines the debtor's cash flow projections, income sources, and payment schedules to assess their ability to meet their financial obligations as they arise. The balance sheet test is another essential assessment conducted in bankruptcy proceedings. Its purpose is to compare the debtor's liabilities against their assets based on predetermined valuation standards. This evaluation seeks to determine if the debtor's liabilities exceed their assets. If the debtor's liabilities outweigh their assets significantly, it may indicate financial distress and insolvency. The capital adequacy test aims to examine the debtor's transactions for any irregularities and ascertain if they can be declared insolvent due to unjustifiable reasons. This test investigates whether the debtor has mismanaged their assets or engaged in fraudulent activities, which may contribute to their insolvency. By assessing the capital adequacy and the debtor's ability to effectively manage their assets, this test helps determine the extent of financial disruption and the need for bankruptcy intervention (Besila, Salsabila, & Shrishti, 2021). It is challenging to provide an exact count of companies that have been saved from bankruptcy by using an insolvency test. However, the insolvency test is widely recognized as a valuable tool for identifying financial difficulties and developing strategies to address them. Numerous companies have utilized insolvency tests to assess their financial positions and implement strategies aimed at improving their financial health.



In Indonesia, the resolution of bankruptcy cases is divided into three types: liquidation, reorganization, and accord. Liquidation involves the payment of debts to creditors through the cessation of the debtor's business and the sale of assets. The liquidation process involves several stages of dissolution, including the recording and collection of assets, determination of the distribution procedure, debt payment, payment of remaining assets to shareholders, and other necessary actions for the settlement of assets (Herwastoeti, 2006). Reorganization, on the other hand, is an effort by the debtor to restore the company's operations by implementing financial and operational restructuring to avoid liquidation. While reorganization is not specifically regulated in Indonesia, upon closer examination, it bears similarities to *Penundaan Kewajiban Pembayaran Utang (PKPU)*, which is a form of debt payment rescheduling. PKPU, as regulated in Article 222 paragraph (2), provides an opportunity for debtors facing financial difficulties to file a petition for the deferment of debt payment to the court. In the PKPU process, the court will issue a ruling to grant protection to the debtor and facilitate the debt restructuring process involving creditors. The main objective is to reach an agreement between the debtor and creditors in order to avoid bankruptcy (Fitria, 2018). Accord, as regulated in Articles 144 to 177 of Law No. 37 of 2004, refers to voluntary settlements between the company and creditors to reduce the amount of debt to be paid by the debtor. Typically, this involves an arrangement where the debtor pays a certain percentage, and the remaining debt is forgiven. In contrast, in the United States, bankruptcy resolutions are generally categorized into two types: liquidation regulated under Chapter 7 and reorganization under Chapter 11 (Amboro, 2022).

Main differences between liquidation in Indonesia and the United States lie in the legal procedures employed and the protections afforded to companies undergoing bankruptcy. In Indonesia, liquidation processes are governed by the Bankruptcy Law, with the appointment of a liquidator by the court. In contrast, in the United States, liquidation bankruptcy is regulated under Chapter 7, involving the appointment of a trustee to oversee the liquidation process. Additionally, differences exist in terms of payment priorities and the protections granted to companies during liquidation (Waisapi, 2023). PKPU in Indonesia involves stricter oversight by the court over the restructuring process and provides protections to debtors. In the United States, Chapter 11 offers more flexibility to companies in formulating debt restructuring plans and provides protections against creditor claims during the process (Putra, 2021).

### **Challenges And Obstacles In Implementing The Insolvency Test In Indonesia**

Munir Fuady expressed his opinion regarding bankruptcy: "Bankruptcy or insolvency is the seizure of all the debtor's assets to achieve a resolution between the debtor and creditors or to enable fair distribution of assets among all creditors."

In the Trade Finance Economics Encyclopedia, it is stated, "While the definition of bankrupt or insolvent is (among other things) a person who is declared bankrupt by a court, whose activities or assets are intended for the settlement of his debts." However, in general, bankruptcy refers to the seizure of all the debtor's assets to achieve a resolution between the debtor and creditor or to facilitate the fair distribution of assets among creditors (Wayan, 2022).

Law No. 37 of 2004, which is used in Indonesia and has its origins in the Netherlands, and the U.S. Code Title 11 Bankruptcy Code, which is used in the United States and has its origins in England, both have a common historical and philosophical basis. This is because the foundation of bankruptcy law in the Netherlands and England is fundamentally rooted in Roman law. The shared historical background of bankruptcy laws has resulted in certain similarities between Indonesian and American bankruptcy laws, albeit only at the level of principles (Kornelis & Amboro, 2016). The presence of shared historical backgrounds provides an opportunity to assimilate and incorporate beneficial aspects of United States bankruptcy law to address the legal gaps in Law No. 37 of 2004 and enhance legal protection and certainty for bankruptcy applications in Indonesia. One area that can be learned from is the utilization of insolvency tests in bankruptcy proceedings.

Bankruptcy and insolvency are closely related because, in principle, bankruptcy can be initiated when a company is insolvent (Surjanto, 2018). The challenge that Indonesia will face if it implements an insolvency test as one of the bankruptcy requirements is bookkeeping, as stated in Article 47 of the Commercial Law Code "If it is clear to the management that a loss of fifty percent of the company's capital has been suffered, they are obliged to announce it in the register held for this purpose at the Registrar's Office of the Raad van Justitie, and likewise in the official newspapers. If the loss amounts to 75 percent, then the company is dissolved by law, and the management is responsible to third parties for the agreements they have entered into after they know or need to know about the loss". The bookkeeping in question will certainly become an obstacle in the verification process, which will be carried out in the trial process, because the financial statements will, of course, only be based on the debtor's bookkeeping. The evidentiary system adopted by Indonesia is in accordance with Article 1865 of the Civil Code (hereinafter abbreviated as the Civil Code) or Article 163 of the *Herzien Inlandsch Reglement* (hereinafter abbreviated as HIR), which reads "Anyone who claims to have a right or designates an event to confirm that right or to dispute another person's right is obliged to prove the existence of that right or the event that is stated". Adhering to the postulating principle means being obliged to prove it. Therefore, this requires the creditor to have access to the debtor's financial statements in order to conduct an insolvency test (Panjaitan et al., 2022).

The bankruptcy theory and the insolvency test are closely related in the context of bankruptcy law. The bankruptcy theory focuses on the legal process that occurs when a company or individual is unable to repay their debts and is compelled to restructure or liquidate their assets to fulfill their obligations. On the other hand, the insolvency test serves as a tool to assess whether a company or individual satisfies the criteria for bankruptcy. During this process, the financial condition of the entity or individual is thoroughly examined to determine if they are incapable of repaying their debts at a given time or unable to meet their overall financial obligations. Within the framework of bankruptcy, the insolvency test is utilized to ascertain whether a company or individual fulfills the bankruptcy criteria and must initiate a bankruptcy application. Subsequently, bankruptcy theory guides the legal proceedings subsequent to a bankruptcy filing, including the restructuring or liquidation of assets to settle outstanding debts.

Difficulty in obtaining the debtor's financial reports results in the disruption of the evidentiary process at the commercial court, posing challenges to the principles of procedural proceedings in court, namely speed, simplicity, and low cost. Additionally, this situation provides an opportunity for debtors with malicious intentions to engage in fraudulent financial reporting. According to the Association of Certified Fraud Examiners, fraudulent financial reporting, defined as the intentional disclosure or concealment of material facts with the intent to harm other parties, is a worrisome form of fraud. Such fraudulent practices involve the company's management and can lead to significant financial losses for investors. Common schemes employed in fraudulent financial reporting include manipulating financial reports, intentionally misrepresenting events, transactions, accounts, or other crucial information in the books of accounts, and deliberately deviating from accepted accounting standards, principles, policies, and measurement methods used in reporting business transactions (Situngkir & Triyanto, 2020). However, this challenge can be addressed by enhancing the financial transparency of companies. This can be achieved by developing and implementing a more effective and transparent financial reporting system, supported by robust laws and advanced information technology.

Companies may encounter financial difficulties due to various factors such as liquidity issues, insolvency, and other challenges. In order to mitigate the risk of bankruptcy, some companies may resort to fraudulent financial reporting as a means to portray a favorable financial condition (Ressidnarry & Sjarief, 2021). The likelihood of a company engaging in fraudulent financial reporting decreases as its financial stability improves. Conversely, companies facing financial difficulties are more prone to resorting to fraudulent bookkeeping practices. Research indicates that companies experiencing financial constraints are 5.5 times more likely to engage in bookkeeping falsification compared to those without such constraints (Abbas, 2017). Legislation plays a crucial role in combating fraudulent financial

reporting. The inclusion of provisions that mandate the submission of audited financial reports or similar documentation to regulatory authorities can significantly reduce the occurrence of fraudulent financial reporting in bankruptcy applications. As a result, the burden of proving the insolvency test falls upon both the debtor and the creditor.

Another challenge that will be encountered pertains to the results of the insolvency test obtained from a company that is solvent but possesses non-current assets such as land, buildings, etc., which cannot be easily converted into cash to repay its debts. Additionally, the valuation of the debtor's assets often sparks debates concerning the appropriate valuation method, including book value, market value, fair value, and liquidation price. The choice of value to be used in calculating the asset value becomes contentious, particularly when the debtor is still operating as a going concern, necessitating consideration of the going concern value, unit asset value, or retail sales-based breakup value (Novia, 2021a). In such circumstances, debt restructuring and/or payment negotiations serve as alternative solutions that can be employed. Essentially, debtors have the capacity to repay their debts but may encounter temporary financial constraints. These measures aid in avoiding scenarios where the debtor's assets cannot be liquidated to settle their debts.

Immature regulations present another obstacle when implementing an insolvency test. The regulations pertaining to insolvency tests in Indonesia are still underdeveloped and in need of updating. Currently, there is a lack of clear guidelines on how to conduct insolvency tests or how their outcomes should be applied in practical terms (Pratama, 2021). This situation can create uncertainty for companies or individuals who intend to conduct insolvency tests and impede their widespread adoption in Indonesia. The legal culture in Indonesia is generally considered less robust (Ismayawati, 2011). As a result, companies are often hesitant to utilize the insolvency test as a means to address their financial issues. Instead, many parties seek illegitimate shortcuts to evade financial problems. The absence of a standardized reference for the insolvency test in Indonesia further complicates its implementation. This lack of clarity makes it challenging for companies to establish consistent and suitable standards for conducting insolvency tests (Novia, 2021b). The utilization of insolvency tests by inexperienced parties can worsen financial issues, as it may lead to errors in evaluating the finances of the involved company or individual. Moreover, the cost associated with conducting an insolvency test can pose a significant obstacle, particularly for small and medium-sized enterprises. To address these challenges, the government can enhance Law No. 37 of 2004 by engaging in consultations with experts and stakeholders, including creditors and debtors. These consultations can facilitate the development of clearer and more accessible regulations.

The implementation of the insolvency test in Indonesia will face challenges, such as the need for strong evidence to demonstrate a debtor's inability to repay debts, with the burden of proof often falling on the party filing the claim, usually the creditors. Additionally, there are difficulties in obtaining accurate financial reports due to limited human resources, accounting expertise, and other factors, creating a high potential for the defendant to manipulate financial statements during the process of gathering evidence. Furthermore, Indonesia lacks mature and adequate legislation to regulate the application of the insolvency test in bankruptcy cases. These challenges will undoubtedly hinder the effectiveness of implementing the insolvency test in Indonesia. In this regard, Indonesia needs a robust legal framework to enhance financial reporting transparency and improve Financial Accounting Standards to support the successful implementation of the insolvency test.

### **Implementation of The Insolvency Test In Indonesia Contribute To Economic Improvement**

The implementation of insolvency tests in Indonesia serves to safeguard companies facing genuine financial difficulties from being declared bankrupt. Its purpose is to prevent malicious parties from using bankruptcy as a means to defraud and harm others while benefiting themselves. The insolvency test functions as a screening mechanism to differentiate between creditors and/or debtors who genuinely seek bankruptcy protection and those who apply in bad faith with the intention of causing harm. This determination of the legitimacy of legal protection is outlined in Article 8, paragraph 6 of the Indonesian Bankruptcy Law, which reads “The Court's decision, as stated in paragraph (5), should include: a) Specific articles of the applicable laws and regulations and/or unwritten legal sources that were used as the basis for the judgment; and b) Legal reasoning and dissenting opinions, if any, that differ from those of the member judges or the panel's chairman”.

The provision implies that the judge, when issuing a bankruptcy order, must take into account additional legal sources and other legal considerations before making the decision. Therefore, the judge cannot simply declare the bankruptcy application of the petitioner fulfilled solely based on meeting the bankruptcy requirements stated in Article 2, paragraph (1) of Law No. 37 of 2004 (Shubhan, 2020). The use of the insolvency test in bankruptcy cases should be considered as one of the factors influencing the judge's decision during the trial proceedings.

The insolvency test is a specialized tool used to evaluate the financial position of a company and determine its solvency. It aims to assess whether the company has the ability to meet its financial obligations. If a company is deemed insolvent, the insolvency test can assist in devising a plan to overcome financial difficulties. In certain instances, these tests have successfully steered companies

away from bankruptcy by identifying issues early on and implementing necessary measures. They have facilitated processes such as operational restructuring, creditor negotiations, or securing external funding. Overall, insolvency tests prove to be an effective tool for companies grappling with financial challenges.

Debtors who are still solvent can still be declared bankrupt under Law No. 37 of 2004 in Indonesia. As a result, Indonesian bankruptcy law is often perceived as a tool for debt collection rather than a comprehensive solution for debtors facing financial difficulties. However, it is important to note that Indonesian bankruptcy law also upholds the principle of business continuity, which allows debtors to continue operating their businesses and enhance their economic value. This principle serves as a form of legal protection for debtors who genuinely intend to repay their debts (Irianto, 2015). The use of an insolvency test can serve as a means to evaluate bankruptcy applications filed in court. In Indonesia, the application of insolvency tests is not yet widespread. However, it is worth noting that Article 72, paragraph (2) of Government Regulation No. 74 of 2020 on Investment Management Institutions (referred to as PP No. 72 of 2020), states that “The determination of insolvency, as mentioned in paragraph (1), shall be based on an insolvency test conducted by an independent institution appointed by the Minister of Finance” has implemented the use of insolvency tests as a requirement for bankruptcy applications. The inclusion of insolvency tests can have a positive impact on the principles upheld by Indonesian law, particularly the principles of business continuity and justice. This is because insolvency tests provide equal legal protection to both creditors and debtors (Alka & Candini, 2022).

If the implementation of the insolvency test to assess solvent debtor companies in bankruptcy applications is not carried out, it will have significant adverse effects on the Indonesian economy. Declaring solvent companies as bankrupt by commercial courts on a frequent basis will erode foreign investors' confidence in investing in Indonesia, disrupt the balance of legal protection for creditors, debtors, and stakeholders, and pose a risk to the stability of Indonesia's economic development (Rahman, 2023). Insolvency tests can play a crucial role in safeguarding the Indonesian economy by enhancing creditor protection mechanisms, mitigating the risk of company failures, and enhancing the quality of decision-making in resolving financial difficulties. In the long run, this can strengthen the financial system in Indonesia and foster sustainable economic growth. One notable case that gained significant public attention is the bankruptcy of General Motors Corporation (GM) in 2009 in the United States.

GM faced severe financial challenges and filed for bankruptcy protection under Chapter 11 of the United States bankruptcy laws. A pivotal aspect of the case was GM's ability to undergo a comprehensive business assessment and restructuring. During this evaluation, GM identified unprofitable ventures, either writing them down or divesting them altogether. Furthermore, GM implemented

measures to streamline its organizational structure and reduce operational costs. This decision enabled GM to secure the necessary funding for its restructuring efforts and facilitate overall business improvement. The inclusion of the insolvency test in GM's case illustrates how the bankruptcy process can be utilized to restructure and enhance the performance of financially distressed companies. GM successfully emerged from bankruptcy in less than a year, with improved financial health and operational efficiency (Smolinsky, 2011). This case highlights the positive impact of implementing an insolvency test in restoring investor confidence and enhancing a country's economy through the revitalization of robust and successful companies. The GM case also underscores the significant role of the courts in overseeing bankruptcy and corporate restructuring proceedings. The legal precedents established in this case can serve as valuable guidance and exemplars for future corporate bankruptcy cases.

Companies facing financial difficulties can promptly receive optimal assistance and solutions to revive their finances, such as debt restructuring or acquisition by external entities. These measures can mitigate the risk of bankruptcy or business closure, which can have far-reaching consequences, including job losses and a decline in people's purchasing power (Karundeng, 2015). The high unemployment rate will have a significant impact, leading to social issues that can diminish the quality of human resources. Various social problems, such as high crime rates, are caused by the combination of high unemployment and a limited number of available jobs (Ishak, 2018). Indonesia is predicted not to experience an economic recession in 2023 (Putri, 2023). Even though Indonesia's economy is experiencing growth, it should be remembered that the world economic conditions are not experiencing significant growth due to factors such as the ongoing war between Russia and Ukraine, new tensions between China and Taiwan, and other events that have had an impact on the global economy (Novelino, 2023). So, Indonesia must take immediate action to prevent a potential wave of mass bankruptcies if the economy does not improve. The implementation of the insolvency test can help identify solvent and insolvent companies, thereby reducing the bankruptcy rate in Indonesia. In other words, by reducing the number of bankrupt companies, the unemployment rate in Indonesia can be lowered, leading to the prevention of social problems that may hinder the country's growth and development.

The use of insolvency tests can strengthen creditor protection mechanisms, enabling creditors to achieve higher profits and minimize the risk of capital loss resulting from company failures. This, in turn, encourages creditors to provide loans and financial support to companies with lower risks, thereby fostering economic growth. In the long run, the application of insolvency tests improves the quality of decision-making in resolving financial problems, enabling companies to become more organized and efficient in managing their finances. This enhances the

quality and competitiveness of companies in the market, contributing to sustainable economic growth and financial stability.

#### D. CONCLUSION

Bankruptcy laws in Indonesia and the United States differ in terms of bankruptcy requirements, eligibility to file for bankruptcy, suspension of debt payment obligations, insolvency tests, and limitations on the amount of debt. These differences signify that Indonesia can assimilate positive aspects and adopt them into its bankruptcy laws for a more improved implementation. By incorporating these elements, Indonesia can enhance its bankruptcy system and strive for better outcomes. The implementation of an insolvency test as a requirement for bankruptcy applications in Indonesia may face challenges and obstacles such as fraudulent financial reporting, a more complex verification process, solvent companies with non-current assets, the absence of standardized references, and high costs associated with conducting insolvency tests. Indonesia needs a strong legal framework to enhance financial reporting transparency and improve Financial Accounting Standards to support the successful implementation of the insolvency test. The implementation of the insolvency test in Indonesia can have a positive impact on the economy by identifying solvent companies capable of continuing and developing their businesses. This, in turn, can reduce the number of bankrupt companies, lower the unemployment rate, and potentially decrease the crime rate. Furthermore, the use of insolvency tests can improve the quality of decision-making in resolving financial problems, enabling companies to enhance their organizational and financial management efficiency.

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#### COMPETING INTEREST

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