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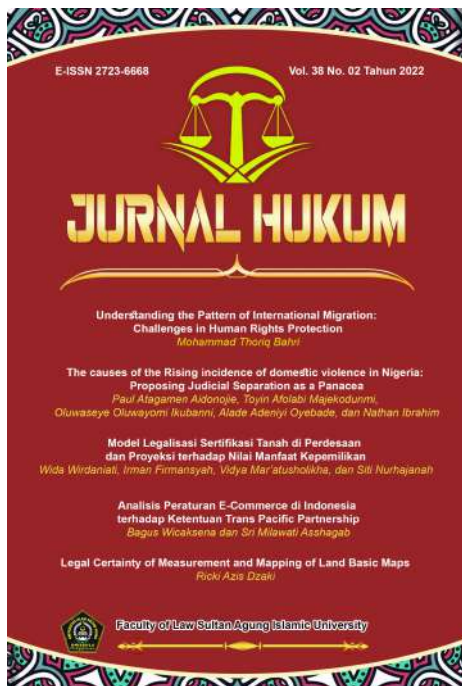
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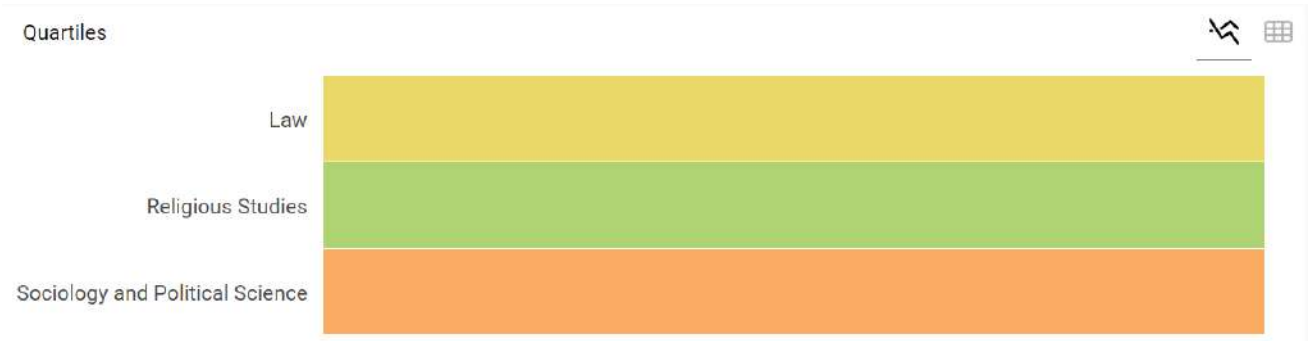
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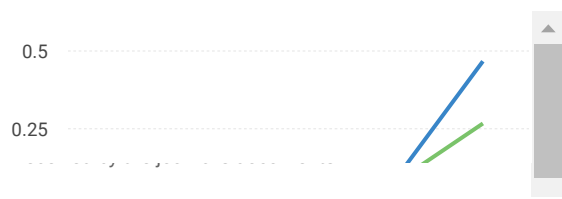
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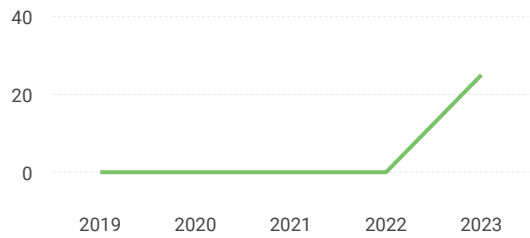
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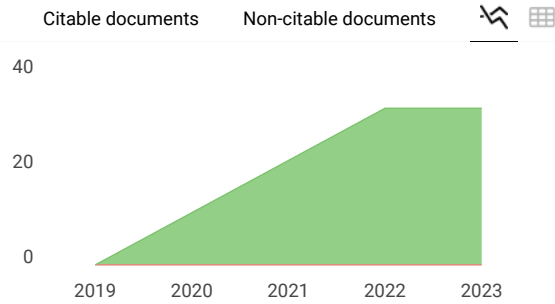




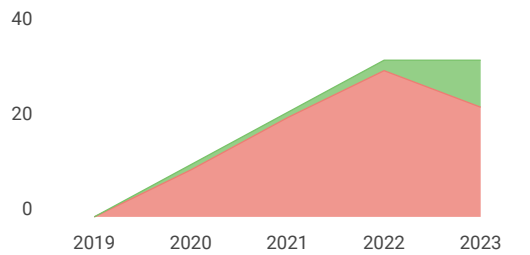
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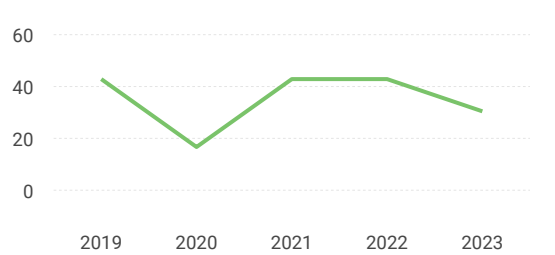
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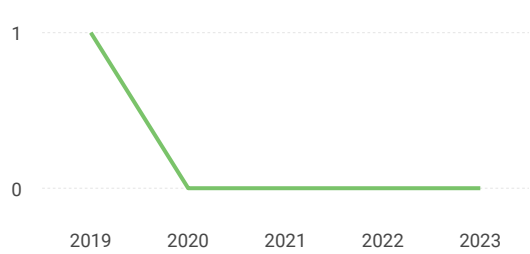
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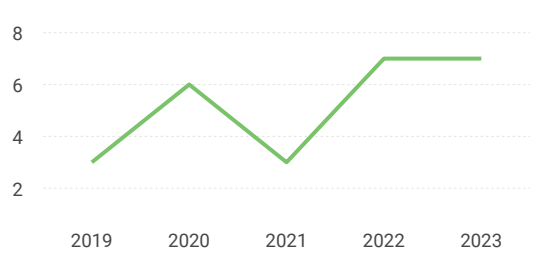
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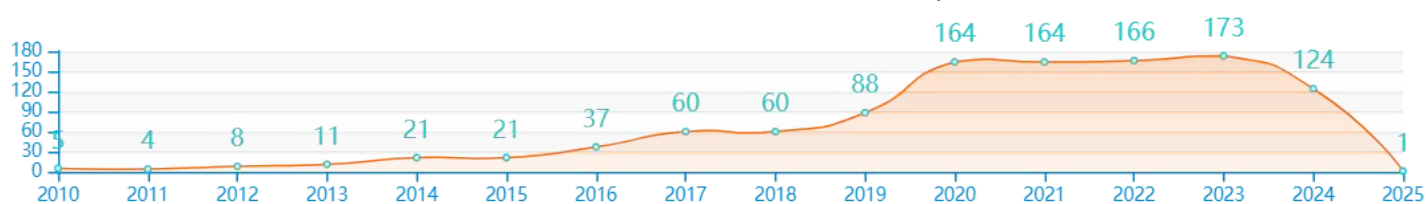
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Guarantee of Legal Protection in Cross-Border Electronic Transactions

Abstract

In the era of globalization, cross-border electronic transactions have become a catalyst for economic growth and global connectivity. However, the legal complexity associated with consumer protection, technological disparities, and regulatory misalignment at national and international levels creates significant challenges. In Indonesia, despite having laws regulating electronic transactions, implementation faces constraints, particularly concerning legal uncertainty and a lack of consumer legal awareness. This research employs a normative legal research method, focusing on the analysis of legislation, jurisprudence, and international conventions related to cross-border electronic transactions. Legislative analysis is used to explore relevant legal aspects, conceptual approaches aid in understanding key concepts, and a comparative approach is applied to analyze legal systems and consumer protection practices. The study underscores the importance of legal reform to address regulatory misalignment, legal uncertainty, and technological disparities in Indonesia's cross-border electronic transactions. Despite the existence of consumer protection laws, further efforts are needed to enhance implementation and consumer legal awareness. The research's conclusion provides a foundation for developing holistic strategies to ensure the fair, secure, and accountable sustainability of e-commerce growth at both the national and international levels.

Keywords: Guarantees, Protection, Law, Electronic Transactions, Cross Borders

Introduction

Cross-border electronic transactions, or cross-border e-commerce, have become a primary driver in connecting the global market through electronic trading platforms. Utilizing electronic media, businesses and consumers can engage in transactions without being restricted by geographical boundaries (Tu & Shangguan, 2018; Huang & Chang, 2019). This phenomenon has presented significant opportunities for economic growth, particularly by expanding access to international markets for small and medium-sized enterprises. Sellers can easily reach consumers beyond national borders, while consumers enjoy broader access to a variety of products and services from around the world. This not only provides a substantial boost to international trade but also creates new opportunities for innovation, cross-border business collaborations, and the enhancement of societal well-being (Saydam & Civelek, 2022). According to information from the United Nations Conference on Trade and Development (UNCTAD), the value of cross-border electronic trade reached \$26.7 trillion in 2019, equivalent to approximately 30% of the global Gross Domestic Product (GDP). Indonesia is also noted as one of the countries with significant growth in cross-border electronic transactions, reaching a rate of 21% in 2020 (Sabirin et al., 2022; Wysokińska, 2023).

Despite opening wide doors for economic growth and global market access, cross-border electronic transactions also pose various legal challenges that need to be addressed. One primary focus in dealing with these issues is consumer protection (Liu et al., 2021). Often, discrepancies between the ordered and received goods or services become a major issue that can harm consumers (Tiwari et al., 2020; Hsu et al., 2022). Additionally, the potential for fraud or identity theft adds

complexity to transaction security. Other challenges include the risk of losses due to system errors or technical failures, violations of intellectual property rights, and non-compliance with quality and safety standards for products (Huang et al., 2020). Most challenging of all is determining the jurisdiction and applicable laws in resolving disputes, as these transactions involve various countries with different regulations. All of these issues pinpoint the vulnerability of consumers as the weaker party in cross-border electronic transactions (Liu et al., 2020; Tjipto, 2021).

Legal protection for consumers is an urgent and strategic imperative to be implemented by the state. This legal protection encompasses various measures aimed at providing certainty, fairness, and balance in the relationship between consumers and businesses (Barkatullah, 2018; Guo et al., 2018). Essentially, legal protection aims to mitigate the risks and vulnerabilities faced by consumers in the increasingly complex global e-commerce ecosystem. Legal protection for consumers can manifest in two main dimensions, namely preventive and repressive (Mou et al., 2020). Preventive efforts include measures such as regulating quality and safety standards for products, monitoring business activities, and providing comprehensive education and information to consumers. These measures are designed to prevent problems or losses for consumers from arising at the outset of transactions (Ahmed, 2019). On the other hand, repressive efforts are aimed at addressing potential issues or providing compensation to consumers who have suffered harm. Through a strategic combination of preventive and repressive approaches, the state can create a fair, secure, and effective e-commerce environment for consumers on a global scale (Cui et al., 2019; Anastasiadou et al., 2019).

In Indonesia, legal protection for consumers in the context of cross-border electronic transactions has been regulated through several laws outlining the rights and obligations of businesses and consumers. Law Number 8 of 1999 on Consumer Protection is the main foundation that regulates consumer rights, including in electronic transactions. Law Number 7 of 2014 on Trade and Law Number 19 of 2016 on the Amendment to Law Number 11 of 2008 on Information and Electronic Transactions also provide a comprehensive legal framework related to electronic commerce. In addition to these regulations, the Indonesian government has issued Government Regulation Number 71 of 2019 on the Implementation of Electronic System and Transactions, which provides detailed regulations on the procedures and security of electronic transactions. Besides internal regulations, Indonesia also demonstrates its commitment to consumer protection in cross-border electronic transactions by ratifying various international legal instruments, including the United Nations Convention on Contracts for the International Sale of Goods (CISG), the United Nations Convention on the Use of Electronic Communications in International Contracts (CUECIC), and the ASEAN Agreement on Electronic Commerce.

Legal protection for consumers in cross-border electronic transactions in Indonesia faces several challenges that contribute to suboptimal and inadequate protection. One of the primary obstacles is the inconsistency and lack of synchronization between national and international legislation (Liu & Li, 2020). The legal and technological gaps among the countries involved in these transactions further complicate efforts to achieve consistency and harmonization within the legal framework. These gaps involve differences in the interpretation and implementation of applicable legal norms, creating legal loopholes exploitable by irresponsible businesses (Voss, 2019). Another complicating factor is the limited human resources and legal infrastructure in Indonesia. Ineffectively managing and enforcing laws related to cross-border electronic transactions create opportunities for violations that can harm consumers. Additionally, the low legal awareness and skills among consumers in electronic transactions further complicate the implementation of consumer protection (Tiwari et al., 2020; Liu et al., 2020). Therefore,

comprehensive efforts are needed to improve and enhance the legal protection system for consumers at the national level, including enhancing legal capacity, updating relevant regulations, and increasing legal awareness among consumers.

Research Methodology

This research applies the normative legal research method, an approach that explores legislation, doctrine, jurisprudence, and international conventions related to cross-border electronic transactions. The aim of the normative legal research method is to identify applicable legal principles and evaluate the suitability, fairness, and effectiveness of these legal principles. In this study, several research approaches are employed to uncover legal aspects related to cross-border electronic transactions. The first approach is the legislative approach, involving an analysis of national and international legal rules such as Law Number 8 of 1999 concerning Consumer Protection, Law Number 7 of 2014 concerning Trade, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as Government Regulation Number 71 of 2019 concerning the Organization of Electronic Systems and Transactions. The second approach is the conceptual approach, focusing on understanding legal concepts related to consumers, businesses, electronic transactions, legal protection, legal harmonization, and dispute resolution. The third approach is the comparative approach, which analyzes legal systems and consumer protection practices in cross-border electronic transactions in several countries. This research utilizes secondary data collection techniques, including relevant legal materials. There are three categories of legal materials accessed in this study. First, primary legal materials, which are the main legal sources binding parties in cross-border electronic transactions, including relevant national and international legislation. Second, secondary legal materials, providing additional information and supporting the understanding of primary legal materials, such as legal expert writings in the form of books, scholarly journals, seminar papers, theses, and dissertations. Third, tertiary legal materials, providing supporting information regarding primary and secondary legal materials, involving legal dictionaries, encyclopedias, legal directories, legal indexes, and other references.

Legal Policy in Facing the Development of Electronic Transactions

The main framework of legislation related to e-commerce activities in Indonesia, predating the issuance of specific regulations for the e-commerce sector, centers around Law No. 11 of 2008 as amended by Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE Law). Although this law provides a legal basis for addressing various aspects of electronic transactions, including e-commerce, its lack of specificity and comprehensiveness in regulating the specific characteristics of e-commerce creates a need for more detailed regulations (Koto, 2021). The law, initially designed to respond to information technology developments, is not entirely adequate in addressing the dynamics and unique issues related to e-commerce, such as consumer protection, dispute resolution, and governance aspects (Siregar et al., 2020; Syaafi et al., 2023). With the growth of the e-commerce sector, several amendments and implementing regulations initiatives from the ITE Law have been introduced. One example is the establishment of the National Cyber and Crypto Agency (NCCA/BSSN), inaugurated by the president in 2018. BSSN aims to provide electronic certificate services to a broader sector, support cybersecurity, and assist the government in addressing cybersecurity issues. Furthermore, the Minister of Communication and Informatics launched the Electronic Certificate Implementation Agency in 2019, with the goal of supporting digital transactions. Although these developments reflect positive

steps in filling legal gaps, further attention and more comprehensive regulatory updates are still needed to accommodate the latest dynamics in the e-commerce ecosystem in Indonesia (Ginanjar & Lubis, 2022).

While the ITE Law has established provisions related to electronic transactions, it should be noted that the law also mandates the issuance of government regulations governing the conduct of electronic transactions both in the public and private spheres (Simbolon et al., 2021). Nevertheless, the ITE Law does not provide sufficiently detailed explanations regarding the scope of the provisions that can be regulated in these government regulations. This ambiguity creates legal uncertainty, especially in guiding law enforcement officials and judges in handling cases involving electronic transactions (Suharsono, 2018; Singgi et al., 2020). This legal uncertainty can have a significant impact, particularly in the practice of justice, especially in deciding cases involving electronic evidence. In law enforcement, judges must make careful considerations regarding the validity and strength of electronic evidence. Without clarity regarding the scope of provisions in government regulations, judges may face difficulties in providing consistent and accurate interpretations (Lesmana et al., 2021; Sutarli & Kurniawan, 2023).

In addition to formulating ideal norms in the form of regulations that support the security of electronic transactions (e-commerce), it is essential to consider that the implementation and effectiveness of these norms also heavily depend on other legal instruments, especially human resources from law enforcement agencies (Gustina et al., 2022). In the context of handling e-commerce cases, such as fraud that harms consumers, there are tangible constraints within the police force. Not all investigators have the necessary abilities or knowledge to effectively address such cases. Limitations in human resources and knowledge in the field of technology pose serious obstacles, causing some investigators to be suboptimal in handling or investigating electronic transaction cases (Fitri, 2022; Silalahi & Dameria, 2024). Furthermore, the lack of legal support aligned with the dynamics of the IT field also hinders the handling of e-commerce cases. Apart from human resource issues, it is crucial to note that data privacy, especially in the context of consumer protection laws, is not adequately regulated at the national level (Ginanjar & Lubis, 2022). While other countries have recognized the importance of privacy as part of individual rights, Indonesia lacks sufficiently robust regulations regarding the protection of personal data in the consumer context. This creates legal uncertainty and exposes the potential for privacy violations in electronic transactions. While the UNCITRAL Model Law emphasizes the need for comprehensive support for data protection, efforts to regulate Personal Data Protection in Indonesia are still in the legislative drafting stage and have not reached completion to date (Siregar et al., 2020). Thus, further efforts are still required to strengthen the legal framework supporting security and privacy in electronic transactions in Indonesia.

Challenges in Legal Protection

Legal protection in cross-border electronic transactions is an essential need to safeguard the rights and interests of all involved parties, especially consumers who often find themselves in a more vulnerable position. Providing a robust legal framework is a crucial step for a country to ensure that such transactions take place fairly, securely, and accountably (Saleh, 2021). However, achieving legal protection in the context of cross-border transactions is not straightforward. Significant challenges arise from the inconsistency of regulations at both the local and international levels, in terms of both substance and jurisdiction (Gustina et al., 2022; Hsu et al., 2022). The existence of local regulations that are not aligned with international norms, such as the differences between Indonesia's ITE Law and CUECIC, creates a void in rules and legal uncertainty, which

can complicate the implementation and enforcement of the law. Other challenges in cross-border electronic transactions include the complexity of the differences in legal systems among the countries involved (Tjipto, 2021). Fundamental differences between civil law and common law, as well as variations in dispute resolution rules, can create confusion and difficulties in determining applicable jurisdictions (Mou et al., 2020; Liu et al., 2021).

Technological gaps between countries pose a serious challenge in the context of cross-border electronic transactions. Differences in the availability and capability of information and communication technology (ICT) infrastructure among countries can create a significant digital divide. Countries with limited access to ICT or limited expertise in its use may experience limitations in accessibility when conducting electronic transactions (Voss, 2019). This not only causes economic disadvantages but also restricts participation and digital economic growth, resulting in a widening development gap between countries (Anastasiadou et al., 2019). Moreover, technological disparities provide opportunities for cybercrimes in cross-border transactions. Countries with less capability in cybersecurity may become easy targets for cybercriminals operating across borders. Cyber threats, such as data breaches, identity theft, and other cyberattacks, can damage the integrity and trust in electronic transactions (Suharsono, 2018; Lesmana et al., 2021).

Furthermore, significant challenges in the supervision and enforcement of electronic transactions involve limitations in human resources among businesses, consumers, and law enforcement. Businesses often face constraints in understanding and implementing secure and legal electronic transaction practices (Liu & Li, 2020). On the other hand, consumers may have limited knowledge to protect themselves from fraudulent practices or other violations in electronic transactions. Law enforcement may also experience human resource limitations, both in terms of the number of skilled personnel and the technical knowledge required to investigate and handle electronic transaction violations (Koto, 2021; Sutarli & Kurniawan, 2023). Not only human resources but also legal infrastructure, such as infrastructure and legal institutions, can be limited in the context of electronic transactions. The infrastructure supporting the supervision and enforcement of electronic transactions needs improvement to provide an effective framework. Legal institutions also need to have adequate capacity to face the evolving challenges in the digital world (Fitri, 2022; Syaafi et al., 2023).

The low legal awareness and skills of consumers pose a serious challenge in the context of cross-border electronic transactions. Lack of understanding of legal aspects related to cross-border transactions can make consumers vulnerable to fraud, consumer rights violations, or misunderstandings of applicable rules (Cui et al., 2019). Low legal awareness can result in consumers not understanding their rights and responsibilities, making them unable to protect themselves effectively. This lack of knowledge can also impact dispute resolution, where consumers may not have adequate understanding of how to engage in the legal process (Ahmed, 2019; Huang et al., 2020). Consumer skills in electronic transactions are also a key factor. The ability to choose suitable products or services, understand transaction terms and conditions, and resolve conflicts if they arise is crucial. Lack of these skills can lead to unwise decisions, confusion in the transaction process, or even conflicts that are difficult to resolve (Huang & Chang, 2019; Saydam & Civelek, 2022; Ginanjar & Lubis, 2022).

Conclusion

This research underscores the need for robust legal protection in addressing the dynamics of cross-border electronic transactions. While the potential for economic growth and global

connectivity through e-commerce is significant, the challenges faced are quite complex. The misalignment of regulations at the national and international levels creates confusion and legal uncertainty that can hinder the implementation and enforcement of rules. The focus on consumer protection in Indonesian law is a positive step, but implementation challenges and the lack of human and legal resources highlight the need for further reforms. Additionally, the technology gap between countries not only creates inequality in accessibility in electronic transactions but also increases the risk of cybercrime. The conclusion of this research emphasizes the necessity for comprehensive efforts, including detailed legal updates, increased human resource capacity, and enhanced consumer legal awareness. The foundation of these conclusions can serve as a basis for the government, businesses, and other stakeholders to develop effective and holistic strategies to ensure that cross-border electronic transactions proceed fairly, safely, and responsibly for all involved parties. This foundation is crucial for mitigating the risks and vulnerabilities that may arise within the increasingly complex ecosystem of electronic commerce.

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Please find the reviewer's report attached below. The paper in question requires major revisions.

Please be so kind as to address the comments provided by the reviewer and to send your revised manuscript by June 25rd 2024. The manuscript requires certain adjustments before it can be accepted.

Please mark the repaired parts with a green block and send the repair form in a separate file.

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Guarantee of Legal Protection in Cross-Border Electronic Transactions

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Abstract

In the era of globalization, cross-border electronic transactions have become a catalyst for economic growth and global connectivity. However, the legal complexity associated with consumer protection, technological disparities, and regulatory misalignment at national and international levels creates significant challenges. In Indonesia, despite having laws regulating electronic transactions, implementation faces constraints, particularly concerning legal uncertainty and a lack of consumer legal awareness. This research employs a normative legal research method, focusing on the analysis of legislation, jurisprudence, and international conventions related to cross-border electronic transactions. Legislative analysis is used to explore relevant legal aspects, conceptual approaches aid in understanding key concepts, and a comparative approach is applied to analyze legal systems and consumer protection practices. The study underscores the importance of legal reform to address regulatory misalignment, legal uncertainty, and technological disparities in Indonesia's cross-border electronic transactions. Despite the existence of consumer protection laws, further efforts are needed to enhance implementation and consumer legal awareness. The research's conclusion provides a foundation for developing holistic strategies to ensure the fair, secure, and accountable sustainability of e-commerce growth at both the national and international levels.

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Keywords: Guarantees, Protection, Law, Electronic Transactions, Cross Borders

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Introduction

Cross-border electronic transactions, or cross-border e-commerce, have become a primary driver in connecting the global market through electronic trading platforms. Utilizing electronic media, businesses and consumers can engage in transactions without being restricted by geographical boundaries (Tu & Shangguan, 2018; Huang & Chang, 2019). This phenomenon has presented significant opportunities for economic growth, particularly by expanding access to international markets for small and medium-sized enterprises. Sellers can easily reach consumers beyond national borders, while consumers enjoy broader access to a variety of products and services from around the world. This not only provides a substantial boost to international trade but also creates new opportunities for innovation, cross-border business collaborations, and the enhancement of societal well-being (Saydam & Civelek, 2022). According to information from the United Nations Conference on Trade and Development (UNCTAD), the value of cross-border electronic trade reached \$26.7 trillion in 2019, equivalent to approximately 30% of the global Gross Domestic Product (GDP). Indonesia is also noted as one of the countries with significant growth in cross-border electronic transactions, reaching a rate of 21% in 2020 (Sabirin et al., 2022; Wysokińska, 2023).

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Despite opening wide doors for economic growth and global market access, cross-border electronic transactions also pose various legal challenges that need to be addressed. One primary focus in dealing with these issues is consumer protection (Liu et al., 2021). Often, discrepancies between the ordered and received goods or services become a major issue that can harm consumers (Tiwari et al., 2020; Hsu et al., 2022). Additionally, the potential for fraud or identity theft adds

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complexity to transaction security. Other challenges include the risk of losses due to system errors or technical failures, violations of intellectual property rights, and non-compliance with quality and safety standards for products (Huang et al., 2020). Most challenging of all is determining the jurisdiction and applicable laws in resolving disputes, as these transactions involve various countries with different regulations. All of these issues pinpoint the vulnerability of consumers as the weaker party in cross-border electronic transactions (Liu et al., 2020; Tjipto, 2021).

Legal protection for consumers is an urgent and strategic imperative to be implemented by the state. This legal protection encompasses various measures aimed at providing certainty, fairness, and balance in the relationship between consumers and businesses (Barkatullah, 2018; Guo et al., 2018). Essentially, legal protection aims to mitigate the risks and vulnerabilities faced by consumers in the increasingly complex global e-commerce ecosystem. Legal protection for consumers can manifest in two main dimensions, namely preventive and repressive (Mou et al., 2020). Preventive efforts include measures such as regulating quality and safety standards for products, monitoring business activities, and providing comprehensive education and information to consumers. These measures are designed to prevent problems or losses for consumers from arising at the outset of transactions (Ahmed, 2019). On the other hand, repressive efforts are aimed at addressing potential issues or providing compensation to consumers who have suffered harm. Through a strategic combination of preventive and repressive approaches, the state can create a fair, secure, and effective e-commerce environment for consumers on a global scale (Cui et al., 2019; Anastasiadou et al., 2019).

In Indonesia, legal protection for consumers in the context of cross-border electronic transactions has been regulated through several laws outlining the rights and obligations of businesses and consumers. Law Number 8 of 1999 on Consumer Protection is the main foundation that regulates consumer rights, including in electronic transactions. Law Number 7 of 2014 on Trade and Law Number 19 of 2016 on the Amendment to Law Number 11 of 2008 on Information and Electronic Transactions also provide a comprehensive legal framework related to electronic commerce. In addition to these regulations, the Indonesian government has issued Government Regulation Number 71 of 2019 on the Implementation of Electronic System and Transactions, which provides detailed regulations on the procedures and security of electronic transactions. Besides internal regulations, Indonesia also demonstrates its commitment to consumer protection in cross-border electronic transactions by ratifying various international legal instruments, including the United Nations Convention on Contracts for the International Sale of Goods (CISG), the United Nations Convention on the Use of Electronic Communications in International Contracts (CUECIC), and the ASEAN Agreement on Electronic Commerce.

Legal protection for consumers in cross-border electronic transactions in Indonesia faces several challenges that contribute to suboptimal and inadequate protection. One of the primary obstacles is the inconsistency and lack of synchronization between national and international legislation (Liu & Li, 2020). The legal and technological gaps among the countries involved in these transactions further complicate efforts to achieve consistency and harmonization within the legal framework. These gaps involve differences in the interpretation and implementation of applicable legal norms, creating legal loopholes exploitable by irresponsible businesses (Voss, 2019). Another complicating factor is the limited human resources and legal infrastructure in Indonesia. Ineffectively managing and enforcing laws related to cross-border electronic transactions create opportunities for violations that can harm consumers. Additionally, the low legal awareness and skills among consumers in electronic transactions further complicate the implementation of consumer protection (Tiwari et al., 2020; Liu et al., 2020). Therefore,

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comprehensive efforts are needed to improve and enhance the legal protection system for consumers at the national level, including enhancing legal capacity, updating relevant regulations, and increasing legal awareness among consumers.

Research Methodology

This research applies the normative legal research method, an approach that explores legislation, doctrine, jurisprudence, and international conventions related to cross-border electronic transactions. The aim of the normative legal research method is to identify applicable legal principles and evaluate the suitability, fairness, and effectiveness of these legal principles. In this study, several research approaches are employed to uncover legal aspects related to cross-border electronic transactions. The first approach is the legislative approach, involving an analysis of national and international legal rules such as Law Number 8 of 1999 concerning Consumer Protection, Law Number 7 of 2014 concerning Trade, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as Government Regulation Number 71 of 2019 concerning the Organization of Electronic Systems and Transactions. The second approach is the conceptual approach, focusing on understanding legal concepts related to consumers, businesses, electronic transactions, legal protection, legal harmonization, and dispute resolution. The third approach is the comparative approach, which analyzes legal systems and consumer protection practices in cross-border electronic transactions in several countries. This research utilizes secondary data collection techniques, including relevant legal materials. There are three categories of legal materials accessed in this study. First, primary legal materials, which are the main legal sources binding parties in cross-border electronic transactions, including relevant national and international legislation. Second, secondary legal materials, providing additional information and supporting the understanding of primary legal materials, such as legal expert writings in the form of books, scholarly journals, seminar papers, theses, and dissertations. Third, tertiary legal materials, providing supporting information regarding primary and secondary legal materials, involving legal dictionaries, encyclopedias, legal directories, legal indexes, and other references.

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Legal Policy in Facing the Development of Electronic Transactions

The main framework of legislation related to e-commerce activities in Indonesia, predating the issuance of specific regulations for the e-commerce sector, centers around Law No. 11 of 2008 as amended by Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE Law). Although this law provides a legal basis for addressing various aspects of electronic transactions, including e-commerce, its lack of specificity and comprehensiveness in regulating the specific characteristics of e-commerce creates a need for more detailed regulations (Koto, 2021). The law, initially designed to respond to information technology developments, is not entirely adequate in addressing the dynamics and unique issues related to e-commerce, such as consumer protection, dispute resolution, and governance aspects (Siregar et al., 2020; Syaafi et al., 2023). With the growth of the e-commerce sector, several amendments and implementing regulations initiatives from the ITE Law have been introduced. One example is the establishment of the National Cyber and Crypto Agency (NCCA/BSSN), inaugurated by the president in 2018. BSSN aims to provide electronic certificate services to a broader sector, support cybersecurity, and assist the government in addressing cybersecurity issues. Furthermore, the Minister of Communication and Informatics launched the Electronic Certificate Implementation Agency in 2019, with the goal of supporting digital transactions. Although these developments reflect positive

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steps in filling legal gaps, further attention and more comprehensive regulatory updates are still needed to accommodate the latest dynamics in the e-commerce ecosystem in Indonesia (Ginanjar & Lubis, 2022).

While the ITE Law has established provisions related to electronic transactions, it should be noted that the law also mandates the issuance of government regulations governing the conduct of electronic transactions both in the public and private spheres (Simbolon et al., 2021). Nevertheless, the ITE Law does not provide sufficiently detailed explanations regarding the scope of the provisions that can be regulated in these government regulations. This ambiguity creates legal uncertainty, especially in guiding law enforcement officials and judges in handling cases involving electronic transactions (Suharsono, 2018; Singgi et al., 2020). This legal uncertainty can have a significant impact, particularly in the practice of justice, especially in deciding cases involving electronic evidence. In law enforcement, judges must make careful considerations regarding the validity and strength of electronic evidence. Without clarity regarding the scope of provisions in government regulations, judges may face difficulties in providing consistent and accurate interpretations (Lesmana et al., 2021; Sutarli & Kurniawan, 2023).

In addition to formulating ideal norms in the form of regulations that support the security of electronic transactions (e-commerce), it is essential to consider that the implementation and effectiveness of these norms also heavily depend on other legal instruments, especially human resources from law enforcement agencies (Gustina et al., 2022). In the context of handling e-commerce cases, such as fraud that harms consumers, there are tangible constraints within the police force. Not all investigators have the necessary abilities or knowledge to effectively address such cases. Limitations in human resources and knowledge in the field of technology pose serious obstacles, causing some investigators to be suboptimal in handling or investigating electronic transaction cases (Fitri, 2022; Silalahi & Dameria, 2024). Furthermore, the lack of legal support aligned with the dynamics of the IT field also hinders the handling of e-commerce cases. Apart from human resource issues, it is crucial to note that data privacy, especially in the context of consumer protection laws, is not adequately regulated at the national level (Ginanjar & Lubis, 2022). While other countries have recognized the importance of privacy as part of individual rights, Indonesia lacks sufficiently robust regulations regarding the protection of personal data in the consumer context. This creates legal uncertainty and exposes the potential for privacy violations in electronic transactions. While the UNCITRAL Model Law emphasizes the need for comprehensive support for data protection, efforts to regulate Personal Data Protection in Indonesia are still in the legislative drafting stage and have not reached completion to date (Siregar et al., 2020). Thus, further efforts are still required to strengthen the legal framework supporting security and privacy in electronic transactions in Indonesia.

Challenges in Legal Protection

Legal protection in cross-border electronic transactions is an essential need to safeguard the rights and interests of all involved parties, especially consumers who often find themselves in a more vulnerable position. Providing a robust legal framework is a crucial step for a country to ensure that such transactions take place fairly, securely, and accountably (Saleh, 2021). However, achieving legal protection in the context of cross-border transactions is not straightforward. Significant challenges arise from the inconsistency of regulations at both the local and international levels, in terms of both substance and jurisdiction (Gustina et al., 2022; Hsu et al., 2022). The existence of local regulations that are not aligned with international norms, such as the differences between Indonesia's ITE Law and CUECIC, creates a void in rules and legal uncertainty, which

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can complicate the implementation and enforcement of the law. Other challenges in cross-border electronic transactions include the complexity of the differences in legal systems among the countries involved (Tjipto, 2021). Fundamental differences between civil law and common law, as well as variations in dispute resolution rules, can create confusion and difficulties in determining applicable jurisdictions (Mou et al., 2020; Liu et al., 2021).

Technological gaps between countries pose a serious challenge in the context of cross-border electronic transactions. Differences in the availability and capability of information and communication technology (ICT) infrastructure among countries can create a significant digital divide. Countries with limited access to ICT or limited expertise in its use may experience limitations in accessibility when conducting electronic transactions (Voss, 2019). This not only causes economic disadvantages but also restricts participation and digital economic growth, resulting in a widening development gap between countries (Anastasiadou et al., 2019). Moreover, technological disparities provide opportunities for cybercrimes in cross-border transactions. Countries with less capability in cybersecurity may become easy targets for cybercriminals operating across borders. Cyber threats, such as data breaches, identity theft, and other cyberattacks, can damage the integrity and trust in electronic transactions (Suharsono, 2018; Lesmana et al., 2021).

Furthermore, significant challenges in the supervision and enforcement of electronic transactions involve limitations in human resources among businesses, consumers, and law enforcement. Businesses often face constraints in understanding and implementing secure and legal electronic transaction practices (Liu & Li, 2020). On the other hand, consumers may have limited knowledge to protect themselves from fraudulent practices or other violations in electronic transactions. Law enforcement may also experience human resource limitations, both in terms of the number of skilled personnel and the technical knowledge required to investigate and handle electronic transaction violations (Koto, 2021; Sutarli & Kurniawan, 2023). Not only human resources but also legal infrastructure, such as infrastructure and legal institutions, can be limited in the context of electronic transactions. The infrastructure supporting the supervision and enforcement of electronic transactions needs improvement to provide an effective framework. Legal institutions also need to have adequate capacity to face the evolving challenges in the digital world (Fitri, 2022; Syaafi et al., 2023).

The low legal awareness and skills of consumers pose a serious challenge in the context of cross-border electronic transactions. Lack of understanding of legal aspects related to cross-border transactions can make consumers vulnerable to fraud, consumer rights violations, or misunderstandings of applicable rules (Cui et al., 2019). Low legal awareness can result in consumers not understanding their rights and responsibilities, making them unable to protect themselves effectively. This lack of knowledge can also impact dispute resolution, where consumers may not have adequate understanding of how to engage in the legal process (Ahmed, 2019; Huang et al., 2020). Consumer skills in electronic transactions are also a key factor. The ability to choose suitable products or services, understand transaction terms and conditions, and resolve conflicts if they arise is crucial. Lack of these skills can lead to unwise decisions, confusion in the transaction process, or even conflicts that are difficult to resolve (Huang & Chang, 2019; Saydam & Civelek, 2022; Ginanjar & Lubis, 2022).

Conclusion

This research underscores the need for robust legal protection in addressing the dynamics of cross-border electronic transactions. While the potential for economic growth and global

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connectivity through e-commerce is significant, the challenges faced are quite complex. The misalignment of regulations at the national and international levels creates confusion and legal uncertainty that can hinder the implementation and enforcement of rules. The focus on consumer protection in Indonesian law is a positive step, but implementation challenges and the lack of human and legal resources highlight the need for further reforms. Additionally, the technology gap between countries not only creates inequality in accessibility in electronic transactions but also increases the risk of cybercrime. The conclusion of this research emphasizes the necessity for comprehensive efforts, including detailed legal updates, increased human resource capacity, and enhanced consumer legal awareness. The foundation of these conclusions can serve as a basis for the government, businesses, and other stakeholders to develop effective and holistic strategies to ensure that cross-border electronic transactions proceed fairly, safely, and responsibly for all involved parties. This foundation is crucial for mitigating the risks and vulnerabilities that may arise within the increasingly complex ecosystem of electronic commerce.

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Guarantee of Legal Protection in Cross-Border Electronic Transactions

Abstract

In the era of globalization, cross-border electronic transactions have become a catalyst for economic growth and global connectivity. However, the legal complexity associated with consumer protection, technological disparities, and regulatory misalignment at national and international levels creates significant challenges. In Indonesia, despite having laws regulating electronic transactions, implementation faces constraints, particularly concerning legal uncertainty and a lack of consumer legal awareness. This research employs a normative legal research method, focusing on the analysis of legislation, jurisprudence, and international conventions related to cross-border electronic transactions. Legislative analysis is used to explore relevant legal aspects, conceptual approaches aid in understanding key concepts, and a comparative approach is applied to analyze legal systems and consumer protection practices. The study underscores the importance of legal reform to address regulatory misalignment, legal uncertainty, and technological disparities in Indonesia's cross-border electronic transactions. Despite the existence of consumer protection laws, further efforts are needed to enhance implementation and consumer legal awareness. The research's conclusion provides a foundation for developing holistic strategies to ensure the fair, secure, and accountable sustainability of e-commerce growth at both the national and international levels.

Keywords: Guarantees, Protection, Law, Electronic Transactions, Cross Borders

Introduction

Cross-border electronic transactions, or cross-border e-commerce, have become a primary driver in connecting the global market through electronic trading platforms. Utilizing electronic media, businesses and consumers can engage in transactions without being restricted by geographical boundaries (Tu & Shangguan, 2018; Huang & Chang, 2019). This phenomenon has presented significant opportunities for economic growth, particularly by expanding access to international markets for small and medium-sized enterprises. Sellers can easily reach consumers beyond national borders, while consumers enjoy broader access to a variety of products and services from around the world. This not only provides a substantial boost to international trade but also creates new opportunities for innovation, cross-border business collaborations, and the enhancement of societal well-being (Saydam & Civelek, 2022). According to information from the United Nations Conference on Trade and Development (UNCTAD), the value of cross-border electronic trade reached \$26.7 trillion in 2019, equivalent to approximately 30% of the global Gross Domestic Product (GDP). Indonesia is also noted as one of the countries with significant growth in cross-border electronic transactions, reaching a rate of 21% in 2020 (Sabirin et al., 2022; Wysokińska, 2023).

Despite opening wide doors for economic growth and global market access, cross-border electronic transactions also pose various legal challenges that need to be addressed. One primary focus in dealing with these issues is consumer protection (Liu et al., 2021). Often, discrepancies between the ordered and received goods or services become a major issue that can harm consumers (Tiwari et al., 2020; Hsu et al., 2022). Additionally, the potential for fraud or identity theft adds

complexity to transaction security. Other challenges include the risk of losses due to system errors or technical failures, violations of intellectual property rights, and non-compliance with quality and safety standards for products (Huang et al., 2020). Most challenging of all is determining the jurisdiction and applicable laws in resolving disputes, as these transactions involve various countries with different regulations. All of these issues pinpoint the vulnerability of consumers as the weaker party in cross-border electronic transactions (Liu et al., 2020; Tjipto, 2021).

Legal protection for consumers is an urgent and strategic imperative to be implemented by the state. This legal protection encompasses various measures aimed at providing certainty, fairness, and balance in the relationship between consumers and businesses (Barkatullah, 2018; Guo et al., 2018). Essentially, legal protection aims to mitigate the risks and vulnerabilities faced by consumers in the increasingly complex global e-commerce ecosystem. Legal protection for consumers can manifest in two main dimensions, namely preventive and repressive (Mou et al., 2020). Preventive efforts include measures such as regulating quality and safety standards for products, monitoring business activities, and providing comprehensive education and information to consumers. These measures are designed to prevent problems or losses for consumers from arising at the outset of transactions (Ahmed, 2019). On the other hand, repressive efforts are aimed at addressing potential issues or providing compensation to consumers who have suffered harm. Through a strategic combination of preventive and repressive approaches, the state can create a fair, secure, and effective e-commerce environment for consumers on a global scale (Cui et al., 2019; Anastasiadou et al., 2019).

In Indonesia, legal protection for consumers in the context of cross-border electronic transactions has been regulated through several laws outlining the rights and obligations of businesses and consumers. Law Number 8 of 1999 on Consumer Protection is the main foundation that regulates consumer rights, including in electronic transactions. Law Number 7 of 2014 on Trade and Law Number 19 of 2016 on the Amendment to Law Number 11 of 2008 on Information and Electronic Transactions also provide a comprehensive legal framework related to electronic commerce. In addition to these regulations, the Indonesian government has issued Government Regulation Number 71 of 2019 on the Implementation of Electronic System and Transactions, which provides detailed regulations on the procedures and security of electronic transactions. Besides internal regulations, Indonesia also demonstrates its commitment to consumer protection in cross-border electronic transactions by ratifying various international legal instruments, including the United Nations Convention on Contracts for the International Sale of Goods (CISG), the United Nations Convention on the Use of Electronic Communications in International Contracts (CUECIC), and the ASEAN Agreement on Electronic Commerce.

Legal protection for consumers in cross-border electronic transactions in Indonesia faces several challenges that contribute to suboptimal and inadequate protection. One of the primary obstacles is the inconsistency and lack of synchronization between national and international legislation (Liu & Li, 2020). The legal and technological gaps among the countries involved in these transactions further complicate efforts to achieve consistency and harmonization within the legal framework. These gaps involve differences in the interpretation and implementation of applicable legal norms, creating legal loopholes exploitable by irresponsible businesses (Voss, 2019). Another complicating factor is the limited human resources and legal infrastructure in Indonesia. Ineffectively managing and enforcing laws related to cross-border electronic transactions create opportunities for violations that can harm consumers. Additionally, the low legal awareness and skills among consumers in electronic transactions further complicate the implementation of consumer protection (Tiwari et al., 2020; Liu et al., 2020). Therefore,

comprehensive efforts are needed to improve and enhance the legal protection system for consumers at the national level, including enhancing legal capacity, updating relevant regulations, and increasing legal awareness among consumers.

Research Methodology

This research applies the normative legal research method, an approach that explores legislation, doctrine, jurisprudence, and international conventions related to cross-border electronic transactions. The aim of the normative legal research method is to identify applicable legal principles and evaluate the suitability, fairness, and effectiveness of these legal principles. In this study, several research approaches are employed to uncover legal aspects related to cross-border electronic transactions. The first approach is the legislative approach, involving an analysis of national and international legal rules such as Law Number 8 of 1999 concerning Consumer Protection, Law Number 7 of 2014 concerning Trade, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as Government Regulation Number 71 of 2019 concerning the Organization of Electronic Systems and Transactions. The second approach is the conceptual approach, focusing on understanding legal concepts related to consumers, businesses, electronic transactions, legal protection, legal harmonization, and dispute resolution. The third approach is the comparative approach, which analyzes legal systems and consumer protection practices in cross-border electronic transactions in several countries. This research utilizes secondary data collection techniques, including relevant legal materials. There are three categories of legal materials accessed in this study. First, primary legal materials, which are the main legal sources binding parties in cross-border electronic transactions, including relevant national and international legislation. Second, secondary legal materials, providing additional information and supporting the understanding of primary legal materials, such as legal expert writings in the form of books, scholarly journals, seminar papers, theses, and dissertations. Third, tertiary legal materials, providing supporting information regarding primary and secondary legal materials, involving legal dictionaries, encyclopedias, legal directories, legal indexes, and other references.

Legal Policy in Facing the Development of Electronic Transactions

The main framework of legislation related to e-commerce activities in Indonesia, predating the issuance of specific regulations for the e-commerce sector, centers around Law No. 11 of 2008 as amended by Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE Law). Although this law provides a legal basis for addressing various aspects of electronic transactions, including e-commerce, its lack of specificity and comprehensiveness in regulating the specific characteristics of e-commerce creates a need for more detailed regulations (Koto, 2021). The law, initially designed to respond to information technology developments, is not entirely adequate in addressing the dynamics and unique issues related to e-commerce, such as consumer protection, dispute resolution, and governance aspects (Siregar et al., 2020; Syaafi et al., 2023). With the growth of the e-commerce sector, several amendments and implementing regulations initiatives from the ITE Law have been introduced. One example is the establishment of the National Cyber and Crypto Agency (NCCA/BSSN), inaugurated by the president in 2018. BSSN aims to provide electronic certificate services to a broader sector, support cybersecurity, and assist the government in addressing cybersecurity issues. Furthermore, the Minister of Communication and Informatics launched the Electronic Certificate Implementation Agency in 2019, with the goal of supporting digital transactions. Although these developments reflect positive

steps in filling legal gaps, further attention and more comprehensive regulatory updates are still needed to accommodate the latest dynamics in the e-commerce ecosystem in Indonesia (Ginanjar & Lubis, 2022).

While the ITE Law has established provisions related to electronic transactions, it should be noted that the law also mandates the issuance of government regulations governing the conduct of electronic transactions both in the public and private spheres (Simbolon et al., 2021). Nevertheless, the ITE Law does not provide sufficiently detailed explanations regarding the scope of the provisions that can be regulated in these government regulations. This ambiguity creates legal uncertainty, especially in guiding law enforcement officials and judges in handling cases involving electronic transactions (Suharsono, 2018; Singgi et al., 2020). This legal uncertainty can have a significant impact, particularly in the practice of justice, especially in deciding cases involving electronic evidence. In law enforcement, judges must make careful considerations regarding the validity and strength of electronic evidence. Without clarity regarding the scope of provisions in government regulations, judges may face difficulties in providing consistent and accurate interpretations (Lesmana et al., 2021; Sutarli & Kurniawan, 2023).

In addition to formulating ideal norms in the form of regulations that support the security of electronic transactions (e-commerce), it is essential to consider that the implementation and effectiveness of these norms also heavily depend on other legal instruments, especially human resources from law enforcement agencies (Gustina et al., 2022). In the context of handling e-commerce cases, such as fraud that harms consumers, there are tangible constraints within the police force. Not all investigators have the necessary abilities or knowledge to effectively address such cases. Limitations in human resources and knowledge in the field of technology pose serious obstacles, causing some investigators to be suboptimal in handling or investigating electronic transaction cases (Fitri, 2022; Silalahi & Dameria, 2024). Furthermore, the lack of legal support aligned with the dynamics of the IT field also hinders the handling of e-commerce cases. Apart from human resource issues, it is crucial to note that data privacy, especially in the context of consumer protection laws, is not adequately regulated at the national level (Ginanjar & Lubis, 2022). While other countries have recognized the importance of privacy as part of individual rights, Indonesia lacks sufficiently robust regulations regarding the protection of personal data in the consumer context. This creates legal uncertainty and exposes the potential for privacy violations in electronic transactions. While the UNCITRAL Model Law emphasizes the need for comprehensive support for data protection, efforts to regulate Personal Data Protection in Indonesia are still in the legislative drafting stage and have not reached completion to date (Siregar et al., 2020). Thus, further efforts are still required to strengthen the legal framework supporting security and privacy in electronic transactions in Indonesia.

Challenges in Legal Protection

Legal protection in cross-border electronic transactions is an essential need to safeguard the rights and interests of all involved parties, especially consumers who often find themselves in a more vulnerable position. Providing a robust legal framework is a crucial step for a country to ensure that such transactions take place fairly, securely, and accountably (Saleh, 2021). However, achieving legal protection in the context of cross-border transactions is not straightforward. Significant challenges arise from the inconsistency of regulations at both the local and international levels, in terms of both substance and jurisdiction (Gustina et al., 2022; Hsu et al., 2022). The existence of local regulations that are not aligned with international norms, such as the differences between Indonesia's ITE Law and CUECIC, creates a void in rules and legal uncertainty, which

can complicate the implementation and enforcement of the law. Other challenges in cross-border electronic transactions include the complexity of the differences in legal systems among the countries involved (Tjipto, 2021). Fundamental differences between civil law and common law, as well as variations in dispute resolution rules, can create confusion and difficulties in determining applicable jurisdictions (Mou et al., 2020; Liu et al., 2021).

Technological gaps between countries pose a serious challenge in the context of cross-border electronic transactions. Differences in the availability and capability of information and communication technology (ICT) infrastructure among countries can create a significant digital divide. Countries with limited access to ICT or limited expertise in its use may experience limitations in accessibility when conducting electronic transactions (Voss, 2019). This not only causes economic disadvantages but also restricts participation and digital economic growth, resulting in a widening development gap between countries (Anastasiadou et al., 2019). Moreover, technological disparities provide opportunities for cybercrimes in cross-border transactions. Countries with less capability in cybersecurity may become easy targets for cybercriminals operating across borders. Cyber threats, such as data breaches, identity theft, and other cyberattacks, can damage the integrity and trust in electronic transactions (Suharsono, 2018; Lesmana et al., 2021).

Furthermore, significant challenges in the supervision and enforcement of electronic transactions involve limitations in human resources among businesses, consumers, and law enforcement. Businesses often face constraints in understanding and implementing secure and legal electronic transaction practices (Liu & Li, 2020). On the other hand, consumers may have limited knowledge to protect themselves from fraudulent practices or other violations in electronic transactions. Law enforcement may also experience human resource limitations, both in terms of the number of skilled personnel and the technical knowledge required to investigate and handle electronic transaction violations (Koto, 2021; Sutarli & Kurniawan, 2023). Not only human resources but also legal infrastructure, such as infrastructure and legal institutions, can be limited in the context of electronic transactions. The infrastructure supporting the supervision and enforcement of electronic transactions needs improvement to provide an effective framework. Legal institutions also need to have adequate capacity to face the evolving challenges in the digital world (Fitri, 2022; Syaafi et al., 2023).

The low legal awareness and skills of consumers pose a serious challenge in the context of cross-border electronic transactions. Lack of understanding of legal aspects related to cross-border transactions can make consumers vulnerable to fraud, consumer rights violations, or misunderstandings of applicable rules (Cui et al., 2019). Low legal awareness can result in consumers not understanding their rights and responsibilities, making them unable to protect themselves effectively. This lack of knowledge can also impact dispute resolution, where consumers may not have adequate understanding of how to engage in the legal process (Ahmed, 2019; Huang et al., 2020). Consumer skills in electronic transactions are also a key factor. The ability to choose suitable products or services, understand transaction terms and conditions, and resolve conflicts if they arise is crucial. Lack of these skills can lead to unwise decisions, confusion in the transaction process, or even conflicts that are difficult to resolve (Huang & Chang, 2019; Saydam & Civelek, 2022; Ginanjar & Lubis, 2022).

Conclusion

This research underscores the need for robust legal protection in addressing the dynamics of cross-border electronic transactions. While the potential for economic growth and global

connectivity through e-commerce is significant, the challenges faced are quite complex. The misalignment of regulations at the national and international levels creates confusion and legal uncertainty that can hinder the implementation and enforcement of rules. The focus on consumer protection in Indonesian law is a positive step, but implementation challenges and the lack of human and legal resources highlight the need for further reforms. Additionally, the technology gap between countries not only creates inequality in accessibility in electronic transactions but also increases the risk of cybercrime. The conclusion of this research emphasizes the necessity for comprehensive efforts, including detailed legal updates, increased human resource capacity, and enhanced consumer legal awareness. The foundation of these conclusions can serve as a basis for the government, businesses, and other stakeholders to develop effective and holistic strategies to ensure that cross-border electronic transactions proceed fairly, safely, and responsibly for all involved parties. This foundation is crucial for mitigating the risks and vulnerabilities that may arise within the increasingly complex ecosystem of electronic commerce.

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Research Methodology

This research applies the normative legal research method, an approach that explores legislation, doctrine, jurisprudence, and international conventions related to cross-border electronic transactions. The aim of the normative legal research method is to identify applicable legal principles and evaluate the suitability, fairness, and effectiveness of these legal principles. In this study, several research approaches are employed to uncover legal aspects related to cross-border electronic transactions. The first approach is the legislative approach, involving an analysis of national and international legal rules such as Law Number 8 of 1999 concerning Consumer Protection, Law Number 7 of 2014 concerning Trade, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, as well as Government Regulation Number 71 of 2019 concerning the Organization of Electronic Systems and Transactions. The second approach is the conceptual approach, focusing on understanding legal concepts related to consumers, businesses, electronic transactions, legal protection, legal harmonization, and dispute resolution. The third approach is the comparative approach, which analyzes legal systems and consumer protection practices in cross-border electronic transactions in several countries. This research utilizes secondary data collection techniques, including relevant legal materials. There are three categories of legal materials accessed in this study. First, primary legal materials, which are the main legal sources binding parties in cross-border electronic transactions, including relevant national and international legislation. Second, secondary legal materials, providing additional information and supporting the understanding of primary legal materials, such as legal expert writings in the form of books, scholarly journals, seminar papers, theses, and dissertations. Third, tertiary legal materials, providing supporting information regarding primary and secondary legal materials, involving legal dictionaries, encyclopedias, legal directories, legal indexes, and other references.

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Legal Policy in Facing the Development of Electronic Transactions

The main framework of legislation related to e-commerce activities in Indonesia, predating the issuance of specific regulations for the e-commerce sector, centers around Law No. 11 of 2008 as amended by Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE Law). Although this law provides a legal basis for addressing various aspects of electronic transactions, including e-commerce, its lack of specificity and comprehensiveness in regulating the specific characteristics of e-commerce creates a need for more detailed regulations (Koto, 2021). The law, initially designed to respond to information technology developments, is not entirely adequate in addressing the dynamics and unique issues related to e-commerce, such as consumer protection, dispute resolution, and governance aspects (Siregar et al., 2020; Syaafi et al., 2023). With the growth of the e-commerce sector, several amendments and implementing regulations initiatives from the ITE Law have been introduced. One example is the establishment of the National Cyber and Crypto Agency (NCCA/BSSN), inaugurated by the president in 2018. BSSN aims to provide electronic certificate services to a broader sector, support cybersecurity, and assist the government in addressing cybersecurity issues. Furthermore, the Minister of Communication and Informatics launched the Electronic Certificate Implementation Agency in 2019, with the goal of supporting digital transactions. Although these developments reflect positive steps in filling legal gaps, further attention and more comprehensive regulatory updates are still needed to accommodate the latest dynamics in the e-commerce ecosystem in Indonesia (Ginanjari & Lubis, 2022).

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While the ITE Law has established provisions related to electronic transactions, it should be noted that the law also mandates the issuance of government regulations governing the conduct of electronic transactions both in the public and private spheres (Simbolon et al., 2021). Nevertheless, the ITE Law does not provide sufficiently detailed explanations regarding the scope of the provisions that can be regulated in these government regulations. This ambiguity creates legal uncertainty, especially in guiding law enforcement officials and judges in handling cases involving electronic transactions (Suharsono, 2018; Singgi et al., 2020). This legal uncertainty can have a significant impact, particularly in the practice of justice, especially in deciding cases involving electronic evidence. In law enforcement, judges must make careful considerations regarding the validity and strength of electronic evidence. Without clarity regarding the scope of provisions in government regulations, judges may face difficulties in providing consistent and accurate interpretations (Lesmana et al., 2021; Sutarli & Kurniawan, 2023).

In addition to formulating ideal norms in the form of regulations that support the security of electronic transactions (e-commerce), it is essential to consider that the implementation and effectiveness of these norms also heavily depend on other legal instruments, especially human resources from law enforcement agencies (Gustina et al., 2022). In the context of handling e-commerce cases, such as fraud that harms consumers, there are tangible constraints within the police force. Not all investigators have the necessary abilities or knowledge to effectively address such cases. Limitations in human resources and knowledge in the field of technology pose serious obstacles, causing some investigators to be suboptimal in handling or investigating electronic transaction cases (Fitri, 2022; Silalahi & Dameria, 2024). Furthermore, the lack of legal support aligned with the dynamics of the IT field also hinders the handling of e-commerce cases. Apart from human resource issues, it is crucial to note that data privacy, especially in the context of consumer protection laws, is not adequately regulated at the national level (Ginanjar & Lubis, 2022). While other countries have recognized the importance of privacy as part of individual rights, Indonesia lacks sufficiently robust regulations regarding the protection of personal data in the consumer context. This creates legal uncertainty and exposes the potential for privacy violations in electronic transactions. While the UNCITRAL Model Law emphasizes the need for comprehensive support for data protection, efforts to regulate Personal Data Protection in Indonesia are still in the legislative drafting stage and have not reached completion to date (Siregar et al., 2020). Thus, further efforts are still required to strengthen the legal framework supporting security and privacy in electronic transactions in **Indonesia**.

Challenges in Legal Protection

Legal protection in cross-border electronic transactions is an essential need to safeguard the rights and interests of all involved parties, especially consumers who often find themselves in a more vulnerable position. Providing a robust legal framework is a crucial step for a country to ensure that such transactions take place fairly, securely, and accountably (Saleh, 2021). However, achieving legal protection in the context of cross-border transactions is not straightforward. Significant challenges arise from the inconsistency of regulations at both the local and international levels, in terms of both substance and jurisdiction (Gustina et al., 2022; Hsu et al., 2022). The existence of local regulations that are not aligned with international norms, such as the differences between Indonesia's ITE Law and CUECIC, creates a void in rules and legal uncertainty, which can complicate the implementation and enforcement of the law. Other challenges in cross-border electronic transactions include the complexity of the differences in legal systems among the countries involved (Tjipto, 2021). Fundamental differences between civil law and common law, as

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well as variations in dispute resolution rules, can create confusion and difficulties in determining applicable jurisdictions (Mou et al., 2020; Liu et al., 2021).

Technological gaps between countries pose a serious challenge in the context of cross-border electronic transactions. Differences in the availability and capability of information and communication technology (ICT) infrastructure among countries can create a significant digital divide. Countries with limited access to ICT or limited expertise in its use may experience limitations in accessibility when conducting electronic transactions (Voss, 2019). This not only causes economic disadvantages but also restricts participation and digital economic growth, resulting in a widening development gap between countries (Anastasiadou et al., 2019). Moreover, technological disparities provide opportunities for cybercrimes in cross-border transactions. Countries with less capability in cybersecurity may become easy targets for cybercriminals operating across borders. Cyber threats, such as data breaches, identity theft, and other cyberattacks, can damage the integrity and trust in electronic transactions (Suharsono, 2018; Lesmana et al., 2021).

Furthermore, significant challenges in the supervision and enforcement of electronic transactions involve limitations in human resources among businesses, consumers, and law enforcement. Businesses often face constraints in understanding and implementing secure and legal electronic transaction practices (Liu & Li, 2020). On the other hand, consumers may have limited knowledge to protect themselves from fraudulent practices or other violations in electronic transactions. Law enforcement may also experience human resource limitations, both in terms of the number of skilled personnel and the technical knowledge required to investigate and handle electronic transaction violations (Koto, 2021; Sutarli & Kurniawan, 2023). Not only human resources but also legal infrastructure, such as infrastructure and legal institutions, can be limited in the context of electronic transactions. The infrastructure supporting the supervision and enforcement of electronic transactions needs improvement to provide an effective framework. Legal institutions also need to have adequate capacity to face the evolving challenges in the digital world (Fitri, 2022; Syaafi et al., 2023).

The low legal awareness and skills of consumers pose a serious challenge in the context of cross-border electronic transactions. Lack of understanding of legal aspects related to cross-border transactions can make consumers vulnerable to fraud, consumer rights violations, or misunderstandings of applicable rules (Cui et al., 2019). Low legal awareness can result in consumers not understanding their rights and responsibilities, making them unable to protect themselves effectively. This lack of knowledge can also impact dispute resolution, where consumers may not have adequate understanding of how to engage in the legal process (Ahmed, 2019; Huang et al., 2020). Consumer skills in electronic transactions are also a key factor. The ability to choose suitable products or services, understand transaction terms and conditions, and resolve conflicts if they arise is crucial. Lack of these skills can lead to unwise decisions, confusion in the transaction process, or even conflicts that are difficult to resolve (Huang & Chang, 2019; Saydam & Civelek, 2022; Ginanjar & Lubis, 2022).

Conclusion

This research underscores the need for robust legal protection in addressing the dynamics of cross-border electronic transactions. While the potential for economic growth and global connectivity through e-commerce is significant, the challenges faced are quite complex. The misalignment of regulations at the national and international levels creates confusion and legal uncertainty that can hinder the implementation and enforcement of rules. The focus on consumer

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protection in Indonesian law is a positive step, but implementation challenges and the lack of human and legal resources highlight the need for further reforms. Additionally, the technology gap between countries not only creates inequality in accessibility in electronic transactions but also increases the risk of cybercrime. The conclusion of this research emphasizes the necessity for comprehensive efforts, including detailed legal updates, increased human resource capacity, and enhanced consumer legal awareness. The foundation of these conclusions can serve as a basis for the government, businesses, and other stakeholders to develop effective and holistic strategies to ensure that cross-border electronic transactions proceed fairly, safely, and responsibly for all involved parties. This foundation is crucial for mitigating the risks and vulnerabilities that may arise within the increasingly complex ecosystem of electronic commerce.

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THE GOING CONCERN PARADIGM IN BANKRUPTCY PROCESS REVIEWED FROM REGULATIONS IN INDONESIA

ABSTRACT

Companies often seek alternative debt resolution methods in bankruptcy to avoid liquidation or operational shutdown. One such alternative is through a settlement, where the debtor offers partial payment of the debt to creditors with the condition of being released from the remaining debt. Additionally, the suspension of debt obligations allows companies to develop a financial restructuring plan that can ensure long-term operational sustainability. This research uses a descriptive approach by analyzing relevant legislation, legal literature, and case studies to understand the mechanisms and legal implications of the bankruptcy process. The secondary data used comes from sources such as laws, court rulings, and relevant legal literature. The study results indicate that the bankruptcy process in Indonesia relies on mechanisms such as debt payment suspension, settlement, and judicial review to resolve debts and ensure business continuity. The going concern paradigm is integrated into these processes, although in a different context from the principle in civil law.

Keywords: Bankruptcy; Legal Consequences; Going Concern; Peace; Judicial Review.

1. Introduction

Business continuity is a fundamental foundation in the business world, where business entities are expected to operate continuously without interruption. This concept is known as the going concern principle, which indicates that a company can operate sustainably for an indefinite period, assuming there will be no liquidation or cessation of operations.¹ Going concern refers to the assumption that an entity will continue its operations into the foreseeable future and not liquidate or significantly curtail its operations. This principle is fundamental in accounting and financial reporting, ensuring that financial statements are prepared with the expectation that the business will remain operational.²

The principle of going concern is closely related to sustainability, which emphasizes the ability to maintain operations over time. Sustainability in this context can be seen as the ability of a system (or business) to sustain itself and meet its changing requirements over time.³ The going concern principle underpins the economic pillar of sustainability, ensuring that businesses are managed to support long-term economic stability and growth. Integrating sustainability into strategic management involves considering the long-term viability of the business and aligning it with the going concern principle. This includes proactive approaches to corporate sustainability, which can lead to cost reductions and competitive advantages.⁴ Businesses must comply with regulations that often require demonstrating their ability to continue as a going concern. This is part of broader sustainability practices, including

¹ Doni Budiono., Analisis Pengaturan Hukum Acara Kepailitan dan Penundaan Kewajiban Pembayaran Utang, *Jurnal Hukum Acara Perdata*, Vol.4, no.2, 2018, page.151.

² Putri Ariqah and Siti Anisah., Arrangement of Bankruptcy Debt Repayment Toward Employees in Indonesia and Germany, *Indonesia Private Law Review* Vol.3, no.1, 2022, page.58.

³ Andrew K. Manderson., A systems based framework to examine the multi-contextual application of the sustainability concept, *Environment, Development and Sustainability*, Vol.8, 2006, page.87.

⁴ Vesna Žabkar, and Tjaša Redek., *Challenges on the Path Toward Sustainability in Europe*, Emerald Publishing Limited, 2020, page.98.

economic, social, and environmental considerations.⁵

However, business reality often does not always align with these expectations. Many companies face serious financial pressure that can threaten operational continuity, potentially leading to an unhealthy financial state.⁶ This is influenced by various factors, such as declining revenues due to changing consumer preferences, intense competition, and worsening macroeconomic conditions. High operational costs, liquidity crises, and mounting debt can also strain a company's cash flow. Market volatility and poor investment decisions also contribute to financial uncertainty. Technological disruption and digital competition force companies to make large investments in transformation, often exacerbating the pressure.⁷

In response to financial stress, many companies may consider legal measures such as bankruptcy or Suspension of Debt Payment Obligations as solutions. Bankruptcy occurs when a debtor is officially declared unable to pay their debts by the court. In such cases, a bankruptcy decision is a crucial step taken by the court to protect creditors' rights and organize the debtor's obligations.⁸ Meanwhile, suspension of debt payment obligations offers an alternative that allows the debtor to delay debt payments for a certain period to formulate a more structured debt settlement plan, hoping to maintain the company's operations. Suspension of Debt Payment Obligations provides an opportunity for debtors and creditors to negotiate and reach an agreement, thereby avoiding bankruptcy.⁹ If a bankruptcy ruling is issued, its legal consequences involve the court appointing a curator. The curator is responsible for managing the debtor's assets, inventorying them, and seeking debt collection for creditor repayment. The bankruptcy process may end in liquidation, where the debtor's assets are sold to settle debts, or reorganization, where the company is given the chance to restructure its debts and continue operations.¹⁰

In bankruptcy situations, companies often seek alternatives to avoid liquidation and maintain operations. One such alternative is the mechanism of settlement, where the debtor offers partial payment of their debt to creditors. If the creditors agree, the debtor is released from the remaining unpaid debt.¹¹ This settlement allows companies to avoid a complete operational shutdown, enabling business processes to continue, albeit in a limited capacity. Another alternative is the Suspension of Debt Payment Obligations, which allows companies to formulate a financial restructuring plan. Suspension of debt payment obligations offers a time frame to devise a more measured strategy for managing financial obligations, intending to maintain the company's going concern. With this, companies not only focus on debt repayment but also on maintaining long-term business stability. Thus, a deep understanding

⁵ Putu Eka Trisna Dewi., Karakteristik khusus pengadilan niaga Dalam mengadili perkara kepailitan, *Jurnal Hukum Saraswati (JHS)*, Vol.5, no.1, 2023, page.335.

⁶ Jared A. Elias, and Robert J. Stark., Bankruptcy hardball, *California Law Review*, Vol.08, no.3, 2020, page.749.

⁷ Faishal Fatahillah, and Atik Winanti., Perbandingan konsep Hukum Kepailitan Amerika (Chapter 11) dan Hukum Kepailitan Indonesia, *Jurnal Usm Law Review*, Vol.6, no.3, 2023, page.1267.

⁸ Atika Ismail., Analisis Alternatif Restruturisasi Utang Atau Penutupan Perusahaan Pada Pandemi Covid-19 Melalui PKPU, Kepailitan Dan Likuidasi, *Jurnal Kepastian Hukum dan Keadilan*, Vol.3, no.1, 2022, page.47.

⁹ Melissa B. Jacoby., Corporate bankruptcy hybridity, *University of Pennsylvania Law Review*, Vol.166, no.7, 2018, page.1717.

¹⁰ Raden Besse Kartoningrat, and Isetyowati Andayani., Mediasi Sebagai Alternatif dalam Pengurusan dan Pemberesan Harta Pailit oleh Kurator Kepailitan, *Halu Oleo Law Review*, Vol.2, no.1, 2018, page.295.

¹¹ Zingapi Mabe., Alternatives to bankruptcy in South Africa that provides for a discharge of debts: lessons from Kenya, *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, Vol.22, no.1, 2019.

of the going concern concept, bankruptcy decisions, and alternative debt resolution methods is crucial for business actors and stakeholders in facing financial crises more effectively. This helps to preserve the company's value and reduce negative impacts for all parties involved.

2. Research Method

This research employs a qualitative method with a normative legal approach aimed at analyzing the legal aspects in the context of bankruptcy and the suspension of debt payment obligations based on Law Number 37 of 2004. A descriptive research method is adopted to provide an accurate, factual, and systematic overview of relevant facts concerning bankruptcy, particularly related to the rights of debtors and creditors. Literature review is conducted by collecting secondary data from various written sources such as regulations, scientific journals, reference books, and published financial reports. The primary focus of this research is to analyze Law Number 37 of 2004, which plays a crucial role in regulating the bankruptcy process and alternative debt resolution through the suspension of debt payment obligations and settlements. The normative legal approach is used to deeply examine how legal rules are applied in practice, including their strengths and weaknesses. The analysis results provide insights into the need for amending the law to improve several provisions that are still considered weak and to create a more equitable balance between the rights of creditors and debtors in addressing bankruptcy issues in Indonesia.

3. Results

3.1. Characteristics of Bankruptcy Law in Indonesia

In Indonesia, bankruptcy is a legal instrument applied to individuals or companies that cannot fulfill their debt payment obligations.¹² This condition can arise from various factors such as bankruptcy, financial difficulties, or other reasons. Bankruptcy in Indonesia is not only related to bankruptcy or financial difficulties but can also be triggered by the debtor's non-compliance with their payment obligations. Thus, bankruptcy does not always reflect the solvency of the debtor's assets or financial condition.¹³ Instead, it often relates to the debtor's reluctance or failure to meet their payment obligations. External factors such as economic fluctuations, regulatory changes, or market instability can affect the debtor's ability to pay debts on time. Meanwhile, internal factors such as poor financial management, misguided business strategies, or internal conflicts within the company can also contribute to the failure to make payments.¹⁴ Therefore, bankruptcy is not just about insolvency; it can also result from a combination of external and internal factors that prevent the debtor from being able or willing to fulfill their obligations.¹⁵

The Indonesian bankruptcy system has several unique characteristics. One of them is the minimal requirement for declaring bankruptcy, which is the existence of overdue debts and

¹² Rai Mantili, and Putu Eka Trisna Dewi., Penundaan Kewajiban Pembayaran Utang (PKPU) Terkait Penyelesaian Utang Piutang Dalam Kepailitan, *Jurnal Aktual Justice*, Vol.6, no.1, 2021, page.9.

¹³ Stephan Madaus., Leaving the shadows of US bankruptcy law: a proposal to divide the realms of insolvency and restructuring law, *European Business Organization Law Review*, Vol.19, no.3, 2018, page.627.

¹⁴ Rizqi Muallif, and Elfrida Ratnawati Gultom., Aspek Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Dalam Pembangunan Ekonomi Nasional, *UNES Law Review*, Vol.5, no.4, 2023, page.1755.

¹⁵ Fahamsyah, Ermanto, Vicko Taniady, Ramadhan Dwi Saputra, Kania Venisa Rachim, and Glenn Wijaya., The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism be Applied?, *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*, Vol.7, no.1, 2024.

at least two creditors.¹⁶ This requirement allows companies that are still solvent to be declared bankrupt, which can trigger significant issues. A major concern is the absence of a bankruptcy test requirement before the court declares bankruptcy. This opens up opportunities for creditors with bad faith to misuse bankruptcy law, pressuring debtors who may still have the ability to pay off their debts. The implementation of a bankruptcy test is considered important to protect debtors from the misuse of the system by creditors.¹⁷ This test can help identify whether the debtor is truly in a financial condition preventing them from paying their debts, ensuring that only companies that cannot meet their obligations can be declared bankrupt.¹⁸

The legal policy of bankruptcy within the legal system in Indonesia is more oriented toward its function as a debt collection tool rather than as a mechanism that provides solutions for debtors facing financial difficulties, bankruptcy, or insolvency.¹⁹ This legal policy approach does not differentiate whether the debtor's inability to pay debts is due to factors of incapacity or unwillingness. Bankruptcy is often activated to pressure debtors who fail to fulfill their payment obligations without considering the underlying financial issues.²⁰ This indicates that the legal policy of bankruptcy in Indonesia tends to prioritize enforcement actions against debtors who do not meet their financial obligations rather than providing comprehensive solutions to financial situations.

Legal reform in bankruptcy in Indonesia has occurred progressively since 1998 with the enactment of Law No. 4 of 1998 concerning the Enactment of Government Regulation in Lieu of Law No. 1 of 1998 concerning Amendments to the Bankruptcy Law, which was later replaced in 2004 by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Law No. 4 of 1998 brought significant changes to the material requirements for filing a bankruptcy petition by simplifying the petition requirements compared to previous regulations.²¹ Furthermore, Law No. 37 of 2004 tightened the requirements by emphasizing that the debts serving as the basis for filing for bankruptcy are those that have not been fully paid. This demonstrates that Law No. 37 of 2004 reduces the leeway for debtors facing payment issues to restructure their debt payment schemes. Consequently, changes in bankruptcy law indicate a shift toward a stricter approach in handling debtors' financial situations, focusing on collecting unpaid debts rather than providing opportunities for debt restructuring.²²

Article 2 paragraph (1) with Article 8 paragraph (4) of Law No. 37 of 2004 concerning

¹⁶ Ida Nadirah., Studi Komparatif Terhadap Kepailitan Perusahaan Asuransi Syariah Menurut Hukum Islam Dan Undang-Undang No 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU), *Iuris Studia: Jurnal Kajian Hukum*, Vol.2, no.2, 2021, page.259.

¹⁷ M. Hadi Shubhan., Misuse of bankruptcy petitions by creditors: The case of Indonesia, *International Journal of Innovation, Creativity and Change*, Vol.10, no.6, 2019, page.197.

¹⁸ M. Hadi Shubhan., Legal protection of solvent companies from bankruptcy abuse in Indonesian legal system, *Academic Journal of Interdisciplinary Studies*, Vol.9, no.2, 2020, page.145.

¹⁹ Ossy Abel Prasetya, and Putri Raodah., Kedudukan Hukum Kreditor Separatis Terhadap Eksekusi Jaminan Dalam Kepailitan Yang Hartanya Lebih Kecil Daripada Utangnya, *Commerce Law*, Vol.3, no.2, 2023.

²⁰ Agustina Ni Made Ayu Darma Pratiwi, and Putu Sekarwangi Saraswati., Tinjauan Yuridis Undang-Undang Nomor 34 Tahun 2004 Tentang Kepailitan Dan PKPU Mengenai PKPU Dalam Hal Debitur Pailit Dimasa Covid 19, *Media Keadilan: Jurnal Ilmu Hukum*, Vol.12, no.1, 2021, page.67.

²¹ Muhammad Nurohim, Yusuf Hanafi, and Asmaiyani Asmaiyani., Application for Bankruptcy by Creditors Perspective of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations (Study of Decision Number 3/Pdt. Sus-Pailit/2021/PN Niaga Jkt. Pst), *Legal Brief*, Vol.11, no.2, 2022, page.1417.

²² Didi Sukardi., The Legal Responsibility of Debtor to Payment Curators in Bankruptcy Situation, *Jurnal Pembaharuan Hukum*, Vol.8, no.2, 2021.

Bankruptcy and Suspension of Debt Payment Obligations does not require the existence of insolvency conditions for the debtor. The requirements for filing a bankruptcy petition regulated in these articles only mention two main conditions along with an additional requirement.²³ The two main conditions are the existence of unpaid and collectible debts and the presence of at least two creditors. The additional requirement is using a simple proof system in the bankruptcy process. Thus, the bankruptcy requirements outlined in this law emphasize the aspects of unpaid debts and the number of creditors involved without explicitly considering the debtor's financial condition.²⁴ This indicates that the bankruptcy legal system in Indonesia does not necessitate proof of the debtor's insolvency as a primary condition for filing for bankruptcy but rather focuses on debt repayment and the number of creditors involved.

The Indonesian bankruptcy system, governed by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, adheres to the principle of collective debt, where the debtor's assets are seized and used to pay off debts to creditors collectively.²⁵ However, this law does not regulate the principle of debt forgiveness, meaning that the debtor remains liable for the remaining debt even after the bankruptcy process is completed. This law has often been criticized for not adequately protecting the rights of debtors and still opening opportunities for legal abuse by creditors.²⁶ Additionally, the high rate of bankruptcies, especially due to the impact of the pandemic, highlights the weaknesses in the bankruptcy legal system in Indonesia, which requires reform to create a balance between the interests of debtors and creditors. Further amendments are expected to address fundamental issues in bankruptcy proceedings and provide fairer protection for all parties involved.²⁷

3.2. Bankruptcy Decision and Legal Consequences

Bankruptcy is a legal process in which a debtor who is unable to pay their debts is declared bankrupt by a commercial court. In this process, the court determines that the debtor is legally incapable of fulfilling their financial obligations to creditors.²⁸ Once a bankruptcy decision is rendered, the debtor's assets will be under the supervision of a trustee, who is responsible for managing and distributing the debtor's assets to creditors in accordance with applicable laws. The trustee is tasked with inventorying, valuing, and selling the debtor's assets to repay existing debts. This process ensures that creditors receive a fair share of the debtor's remaining assets. Additionally, bankruptcy also aims to provide legal certainty for creditors

²³ Zeffrianto Sihotang., Duties and Authority of PKPU Management Based on Law No. 37 Of 2004 Concerning Bankruptcy and Suspension Debt Payment Obligations, *Journal of Law Science*, Vol.3, no.1, 2021, page.19.

²⁴ Binov Handitya., Redesign the Relevance of Justice in Debtor Protection Related to Parate Executions Performed by Separate Creditors in Liability Agreements, *Jurnal Akta*, Vol.8, no.4, 2021, page.225.

²⁵ Bicar Franki Leonardo Manurung, Elza Syarief, and Rina Shahriyani Shahrullah., Legal Consequences of Bankruptcy and Postponement of Debt Payment Obligations: Are They Similar?, *Journal of Law and Policy Transformation*, Vol.7, no.1, 2022, pager.89.

²⁶ Kurnia Toha, and Sonyendah Retnaningsih., Legal policy granting status of fresh start to the individual bankrupt debtor in developing the bankruptcy law in Indonesia, *Academic Journal of Interdisciplinary Studies*, Vol.9, no.2, 2020, page.156.

²⁷ Cintya Sekar Ayu Permatasari, and Octa Nadia Mellynda., Temporary Measures on Bankruptcy: Alternatives to the Moratorium on Act 37/2004 in Resolving Indonesian Bankruptcy During the COVID-19 Pandemic, *Lex Scientia Law Review*, Vol.5, no.2, 2021, page.40.

²⁸ Susilawati Ussy RafaRayya., Work Relationship Terminated Employees Legal Protection to Get Severance Payment from PT. Kertas Lecess Related to Law of Bankruptcy and Law of Labor, *Widya Yuridika*, Vol.3, no.1, 2020, page.25.

and resolve financial disputes collectively.²⁹

According to Article 1 number (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, bankruptcy is a legal process in which all of the debtor's assets are seized generally and managed by a trustee under the supervision of a supervising judge.³⁰ This process aims to distribute the debtor's assets among all entitled creditors fairly. The trustee has an essential responsibility in inventorying, managing, and distributing the debtor's assets in accordance with the relevant legal provisions while considering the rights of each creditor. Bankruptcy provides a mechanism for collective debt resolution, where the debtor's remaining assets are distributed proportionally based on the priority of creditors established by law.³¹ This process is overseen by a supervising judge to ensure transparency and fairness in its implementation. Bankruptcy protects the interests of creditors, provides legal certainty, and prevents prolonged disputes between debtors and creditors.

The going concern paradigm in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is highly relevant in the context of bankruptcy proceedings.³² The going concern principle emphasizes the continuous operation of a business entity without interruption. However, when a debtor faces serious financial difficulties, this principle is put to the test. A bankruptcy ruling, as the initial step in the bankruptcy process, signifies that the debtor is no longer considered an entity capable of operating sustainably according to the going concern paradigm.³³ The impact of a bankruptcy ruling is significant within the legal framework of bankruptcy. After a bankruptcy decision, no ruling can be enforced against the debtor's assets. This indicates that the going concern paradigm no longer applies to a debtor who has been declared bankrupt. Legal processes come to a halt, and the focus shifts to the management and distribution of the debtor's wealth to creditors. The going concern paradigm is replaced by a paradigm that emphasizes the equitable redistribution of the debtor's assets according to applicable legal provisions in bankruptcy.³⁴

This ruling will have legal consequences when the Commercial Court declares a debtor bankrupt.³⁵ First, the debtor's wealth that falls into the bankruptcy estate becomes the object of general seizure, encompassing all assets owned by the debtor at the time the bankruptcy

²⁹ Rumawi Rumawi, Siti Sariroh, Udiyo Basuki, Mellisa Towadi, Moh Ali, and Supianto Supianto., Karakteristik Perseroan Terbatas Perorangan dalam Hukum Indonesia, *Jurnal Hukum Bisnis*, Vol.12, no 02, 2023, page.73.

³⁰ Yulianti Wiyono, Slamet Suhartono, and Endang Prasetyawati., Bankruptcy according to the bankruptcy law and postponement of payment perspective of creditor legal protection, *Technium Social Sciences Journal*, Vol.56, 2024, page.117.

³¹ Agus Nurudin., Bankruptcy and postponement of debt payments for large companies, *International Journal of Economics and Business Administration*, Vol.8, no.2, 2020, page.389.

³² Zeto Bachri, Suhariningsih Suhariningsih, Sukarmi Sukarmi, and Iwan Permadi., Legal protection for debtors in determining the application requirements for suspension of debt payment obligations, *International Journal of Research in Business and Social Science (2147-4478)*, Vol.10, no.6, 2021, page.395.

³³ Japansen Sinaga, and Dona Bella Faustine Law., Akibat Hukum Kepailitan Perseroan Terbatas Sebagai Badan Hukum Atas Merek Dagang Dalam Boedel Pailit: Akibat Hukum Kepailitan Perseroan Terbatas Sebagai Badan Hukum Atas Merek Dagang Dalam Boedel Pailit, *Law Pro Justitia*, Vol.5, no.2, 2020, page.10.

³⁴ Holyness Singadimeja, Rai Mantili, and Ema Rahmawati., The Implementation of Legal Certainty Principles in the Reporting Process of Debtor Bankruptcy Settlement by Curator to Supervisory Judge in Bankruptcy Practice, *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, Vol.5, no.3, 2019, page.515.

³⁵ Rachmat Suharto., The bankruptcy characteristics of cooperative legal entities, *Hang Tuah Law Journal*, 2019, page.11.

ruling is pronounced, as well as any wealth acquired during the bankruptcy process. Second, bankruptcy only applies to the bankruptcy estate and does not affect the debtor's personal status, allowing the debtor to retain personal freedoms such as getting married. Third, the debtor loses the right to manage and control their wealth included in the bankruptcy estate from the moment the bankruptcy ruling is pronounced. Fourth, any obligations entered into by the debtor after the bankruptcy ruling cannot be settled from the bankruptcy estate unless they benefit the bankruptcy estate. Fifth, the management of the bankruptcy estate is carried out by a trustee for the benefit of both creditors and the debtor. Sixth, all claims and lawsuits related to the rights and obligations of the bankruptcy estate must be brought by or against the trustee. Seventh, all claims aimed at obtaining settlement from the bankruptcy estate, including from the debtor's own assets, must be submitted through a matching process. Finally, creditors with guarantees over specific properties may exercise their execution rights as if no bankruptcy process were underway, with an execution suspension of up to 90 days after the bankruptcy ruling is pronounced.

3.3. Debt Settlement Alternatives in Bankruptcy

Debt Payment Obligation Suspension is an alternative debt resolution aimed at avoiding bankruptcy. According to Article 222 paragraph (2) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, a debtor who is unable to continue paying due and collectible debts has the right to apply for suspension of debt payment obligations. The purpose of suspension of debt payment obligations is to formulate a peace plan that includes an offer to pay part or all of the debt to its creditors.³⁶ Suspension of debt payment obligations essentially only applies to concurrent creditors, although Article 222 paragraph (2) of Law No. 37 of 2004 does not explicitly mention the term "concurrent creditors" as in Law No. 4 of 1998. This indicates that the suspension of debt payment obligations is designed to address debts payable to all creditors without distinguishing between the type or status of the creditor. Suspension of debt payment obligations allows the debtor to propose a peace plan that can satisfy all parties with claims against the debt, without needing to involve the bankruptcy process.³⁷

Debt matching is a crucial stage in the bankruptcy process, as it determines the balance and order of rights among each creditor. This stage must be completed no later than 14 days from the time the bankruptcy declaration becomes legally binding. The supervising judge has the authority to set deadlines for submitting claims, deadlines for tax verification, and the date, time, and place for creditor meetings to conduct debt matching. The trustee reconciles calculations with existing records and confirms that the debtor has gone bankrupt. In the debt matching meeting, the supervising judge reads the list of claims that have been temporarily recognized and those disputed by the trustee for discussion in the meeting. The debtor is required to attend this meeting to provide information regarding the causes of bankruptcy and the status of the bankruptcy estate. The debtor's presence in the debt matching meeting is important to facilitate the process and provide clarification on the information needed by the supervising judge.³⁸

In the context of the Bankruptcy Law and Suspension of Debt Payment Obligations, the

³⁶ Stevi G. Tampemawa., *Prosedur dan Tatacara Penundaan Kewajiban Pembayaran Utang (PKPU) Menurut Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Lex Privatum*, Vol.7, no.6, 2019.

³⁷ Rizka Rahmawati., *Comparison of Laws for Settling Debt Remaining Bankruptcy Between Indonesian and Dutch Countries, Notariil Jurnal Kenotariatan*, Vol.4, no.1, 2019, page.19.

³⁸ Isis Ikhwansyah, and Lambok Marisi Jakobus Sidabutar., *The Implementation of Insolvency Test on Debtors' Bankruptcy in Performing the Principle of Justice, Jurnal Media Hukum*, Vol.26, no.2, 2019, page.245.

going concern paradigm becomes relevant in efforts to resolve bankruptcy cases. In the bankruptcy process, efforts for reconciliation are a crucial step taken after the court issues a bankruptcy ruling.³⁹ Although the going concern paradigm emphasizes the operational continuity of the company, the reality in the context of bankruptcy necessitates a shift in this paradigm. Debtors experiencing bankruptcy must adapt to situations that compel them to offer reconciliation to creditors as an alternative to address debts they cannot fully pay. Furthermore, the review process can also influence the paradigm of going concern in bankruptcy. Even after a bankruptcy ruling has been issued, legal efforts for a review can still be pursued based on certain grounds. This indicates that, within the context of bankruptcy law, the going concern principle must be interpreted flexibly, considering the dynamics and complexities involved in the bankruptcy resolution process.⁴⁰

After a bankruptcy ruling has obtained permanent legal force, there is still the possibility of filing for a review. Legal efforts for a review can be initiated for two main reasons. First, if new evidence is deemed significant that, if known during the previous trial stage, is believed to lead to a different ruling.⁴¹ Second, a review may be filed if there is a manifest error in the ruling of the Commercial Court or the ruling judge concerned. The review must be submitted no later than 180 days after the date the ruling requested for review has obtained permanent legal force. However, there is an exception based on Article 295 paragraph (2) letter a of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, where if the reason for the review is the existence of important new evidence, the review must be conducted no later than 30 days after the ruling requested for review has obtained permanent legal force.⁴²

4. Conclusion

The bankruptcy system in Indonesia plays a crucial role in addressing the issues of debtors who are unable to fulfill their obligations. The bankruptcy process aims to protect the rights of creditors by seizing all of the debtor's assets and distributing them fairly under the management of a curator and the supervision of a judge. The Suspension of Debt Payment Obligations and reconciliation are important alternatives in Indonesian law for settling debts and avoiding bankruptcy. The suspension of debt payment obligations provides time for the debtor to formulate a debt restructuring plan that creditors can agree upon. Reconciliation allows the debtor to offer partial debt payments with the condition of being released from the remaining debt if the creditors agree. One critical step in this process is the matching of receivables, where the rights of creditors are verified and prioritized to determine the legitimate number of receivables. This ensures that the distribution process is conducted fairly. If errors in the ruling or new significant evidence emerges, creditors or debtors can file for a review to revise the decision already made. Thus, the suspension of debt payment obligations and reconciliation mechanisms provide a more flexible solution than bankruptcy while still protecting the rights of both creditors and debtors.

Although Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment

³⁹ Kurnia Toha, and Sonyendah Retnaningsih., Legal policy granting status of fresh start to the individual bankrupt debtor in developing the bankruptcy law in Indonesia, *Academic Journal of Interdisciplinary Studies*, Vol.9, no.2, 2020, page.159.

⁴⁰ Sutrisno Sutrisno., Legal Protection for Debtors over Separatist Creditors' Rights Related to Bankruptcy, *Jurnal Akta*, Vol.7, no.1, 2020, page.441862.

⁴¹ Elena Valeryevna Vinogradova, Svetlana Ibragimovna Chelakhsaeva, Denis Anatolievich Kratiuk, Adelina Viktorovna Oganezova, and Olga Yevgenievna Lebedeva., Prospects of the extrajudicial settlement by enforcement authorities of bankruptcy procedures, *The Journal of Social Sciences Research*, 2018, page.370.

⁴² Serlika Aprita., Bankruptcy Moratorium Plan and Suspension of Debt Payment Obligations Reviewed from Legal Protection of Creditors, *Syiar Hukum: Jurnal Ilmu Hukum*, Vol.20, no.1, 2022, page.10.

Obligations has provided a clear legal foundation, it still requires amendments to address several shortcomings, such as implementing bankruptcy tests that can prevent abuse by malicious creditors. Regulatory reforms are also needed to balance the interests of debtors and creditors. This research offers a deep understanding of the bankruptcy process in Indonesia, highlighting the importance of comprehending the rules and mechanisms involved. It reinforces awareness of the legal processes involved in resolving bankruptcy and the importance of appropriate strategies for efficiently managing debt and avoiding bankruptcy issues in the future.

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THE GOING CONCERN PARADIGM IN BANKRUPTCY PROCESS REVIEWED FROM REGULATIONS IN INDONESIA

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ABSTRACT

Companies often seek alternative debt resolution methods in bankruptcy to avoid liquidation or operational shutdown. One such alternative is through a settlement, where the debtor offers partial payment of the debt to creditors with the condition of being released from the remaining debt. Additionally, the suspension of debt obligations allows companies to develop a financial restructuring plan that can ensure long-term operational sustainability. Thus, the purpose of this study is important to understand how bankruptcy decisions, and debt settlement alternatives for business actors and stakeholders. This research uses a descriptive approach by analyzing relevant legislation, legal literature, and case studies to understand the mechanisms and legal implications of the bankruptcy process. The secondary data used comes from sources such as laws, court rulings, and relevant legal literature. The primary focus of this research is to analyze Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The study results indicate that the bankruptcy process in Indonesia relies on mechanisms such as debt payment suspension, settlement, and judicial review to resolve debts and ensure business continuity. The going concern paradigm is integrated into these processes, although in a different context from the principle in civil law.

1. Introduction

Business continuity is a fundamental foundation in the business world, where business entities are expected to operate continuously without interruption. This concept is known as the going concern principle, which indicates that a company can operate sustainably for an indefinite period, assuming there will be no liquidation or cessation of operations.¹ Going concern refers to the assumption that an entity will continue its operations into the foreseeable future and not liquidate or significantly curtail its operations. This principle is fundamental in accounting and financial reporting, ensuring that financial statements are prepared with the

¹ Doni Budiono., Analisis Pengaturan Hukum Acara Kepailitan dan Penundaan Kewajiban Pembayaran Utang, *Jurnal Hukum Acara Perdata*, Vol.4, no.2, 2018, page.151.

expectation that the business will remain operational.²

The principle of going concern is closely related to sustainability, which emphasizes the ability to maintain operations over time. Sustainability in this context can be seen as the ability of a system (or business) to sustain itself and meet its changing requirements over time.³ The going concern principle underpins the economic pillar of sustainability, ensuring that businesses are managed to support long-term economic stability and growth. Integrating sustainability into strategic management involves considering the long-term viability of the business and aligning it with the going concern principle. This includes proactive approaches to corporate sustainability, which can lead to cost reductions and competitive advantages.⁴ Businesses must comply with regulations that often require demonstrating their ability to continue as a going concern. This is part of broader sustainability practices, including economic, social, and environmental considerations.⁵

However, business reality often does not always align with these expectations. Many companies face serious financial pressure that can threaten operational continuity, potentially leading to an unhealthy financial state.⁶ This is influenced by various factors, such as declining revenues due to changing consumer preferences, intense competition, and worsening macroeconomic conditions. High operational costs, liquidity crises, and mounting debt can also strain a company's cash flow. Market volatility and poor investment decisions also contribute to financial uncertainty. Technological disruption and digital competition force companies to make large investments in transformation, often exacerbating the pressure.⁷

In response to financial stress, many companies may consider legal measures such as bankruptcy or Suspension of Debt Payment Obligations as solutions. Bankruptcy occurs when a debtor is officially declared unable to pay their debts by the court. In such cases, a bankruptcy decision is a crucial step taken by the court to protect creditors' rights and organize the debtor's obligations.⁸ Meanwhile, suspension of debt payment obligations offers an alternative that allows the debtor to delay debt payments for a certain period to formulate a more structured debt settlement plan, hoping to maintain the company's operations. Suspension of Debt Payment Obligations provides an opportunity for debtors and creditors to negotiate and reach an agreement, thereby avoiding bankruptcy.⁹ If a bankruptcy ruling is issued, its

² Putri Ariqah and Siti Anisah., Arrangement of Bankruptcy Debt Repayment Toward Employees in Indonesia and Germany, *Indonesia Private Law Review* Vol.3, no.1, 2022, page.58.

³ Andrew K. Manderson., A systems based framework to examine the multi-contextual application of the sustainability concept, *Environment, Development and Sustainability*, Vol.8, 2006, page.87.

⁴ Vesna Žabkar, and Tjaša Redek., *Challenges on the Path Toward Sustainability in Europe*, Bradford, Emerald Publishing Limited, 2020, page.98.

⁵ Putu Eka Trisna Dewi., Karakteristik khusus pengadilan niaga Dalam mengadili perkara kepailitan, *Jurnal Hukum Saraswati (JHS)*, Vol.5, no.1, 2023, page.335.

⁶ Jared A. Elias, and Robert J. Stark., Bankruptcy hardball, *California Law Review*, Vol.08, no.3, 2020, page.749.

⁷ Faishal Fatahillah, and Atik Winanti., Perbandingan konsep Hukum Kepailitan Amerika (Chapter 11) dan Hukum Kepailitan Indonesia, *Jurnal Usm Law Review*, Vol.6, no.3, 2023, page.1267.

⁸ Atika Ismail., Analisis Alternatif Restruturisasi Utang Atau Penutupan Perusahaan Pada Pandemi Covid-19 Melalui PKPU, Kepailitan Dan Likuidasi, *Jurnal Kepastian Hukum dan Keadilan*, Vol.3, no.1, 2022, page.47.

⁹ Melissa B. Jacoby., Corporate bankruptcy hybridity, *University of Pennsylvania Law Review*, Vol.166, no.7, 2018, page.1717.

legal consequences involve the court appointing a curator. The curator is responsible for managing the debtor's assets, inventorying them, and seeking debt collection for creditor repayment. The bankruptcy process may end in liquidation, where the debtor's assets are sold to settle debts, or reorganization, where the company is given the chance to restructure its debts and continue operations.¹⁰

In bankruptcy situations, companies often seek alternatives to avoid liquidation and maintain operations. One such alternative is the mechanism of settlement, where the debtor offers partial payment of their debt to creditors. If the creditors agree, the debtor is released from the remaining unpaid debt.¹¹ This settlement allows companies to avoid a complete operational shutdown, enabling business processes to continue, albeit in a limited capacity. Another alternative is the Suspension of Debt Payment Obligations, which allows companies to formulate a financial restructuring plan. Suspension of debt payment obligations offers a time frame to devise a more measured strategy for managing financial obligations, intending to maintain the company's going concern. With this, companies not only focus on debt repayment but also on maintaining long-term business stability. Thus, a deep understanding of the going concern concept, bankruptcy decisions, and alternative debt resolution methods is crucial for business actors and stakeholders in facing financial crises more effectively. This helps to preserve the company's value and reduce negative impacts for all parties involved.

2. Research Methods

This research employs a qualitative method with a normative legal approach aimed at analyzing the legal aspects in the context of bankruptcy and the suspension of debt payment obligations based on Law Number 37 of 2004. A descriptive research method is adopted to provide an accurate, factual, and systematic overview of relevant facts concerning bankruptcy, particularly related to the rights of debtors and creditors. Literature review is conducted by collecting secondary data from various written sources such as regulations, scientific journals, reference books, and published financial reports. The primary focus of this research is to analyze Law Number 37 of 2004, which plays a crucial role in regulating the bankruptcy process and alternative debt resolution through the suspension of debt payment obligations and settlements. The normative legal approach is used to deeply examine how legal rules are applied in practice, including their strengths and weaknesses. The analysis results provide insights into the need for amending the law to improve several provisions that are still considered weak and to create a more equitable balance between the rights of creditors and debtors in addressing bankruptcy issues in Indonesia.

3. Results

3.1. Characteristics of Bankruptcy Law in Indonesia

In Indonesia, bankruptcy is a legal instrument applied to individuals or companies

¹⁰ Raden Besse Kartoningrat, and Isetyowati Andayani., *Mediasi Sebagai Alternatif dalam Pengurusan dan Pemberesan Harta Pailit oleh Kurator Kepailitan*, *Halu Oleo Law Review*, Vol.2, no.1, 2018, page.295.

¹¹ Zingapi Mabe., *Alternatives to bankruptcy in South Africa that provides for a discharge of debts: lessons from Kenya*, *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, Vol.22, no.1, 2019.

that cannot fulfill their debt payment obligations.¹² This condition can arise from various factors such as bankruptcy, financial difficulties, or other reasons. Bankruptcy in Indonesia is not only related to bankruptcy or financial difficulties but can also be triggered by the debtor's non-compliance with their payment obligations. Thus, bankruptcy does not always reflect the solvency of the debtor's assets or financial condition.¹³ Instead, it often relates to the debtor's reluctance or failure to meet their payment obligations. External factors such as economic fluctuations, regulatory changes, or market instability can affect the debtor's ability to pay debts on time. Meanwhile, internal factors such as poor financial management, misguided business strategies, or internal conflicts within the company can also contribute to the failure to make payments.¹⁴ Therefore, bankruptcy is not just about insolvency; it can also result from a combination of external and internal factors that prevent the debtor from being able or willing to fulfill their obligations.¹⁵

The Indonesian bankruptcy system has several unique characteristics. One of them is the minimal requirement for declaring bankruptcy, which is the existence of overdue debts and at least two creditors.¹⁶ This requirement allows companies that are still solvent to be declared bankrupt, which can trigger significant issues. A major concern is the absence of a bankruptcy test requirement before the court declares bankruptcy. This opens up opportunities for creditors with bad faith to misuse bankruptcy law, pressuring debtors who may still have the ability to pay off their debts. The implementation of a bankruptcy test is considered important to protect debtors from the misuse of the system by creditors.¹⁷ This test can help identify whether the debtor is truly in a financial condition preventing them from paying their debts, ensuring that only companies that cannot meet their obligations can be declared bankrupt.¹⁸

The legal policy of bankruptcy within the legal system in Indonesia is more oriented toward its function as a debt collection tool rather than as a mechanism that provides solutions for debtors facing financial difficulties, bankruptcy, or insolvency.¹⁹ This legal policy approach does not differentiate whether the debtor's inability to pay

¹² Rai Mantili, and Putu Eka Trisna Dewi., Penundaan Kewajiban Pembayaran Utang (PKPU) Terkait Penyelesaian Utang Piutang Dalam Kepailitan, *Jurnal Aktual Justice*, Vol.6, no.1, 2021, page.9.

¹³ Stephan Madaus., Leaving the shadows of US bankruptcy law: a proposal to divide the realms of insolvency and restructuring law, *European Business Organization Law Review*, Vol.19, no.3, 2018, page.627.

¹⁴ Rizqi Muallif, and Elfrida Ratnawati Gultom., Aspek Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Dalam Pembangunan Ekonomi Nasional, *UNES Law Review*, Vol.5, no.4, 2023, page.1755.

¹⁵ Fahamsyah, Ermanto, Vicko Taniady, Ramadhan Dwi Saputra, Kania Venisa Rachim, and Glenn Wijaya., The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism be Applied?, *Volkgeist: Jurnal Ilmu Hukum dan Konstitusi*, Vol.7, no.1, 2024.

¹⁶ Ida Nadirah., Studi Komparatif Terhadap Kepailitan Perusahaan Asuransi Syariah Menurut Hukum Islam Dan Undang-Undang No 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU), *Iuris Studia: Jurnal Kajian Hukum*, Vol.2, no.2, 2021, page.259.

¹⁷ M. Hadi Shubhan., Misuse of bankruptcy petitions by creditors: The case of Indonesia, *International Journal of Innovation, Creativity and Change*, Vol.10, no.6, 2019, page.197.

¹⁸ M. Hadi Shubhan., Legal protection of solvent companies from bankruptcy abuse in Indonesian legal system, *Academic Journal of Interdisciplinary Studies*, Vol.9, no.2, 2020, page.145.

¹⁹ Ossy Abel Prasetya, and Putri Raodah., Kedudukan Hukum Kreditor Separatis Terhadap Eksekusi Jaminan Dalam Kepailitan Yang Hartanya Lebih Kecil Daripada Utangnya, *Commerce Law*, Vol.3, no.2, 2023.

debts is due to factors of incapacity or unwillingness. Bankruptcy is often activated to pressure debtors who fail to fulfill their payment obligations, without considering the underlying financial issues.²⁰ This indicates that the legal policy of bankruptcy in Indonesia tends to prioritize enforcement actions against debtors who do not meet their financial obligations rather than providing comprehensive solutions to financial situations.

Legal reform in bankruptcy in Indonesia has occurred progressively since 1998 with the enactment of Law No. 4 of 1998 concerning the Enactment of Government Regulation in Lieu of Law No. 1 of 1998 concerning Amendments to the Bankruptcy Law, which was later replaced in 2004 by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Law No. 4 of 1998 brought significant changes to the material requirements for filing a bankruptcy petition by simplifying the petition requirements compared to previous regulations.²¹ Furthermore, Law No. 37 of 2004 tightened the requirements by emphasizing that the debts serving as the basis for filing for bankruptcy are those that have not been fully paid. This demonstrates that Law No. 37 of 2004 reduces the leeway for debtors facing payment issues to restructure their debt payment schemes. Consequently, changes in bankruptcy law indicate a shift toward a stricter approach in handling debtors' financial situations, focusing on collecting unpaid debts rather than providing opportunities for debt restructuring.²²

Article 2 paragraph (1) with Article 8 paragraph (4) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations does not require the existence of insolvency conditions for the debtor. The requirements for filing a bankruptcy petition regulated in these articles only mention two main conditions along with an additional requirement.²³ The two main conditions are the existence of unpaid and collectible debts and the presence of at least two creditors. The additional requirement is using a simple proof system in the bankruptcy process. Thus, the bankruptcy requirements outlined in this law emphasize the aspects of unpaid debts and the number of creditors involved without explicitly considering the debtor's financial condition.²⁴ This indicates that the bankruptcy legal system in Indonesia does not necessitate proof of the debtor's insolvency as a primary condition for filing for bankruptcy but rather focuses on debt repayment and the number of creditors involved.

The Indonesian bankruptcy system, governed by Law No. 37 of 2004 concerning

²⁰ Agustina Ni Made Ayu Darma Pratiwi, and Putu Sekarwangi Saraswati., Tinjauan Yuridis Undang-Undang Nomor 34 Tahun 2004 Tentang Kepailitan Dan PKPU Mengenai PKPU Dalam Hal Debitur Pailit Dimasa Covid 19, *Media Keadilan: Jurnal Ilmu Hukum*, Vol.12, no.1, 2021, page.67.

²¹ Muhammad Nurohim, Yusuf Hanafi, and Asmaiyani Asmaiyani., Application for Bankruptcy by Creditors Perspective of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations (Study of Decision Number 3/Pdt. Sus-Pailit/2021/PN Niaga Jkt. Pst), *Legal Brief*, Vol.11, no.2, 2022, page.1417.

²² Didi Sukardi., The Legal Responsibility of Debtor to Payment Curators in Bankruptcy Situation, *Jurnal Pembaharuan Hukum*, Vol.8, no.2, 2021.

²³ Zeffrianto Sihotang., Duties and Authority of PKPU Management Based on Law No. 37 Of 2004 Concerning Bankruptcy and Suspension Debt Payment Obligations, *Journal of Law Science*, Vol.3, no.1, 2021, page.19.

²⁴ Binov Handitya., Redesign the Relevance of Justice in Debtor Protection Related to Parate Executions Performed by Separate Creditors in Liability Agreements, *Jurnal Akta*, Vol.8, no.4, 2021, page.225.

Bankruptcy and Suspension of Debt Payment Obligations, adheres to the principle of collective debt, where the debtor's assets are seized and used to pay off debts to creditors collectively.²⁵ However, this law does not regulate the principle of debt forgiveness, meaning that the debtor remains liable for the remaining debt even after the bankruptcy process is completed. This law has often been criticized for not adequately protecting the rights of debtors and still opening opportunities for legal abuse by creditors.²⁶ Additionally, the high rate of bankruptcies, especially due to the impact of the pandemic, highlights the weaknesses in the bankruptcy legal system in Indonesia, which requires reform to create a balance between the interests of debtors and creditors. Further amendments are expected to address fundamental issues in bankruptcy proceedings and provide fairer protection for all parties involved.²⁷

3.2. Bankruptcy Decision and Legal Consequences

Bankruptcy is a legal process in which a debtor who is unable to pay their debts is declared bankrupt by a commercial court. In this process, the court determines that the debtor is legally incapable of fulfilling their financial obligations to creditors.²⁸ Once a bankruptcy decision is rendered, the debtor's assets will be under the supervision of a trustee, who is responsible for managing and distributing the debtor's assets to creditors in accordance with applicable laws. The trustee is tasked with inventorying, valuing, and selling the debtor's assets to repay existing debts. This process ensures that creditors receive a fair share of the debtor's remaining assets. Additionally, bankruptcy also aims to provide legal certainty for creditors and resolve financial disputes collectively.²⁹

According to Article 1 number (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, bankruptcy is a legal process in which all of the debtor's assets are seized generally and managed by a trustee under the supervision of a supervising judge.³⁰ This process aims to distribute the debtor's assets among all entitled creditors fairly. The trustee has an essential responsibility in inventorying, managing, and distributing the debtor's assets in accordance with the relevant legal provisions while considering the rights of each creditor. Bankruptcy provides a mechanism for collective debt resolution, where the debtor's

²⁵ Bicar Franki Leonardo Manurung, Elza Syarief, and Rina Shahriyani Shahrullah., Legal Consequences of Bankruptcy and Postponement of Debt Payment Obligations: Are They Similar?, *Journal of Law and Policy Transformation*, Vol.7, no.1, 2022, page.89.

²⁶ Kurnia Toha, and Sonyendah Retnaningsih., Legal policy granting status of fresh start to the individual bankrupt debtor in developing the bankruptcy law in Indonesia, *Academic Journal of Interdisciplinary Studies*, Vol.9, no.2, 2020, page.156.

²⁷ Cintya Sekar Ayu Permatasari, and Octa Nadia Mellynda., Temporary Measures on Bankruptcy: Alternatives to the Moratorium on Act 37/2004 in Resolving Indonesian Bankruptcy During the COVID-19 Pandemic, *Lex Scientia Law Review*, Vol.5, no.2, 2021, page.40.

²⁸ Susilawati Ussy RafaRayya., Work Relationship Terminated Employees Legal Protection to Get Severance Payment from PT. Kertas Lecess Related to Law of Bankruptcy and Law of Labor, *Widya Yuridika*, Vol.3, no.1, 2020, page.25.

²⁹ Rumawi Rumawi, Siti Sariroh, Udiyo Basuki, Mellisa Towadi, Moh Ali, and Supianto Supianto., Karakteristik Perseroan Terbatas Perorangan dalam Hukum Indonesia, *Jurnal Hukum Bisnis*, Vol.12, no 02, 2023, page.73.

³⁰ Yulianti Wiyono, Slamet Suhartono, and Endang Prasetyawati., Bankruptcy according to the bankruptcy law and postponement of payment perspective of creditor legal protection, *Technium Social Sciences Journal*, Vol.56, 2024, page.117.

remaining assets are distributed proportionally based on the priority of creditors established by law.³¹ This process is overseen by a supervising judge to ensure transparency and fairness in its implementation. Bankruptcy protects the interests of creditors, provides legal certainty, and prevents prolonged disputes between debtors and creditors.

The going concern paradigm in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is highly relevant in the context of bankruptcy proceedings.³² The going concern principle emphasizes the continuous operation of a business entity without interruption. However, when a debtor faces serious financial difficulties, this principle is put to the test. A bankruptcy ruling, as the initial step in the bankruptcy process, signifies that the debtor is no longer considered an entity capable of operating sustainably according to the going concern paradigm.³³ The impact of a bankruptcy ruling is significant within the legal framework of bankruptcy. After a bankruptcy decision, no ruling can be enforced against the debtor's assets. This indicates that the going concern paradigm no longer applies to a debtor who has been declared bankrupt. Legal processes come to a halt, and the focus shifts to the management and distribution of the debtor's wealth to creditors. The going concern paradigm is replaced by a paradigm that emphasizes the equitable redistribution of the debtor's assets according to applicable legal provisions in bankruptcy.³⁴

This ruling will have legal consequences when the Commercial Court declares a debtor bankrupt.³⁵ First, the debtor's wealth that falls into the bankruptcy estate becomes the object of general seizure, encompassing all assets owned by the debtor at the time the bankruptcy ruling is pronounced, as well as any wealth acquired during the bankruptcy process. Second, bankruptcy only applies to the bankruptcy estate and does not affect the debtor's personal status, allowing the debtor to retain personal freedoms such as getting married. Third, the debtor loses the right to manage and control their wealth included in the bankruptcy estate from the moment the bankruptcy ruling is pronounced. Fourth, any obligations entered into by the debtor after the bankruptcy ruling cannot be settled from the bankruptcy estate unless they benefit the bankruptcy estate. Fifth, the management of the bankruptcy estate is carried out by a trustee for the benefit of both creditors and the debtor. Sixth, all claims and lawsuits related to the rights and obligations of the bankruptcy

³¹ Agus Nurudin., Bankruptcy and postponement of debt payments for large companies, *International Journal of Economics and Business Administration*, Vol.8, no.2, 2020, page.389.

³² Zeto Bachri, Suhariningsih Suhariningsih, Sukarmi Sukarmi, and Iwan Permadi., Legal protection for debtors in determining the application requirements for suspension of debt payment obligations, *International Journal of Research in Business and Social Science (2147-4478)*, Vol.10, no.6, 2021, page.395.

³³ Japansen Sinaga, and Dona Bella Faustine Law., Akibat Hukum Kepailitan Perseroan Terbatas Sebagai Badan Hukum Atas Merek Dagang Dalam Boedel Pailit: Akibat Hukum Kepailitan Perseroan Terbatas Sebagai Badan Hukum Atas Merek Dagang Dalam Boedel Pailit, *Law Pro Justitia*, Vol.5, no.2, 2020, page.10.

³⁴ Holyness Singadimeja, Rai Mantili, and Ema Rahmawati., The Implementation of Legal Certainty Principles in the Reporting Process of Debtor Bankruptcy Settlement by Curator to Supervisory Judge in Bankruptcy Practice, *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, Vol.5, no.3, 2019, page.515.

³⁵ Rachmat Suharto., The bankruptcy characteristics of cooperative legal entities, *Hang Tuah Law Journal*, 2019, page.11.

estate must be brought by or against the trustee. Seventh, all claims aimed at obtaining settlement from the bankruptcy estate, including from the debtor's own assets, must be submitted through a matching process. Finally, creditors with guarantees over specific properties may exercise their execution rights as if no bankruptcy process were underway, with an execution suspension of up to 90 days after the bankruptcy ruling is pronounced.

3.3. Debt Settlement Alternatives in Bankruptcy

Debt Payment Obligation Suspension is an alternative debt resolution aimed at avoiding bankruptcy. According to Article 222 paragraph (2) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, a debtor who is unable to continue paying due and collectible debts has the right to apply for suspension of debt payment obligations. The purpose of suspension of debt payment obligations is to formulate a peace plan that includes an offer to pay part or all of the debt to its creditors.³⁶ Suspension of debt payment obligations essentially only applies to concurrent creditors, although Article 222 paragraph (2) of Law No. 37 of 2004 does not explicitly mention the term "concurrent creditors" as in Law No. 4 of 1998. This indicates that the suspension of debt payment obligations is designed to address debts payable to all creditors without distinguishing between the type or status of the creditor. Suspension of debt payment obligations allows the debtor to propose a peace plan that can satisfy all parties with claims against the debt, without needing to involve the bankruptcy process.³⁷

Debt matching is a crucial stage in the bankruptcy process, as it determines the balance and order of rights among each creditor. This stage must be completed no later than 14 days from the time the bankruptcy declaration becomes legally binding. The supervising judge has the authority to set deadlines for submitting claims, deadlines for tax verification, and the date, time, and place for creditor meetings to conduct debt matching. The trustee reconciles calculations with existing records and confirms that the debtor has gone bankrupt. In the debt matching meeting, the supervising judge reads the list of claims that have been temporarily recognized and those disputed by the trustee for discussion in the meeting. The debtor is required to attend this meeting to provide information regarding the causes of bankruptcy and the status of the bankruptcy estate. The debtor's presence in the debt matching meeting is important to facilitate the process and provide clarification on the information needed by the supervising judge.³⁸

In the context of the Bankruptcy Law and Suspension of Debt Payment Obligations, the going concern paradigm becomes relevant in efforts to resolve bankruptcy cases. In the bankruptcy process, efforts for reconciliation are a crucial step taken after the

³⁶ Stevi G. Tampemawa., *Prosedur dan Tatacara Penundaan Kewajiban Pembayaran Utang (PKPU) Menurut Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, *Lex Privatum*, Vol.7, no.6, 2019.

³⁷ Rizka Rahmawati., *Comparison of Laws for Settling Debt Remaining Bankruptcy Between Indonesian and Dutch Countries*, *Notariil Jurnal Kenotariatan*, Vol.4, no.1, 2019, page.19.

³⁸ Isis Ikhwansyah, and Lambok Marisi Jakobus Sidabutar., *The Implementation of Insolvency Test on Debtors' Bankruptcy in Performing the Principle of Justice*, *Jurnal Media Hukum*, Vol.26, no.2, 2019, page.245.

court issues a bankruptcy ruling.³⁹ Although the going concern paradigm emphasizes the operational continuity of the company, the reality in the context of bankruptcy necessitates a shift in this paradigm. Debtors experiencing bankruptcy must adapt to situations that compel them to offer reconciliation to creditors as an alternative to address debts they cannot fully pay. Furthermore, the review process can also influence the paradigm of going concern in bankruptcy. Even after a bankruptcy ruling has been issued, legal efforts for a review can still be pursued based on certain grounds. This indicates that, within the context of bankruptcy law, the going concern principle must be interpreted flexibly, considering the dynamics and complexities involved in the bankruptcy resolution process.⁴⁰

After a bankruptcy ruling has obtained permanent legal force, there is still the possibility of filing for a review. Legal efforts for a review can be initiated for two main reasons. First, if new evidence is deemed significant that, if known during the previous trial stage, is believed to lead to a different ruling.⁴¹ Second, a review may be filed if there is a manifest error in the ruling of the Commercial Court or the ruling judge concerned. The review must be submitted no later than 180 days after the date the ruling requested for review has obtained permanent legal force. However, there is an exception based on Article 295 paragraph (2) letter a of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, where if the reason for the review is the existence of important new evidence, the review must be conducted no later than 30 days after the ruling requested for review has obtained permanent legal force.⁴²

4. Conclusion

The bankruptcy system in Indonesia plays a crucial role in addressing the issues of debtors who are unable to fulfill their obligations. The bankruptcy process aims to protect the rights of creditors by seizing all of the debtor's assets and distributing them fairly under the management of a curator and the supervision of a judge. The Suspension of Debt Payment Obligations and reconciliation are important alternatives in Indonesian law for settling debts and avoiding bankruptcy. The suspension of debt payment obligations provides time for the debtor to formulate a debt restructuring plan that creditors can agree upon. Reconciliation allows the debtor to offer partial debt payments with the condition of being released from the remaining debt if the creditors agree. One critical step in this process is the matching of receivables, where the rights of creditors are verified and prioritized to determine the legitimate number of receivables. This ensures that the distribution process is conducted fairly. If errors in the ruling or new significant evidence emerges, creditors or debtors can file for a review to revise the decision already made. Thus, the

³⁹ Kurnia Toha, and Sonyendah Retnaningsih., Legal policy granting status of fresh start to the individual bankrupt debtor in developing the bankruptcy law in Indonesia, *Academic Journal of Interdisciplinary Studies*, Vol.9, no.2, 2020, page.159.

⁴⁰ Sutrisno Sutrisno., Legal Protection for Debtors over Separatist Creditors' Rights Related to Bankruptcy, *Jurnal Akta*, Vol.7, no.1, 2020, page.441862.

⁴¹ Elena Valeryevna Vinogradova, Svetlana Ibragimovna Chelakhsaeva, Denis Anatolievich Kratiuk, Adelina Viktorovna Oganezova, and Olga Yevgenievna Lebedeva., Prospects of the extrajudicial settlement by enforcement authorities of bankruptcy procedures, *The Journal of Social Sciences Research*, 2018, page.370.

⁴² Serlika Aprita., Bankruptcy Moratorium Plan and Suspension of Debt Payment Obligations Reviewed from Legal Protection of Creditors, *Syiar Hukum: Jurnal Ilmu Hukum*, Vol.20, no.1, 2022, page.10.

suspension of debt payment obligations and reconciliation mechanisms provide a more flexible solution than bankruptcy while still protecting the rights of both creditors and debtors.

Although Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations has provided a clear legal foundation, it still requires amendments to address several shortcomings, such as implementing bankruptcy tests that can prevent abuse by malicious creditors. Regulatory reforms are also needed to balance the interests of debtors and creditors. This research offers a deep understanding of the bankruptcy process in Indonesia, highlighting the importance of comprehending the rules and mechanisms involved. It reinforces awareness of the legal processes involved in resolving bankruptcy and the importance of appropriate strategies for efficiently managing debt and avoiding bankruptcy issues in the future.

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#37175 Summary

Submission

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Title and Abstract

Title	The Going Concern Paradigm in Bankruptcy Process Reviewed from Regulations in Indonesia
Abstract	<p>Companies often seek alternative debt resolution methods in bankruptcy to avoid liquidation or operational shutdown. One such alternative is through a settlement, where the debtor offers partial payment of the debt to creditors with the condition of being released from the remaining debt. Additionally, the suspension of debt obligations allows companies to develop a financial restructuring plan that can ensure long-term operational sustainability. Thus, the purpose of this study is important to understand how bankruptcy decisions, and debt settlement alternatives for business actors and stakeholders. This research uses a descriptive approach by analyzing relevant legislation, legal literature, and case studies to understand the mechanisms and legal implications of the bankruptcy process. The secondary data used comes from sources such as laws, court rulings, and relevant legal literature. The primary focus of this research is to analyze Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The study results indicate that the bankruptcy process in Indonesia relies on mechanisms such as debt payment suspension, settlement, and judicial review to resolve debts and ensure business continuity. The going concern paradigm is integrated into these processes, although in a different context from the principle in civil law.</p>

Indexing

Keywords	Bankruptcy; Legal Consequences; Going Concern; Settlement Agreements; Debt Resolution
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Supporting Agencies

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References

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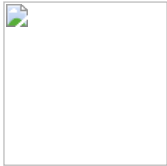
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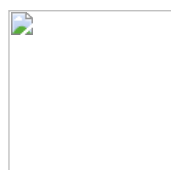
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