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A Comparison of the Concept of Insolvency in Determining Bankruptcy Between Indonesia and The United States

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ABSTRACT: This study examines the comparison of insolvency concepts in determining bankruptcy between Indonesia and the United States. The research aims to identify differences in legal approaches, as well as the impacts on creditors, debtors, and the overall economy. This study employs a normative juridical method with literature review and case study approaches, including the bankruptcy cases of Nyonya Meneer in Indonesia and Eastman Kodak Company in the United States. The result show that the Indonesian bankruptcy system emphasizes formal debt repayment, whereas the United States system applies the Insolvency Test to provide greater protection for debtors with restructuring potential. These differences affect predictability of repayment for creditors, restructuring opportunities for debtors, and overall economic stability.

KEYWORDS: Insolvency, Bankruptcy, Creditors, Debtors, Legal Comparison.

I. INTRODUCTION

Insolvency is a condition in which a debtor, whether an individual or a corporation, is unable to meet debt repayment obligations to creditors due to a lack of adequate assets or financial means.[1] Bankruptcy legal systems in various countries provide that a debtor may file for bankruptcy upon being in a state of insolvency, namely when their liabilities exceed the value of their assets.[2] Although this concept is widely adopted across many countries, each jurisdiction applies it differently, depending on the legal system in place.

The regulation of the insolvency concept in Indonesia is governed by Law number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Pursuant to this law, a bankruptcy declaration does not necessarily indicate the debtor's actual state of insolvency. This reflects a differing interpretation of insolvency, wherein in other jurisdictions, a state of insolvency may directly result in a bankruptcy declaration due to the debtor's inability to fulfill debt obligations.[3] This law stipulates that a debtor, whether an individual or a corporation, may be declared bankrupt even if they still possess sufficient assets to meet their obligations in the future, as long as there exists an unpaid debt that has become due. Law number 37 of 2004 does not explicitly require insolvency to be established through an insolvency test as a prerequisite for bankruptcy. The absence of such a test has contributed to the large number of companies in Indonesia that are legally declared bankrupt.[4]

The lenient regulation of bankruptcy allows debtors to be declared bankrupt with relative ease, leading to an increase in bankruptcy petitions filed against companies or individual debtors. According to data from the Case Tracking Information System (SIPP) of the Central Jakarta District court, during the last quarter of 2020, specifically from October to mid-December, there were 133 cases related to Suspension of Debt Payment Obligations (PKPU) and bankruptcy filed with the Central Jakarta Commercial Court.[5] This indicates that within a period of less than three months at the end of 2020, the number of PKPU and bankruptcy cases had already surpassed the total number of bankruptcy rulings issued over 46 years, from 1950 to 1966, which amounted to approximately 130 rulings.[6] The economic crisis faced by Indonesia since the implementation of the *Faillissement-*

[1] Gede Aditya Pratama, "Hilangnya *Insolvency Test* Sebagai Syarat Kepailitan Di Indonesia", *Krtha Bhayangkara* 15, no. 1 (2021): 1–10, https://doi.org/10.31599/krtha.v15i1.450.

[2] Randi Ikhlas Sardoni, "Instrumen Insolvensi Tes Pada Perkara Kepailitan di Indonesia", 2011, Hal. 37.

[3] F Yudhi Priyo Amboro, "Pengaturan Hukum Kepailitan Indonesia : Perbandingan Hukum Amerika Serikat Dan Inggris Kajian" *Lex Prudentium*, 1, no. 2 (2022): 62–81.

[4] Sunarmi, *Prinsip Keseimbangan Dalam Hukum Kepailitan DiIndonesia*, PT. Softmedia, Jakarta, 2010, hal 316.

[5] Sistem Informasi Penelusuran Perkara Pengadilan Negeri Jakarta Pusat, http://sipp.pnjakartapusat.go.id/statistik_perkara.

[6] Hadi Shubhan, *Hukum Kepailitan Prinsip, Norma, dan Praktik di Pengadilan*, cet. 6 (Jakarta: Kencana Prenadamedia Group, 2019), hlm. 6.

Verordening 1906 should serve as a lesson for the Indonesian government that establishing a clear insolvency condition is necessary to prevent debtors from being declared bankrupt too easily.[7] The bankruptcy process is often viewed as a swift means of debt collection, given the time limits for case examination set by law. However, if the debtor is not actually insolvent, the creditor should pursue a breach of contract claim in the district court to seek debt repayment. This is because such disputes fall under general civil law. In reality, the debtor may still be solvent or capable of repaying the debt.[8] In comparison to the regulations in the United States, as governed by the Bankruptcy Code, the U.S. stipulates that a debtor may be declared bankrupt only if found to be insolvent following the application of an insolvency test.

A pertinent case example in Indonesia is the bankruptcy of Nyonya Meneer, a legendary Indonesian herbal medicine brand, which was, in fact, still solvent and possessed sufficient assets to settle its debts. The case concluded with a bankruptcy ruling by Semarang Commercial Court in 2017.[9] Conversely, in the United States, the Eastman Kodak Company serves as a notable case. Established in 1888, Kodak, a pioneer in photography and imaging technology, filed for bankruptcy in 2012.[10] The failure to pass the Insolvency Test made Kodak eligible to file for bankruptcy. The Kodak case illustrates a different approach from the Indonesian bankruptcy system. In the United States, bankruptcy can only be filed after a thorough financial assessment through the Insolvency Test. This prevents solvent companies from being liquidated prematurely, provides an opportunity for restructuring, and protects creditors. In Indonesia, filing for bankruptcy only requires proof of failure to pay a single matured debt, without considering the overall financial condition of the debtor.

This study identifies differences in the concept of insolvency as a basis for declaring bankruptcy and examines the impact on creditors, debtors, and the economy in general. The research is important because insolvency and bankruptcy are highly relevant issues in the global economy, especially in times of economic uncertainly and rising corporate bankruptcy rates. This study discusses the differences in insolvency concepts between Indonesia and the United States, along with their impacts on creditors, debtors, and the economy.

II. RESEARCH METHODS

This study employs a normative juridical research method. Normative research is a process aimed at analyzing legislation and legal norms applicable to bankruptcy and insolvency in Indonesia and the United States. The data collection technique is based on secondary data, namely library research and the use materials relevant to the issues examined in this study.[11] The research broadly reviews the prevailing legislation in Indonesia (*Law number 37 of 2004*) and the United States (*Bankruptcy Code*), as well how these regulations are implemented in bankruptcy practice. It also analyzes legal concepts such as insolvency, bankruptcy, and the differences in regulatory application between Indonesia and the Unites States. By using concrete case studies, including the bankruptcy of Nyonya Meneer in Indonesia and the case of Eastman Kodak Company in the United States, this study compares the concepts and legal processes applied in the bankruptcy systems of both countries, along with their impacts on creditors, debtors, and the economy.

III. THEORETICAL FRAMEWORK

A. General Overview of the Concept of Insolvency

Insolvency according to the English dictionary is defined as the inability to pay debts.[12] Meanwhile, Black's Law Dictionary defines insolvency as follows:[13]

> "*Insolvency is the condition of a person who is insolvent, inability to pay one's debts, lack of means to pay one's debts such a relative condition of a man's assets and liabilities that the former, if all made immediately available, would not sufficient to discharge the latter or the condition of a person who is unable to pay his debts as they fall due or in usual course of trade and business*."

Insolvency according to Henry Campbell Black, is the inability of a person to pay their debts. Black further states the following in full:[14]

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[7] Lili Naili Hidayah, "Indikator Insolvensi Sebagai Syarat Kepailitan Menurut Hukum Kepailitan Indonesia", *Jurnal Ilmu Hukum* 7, Nomor 1 (2016): 134–44, https://repository.unja.ac.id/613/1/8. Lili Naili.pdf.

[8] Lilik Warsito, "Urgensi Pembuktian Syarat Kepailitan Dan *Insolvency Test* Dalam Permohonan Kepailitan", *Jurnal Usm Law Review* 7, no. 2 (2024): 822, https://doi.org/10.26623/julr.v7i2.9018.

[9] Tinwarotul Fatonah, 2017, "3 Penyebab 'Besar' Bangkrutnya Pabrik Jamu Legendaris Nyonya Meneer", https://wow.tribunnews.com/2017/08/05/3-penyebab-besar-bangkrutnya-pabrik-jamu-legendaris-nyonya-meneer.

[10] ABCNews, 2025, "145-year-old film company Kodak pushes back on reports it may shut down", 145-year-old film company Kodak pushes back on reports it may shut down - ABC News.

[11] Ishaq, 2017, *Metode Penelitian dan Penulisan Skripsi, Tesis, serta Disertasi,* Bandung: Alfabeta.

[12] Peter Salim, *Slim's Ninth Collegiate English – Indonesian Dictionary*, Modern English Press, Jakarta, 2000, hal. 754.

[13] Henry Campbell Black, M. A., "Black's law Dictionary; Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern", Fifth Edition ST. Paul Minn., West Publishing Co.1979.

"*Insolvency is inability to pay one's debt; lack of means to pay one's debt. Such relative condition of a man's assets and liabilities that the former, if all made immediately available, would not be sufficient to discharge the latter. Or the conditions of a person who is unable to pay his debts as the fall due, or in the usual course of trade business*."

This view is supported by Harold F. Lusk, Charles M. Hewitt, John D. Donnell, and A. James Barnes, who state that:[15] "*Debtors are considered insolvent if they are unable or fail to pay their debts as they become due*".

Friedman defines insolvency as the inability to meet financial obligations when they fall due, as commonly occurs in the business world, or as a condition in which liabilities exceed assets during a given period.[16] According to Sutan Remy Sjahdein, insolvency can be defined as follows:[17]

"Insolvency arises when individuals or businesses have insufficient assets to cover their debts, or are unable to pay their debts when they are supposed to."

The conclusion regarding the concept of insolvency is that the term refers to a condition in which an individual or a debtor is unable to meet financial obligations as they become due. In a broader perspective, insolvency may occur when the available assets are insufficient to cover all liabilities or when the debtor is unable to repay debts within the agreed timeframe.

The concept of insolvency used in this study will be analyzed through the lens of the Welfare State Law Theory. According to Bagir Manan, the concept of a welfare state is as follows:[18]

"*The state or government is not merely a guardian of public order or security, but the primary bearer of responsibility for realizing social justice, public welfare, and the greatest possible prosperity for the people*."

Muchsan states that the characteristics of a welfare state include the aim to improve the welfare of citizens equally. The state is expected to provide optimal services that reach all segments of society. Without equitable service delivery, it is difficult to achieve social welfare.[19] Through this approach, the concept of insolvency is expected to function not only as a legal instrument but also as a means of protecting the balance between creditor and debtor interests, while supporting broader social and economic stability. This approach is relevant to ensure that bankruptcy mechanisms are not only fair, but also aligned with the broader goals of a welfare-oriented state.

B. Determination of Bankruptcy in Indonesia

The procedure and requirements for filing bankruptcy in Indonesia have distinct characteristics, as there is no specified minimum amount of debt or receivables required to initiate a bankruptcy petition. Furthermore, it is not mandatory to prove that a company or an individual is in a state of insolvency before a bankruptcy application can be filed.[20] Law number 37 of 2004 regulates the requirements for bankruptcy in Indonesia, which include: (a) the debtor has two or more creditors, in accordance with the principle of concursus creditorium, which requires that the debtor must owe debts to more than one creditor; (b) failure to repay at least one debt; and (c) the debt is due and collectible. In practice, this regulatory framework still has weaknesses, namely the absence of a minimum debt threshold and the lack of an insolvency test.

The first requirement is that the debtor must have at least two creditors. This provision reflects the concursus creditorium principle, which stipulates that a debtor can only be declared bankrupt if there is more than one creditor.[21] This is reasonable, as a debtor with only one creditor gives no cause for concern over the distribution of repayment from the debtor's assets. Law number 37 of 2004 does not stipulate a minimum debt amount that must be met by either the petitioner or respondent in submitting a bankruptcy petition. This may create a legal loophole that allows bankruptcy petitions to be filed in inappropriate or unjustified situations.[22] In the absence of an insolvency test, a debtor who still possesses sufficient assets to repay their debts may nonetheless

[14] Amboro, "Pengaturan Hukum Kepailitan Indonesia : Perbandingan Hukum Amerika Serikat Dan Inggris Kajian."
[15] *Amboro.*
[16] Munir Fuady, 1999, *Hukum pailit 1998 (dalam teori dan praktek)*, Bandung: Citra Aditya Bakti.
[17] Sutan Remy Sjahdeini, 2016, *Sejarah, Asas, dan Teori Hukum Kepailitan (Memahami undang-undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran),* Prenadamedia Group.
[18] Bagir Manan, 1996, *Politik Perundang-undangan dalam Rangka Mengantisipasi Liberalisme Perekonomian*, FH UNLA, Bandar Lampung, h. 9.
[19] Muchsan, 1992, *Sistem Pengawasan Terhadap perbuatan Pemerintah dan Peradilan Tata Usaha Negara di Indonesia*, Liberty, Yogyakarta, h. 4-5.
[20] Hidayah, "Indikator Insolvensi Sebagai Syarat Kepailitan Menurut Hukum Kepailitan Indonesia."
[21] Sutan Remy Sjahdeni, *Sejarah, Asas, dan Teori Hukum Kepailitan*, cet. 2, (Jakarta: Prenadamedia Group, 2018), hlm. 163.
[22] Pratama, "Hilangnya *Insolvency Test* Sebagai Syarat Kepailitan Di Indonesia."

be declared bankrupt by the court solely for failing to fulfil a payment obligation, as stipulated in Article 2 paragraph (1) of Law number 37 of 2004. This condition may harm companies that are, in fact, still solvent.[23]

The second requirement is the debtor's inability to repay at least one debt. This means that, among two or more existing creditors, it is sufficient for a single debt owed to one creditor to remain unpaid, even if obligations to the other creditors are being fulfilled properly. Moreover, the amount of unpaid debt to that one creditor is not considered in relation to the debtor's total outstanding liabilities.[24] Law number 37 of 2004 does not take into account the debtor's ability to repay their debts. This creates a situation in which a creditor holding a relatively small claim may file a bankruptcy petition against a debtor, even if the debtor possesses assets that significantly exceed the amount of debt owed to the petitioning creditor.[25]

The third requirement is that the debt must be due and collectible. This means that the unpaid debt must have reached its agreed maturity date, thereby entitling the creditor to demand payment in accordance with applicable provisions.[26] An example is debt agreement that requires payment within a certain period, known as the maturity date. A court decision can also order the debtor to pay the creditor a sum of money. This may happen due to breach of contract or as compensation for unlawful acts by the debtor. In both cases, the debt is considered due and collectible.[27]

Insolvency is not a requirement for a debtor to be declared bankrupt in Indonesia. Article 178 paragraph (1) of law number 37 of 2004 states that insolvency is determined only after the debtor is declared bankrupt. Insolvency occurs automatically without a judge's decision if no peace offer (accord) is made during the debt reconciliation meeting; or if a peace agreement exists but is not approves in the verification meeting; or if the approved peace agreement does not receive homologation from the bankruptcy judge; or if the homologated peace agreement is rejected by the appellate judge.

Insolvency in Indonesia can also be established through Suspension of Debt Payment Obligations (PKPU). If within 270 days after the temporary payment decision the peace plan is not accepted by creditors, or if the peace is not ratified by the Commercial Court, or if no agreement is reached, the supervising judge must notify the Commercial Court and declare the debtor bankrupt.[28] The assessment of insolvency in law number 37 of 2004 differs from the Insolvency Test found in the previous law. The Insolvency Test should be conducted to determine whether a debtor can be declared bankrupt.[29]

A debtor is only considered to be in a state of insolvency if the total amount of liabilities (debts) exceeds the value of the assets owned. This condition is referred to as balance sheet insolvency. On the other hand, cash flow insolvency occurs when the debtor does not have sufficient liquidity to pay debts that have fallen due, even though the total value of assets is greater than the liabilities. In cases of cash flow insolvency, the competent court is the general civil court (District Court) rather than the Commercial Court, because unpaid debt due to cash flow insolvency is more appropriately classified as a breach of contract rather than a bankruptcy issue.[30]

C. Determination of Bankruptcy in the United States

The regulation of bankruptcy in the Unites States is governed by the Bankruptcy Code, particularly found in Chapter 7 (liquidation), Chapter 11 (corporate debt restructuring), and the concept of insolvency plays a central role in determining bankruptcy. According to the Bankruptcy Code, a company or individual is considered insolvent if their debts exceed the value of their assets, or if they are unable to pay debts that are due and payable. This condition is generally assessed through three types of Insolvency Tests: the Balance Sheet Test, the Adequate Capital Test, and the Cash Flow Test.[31]

The Balance Sheet Test evaluates whether, at the time of a specific transaction, the value a company's assets exceeds the value of its liabilities. Assets are assessed based on their fair market value, not their book value, which reflects historical cost. Adjustments may be necessary to reflect the actual market value, including for unrecorded assets such as contingent property.[32]

Cash Flow Test analyzes a company's ability to meet its financial obligations as they fall due. This is done by evaluating future financial projections based on various scenarios, such as expected growth, current economic conditions, and historical performance. The test also involves financial ratios such as debt-to-equality, current ratio, and quick ratio to provide a deeper analysis.[33]

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[23] Clarita Stefanie Panjaitan, R. Kartikasari, and Artaji Artaji, "Keabsahan Keadaan Solven Debitor Sebagai Dasar Pertimbangan Dalam Perkara Kepailitan," *Media Iuris* 5, no. 1 (2022): 19, https://doi.org/10.20473/mi.v5i1.27480.

[24] Prihatmaka, dkk, "Insolvensi dalam Hukum Kepailitan di Indonesia (Studi Putusan No. 48/Pailit/2012/Pn.Niaga.Jkt.Pst Antara PT. Telekomunikasi Selular Vs PT. Primajaya Informatika), *Fiat Justisia Jurnal Ilmu Hukum*, Volume 8 No. 2, 2014, hlm. 326-241.

[25] Pratama, "Hilangnya *Insolvency Test* Sebagai Syarat Kepailitan Di Indonesia."

[26] Tata Wijayanta, "Kajian Tentang Pengaturan Syarat Kepailitan Menurut Undang-Undang Nomor 37 Tahun 2004", *Mimbar Hukum*, Vol. 26, No. 1.

[27] Pratama, "Hilangnya *Insolvency Test* Sebagai Syarat Kepailitan Di Indonesia."

[28] *Pratama.*

[29] *Prihatmaka.*

[30] Pratama, "Hilangnya *Insolvency Test* Sebagai Syarat Kepailitan Di Indonesia."

[31] Novi Hasanah, 2018, "Perbedaan Kepailitan dengan Insolvensi", Perbedaan Kepailitan dengan Insolvensi | Klinik Hukumonline.

[32] Meaden & Moore, 2017, "3 Tests Forensic Accounting Experts Use to Analyze Solvency", 3 Tests to Analyze Solvency | Meaden & Moore.

[33] *Meaden & Moore.*

Adequate Capital test assesses whether a company has sufficient capital to operate normally despite future fluctuations. This test takes into account asset variability, debt repayment schedules, and access to credit. A company passes the test if it has enough funds to cover operating costs, capital expenditures, and debt obligations.[34] If a company or individual fails this test, they are considered insolvent and may file for bankruptcy under Chapter 7 or Chapter 11 of the Bankruptcy Code. In this context, the concept of insolvency in the United States is more comprehensive and helps prevent misuse of bankruptcy proceedings by companies that are actually still solvent.

IV. RESULTS AND DISCUSSION

A. Differences in the Concept of Insolvency in Determining Bankruptcy in Indonesia and the United States

The concept of insolvency in determining bankruptcy in Indonesia and the United States differs as a requirement for declaring bankruptcy. The bankruptcy requirements in Indonesia are regulated under Article 2 paragraph (1) of Law number 37 of 2004, which states:

> "*A debtor who has two or more creditors and fails to fully repay at least one debt that is due and collectible shall be declared bankrupt by a court decision, either upon its own petition or upon the petition of one or more of its creditors*."

Insolvency refers to a condition experienced by a debtor when the total debt exceeds the total assets owned. This condition reflects a financial imbalance, where the available assets are insufficient to cover the obligations that must be fulfilled.[35] Debtors who are insolvent can be identified through the application of an Insolvency Test.[36] This test was previously regulated under Article 1 paragraph (1) of the *Faillissement-Verordening* 1906, which states:

> "*Any debtor (person in debt) who is unable to pay his debts and has ceased to pay them back, either upon his own request or upon the request of a creditor (person to whom money is owed) or several of his creditors, may be declared bankrupt by a judge's ruling*."

Based on Article 1 paragraph (1) of the *Faillissement-Verordening* 1906, only debtors who are unable to pay their debts may be declared bankrupt, after undergoing an Insolvency Test. The Insolvency Test is the most ideal mechanism to assess a debtor's financial condition. It involves two main aspects: a cash flow test and a balance sheet test, both of which comprehensively evaluate the debtor's ability to meet financial obligations.[37] Insolvency occurs when the total value of a debtor's assets is smaller than the total of his obligations to creditors.[38] Compared to the requirements under the new bankruptcy law, the old provisions show a significant difference, particularly in their approach to the concept of insolvency. Under the old framework, insolvency was the main requirement for declaring bankruptcy. Under the new law, however, bankruptcy can be declared without specifically considering whether or not insolvency has occurred.[39] The execution and procedure of the Insolvency Test are important steps in the bankruptcy system. They ensure that the debtor's financial condition is evaluated fairly and accurately, so that the results truly reflect the debtor's financial situation.[40] The Insolvency Test functions to determine whether a debtor is insolvent. Yet Indonesian bankruptcy law does not clearly establish limits for filing a bankruptcy petition. As a result, debtors who are still solvent may file for bankruptcy without considering insolvency as a last resort in resolving debt with creditors.[41] The insolvency parameter under Indonesian bankruptcy law is set forth in Article 178 of the Bankruptcy Law, which states:[42]

> "*If no settlement plan is offered in the creditors meeting, or if the settlement plan is not accepted, or if ratification of the settlement is refused by a final and binding court decision, by operation of law the bankrupt estate shall be deemed insolvent*."

The elements underlying bankruptcy requirements under Las number 37 of 2004 remain relatively simple.[43] This is further clarified in Article 8 paragraph (4), which provides:

> "*A petition for a declaration of bankruptcy shall be granted if there is clear evidence that the requirements for declaring bankruptcy under Article 2 paragraph (1) of Law number 37 of 2004 have been met.*"

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[34] *Meaden & Moore.*
[35] *Meaden & Moore.*
[36] Sutan Remy Sjahdeni, *Sejarah, Asas, dan Teori Hukum Kepailitan*, cet. 2, (Jakarta: Prenadamedia Group, 2018), hlm. 151.
[37] Pratama, "Hilangnya *Insolvency Test* Sebagai Syarat Kepailitan Di Indonesia."
[38] Luqman Hakim and Nanda Diyan Saputra, "Politik Hukum Insolvency Test Dalam Pembaharuan Hukum Kepailitan di Indonesia," *Madani: Jurnal Ilmiah Multidisipline* 1, no. 8 (2023): Hal. 308, https://jurnal.penerbitdaarulhuda.my.id/index.php/MAJIM/article/view/899/932.
[39] Pratama, "Hilangnya *Insolvency Test* Sebagai Syarat Kepailitan Di Indonesia."
[40] Amboro, "Pengaturan Hukum Kepailitan Indonesia : Perbandingan Hukum Amerika Serikat Dan Inggris Kajian."
[41] Fransiskus Stefan Sunur, "Atasi Tantangan : Memahami Pentingnya Uji Insolvensi Dalam Kepailitan Di Indonesia Overcoming Challenges : Understanding The Importance of Insolvency Test in Bankruptcy in Indonesia" *ARBITER : Jurnal Ilmiah Magister Hukum* 6, no. April (2024): 132–41, https://doi.org/10.31289/arbiter.v6i1.3833.
[42] Warsito, "Urgensi Pembuktian Syarat Kepailitan Dan *Insolvency Test* Dalam Permohonan Kepailitan", 2024, *Jurnal USM Law Review*, Vol. 7, No. 2, hlm 822-834.
[43] Elviana Sagala, "Efektivitas Lembaga Penundaan Kewajiban Pembayaran Utang (PKPU) Untuk Menghindarkan Debitur Dari Pailit", *Jurnal Ilmiah Advokasi*, Vol. 3 No.1, (2015) : 42-43.

Thus, if a debtor is proven to have at least one overdue debt to a creditor, the debtor is deemed to meet the requirement for a bankruptcy ruling by the commercial court, without regard to the origin of the debt or whether the debtor is still solvent.[44] In practice, bankruptcy proceedings in Indonesia are often used as a quick means to collect debts. However, the more appropriate legal mechanism for debtors who are not insolvent is to file a breach of contract (*wanprestasi*) claim in the district court, which handles general civil disputes. An example is the case of Nyonya Meneer. The company was declared bankrupt for falling to pay debts that had fallen due. This illustrates how Indonesian bankruptcy law sometimes overlooks the debtor's solvency status and instead emphasizes formalities such as unpaid debts. This approach caused Nyonya Meneer to be trapped in bankruptcy, even though other legal remedies, such as a breach of contract lawsuit, may have been more appropriate. From the perspective of the welfare state theory, premature bankruptcy determinations in Indonesia, as seen in the Nyonya Meneer case, can harm economic and social welfare. A solvent company may be forced into liquidation, eliminating jobs and disrupting industries that could otherwise recover.

This concept of determining bankruptcy in Indonesia differs from that in the United States. In the United States, bankruptcy may only be filed if one of the requirements is met, namely when a debtor is unable to repay its debts or has no prospect of doing so in the future. In this context, the debtor must be in a critical financial state, where its assets are significantly smaller than its total obligations. Thus, only individuals or companies in severe financial distress, or with no realistic hope of repayment, can be declared bankrupt.[45]

The United States adopts a stricter approach, requiring bankruptcy petitions to be based on insolvency established through an Insolvency Test. This test includes *the Balance Sheet Test, Cash Flow Test*, and *Adequate Capital Test*. Debtors who fail these tests are considered insolvent and may file for bankruptcy. Bankruptcy procedures in the United States aim to protect creditors while ensuring that debtors who truly cannot pay their debts are able to restructure or liquidate under the law. This contrasts with Indonesia, where bankruptcy can be declared merely for failure to pay a single debt, without deeper consideration of solvency status. A notable example is the Eastman Kodak Company case.

The Eastman Kodak Company case (2012) demonstrates how the United States application of the Insolvency Test affects bankruptcy proceedings and outcomes. Under Chapter 11 of the Bankruptcy Code, bankruptcy petitions are not based solely on inability to pay debts but must also undergo thorough evaluation through the Insolvency Test. If Kodak's case had occurred in Indonesia, the company could have been declared bankrupt immediately for falling to pay a single due debt, regardless of its overall financial health. The Kodak case shows how the strict United States insolvency framework protects companies with potential for recovery, while also safeguarding creditors. This is in stark contrast to Indonesia's looser approach, which risks harming debtors and undermining economic efficiency. It highlights the need for reform in Indonesia's bankruptcy system to achieve a fairer balance between debtor and creditor interests.

The United States system ensures that only debtors who are truly unable to meet their obligations go through bankruptcy, protecting solvent companies from unnecessary proceedings. The Kodak case also reflects the welfare law theory in United States bankruptcy law. By allowing restructuring, the system protects creditors, debtors, and the broader community. Conversely, Indonesia's more lenient system risks creating imbalances that harm both debtors and the economy. Reforming Indonesia's bankruptcy framework is therefore essential to align it more with welfare law principles.

B. Impact of Differences in the Concept of Insolvency on Creditors, Debtors, and the Economy

The differences concept of insolvency affect creditors, debtors, and the economy in various ways. In a legal system that prioritizes the interests of creditors, they may find it easier to obtain repayment of their debts, although this can result in harsher consequences for debtors.[46] Conversely, if the legal system emphasizes debtor protection or provides opportunities for debt restructuring, creditors may not receive immediate repayment, but there is potential to preserve long-term relationships with debtors through negotiation and restructuring. The more lenient bankruptcy system in Indonesia benefits creditors by granting quick and easy access to debt collection through commercial courts. However, this approach may also disadvantage creditors in the long run if the declared bankrupt company is actually capable of repaying its debts through restructuring or alternative mechanisms. Meanwhile, the insolvency test approach applied in the United States protects creditors by ensuring that bankruptcy proceedings only apply to debtors who are genuinely unable to meet their obligations. Tests such as the Balance Sheet Test, Cash Flow Test, and Adequate Capital Test provide creditors with more optimal repayment opportunities from companies undergoing restructuring.

In some systems, the concept of insolvency can provide protection or opportunities for debtors to avoid bankruptcy and restructure their debts without losing core assets. However, if the system favors creditors, debtors may be forced to sell assets or face bankruptcy more quickly, which can damage their reputation and hinder their ability to restart a business. Systems that place

[44] Hidayah, "Indikator Insolvensi Sebagai Syarat Kepailitan Menurut Hukum Kepailitan Indonesia."
[45] *Hidayah.*
[46] *Hidayah.*

greater emphasis on debtor protection, such as in some countries with debt restructuring policies, may delay creditor repayment, but they give debtors the opportunity to avoid bankruptcy and preserve long-term relationships with creditors. This approach can also strengthen economic resilience and encourage greater risk-taking in business, as entrepreneurs feel more protected.[47] Ideally, bankruptcy law should serve as a mechanism that provides fair protection, especially for debtors facing financial hardship. However, the cumulative requirements for declaring bankruptcy under Law number 37 of 2004 are considered less effective, as they allow bankruptcy proceedings to proceed to easily without considering important aspects such debt thresholds and the debtor's insolvency condition.[48] Regulations that do not require insolvency often disadvantage debtors, particularly companies that are actually solvent. For instance, the Nyonya Meneer case illustrates that a company with sufficient assets to repay debts in the future can still be declared bankrupt failing to pay a single matured debt. In contrast, the United States system provides greater protection to debtors, particularly through Chapter 11 of the Bankruptcy Code, which allows for debt restructuring without immediate asset liquidation. This approach gives companies such as Eastman Kodak the opportunity to recover and continue operating.

A system that gives debtors more opportunities to recover from financial distress (for example, through restructuring procedures) can create greater economic resilience and encourage higher risk-taking, as business actors feel more protected. On the other hand, a system that prioritizes immediate debt repayment can accelerate bankruptcy proceedings but provides creditors with greater predictability and reduces uncertainty in the economy. The flexibility found in Indonesia's system business actors to feel more protected in tasking risks, since they know they have the opportunity to restructure debts without facing rapid liquidation. This can encourage innovation and greater risk-taking, but it may also create long-term uncertainly for creditors who are concerned about debt recovery.[49] In the Unites States, by contrast, a stricter approach to insolvency influences the investment climate by giving higher credibility to a clear and predictable legal system. Although the restructuring process is more complex and time-consuming, creditors have greater confidence that they will receive optimal repayment. This fosters greater economic stability and reduces uncertainly in the investment market. Imbalances in bankruptcy law can disrupt economic efficiency. Companies with remaining economic value may be destroyed, leading to job losses and broader industrial harm. Stricter procedures help ensure that companies with potential can continue operating. This supports business continuity, protects jobs, and reduces negative impacts on the economy as a whole. It is important for Indonesia to reform its bankruptcy law so that it becomes more adaptive to current economic needs and creates a more conducive ecosystem for business and investment. A system that provides debtors with greater opportunities for restructuring can build stronger economic resilience, while ensuring predictability and certainty for creditors can enhance overall economic stability.[50]

CONCLUSION

The differences in the concept of insolvency in determining bankruptcy in Indonesia and the United States reflect distinct approaches toward debtors facing financial difficulties. In Indonesia, bankruptcy law places greater emphasis on formality, such as a debtor's failure to pay debts that are due, without deeply considering the debtor's actual insolvency or solvency condition. This may lead to solvent companies, such as Nyonya Meneer, being declared bankrupt despite the availability of other more appropriate legal remedies, such as breach of contract claims. In contrast, in the United States, the bankruptcy system applies stricter Insolvency Tests, such as the Balance Sheet Test and the Cash Flow Test, to ensure that only debtors who are genuinely unable to pay their debts can be subjected to bankruptcy proceedings. This approach provides greater protection to debtors who still have potential to recover, while also ensuring legal certainty for creditors. The case of Eastman Kodak illustrates how the strict application of Insolvency Tests in the Unites States allows restructuring while safeguarding the interests of creditors, debtors, and the economy as a whole. Therefore, Indonesia's bankruptcy system needs reform to become more balanced and fair by considering the interests of both parties more comprehensively, in line with the principles of welfare law.

The differences in the insolvency in insolvency concept in bankruptcy law significantly affect creditors, debtors, and the economy. For creditors, a more lenient system such as that in Indonesia provides an easier avenue to collect debts quickly through bankruptcy proceedings but may be detrimental if the debtor is still capable of restructuring. Conversely, the United States approach, which is based on Insolvency Tests, ensures that bankruptcy applies only to debtors who are genuinely unable to pay, thereby protecting creditors while also giving debtors an opportunity to restructure their debts. For debtors, a more protective system offers the chance to avoid bankruptcy and preserve long-term relationships with creditors, as exemplified in the United States *Chapter 11 Bankruptcy Code*. However, in Indonesia, regulations that disregard the debtor's insolvency condition may harm debtors, as seen in the Nyonya Meneer Case. From an economic perspective, a system that provides opportunities for debtor

[47] Siti Anisah, "Studi Komparasi Terhadap Perlindungan Kepentingan Dan Debitor Dalam Hukum Kepailitan", *Jurnal Hukum* 16 (2009): 30–50, https://journal.uii.ac.id/IUSTUM/article/view/3881.
[48] Ricardo Simanjuntak, 2023, "Reformasi Hukum Kepailitan Indonesia: Kepailitan Tidak Didasarkan Pada Insolvency Test", Reformasi Hukum Kepailitan Indonesia: Kepailitan Tidak Didasarkan Pada Insolvency Test.
[49] Hidayah, "Indikator Insolvensi Sebagai Syarat Kepailitan Menurut Hukum Kepailitan Indonesia."
[50] *Ricardo Simajuntak.*

restructuring has the potential to foster economic resilience and encourage greater risk-taking. Meanwhile, a system that prioritizes direct debt repayment may accelerate bankruptcy but enhances predictability for creditors. Therefore, reforming Indonesia's bankruptcy system is necessary to create a better balance between debtor and creditor protection, which in turn will support overall economic stability.

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