

Comparison of Bankruptcy Concepts and Procedures in Islamic Economic Law and Indonesian Bankruptcy Law

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Abstract

This study examines and compares the concepts and procedures of bankruptcy in Islamic economic law (*At-Taflis wal Hajr*) and Indonesian Bankruptcy Law (Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations). Utilizing a normative legal research design with a qualitative, descriptive-analytical approach, this study relies on secondary data derived from Islamic legal sources (Qur'an, Hadith, classical *fiqh* literature, and scholarly fatwas) and Indonesian statutory regulations. The analysis applies a comparative legal method supported by content analysis to identify similarities, differences, strengths, and limitations within both legal systems. Findings reveal that while both frameworks share the fundamental aim of resolving debt disputes, protecting creditor rights, and distributing debtor assets equitably under judicial supervision, they differ significantly in their normative underpinnings. Islamic law embeds moral and social dimensions, treating bankruptcy as a remedial mechanism aligned with communal responsibility, whereas Indonesian positive law prioritizes procedural certainty and institutional enforcement to ensure legal and economic order. The study suggests harmonization through integrating procedural clarity with ethical and social responsibility measures from Islamic jurisprudence to strengthen bankruptcy governance in Indonesia.

Keywords: Bankruptcy law, comparative legal study, insolvency, islamic economic law.



Introduction

The existence of bankruptcy law within a legal system serves a strategic function¹ and plays an essential role in maintaining economic stability and fostering economic growth.² In a global context, diverse models of bankruptcy law have been adopted by various countries.³ In Indonesia, bankruptcy law is regulated under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU).⁴ However, alongside the conventional bankruptcy system, there also exists a bankruptcy framework grounded in Islamic principles, commonly referred to as Islamic economic law.⁵

Islamic economic law introduces distinct concepts and procedures of bankruptcy that differ fundamentally from those of the conventional system.⁶ Such differences arise from the philosophical foundations and underlying principles of each legal framework. Islamic economic law emphasizes justice, balance, and public benefit (*maslahah*), whereas conventional bankruptcy law is primarily concerned with efficiency and legal certainty. A comprehensive understanding and comparison of bankruptcy concepts and procedures under Islamic economic law and Indonesian bankruptcy law is therefore crucial.⁷ Such a comparative approach provides a more holistic perspective on both legal systems and helps identify potential synergies as well as key differences that could contribute to the further development of bankruptcy law in Indonesia.

The research gap and novelty of this study lie in its attempt to examine and comprehensively compare the concepts and procedures of bankruptcy under Islamic economic law and Indonesian

¹ Fitria Amini, "Prosedur Penyelesaian Sengketa Kepailit Oleh Pengadilan Niaga," *Jurnal Thengkyang* 9, no. 2 (2024): 182–90.

² Peter Sosilo et al., "Fair Legal Protection for Bankruptcy Respondent Debtors," *Batulis Civil Law Review* 6, no. 1 (March 31, 2025): 1–10, <https://doi.org/10.47268/ballrev.v6i1.2154>.

³ Mochamad Cholil, "Urgensi Pengaturan Hukum Kepailitan Transnasional Kawasan Association of Southeast Asian Nations," *Media Juris* 6, no. 3 (October 26, 2023): 417–34, <https://doi.org/10.20473/mi.v6i3.43536>; Erwin Owan Hermansyah Soetoto, "The Politics Of Justice-Based International Bankruptcy Law," *Jurnal Pembaharuan Hukum* 11, no. 3 (September 22, 2024): 461, <https://doi.org/10.26532/jph.v11i3.39589>; Ermanto Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied?," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 30, 2024, 199–218, <https://doi.org/10.24090/volksgeist.v7i1.10079>; Tingyong Zhong, Ying Duan, and Zhiguo Ding, "How Bankruptcy System Innovation Affects Firm Investment Behavior: A Quasi-Natural Experiment Based on the Establishment of Bankruptcy Courts in China," *International Review of Financial Analysis* 96 (November 2024): 103723, <https://doi.org/10.1016/j.irfa.2024.103723>.

⁴ Serlika Aprita and Hasanul Mulkan, "Masa Depan Kepailitan Dan PKPU Di Indonesia Dalam Kaitannya Dengan Urgensi Revisi UU Kepailitan Dan PKPU Ditinjau Dari Prespektif Hukum Dan Hak Asasi Manusia," *UNES Law Review* 5, no. 4 (June 15, 2023): 2294–2303, <https://doi.org/10.31933/UNESREV.V5I4.467>; Gede Aditya Pratama, Elfirda Ade Putri, and Arga Pribadi Imawan, "Indonesian Bankruptcy Law Policy After Political & Monetary Turmoil In 1998," *Jurnal Ilmu Sosial* 23, no. 2 (February 13, 2025): 64–74, <https://doi.org/10.14710/jis.23.2.2024.64-74>; Theresia Anita Christiani, "Legal Analysis Of Bankruptcy In The Perspective Of Legal Purposes," *Jurnal Pembaharuan Hukum* 8, no. 1 (March 17, 2021): 73, <https://doi.org/10.26532/jph.v8i1.11562>.

⁵ Erna Widjajati, "Penyelesaian Sengketa Kepailitan Menurut Hukum Perbankan Syariah," *AHKAM: Jurnal Ilmu Syariah* 15, no. 1 (February 21, 2019), <https://doi.org/10.15408/ajis.v15i1.2855>.

⁶ Siti Kadariah, Pangeran Harahap, and S Sukiati, "Analisis Penyelesaian Kepailitan Perbankan Syariah Di Pengadilan Niaga Dalam Putusan No.01/Pdt-Susp KPU/2015/Pn Niaga Medan Ditinjau Dari Perspektif Ekonomi Islam," *Jurnal Penelitian Medan Agama* 9, no. 1 (June 21, 2018): 67–88, <https://doi.org/10.58836/JPMA.V0I0.3965>.

⁷ Lucky Nugroho, "Comparison of At Taflis Wal Hajr in Islamic Law and Bankruptcy in Positive Law," in *Proceedings of the International Conference on Social Science 2019 (ICSS 2019)* (Paris, France: Atlantis Press, 2019), <https://doi.org/10.2991/icss-19.2019.134>.

bankruptcy law, with a particular focus on their similarities and differences. Previous studies on bankruptcy have predominantly concentrated on legal protection,⁸ the legal politics of bankruptcy law,⁹ or, most commonly, on dispute resolution mechanisms in bankruptcy cases.¹⁰ Only a limited number of studies have undertaken a comparative approach, particularly between Indonesian positive law and Islamic law.

Nevertheless, it should be acknowledged that several comparative legal studies on bankruptcy have already been conducted, though they are largely restricted to comparisons between Indonesia and other jurisdictions such as Singapore,¹¹ and Australia.¹² For instance, research by Lucky Nugroho has attempted to compare Islamic law with conventional bankruptcy law. However, such studies have not produced conclusive or substantive findings.¹³ This research, therefore, seeks to complement and refine the existing body of literature. In light of this urgency, the study is expected to contribute to the development of bankruptcy law in Indonesia by integrating Islamic values and principles of justice and public welfare into bankruptcy resolution processes. The findings of this research are also anticipated to provide practical recommendations for key stakeholders, including academics, legal practitioners, and policymakers, in the effort to strengthen and improve the Indonesian bankruptcy legal system.

⁸ Ihsan Hamdi, Armaoyuda Siregar, and Bambang Fitrianto, “Legal Protection For Creditors In Bankruptcy Processes Reviewed From Bankruptcy Law No. 37 Of 2004,” *International Journal of Synergy in Law, Criminal, and Justice* 2, no. 1 (January 15, 2025): 490–96, <https://doi.org/10.70321/IJSLCJ.V2I1.98>; Maya Tryandari, “Legal Protection for Bankruptcy Curators in the Resolution of Bankruptcy Cases,” *Journal of Law and Legal Reform* 2, no. 3 (July 31, 2021): 421–38, <https://doi.org/10.15294/jllr.v2i2.46621>; Sutrisno Sutrisno, “Legal Protection for Debtors over Separatist Creditors’ Rights Related To Bankruptcy,” *Jurnal Akta* 7, no. 1 (May 15, 2020): 83, <https://doi.org/10.30659/akta.v7i1.9453>; I Nyoman Wiguna et al., “Legal Protection for Third Parties in Good Faith on Actio Pauliana Litigation in Bankruptcy Proceedings,” *Yuridika* 39, no. 2 (May 17, 2024): 181–210, <https://doi.org/10.20473/ydk.v39i2.56057>.

⁹ Ria Sintha Devi et al., “The Bankruptcy Legal Politics in Indonesia Based on Justice Value,” *Jurnal Akta* 9, no. 1 (March 31, 2022): 67, <https://doi.org/10.30659/akta.v9i1.20842>; Unggul Wibawa Widhayaka, Sonyendah Retnaningsih, and Sufiarina, “The Law Politics of Bankruptcy Decision Execution against Debtor’s Assets Abroad,” *International Journal of Research in Business and Social Science (2147- 4478)* 13, no. 6 (October 14, 2024): 437–54, <https://doi.org/10.20525/ijrbs.v13i6.3756>.

¹⁰ Muhammad Dzaky, Budi Santoso, and Hanif Nur Widhiyanti, “Analysis Of Cross-Border Insolvency Dispute Resolution In Insolvency Practice In Indonesia,” *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)* 5, no. 3 (November 10, 2023): 825–43, <https://doi.org/10.47006/ijierm.v5i3.275>; Siswanto Siswanto et al., “Conflict Resolution in Sharia Business Bankruptcies in Indonesia: Ethical and Legal Challenges,” *Az-Zarqa’: Jurnal Hukum Bisnis Islam* 15, no. 2 (January 4, 2024): 149–73, <https://doi.org/10.14421/azzarqa.v15i2.3182>; Bujang Ali, Mella Ismelina Farma Rahayu, and Rasji, “Mediation as a Final Settlement in Bankruptcy Disputes,” *Journal of Environmental Treatment Techniques* 8, no. 4 (September 30, 2020): 1456–62, [https://doi.org/10.47277/JETT/8\(4\)1462](https://doi.org/10.47277/JETT/8(4)1462); Widjajati, “Penyelesaian Sengketa Kepailitan Menurut Hukum Perbankan Syariah”; Mona Wulandari and Saifullah Basri, “Analisis Hukum Penyelesaian Sengketa Kepailitan Syariah Di Indonesia,” *Wajah Hukum* 6, no. 2 (October 14, 2022): 441, <https://doi.org/10.33087/wjh.v6i2.1081>.

¹¹ Bryan Mugito, “How Concurrent Creditors Are Treated in Company’s Bankruptcy: A Comparison into Indonesia and Singapore,” *The Lawpreneurship Journal* 1, no. 2 (October 5, 2021): 158–75, <https://doi.org/10.21632/tlj.1.2.158-175>.

¹² R Benny Riyanto et al., “Clashing Legal Realities: A Comparative Analysis of Insolvency Tests in Australia and Indonesia’s Bankruptcy Law,” *Jambura Law Review* 7, no. 1 (December 30, 2024): 88–104, <https://doi.org/10.33756/jlr.v7i1.27327>.

¹³ Nugroho, “Comparison of At Taflis Wal Hajr in Islamic Law and Bankruptcy in Positive Law.”

The primary objective of this study is to compare the concepts and procedures of bankruptcy under Islamic economic law and Indonesian bankruptcy law. It is expected that this research will generate a deeper understanding of both legal systems and offer valuable recommendations for advancing the development of bankruptcy law in Indonesia.

METHOD

This study employs a normative legal research design with a qualitative approach, adopting a descriptive-analytical framework. The research relies exclusively on secondary data, including Islamic legal sources (the Qur'an, Hadith, classical fiqh literature, and scholarly fatwas) and Indonesian statutory regulations (Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations). Data is collected through comprehensive literature review (library research), utilizing document analysis of legal texts, academic journals, and reference books on Islamic and conventional bankruptcy frameworks.

The data is analyzed using a comparative legal method, supported by content analysis to examine the principles, procedures, and legal implications of bankruptcy in both systems. The analysis involves legal interpretation of Sharia norms and statutory provisions, supplemented by critical analysis to identify similarities, differences, strengths, and weaknesses between the two frameworks. Findings are presented systematically through a deductive approach to address the research questions in a structured manner.

RESULT AND DISCUSSION

Bankruptcy in the Perspective of Sharia Economic Principles

Etymologically, the term *taflis* derives from the Arabic word *at-taflis*,¹⁴ which means bankrupt or solvency, insolvent (no longer have assets), or financially ruined.¹⁵ A person declared bankrupt is referred to as a *muflis*, which describes an individual whose liabilities exceed their assets. In a hadith, the Prophet Muhammad (peace be upon him) depicted a *muflis* in the Hereafter as someone whose sins outweigh their good deeds. This person is deemed spiritually bankrupt because their rewards are transferred to those they wronged, leading to a deficit in their spiritual balance. In economic terms, *taflis* refers to a person whose debts surpass their possessions. From the perspective of Islamic economic terminology, *at-taflis* (bankruptcy declaration) is defined as a judicial decision prohibiting an individual from conducting legal transactions involving their assets.¹⁶ This restriction is imposed due to their indebtedness, which encompasses or even exceeds the entirety of their wealth.

In the context of Sharia economics, the concept of bankruptcy finds its basis in prophetic traditions. One narration recounts that the Prophet Muhammad (peace be upon him) declared

¹⁴ Nugroho; Ahmad Hidayat bin Md Nor, Aishath Muneeza, and Magda Mohsin, "What Is the Insolvency Regime Applied under Shariah for Islamic Banks?," *International Journal of Law and Management* 67, no. 1 (January 2, 2025): 56–77, <https://doi.org/10.1108/IJLMA-08-2023-0191>.

¹⁵ Yusup Hidayat, "Islamic Legal Perspective Resolution Of Bankruptcy In Sharia Business Disputes," *Journal of Law and Sustainable Development* 12, no. 5 (May 20, 2024): e3678, <https://doi.org/10.55908/sdgs.v12i5.3678>.

¹⁶ Gede Aditya Pratama, Nina Zainab, and Heru Siswanto, "Legal Remedies Against Bankruptcy Decision Following Constitutional Court Decision No. 23/PUU-XIX/2021," *Jurnal Bina Mulia Hukum* 7, no. 2 (March 31, 2023): 216–30, <https://doi.org/10.23920/jbmh.v7i2.1060>.

Mu'adh ibn Jabal bankrupt due to his inability to repay his debts. The Prophet then used Mu'adh's remaining assets to settle part of the debt. However, the creditor did not receive full payment and subsequently protested to the Prophet, who responded: "You will receive nothing more than this" (Narrated by Daruqutni and Al-Hakim).

Another narration indicates that Umar ibn al-Khattab confiscated the assets of a debtor for distribution among his creditors. In summary, Usaifi', a resident of Juhainah, had accumulated debts but refused to repay them. Consequently, Umar detained his property and announced that creditors should come forward to claim their portions (as derived from narrations by Malik and Daruqutni). These traditions suggest that the authority to declare a person bankrupt (*taflīs*) and place them under legal restraint (*hajr*) lies with the ruler or judge. Accordingly, the declaration of bankruptcy must be established by judicial decision.

The majority of Islamic jurists (*jumhūr al-'ulamā'*) assert that a person is only legally considered bankrupt once declared so by a judge.¹⁷ In the absence of such a ruling, all legal actions undertaken by the debtor remain valid. Conversely, once a judge issues a bankruptcy ruling, the debtor may be legally prohibited from disposing of their remaining assets if such actions harm the rights of creditors.¹⁸ The judge also holds the authority to place the debtor under guardianship and, if necessary, detain them. During this period, the judge may liquidate the debtor's remaining assets and distribute the proceeds among creditors proportionally.

According to the commentary *Sharḥ Bulūgh al-Marām*, several essential steps must be followed in resolving bankruptcy disputes:

1. Imposition of Legal Restraint (al-*hajr*): The initial step is the imposition of a legal restraint prohibiting the bankrupt individual from spending or disposing of wealth acquired through inheritance or other means. This restriction is legally valid, provided certain conditions are met, and serves to protect the rights of creditors. Any transactions conducted by the debtor in contravention of this restriction are deemed invalid.
2. Judicial Authority Required for Restraint: Legal restraint on asset disposal must be issued by a judge, who may do so at the request of one or more creditors. This necessity arises from the fact that determining the legality of such a restraint requires *ijtihād* (juridical reasoning) as well as legislative and executive authority, which resides solely with the judiciary. Ibn al-Qayyim notes that if a debtor's liabilities exceed their assets, their transactions may be invalidated due to the risk they pose to creditors. The judge may, therefore, intervene to impose such restrictions. This view is supported by scholars such as Ibn Rajab and is affirmed in the work *Al-Inṣāf*.
3. Liquidation and Distribution: The judge must liquidate the bankrupt individual's assets and distribute the proceeds among creditors according to a priority system. This process entails

¹⁷ Muhammad Azani, Hasan Basri, and Dewi Nurjannah Nasution, "Pelaksanaan Transaksi Akad Jual Beli Dalam Kompilasi Hukum Ekonomi Syariah (KHES) Kecamatan Tampan Pekanbaru," *Jurnal Gagasan Hukum* 3, no. 01 (August 12, 2021): 1–14, <https://doi.org/10.31849/jgh.v3i01.7499>.

¹⁸ Ruth Irene Saurmauli, "Legal Certainty of Actio Pauliana Decision in Bankruptcy Cases," *Locus Journal of Academic Literature Review*, November 2, 2022, 386–93, <https://doi.org/10.56128/ljoalr.v1i7.92>.

assessing the total outstanding debts and correlating them with the debtor's remaining assets, with each creditor receiving a proportional share.

4. Termination of Creditor Claims: Once the debtor's assets have been distributed, the creditors' claims are considered resolved. Creditors may not pursue further legal action or detain the debtor, who must instead be treated with compassion until they regain financial capacity. This does not imply that the debtor is released from the remaining debt; rather, creditors are instructed to exercise patience, as emphasized in the Qur'anic verse: "And if the debtor is in hardship, then [let there be] postponement until [a time of] ease." (Surah Al-Baqarah, 2:280).

Hence, bankruptcy does not annul the rights of creditors.¹⁹ However, it prohibits further pursuit or demands for payment, as exemplified by the Prophet's statement to Mu'adh's creditors: "Take what you find, and nothing beyond that is due to you." According to the majority of scholars, an individual declared bankrupt by a judge is placed under guardianship and is no longer deemed legally competent to manage their remaining assets.²⁰ This legal status aims to safeguard the interests of creditors.²¹ Without such restrictions, a bankrupt debtor may neglect their obligations, further intensifying conflicts with creditors.

Once a judge has officially declared bankruptcy, there is consensus among jurists that the debtor's legal capacity is suspended, their assets belong to the creditors, and a public announcement should be made.²² This announcement serves to inform the public, thereby preventing further economic transactions with the bankrupt individual.

Legal Consequences of Taflīs (Bankruptcy Declaration) and Ḥajr (Guardianship)

Islamic legal scholars identify several legal implications for individuals declared bankrupt and placed under guardianship:

1. The debtor's remaining assets become the lawful property of creditors. Consequently, the debtor is no longer permitted to engage in legal transactions involving those assets. This consensus is well established among jurists.
2. Scholars also agree that the debtor may be subject to temporary detention until their debts are resolved.

Usul al-Fiqh Principle and Termination of Guardianship

¹⁹ Runarianu Rachmat and Suherman Suherman, "Perlindungan Hukum Terhadap Kreditor Pemegang Jaminan Fidusia Terhadap Harta Debitor Yang Dinyatakan Pailit," *ADIL: Jurnal Hukum* 11, no. 1 (August 24, 2020): 87–106, <https://doi.org/10.33476/ajl.v11i1.1446>.

²⁰ M. Hadi Shubhan, "Deconstructing Simple Evidence In Bankruptcy Petition For Legal Certainty," *Indonesia Law Review* 9, no. 2 (August 31, 2019), <https://doi.org/10.15742/ilrev.v9n2.527>.

²¹ Puja Dwi Pangestu, "Actio Pauliana as the Rights Protection Efforts for Creditors in the Bankruptcy Case," *Journal of Private and Commercial Law* 3, no. 1 (May 31, 2019): 26–29, <https://doi.org/10.15294/jpcl.v3i1.18673>.

²² Anwar Hidayat, Muhamad Abas, and Dalih Purwana, "Juridical Review Of Bankruptcy Conditions And Delay Of Debt Repayment Obligations," *Awang Long Law Review* 6, no. 1 (November 30, 2023): 231–36, <https://doi.org/10.56301/awl.v6i1.992>.

According to the principles of *usūl al-fiqh*, legal rulings are contingent upon their effective cause ('illah). When the 'illah exists, the ruling applies; when it ceases to exist, the ruling is lifted. In the case of a bankrupt individual under guardianship, if all remaining assets have been distributed among creditors, the basis for guardianship ceases to exist.

The majority of scholars, including some from the Shafi'i and Hanbali schools, maintain that once a bankrupt individual's assets have been proportionally distributed – regardless of whether the debts are fully settled – their status under guardianship is nullified. This is analogized to the case of a mentally ill person who, upon recovery, is no longer considered under guardianship, without requiring a new judicial decree.

The same applies to a bankrupt person. This conforms with the *usūl al-fiqh* maxim: "Legal rulings revolve around their effective causes; when the cause exists, the ruling applies, and when the cause ceases to exist, the ruling is no longer applicable."

Bankruptcy in the Context of Indonesian Positive Law

According to the *Fockema Andreae Legal Dictionary* (Indonesian Edition), a debtor's bankruptcy refers to a court-determined condition wherein the debtor has ceased to fulfill debt obligations, resulting in general seizure of the debtor's assets for the collective benefit of creditors, under the supervision of the court. The essential element of bankruptcy lies in the existence of a debt relationship (obligatory engagement) between a debtor and one or more creditors.²³

The mechanism for filing a petition for bankruptcy is regulated under Article 6 of the Indonesian Bankruptcy Law (UUK), which stipulates that the petition must be submitted to the Chief Judge.²⁴ The term "Chief Judge" refers specifically to the Commercial Court within the jurisdiction of the general court, as defined in Article 1 point 7 of the UUK: "The Court refers to the Commercial Court within the general judiciary."

The procedural stages for handling a bankruptcy petition under Article 6 of the UUK are as follows:

1. The petition is addressed to the Chief Judge of the Commercial Court.
2. The clerk registers the petition.
3. A hearing is held within a maximum of 20 days after registration.
4. If necessary, the court may grant a postponement not exceeding 25 days.
5. Examination of the case must take place within a maximum of 20 days from the petition's registration, pursuant to Article 6(6) of the UUK: "The hearing for the bankruptcy petition must be held no later than 20 (twenty) days after the petition is registered."

²³ Tryandari, "Legal Protection for Bankruptcy Curators in the Resolution of Bankruptcy Cases."

²⁴ Syafrudin Makmur, "Penerapan Undang-Undang Kepailitan Dalam Menciptakan Iklim Berusaha Yang Sehat Bagi Seluruh Pelaku Usaha," *Ajudikasi: Jurnal Ilmu Hukum* 2, no. 1 (July 20, 2018): 97, <https://doi.org/10.30656/ajudikasi.v2i1.599>.

6. The judge may grant a further postponement of up to 25 days in accordance with Article 8(7) of the UUK: "The ruling on the bankruptcy petition must contain complete legal reasoning and be pronounced in an open court session. It may be enforced even if legal remedies are pursued."
7. The summons must be issued at least 7 days before the hearing.
8. The court ruling must be issued no later than 60 days after the petition is filed, as stated in Article 8(5) of the UUK: "The court's decision on the bankruptcy petition shall be delivered no later than 60 (sixty) days after the petition was filed."

Following the issuance of a bankruptcy ruling by the court, the case proceeds to the administration of the bankrupt estate. Two main parties play an active role in this process:

1. Supervisory Judge

Article 65 of the UUK stipulates that the supervisory judge oversees the management and settlement of the bankrupt estate. This demonstrates that the judiciary's role extends beyond merely issuing the bankruptcy ruling to ensuring the implementation of its decision.

2. Curator (Receiver)

As regulated in Article 69 of the UUK, the curator is responsible for the administration and/or settlement of the bankrupt estate. The curator's duties include the following steps:

- a. Publishing a summary of the court ruling in the State Gazette and a national newspaper, which must include:
 - 1) Name, address, and occupation of the debtor.
 - 2) Name of the supervisory judge.
 - 3) Name, address, and occupation of the curator.
 - 4) Name, address, and occupation of the temporary creditors' committee (if appointed).
 - 5) Time and place of the first creditors' meeting.
- b. Selling the assets.
- c. Establishing a permanent creditors' committee composed of verified creditors.
- d. Debt verification process:

Article 113 of the UUK requires that, within 14 (fourteen) days after the bankruptcy ruling is issued, the supervisory judge must determine:

- 1) The deadline for claim submission.
 - 2) The deadline for tax verification to assess tax liability under relevant regulations.
 - 3) The date, time, and place for the creditors' meeting to reconcile claims.
- e. Distributing the remaining assets to creditors on a pro-rata basis.

However, it is important to note that the Commercial Court's ruling on bankruptcy is not final and binding, as debtors may seek legal remedies. In accordance with Article 11 of the UUK, the decision on a bankruptcy petition may be appealed to the Supreme Court through a cassation process.

The Bankruptcy Law also outlines in detail which legal entities cannot be declared bankrupt and which assets are exempt from execution by the curator. One notable distinction involves inheritance assets. Under Islamic law, inheritance may be used to pay debts,²⁵ whereas the UUK explicitly states that inheritance assets cannot be used to settle creditor claims unless doing so benefits the bankrupt estate.

It is stated that all legal entities – whether individuals, legal bodies, or corporations – may be declared bankrupt by the Commercial Court, except for State-Owned Enterprises (BUMN) structured as *Perum*. Based on the State Finance Law, state assets cannot be seized.²⁶ BUMN are state assets,²⁷ and any action involving these assets requires approval from both the minister and the House of Representatives.

Besides *Perum*-structured BUMN, other legal entities exempt from bankruptcy include government ministries, the national police, and other state apparatuses. Furthermore, under Article 21 of the UUK, bankruptcy encompasses all assets owned by the debtor at the time the bankruptcy ruling is issued, as well as assets acquired during the bankruptcy period. However, Article 22 of the UUK provides exceptions to Article 21, namely:

- a. Items (including animals) essential for the debtor's work, equipment, medical instruments, bedding used by the debtor and their family, and food supplies sufficient for 30 (thirty) days.
- b. Any income earned by the debtor through employment (such as salary, wages, pensions, or allowances), as determined by the supervisory judge.
- c. Funds provided to the debtor for fulfilling a legally mandated maintenance obligation.

According to Article 34 of the UUK, unless otherwise stipulated by law, any contract involving the transfer of land rights, renaming of ships, mortgage, or fiduciary collateral agreed upon prior to the bankruptcy declaration becomes unenforceable after the bankruptcy is declared. Additionally, Article 40(1) of the UUK provides that any inheritance received by the debtor during the bankruptcy period may not be accepted by the curator unless it benefits the bankrupt estate. In conclusion, execution of bankruptcy cannot be applied to:²⁸

- 1) Essential personal property.
- 2) Wages, fees, and related income.
- 3) Maintenance support funds.
- 4) Mortgaged property or fiduciary guarantees.

²⁵ Fadli Januaris and Mahlil Adriaman, "Inheritance Disputes Over Assets Still Under Debt Collateral Status from an Islamic Law Perspective," *USRATY: Journal of Islamic Family Law* 2, no. 2 (December 13, 2024): 102–12, <https://doi.org/10.30983/usraty.v2i2.8798>.

²⁶ Waluyo Waluyo, Hilaire Tegnan, and Noni Oktiana Setiowati, "Aligning State Finance Regulations with SOE Bankruptcy Policy: Evidence from the United States," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (March 30, 2025): 246–78, <https://doi.org/10.53955/jhcls.v5i1.470>; Heru Pramono, "Legal Protection For Creditors To Ensure The Fulfillment Of State-Owned Enterprises (Persero)'S Liabilities In The Indonesian Legal System," *Prophetic Law Review* 5, no. 2 (December 1, 2023): 129–56, <https://doi.org/10.20885/PLR.vol5.iss2.art1>.

²⁷ Ghora Putra Bafelanna, "Status of the Separated State Assets into BUMN Persero," *Unram Law Review* 4, no. 1 (April 23, 2020): 26–32, <https://doi.org/10.29303/ulrev.v4i1.110>.

²⁸ Serlika Aprita and Rijalush Shalihin, *Hukum Kepailitan Dalam Islam* (Bogor: Penerbit Mitra Wacana Media, 2023).

5) Inheritance,

Unless otherwise provided by statutory regulations for items d and e.

Comparative Analysis between the Islamic Legal Concept of *At-Taflis Wal Hajr* and Bankruptcy in Indonesian Positive Law

The study conducted by Nugroho reveals that although the Islamic legal concept of *At-Taflis wal Hajr* and the bankruptcy system in positive law originate from different normative foundations, both serve a converging function: to resolve debt disputes through judicial intervention, protect creditors' rights, and manage the debtor's assets fairly. However, Islamic law emphasizes the moral dimension of insolvency and incorporates communal and social responsibility, whereas positive law focuses on procedural and institutional frameworks to ensure legal certainty and economic order.²⁹

The Islamic concept of *At-Taflis* is deeply rooted in classical jurisprudence,³⁰ as derived from hadiths of the Prophet Muhammad and practices of the early Caliphs, such as Umar ibn Khattab. These precedents show that the declaration of insolvency in Islam must be determined by a judge upon verifying that the debtor is genuinely unable to repay debts due to lack of assets. The principle of *Hajr* (asset restriction) is subsequently applied to prevent the debtor from disposing of property to the detriment of creditors.³¹ This system reflects a balance between protecting the collective rights of creditors and preserving the dignity and civil rights of debtors.

Unlike Islamic insolvency principles that emphasize moral responsibility and the debtor's actual financial incapacity, positive law – particularly as implemented in modern bankruptcy systems – places greater weight on procedural clarity and legal certainty. According to Article 2(1) of the Bankruptcy and Suspension of Payment Law, bankruptcy may be filed against a debtor who has at least two creditors and has failed to pay one or more due and collectible debts. This statutory framework allows both debtors and creditors to initiate proceedings, relying on a "simple verification" standard to ensure expediency and enforceability.

One of the core findings of Nugroho's research is that *At-Taflis* does not serve as a punitive instrument but as a remedial legal tool. It is designed to facilitate equitable debt distribution and to protect the public interest without criminalizing the debtor's condition.³² This contrasts with the perception that bankruptcy under positive law is sometimes seen as a loss of status or capacity. Indeed, Islamic jurisprudence rejects extrajudicial enforcement, underscoring that only the judiciary has the authority to impose insolvency status – thereby discouraging vigilante behavior by creditors.

Another critical difference lies in the treatment of the debtor post-bankruptcy. In both legal traditions, debtors lose control over their assets, but under Islamic law, they retain their broader

²⁹ Nugroho, "Comparison of *At Taflis Wal Hajr* in Islamic Law and Bankruptcy in Positive Law."

³⁰ bin Md Nor, Muneeza, and Mohsin, "What Is the Insolvency Regime Applied under Shariah for Islamic Banks?"

³¹ Muhammad Panca Prana Mustaqim Sinaga et al., "Al-Hajr Sebagai Dasar Hukum Sita Jaminan Menurut Hukum Islam," *JUSTLAW : Journal Science and Theory of Law* 1, no. 01 (November 15, 2024): 1–8.

³² Nugroho, "Comparison of *At Taflis Wal Hajr* in Islamic Law and Bankruptcy in Positive Law."

civil and political rights, just as under positive law.³³ However, the Islamic model further stresses the role of communal solidarity, such as almsgiving (*sadaqah*), in alleviating the burden of insolvency, indicating that financial failure is seen not only as a legal issue but as a social concern deserving collective support.

Furthermore, Nugroho notes that Islamic law recognizes both individuals (*shahsiyyah haqiqiyyah*) and legal entities (*shahsiyyah ma'nawiyyah*) as valid subjects for insolvency proceedings. This legal recognition enables institutions such as Baitul Mal and Waqf boards to participate in debt settlement procedures. The authorization and representation of such entities follow strict procedural norms, reinforcing the legitimacy and transparency of insolvency declarations within the Islamic legal framework.³⁴

CONCLUSION

The comparative analysis demonstrates that both the Islamic concept of *At-Taflis wal Hajr* and the Indonesian Bankruptcy Law share a fundamental objective: to resolve debt disputes through judicial mechanisms, protect creditor rights, and regulate the equitable distribution of debtor assets. However, the study highlights significant differences in their normative foundations and philosophical underpinnings. Islamic law incorporates moral and social dimensions, positioning bankruptcy not as a punitive status but as a remedial mechanism aligned with communal responsibility and ethical debt resolution. Conversely, the Indonesian positive law emphasizes procedural certainty, institutionalized enforcement, and economic order, focusing on clear legal frameworks and statutory provisions to expedite debt settlement. Despite these differences, both systems reinforce the judiciary's central role in insolvency proceedings and uphold the principle of protecting creditors while safeguarding the dignity and minimum rights of debtors.

Future policy reforms should aim to integrate the strengths of both legal traditions by adopting the procedural clarity of positive law while embedding the ethical and communal support mechanisms emphasized in Islamic jurisprudence. This could involve the incorporation of social responsibility measures—such as structured debt relief programs and community-based financial assistance—into modern bankruptcy frameworks to mitigate the socio-economic consequences of insolvency. Further interdisciplinary research is recommended to explore harmonization pathways between Islamic and conventional bankruptcy systems, particularly in pluralistic legal environments like Indonesia, where both frameworks coexist and interact within the same socio-economic context.

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³³ Nugroho.

³⁴ Nugroho.

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