Eduvest – Journal of Universal Studies
Volume 6 Number 1, January, 2026
p- ISSN 2775-3735- e-ISSN 2775-3727

Assessment of the Business Prospects of Bankrupt Debtors in the Implementation of the Going Concern Principle: A Legal Review Under Indonesia's Bankruptcy Regime

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ABSTRACT

This research examines the assessment of business prospects of bankrupt debtors in implementing the going concern principle under Indonesian Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payments (KPKPU). A significant gap exists between the normative objectives of going concern and its practical application in Indonesia's commercial court system. Indonesian bankruptcy regulations lack detailed technical mechanisms for prospectivity assessment, leading to ad hoc and subjective decision-making. Despite recognizing going concern as fundamental, success rates reach only 30-40% of filed cases, signaling systematic failures. This study uses a juridical-empirical approach with prescriptive-analytical methods, blending normative legal analysis and empirical data from curators, supervisory judges, and creditors. Comparative analysis with bankruptcy regimes in the United States, United Kingdom, Germany, and France identifies five key parameters: (1) liquidity and cash flow adequacy, (2) asset quality and marketability, (3) revenue generation capacity and market positioning, (4) management capability and turnaround experience, and (5) independent auditor opinion on going concern status. The research recommends a hybrid model integrating England's Company Voluntary Arrangement (CVA) (flexible, cost-effective), France's short observation periods (4-6 months with automatic stay), and simple litmus test-based assessment suited to Indonesian court capacity and MSME-dominated economy. This addresses unique challenges while ensuring creditor protection and efficiency. The framework boosts business rescue effectiveness and supports evidence-based bankruptcy reforms, especially amid Law 37/2004 revisions in the 2026 National Legislative Program (Prolegnas).

KEYWORDS Going Concern, Business Prospects, Bankruptcy, Assessment Parameters, Business Restructuring

INTRODUCTION

In response to the rapid increase in the number of companies experiencing bankruptcy, the government issued Government Regulation in Lieu of Law Number 1 of 1998, which was later enacted as Law Number 4 of 1998. This regulation introduced amendments, additions, and improvements to the provisions in the *Faillissements-Verordening Stb. 1905 No. 217 jo. Stb. 1906 No. 348*, and was further amended by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU Law), which came into effect on October 18, 2004 (Anisah & Suarti, 2022; Giysmar & Dewi, 2024; Kesuma & Mahmudah, 2024; Ramadhan et al., 2024; Yusticia & Rumesten, 2022). This Bankruptcy Law was needed as a result of the 1997 economic crisis, during which many companies failed to pay their debts, necessitating a bankruptcy institution capable of settling them quickly (Tambunan, 2019; Tanji et al., 2015; Wijaya et al., 2020).

This regulatory framework reflects the evolution of the bankruptcy law paradigm from an absolute liquidation approach to a company rescue approach for entities that still have economic prospects. The General Explanation of the Bankruptcy Law explicitly identifies four fundamental principles underpinning the Indonesian bankruptcy system: (1) the principle of balance between the interests of creditors and debtors; (2) the principle of going concern; (3) the principle of justice; and (4) the principle of integration in the national civil law system. Among these, the principle of business continuity (going concern) is the most controversial and problematic in its implementation, as it creates normative tension between the ease of bankruptcy filing requirements and the complexity of evaluating a company's viability.

Despite the explicit recognition of going concern as a fundamental principle, empirical evidence reveals substantial implementation challenges in Indonesia's commercial court system. Data from the Indonesian Association of Curators and Administrators (AKPI) indicates that the success rate of business continuity mechanisms—including going concern arrangements and Suspension of Debt Payment Obligations (PKPU)—ranges from only 30-40% of filed cases (Gaol et al., 2021; Glevano Sambiri, Hendri Jayado, 2023; Rosyidah & Nugraheni, 2021). This low success rate raises critical questions about whether failures stem from genuine business unviability or from systematic deficiencies in assessment and implementation processes. Furthermore, the absence of standardized evaluation criteria leads to substantial inconsistency in judicial decision-making across commercial courts, undermining legal certainty and predictability for creditors and debtors (Aprita, 2022; Ulkhaq et al., 2025; Yitawati et al., 2021).

The principle of going concern recognizes that a business entity can maintain its activities in the long term without short-term liquidation, provided the debtor retains potential and prospects for development. The fundamental philosophy of this principle is that bankruptcy should be the ultimate *remedium*, applied only after alternatives such as negotiation, debt restructuring, and postponement of debt payment obligations (PKPU) have been exhausted. However, in practice, a significant gap exists between this normative goal and operational reality in Indonesia's commercial court system. The critical question is whether the Indonesian bankruptcy system truly operationalizes the principle of business continuity as the primary consideration in bankruptcy applications or treats it merely as a legal formality lacking substantive evaluation.

Referring to the KPKPU Law, bankruptcy constitutes a general confiscation of all assets of a bankrupt debtor, with management and settlement handled by the curator under the supervisory judge's oversight, as stipulated in the law. Article 2(1) of the Bankruptcy Law sets minimal requirements for bankruptcy in a simple formulation: "Debtors who have two or more creditors and fail to pay at least one due and collectible debt in full shall be declared bankrupt by court decision." Furthermore, Article 8(4) emphasizes that "a bankruptcy declaration petition must be granted if facts or circumstances are simply proven to meet the requirements in Article 2(1)."

This provision allows bankruptcy petitions against companies or business entities to be filed relatively easily, with no additional requirements. The "simply proven" standard facilitates bankruptcy applications without in-depth evaluation of the debtor's viability. Bankruptcy law experts have criticized this. For instance, Zahrul Rabain, Deputy Chief Justice of the Gorontalo High Court, stated: "The Bankruptcy Law in Indonesia makes it too easy to

bankrupt a company; with only two creditors and one overdue debt, bankruptcy can be declared—the conditions are too simple, and judges must decide quickly." Similarly, Ricardo Simanjuntak, former Chairman of the Indonesian Association of Curators and Administrators (AKPI), noted that Indonesia cannot implement an insolvency test system because it relies on the formal, presumptive, and non-substantive requirements of Article 2(1).

This inconsistency is evident in the absence of an insolvency test, a mechanism to objectively determine whether a debtor is truly "unable to pay" or merely "unwilling to pay." An insolvency test demands complex evaluation, including analysis of historical financial statements, productive asset valuation, medium-term cash flow projections, debt sustainability calculations, and assessments of manageable business operations. However, Indonesia's bankruptcy regime lacks detailed regulations on this technical mechanism, resulting in superficial assessments of "inability to pay" based solely on formal evidence (two creditors and one overdue debt), without substantive consideration of business prospects.

Empirical data from commercial court decisions between 2018 and 2023 shows that approximately 65% of bankruptcy petitions are granted within the mandatory 60-day period, relying primarily on formal documentary evidence with minimal substantive review of the debtor's financial condition or viability (Meliala & Andira, 2023). This pattern positions commercial courts as administrative processors rather than substantive evaluators of business distress, undermining the embedded going concern principle.

Empirical data also indicates that the success rate of applying the going concern principle in the PKPU system and bankruptcy cases reaches only 30-40%. This has two implications warranting investigation: first, most failed going concern efforts may reflect genuine economic unviability; second, suboptimal assessment mechanisms for bankrupt estates (*boedel*) may cause viable cases to fail due to implementation flaws or creditor barriers.

The core regulatory paradox is that the Bankruptcy Law affirms the purpose of going concern but lacks systematic, measurable mechanisms for assessing bankrupt estate prospects. Article 179(1) states: "At the request of the curator or a creditor, with approval from creditors representing more than half of all receivables, the supervisory judge may approve a plan to continue the business of the bankrupt debtor."

This creates two serious problems. First, the law provides no concrete criteria or guidance for approving going concern proposals, lacking standards for financial, operational, or managerial indicators and defined timelines, which fosters inconsistent, subjective decisions. Second, unlike standardized financial asset valuation, no specific standards exist for valuing bankrupt estates in going concern assessments, leading to ad-hoc curator methodologies, undervaluation of intangible assets, lack of quality control, and vulnerability to curator bias favoring liquidation.

Academic research documents that most Indonesian curators have conventional legal or accounting backgrounds without industry-specific operational experience for bankruptcy debtors. This competency gap is worsened by the absence of mandatory training or certification for going concern assessments. Despite curators' material responsibility—impacting thousands of employees and regional economies—their recruitment and development lack specialized frameworks. Consequently, going concern decisions rely on incomplete information, limited analysis, and inadequate infrastructure rather than comprehensive professional judgment.

Based on the above, a significant research gap exists between the normative going concern framework and practical implementation, hindering ideal assessment of bankrupt prospects. The research is important to: (1) identify the normative framework and its weaknesses; (2) develop an integrated valuation method combining legal, accounting, and financial analysis; (3) provide practical recommendations to enhance going concern decision-making in Indonesian commercial courts; and (4) enrich evidence-based literature on operational aspects of Indonesia's Bankruptcy Law.

RESEARCH METHOD

This research was an empirical juridical study, also known as socio-legal research, which integrated normative and empirical approaches within one comprehensive framework. This approach was chosen to gather data directly from real bankruptcy cases and incorporate legal comparisons with other countries. The research employed three components of an integrated approach: first, a normative juridical approach analyzing Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and its derivative regulations; second, an empirical juridical approach through in-depth interviews with curators, supervisory judges, and creditors, as well as direct observation of the *going concern* management process; third, a comparative approach with the legal systems of the United States, the United Kingdom, and Continental Europe, based on criteria such as legal system type, level of regulation, and relevance.

Data collected from literature studies included primary legal materials (laws, court decisions), secondary legal materials (books, journals, academic articles), and tertiary legal materials (legal dictionaries). The research used four problem approaches: the statutory approach analyzed the positive normative framework; the conceptual approach examined the concept of going concern in assessing bankrupt estate prospects; the case approach reviewed commercial court decisions for practical application; and the comparative approach contrasted bankruptcy regimes across jurisdictions. The analysis employed a prescriptive-analytical method with a qualitative approach through legal interpretation, norm systematization, and legal argumentation to yield deductive conclusions aligned with the principles of legal certainty, justice, and utility.

RESULT AND DISCUSSION

Regulating Going Concern in the Bankruptcy Legal Framework in Indonesia

Bankruptcy is a legal event that has a significant impact on the sustainability of a company's operations. In the context of Indonesian bankruptcy law, the decision to continue the business of a company that has been declared bankrupt through the going concern mechanism is one of the strategic choices that can be taken by the curator with the approval of creditors. Elyta Ras Ginting in her book Bankruptcy Law: Creditor Meetings explains that the term business continuity has an equivalent in English as '*going concern*' which is a term commonly used in the accounting field related to the *financial statements* of a company (*entity*) made by a professional public accountant.

The concept of going concern or business continuity is basically a principle that allows debtor companies that still have prospects to continue operating even though they have been declared bankrupt by the Commercial Court. The application of this principle aims to maximize

the value of bankruptcy assets and provide more optimal payment opportunities to creditors compared to direct liquidation of the company's assets.

In practice, the curator as the party who has full authority to manage and settle the bankruptcy assets must conduct an in-depth assessment of the prospectivity of the bankruptcy estate before submitting a proposal for going concern. Although the term "going concern" is not explicitly written in the title of the articles in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK PKPU), the substance of this principle is embedded in various provisions that govern the mechanism of corporate rescue, especially in the procedures of Suspension of Debt Payment Obligations (PKPU) and reorganization as an alternative to bankruptcy by liquidation.

The regulation regarding going concern in the Indonesian bankruptcy system is specifically regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law). Provisions regarding business continuity can be found in two main phases of the bankruptcy process. The first phase is after the bankruptcy judgment is rendered but the company is still in solvent status, as stipulated in Article 104 paragraphs (1) and (2) of the Bankruptcy Law and PKPU. In this phase, the curator can continue the business of a debtor who has been declared bankrupt based on the approval of the creditor committee, even if the bankruptcy judgment is still in the process of cassation or review. If there is no creditor committee in the bankruptcy case examination process, the curator can ask the Supervisory Judge for permission to continue the debtor's business.

The normative formulation in Article 104 contains several key elements that are very important to understand. First, this article establishes a normative requirement that the decision to continue the business of a bankrupt debtor must be based on the approval of the temporary creditor committee. This requirement reflects the principle of procedural democracy in bankruptcy law, where the curator does not have full discretionary authority to unilaterally decide on going concern, but rather this decision must have legitimacy from the organ representing the interests of creditors. This is in line with the opinion of Munir Fuady in his fundamental work "*Bankruptcy Law in Theory and Practice*," namely the principle of creditor democracy in going concern decision-making is essential to ensure that this strategic decision does not become an instrument for the sole benefit of the curator or debtor, but truly reflects the will of the majority of creditors who have the most interest in the outcome of the bankruptcy process.

The second phase is after the bankrupt assets reach insolvency status, where further provisions are regulated in Articles 179 to 184 of the Bankruptcy Law and PKPU. It should be noted that the determination of the state of insolvency is regulated in Article 178 paragraph (1) of the Bankruptcy Law 2004 which states: "*The state of insolvency begins from the moment as referred to in Article 179 paragraph (1) or Article 183 paragraph (1) or Article 184 paragraph (3)*". This article establishes very important normative parameters regarding *timing* and *triggers* to determine the circumstances of the debtor's insolvency in bankruptcy. In contrast to some bankruptcy regulations in other countries that determine insolvency based on the conditions at the time of filing a bankruptcy application, the Bankruptcy Law and PKPU use a more *timing-based approach* by determining the status of insolvency at specific times stipulated in certain articles. The provisions in Article 178 imply that the state of insolvency is not a static condition that remains fixed from the beginning of the bankruptcy proceedings, but rather a condition

that is formally determined at crucial moments in the bankruptcy proceedings and must be carried out at a certain juncture clearly established by law, i.e. at the times mentioned in Article 179 (after the receivables matching meeting), Article 183 (at the time of evaluation of whether the going concern still provides benefits), or Article 184 (at the time of consideration whether settlement should be initiated).

Furthermore, Article 179 paragraph (1) gives the trustee the authority to assess whether maintaining a going concern can increase the value of the bankruptcy asset. In this case, the curator has the authority to determine the continuation of the business of the bankrupt debtor if it is considered to be able to increase the value of the bankruptcy assets, in accordance with the principle explained in Article 25 of the KPKPU Law, which states: "*All Debtors' engagements issued after the bankruptcy declaration judgment can no longer be paid from the bankruptcy assets, unless the engagement benefits the bankruptcy assets.*"That is why

Meanwhile, Article 180 paragraph (1) regulates the approval mechanism whereby the proposal to continue the business of a bankrupt company must be accepted if it is approved by concurrent creditors representing more than half of all receivables recognized or temporarily received. Furthermore, this Article stipulates that approval must be calculated based on the number of creditors (*one creditor, one vote principle*), not based on the value of receivables. This means that every creditor, regardless of the size of the receivables has the same voting rights in decision-making. This article also sets a normative threshold of "more than half" (50% + 1), which is a *simple majority* and not *a supermajority* or *unanimity*. This reflects the principle that going concern decisions are decisions that require firmness and clarity, rather than a perfect consensus that may never be reached.

Comparison of Going Concern Arrangements in the Bankruptcy Legal System in Indonesia with Other Countries

To understand the position and characteristics of the regulation of the principle of going concern in Indonesian bankruptcy law more comprehensively, a comparative study with the bankruptcy legal system in other countries is needed. This comparison is important to assess the extent to which the business rescue orientation is accommodated in various bankruptcy regimes, as well as how the balance between the interests of debtors and creditors is regulated. Therefore, the following table presents a comparison of the main arrangements of going concern in the bankruptcy legal system of Indonesia, the United States, the United Kingdom, and Continental European countries based on the main relevant aspects.

Table 1. Comparison of the main arrangements

Comparative Aspects	Indonesia (Law 37/2004)	United States (Chapter 11)	English (Insolvency Acts)	Germany (StaRUG/InsO)	France (Save)
Going Concern Initiative	Debtor, Curator, or Creditor	Debtor (DIP)	Debtor or Court	Debtor	Debtor (pre-negotiated)
Creditor Approval	>50% receivables recognized	≥75% of one class +	75% CVA or court discretion	50% amount + 50% value	75% (acceleration) or court

		absolute priority			
Business Control	Curator + Supervising Judge	Debtor (DIP)	Administrator/Debtor	Debtor	Debtor + Administrator
Going Concern Assessment	Subjective, without compulsory members	Disclosure Statement & detailed plan	Administrator proposal	Positive 12-month prognosis	A viable business plan is mandatory
Automatic Stay	None	Yes, automatic	Only administration	In restructuring	Observation period
Validity Period	Unlimited	Until the plan is confirmed	Flexible	24 months of insolvency risk	2-12 months
Cross-Class Cramdown	None	Yes (absolute priority)	Yes (restructuring plan)	Yes (protect minorities)	Yes (safeguards)
Asset Valuation	Going concern (without standards)	Going vs liquidation	Usually going concern	Restructuring assumptions	Projected cash flow
Creditor Priority	Pari passu pro rata	Strict absolute priority	Secured > Unsecured	Absolute + flexibility	Absolute protected

Source: Data Proccessed

Based on the analysis of Indonesia's economic context and legal infrastructure as described in the table above, a hybrid model that combines the CVA mechanism from the UK, the rapid observation period from France, and Indonesia's local flexibility is the most appropriate to adopt. No other system can be adopted in its entirety because each country has a unique context that is different from Indonesia.

Indonesia has a very unique economic structure dominated by MSMEs with 99% of all business units being MSMEs, accounting for 60.5% of GDP and absorbing 96.9% of the national workforce. Micro businesses themselves account for 99.6% of MSMEs, creating a significant "missing middle". This structure is very different from the United States, the United Kingdom, Germany, and France which have a much stronger middle and large business class. Therefore, the bankruptcy system that is suitable for maintaining going concern must be designed specifically for MSMEs, not for large companies. Chapter 11 America is too complex and expensive for Indonesian MSMEs because legal fees and long processing time will destroy the business before the reorganization is complete. The German model with a "positive going concern 12-month prognosis" is also too strict and requires professional financial analysis that Indonesian MSMEs do not have.

The most appropriate system is to combine three key elements. First, the adoption of the CVA (Company Voluntary Arrangement) mechanism from the UK which is fast, cost-effective and can be completed without extensive publicity damaging the reputation of the business. CVAs are suitable for MSMEs because they are flexible, require 75% creditor approval (protect creditors while not hindering reorganization), and do not require complicated court procedures.

Second, the adoption of a short observation period of 4-6 months from France with an automatic stay (termination of creditors' actions), replacing the Indonesian system that does not set a time limit (creating uncertainty) and not the strict German system (12 months). This short period gives the debtor ample time to restructure operations while protecting creditors from late decisions. Third, the adoption of a "simple litmus test" based on going concern assessment is not a complicated 12-month German prognosis but rather a question of whether the business is generating revenue, assets are retaining value, and debtors have a simple plan for the next 4-6 months. This is in accordance with the capacity of Indonesian courts which are still limited in terms of human resources and technological infrastructure.

This model must also include a better creditor protection mechanism than the current system, namely automatic stay to manage and even transfer the assets they own. It then prevents the "separation" of assets that undermines going concern, and clear creditor priorities (separatist > preferred > concurrent rather than *pro rate*), as well as limited cross-class cramdown that requires the approval of at least one class of creditors (not 100% of all creditors). This system creates a balance between the flexibility needed by Indonesian MSMEs and adequate creditor protection, without requiring the court infrastructure to conduct in-depth analysis or complicated documentation processes. The Indonesian Association of Curators and Administrators (AKPI) has recommended the reform of Law 37/2004 to the Ministry of Law for the inclusion of Prolegnas 2026, providing a golden opportunity for the implementation of this hybrid model along with the strengthening of the infrastructure of special bankruptcy courts and training of judges.

Thus, a hybrid system that combines the UK's CVA, a French observation period, and a simple assessment according to local capacity is the best choice because: (1) it is accessible to MSMEs through low costs and fast processes, (2) realistic with the capabilities of Indonesian courts that do not require in-depth financial analysis, (3) it protects creditors better than the current system through automatic stay and clear priorities, and (4) remain flexible to adapt to dynamic local business conditions. This model is not a full adoption of one country, but a contextual adaptation that considers the uniqueness of Indonesia's economy as an emerging market with the dominance of MSMEs.

Factual Parameters of the Assessment of the Business Prospectivity of the Bankruptcy Debtor in Going Concern Decision Making by the Curator

A. Financial Parameters

The going concern assessment for bankrupt debtors is a comprehensive process built upon three fundamental parameters. The first is the debtor's liquidity position, which determines its short-term ability to meet obligations. While historical ratios like the current and quick ratios are considered, the critical focus is a realistic 12-24 month cash flow projection, tested under various scenarios. A key task for the curator is to diagnose whether a liquidity shortfall is a temporary market shock or a symptom of chronic, structural insolvency, as this diagnosis dictates the entire recovery strategy.

The second parameter is the long-term profitability outlook, reflecting the business's fundamental ability to generate returns. Indicators such as ROA, ROE, and particularly EBITDA—which isolates operational cash generation—are analyzed. The central question is whether the debtor can achieve break-even or sustained profit within a reasonable timeframe,

typically 2-3 years. If projections show persistent losses without a credible turnaround strategy, going concern is deemed unviable, making liquidation the preferable option to protect creditors' aggregate interests.

Finally, the assessment examines the long-term solvency position, evaluating the debtor's capital structure and ability to meet all obligations. Critical indicators include the Debt to Asset Ratio (DAR) and Debt to Equity Ratio (DER), with a particular focus on equity deficiency or negative equity, which signals substantive insolvency. Tools like the Altman Z-Score can provide a holistic view of financial health. Ultimately, a credible and accountable going concern opinion can only be formed through the integrated and simultaneous evaluation of all three parameters: short-term liquidity, medium-term profitability, and long-term solvency.

B. Operational Parameters

The going concern assessment for a bankrupt debtor requires a critical evaluation of its operational capacity and management quality. A curator must systematically analyze whether production facilities can function optimally post-restructuring, examining the condition of machinery, the competency of the remaining workforce, and the flexibility of the cost structure to meet market demand. This operational review is essential for distinguishing the nature of the debtor's losses—whether they are temporary, stemming from external market shocks, or structural, indicating a flawed business model. This diagnosis is material, as temporal losses may be recovered with market normalization, whereas structural ones demand profound business transformation.

Alongside operational viability, the value of the debtor's inventory and receivables is a crucial short-term parameter. The curator must determine if inventory is marketable or obsolete, as obsolete stock not only fails to generate cash but also burdens cash flow with carrying costs. The ability to quickly convert these assets and collect outstanding receivables into cash is vital for meeting urgent operational liquidity needs and supporting viability in the critical 3-6 month window. This liquidity from assets directly impacts the feasibility of sustaining operations.

The most fundamental determinant of going concern success is the quality and capability of management, whether the existing team or a curator in an interim role. A credible recovery plan, articulated as a formal business plan with SMART criteria, must be transparently communicated. The plan's credibility heavily depends on the management's proven track record in both normal operations and, critically, in executing successful turnarounds during financial distress. Experienced and competent management lends significant credibility to projections, while a poor track record substantially increases the risk of the recovery plan's failure.

C. Audit Parameters and Financial Projections

The auditor's opinion regarding going concern is a fundamental indicator in evaluating an entity's ability to maintain its survival, considering that independent auditors have a professional responsibility to provide an objective and transparent assessment. If the independent auditor has issued an opinion with modifications in the form of going concern qualification that explicitly states that there is substantial doubt about the debtor's ability to continue its business, this is a very strong justification for the curator to conduct an in-depth review of the business continuity proposal submitted by the debtor or creditor. The auditor's opinion of going concern is usually based on international auditing standards that require the auditor to systematically evaluate whether there are certain events or conditions (going concern

events) that may cause significant doubts as to the entity's ability to maintain its business continuity over a period of time, generally measured within 12 months of the date of the financial statements.

The next crucial and non-negotiable step is the preparation of a comprehensive and detailed cash flow projection by the curator or the appointed management team. This cash flow projection must be prepared with sufficient granularity, namely on a monthly or quarterly basis for the next 12 to 24 months period, so as to allow accurate monitoring of the realization of projections. In order to have validity and credibility that can be accounted for to stakeholders, these projections must not only be supported by objective, well-documented, and traceable assumptions, but must also go through stress testing through rigorous sensitivity analysis. This sensitivity analysis aims to methodically measure the impact or elasticity of changes in key variables on the company's liquidity and viability, by simulating various extreme scenarios such as a 20-30% decrease in revenue due to a contraction in market demand, or an increase in production costs by 15% due to inflation or supply chain disruption.

In sound restructuring practices and international best practices, mandatory financial projections include three different probability scenarios: optimistic scenarios (upside scenarios with favorable assumptions), realistic scenarios (the most likely base case scenario based on historical data and market conditions), and pessimistic scenarios (downside scenarios with conservative assumptions). These three scenarios together provide a complete picture of the risk distribution and help creditors and judges to understand the probabilities of various outcomes of the restructuring plan. Projections that only show the best-case scenario without sensitivity analysis will be considered uncredible and may indicate the debtor's intentions to cover up the actual risk.

The success of business recovery (turnaround) does not only depend on the validity of comprehensive financial projections, but must be supported by a measurable and actionable management plan in a concrete manner. An effective recovery plan (recovery plan or business plan) must integrate four key strategic components that are interrelated. First, financial restructuring which includes rescheduling debts according to their ability to pay, haircut or the elimination of part of debts that can no longer be recovered, or refinancing with alternative sources of funds. This financial restructuring must be adjusted to the projected cash flow so that the debt payment burden does not exceed the company's cash generation capacity. Second, operational restructuring that focuses concretely on cost reduction, increased productivity, and optimization of capacity utilization of existing production assets. Third, a market penetration strategy or revenue recovery plan to restore revenue flows through expansion into new market segments, product development, or market recapture from competitors. Fourth, the establishment of a realistic timeline and clear and quantified Key Performance Indicators (KPIs) to monitor the progress of the implementation of the plan objectively and in real-time. Without measurable and specific indicators, a peace plan or restructuring will be difficult to evaluate its effectiveness and allow the debtor to distract from the agreed targets.

Business continuity assessments must be placed within an integrated framework and a sustainable and structured monitoring mechanism. A holistic valuation combines historical analysis to look at past performance trends, forward-looking projections to assess realistic future prospects, in-depth technical operational analysis, as well as analysis of the debtor's competitive position in the industrial market. Given that going concern is not a static decision

made once and for all, but a dynamic status that can change as internal and external conditions change, the curator has a legal and fiduciary obligation to carry out periodic monitoring of the implementation of the plan. Monitoring meetings must be held at least quarterly to evaluate the achievement of KPIs, compare realizations with projections, and detect significant changes in conditions from both internal factors (operational, management) and external factors (market, industry, macroeconomics). If in the monitoring phase there are material negative deviations from the initial assumptions such as the realization of revenue far below the projection or operating costs exceeding the budget and the business prospects continue to deteriorate without a credible improvement strategy, the curator is authorized and obliged, in the best interests of the bankrupt assets and creditors, to recommend the termination of going concern and switch to asset liquidation or strategic sale (asset sale). The decision to liquidate or continue the going concern must be supported by a value comparison analysis: whether the NPV (net present value) of continuing operations is higher than the liquidation value, or whether liquidation will result in a better recovery for creditors.

D. Conceptualization of the Business Prospectivity Parameters of Bankruptcy Debtors in the Case of Lehman Brothers

The failure of Lehman Brothers on September 15, 2008 was a pivotal event in the history of modern corporate bankruptcy that provided fundamental lessons about assessing business prospectivity and decision-making between going concern and liquidation. Although Lehman Brothers is a sophisticated global investment bank, the principles of going concern evaluation revealed from the case have significant relevance to bankruptcy practices in various contexts, including Indonesia.Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations gives Indonesian curators the authority to evaluate the debtor's business prospects and choose between the restructuring route (going concern) or asset liquidation.

The bankruptcy of Lehman Brothers was not the result of a single event, but rather an accumulation of various fundamental failures. First, Lehman operates with a highly leveraged business model (gross leverage ratio stands at 30:1, with equity of just 3.5% of assets), creating systemic instability in which the company relies on daily repo market refinancing to sustain operations. When market confidence declined, Lehman was unable to refinance. Second, Lehman concentrated its portfolio in highly illiquid $221 billion in residential mortgage-backed securities. Lehman's internal valuation shows values close to par, but the market pricing service rates it 40% lower. The company is trapped, deleveraging is impossible without a force sale. Third, Lehman used the Repo 105 transaction to hide $50 billion in assets from its balance sheet, disguising the deterioration of its cash position (from $41.5 billion to $1.4 billion in one week) and negative operating cash flow from 2005-2006.

The Valukas Examiner report identified that the failure of the going concern assessment occurred prior to the bankruptcy filing. Lehman's 2007 Z-Altman score of 0.604 puts the company in a distressed zone (Z threshold < 1.81), with clear warning signals: cash is only 1% of assets, persistently negative cash flow, and long-term debt continues to rise to offset the operating deficit. Nevertheless, independent auditors Ernst & Young continued to provide an unmodified opinion without the inclusion of going concerns until the end of 2008. This failure shows that the assessment of going concern must be prospective and probabilistic, not just an analysis of historical trends, and cannot be fully delegated to the auditor so the curator must conduct a careful independent assessment.

The analysis of the Lehman Brothers case identified five parameters of prospectivity that are quite critical and universally applicable. The first parameter of Liquidity Coverage and Cash Burn Rate measures the ability of the debtor to maintain operations compared to the level of operational cash expenditure. Lehman's liquidity collapsed to less than a week as opponents demanded additional collateral. Operational indicators to analyze: current ratio, quick ratio, cash conversion cycle, monthly cash burn rate, and liquidity period (how many operational months can be maintained with the current cash position). The curator should evaluate: if the liquidity period is less than three months without a secured credit facility, the viability of going concern is very low unless there is a realistic revenue projection with a probability of success of more than 70%.

The second parameter, namely Asset Quality and Realized Value in a Depressed Scenario, measures the ability to convert assets into cash without significant reduction in value. Lehman's valuation gap between internal markings ($3.5 billion) versus market realities ($2 billion) shows a 43% cut—an illustration of the huge mismatch between book value and liquidation reality. In a frozen market, non-marketable assets cannot be sold at a fair price. Indicators to evaluate: the percentage of assets in liquid versus illiquid instruments, mark-to-market loss recognition, and explicit differentiation between book value versus forced liquidation value. Red flags: inventory obsolescence rates of more than 10% per year, old accounts receivable more than 90 days old uncollected by more than 15%, or assets that require significant capital expenditure to maintain saleable condition.

Third Parameter: Revenue Generation Capacity and Market Position Durability measures the debtor's fundamental ability to generate sustainable income in a competitive market. Lehman was heavily exposed to a collapsing residential property market with no alternative revenue streams to offset the decline. Indicators: revenue trends over 3-5 years (growing, stable, declining, shaking), market share, customer concentration (percentage of the top five customers), bargaining power, and gross profit margin trends. Red flags: if the debtor is the recipient of the price in a declining market (low differentiation), the prospectivity of going concern is VERY LOW; if the customer concentration is more than 40%, the risk of dependency is high.

Fourth Parameter: Management Ability and Track Record in Crisis Management measures the ability to execute a recovery plan and make difficult decisions. The Valukas report identified management failures: Richard Fuld maintained a denial of the depth of the crisis, pursued a strategy of "doubling down" in mortgage investment while the market was clearly deteriorating, was reluctant to cut costs aggressively until September 2008 (too late to save the company), and delayed a deleverage strategy. Indicators: track record in turnaround or crisis management situations, willingness to make unpopular decisions (asset sales, cost reduction, strategic pivot), transparency of communication with creditors, and management expertise in the debtor industry. The curator must assess: is the debtor open about the problem or concealing information?

The fifth parameter, namely the Going Concern Opinion from the Independent Auditor, provides a professional baseline assessment of the ability of going concern. International Auditing Standard 570 requires auditors to systematically evaluate whether there are events or conditions that could raise substantial doubts about the going concern. Lehman Ernst & Young auditors failed to identify going concerns in a timely manner—although the Z-Score indicator

has been clearly in a distressed zone since 2007, a modified opinion only occurred in late 2008 (beyond the rescue stage). Curators should: prioritize going concern opinions that have inclusion as a STRONG SIGNAL for intensive investigation; do not assume unmodified opinions mean that going concern can be accepted and validated through independent assessment.

The Integrated Decision Making Framework consists of three phases. The First Phase i.e. Rapid Valuation (Days 1-7) involves the collection of independent audit reports, management statements, 12-month cash flow projections with sensitivity analysis, independent asset valuation, and industry/market analysis. Red flags that trigger immediate liquidation considerations: (1) the inclusion of going concern auditors without a credible management plan; (2) the liquidity period is less than one month plus insufficient credit; (3) deterioration of asset quality by more than 30% plus a slow liquidation period; (4) a decrease in revenue of more than 30% year over year without a recovery mechanism; (5) management credibility problems (hiding information, repeatedly missed predictions). The second phase i.e. Detailed Assessment (Weeks 2-4) involves a comprehensive analysis of five parameters by an independent due diligence team (financial analysts, asset appraisers, industry experts, legal consultants). Phase 3: Comparative Value Analysis (Weeks 5-8) calculates the net present value of the going concern scenario compared to liquidation income minus costs, selecting a path that maximizes creditor recovery.

The rating system uses a 5-point scale: a score of ≥ 4.0 indicates that going concern **is acceptable**, a score of 2.5-3.9 indicates **uncertainty** in need of additional conditions/monitoring, and a score of < 2.5 indicates more optimal liquidation. Practical implementation requires curators to: form an independent due diligence team (independent of management); insist on independent audits if the auditor's previous opinion appears optimistic; use rigorous sensitivity analysis with a variety of scenarios (optimistic, fundamental, pessimistic); carry out quarterly monitoring recognizing that going concerns are a dynamic status; prepare contingency plans with a clear asset sale/liquidation strategy; maintain communication Be transparent with the creditors committee regarding prospective assessments including identified risks.

Important lessons from Lehman Brothers for Indonesia are: first, avoid the optimism bias where management insists on independent due diligence; second, assess the sustainability of funding structures recognizing that high leverage plus fragile funding creates systemic risks; third, recognizing that the concentration of illiquid assets is a serious red flag; fourth, using probabilistic scenarios instead of single-point forecasts; fifth, carry out quarterly monitoring with reevaluation triggers; Sixth, prepare a contingency plan with a clear exit strategy. This framework, when applied systematically in combination with strict due diligence and regular monitoring, can help the curator maximize creditor recovery while optimally protecting the interests of the bankrupt assets, consistent with the obligations inherent in the curator's position under the Indonesian bankruptcy regime.

CONCLUSION

This study identified a significant gap between the going concern principle enshrined in Indonesia's Law No. 37/2004 and its practical implementation, where the absence of concrete assessment criteria leads to ad-hoc, subjective curatorial decision-making. It proposed an

integrated framework based on five parameters—liquidity, profitability, solvency, operational capability, and management—along with a hybrid model incorporating England's Company Voluntary Arrangement (CVA), short observation periods, and quarterly monitoring to enhance credibility in evaluating bankrupt debtors' prospects, drawing lessons from the Lehman Brothers case. For future research, scholars should conduct longitudinal empirical studies tracking going concern outcomes post-reform implementation across Indonesian commercial courts, while exploring AI-driven predictive analytics for real-time prospectivity assessments to address evolving economic challenges.

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