

## EQUILIBRIUM THEORY APPROACH TO COMPLETING BANKRUPTCY: BALANCING THE RIGHTS OF CREDITORS AND DEBTORS IN THE ERA OF THE DIGITAL ECONOMY

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### Abstract

In bankruptcy cases, creditors' claims to a debtor's assets are frequently underrated especially when those assets are technology-based or intellectual property. Because existing valuation systems lag behind digital realities, case resolutions often tilt unfairly between creditor and debtor interests. The purpose of the research is to explore a legal approach through equilibrium theory to analyze the settlement of bankruptcy cases between creditors and debtors, as well as to evaluate whether bankruptcy regulations in Indonesia are adequate in accommodating the development of the digital economy. This research is based on a research method with a normative juridical approach. The results of this study finds that applying equilibrium theory to bankruptcy law balances creditor and debtor interests—accounting for claim priorities, debtor rights, personal assets, and debt restructuring. Indonesia's bankruptcy framework must now evolve for the digital economy through a more adaptive, transparent, and sustainable legal approach.

**Keywords:** Equilibrium Theory; Bankruptcy; Creditor's Rights; Debtor's Rights; Digital Economy.

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### Introduction

The increasing business development in Indonesia has given rise to new problems such as unstable financial conditions and financial crises which often lead to serious financial difficulties, even bankruptcy. (Selfeny, 2024) Bankruptcy case issues are regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PKPU). The rapid development of business in the digital economy era has created new challenges in implementing this rule, especially regarding the resolution of cases involving technology-based digital company assets or intellectual property that are difficult to measure with systems that do not fully use technology. (Aprita & Adhitya, 2019) Start-up company (startup) and other technology companies developing in the digital economy era operating in the digital platform, e-commerce and fintech sectors. The company is at risk of bankruptcy because it does not pay attention to long-term financial stability due to its business model based on rapid growth.

The phenomenon of start-up companies that have mushroomed in Indonesia, cannot withstand the challenges of the economic crisis and choose to cease operations. Fabelio's case is a company startup which operates in the furniture sector. Fabelio is a clear example of a company startup who was declared bankrupt by the Commercial Court at the Central Jakarta District Court in decision no. 47/Pdt.Sus-PKPU/2022/PN.Niaga.JKT.PST, on October 5 2022. (Feirisa, 2023) The cause of bankruptcy experienced by Fabelio could have occurred because it failed to pay the salaries of its employees and vendors last year, sales were not can cover operational expenses, closing 14 of their 15 offline outlets, furniture sales dropping drastically, and employee cuts in 2021. A total of 118 startup companies have gone bankrupt since 2018, 38 percent of them were caused by running out of capital. So they find it difficult to get an injection of fresh funds from investors. Another reason is that these startup companies are not needed by the market, namely the percentage is 35 percent. Startup companies can survive if their products offer problem

solving or solutions to problems that exist in society. Furthermore, there are 20% of startups that close because they cannot compete with startups operating in the same field.

The bad business model that was implemented also resulted in startups dying before they developed, the proportion was 19%. And what is hampered by regulations is the percentage of 18%. Then 15% of startups close due to cost or price problems. A startup team that is inappropriate in carrying out operations contributes to 14% startup bankruptcy. There are 10% of startups that fail because the product is at the wrong time. As many as 7% of startups go bankrupt because there is disharmony between teams or with investors. The last two reasons startups went bankrupt were bad business pivots as well as lack of interest and fatigue at 6% and 5% respectively. (Rizky Dwinanto, 2019)

In 2023, in commercial courts there will be an increase in bankruptcy and PKPU cases, where the majority of companies are unable to fulfill their debt obligations. Resolving bankruptcy cases in startup companies faces different dynamics because company assets based on digital, technology and intellectual property are difficult to measure using traditional methods. (Kusumawati, 2021) So this creates legal uncertainty and causes an imbalance in the process of resolving bankruptcy cases between creditors and debtors.

Digital-based company assets, technology and intellectual property in startup companies have significant value but in the context of the traditional bankruptcy law system it is difficult to measure. (Candini & Alka, 2022) So when a startup company experiences a financial crisis, the resolution often uses a bankruptcy law system designed to resolve bankruptcy cases of traditional companies, where in traditional companies the physical assets are the center of attention. As a result, the debtor's interests are often ignored, while the creditor's interests are prioritized in the debt settlement process. (Badri, 2021) This research aims to explore bankruptcy resolution in balancing creditor and debtor rights in the digital economy era using Equilibrium Theory. This theory is used to create a balance between creditor and debtor rights in the bankruptcy process in the digital economy era. This research integrates a theory that is rarely used in bankruptcy law analysis, namely Equilibrium Theory from economics. Through this research, it is hoped that approaches that are usually applied in the context of economic markets can be adapted to the legal system, especially bankruptcy law, to optimize the balance between creditors and debtors in the bankruptcy resolution process in the digital economy era and evaluate whether bankruptcy regulations in Indonesia are adequate in accommodating development of the digital economy.

Previous research written by Risca Selveny in her research stated that the company legal system in Indonesia in resolving bankruptcy cases is still complicated, inefficient and not transparent. (Selfeny, 2024) The use of blockchain technology is an innovative solution to improve the process of resolving bankruptcy cases more efficiently, transparency, security, accountability and collaboration. The use of Equilibrium Theory in this research is expected to fill this gap and offer a more progressive and relevant solution to the process of resolving bankruptcy cases in the digital economy era.

### Research Problems

The problems in this research are, first, how can the application of Equilibrium Theory in the bankruptcy process create a balance of rights between creditors and debtors? and second how can bankruptcy regulations in Indonesia be adapted to face the development of the digital economy?

## Research Method

This research method is structured descriptively with a focus on in-depth understanding of bankruptcy resolution in balancing the rights of creditors and debtors in the digital economy era. This research uses a normative juridical approach. (Soekanto, 2003) Normative juridical methods are used to analyze bankruptcy resolution in balancing the rights of creditors and debtors in the digital economy era using equilibrium theory. This theory can be used to analyze the bankruptcy resolution process between creditors and debtors who have conflicting interests. So this theory has great potential in creating balance between the parties in dispute.

This research uses a type of data, namely secondary data. Secondary data comes from library materials which include written official documents, such as legal journals, textbooks, research reports, and scientific articles. (Sunggono, 2003) The official documents used in this research used relevant data in accordance with the legal issues and objects studied. Researchers collected secondary data from relevant legal literature, statutory regulations, scientific journals, as well as official online sources, such as bankruptcy case databases. Analysis was carried out on regulations and policies for resolving bankruptcy cases in the digital economy era.

The data obtained will be analyzed using a qualitative analysis method. The qualitative method is suitable for this research because it focuses on theory exploration, legal analysis, policy interpretation, and an in-depth understanding of the balance between creditors' and debtors' rights in bankruptcy in the digital era. With this approach, the study can provide a more comprehensive conceptual insight rather than merely quantitative measurement. Analysis carried out sequentially as follows: (a) descriptive analysis: The data that has been collected will be analyzed qualitatively using a descriptive method, namely by describing the resolution of bankruptcy cases in the digital economy era. (b) Content analysis: To explore the meaning contained in resolving bankruptcy cases in the digital economy era using equilibrium theory. (c) Data triangulation: Involves cross-checking data from various sources to increase the validity of research results.

## Discussion

### **Application of Equilibrium Theory in the bankruptcy process in creating a balance of rights between creditors and debtors**

Equilibrium Theory, is a theory that comes from economics. This theory describes the conditions in which the economic system is in a balance between rights and obligations.

Equilibrium is defined as interactions that occur in human life activities that can run in harmony and balance, and have an impact on human welfare. (Hidayat & Arifin, 2019) Equilibrium is described in economic activity as a condition where economic actors do not experience losses, because it creates market balance by maintaining price balance and quantity balance of buyers or sellers or demand and supply. With market balance, price balance and quantity balance can be realized. To realize market balance, values such as honesty, fairness, openness and healthy competition must be implemented. (Azzahra Nur & Batubara, 2023)

Implementation in balance is also inseparable from rights and obligations. Rights and obligations are likened to a piece of metal currency that cannot be separated, if the two are separated then there will not be a balanced condition. The implementation of the obligation that is appropriate in accordance with the rules that have been determined, then the rights received are based on the implementation of the obligation. While the

obligations performed are not in accordance with the rules that have been determined, then the rights received are not appropriate either.

The application of factors in balancing the implementation of rights and obligations in bankruptcy law as a reference for society as well as the application of generally accepted legal principles must be based on the principle of fairness and the principle of equality before the law. The implementation of creating a fair balance between creditors and debtors in the bankruptcy resolution process often occurs in the opposite position. The position of the creditor to obtain repayment of receivables as much and as quickly as possible, as well as the position of the debtor to maintain assets and continue running his business again makes the bankruptcy resolution process complicated. Therefore, equilibrium theory plays an important role in bridging these opposing interests.

Equilibrium theory is a theory that balances the rights and obligations between parties related to the law. In the context of bankruptcy law, this theory is used to balance the rights and obligations between creditors and debtors in the bankruptcy resolution process. The embodiment of this theory is focused on legal provisions that regulate payment priorities, distribution of assets, and certain protections for debtors who are declared bankrupt. In the bankruptcy resolution process, there are several goals to be achieved, namely justice and economic efficiency. The justice referred to is the allocation of the debtor's remaining assets proportionally among the creditors, while economic efficiency aims to minimize economic losses for all parties, namely debtors and creditors.

The application of equilibrium theory applies several legal mechanisms that attempt to maintain a balance of rights and obligations between creditors and debtors, namely (1) equal distribution between creditors of the same status, of the remaining assets after the assets are collected and sold in the bankruptcy process, (2) division of assets based on priority based on creditors. Separatist creditors as collateral holders because they have special rights over certain assets take precedence over concurrent creditors as unsecured creditors, as well as other creditors who have pre-village certain cases in bankruptcy. However, it must be ensured that it remains fair to obtain the rights of each creditor to the remaining assets remaining after payment to priority creditors. (3) release of the debtor's rights to personal assets he owns, such as a place to live and living necessities. (4) debt restructuring that needs to be reconsidered with creditors to reduce conflicts and minimize losses. Through this stage, it allows the debtor to avoid bankruptcy and can continue his business while also giving creditors the opportunity to obtain debt payments from the debtor in stages.

### **Bankruptcy regulations in Indonesia can be adapted to face developments in the digital economy**

In the era of the digital economy, challenges in the bankruptcy process are increasingly complex, especially related to the valuation of digital assets that are difficult to integrate in the traditional bankruptcy legal system. One real example is the bankruptcy case of Fabelio, a furniture startup that was declared bankrupt by the Central Jakarta Commercial Court through Decision No. 47/Pdt.Sus-PKPU/2022/PN. Niaga.JKT.PST.

As a technology-based company, Fabelio not only owns physical assets such as warehouses and inventory, but also high-value digital assets, such as e-commerce platforms, customer databases, and intellectual property rights integrated into its operational systems. However, in the liquidation process, the traditional bankruptcy system focuses only on tangible assets that can be easily valued and auctioned to pay off debts to creditors.

Fabelio's digital assets, such as customer data and e-commerce systems, do not have a clear valuation mechanism in Indonesia's bankruptcy law. This causes an imbalance between the rights of creditors and debtors, where creditors experience difficulties in executing digital assets as a form of debt repayment, while debtors lose the opportunity to optimize their non-physical assets.

This situation shows the need for bankruptcy law reform in Indonesia to be more adaptive to the characteristics of digital companies. Some of the solutions that can be proposed include: (1) Standardize digital asset valuation methods, so that assets such as technology platforms and customer data can be integrated in the liquidation process. (2) Regulatory updates related to digital bankruptcy, including the recognition of intellectual property as a valuable asset that can be used for debt repayment. (3) Strengthening cooperation between legal and technology experts, in order to create a more comprehensive mechanism in handling the bankruptcy of digital companies.

Bankruptcy law in Indonesia is regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. The aim of this law is to provide balanced legal protection between creditors and debtors. (Fatoni & Gultom, 2023). Bankruptcy is a general confiscation of all assets of a bankrupt debtor, the management and settlement of which is carried out by a curator under the supervision of a supervising judge.

The main objective of the bankruptcy resolution process is to distribute assets resulting from debts from debtors to creditors by a curator supervised by a supervisory judge. (Fatoni & Gultom, 2023) Bankruptcy is implemented to prevent separate confiscations or executions by creditors and replace them with joint confiscations so that the debtor's assets can be distributed fairly to all creditors based on their respective rights. Basically, bankruptcy institutions function as a solution for the parties when the debtor is unable to pay. This institution has two main roles, namely: (1) As a guarantee for creditors that debtors will not commit fraudulent acts and remain responsible for all their debts to creditors. (2) As protection for creditors from the possibility of simultaneous execution by other creditors. Thus, the provisions regarding bankruptcy, both as an institution and as a special legal remedy, are a consistent concept in accordance with the provisions of Articles 1131 and 1132 of the Civil Code.

Based on the two provisions above, if the debtor is unable to pay their debts, they can file for bankruptcy so that the remaining assets can be managed to help settle debts to creditors, with distribution done proportionally. Kartini Muljadi explains that bankruptcy institutions exist because creditors often face unfairness when seeking repayment if the debtor owes multiple parties. In cases where a debtor has numerous creditors and insufficient assets, creditors might compete aggressively to get paid first, leaving later creditors unpaid when the assets are depleted, which is both unfair and disadvantageous. The Bankruptcy Law defines several parties involved in the bankruptcy process, namely: (1) Creditors, as per Article 1, point 2, are individuals or entities holding receivables due to agreements or legal provisions, collectible in court. (2) Debtors, as per Article 1, point 3, are those with debts based on agreements or laws, repayable through court claims. (3) Curators, as per Article 1, point 5, refer to the Inheritance Property Office or an individual appointed by the court to oversee and manage the bankrupt debtor's assets under the supervision of a Supervisory Judge. (4) Supervisory Judge. (Sari & Joesoef, 2020)

Article 1 number 8 of the Bankruptcy Law regulates that a supervisory judge is a judge appointed by the court in a bankruptcy decision or a decision to postpone debt payment obligations. Based on the provisions of the Bankruptcy Law, not all debtors who

fail to pay their debts can be filed for bankruptcy. Article 2 paragraph 1 of the Bankruptcy Law regulates that: Debtors who have two or more creditors and do not pay in full at least one debt that is due and collectible, are declared bankrupt by decision. Court, either at his own request or at the request of one or more of his creditors. Based on this provision, the conditions for a debtor to be declared bankrupt are: (1) The debtor has two or more creditors; and (2) The debtor does not pay in full at least one debt that is due and collectible.(Yunita & Permatasari, 2022)

In the explanation of Article 2 paragraph (1) of the Bankruptcy Law, what is meant by "Creditors" in this paragraph are either concurrent creditors, separatist creditors or preferred creditors. Specifically regarding separatist creditors and preferred creditors, they can apply for a declaration of bankruptcy without losing their collateral rights to the property they own in the Debtor's assets and their rights of precedence. Furthermore, in the explanation of Article 2 paragraph (1) of the Bankruptcy Law, it also explains that "what is meant by debt that has matured and can be collected is the obligation to pay debt that has matured, either because it has been agreed upon by accelerating the collection time as agreed, because of the imposition of sanctions. or fines by the competent authority, or due to a decision by a court, arbitrator or arbitration panel." Regarding this matter, the Bankruptcy Law does not provide an explanation, only stating that the debt that is not paid by the debtor as intended in this provision, is the principal debt or interest.(Alaysia, Al, Putri, & Setiawati, 2023).

Here is a table showing some of the cases of digital company bankruptcy in Indonesia in recent years:

**Tabel 1** Case of bankruptcy of a digital company in Indonesia

Year	Company	Sector	Main Cause
2020	Airy Rooms	Accommodation Services	The significant decline in business due to the COVID-19 pandemic has led to a significant reduction in human resources and a significant decline in business.
2023	JD.ID	E-commerce	Lack of funding injection and tight competition with other e-commerce platforms such as Tokopedia, Shopee, Lazada, and Bukalapak.
2023	Pegipegi	Travel Agency	Fierce competition with other platforms that offer more attractive promos and more diverse services.
2023	Fabelio	Furnitur	Difficulties in the valuation of digital assets such as e-commerce platforms and customer databases in the liquidation process.

Source : self-processed

The data above shows an increasing trend of bankruptcies in Indonesia's digital sector, mainly due to fierce competition, lack of innovation, and the impact of the COVID-19 pandemic. In addition, challenges in the valuation of digital assets are also a significant factor in the bankruptcy process of digital companies.

Globally, a similar trend is also occurring. According to S&P Global data, during the January-April 2023 period, there were 236 companies in the United States that filed for

bankruptcy, with the consumer products, industrial, financial, and healthcare sectors being the most affected.

These statistics highlight the need for continuous adaptation and innovation for digital companies to survive in a competitive and dynamic business environment.

Bankruptcy problems always have consequences, both for creditors and debtors as well as employees of a company who are involved in termination of employment. More broadly, bankruptcy will have a large and important impact on a country's economy which can threaten economic losses for the country concerned. (Sihotang & Windiarti, 2024) These losses were caused by many companies facing the threat of difficulty paying their debts to their creditors. To avoid the court's determination of bankruptcy with a permanent judge's decision, a legal effort will be taken that can balance the existence and function of bankruptcy law itself, namely by implementing a Postponement of Debt Payment Obligations (PKPU). PKPU can be submitted by debtors or creditors who have good faith, where the application for PKPU must be submitted before the decision to declare bankruptcy is pronounced. (Kheriah, 2014)

In the business world, bankruptcy is nothing new for business people, but the definition of bankruptcy is often interpreted as the dissolution or liquidation of a legal entity. In fact, bankruptcy is a commercial solution as an alternative solution to the problem of debts and receivables that debtors cannot fulfill to their creditors. (Yunita & Permatasari, 2022)

If the debtor does not have the ability to pay obligations that are due to creditors, the debtor can apply for bankruptcy status against himself. Bankruptcy status is determined if the debtor is declared unable to pay debts that are due and collectible. The situation of a debtor who does not pay a debt that is due does not need to be classified as that the debtor does not have the ability to pay the debt or the debtor does not want to pay the debt to his creditors. (Fauzia, 2020)

The applicable Bankruptcy Law is designed to deal with bankruptcy cases in conventional businesses. Meanwhile, as time goes by, many companies in the digital business have non-physical assets such as intellectual property rights. (Dewi, Munajat, Umami, Hapsari, & Stevenson, 2024) This is what causes gaps in the application of bankruptcy law to digital companies facing bankruptcy, because regulations do not fully regulate the management of liquidation of non-physical assets. The development of digital companies has different characteristics from traditional companies, both in terms of business models and in terms of assets. (Sutrisno & Poerana, 2020) The following are the characteristics of the differences between traditional companies and digital companies: (1) the type of assets the company owns. Traditional companies have physical assets such as property, buildings, movable and immovable assets, whereas digital business companies have assets that tend to be intangible such as intellectual property rights, user data, etc. (Yuniarsih, Raditya, Sitohang, Hardinata, & Atriani, 2024) So in the context of bankruptcy, especially intangible assets will affect the settlement of debts to creditors, because there is no clear regulation yet. (2) the business cycle in companies engaged in digital business is dynamic and fluctuating, because digital-based companies rely on technology that develops very quickly and briefly but carries high risks. Meanwhile, traditional companies tend to have a stable cycle with lower risk. So in digital companies, regulations related to bankruptcy are not yet flexible enough to deal with rapidly changing business developments. (3) the reach of digital companies is multinational which has complex problems because it is not only located in one country but several countries. This is what causes bankruptcy problems to become complex, the rapid development of digital companies to various countries which of course use foreign legal jurisdictions for certain

purposes such as taxation or other legal protection. (4) data protection and privacy are assets owned by digital companies, which are not found in traditional companies. (Ahmad Baihaki & M. Rizhan Budi Prasetya, 2021)

Based on the characteristics of traditional companies and digital companies mentioned above, it is necessary to adapt bankruptcy law regulations in Indonesia to make them more relevant to face developments in the digital economy era. There are several aspects that need to be considered in facing the development of the digital economy in the bankruptcy resolution process, (Lubis, Gultom, & Somawijaya, 2021) namely: (1) asset assessment of intangible assets. There is a need for clear guidelines for assessing intangible assets by considering technological aspects such as data protection and cryptography. (2) strengthening international coordination. This is necessary because it is very possible for digital companies that operate cross-border. International coordination is very necessary to handle the bankruptcy process efficiently. (3) development of adequate human resources and legal infrastructure, such as training for law enforcement officers and curators to handle bankruptcy cases in digital companies. Law enforcement officers play an important role in carrying out the process of resolving bankruptcy cases well, but balanced with legal certainty and adequate facilities to ensure the implementation of these regulations. There are several factors that can be used as a reference to move towards legal certainty, namely: (1) Clear norms that determine what is required and what is prohibited; (2) Legal transparency that prevents society from normative confusion; and (3) Continuity of legal order which provides a reference for future behavior.

## Conclusion

The application of Equilibrium Theory in bankruptcy law plays an important role in maintaining a balance between the rights and obligations of creditors and debtors, especially in the process of resolving bankruptcy disputes. This theory emphasizes the importance of harmony between the obligations and rights of both parties to avoid inequality in asset allocation, by giving priority based on the creditor hierarchy. In the context of bankruptcy resolution, this theory bridges interests that are often contradictory, on the one hand, creditors seek to maximize debt repayment, while debtors want to maintain their business. Through an equilibrium approach, it is hoped that the bankruptcy process can proceed fairly by taking into account the various rights of creditors and providing certain protections for debtors, such as rights to personal assets and debt restructuring.

On the other hand, bankruptcy law in Indonesia needs to adapt to face the rapid development of the digital economy, where the characteristics of digital businesses are different from traditional companies. Non-physical assets, such as intellectual property rights, user data, and privacy protection, require special regulations to be recognized in the bankruptcy process. The uniqueness of digital companies, such as the intangible nature of assets, multinational reach, and fast business dynamics, makes conventional bankruptcy regulations less relevant in resolving digital bankruptcy cases. Therefore, an adaptive approach is needed that includes assessing intangible assets, cross-border coordination, and improving the quality of human resources and legal infrastructure.

Overall, to ensure that bankruptcy regulations in Indonesia are in line with the demands of the digital economy, several important steps that must be taken include establishing clear norms, legal transparency, and continuity in law enforcement. With regulations that are responsive to changes in the digital economy, it is hoped that the bankruptcy process can be carried out efficiently, fairly and sustainably, providing legal



certainty that is beneficial for digital business players and all parties involved in resolving bankruptcy.

Future research can be focused on developing a more adaptive digital bankruptcy regulatory model, digital asset valuation and liquidation standards, protection of creditors and debtors' rights in digital bankruptcy, the use of technologies such as AI and blockchain to improve the efficiency of the bankruptcy process, and comparison of bankruptcy systems in various countries in facing digital economy challenges.

### Suggestions

To translate equilibrium theory into practice while encouraging further research, Indonesia needs to modernize its bankruptcy law to explicitly cover digital assets and intellectual property, build a technology-based valuation and case management platform that provides creditors and debtors with transparent and real-time access to asset data and restructuring proposals, require capacity-building programs on digital asset valuation and negotiation based on a theory of balance for judges and bankruptcy professionals, incorporating ESG considerations in restructuring plans, and conducting comparative empirical studies on advanced digital jurisdictions to assess the impact of the reforms on recovery rates and stakeholder satisfaction.

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