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Do Cross-Default and Cross-Collateral Clause Fulfill the Principles of Justice and Equality in Loan Agreement?(The Case of Indonesia)

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A B S T R A C T

Purpose: This research seeks to examine the cross-default and cross-collateral clauses in loan agreement that meet the principles of justice and the principle of balance, especially in developing countries such as Indonesia.
Design/methodology/approach: A legal normative review method is used in this study. The cross-default clause and cross-collateral clauses are discussed in relation to existing legal practices in this paper, and a new framework is proposed. The topic in the research centers on the principles of justice and equality for creditors and borrowers.
Findings: It concludes that the cross-default and cross-collateral clauses do not fulfill the principles of justice and balance. Cross-default clause shows injustice when associated with subsidiaries' performance. Cross-collateral clause does not fulfill the principle of equality because it has a higher collateral execution position than other non-bank creditors or non-cash management services bank. This study suggests that debtors reconsider the provision of cross-default and cross-collateral clauses. Cross-default can be limited to a minimum default value. Cross-collateral must be abolished to deliver justice to all creditors.
Research limitations/implications: The prelamination of this research is that it does not address the issue of negotiations between creditors and debtors. Finally, existing creditors are unlikely to change the rights they have already obtained. Further research can be developed by researching the types of businesses that provide a fixed asset guarantee value.
Originality/value: This study provides a novelty by rethinking principle of fairness and equality in cross-collateral and cross-default clauses in loan agreement, under insolvency.

Keywords: Default, Equality, Justice, Loan Agreement

I. Introduction

A company is part of a business ecosystem (Azzam et al., 2017). If one business ecosystem is disrupted, the company's performance also will be disrupted. Creditors believe that disruption to the ecosystem will risk the debtor's ability to repay debt (Hu et company's).

Creditors are also part of a company's ecosystem (Omarini, 2018). The disturbance of one creditor will affect the overall performance of the company. Creditors will ask for a correlation in the relationship between one loan and another loan. This is referred to as a cross-default clause (Olivares-Caminal, 2017).

Creditors view that disruption to a value chain will risk the company's ability to pay. Creditors must

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anticipate risks. Creditors view risk to the debtor as a systemic risk. Collateral on one loan can be netted off with other loans. Collateral on one loan can be used to cover other loans. This clause is a cross-collateral clause (Sriwati, 2021).

This research explicitly discusses cross-default and cross-collateral clauses in loan agreements related to the principles of justice and principles of equality. However, no research examines the relationship between loan agreements and the principle of justice and principles of equality. This research connects legal philosophy with business policies, especially loan agreement. It has the advantage of linking legal philosophy with firm loan policies.

The findings of this study will aid in the establishment of debtor-creditor loan agreements and creditor-creditor agreements. In the future, research will lead to improved commercial ties. The study will reveal how to establish a positive relationship between creditors and debtors, as well as creditors and creditors.

The interests of creditors and debtors are diametrically opposed. Creditors want to know that the loans they pay out are secure. Creditors will tie borrowers and supply loans at high interest rates, whereas debtors prefer flexible loan terms and low interest rates. On the other hand, debtor and creditor have mutualistic symbiotic relationship. Agency theory deals with the connection between debtors and creditors (Ria & Nuryanto, 2018).

Furthermore, the relationship between creditors and other creditors is a source of concern. All creditors desire to be treated equally, which is known as the principle of equality. Each creditor, on the other hand, wants to be in a better position than the others. Debtors must be treated equally by all creditors. This fairness will be reflected in a loan arrangement based on the notion of justice.

II. Literature Review

Cross-default is a clause in a loan agreement between a company and a financial institution regulating default conditions (Kogin et al., 2018). Cross-default is a condition of default of one agreement related to another agreement or to another company that has a business relationship with it. (Mursyida, 2017; Dawson, 2018). Creditors know the conditions of default earlier will provide better conditions. Cross-default clause will provide better conditions for creditors. Creditors will be able to act to secure their positions. This scheme is depicted in Figure 1.

The relationship between defaults and other companies occurs if one company has a close relationship with another company (Ams et al., 2018). The parent company guarantees the debts of the subsidiary. The creditor will collect the debt of the defaulting subsidiary to the parent company. Dependence on certain suppliers will put the company at risk. If the main supplier defaults, then the company will have difficulty supplying raw materials, resulting in a potential default. Cross defaults are caused by the relationship between the parent company and its subsidiaries, the relationship between the company and its principal supplier, and the relationship between one credit arrangement and another credit agreement (Beaver et al., 2019). Another

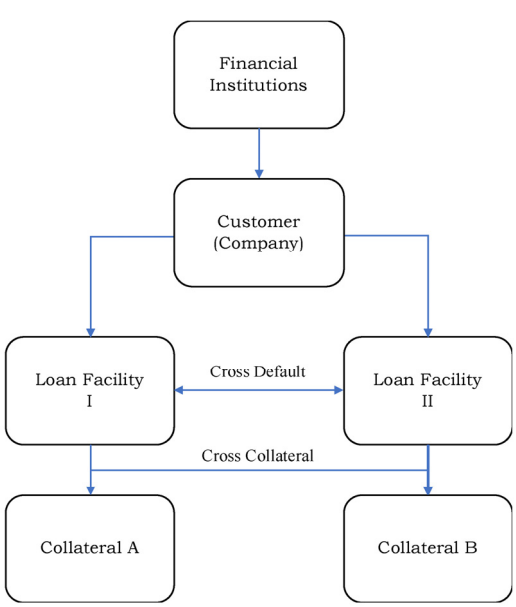

Figure 1. Cross Default Scheme

linkage is the relationship between the guarantor and the guaranteed party (Putri et al., 2019). The company establishes a new business that requires financial support from creditors. Creditors only provide loans to companies that have been running for more than two years. Creditors provide loans to new businesses on condition that there is a guarantee from the parent company. A shareholder guarantees the company, going into bankruptcy (Zulpahmi et al., 2018; Hu, 2021). Shareholders who provide guarantees are unable to cover creditors' losses on their promises. Then, the guarantor becomes subject to bankruptcy (Teco, 2021).

Cross-collateral clause has two meanings. The collateral in a loan agreement can be used to cover losses in other loan agreement with the same creditor (Sriwati, 2021). Another function is that it regulates the guarantee given to additional financing or collateral to two loans (Austin, 2019). If collateral goods have a greater value than the value of the outstanding loan. The exact collateral goods are pledged on other loans. The parties receiving the loan will sign a guarantee agreement jointly for one collateral item. Cross-collateral clause offers a better position for creditors who have more than one loan if the collateral value is greater than the outstanding loan (Zhang, 2018).

Creditors who make two loans to a company can also link the collateral provided by each loan. In addition to cross-collateral clause, cross-default clause parties be related to the net off of the parties' debts. This scheme is illustrated in Figure 1. Cross-default clause gives creditors a better position than other creditors. (Schwert, 2020)

Cross-collateral clause and cross-default clause are clauses commonly used in lending by financial institutions to consumers (Hielmy, 2020). Cross-collateral clause is a clause where one or more collateral guarantees more than one debt obligation. The purpose of the cross-collateral clause is the same as providing guarantees, namely to give creditors a better position with preferential rights over credit guarantees. In addition to cross-collateral clause, the credit agreement also has a cross-default clause. Cross-default is a condition where some credit payment obligations are bound by default. One credit payment obligation will be considered in default if the other related credit payment obligations are also in default (Mursyida, 2017). The cross-default clause effect can trigger a domino effect of default. Credit that has not been in default will be in default due to the cross-default clause.

The credit agreement thoroughly explains the legal relationship between a company as a debtor and a financial institution as a creditor. The cross-default and cross-collateral clauses are required clauses in the agreement (Sriwati, 2021). Creditor position problems can arise if there are creditors who have preferred positions. This research will discuss whether cross-default and cross-collateral clauses protect the interests of creditors and provide justice and balance between creditors and other creditors.

Agreements made by two parties also must meet the principle of balance. The parties to the agreement have rights and obligations that are balanced between them (Svirin, 2019; Sukmana, 2020). If the agreement is a share purchase agreement, the seller has to deliver the shares, and the buyer's commitment is to pay. Buyers and sellers are in the same position.

According to Aristotle, there are two sorts of justice: distributive justice and commutative justice. Distributive justice is based on the notion of rewarding people based on their contributions. Commutative justice is a sort of justice in which each person receives the same amount based on the services he or she has rendered (Klein, 2017). Under distributive justice, creditors have a claim to services. Creditors are credited with lending the funds needed by the company. The company uses the loan funds to develop its business (Tarasov, 2019). Creditors are entitled to compensation for funds used by the debt or value in use. The debtor can use the debtor's loan funds and make a profit.

Business ethics are extremely important in the business sector. The debtor must be financially capable of repaying the loan. In the eyes of the creditor, the debtor's reputation is extremely essential. There are two types of business ethics: descriptive and normative. Business ethics, according to the descriptive definition, are the attitudes and rules that are observed within a company. As a result, all we're doing is

documenting what's going on. Meanwhile, business ethics is a normative assessment of the degree to which observable conventions, attitudes, and norms are ethical (Ghillyer, 2020).

Meanwhile, John Rawls had a different view on justice. Rawls stated that justice is fairness. The court is not an institution that only judges but has an abstract component, namely "a place to provide justice. The function of justice is related to the court's task or the duty of the judge to provide justice (Rawls, 1970). Justice is giving rights to the person. Justice is equated with fairness. Fairness is one of the principles of good corporate governance (Naqvi et al, 2011).

In law enforcement, according to Friedman, the law must be delineated by the content of the law, by the structure of law, and by the culture of law. Enforcement of the laws is not only done by implementing legislation. The implementation of the law must empower the legal apparatus and legal facilities. The performance of the law also creates a favorable legal culture for the community. The legal culture is reflected in adherence to the contents of the agreement by the parties.

Justice had become a subject of study in various philosophical and religious circles, politicians, and legal thinkers (Bahder, 2017). A definite measure cannot determine justice. Whether something fulfills the element of fairness or not, justice is often difficult to establish. It seldom satisfies all parties. The debate about justice is still ongoing. This justice issue has encouraged people to submit the formulation of justice to legislators. Judges determine justice based on their considerations when making decisions.

Because the notion of justice is not confined to current resource, it also refers to moral problems. The judge's choices in drafting laws and regulations are included in the legislation. According to the law and rules, the judge's ruling must provide fairness to the disputed party.

Rights are attached to creditors with collateral against debtors at the time of bankruptcy per the provisions of the Insolvency Law. Secured loans will be executed first, then unsecured loans (Donaldson et al., 2019). Collateral with mortgage and fiduciary gives special rights to the owner of the guarantee. This guarantee protects the right holder from claims by other creditors when the company goes bankrupt. (Juzikienė, 2018). Creditors with collateral have the right to execute guarantee. (Wardani, 2021; Johan, 2021).

Debtors who have taken out a bank loan are frequently unable to pay off all of their bills. Default occurs when creditors are unable to pay their debts. Inequity can be seen in default conditions. The principal and unpaid interest make up the debtor's debt. The fundamental requirement to pay credit installments on time is mentioned in a loan agreement as the loan provision. The debtor is said to be in default if he is unable to pay his debt after the payment time has expired. Banks, as creditors, can execute collateral with non-performing loans (Hidayat, 2018).

Creditors will not receive a loan return or interest. The debtor has not fulfilled its obligations. Debtors' ability to pay will, however, be influenced by macroeconomic factors such as recession and pandemics. Debtors can seek for debt restructuring while continuing to pay their bills. Good borrowers who are unable to pay due to macroeconomic situations differ from bad debtors who actively do not fulfill their obligations or take risks on their debts. Debtors with nefarious motives will deprive creditors of their rights.

On the other hand, in insolvency, the bank is the secured creditor and the preferred creditor. As creditors who have collateral rights, banks can execute their guarantees at any time if the debtor defaults. Banks' legal protection is the right to enforce guarantees in a state of insolvency, even though there is no bankruptcy. This provision has been regulated in the Insolvency Law in Indonesia (Lie et al., 2019).

Secured creditors are creditors who hold collateral rights over the property. Secured creditors can sell goods that are collateral and can take the proceeds of the sale. Proceeds from the sale of collateral cover the loan losses. For a bank loan agreement with collateral rights, the creditor can directly execute the collateral if the debtor defaults and the collateral can be auctioned (Prastika et al., 2017).

Bankruptcy is a court decision that results in a general confiscation of the debtor's wealth (Dewi &

Markeling, 2013). Bankruptcy can occur if the company defaults to creditors. Creditors can file for bankruptcy against debtors. Secured creditors can execute collaterals based on the loan agreement. Unsecured creditors have no collateral. Therefore, the reorganization plan or debt restructuring only applies to unsecured creditors (Johan, 2021). Execution of guarantees can delay the process of the reorganization plan. (Dewi & Tjatrayasa, 2017).

From the perspective of bankruptcy law, if a debtor goes bankrupt and his assets are not more than the debt, the unsecured creditors who are the most disadvantaged may not get any repayments at all from the debtor. For this reason, bankruptcy facilities must not be used for bad intentions (Disemadi, 2021). Unsecured creditors are creditors who support the running of the company. Unsecured creditors consist of suppliers and other unsecured loans. Meanwhile, employee salaries are unsecured creditors (Rosmiati et al., 2021). Unsecured creditors are an important source of financing for companies. The position of unsecured creditors must be fair with other creditors. Employee salaries are recognized as preferred creditors under the Indonesian Civil Code (Yulianingsih, 2021).

The Bankruptcy Law in Indonesia currently face challenges. It increases the relationship problems between creditors and debtors. The initial concept of the Bankruptcy Law was to settle debts and receivables quickly, fairly, openly, and effectively settle debts so that the parties do not harm each other. Regulations provide legal certainty. Businesses have a definite way of resolving disputes. The quick settlement benefits both the creditors and debtors (Fitria, 2018). Bankruptcy can resolve default disputes in less than one year. If debtors and creditors do not reach a reorganization agreement, the debtor will end up in bankruptcy court (Muryati et al., 2017).

As previously stated, during the COVID-19 epidemic, the usage of the Bankruptcy Law has changed. Many businesses, as well as creditors, have declared bankruptcy. Debtors have expressed their dissatisfaction with bankruptcy as a result of COVID-19. Due to unforeseen circumstances, the debtor has been compelled default (Johan, 2020). Several countries' governments have imposed bankruptcy moratoriums during the COVID-19 pandemic (Clarke, 2021; Noerr, 2020). The governments of Russia, Belgium, the UK, and Australia have provided flexibility to insolvent companies during the COVID-19 pandemic (AFSA, 2021; Callanan, 2020).

In addition, the implementation has not synchronized with the Bankruptcy Law in reality, where creditors holding mortgage rights cannot directly execute mortgage guarantee. The bankruptcy curator still takes the creditor's right of responsibility for the collateral in the bankrupt company. In some cases, the curator may treat the mortgage object as if there was no liability in the event of bankruptcy. (Husni, 2020).

Legal protection against the position of third parties in claiming their rights due to *actio pauliana* can be determined through the type and nature of the receivables from each creditor. To fulfill their rights, third parties in bankruptcy cases are unsecured creditors (Putri & Artha, 2020).

Equality is a fundamental human right that is enshrined in numerous national constitutions as well as international and regional conventions (van den Brink, 2021), The Oxford Dictionary define" "equality" as "the state of being equal." From a legal standpoint, it is an ambiguous idea. When determining whether a given rule or situation can have a detrimental or undermining effect, the translator, that is, the judge, must put in a significant amount of creative work. Because the value of characteristics used to separate people or grant preferential treatment has varied throughout time, the equality principle has been undefined historically (Olivares-Carminal, 2018). Both public and private legal relations are built on the ideals of liberty, equality, and solidarity. People are free to do what they choose without being constrained by the aspirations of others or the ideals of equality, and they all have the same legal standing to exercise and strengthen their rights. Individuals are treated equally under the law in this situation (Atikah, 2020).

The banking relationship between the executing bank and the client must be founded on the principle of equality, which is further defined by the fiduciary, prudential, and secrecy principles, as well as the principle of understanding the customer (know your

customer principle) (Ramadhani, 2020). In the management and acquisition of bankrupt assets, the principles of equal treatment of creditors and pari passu prorata parte are applied simultaneously and cannot be separated (Winanto & Muryanto, 2019).

This research shows the linkage of particular clauses in credit agreements with the main legal principles. Clauses in a contract must still refer to legal principles. Clauses that fail to meet legal principles can be canceled. The clauses discussed are cross-default and cross-collateral clauses. The legal principles discussed are the legal principles of justice and the legal principles of equality. This research reviews the provisions that become standard clauses in credit agreements with legal principles. This research is novel because it reviews the guarantee clause based on legal principles.

The research begins with the research background and literature review, research method, discussion, and conclusion. This research examines fairness and balance in the relationship between debtors and creditors. This research explains cross-default clause, cross-collateral default, the principles of justice and the principle of equality between parties, cross-collateral, cross-default and solutions so that cross-collateral and cross-default can fulfill the principle of justice and equality. This research contributes to the development of credit agreements between financial institutions and consumers in terms of the principle of justice and principle of equality. This research is a study that links legal principles with economic theory, especially those related to bankruptcy, agency theory and capital structure theory.

III. Research Method

This research uses a normative legal research method. This research uses primary material sources, namely the purpose of forming laws, legislation, norms, and the legal basis. Secondary materials are sources of research materials supporting the primary materials. Source materials in the form of scientific articles, articles at conferences, and books related to research topics are consulted. Other research sources are drawn from the internet on related issues and other matters in the public domain. Several economic and financial theories, such as bankruptcy theory and agency theory, are also tied to this study (Johan & Ariawan, 2021). The interaction between creditors and debtors is the subject of agency theory. Information between creditors and creditors is linked to the theory of asymmetric information. While bankruptcy theory is linked to the debtor's liquidation situation at the moment of default.

The research begins with a discussion of credit agreements between financial institutions and companies. This credit agreement raises several issues that concern this research. This research framework examines the relationship between the principle of contract and the principle of law, the cross-default, and cross-collateral clauses. The principle of law discusses the principles of justice and equality. This study discusses the cross-default clause and cross-collateral clause related to existing legal norms. The research discussion focuses on the principle of fairness and the principle of equality for creditors and debtors.

Several financial institutions have provided loans to each company. Five banks have provided loans to XYZ. Bank A makes two loans to company XYZ, whereas banks C, D, E, and F each make one loan. In loans A and B, Company A has a cross default clause. Bank loans E and F, on the other hand, have a cross default. Between bank loan agreements A, C, D, E, and F, the research discussion is about the principles of justice and equality. This research framework is described in Figure 2.

IV. Results and Discussions

A. Cross-collateral, Principle of Justice, and Principle of Equality

Financial institutions will provide loans based on the 5 C (character, capacity, collateral, condition, and capital) of credit concept. Character is the most

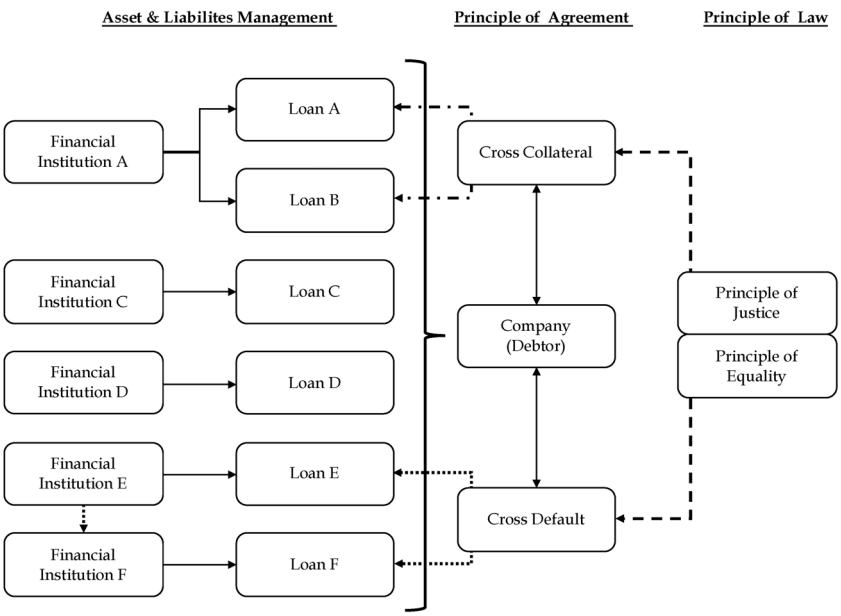

Figure 2. Research Framework

challenging factor to justify. Financial institutions tend to lend to customers they already know. Banks already know the character of existing customers.

Customers tend to establish relationships with existing banks. The customer will limit the number of banks in doing business. The limited number of banks has both positive and negative effects. The positive effect is that the customer has an anchor bank, while the negative effect is that the customer has a dependence on a particular bank. Anchor bank will be a bank that supports customer financing needs.

Banks provide additional loans to existing customers. Existing loans have collateral with a specific coverage ratio. As time goes by, the balance of the debt decreases, and the collateral value remains and the coverage ratio increases. The customer negotiates with the bank to exchange the collateral according to the debt balance. The customer bank requires a new loan with the collateral. The bank offers to provide new loans with the same 110% coverage and cross-collateral against existing loans.

The customer agrees to the bank's offer of new cross-collateralized loans. The new loan has a 110 percent coverage ratio. As a result, the loan coverage ratio is currently at 137.5 percent. As a result of the payment, the loan sum is reduced, but the collateral remains. The ratio is 110/80 = 137.50 percent since the loan balance is 80 percent of the existing loan and the collateral is 110 percent.

The bank extends a $100 loan, with the debtor giving $110 in collateral, for a total loan of 180 and a total collateral value of 220. The total coverage ratio is 220/180 = 122 percent with this cross-collateral clause. A collateral coverage ratio of 110 percent is estimated by other creditors. Because of the cross-collateral clause in the agreements, the real value of the collateral coverage ratio for the two loans is 122 percent. The coverage for collateral is depicted in Figure 3.

The cross-collateral clause indicates that the credit agreement does not meet the principles of fairness and balance among creditors. Creditors do not have the same position in the cross-collateral clause. This clause results in differences in the collateral coverage ratio. Between creditors, there is a lack of complete information. The credit agreement clauses are not

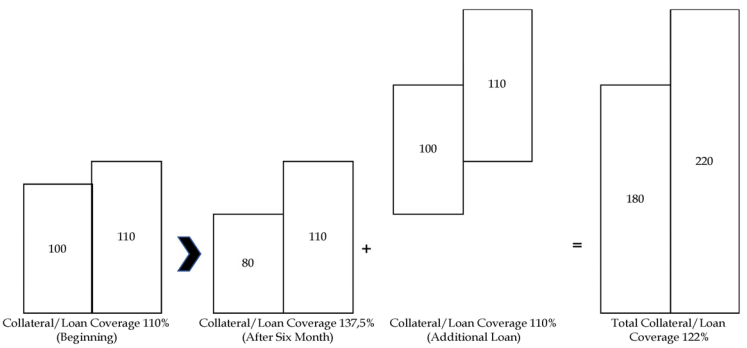

Figure 3. Collateral per Loan Coverage (1)

described in detail in the audited financial statements. Asymmetric information exists between creditors and debtors.

A company's audit report states the value of the guarantee and the collateral coverage ratio. However, the audit report does not explain the cross-collateral clause. This information is indicative of the existence of asymmetric information. Asymmetric information creates an imbalance in the position of creditors.

Creditors execute the collateral based on the cross-collateral clause. Cross-collateral information will appear if the debtor is in default. Other creditors will know that the position between creditors is not balanced.

B. Cross-default, Principle of Justice, and the Principle of Equality

Financial institution examines the risks of a debtor in repaying the loan. These credit risks include the sources of income, raw materials, market disturbances, and other matters that may affect the ability to pay.

Some financial institutions consider that shareholders influence the payment ability of subsidiaries. Financial institutions will put a cross-default clause on shareholders against subsidiaries. If the shareholders default, the subsidiary will also default. Default criteria can be grouped into two types, loan and company defaults.

A cross-default loan is a default on one loan that results in another loan. Corporate defaults are defaults that occur in companies and are not limited to loans. Determination of default must be according to the criteria for default based on the agreement or through the courts.

Bank's parent firm defaults on one of the bank's loans, it causes defaults on subsidiary loans to follow. The parent company loan has a cross-default clause in the subsidiary loan arrangement with the bank. The parent business owns the majority of the stock. Figure 4 illustrates cross-default scheme. The parent company's business is distinct from that of the subsidiary. Both businesses are limited-company's corporations (LLCs). The parent company's connection with its subsidiaries is merely an investment relationship.

In the meantime, there are parent companies and subsidiaries that do not have a binding relationship. Subsidiaries and parent companies operate independently. However, the parent company's cross-default clause against the subsidiary results in a default on the subsidiary. The subsidiary's business is not affected by the parent company's insolvency. However, due to the cross-default clause, the subsidiary's business also defaults because the subsidiary's business was disrupted. All obligations of the subsidiary go into default. This cross-default is illustrated in Figure 4. This subsidiary is a stand-alone entity with no significant business ties to the parent corporation. This is not the same as a subsidiary that is heavily reliant on the parent firm.

Cross-default clauses create systemic risk. Default on one loan results in default on all loans. The company as the debtor will also be in default. However, the default trigger is not from the company.

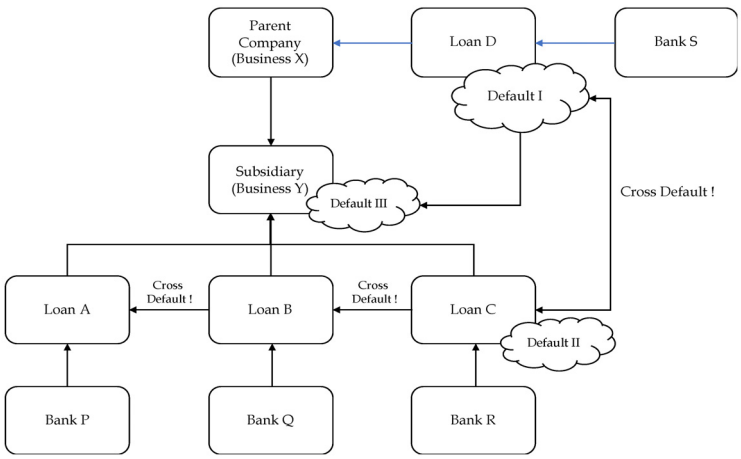

Figure 4. Cross Default Subsidiary and Parent Company

The cross-default clause does not reflect the principles of justice and equality. Defaults on the parent company result in the subsidiary being ruined. Financial institutions in subsidiaries consider that the parent company's insolvency decreases the subsidiary's ability to pay. This clause shows that it does not meet the principles of balance and justice. It should be noted that not all defaults of the parent company affect a subsidiary.

The cross-default clause does not apply to all credit agreements. Not all creditors will have the same rights in determining the cross-default clause. The cross-default clause is never clearly stated in the credit agreement and is open to all creditors. This agreement between the parties does not fulfill the principle of balance.

In general, the cross-default clause applies to the parent company, as well as to other loans. If a loan is in default, the different loan facilities will be in default. Many factors can cause a loan default. Bankruptcy has dire implications for creditors and debtors. The reputation of the debtor in default creates a bad record. Creditors are required to provide for losses for debtors who default.

C. Cross-default and Cross-collateral

Cross-collateral has no effect if the company is not in default. The default condition raises the creditor's rights to the collateral. Creditors cannot execute collateral if they are not triggered. Cross-default will arise if there is a default agreement. Cross-defaults affect cross-collateral.

Collateral and cross-collateral clauses are two different clauses. Collateral is an article that regulates guarantees in credit agreements. The cross-collateral clause is a clause that binds one contract to another.

Default is a condition in which creditors are unable to pay their maturing and collectible liabilities. Liabilities can be debts that are due or promises that must be fulfilled. The cross-default clause is a clause that governs the binding conditions of default between one contract and another.

Default will rise to cross-default. After a cross-default occurs, it will cause a cross-collateral. Defaults have a systemic effect on overall company performance.

D. Solutions to Fulfill the Principles of Justice and Equality

The cross-collateral clause must be removed from the credit agreement. The cross-collateral clause does not fulfill the principle of *pari passue pro rate parte*. This clause gives preference rights to certain creditors. Abolishing these clauses gives creditors the same

position based on the principles of justice and equality. Collateral can be asset guarantees in the form of fixed or current assets.

Another alternative to the cross-collateral clause is to have collateral coverage be based on a ratio so that no party will benefit. The debtor must ensure that the collateral that the creditor can obtain is in the form of a percentage, not an asset. Many banks will always stick to the value of guaranteed assets rather than the debt-to-guarantee ratio. This is a common occurrence in developing countries like Indonesia. Furthermore, the loan value cannot be used to divide the fixed asset value. A single unit represents the fixed asset value. The proposed collateral coverage is illustrated in Figure 5. The ratio shows a decrease in the debt balance followed by a decrease in the collateral balance.

A cross-default clause with limits is provided by the debtor. Creditors want the cross-default clause because it anticipates risk. The debtor has the option of setting a minimum default value. The default value must represent an issue that has an impact on the company's performance. The default limit's value must reflect the value of the company's capital. Figure 6 illustrates these limiting conditions.

Many businesses in underdeveloped nations, such as Indonesia, are at a disadvantage when it comes to negotiating with creditors. The debtor is concerned that the creditor would refuse to give a loan as a result of the negotiations. The debtor sees the loan as a sort of self-trust.

Limiting the minimum value of cross-defaults

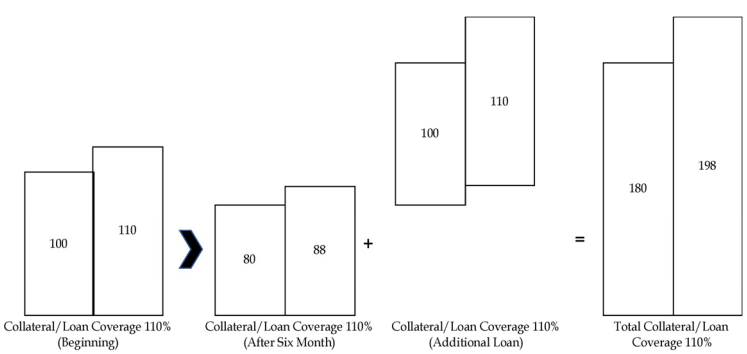

Figure 5. Equal Collateral per Loan Coverage

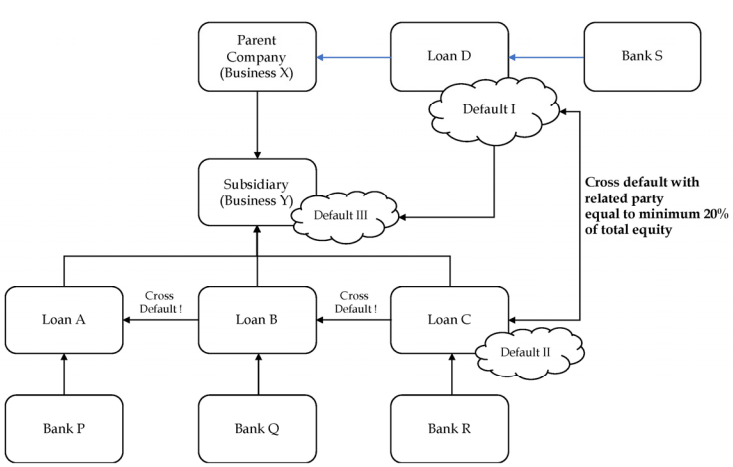

Figure 6. Cross Default Criteria

provides fairness and balance to all parties. Not all default conditions can cause systemic effects. Cross-default settings must reflect the value of justice and balance in a two-party agreement.

V. Conclusion

A credit agreement is a form of contract. The clauses in an agreement must fulfill the principle of equality and the principle of justice. The cross-default clause and the cross-collateral clause in the credit agreement do not meet these two principles.

The debtor may offer modifications to the cross-default clause and the cross-collateral clause. Limiting the collateral value to the collateral ratio is one alternative. Determining the default value based on a deal that has a significant effect is another. Limitation to this value and percentage offers fairness and balance to all creditors. Further research can be developed by researching the types of businesses that provide a fixed asset guarantee value. In addition, the prelamination of this research is that it does not address the issue of negotiations between creditors and debtors. Finally, existing creditors are unlikely to change the rights they have already obtained.

Another line of inquiry could be to undertake a poll of foreign creditors' perspectives on developing country borrowers. In addition, research can also examine the views of supporting professions such as lawyers and arbitrators regarding debt dispute resolution. Other research can be developed by conducting comparative studies of debt disputes between countries.

VI. Managerial Implications

The debtor must be able to discuss the terms of arrangement with the creditor. Debtors' negotiations are not considered defiance of creditors. The debtor must consider the long-term repercussions of his business and ensure that the creditor is treated fairly. Debtors must preserve a good reputation in the eyes of all creditors. Creditors must request debtor information and have faith in the debtor. Creditors' faith in debtors will foster a favorable business climate.

VII. Acknowledgment

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What Could ASEAN Learn about Bankruptcy Law from ASEAN Partner Countries, China and Japan?

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Abstract: By 2021, Japan will have the third-largest economy in the world, behind China, which is currently the world's second-largest economy. China accounts for 17.9% of the global gross domestic product (GDP), while Japan accounts for 5.4 percent. In 2022, the Association of Southeast Asian Nations (ASEAN) and Asia Pacific countries, such as Australia, will establish the RECP (Regional Comprehensive Economic Partnership), becoming the world's largest free trade area cooperative bloc. On the other hand, it brings within several investment risks. Undertakings succumbing in the financial hardships or financial default will be manifested. Diverse legal systems result in different approaches to resolving defaulted businesses. For businesspeople, this disparity in the legal system creates legal uncertainty. The goal of this study is to describe how the bankruptcy system works in RCEP member countries and what ASEAN nations may do to improve their bankruptcy laws. The normative legal method is used in this study. This method compares the legal systems of the top ASEAN countries and other RCEP members. This analysis concludes that ASEAN bankruptcy legislation can be improved by using current systems from other ASEAN and RCEP nations. When faced with bankruptcy, the consistency of regulations is supposed to give legal certainty for corporate actors. This will also provide investors from other countries with a sense of security.

Keywords: ASEAN; Bankruptcy Law; Regional Cooperation; Cross-border Bankruptcy

1. Introduction

Due to the several occurrences of financial crisis and pandemic crisis in the South East Asian region, the ASEAN Countries have committed to create and initiate the ASEAN Economic Community Blue Print 2025 aiming to create an Enhanced Dispute Settlement Mechanism (EDSM) and other methods for resolving economic disputes in a more rapid manner.[1] Taking into account that business-based disputes are unavoidable, a precise method for solving disputes is of high necessity. Since financial crisis striking Indonesia, Thailand, Malaysia and Singapore during 1997 until 1999, had caused the financial failure of a large number of undertakings. Multinational creditors have been unable to recover debts owed to them. The Association of Southeast Asian Nations (ASEAN), was established on 8 August 1967 in Bangkok, Thailand. The International Monetary Fund

[1] ASEAN Secretariat, ASEAN Economic Community Blueprint 2025, The ASEAN Secretariat, Jakarta, 2018, https://doi.org/10.1355/9789814414296-012.

(IMF) have lent a huge amount of money to these ASEAN Countries to assist them in doing structural adjustment measures to escape from the debt trap during the financial crisis. One of the IMF's main instruments of aid for these Countries was the legislation and implementation of a bankruptcy law.

The Special Drawing Right (SDR) is an international reserve asset, created by the IMF in 1969 to supplement its member countries' official reserves. To date, a total of SDR 660.7 billion (equivalent to about US$943 billion) have been allocated. This includes the largest-ever allocation of about SDR 456 billion approved on August 2, 2021 (effective on August 23, 2021). This most recent allocation was to address the long-term global need for reserves, and help countries cope with the impact of the COVID-19 pandemic.

One of the IMF's aims is for each country to adopt bankruptcy legislation. Law No. 42 of 1999 on Fiduciary Guarantees and Law No. 37 of 2004 on Bankruptcy were passed in Indonesia.[2]Historically, prior to the enactment of the Law Number 37 year of 2004 on Bankruptcy, provisions regarding bankruptcy and suspension of payments were regulated in the Staatsblad 1905:217 *jo*. Staatsblad 1906:348 : Faillissement Verordening (Undang-undang tentang Kepailitan), which thus amended by the Government Regulation in Lieu of Law Number 1 year of 1998 and subsequently ratified to be the Act Number 4 year of 1998 on Bankruptcy and Suspension of Payments.

Early in 2022, ASEAN and some Asia-Pacific nations formed the Regional Comprehensive Economic Partnership (RCEP). ASEAN, as well as Australia, China, Japan, South Korea, and New Zealand, are all parties to this pact. The RCEP will be the world's largest free trade agreement. RCEP is the first trade agreement among the largest economies in Asia, including China, Indonesia and Japan. The agreement is signed in November 2020.[3] The establishment of RCEP is line with Article XXIV General Agreement on Tariffs and Trade (GATT, now is called World Trade Organization - WTO), which allowed countries to grant special treatment to one another counties by establishing a free trade corporation. Based on Article XXV GATT, the joint parties to have objectives of the signed agreement and each part is in equal position.

This study compares the bankruptcy laws of ASEAN member countries to those of other Asian countries. The disparities in rules between countries are discussed in this study. Explicit comparisons are required in comparative law, and most non-comparative foreign law writing may benefit from being made overtly comparative.[4] The varied systems and backgrounds are investigated in this research.[5]

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[2] Adam J. Levitin, "Bankruptcy's Lorelei: The Dangerous Allure of Financial Institution Bankruptcy," North Carolina Law Review 97, no. 2 (2018), https://doi.org/10.2139/ssrn.3120145.

[3] Huaxia, "World's Largest Free Trade Deal Takes Effect on First Day of 2022," 2022, http://www.xinhuanet.com/english/20220101/2aaf3d71cb99477a92f2507caa6740cb/c.html.

[4] John C Reitz, "How to Do Comparative Law," The American Journal of Comparative Law 46, no. 1980 (1998): 617–36.

[5] Radion Cojocaru and Igor Soroceanu, "The Analysis Of The Comparative Law Elements On The Activity Of Mercenaries In The Experience Of The Commonwealth Of Independent States (CIS)," Fist Iustitia 1 (2019): 80–87.

Many ASEAN businesses were experiencing cash flow problems as a result of the COVID-19 in 2020-2021.[6] The number of businesses declaring bankruptcy is continuously rising.[7] The number debt suspension (PKPU) cases from 2018 to June 2022 in Indonesia is stated in Figure 1. The issue of bankruptcy is a macroeconomic conditions. Bankruptcy has an impact not only on the company and its employees, but also on the whole country and society.[8] Corporate insolvency can lead to industrial inefficiency. One example is how the bankruptcy of the airline industry can lead to a monopoly on other companies in the airline industry. Monopoly will result in inefficient industry and harm society.

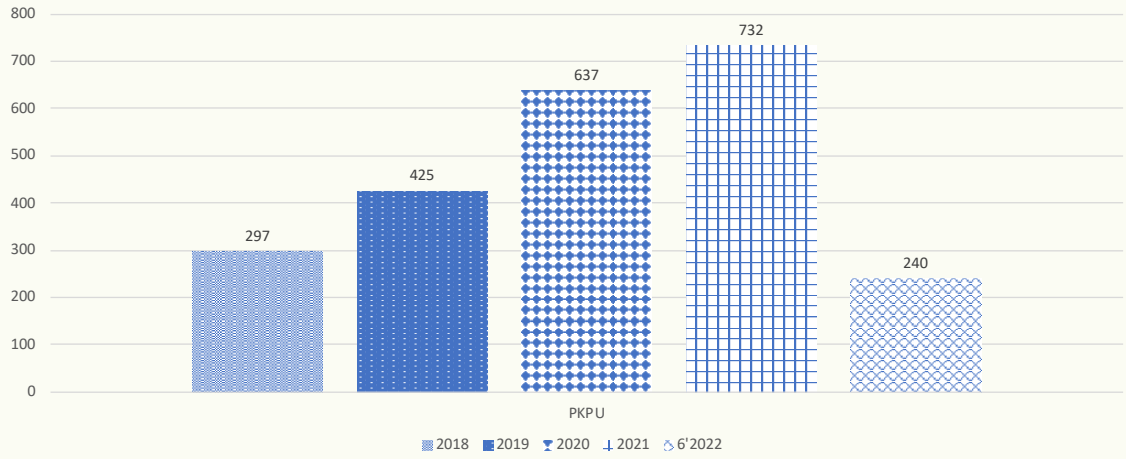

Figure 1 Debt Suspension Case From 2018-June'2022

This study is of highly important for business practitioners who want to understand the Bankruptcy law as well as to what extent this law relates to the regional economic unity particularly in the South East Asian Countries. This study is important for businesspeople who want to understand bankruptcy laws and how they relate to regional economic unity.[9] Comparative research can also be used to compare how judges make decisions in court. External and internal pressures may have influenced the judge's decision in the case.[10] This study is unique in that it compares bankruptcy laws in ASEAN to those in Asian countries in according to the establishment of RCEP.

[6] Suwinto Johan, "Potential Systemic Risk Effects Of Credit Relaxation In The Financial Industry As The Effect The COVID-19," Jurnal Manajemen Bisnis Dan Kewirausahaan 4, no. 4 (2020): 87–93, https://doi.org/10.24912/jmbk.v4i4.8661.

[7] Suwinto Johan and Ariawan, "Corporate Liability for Creditors' Losses during the Covid-19 Pandemic," Media Hukum 28, no. 1 (2021): 15–28, https://doi.org/10.18196/jmh.v28i1.10566.

[8] Jonas Mackevicius, Ruta Sneidere, and Daiva Tamuleviciene, "The Waves of Enterprises Bankruptcy and The Factors That Determine Them: The Case of Latvia and Lithuania," Entrepreneurship And Sustainability Issues 6, no. 1 (2018): 190–210.

[9] Ishita Das, "The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016," Vikalpa The Journal of Decision Makers 45, no. 2 (2020): 104–14, https://doi.org/10.1177/0256090920946519.

[10] Lee Epstein, Urška Šadl, and Keren Weinshall, "The Role of Comparative Law in the Analysis of Judicial Behavior," American Journal of Comparative Law, 2020, 1–26.

The most important thing to ask about bankruptcy law is why it is necessary. This is explained by the Creditors' Bargain Theory. There are two possibilities: re-creating a hypothetical ex-ante deal and honoring creditors' non-bankruptcy rights[11]. This theory teaches that a contract is only binding as far as what is negotiated (bargained) and then agreed upon by the parties. The contract in this study is a contract between a debtor and a creditor. Prior to signing the contract, both parties have negotiated (bargained). Bargaining theory is part of contract law.

The conflict of laws (*Kollisionsrecht*) that causing problem in solving the cross-border bankruptcy or insolvency. Cross-border business actors require a great deal of regulatory harmonization.[12] Harmonization of regulations was carried out by European Union countries in the framework of market unity in 1993. Countries that are members of RCEP also need to harmonize regulations. Harmonization of regulations is to make adjustments to the regulations of each country on a cooperation with minimal differences between members of the cooperation.[13] This aims to provide certainty for business actors and avoid the emergence of regulatory barriers between countries against business actors. Harmonization of regulations or adjustment of regulations does not replace existing regulations with new regulations.[14] One example of harmonization of regulations is UNCITRAL (United Nations Commission on International Trade Law). Harmonization of regulations can have positive and negative effects on residents of each country. Positive harmonization is the harmonization of regulations that have an impact on the economy of a country and society, otherwise if it is negative.[15] The Bankruptcy Law at the time of its formation in Indonesia was more likely to protect the interests of creditors. This law was enacted at a time when Indonesia was in crisis 1998, where many foreign creditors had difficulty getting their loans back. In certain nations, particularly in the Middle East, bankruptcy laws still contain significant flaws.[16]

Involvement of the state as a public authority in bankruptcy is unavoidable. From the Regulatory law theory, the State must not only engage in bankruptcy issues but also engage in variety sectors of economic activities in a state, such as telecommunication, oil and gas, clean water, and public transportation.

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[11] Anthony J. Casey, "Chapter 11's Renegotiation Freamwork and The Purpose of Corporate Bankruptcy," Columbia Law Review 120, no. 7 (2020): 1709–70, https://heinonline.org/HOL/LandingPage?handle=hein.journals/clr120&div=44&id=&page=.

[12] Adrian Walters, "MODIFModified Universalisms & The Role Of Local Legal Culture In The Making Of Cross-Border Insolvency Law," Am. Bankr. LJ 93 (2019): 1–85.

[13] Munsharif Abdul Chalim, "Harmonization Between the National and International Law on the Usage Settings of Natural Resources in the Territory of the Republic of Indonesia," Jurnal Pembaharuan Hukum 4, no. 2 (2017): 191, https://doi.org/10.26532/jph.v4i2.1669.

[14] Sarah R Wasserman Rajec, "The Harmonization Myth in International Intellectual Property Law," Ariz. L. Rev. 62 (2020): 735.

[15] Matthew Ayamga, Bedir Tekinerdogan, and Ayalew Kassahun, "Exploring the Challenges Posed by Regulations for the Use of Drones in Agriculture in the African Context," Land 10, no. 2 (2021): 1–13, https://doi.org/10.3390/land10020164.

[16] Jason J. Kilborn, "Small Business Bankruptcy Reform in the Arab World: Two Steps Forward, One Step Back," Arab Law Quarterly 1 (2020): 1–36, https://doi.org/10.1163/15730255-BJA10064.

The creation of a guarantee institution has complimented the government's role. This issue must be revisited.[17] Slovenia, Australia, and Austria, for example, have debtor-unfriendly bankruptcy and restructuring laws. Meanwhile, bankruptcy laws in the United States, Ireland, and Canada are more debtor-friendly.[18] At the time of implementation, bankruptcy rules must consider a variety of issues. A de lege ferenda approach to bankruptcy law is required.[19] Furthermore, there is misconception that bankruptcy or debt restructuring is a means of resolving debtors' obligations rather than debt relief.[20] Singapore has overhauled its bankruptcy and reorganization laws. Singapore aspires to be a global hub for debt restructuring. Singapore is enacting legislation based on Chapter 11 of the United States Bankruptcy Code.[21]

Singapore Government has adopted the UNCITRAL Model Law for Cross-Border Insolvency 1997 to become the regional hub for bankruptcy settlement. From the official source UNCITRAL Model Law: The Model Law is designed to assist States to equip their insolvency laws with a modern legal framework to more effectively address cross-border insolvency proceedings concerning debtors experiencing severe financial distress or insolvency. It focuses on authorizing and encouraging cooperation and coordination between jurisdictions, rather than attempting the unification of substantive insolvency law, and respects the differences among national procedural laws. For the purposes of the Model Law, a cross-border insolvency is one where the insolvent debtor has assets in more than one State or where some of the creditors of the debtor are not from the State where the insolvency proceeding is taking place.

With regard to the smoothing process of ASEAN economic integration, UNCITRAL Model Law assists the process. Although the number of cross-border insolvency cases has increased significantly since the 1990s, the adoption of national or international legal regimes equipped to address the issues raised by those cases has not kept pace. The lack of such regimes has often resulted in inadequate and uncoordinated approaches to cross-border insolvency that are not only unpredictable and time-consuming in their application, but lack both transparency and the tools necessary to address the disparities and, in some cases, conflicts that may occur between national laws and insolvency regimes. These factors have impeded the protection of the value of the assets of financially troubled businesses and hampered their rescue process.

[17] M Fauzi, "Insolvency within Bankruptcy: The Case in Indonesia," SHS Web of Conferences 54 (2018): 1–5, https://doi.org/10.1051/shsconf/20185406004.

[18] Sylwia Morawska et al., "Bankruptcy Law Severity for Debtors: Comparative Analysis Among Selected Countries," European Research Studies Journal 23, no. 2 (2020): 659–86, https://doi.org/10.35808/ersj/1847.

[19] Jana Kliestikova, Maria Misankova, and Tomas Kliestik, "Bankruptcy in Slovakia: International Comparison of the Creditor's Position," Oeconomia Copernicana 8, no. 2 (2017): 221–37, https://doi.org/10.24136/oc.v8i2.14.

[20] V. Yu Soldatenkov and V. V. Evenko, "Bankruptcy of an Individual in Russia: State and Prospects of Development," Opcion 34, no. Special Issue 14 (2018): 1136–56.

[21] Gerard McCormack and Wai Yee Wan, "Transplanting Chapter 11 of the US Bankruptcy Code into Singapore's Restructuring and Insolvency Laws: Opportunities and Challenges," Journal of Corporate Law Studies 19, no. 1 (2019): 69–104, https://doi.org/10.1080/14735970.2018.1491680.

To recover the company and give it a fresh start, it is critical to shift from the present idea of bankruptcy to the perception of insolvency processes.[22] The risk of business failure is considerably raised during the COVID-19 pandemic, and it is critical to take steps to prevent business failure.[23] Inefficient companies are allowed to close, and resources are allocated to efficient companies.[24] Judges, in addition to debtors and creditors, play an important role in the bankruptcy process.[25] In addition to the problems, creditors will be hesitant to issue loans due to legal differences. In Poland, bankruptcy settlement takes an average of 853 days.[26] Comparison with the PKPU settlement period in Indonesia, which in total is only 335 days and in Singapore it is only 180 days.

The insolvency of a corporation can be foreseen.[27] The use of statistical approaches in research also can help anticipate bankruptcy.[28] It is possible to utilize machine learning to anticipate bankruptcy.[29] The majority of insolvent companies are private companies between the ages of 10 and 15 and public companies between the ages of 25 and 30.[30] The bankruptcy of socially owned businesses lasts longer than general corporate bankruptcy.[31] In the bankruptcy procedure, categorizing creditors into current and privileged creditors is critical.[32]

Creditors have a right to participate in bankruptcy proceedings. A simple majority system governs the decision-making process.[33] This demonstrates that creditors and borrowers

[22] Alla Bobyleva and Olga Lvova, "The Bankruptcy Law and Its Enforcement in Russia Keywords :," E-Proceeding of the 27th NISPAcee Annual Conference 27 (2019).

[23] Tatyana A Skvortsova et al., "The Problem of Bankruptcy of Business Entities as a Consequence of the COVID-19 Pandemic," International Journal of Economics and Business Administration VIII, no. 4 (2020): 828–37.

[24] Chuyi Wei, "Bailouts and Bankruptcy Law in China : A Confusion of Law and Policy," Cambridge Journal of China Studies 12, no. 52 (2017): 50–76.

[25] (van Dijck et al., 2020).

[26] Piotr Staszkiewicz and Sylwia Morawska, "The Efficiency of Bankruptcy Law: Evidence of Creditor Protection in Poland," European Journal of Law and Economics 48, no. 3 (2019): 365–83, https://doi.org/10.1007/s10657-019-09629-2.

[27] Błażej Prusak, "Review of Research into Enterprise Bankruptcy Prediction in Selected Central and Eastern European Countries," International Journal of Financial Studies 6, no. 3 (2018): 1–28, https://doi.org/10.3390/ijfs6030060; Irina Anatolievna Kiseleva et al., "Models of Assessing The Probability Bankruptcy of Enterprises," Journal of Critical Reviews 7, no. 9 (2020): 1111, http://creativecommons.org/licenses/by/4.0/.

[28] Marianna Succurro, "Financial Bankruptcy across European Countries," International Journal of Economics and Finance 9, no. 7 (2017): 132–46, https://doi.org/10.5539/ijef.v9n7p132.

[29] Claudiu Clement, "Machine Learning in Bankruptcy Prediction - A Review," Journal of Public Administration, Finance and Law, no. 17 (2020): 20.

[30] A. Kuzmin, Evgeny, Marina V. Vinogradova, and Andrey S. Novitsky, "Bankruptcy Dynamics of Companies in Russia," International Transaction Journal of Engineering , Management , & Applied Sciences & Technologies 11, no. 13 (2020): 1–11, https://doi.org/10.14456/ITJEMAST.2020.254.

[31] Aleksandar S Mojašević and Aleksandar Jovanović, "Reasonable Time And Bankruptcy Of Socially-Owned Enterprises," Facta Universitatis 19, no. 1 (2021): 11–25.

[32] Serhiy O. Yuldashev and Valentyna P. Kozyreva, "Classification and Protection of the Rights of Creditors in Bankruptcy Cases," Scientific Works of National Aviation University. Series: Law Journal "Air and Space Law" 2, no. 51 (2019), https://doi.org/10.18372/2307-9061.51.13792.

[33] Mari Schihalejev, "Court Supervision of the Determination of the Votes at the First General Meeting of Creditors in Estonian Bankruptcy Law," Juridica International 26, no. 08 (2017): 76, https://doi.org/10.12697/ji.2017.26.08.

have an unequal relationship. This is not in accordance with distributive fairness, which places a premium on proportional likeness and balance.[34] In European Union countries, bankruptcy proceedings are more creditors-friendly and are eventually altered to a more forgiving path.[35] Individual bankruptcy exists in addition to corporate bankruptcy. Individual bankruptcy in the United Kingdom will be erased after 15 years, but there is no write-off in Singapore. Malaysia has an agreement in place, but it has not been finalized.[36] Only studies on business bankruptcies in developed economies are currently available. Based on the foregoing context, this study examines the benefits and drawbacks of ASEAN countries' bankruptcy legal systems. The goal of this study is to improve the bankruptcy law systems in ASEAN countries in order to help the ASEAN Economic Community accomplish its goals by 2025.

2. Method

The disparities in bankruptcy laws between ASEAN countries and other Asian countries are discussed in this study. The focus of this study is on the differences in laws between countries, particularly the definition of a debtor, a grouping of creditors, definition of a creditor, the authority of the debtor in filing for bankruptcy, the amount of debt that can be filed for bankruptcy, the definition of debt that can be filed for bankruptcy, the authority to declare a company bankrupt, the number of creditors that can file for bankruptcy, the bankruptcy voting system, and who has the authority to declare a company bankrupt.

The normative legal method is used in this study. The rules and regulations of RECP member countries are compared. The research is normative descriptive in nature.[37] Primary research materials, secondary research materials, and other legal normative research materials are included. The primary materials relevant to each country's rules are the focus of this study. Secondary research materials include research materials, scientific articles, and other items pertaining to bankruptcy regulations. Other materials that explore bankruptcy regulations are referred to as tertiary research materials.[38] Comparative law is a comparison of the legal systems that apply in each country. Comparative law is better known as part of international law. Comparative law aims to find similarities and differences in the laws that apply in each country.[39]

[34] Agus Nurudin, "Bankruptcy and Postponement of Debt Payments for Large Companies," International Journal of Economics and Business Administration 8, no. 2 (2020): 388–95, https://doi.org/10.35808/ijeba/469.

[35] György Walter and Jens Valdemar Krenchel, "The Leniency of Personal Bankruptcy Regulations in the EU Countries," Risks 9, no. 162 (2021): 1–20, https://doi.org/10.3390/risks9090162.

[36] Ruzita Azmi, Adilah Abd Razak, and Siti Nur Samawati Ahmad, Discharge in Bankruptcy: A Comparative Analysis of Law and Practice between Malaysia, Singapore and the United Kingdom (UK) – What Can We Learn?, Commonwealth Law Bulletin, vol. 43 (Routledge, 2017), https://doi.org/10.1080/03050718.2017.1413989.

[37] Suwinto Johan, "Knowing Company Secrets Through Employee Posts on Social Media," Diponegoro Law Review 6, no. 2 (2021): 203–16, https://doi.org/10.14710/dilrev.6.2.2021.203-216.

[38] Suwinto Johan and Ariawan, "Consumer Protection in Financial Services," Legality : Jurnal Ilmiah Hukum 29, no. 2 (2021): 173–83.

[39] Ratno Lukito, Perbandingan Hukum : Perdebatan Teori Dan Metode (Yogykarta: Gajar Mada University Press, 2019).

3. Bankruptcy Law Comparison between ASEAN, China and Japan

The major focus of this study is a comparison of bankruptcy rules in ASEAN, China and Japan. Behind China, which is currently the world's second-largest economy, Japan will have the third-largest economy by 2021. In comparison to Japan, which makes up 5.4 percent of the world GDP, China accounts for 17.9 percent of it. This study focuses on legal similarities among Asian countries rather than comparing the United States or the European Union.

3.1. Indonesia

In 1998, a large number of Indonesian businesses filed for bankruptcy. The company's debt soared by nearly tenfold. The Jakarta Initiative (JI) was developed by the Indonesian government to assist businesses in negotiating with creditors. These conversations, however, did not proceed as planned. Default happens to a lot of businesses. The Bankruptcy Law No. 37 of 2004 was issued by the Indonesian government in 2004. The Indonesian Bankruptcy Law has been amended several times. Finally, bankruptcy judgements will be appealable to the Supreme Court in 2021. Previously, the commercial court's bankruptcy ruling was final. Furthermore, creditors with collateral will not be able to file for bankruptcy in 2020. However, this will be changed so that creditors with collateral can file in the same year.

The definition of a debtor is not defined in Bankruptcy Law No. 37 of 2004. Individuals or business entities can be debtors. It is not explained in any way. While creditors have a distinct definition, they are divided into two categories: secured and unsecured creditors. The secured is referred to as separate in this bankruptcy law, whereas the unsecured is referred to as concurrent. According to the Civil Code, there are creditors who are referred to as preferred creditors. Preferred creditors are those that are given first priority. Debtors or creditors may petition the commercial court for debt restructuring. Debtors and creditors both have the option of proposing debt restructuring.

There is no minimum amount for a debt restructuring application, but it must include two creditors. One of the creditors' debts must be past due and recoverable. It takes 335 days from filing for reorganization to reaching an agreement or declaring bankruptcy. Meanwhile, the court must decide on the bankruptcy process. Judges have the power to select administrators or curators, who are then overseen by the court. Following the bankruptcy filing, the bankrupt company will be managed by the bankruptcy administrator or curator.

3.2. Vietnam

A debtor is defined clearly in Bankruptcy Law No. 51 of 2014. The debtor is a Vietnamese firm based in the country. Companies that are not based in Vietnam are not eligible to petition for bankruptcy. The Bankruptcy Law of Vietnam divides creditors into three categories: Secured, unsecured, and partly unsecured creditors which are divided into three categories. A creditor is defined as a debtor who has not been paid for 30 months and does not have a guarantee or partial guarantee. Shareholders own 20% of the company and have held their shares for at least six months. Debtors and shareholders can submit restructuring plans. When a creditor files for bankruptcy, the minimum

amount of debt is not determined. The creditor's loan, on the other hand, was due to maturity in three months. A special bankruptcy court makes decisions about bankruptcy and reorganization. The minimum number of creditors is not regulated by this Bankruptcy Law. The time it takes to file for bankruptcy or make a restructuring decision ranges from 63 to 73 days. More than half of the number of unsecured creditors and 65% of the loan value of unsecured creditors must attend decisions about bankruptcy or restructuring, and decisions must be approved by more than half of the number of unsecured creditors and 65% of the loan value of unsecured creditors.

Regarding judges' decisions on bankruptcy or reorganization, the central authority's court in the province or city has the power to adjudicate. There must be no conflict of interest between the judge and the debtor. Collateralized debts are excluded from bankruptcy and restructuring decisions. The order of debt payments is regulated by the Bankruptcy Law, which states that the proceedings must first pay bankruptcy costs, employee wages, debts and duties to the state, unsecured loans, and finally unpaid guaranteed loans. Unsecured creditors have the same rights and responsibilities as secured creditors.

3.3. The Philippines

Bankruptcy is governed by Regulation No. 10142, which was issued on July 27, 2009. A debtor is a private corporation registered with the Department of Trade and Industry, a firm registered with the Securities and Exchange Commission, a company formed under Philippine law, or an individual who is facing financial difficulties. At the same time, a creditor is defined as a person who has a claim against a debtor based on relevant legislation that occurred before or at the time of the claim. While debt is defined as "all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed," it also includes, but is not limited to: (1) all claims of the government, whether national or local, including taxes, tariffs, and customs duties; and (2) claims against directors and officers of the debtor arising from acts done in the course of the debtor's business. This provision does not exclude creditors or third parties from bringing lawsuits against directors and officers acting in their official roles.

Banks, insurance companies, and government entities are not included in the debtor definition. It is both voluntary and involuntary to file for bankruptcy or reorganization. The minimum amount of debt application is one million pesos (Php1,000,000.00) or twenty-five% (25%) of the subscribed capital stock or partners' contributions, which allows the debtor to face involuntary procedures by filing a petition for rehabilitation with the court. These debts are obviously past due. There is no minimum number of creditors required. Within 40 days after the first trial, the bankruptcy decision is made. The bankruptcy or reorganization choices are made by the court. Rehabilitation receivers are the name given to bankruptcy administrators. If the petitioner(s) is/are a creditor or group of creditors, that the petitioner(s) has/have met with the debtor and made a reasonable faith effort to reach a consensus on the proposed Rehabilitation Plan if the debtor has approved the restructuring decision has met with its creditor(s) representing at least three-fourths (3/4) of its total obligations to the extent reasonably possible and made a reasonable faith effort to reach a consensus on the proposed Rehabilitation Plan.

Secured debt is included in the restructuring, but its rights as a secured creditor are not affected. The court will be appointed by the Supreme Court. The court will assess whether owners, directors, or officials are liable for losses incurred as a result of bankruptcy.

3.4. Singapore

A debtor is someone who is unable to pay their debts, and creditors may elect to file for bankruptcy against them. A petitioning creditor can begin a bankruptcy application in Singapore under Section 61 of the Bankruptcy Act if someone owes anyone (any person or even a company) more than S$15,000.00, has property in Singapore, has resided/carried on business in Singapore within a year of the filing, and is unable to pay their debts. Further requirements are: having a residence in Singapore for at least one year, domiciled in Singapore, having property in Singapore, having carried on business in Singapore for at least one year, having generally been a resident in Singapore for at least one year. In Singapore, however, the different sorts of creditors are not distinguished. The decision to file for bankruptcy or debt restructuring can be voluntary or involuntary. Debts that have not been paid within 21 days of being filed in court or within 14 days of being filed in court can be collected. The minimum amount that must be paid is $15,000. The number of creditors is not specified in the Singapore Bankruptcy Act. Secured debt is divided into two categories: bankruptcy and restructuring. Bankruptcy decisions are made by the court. The Official Assignee is in charge of bankruptcy administration. A majority vote is required to make restructuring choices.

3.5. Malaysia

A liquidated payment payable immediately or at a certain future time is defined as a debt. In addition to the definition of debt, it is any remuneration for work or labor performed, any obligation or the possibility of an obligation to pay money or money's worth for the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach occurs or does not occur, is or is not likely to occur, or is capable of occurring before the debtor's discharge, and generally it shall include any express or implied engagement, agreement, or undertaking, and it shall include any express or implied engagement. The Malaysian Bankruptcy Act does not distinguish between different types of creditors. However, secured creditors can participate in voting by releasing their collateral.

Both voluntary and involuntary bankruptcy and reorganization can be filed. A creditor may not file a bankruptcy petition against a debtor unless (a) the debt owed by the debtor to the petitioning creditor, or if two or more creditors join in the petition, with the aggregate amount of debts owed to the several petitioning creditors, exceeds *fifty thousand ringgit; (b) the debt is a liquidated sum payable either immediately or at a specific future time; and (c) the act of bankruptcy on which the petition is based has occurred within the

If the submission is made against (a) a social guarantee; or (b) a guarantor other than a social guarantor, a bankruptcy filing cannot be filed unless the petitioning creditor has secured leave from the court. From RM 50,000 in 2017, to RM 100,000 until August 31, 2021, the minimum value for bankruptcy filing has increased from RM 30,000 to RM

100,000. Loans for Individuals were 31% in 2016, 53% in 2020, and 54% in the first four months of 2021. Debt that has been past due for six months and can be recovered. The bankruptcy decision is made by a majority vote of the loan value, and bankruptcy management is handled by nominees. Creditors with collateral interests are not affected in the same way, but there is a caveat: Unsecured creditors are barred from taking further action against a bankrupt person to recover obligations incurred before bankruptcy was declared. Unsecured creditors have no authority over a bankrupt's property, and any unsecured creditor who wishes to pursue legal action against a bankrupt must first obtain the court's permission. Unsecured creditors should file their Proof of Debt in addition to bringing a lawsuit against a bankrupt.

Secured creditors have the legal right to seize a bankrupt's assets. A secured creditor, on the other hand, may deal with a bankrupt property under section 8(2) of the Insolvency Act 1967, and if the property is realized within 12 months of the Bankruptcy Order, the secured creditor is entitled to interest. The surplus from the sale will be given to the DGI, who will credit it back into the bankrupt's estate account and distribute it to the creditors. Payment is made in the following order: According to the law, priority would be given to preferential unsecured creditors such as the company's employees and other preferential claims. Any remaining assets will be allocated equally to the company's unsecured creditors.

3.6. Thailand

Thailand experienced a crisis in 1997 as experienced by Indonesia. At the request of the IMF. Thailand has a Bankruptcy Act.[40] Subject to the composition meeting certain minimum requirements, creditors may agree to accept the proposal by special resolution of a meeting of creditors, requiring the approval of creditors representing a minimum of 75% of the debt with a majority of the creditors attending the meeting.

There are three types of procedure available for corporate debtors. First, a creditor-initiated bankruptcy, whereby the successful verification of the debtor's insolvency by the creditor leads to a court order of absolute receivership and the process is under judicial supervision. Second, a debtor-initiated bankruptcy through voluntary liquidation as a result of a special resolution of shareholders. Corporate bankruptcy is the ability to seek a temporary receivership order, the ability of the corporate debtor to propose a composition of debt and the methods of release from bankruptcy. The third type of procedure for corporate debtors is a business reorganization procedure, either creditor- or debtor-initiated, with the objective of rehabilitating the business. Thai law does not provide for an out-of-court settlement option.

The Bankruptcy Regulations that apply are almost the same as those of Indonesia. These regulations were both issued during the 1997-1998 crisis at the request of the International Monetary Fund (IMF). However, Thailand has a minimum number of

[40] Narun Popattanachai, "A Legal Theory of Finance Reinterpretation of the Asian Financial Crisis and the Implications for the Future of Thailand and South East Asia," Columbia University (2018), http://journal.stainkudus.ac.id/index.php/equilibrium/article/view/1268/1127%0Ahttp://publicacoes.cardiol.br/portal/ijcs/portugues/2018/v3103/pdf/3103009.pdf%0Ahttp://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0121-75772018000200067&lng=en&tlng=.

creditors to charge non-paying companies. If the creditor is a company, it must have receivables or bills of two million baht and for individual creditors the minimum is one million baht.

3.7. China

Enterprise Bankruptcy Law No. 54 of 2007 is the name of China's bankruptcy law. The debtor is a business or corporation. Secured and unsecured creditors are the two types of creditors. The term "debt" refers to debt that is past due. Creditors and debtors can both file for bankruptcy and reorganization. There is no minimum valuation for filing for bankruptcy and restructuring, but the claims must be past due.

Bankruptcy and reorganization decisions are made by the courts. The administrator is in charge of bankruptcy. An administrator is appointed by the judge. The court makes its decision based on the debtor's situation. The entire process takes about 50 days from submission to decision. More than half of the attending creditors with a value more than half of the unsecured debts must approve restructuring decisions. Restructuring and bankruptcy do not apply to secured debt. The payment of bankruptcy fees, earnings or salary, social insurance, taxes, and other general claims takes precedence over other claims. Secured creditors are not allowed to vote. If a violation is established, the Board of Directors or management who controls the company is accountable for the company's insolvency. According to the applicable laws and regulations, the Board of Directors or management must be accountable.[41]

3.8. Japan

Bankruptcy is governed by Law No. 75, enacted on June 2, 2004. A bankruptcy claim, as defined in this Act, is a claim on property arising against the bankrupt from a cause that happened before the initiation of bankruptcy proceedings (including the claims stated in the items of Article 97) and that is not covered by the estate's claims. A district court before which a bankruptcy case is underway is referred to as the bankruptcy court in this Act. A bankruptcy creditor is a creditor who has a bankruptcy claim, as defined in this Act. Unable to pay debts means the condition in which a debtor is generally and continuously unable to pay their debts as they become due because of a lack of ability to pay (in the case of bankruptcy of the trust property, the condition in which the trustee is generally and continuously unable to pay their debts is covered by the trustee's liability for payment based on the trust property/meanie due to a lack of ability to pay with the trust property due to a lack of ability to pay). The Bankruptcy Code makes no distinction between secured and unsecured debts.

Bankruptcy regulations of various countries are summarized in table 1. There is no one country law that covers everything.

[41] Suwinto Johan and Ariawan Ariawan, "Corporate Liability for Creditors' Losses during the Covid-19 Pandemic," Media Hukum 28, no. 1 (2021): 15–28.

Table 1. Summary of Bankruptcy Law in RCEP Countries

	Indonesia	Vietnam	Philippine	Malaysia	Singapore	Thailand	China
Company Debtor	Y	Y	Y	Y	Y	Y	Y
Individual Debtor	N	N	Y	N	Y	Y	N
Creditor Type	Y	Y	N	N	N	Y	Y
Definition of Debt	Y	Y	Y	Y	Y	Y	Y
Minimum Debt Amount	N	N	Y	Y	Y	Y	N
Bankruptcy Court	Y	N	Y	Y	N	n.a.	Y
Voting	Y	Y	Y	Y	Y	Y	Y

Note: *Y = Included*
N = not available/unclear
Source: Primary data, 2017 (Edited)

4. Bankruptcy Law Harmonization

The definition of creditors in Indonesia is the parties who have receivables and are due. Indonesia does not regulate the minimum amount of debt that can be collected. So that Indonesia and other ASEAN countries need to apply a minimum amount for filing a suspension of debt or bankruptcy. Singapore sets a minimum of SGD 15,000. The definition of debtor in Singapore also includes individuals. While in other countries, debtors are more focused on companies. Vietnam clearly determines that the company that is proposed for suspension of debt is a company established in Vietnam. However, Singapore and Malaysia do not clearly distinguish the types of creditors. Indonesia, China, Vietnam and Thailand distinguish between secured and unsecured creditors.

The number and kind of creditors must be determined in order to be fair to other creditors. It is possible to estimate the number of creditors who will file for bankruptcy. The number of creditors must be considered in bankruptcy court rulings. Creditors are the ones who appoint bankruptcy trustees. Bankruptcy management must be re-defined with the participation of stakeholders with a stake in the company. Stakeholders, not just independent parties, must be involved. The voting method for peace proposals must consider the secured creditor's position, the unsecured creditor's position, the maturity time, and the contribution. Currently, peace initiatives focus solely on guarantees and no guarantees. The term "secured debt" has to be defined more precisely. Is it still regarded as secured debt if there are other creditors who have the same guarantee? It is necessary to include a creditor classification based on the debtor's moral hazard. Priority determines how much money is made from a bankruptcy sale. The main debt, loan interest, and other expenditures take precedence. The Bankruptcy Law should stress the order in which the proceeds from the bankruptcy sale are distributed. Creditors' obligation to follow the bankruptcy process. The peace plan must be accepted by all creditors as the only method to pay the debtor's debt. After losing the peace proposal vote, several creditors bring criminal charges against shareholders or directors.

Petitions can be submitted by debtors or creditors. This term is different in the Philippines, where it is voluntary and involuntary. Voluntary is said to be submitted by the debtor himself, while involuntary is submitted by the creditor. Meanwhile, Vietnam allows shareholders to apply voluntarily as well. The maximum total number of days for bankruptcy proceedings in Indonesia requires 270 days from filing for suspension of debt payment obligations to bankruptcy. Meanwhile, China provides a maximum of 90 days and a minimum of 30 days for companies that file for bankruptcy. Meanwhile, Vietnam requires the court to make a bankruptcy decision within 30 days. Meanwhile, Singapore decided the bankruptcy of the company within a period of 21 days.

Bankruptcy decisions are the authority of the judge or panel of judges in each country. Vietnam named judges and administrators, while the Philippines and Singapore gave authority to administrators. Malaysia appointed nominees as direct supervisors of the implementation of the suspension of debt repayment obligations. After the decision to postpone the payment of debt obligations is approved, the company is run by management with supervision by the receiver. Implementation in Indonesia, every management action to spend funds needs to get approval from the receiver.

Bankruptcy decisions in Indonesia distinguish between secured and unsecured creditors. While in Vietnam and China, only focus on collateral creditors with a minimum amount of 51. However, Vietnam added that it is mandatory to reach 65% of the total debt. The Philippines requires reaching a minimum of 3/4 of the total debt. Meanwhile, Singapore and Malaysia require a majority to be achieved. Thailand requires 75% of creditors' votes to approve every decision up to bankruptcy. The status of the employee remains the same during the period of suspension of debt payment obligations. However, many employees will start looking for work outside.

5. Conclusion

The implementation of bankruptcy rules in ASEAN countries is still uneven. The existence of legal equality regarding bankruptcy is crucial for economic cooperation and giving legal certainty for business people. Business actors in ASEAN, particularly financial institutions, can lend to creditors in other ASEAN nations. Changes are affecting the concept of creditors, their rights and obligations, creditor categorization, voting methods, and other moral hazard-related issues. Investor trust in ASEAN countries will be boosted as a result of this modification. The RCEP and ASEAN members are not given enough attention in this report. Including nation conditions outside of the RCEP in future research will yield different results. Other research on the perspectives of business actors on each country's legal environment is also required.

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Rethinking Indebtedness according to the Principles of Justice and Equality

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Abstract *The law's objective is to uphold the principle of justice. Contractual debts, interest-bearing debts, unsecured debts, and debts with payment terms are all included in restructuring plans. All debts must be accompanied by a contract. If the business defaults, the contract serves as proof of debt. This research focuses on Indonesia's bankruptcy law. This study employs an empirical qualitative legal method. The study recommends categorizing debt according to its source, duration, function, and collateral. Debts classified as restructuring must waive their collateral rights. This debt grouping is consistent with finance's capital structure theory. This research will revolutionize the current concept of debt restructuring. The study will serve as a resource for all business actors who have documented debt. Debt is uncommon in developing countries such as Indonesia. Entrepreneurs in developing countries have established business relationships*

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based on mutual trust. The study's limitation is that it does not take industry type into account. Additionally, this research has implications for a firm's total cost of capital as a result of changes in the risk model and creditor roles, particularly in developing countries. This study proposes a system of debt classification based on principles of justice and equity. This classification is made not only on the basis of the guarantee's type, but also on the basis of the agreement's duration and financial principles. The purpose of this study is to examine bankruptcy law in developing countries. Knowledge of bankruptcy law will add value to investors and banks on a global scale.

Keywords Indebtedness, Principles of Equality, Principle of Justice

1. Introduction

Numerous retail businesses have declared bankruptcy as a result of the Covid-19 pandemic. For example, in the United States, 50% more businesses filed for bankruptcy in 2020 than in 2019.[1] Others filed for Chapter 11 bankruptcy protection during the 2008 financial crisis and the ensuing bankruptcy, while others, such as General Motors, were rescued from bankruptcy by the United States government.[2]

Additionally, Worldcom, Enron, and Lehman Brothers were all large corporations that declared bankruptcy during the 2008 financial crisis.[3] Consumer

[1] Lauren Thomas, "The 10 Biggest Retail Bankruptcies of 2020," *Cnbc*, 2020, https://www.cnbc.com/2020/12/26/the-10-biggest-retail-bankruptcies-of-2020.html.

[2] Sean P Mcalinden and Yen Chen, "After the Bailout: Future Prospects for the U.S. Auto Industry," *Center for Automotive Research*, No. December 2012 (2012), http://www.cargroup.org/wp-content/uploads/2017/02/After˅the˅Bailout˅Future˅Prospects˅for˅the˅U.S.˅-Auto˅Industry.pdf.

[3] Ty Haqqi, "15 Biggest Companies That Went Bankrupt," 2021, https://finance.yahoo.com/news/15-biggest-companies-went-bankrupt-094001224.html.

demand has been impacted by the Coronavirus. Numerous large retailers, including GNC, Hertz, JCPenney, Gold's Gym, Sizzler, and Virgin Atlantic, have filed for Chapter 11 bankruptcy protection as a means of financial restructuring.[4] Additionally, several companies outside the United States have filed for bankruptcy, including Muji (Japan), Hypermart (Indonesia), and Ramayana (Indonesia).[5]

Under Chapter 11, bankruptcy is a reorganization in which the business continues to operate and is eligible for new financing. However, the court requires that the reorganization plan be submitted to creditors for approval, and the majority of creditors with rights.[6] Chapter 13 is not synonymous with company liquidation.[7]

A financial reorganization proposal includes a strategy for repaying creditors for the company's debts.[8] The company declared bankruptcy due to its inability to pay maturing debts. Secured or unsecured creditors are both possible.

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4 Emily Pandise, "One Year into Pandemic, Main Street Bankruptcies Continue," *NBC News*, 2020, https://www.nbcnews.com/business/consumer/which-major-retail-companies-have-filed-bankruptcy-coronavirus-pandemic-hit-n1207866.

5 Fortune, "Companies Filing Bankruptcy during COVID: List of Top Companies That Filed for Chapter 11 amid Coronavirus Pandemic," *Fortune*, 2020, https://fortune.com/2020/08/04/companies-filing-bankruptcy-2020-due-to-covid-list-filed-chapter-11-coronavirus-pandemic/.

6 U.S. Courts, "Chapter 7 - Bankruptcy Basics | United States Courts," *United States Courts*, 2020, https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics.

7 Karikari Amoa-Gyarteng, "Financial Characteristics of Distressed Firms: An Application of the Altman Algorithm Model," *Journal of Corporate Accounting & Finance* 30, No. 1 (2019): 63–76, https://doi.org/10.1002/jcaf.22367.

8 Arturo García-Santillán, "An Algorithm to Renegotiate Debt through Equivalent Equations and Transaction Costs: A Proposal for the Field of Financial Education," *International Electronic Journal of Mathematics Education* 14, No. 1 (2019): 123–36, https://doi.org/10.12973/iejme/3981.

Secured/collateral creditors make loans contingent upon the provision of a predetermined type of guarantee. Generally, guarantee creditors are financial institutions, and the loans are medium- to long-term in nature, unless they have matured.[9]

Unsecured creditors obtain loans without collateral. In essence, these are business partners or parties who owe money on a short-term basis, such as employee salaries or payables.[10] Employee receivables are categorized as preferred receivables.

Both types of creditors are involved in a financial reorganization proposal. The company must obtain authorization from both types of creditors.[11] Each creditor's voting provisions are tailored to the applicable laws and regulations in each country. Creditors are classified according to their exposure to secured and unsecured debt. The debt is secured by the collateral held pursuant to a credit agreement.[12] A claim right is a legal term that refers to a right that imposes responsibilities, duties, or obligations on third parties with respect to the right-holder. The guarantee may include double, triple, or more pledges and must be consistent with applicable laws and regulations.

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[9] Idris Yahaya Adamu, "Idea of Collateral and Guarantor in Islamic Bank Financing," *SEISENSE Journal of Management* 1, No. 5 (2018): 49–57, https://doi.org/10.5281/zenodo.1474664.

[10] Richard Jr Hunter and John H Shannon, "Managing Financial Stress for Debtors and Creditors in the Midst of a Pandemic Part II: Bankruptcy," *International Journal of Business Management and Commerce* 5, No. 3 (2020): 11–20, http://ijbmcnet.com/images/Vol5No3/1.pdf.

[11] Serhiy O. Yuldashev and Valentyna P. Kozyreva, "Classification and Protection of the Rights of Creditors in Bankruptcy Cases," *Scientific Works of National Aviation University. Series: Law Journal "Air and Space Law"* 2, No. 51 (2019), https://doi.org/10.18372/2307-9061.51.13792.

[12] M. Hadi Shubhan, "Deconstructing Simple Evidence in Bankruptcy Petition for Legal Certainty," *Indonesia Law Review* 9, No. 2 (2019), https://doi.org/10.15742/ilrev.v9n2.527.

Both types of creditors are included in a financial reorganization proposal. The business must secure approval from both types of creditors.[13] Each creditor's voting provisions are tailored to the country's specific laws and regulations. Creditors are classified according to secured and unsecured debt. The debt is secured by claim rights to collateral held pursuant to a credit agreement.[14] A claim right is a legal term that refers to a right that imposes responsibilities, duties, or obligations on third parties in relation to the right holder. The guarantee may contain two, three, or more pledges and must reflect fairness under applicable laws and regulations.

This research focuses on Indonesia's bankruptcy law. Indonesia is a member of the G20 and has the world's fourth largest population. In 2022, Indonesia will assume the G20 Presidency. Indonesia's economy will attract a large number of foreign investors, making bankruptcy research critical for investors and banks.

Justice is a value that must be realized through the legal system. Law is conceived as a universally applicable principle of justice that applies to all humankind.[15]. This theory considers the law in isolation from the facts. Furthermore, rules are eternally applicable, whereas norms derive from God, the universe, and human reason. Additionally, the law is not time-bound, whereas

[13] Yuldashev and Kozyreva, "Classification and Protection of the Rights of Creditors in Bankruptcy Cases."

[14] M. Hadi Shubhan, "Legal Protection of Solvent Companies from Bankruptcy Abuse in Indonesian Legal System," *Academic Journal of Interdisciplinary Studies* 9, No. 2 (2020): 142–48, https://doi.org/10.36941/ajis-2020-0031.

[15] Mahrus Ali, "Pemetaan Tesis Dalam Aliran-Aliran Filsafat Hukum Dan Konsekuensi Metodologisnya," *Jurnal Hukum IUS QUIA IUSTUM* 24, No. 2 (2017): 213–31, https://doi.org/10.20885/iustum.vol24.iss2.art3; Iffaty Nasyiah, "Potential Criminal Action in Shadow Banking Practice," *Proceedings of the International Conference on Engineering, Technology and Social Science (ICONETOS 2020)* 529, No. Iconetos 2020 (2021): 128–33, https://doi.org/10.2991/assehr.k.210421.020.

justice is rooted in the human mind, universally and eternally applicable, and realized by humans.

The law's goal is justice, and achieving it requires humane values such as morality and an understanding of what is right and wrong to do.[16] On the basis of human judgment, the principle of justice distinguishes between good and evil.[17] According to Aristotle, justice can be distributive, awarding individuals based on their service, or cumulative, awarding everyone an equal share of their services.[18] All creditors have distributive justice because they all lend money to the business for development.[19]

According to Rawls, justice is "fairness dispensed by the court through judgment".[20] To the person adjudicating, the courts or judge provide justice. Similarly, equity is a fundamental principle of sound corporate governance.[21]

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[16] Weda Kupita, "State Administrative Court as a Means to Realize Justice," *SHS Web of Conferences* 54 (2018): 03007, https://doi.org/10.1051/shsconf/20185403007.

[17] Henry Halim, "Asas Keadilan Dalam Syarat Sahnya Perjanjian dalam Pasal 1320 KUH Perdata," *Jurnal Ilmu Administrasi Negara & Bisnis* 3, No. 2 (2018): 1–12, http://jurnal.stiaindragiri.ac.id/site/index.php/jiaganis/article/view/93.

[18] Ayman Alshaabani et al., "Impact of Distributive Justice on the Trust Climate among Middle Eastern Employees," *Polish Journal of Management Studies* 21, No. 1 (2020): 34–47, https://doi.org/10.17512/pjms.2020.21.1.03.

[19] Agus Nurudin, "Bankruptcy and Postponement of Debt Payments for Large Companies," *International Journal of Economics and Business Administration* VIII, no. Issue 2 (2020): 388–95, https://doi.org/10.35808/ijeba/469.

[20] John Ralws, *Justice as Fairness* (London, Routledge, 1970).

[21] Saparila Worokinasih and Muhammad Lutfi Zuhdi Bin Mohamad Zaini, "The Mediating Role of Corporate Social Responsibility (CSR) Disclosure on Good Corporate Governance (GCG) and Firm Value," *Australasian Accounting, Business and Finance Journal* 14, No. 1 Special Issue (2020): 88–96, https://doi.org/10.14453/aabfj.v14i1.9.

Friedman defined law as "the content, structure, and culture of the legal system".[22] As a result, the law is enforced through legislation as well as through the empowerment of the legal apparatus and facilities. However, society's legal culture must be supportive of law enforcement. This legal culture is reflected in the credit agreement's compliance and adherence to its terms.

Numerous philosophical, religious, political, and legal studies have been conducted on issues pertaining to justice.[23] A matter of justice cannot easily be determined to be just. Typically, justice responses are insufficient and are still debatable. Additionally, various formulations of justice are relative formulations, encouraging individuals to present their cases to legislators and judges for consideration.[24]

Justice is concerned with available resources and morals, whereas legislation, including a judge's decision as a law enforcer, incorporates material and spiritual components. According to Al-Ghazali, achieving justice without spiritual guidance is a violation of humanity's principles. It is a divine attribute because it pertains to both worldly human life and God's realm. As such, religious practitioners should apply and implement it. Justice is a moral obligation that

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[22] Wahyu Suwarni, "Obstacles to Enforcement of Book Copyright Law in Indonesia Based on The Legal Structure, Legal Substance, and Legal Culture," *International Journal of Advanced Research and Publications (IJARD)* 3, No. 3 (2019): 153, http://www.ijarp.org/published-research-papers/mar2019/Obstacles-To-Enforcement-Of-Book-Copyright-Law-In-Indonesia-Based-On-The-Legal-Structure-Legal-Substance-And-Legal-Culture.pdf.

[23] Bahder Johan Nasution, "Kajian Filosofis Tentang Hukum dan Keadilan dari Pemikiran Klasik Sampai Pemikiran Modern," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 11, No. 2 (2017): 247, https://doi.org/10.19105/al-ihkam.v11i2.936.

[24] Zahir Shah, Manzoor Ahmad, and Naveeda Yousaf, "An Appraisal of Justice in Pakistan from the Prism of Platonic Justice," *South Asian Studies* 32, No. 1 (2017): 267, http://journals.pu.edu.pk/journals/index.php/IJSAS/article/view/3105.

requires society to provide virtue, goodness, and equality based on righteousness through the use or enforcement of the law.

Justice is defined as the legality of an act that dictates whether it is just or unjust. According to Kelsen, justice is legality or a legal standard that is permissible under the law.[25] However, written law cannot provide the justice that a judge's decision provides. Decisions are frequently discussed, criticized, and serve as the focal point of legal reform. The judge, not the king or the government, is the author of the law.[26] Bankruptcy has specific rules that must be followed. A peace proposal must be approved by a judge in court.[27]

Justice embodies peace, which is defined as submission to authority accompanied by acceptance as a form of liberation.[28] Peace and justice are necessary components of any society.[29] A financial restructuring proposal is similar to a peace proposal; it is accepted by the parties as a new agreement.

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[25] Deden Muhammad Surya, "Pemutusan Hubungan Kerja Pada Pekerja/Buruh Dengan Dasar Menolak Mutasi Ditinjau dari Perspektif Asas Kepastian Hukum dan Asas Keadilan," *Jurnal Wawasan Yuridika* 2, No. 2 (2018): 169, https://doi.org/10.25072/jwy.v2i2.182.

[26] Indra Rahmatullah, "Filsafat Realisme Hukum (Legal Realism)," *Adalah Buletin Hukum & Keadilan* 5, no. 3 (2021): 11–22, https://doi.org/10.15408/adalah.v5i3.21395.

[27] Jennifer Payne, "The Role of the Court in Debt Restructuring," *Cambridge Law Journal* 77, No. 1 (2018): 124–50, https://doi.org/10.1017/S0008197318000016.

[28] Lokindra Hari Bhattarai, "Shifting of Governance and Justice: A Reference of Nepal," *Molung Educational Frontier* 10, No. 2011 (2020): 121–33, https://doi.org/10.3126/mef.v10i0.34078; Suwinto Johan, "Separatist Creditors Problems on Postponement of Debt Payment Obligations Based on the Supreme Court's Decree Number 30/KMA/SK/I/2020," *Fiat Justisia: Jurnal Ilmu Hukum* 15, No. 3 (2021): 207–20, https://doi.org/10.25041/fiatjustisia.v15no3.1956; Bhattarai, "Shifting of Governance and Justice: A Reference of Nepal"; Justus Ngala, NAZEEM Ansary, and Olanrewaju Abdul, "Determinants of Bridging Loan among Small and Medium Sized Enterprises in the South African Construction Industry" (University of Johannesburg, 2017), https://doi.org/10.15224/978-1-63248-131-3-67.

[29] Tanius Sebastian, "Masalah Metodologis Ilmu Hukum Indonesia," *Veritas et Justitia* 4, No. 1 (2018): 59–87, https://doi.org/10.25123/vej.2913.

If ethical considerations are incorporated into the agreement-making process, agreements may achieve justice. Numerous contracts violate the principle of justice as a result of one party's monopoly. For instance, one party may possess a hegemonic good, while the other requires it.[30] Additionally, one party can impose its will on the other or is forced to sign the agreement.

In the event of bankruptcy, the principle of justice is effective at protecting the debtor's interests. Specifically, it provides protection against creditors' arbitrary actions against debtor assets.[31] At the time of default, debtors are protected from creditor claims. Bankruptcy protects debtors under the Bankruptcy and Suspension of Debt Payment Obligations Law (UU PKPU).

The principle of justice can apply to customers who deposit funds in banks, necessitating the need to understand the risk of loss. The customer or the financial institution may suffer loss, demonstrating a lack of regard for the justice principle. The principle of justice is a fundamental tenet of economic activity, particularly Islamic economics.[32] Additionally, economic activities, particularly Islamic economics, are guided by a variety of principles, one of which is justice.

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[30] Thomas Christiano, "Equality, Fairness and Agreements," *Journal of Social Philosophy* Special Is (2013), https://www.tse-fr.eu/sites/default/files/medias/stories/sem_12_13/IAST/paper_christiano.pdf.

[31] Serlika Aprita and Rio Adhitya, "Penerapan 'Asas Keadilan' Dalam Hukum Kepailitan Sebagai Perwujudan Perlindungan Hukum Bagi Debitor," *Jurnal Hukum Media Bhakti* 3, no. 1 (2019): 46–56, https://doi.org/10.32501/jhmb.v3i1.44.

[32] Siti Nur Shoimah and Dyah Ochtorina Susanti, "Penerapan Asas Keadilan Pada Transaksi Penyimpanan Dana Nasabah Di Bank Syariah Berdasarkan Akad Mudharabah," *Dialektika* 5, No. 1 (2020): 23–38, http://ejournal.uniramalang.ac.id/index.php/dialektika/article/view/409; Momon Ardiansyah, Siti Hamidah, and Dewi Astuti Mochtar, "Perwujudan Asas Keadilan dan Keseimbangan dalam Pembuatan Akta Persekutuan Komanditer Berdasarkan Akad Mudharabah," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, No. 2 (2020): 321–27, https://doi.org/10.17977/um019v4i2p321-327.

A win-win solution is an effective method of resolving a contract dispute in a business contract. It reflects the principle of equality or proportionality in problem solving. The principle of equality states that an agreement is binding if the parties' interests are aligned. It is applicable to current and prospective debtors under credit or financing agreements. In a deal based on good faith, etiquette, customs, and laws, the principle of equality is emphasized. These factors help maintain a balance between the parties in order to ensure justice, as an unbalanced agreement is not legally binding and can be cancelled.[33]

Standard agreements or clauses govern the relationship between financial institutions and their customers. A financial institution creates a standard agreement or clause and requires the customer to sign it, even though the contract does not reflect equality.[34] Additionally, these agreements are generated as a result of the parties' disparate bargaining positions, and their formation is facilitated by economic considerations. The arrangement encourages the development of standard contracts with inequalities resulting from the parties' unequal economic power. The actions of the parties determine the equality, content, and implementation of an agreement.[35]

Apart from standard agreements, other parties recognize guarantees for loans obtained by financial institutions when the company is insolvent. The guarantees continue to favor financial institutions. By and large, the relationship between debtors and financial institutions remains unbalanced. Debtors have a

[33] Muhammad Irayadi, "Asas Keseimbangan Dalam Hukum Perjanjian," *Jurnal HERMENEUTIKA* 5, No. 1 (2021): 1–6, https://doi.org/10.33603/hermeneutika.v5i1.4910.

[34] Suwinto Johan and Ariawan, "Consumer Protection In Financial Institutions," *Legality : Jurnal Ilmiah Hukum* 29, No. 2 (2021): 173–83, https://doi.org/10.22219/ljih.v29i2.16382.

[35] Aryo Dwi Prasnowo and Siti Malikhatun Badriyah, "Implementasi Asas Keseimbangan Bagi Para Pihak dalam Perjanjian Baku," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, No. 1 (2019): 61, https://doi.org/10.24843/jmhu.2019.v08.i01.p05.

lower social standing than creditors and therefore require loans. Likewise, creditors have the authority to approve loans and select debtors.

Creditors' power runs counter to the legal philosophy's foundation of fundamental values. Injustice and inequality are antithetical to the legal philosophy. The Collateral Act places a premium on financial institutions' interests, highlighting the inequity and imbalance between debtors and creditors.[36] The proportionality principle is applied throughout the agreement's exchange of rights and obligations between the parties.[37]

Commutative justice ensures that debtors and creditors are treated equally in financing agreements. This equality is accomplished through the deal's terms, which avoid violating the principle of justice.[38] The court may annul the agreement if it violates the principle of equality under the law.[39]

In financing agreements, commutative justice entails equality between debtors and creditors. This equality is accomplished through the deal's contents,

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[36] Emilian Ciongaru, "The Principle of Separatio of Powers - Contitutional.," *Challenge of the Knowledge Society, PUblic Law*, 2017, 411–15, https://www.bib.irb.hr; M. Najib Imanullah, "Equalizing the Bank Position and Businesses in Credit Agreement With TheGuarantee of Mortgage," *Yustisia* 7, No. 1 (2018): 173–89, https://pdfs.semanticscholar.org/f8a8/f7742ceb721f288a9d4d40c70c259b9ca89d.pdf.

[37] Ifada Qurrata A'yun Amalia and Endang Prasetyawati, "Karakteristik Asas Proporsionalitas dalam Pembentukan Klausul Perjanjian Waralaba," *Jurnal Hukum Bisnis Bonum Commune* 2, No. 2 (2019): 173, https://doi.org/10.30996/jhbbc.v2i2.2513.

[38] Dwi Ratna Indri Hapsari and Kukuh Dwi Kurniawan, "Consumer Protection in the Banking Credit Agreement in Accordance with the Principle of Proportionality under Indonesian Laws," *Fiat Justisia: Jurnal Ilmu Hukum* 14, No. 4 (2020): 337, https://doi.org/10.25041/fiatjustisia.v14no4.1884.

[39] Tiar Ramon, "Kriteria Keseimbangan Dalam Perjanjian Kredit Bank Untuk Mewujudkan Keadilan Komutatif," *Jurnal Hukum Ius Quia Iustum* 26, No. 2 (2019): 372–90, https://doi.org/10.20885/iustum.vol26.iss2.art8.

which avoid violating the principle of justice.[40] If the agreement violates the principle of equality under the law, the court may vacate it.[41]

A mutual agreement entails equal rights and obligations on the part of the seller and the buyer in connection with the sale and purchase of the company's shares. It entails the seller's obligation to deliver the shares sold, the buyer's payment obligation, and their equality of rights. Additionally, the agreement's contents must be balanced between the two parties, so that buyers and sellers are in an equal position with respect to one another.[42]

A business contract between two parties is constructed using efficiency standards as a guide. Business requires something efficient and rapid, whereas equality demonstrates contractual justice, which contradicts contract freedom.[43]

Secured creditors make loans and collect collateral for goods in accordance with the terms of a credit agreement. In comparison to unsecured loans, creditors with collateral prefer collateralized financial institutions.[44] By providing competitive interest, the collateral value mitigates the risk.[45]

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[40] Hapsari and Kurniawan, "Consumer Protection in the Banking Credit Agreement in Accordance with the Principle of Proportionality under Indonesian Laws."

[41] Ramon, "Kriteria Keseimbangan Dalam Perjanjian Kredit Bank Untuk Mewujudkan Keadilan Komutatif."

[42] Deny Slamet Pribadi, "Penerapan Asas Proporsionalitas/Berimbang Dalam Perjanjian Kemitraan," *Yuriska : Jurnal Ilmiah Hukum* 10, No. 1 (2018): 29, https://doi.org/10.24903/yrs.v10i1.265.

[43] Johan, "Separatist Creditors Problems on Postponement of Debt Payment Obligations Based on the Supreme Court's Decree Number 30/KMA/SK/I/2020."

[44] Chau H.A. Le and Hieu L. Nguyen, "Collateral Quality and Loan Default Risk: The Case of Vietnam," *Comparative Economic Studies* 61, No. 1 (2019): 103–18, https://doi.org/10.1057/s41294-018-0072-6.

[45] G Calcagnini and F Farabullini G Giombini, "Loans , Interest Rates and Guarantees : Is There a Link ?," 2009, https://www.researchgate.net/profile/Giorgio-

Unsecured creditors, such as suppliers who offer trade payables, provide unsecured debt.[46] Rent, employee salaries, and tax liabilities are additional unsecured creditors. Unsecured debt is short-term in nature and is primarily determined by accounting records.[47]

2. Method

In connection with the background and research questions, this prescriptive legal research aims to safeguard creditors confronted with insolvency.[48] This research is conducted by examining secondary or library materials. Normative or literature legal research includes research on legal norms and principles, the systematics of statutory regulations, the level of vertical and horizontal synchronization between applicable laws and regulations in Indonesia for matters related to criminal acts in the financial service industry. In normative law, this research uses a statutory approach by researching statutory regulations as a whole. This statutory approach is an approach using legislation and regulations. This method analyzes regulations, identifies, and adapts to criminal acts in the

Calcagnini/publication/46476976_Loans_Interest_Rates_and_Guarantees_Is_There_a_Link/links/09e4150b7132b3d339000000/Loans-Interest-Rates-and-Guarantees-Is-There-a-Link.pdf.

[46] María Cantero-Saiz, Begoña Torre-Olmo, and Sergio Sanfilippo-Azofra, "Creditor Rights, Monetary Policy, Financial Crisis, and Trade Credit," *BRQ Business Research Quarterly*, 2021, https://doi.org/10.1177/2340944420988294.

[47] Xia Chen et al., "Corporate Social Responsibility and Financial Statement Comparability: Evidence from China," *Journal of Asian Finance, Economics and Business* 7, No. 11 (2020): 001–011, https://doi.org/10.13106/jafeb.2020.vol7.no11.001.

[48] Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi - Prof*, Revisi (Jakarta: Kencana Prenada Media Grup, 2017), https://www.google.co.id/books/edition/Penelitian_Hukum/CKZADwAAQBAJ?hl=id&gbpv=1&dq=Penelitian+Hukum:+Edisi+Revisi&printsec=frontcover.

financial services industry and corporate crimes. Normative legal research materials include primary legal materials, secondary legal materials, and tertiary legal materials or other supporting materials. This research's primary legal materials are the 1945 Constitution of the Republic of Indonesia, laws, and other regulations related to the research topic. Secondary legal materials used are literature reviews in the form of books, legal journals published in scientific journals related to research topics, seminar results/call for papers, and scientific articles. Tertiary legal materials explain the primary and secondary legal materials, including news coverage on the internet.[49]

Additionally, it rethinks the concept of grouping creditors based on guarantees from existing financial science principles and capital structure theory. The primary data source was material on existing bankruptcy laws and regulations. Additionally, secondary data on default and debt classification were gathered from the published literature. These sources included journals, books, articles, and proceedings from academic conferences.[50] Other materials included financial science capital structure theory and information on corporate bankruptcy as a result of COVID-19.

[49] Suwinto Johan, "Sanctions in Financial Services, Developing A Conducive Financial Industry In Indonesia," *Humaniora* 13, No. 1 (2022): 9–15, https://doi.org/10.21512/humaniora.v10i3.5874.

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3. Result & Discussion

A. Debt Scheme and Its Development in Indonesia

Numerous businesses are experiencing operational difficulties as a result of the pandemic. Cash flow difficulties are a result of business difficulties. Insolvency occurs when a business is unable to repay its maturing debt. Inability to pay debts creates legal complications. Financial distress begins with insolvency. Insolvency can result in bankruptcy if a restructuring plan is not implemented.

For instance, a company may seek a postponement of debt repayment obligations under the Indonesian Bankruptcy Act if it is unable to pay its maturing debt. If the debtor and creditor are unable to reach an agreement on a reconciliation proposal after 335 days, the debtor must declare bankruptcy.

Debt is a source of financing for businesses. Every business requires resources, most commonly debt, in order to expand. Debt can take various forms, including short- and long-term debt, secured and unsecured debt, bilateral and multilateral debt, and committed and uncommitted loans.

Debt is a source of funding for businesses, but it can also be a source of problems. Businesses that are unable to manage their cash flow and debt repayment will face difficulties. If a business is unable to repay its debts, bankruptcy will result.

Asian countries were hit by a financial crisis in 1998. Numerous businesses become insolvent. Numerous international banks lend to businesses in Asia, particularly Southeast Asia. Global banks must write off debts owed to Southeast Asian corporations.

Indonesia, the world's largest country in terms of population and GDP, is also experiencing a financial crisis. Numerous businesses are unable to repay their debts. The Indonesian Rupiah's (IDR) exchange rate against the United States

Dollar (USD) increased from IDR 1,800/USD on August 1, 1997 to IDR 14,800/USD on January 8, 1998. Currency depreciation resulted in many businesses having negative equity. This condition of currency depreciation also resulted in negative growth for the Indonesian economy. Numerous businesses face insolvency.

The Indonesian government established the Jakarta Initiative as an institution to assist in debtor-creditor negotiations. The Jakarta Initiative is making little progress. The International Monetary Fund extended a loan to Indonesia (IMF). The IMF is advocating for bench regulations. Indonesia enacted bankruptcy legislation.

This bankruptcy law is intended to settle disagreements between debtors and creditors. Additionally, this bankruptcy law provides for debt restructuring. Additionally, this bankruptcy law provides a faster resolution time of 335 days, as opposed to lengthy civil debt disputes.

However, bankruptcy law is generally protective of creditors' interests. Global bank creditors account for the lion's share. Thus, bankruptcy law raises several considerations that are deemed to be detrimental to the debtor's interests.

Debt serves as a source of financing and a driving force in the economy of a country. Additionally, debt demonstrates a high degree of trust between creditors and debtors. The state incurs debt in order to develop the country. A business borrows money to expand its operations. Individuals borrow in order to enjoy life.

When a debtor defaults, debt becomes a critical issue. Mass defaults can be detrimental to a country's economic system. Economic harm has occurred on numerous occasions, including the 1998 Asian crisis, the 2008 global crisis, and the 2020 Covid-19 crisis.

Mass failures and bankruptcies have occurred in a number of countries. It happened in Indonesia in 1997-1998, when hundreds of firms needed to be rescued

from bankruptcy. This occurred during the Covid-19 pandemic, which lasted from 2020 to 2022. Many businesses have defaulted on their responsibilities.

Default and bankruptcy occur as a result of insolvency. Bankruptcy may result in the liquidation of a business. Liquidation affects the financial sector on a systemic level. Bankruptcy categorizes debts according to the type of collateral used. The current classification is based on the type of collateral that has been the subject of numerous creditor complaints. The current category makes no distinction between the type of debt and the maturity date.

Classifying debt according to the type of collateral has a number of disadvantages. By ignoring the terms of the debt and its source, the collateralized obligation category subverts the justice and balance of creditors' rights.

Various sorts of financial reengineering emerge as technology and innovation advance. The classification of corporate debt has changed as a result of this financial reengineering. Corporate debt is complicated by the fact that it is both secured and unsecured. Creditor rights do not just apply to loan interest.

Zero-coupon bonds, asset-backed securitization, leasing, medium-term notes, and a variety of other hybrid loans have all contributed to the development of this type of loan. Each product has its own set of features, such as creditor rights and debtor duties.

B. Justice and Edquality in Debt Scheme in Indonesia

Creditor rights should be paid in full and on an equal footing. Creditors' rights, which are represented by accounts payable, are equated to those of other payable. This is deemed unjust by accounts payable creditors or suppliers. Additionally, creditors of short-term loan debt contend that debt restructuring is unjust. Creditors whose debts have not yet matured are also considered to be

mature creditors. This divergence has resulted in the belief that the current restructuring method lacks credit justice and balance.

The principle of equality reflects the agreement's balance between its parties. In debt transactions, equality is a balance between debtors and creditors, as well as between individual creditors. This balance adheres to the pari passue principle, which is critical when determining the seniority of a loan. The equality principle is illustrated in Figure 1.

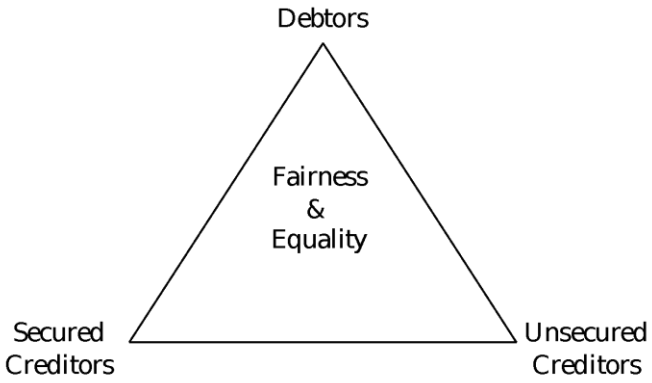

FIGURE 1. The Triangular Position of the Creditor, Guaranteed Creditors, and Unsecured Creditors
Source: research results

The creditor who makes the initial loan is in the same position as those who make subsequent loans. This position reflects the priority of payment, which is determined by the guarantees obtained and the liquidation order of the company. Payments have been made to the creditors who made the initial loan, and the debt balance has decreased. The collateral value will exceed the agreement's collateral coverage ratio.

Secured and unsecured loans both reflect the execution of the collateral immediately upon the debtor's default. In this case, the creditor who has a

guarantee has the authority to enforce it. In contrast, the priority principle reflects the order of payments to equal-standing creditors.

Control of collateral goods creates inconsistencies for creditors under the priority principle. Each creditor who has collateral retains ownership of that collateral and has no dealings with other creditors. Additionally, they require the pari passu or priority principle when sharing collateral with other creditors. The equality principle applies to pari passue but not when the priority principle is in effect.

Lending and borrowing are forms of distributive justice in which each creditor is compensated for their services. According to distributive justice, the company should return creditor services.

Unsecured creditors or suppliers contribute to the company's short-term viability. They do not charge interest, require no agreement or collateral, and offer discounts to businesses that pay their debts on time. Additionally, they are prioritized in their balance sheet above other creditors, indicating the payment due date. This priority principle means that they are given precedence over unsecured creditors.

TABLE 1. Different Types of Creditors

No.	Description	Secured Creditors (Loan)	Unsecured Creditors (Account Payable)
1	Collateral	V	X
2	Interest	V	X
3	Payment Term	V	V
4	Agreement	V	X
5	Impact to Business	V	V

Note: V = Exist
X = Do Not Exist

Source: research results

Creditors who provide guarantees or financial institutions contribute to the company's long-term viability. Their financing is used for long-term investments such as the construction of factories and infrastructure, as well as the acquisition of machinery. Additionally, the proceeds serve as collateral for the loan, serve as a source of revenue, and serve as a guarantee for a credit agreement. The following table 1 summarizes the distinctions between secured and unsecured loans.

Grouping creditors according to the type of guarantee violates the justice principle. The law classifies creditors as secured or unsecured. Both types of creditors have distinct characteristics and cannot be compared due to the supplier's lack of creditor status.

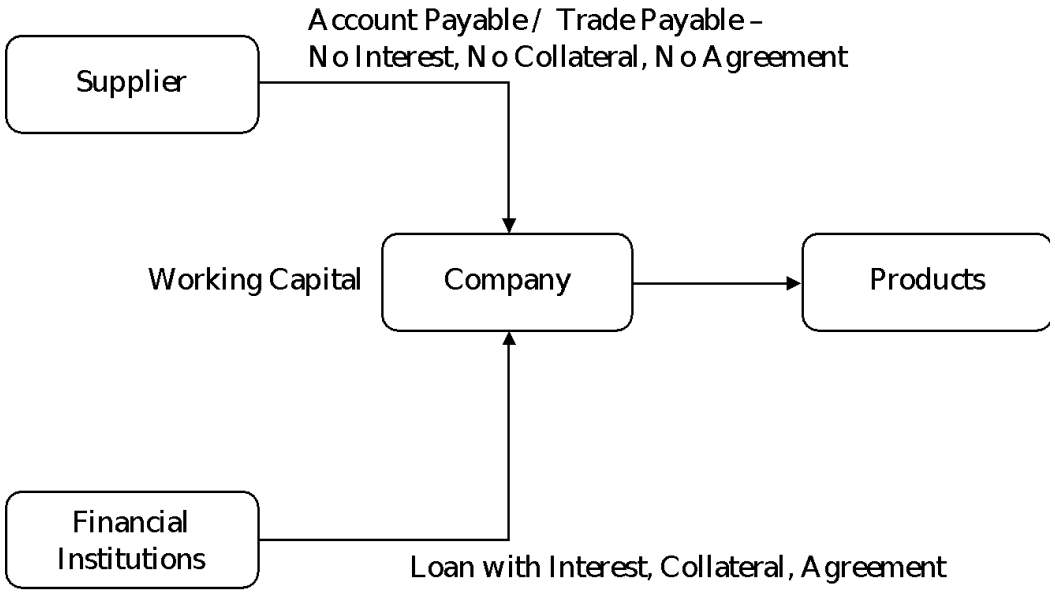

FIGURE 2. Loan Characteristics
Source: research results

Suppliers sell merchandise to the company but do not adhere to the credit agreement's terms. Additionally, they do not enter into financing agreements, do not earn interest, and do not own collateral. Suppliers and salary payables directly associated with the short-term manufacturing process are not debt, but rather a company obligation that has been delayed due to bankruptcy, as illustrated in Figure 2.

According to the principle of justice, the company is required to pay this obligation in the event of bankruptcy. However, because it is not a loan, it is not converted into a financial restructuring agreement.

The company seeks the optimal financing structure for its asset investments. In this regard, the optimal financing combination is defined by the capital structure theory as the sources of debt.[51]. It includes interest rates, risk, loan duration, and asset adjustments.[52]

The capital structure classifies debt according to its maturity date, implying that the closer the debt position is to maturity, the greater the debt position, and vice versa. Capital is listed last because it represents the shareholders' equity, as illustrated in Figure 3. As with the previous accounting post, a shareholder's loan is added to the capital.

[51] Mumtaz Hussain Shah and Atta Ullah Khan, "Factors Determining Capital Structure of Pakistani Non-Financial Firms," *International Journal of Business Studies Review (IJBSR)* 2, No. 1 (2017): 46–59.

[52] Suwinto Johan, "Potential Systemic Risk Effects of Credit Relaxation in the Financial Industry as the Effect the COVID-19," *Jurnal Manajemen Bisnis Dan Kewirausahaan* 4, No. 4 (2020): 87–93, https://doi.org/10.24912/jmbk.v4i4.8661.

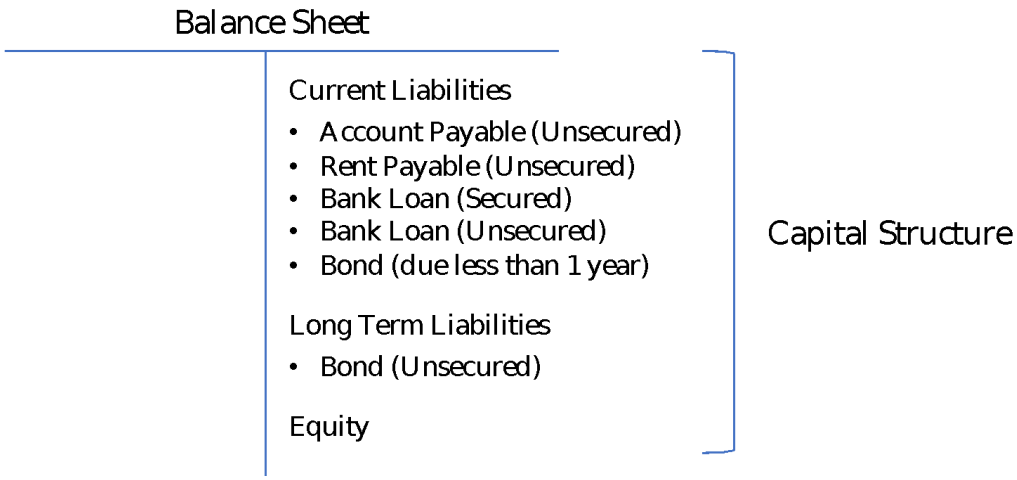

FIGURE 3. Debt Grouping Based on the Theory of Capital Structure
Source: research results

The classification of secured and unsecured creditors based on the outcome of bankruptcy proceedings disregards the fairness of debt maturation. All debts are restructured to maintain the same loan term and are repaid pro rata. This creates an inequitable situation between creditors who have repaid their short-term loans and new creditors who provide long-term loans. Creditor grouping must take the maturity period into account by including the tenure factor in risk assessments. As a result of the risk, the longer the term of the loan, the higher the interest rate.

Creditor grouping must consider the debt's source, duration, function, and guarantee in accordance with the principles of equality and justice and the capital structure theory. As illustrated in Figure 4, this grouping satisfies justice, equality, and capital structure theory between creditors and creditors. Debt is sourced from third parties, whereas debt owed by shareholders is not restructured because it is in the last position during liquidation.

The terms are classified as short-term (less than a year) and long-term (greater than a year). This classification ensures that creditors with past-due and collectible debts are treated fairly. When the short-term debt is between one and three years, the long-term debt is multiplied by three to nine years. Additionally, the debt settlement proposal adheres to this timeline.

The debt function indicates the intended use of funds or sources of financing. Trade receivables are the primary source of funding and have the most debt. Other receivables, such as rent, salary, or other debts, are categorized as short-term.

Debts are classified as secured or unsecured. Debts secured by collateral are calculated when the borrower has completed the guarantee but has not yet balanced and taken the final position. Additionally, they are not included in the debt calculation and are capable of managing collateral. The collateral's excess value over the debt must be returned. The unsecured loan includes the absence of collateral to secure the debt.

Debt grouping serves the interests of all stakeholders in a business, including shareholders, creditors, suppliers, and all other stakeholders with payables. This classification complies with the principles of justice and equality, as well as the capital structure theory as shown in Figure 4.

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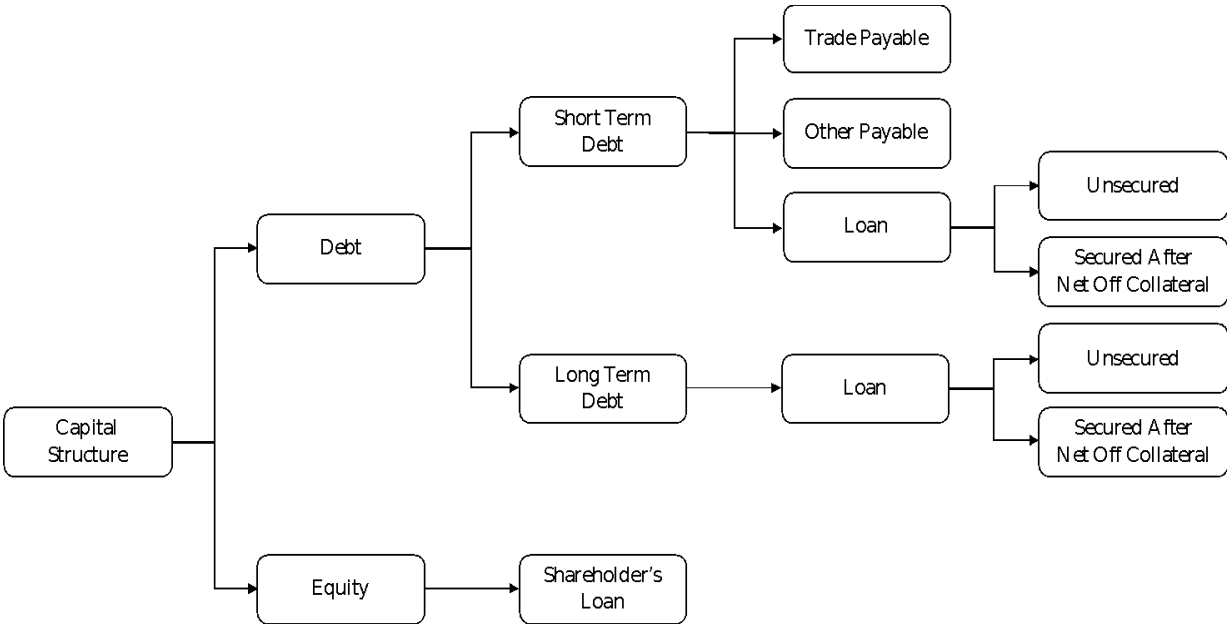

FIGURE 4. Debt Grouping
Source: research results

Debt classification based on the term, source, duration, and collateral of the loan is preferable to debt classification based on the type of collateral. Guarantees come in a variety of forms. Leasing is a method of financing that isn't the same as taking out a loan. The concept of rent a production equipment is known as leasing. The leasing business owns the production equipment. A leasing firm provides the company with production equipment. Leasing, on the other hand, is one of the company's financial sources. The leasing has debt in the form of rental costs at the time of default. The rent due has not yet been paid. The lease payment is required at the end of the lease term. Because of the means of production, leasing might be characterized as secured. However, because it does not guarantee rental payments in the event of a default, leasing can be characterized as unsecured.

Furthermore, asset-backed securitization (ABS) has its own set of characteristics. ABS refers to the sale of a company's collection rights. This right to make a claim is passed on to the buyer. Additional than the processing of these claims, the claim selling company has no other responsibility. Factoring and other types of debt have gained in popularity. So, even if merely considering secured and unsecured elements, debt classification must be reassessed.

4. Conclusion

Grouping debt based on collateral violates justice and equality principles. As a result, secured debts should not be considered in restructuring proposals. Trade obligations are also excluded from restructured debts due to the requirement for agreements and interest bearing. This study proposes categorizing debt according to its source, duration, function, and guarantee type. The restructuring category includes debt that does not include collateral. The capital structure theory is used to classify debt in this study. This study has theoretical and managerial consequences. The study recommends, in theory, that a single variable of collateral be eliminated as a factor in debt classification. Many more factors must be considered when classifying debt. Other financial variables, such as funding sources and loan period, are included in this study. In practice, research leads to a better and more equitable debt restructuring strategy. Debt restructuring will take longer because there are so many things to consider. The loan recovery rate will be affected by a longer duration. When debt restructuring happens, this study has flaws in the execution of debt classification. The time it takes to restructure will be extended if classification considers several variables. Other study on this classification can be developed by conducting interviews with legal and economic practitioners. In addition, study on the balance sheets of corporations in default

can be done using simulations. Simulation is critical to carry out in order for the suggested debt classification to be in line with current practice. The simulation will provide you feedback on your debt classification strategy. Economic, financial, and legal views must all be considered in debt restructuring research. This study cannot be based solely on one science.

5. Declaration of Conflicting Interests

The authors state that there is no conflict of interest in the publication of this article.

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We say we value the legacy we leave the next generation and then saddle that generation with mountains of debt.

Barack Obama

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The Justice Medical Disputes Resolutions

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Abstract
This study aims to explain the dispute resolution process in the medical field, according to the provisions of the applicable laws and regulations and to find a solution for resolving medical disputes that is fair for both patients and medical personnel (doctors and dentists). The analysis shows that the process of resolving medical disputes caused by medical malpractice is still not fair, both in the dispute resolution process at the Indonesian Medical Disciplinary Council (MKDKI) and in the Civil Court. The injustice occurs in procedural and substantive. From this injustice, the researcher felt that it was necessary to form a special medical court.
KeyWords: Medical Dispute, Medical Court, Justice Court Trial

Introduction

Health is a basic need for everyone and is a human right guaranteed in the constitution of the Republic of Indonesia (UUD NRI 1945). In the context of providing health services, the State is obliged to facilitate the establishment of health service facilities, one of which is a hospital. In providing health services in hospitals, there is a legal relationship between patients and medical personnel (doctors and dentists). In healthcare services, the patient and the doctor are bound by an effort, engagement (*inspanningverbintenis*) not a result engagement (*resultants verbintenis*). The effort in the engagement relationship (*inspanningverbintenis*) does not require that the medical doctor will provide certain results. The medical doctor does not responsible that the result is not going to be what is expected by the patient. The medical doctor only needs to prove the best effort that he has done for the patient. Somehow disputes may always happen.

For example, in the case of malpractice that occurred at the *Medika PermataHijau Jakarta* Hospital with Decision No. 625/Pdt.G/2014/PN.JKT.BRT. jo Decision No. 614/PDT/2016/PT.DKI jo. Decision No. 42K/Pdt/2018 jo. Decision No. 19/2020Ex. jo. Decision No. 625/Pdt.G/2014/PN.JKT.BRT. The chronology of the case: The Plaintiff (1. Oti Puspa Dewi; 2. Muhammad Yunus) are the biological parents of Raihan AlyustiPariwesi, a patient in the hospital, who at the time of the malpractice was (twelve) years old. The malpractice claim was made against 1. dr. Elizabeth A.P (Defendant I); 2. dr. Aurizan Daryan Karim, SP. B (Defendant II); 3. Permata Hijau Medika Hospital (Defendant III); 4. PT. The solemn treatment of medical services (Defendant IV).Raihan, the plaintiff's child had received and underwent treatment at Defendant

III's place, from September 22, 2012, to November 2, 2012,due to the initial diagnosis from Defendant II, which stated that the Plaintiffs' child had appendicitis and had to be operated on immediately. The patient Raihan AlyustiPariwesi experienced blindness and complete paralysis after undergoing surgery (Situmorang, 2020). As can be seen from the above case, the medical dispute resolution process takes a very long time, which includes the process that must be followed by the victim in Medical Discipline Honorary Council Indonesia (hereinafter referred to as MKDKI). Moreover, there is no guarantee that the decision can be executed, including if the patient wins in the Medical Discipline Honorary Council Indonesia (MKDKI). Indonesian Medical Counsel (hereinafter referred to as KKI) even made a regulation that MKDKI's decision cannot be used as evidence in civil or criminal cases. The hard time and uncertainty in the long legal process and decision have made the current dispute resolution in medical disputes injustice. Based on the issue that arise above, the research aims to describe the current dispute resolution in medical disputes and then elaborate further to find the justice dispute resolution in medical cases caused by malpractice.

Theoretical Review

Dispute Resolutions

In Indonesia, there are 3 (three) dispute resolution mechanisms that can be taken by patients who experience losses due to medical malpractice errors, namely (Widjaja, 2015):

(1) Report to Medical Ethics Honorary Council (MKEK);
(2) Make a complaint to MKDKI;
(3) Take legal action, in form of:
    a. File a claim for compensation to the District Court (civil litigation), and/or
    b. Report any suspected criminal acts to the Indonesian National Police (criminal case).

Besides those, the law also allows the use of alternative disputes resolutions, such as mediation (Friedrich, 2004; Widjaja, 2020; Widjaja & Aini, 2022).

Honorary Council of Medical Ethics (hereinafter referred to as MKEK) is the institution under the Professional Organization, the Indonesian Doctors' Association (also referred to asIDI) that take care of ethical issues. Meanwhile, the Indonesian Medical Discipline Honorary Council (MKDKI) is the only institution authorized to determine whether malpractice occurs as a result of a medical disciplinary violation that has been determined by the Indonesian Medical Council.

Malpractice

Malpractice, according to Black's Law Dictionary (Garner, 2009) is:

"An instance of negligence or incompetence on the part of a professional. To be Succeed in a malpractice claim, a plaintiff must also prove proximate cause and damages. Also termed professional negligence."

Meanwhile, Isfandyarie(2005) defines:

"Malpractice is a doctor's fault for not using knowledge and skill level in accordance with professional standards which ultimately results in the patient being injured or physically disabled and even dead."

According to Widjaja (2022), medical malpractice is not a crime, it is merely a breach of contract, a default in a civil case. In such a view, medical malpractice can cause medical disputes.

Theory of Justice

With respect to the justice dispute resolution caused by medical malpractice, the researcher uses the theory of justice proposed by Luypen and Prasetyo. Quoted from the book by Atmasasmita(2012) entitled Integrative Legal Theory, it is said that the correct law, according to Luypen is a law whose goal is justice. According to Luypen, the law must provide mutually beneficial solutions. Justice in the conception of Luypen is more of an attitude of justice. Luypen defines justice as an attitude of paying attention to duties and obligations to maintain and develop humanity. Without this attitude, living together with humans is impossible to build properly. What advances humanity is just, and what opposes it is unjust.

In the book Legal Theory, Remembering, Collecting and Reopening, Otje& Susanto (2007) said that according to Luypen, even a legal system does exist, it is not sufficient enough to guarantee a good order of living together. Luypen explains this by referring to experiences during the Nazi regime. However, Luypen believed that norms of justice have long been recognized as an inherent part of the law.

In view of justice theory, Prasetyo(2020), in the Book of Law and Legal Theory "The Perspective of Dignified Justice Theory" sparked a new legal theory, namely the dignified justice theory, which explained as follows:

"Dignified justice theory, or often abbreviated as dignified justice, seeks to find a middle way in justifying the law. This theory, as outlined in this book, combines and seeks a meeting point between law as a result of the thoughts of God Almighty in the upper stream and also as a result of human thought and society in the lower stream."

Further, Prasetyo(2020) states that the basis of legal theory must consist of a series of events that are correct in its way of thinking and have the ability to know in investigating all the basic facts or in the philosophy itself. By fulfilling the basic concept of philosophy, the philosophy of law, the dignified justice theory can be said as an idea, rather than a legal theory or legal philosophy or jurisprudence. The idea is that the truth is essentially a system of thinking or a system of theory. Dignified justice serves to explain and provide adjustments to the applicable legal system. It explains and justifies a legal system by, among other things, a postulate that the law exists, and grows in the soul of the nation or the *Volksgeist.*

Research Methods

This is normative legal research with a descriptive-analytical approach. It uses primary data and secondary data. Primary data were obtained by conducting interviews with practicing experts in the field of medical law. While secondary data was obtained from literature searches, literature, legislation, and internet searches using keywords, namely: medical malpractice, medical dispute, as well as MKDKI. The analysis is conducted using the qualitative method, to find the answer to the purpose of the research.

Results and Discussion

As explained previously, the current legal system does not support the easy settlement of medical disputes, not because of the long period of time but also the uncertainty in the execution. With respect to the role of MKDKI, if the MKDKI has decided whether there is an error or violation of medical discipline, then the patient can file a claim for compensation to the District Court or make a complaint to the Indonesian National Police. However, these provisions are unfair and cause many

problems in practice, especially for patients and doctors. The opinion of the researcher was corroborated by practitioners of medical law. As stated by Sidipratomo, a medical doctor, in his interview with the researcher, stated that the legal provisions governing medical practice do not provide legal certainty and can result in the criminalization of the profession of a doctor. This situation is very dangerous because the provisions of the law are supposed to provide justice. Furthermore, Sidipratomo agreed that disciplinary errors were the authority of the MKDKI, but if errors were already related to legal issues, the resolution had to be resolved in court. Doctors who are suspected of committing malpractice will be very disturbed because in several cases doctors are also reported to the MKDKI, reported alleged criminal acts to the Police, and sued for compensation to the District Court.

According to Yulita, as a medical doctor, in her interview, argues that the provisions of Article 66 of the Medical Practice Law have two options that make people confused about where to complain? But in the end, it opens up opportunities, people can complain to MKDKI or the police depending on which one is profitable for them. There should only be one place (institution) so that there is legal certainty in the resolution of medical disputes. This avoids if the MKDKI's decision differs from that of the Indonesian National Police and the Civil Court.

According to Rezaldy, another medical doctor, gave an argument against the provisions of Article 66 of the Medical Practice Act. He said that the provisions of Article 66 paragraphs (1), (2), and (3) of the Medical Practice Act must be carried out correctly and proportionally considering the level of error whether administrative, civil, and or criminal based on chronology and liability of each party that plays a role in medical service and or health service. The MKDKI Decision states that the MKDKI Decision does not rule on unlawful acts and there is a statement from the Indonesian Medical Council that the MKDKI Decision is not evidence. According to Rezaldy, regarding the role and function of the MKDKI which is engaged in the disciplinary aspect, the MKDKI's decision should only conclude whether there is a violation of the disciplinary aspect or not. Regarding the decision against the law or not, that is the authority of the judge according to the law on judicial power. Rezaldy disagreed that the MKDKI decision was not evidence. In his view, the MKDKI's decision can be used as documentary evidence

Meanwhile, according to Tan, a practicing lawyer argues that the current medical dispute resolution is too time-consuming and costly. In addition, there are still technical problems of proof, especially for patients or families who file claims for compensation to the District Court. Additionally, according toSjahdeini, a legal scholar, criticize the MKDKI's decision which never wanted to include a sentence of violation of medical discipline as a mistake in an unlawful act.

The opinions of Medical Practitioners and Legal Practitioners above show that the current legal provisions do not fulfill procedural justice and do not fulfill substantial justice. The existing legal provisions do not treat the disputing parties fairly and with dignity, do not humanize the disputing parties, and do not provide significant benefits as intended by the legal objectives referred to by the theory of dignified justice according to Prasetyo(2020).

Therefore, the researcher does not agree with the opinion which says that the MKDKI decision only tests the presence or absence of errors in the medical discipline while the MKDKI has no authority to test whether there is an unlawful act even though whether there is an error made by a doctor in applying his medical discipline must be in accordance with the standard operating procedures made by the College of Medicine and the College of Dentistry. The researcher agrees with the opinion of

Sjahdeini because if the MKDKI's decision at the same time includes an error that causes an unlawful act, it will facilitate the process of proving a civil lawsuit in the District Court.

In view of the above-mentioned case, the Decision No. 625/Pdt.G/2014/PN.JKT.BRT in conjunction with Court of Appeal Decision No. 614/PDT/2016/PT.DKI in conjunction with the Cassation Decision Number 42/Pdt/2018 did not fulfill substantial justice. This decision has become binding. In the Supreme Court's Cassation Decision, the verdict granted not all of the plaintiff's claims, where material compensation is fulfilled and immaterial is not fulfilled and the protracted dispute resolution process has resulted in unhappiness. The judge did not grant the claim for immaterial losses, since the material losses was considered sufficient to replace the blindness and paralysis experienced by Raihan AlyustiPariwesi. This decision of the Panel of Judges based on the provisions of Article 1365, Article 1367, and Article 1371 of the Indonesian Civil Code has eliminated substantial justice. Substantial justice is not also felt by medical personnel (doctors and dentists). The perceived injustice is the result of:

1. As a doctor, his life is disturbed physically and mentally, and experiences unhappiness.
2. The period for obtaining justice is almost 10 (ten) years.

Nevertheless, all current medical dispute resolution efforts have not met the values of ethical justice that meet the utilitarian criteria, namely justice that is not only given to patients but also to doctors. Because the resolution of medical disputes in the current legal provisions has not provided justice, the researcher expresses the opinion that a special court institution under the Supreme Court should be formed with special authority to adjudicate medical disputes. According to the researcher's view, a Medical Court should be established as one of the special courts in Indonesia. Hence, it is hoped that the establishment of a medical court can provide fast, simple, and low-cost, executable, and fulfills ethical justice.

Conclusions

Based on the findings and discussions above, it can be concluded that the establishment of a Medical Court which is expected to create justice can enrich the development of medical law originating from the Medical Practice Act, Health Act, Hospital Law, Jurisprudence, and Doctrine in National Law Development. Equitable resolution of medical disputes in the national medical law reform in the medical justice system will be able to create values of justice that are ethical and can be accepted by the utilitarian.

Recommendation

The result of the research recommends that the Government and the House of Representatives (also referred to as DPR) amend several laws and regulations that can provide a fair resolution of medical disputes for both patients and medical personnel (especially doctors and dentists) and consider the establishment of the special medical court (Widjaja, 2021).

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