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Between The Indonesian Bankruptcy Law and *Fiqh* Ibnu Qudamah's about *Ahkam Iflas* in *Al-Mughni*

Muhammad Rusydianta
Universitas Darussalam Gontor, Indonesia
mrusydianta@unida.gontor.ac.id

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Abstract:
Research Main Problem: This article begin from the researchers similarities finding, such as Lubis found that various bankruptcy provisions in *Bidayatu Al-Mujtahid* are similar to Indonesian Bankruptcy Law, and Western bankruptcy regulations (Common Law and Civil Law) as Abed and Michael found in their research, *Al-Mughni's* bankruptcy provisions (Ibn Qudamah's book) similar with the United States Bankruptcy Act. Then, it might be worth examining Indonesian Bankruptcy Law in comparison with Ibn Qudamah's *fiqh*; Research Objectives: To discover the similar post-modern bankruptcy provisions analogous to Islamic Law "*ahkam iflas*" discussed in Ibn Qudamah's book since eighth century earlier. Especially, how does the legal substance of *iflas* in this work of jurists compare with Law No. 37 of 2004 concerning Bankruptcy and Delayment of Debt Payment Obligations; Methodology: Utilising legal semiotics and a comparison approach to analysing primary and secondary legal material from the statute, Ibn Qudamah's book, and others. This article will qualitatively discuss the object of the research descriptively; and Results: Found several similarities, including: the understanding of bankruptcy, the exclusion of debtors, preferential rights, types of creditors, to the delayment of debt payment obligations. Some of the differences include: bankruptcy status; the presence or absence of bankruptcy revocation; the absence of recommendations for creditors to grant a payment delay during the debtor's difficult times; to differences in paradigms between anthropocentric and theocentric materialism. Might this finding contribute to lighten the load of Islamisation of knowledge, as several provisions are already analogous to "*Ahkam Iflas,*" conjecturally derived from prophetic tradition.

Kata Kunci:
Iflas
Hukum Islam
Kepailitan
Hukum Barat
Tradisi Hukum

Abstrak:
Permasalahan Utama Penelitian: Artikel ini berawal dari temuan kesamaan para peneliti sebelumnya, seperti temuan Lubis bahwa berbagai ketentuan kepailitan dalam *Bidayatu Al-Mujtahid* serupa dengan Hukum Kepailitan Indonesia, dan peraturan kepailitan Barat (tradisi hukum Common Law dan Civil Law Eropa Kontinental) seperti temuan Abed dan Michael dalam penelitian mereka, ketentuan kepailitan Al-Mughni (karya Ibn Qudamah) serupa dengan Undang-Undang Kepailitan Amerika Serikat. Untuk itu, ada baiknya meneliti Hukum Kepailitan Indonesia dibandingkan dengan fikih Ibn Qudamah; Tujuan Penelitian: Untuk menemukan ketentuan hukum kepailitan post-modern yang similar dan mirip dengan hukum kepailitan Islam "ahkam iflas" yang dibahas dalam kitab Ibn Qudamah sejak delapan abad sebelumnya. Secara khusus, untuk menyingkap bagaimana substansi hukum *Iflas* dalam karya ahli hukum tersebut dibandingkan dengan Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang; Metodologi:

Menggunakan pendekatan legal-semiotika dan perbandingan untuk menganalisis bahan hukum primer dan sekunder dari undang-undang, buku Ibn Qudamah, dan lainnya. Artikel ini akan membahas objek penelitian secara deskriptif dan kualitatif; dan Hasil: Ditemukan beberapa kesamaan, termasuk: pengertian kebangkrutan, pengecualian debitur, hak preferensial, jenis kreditur, hingga penundaan kewajiban pembayaran utang. Beberapa perbedaannya meliputi: status kebangkrutan; ada atau tidaknya pencabutan kebangkrutan; tidak adanya rekomendasi bagi kreditur untuk memberikan penundaan di masa-masa sulit debitur; dan perbedaan paradigma antara materialisme antroposentris dan teosentris. Seomga temuan ini berkontribusi untuk meringankan beban tugas Islamisasi pengetahuan, karena beberapa ketentuan hukum kepailitan sudah sesuai dengan *ahkam Iflas,,* diduga berasal dari tradisi profetik.

Introduction

In the fifth edition of the Great Dictionary of the Indonesian Language (KBBI), "*pailit* (bankrupt)" is an adjective meaning "*Jatuh bangkrut atau jatuh miskin* (going bankrupt or becoming poor) (pailit Tim Penyusun, 2023)." Synonyms for "*pailit*" include"*bangkrut*" and "*gulung tikar*", a figurative Indonesian word meaning running out of capital (gulung tikar Tim Penyusun, 2023). Meanwhile, "*bangkrut* (bankrupt)" is a verb that also means falling into poverty due to the depletion of assets or suffering significant losses to the point of bankruptcy—"going out of business" due to constant losses and running out of capital—similar to the meaning of "*pailit* (bankrupt) (bangkrut; kebangkrutan Tim Penyusun, 2023)." Meanwhile, the noun for "*pailit* (bankrupt)" is "*kepailitan* (bankruptcy)," which refers to a situation in which an individual or legal entity is unable to pay its obligations (debts) to creditors (pailit; kepailitan Tim Penyusun, 2023). Furthermore, the noun for "*bangkrut* (bankrupt)," "*kebangkrutan* (bankruptcy or insolvency)," also has the same meaning as "*kepailitan*," meaning "the state of bankruptcy of a business due to the inability to pay debts, etc."(see bangkrut; kebangkrutan Tim Penyusun, 2023)

In existing literature, etymologically, the word "*bangkrut*" is a loanword from the English word "bankrupt," which also means insolvent or *pailit*, while "bankruptcy" means "*kebangkrutan*" insolvency or bankruptcy (Echols & Shadily, 2003, p. 56). Bankrupt itself comes from the Italian word "*Banca rotta*"—"*Banca*" means bank; "*rotta*" means *to go broke; to break the bank*." A word combination used to describe the situation in which a debtor fails to pay a bill (debt), first used in the 13th century by a bank in Venice (Bracewell & Giuliani, 2012, p. 1). One or two century earlier before Stolker finding about England bankruptcy Statute in 1543 (Stolker, 2023) or Levinthal finding about Italian bankruptcy system in 14th century, French Law bankruptcy system "Coutume of Paris of 1510", and Dutch Law of bankruptcy in the 16th century (Levinthal, 1918, pp. 242–245) Meanwhile, the word "*pailit*" is now familiar in

everyday use and is also used in legal-positive juridical terms in Indonesian legislation. Etymologically, it is a loanword from the Dutch "*Failliet*," and "*Faillissement*" means bankruptcy. Both are closely related to the term "*Failliet verklaring*" (declaration of bankruptcy), a term long used under colonial bankruptcy regulations in effect from 1905 (*Faillisements verordening (Fv) Staatsblad* (S.) 1905 *Number* (No.) 217 *juncto* (jo.) 1906 No. 348) until 2004 (Fuady, 2005, p. 9; Widijowati, 2012, p. 213), was repealed under Article 307 of Law No. 37 of 2004 concerning *Kepailitan dan Penundaan Kewajiban Pembayaran Utang* (KPKPU) or Bankruptcy and Delayment of Debt Payment Obligations (Law No. 37/2004 concerning the KPKPU),

"*Pada saat Undang-Undang ini mulai berlaku, Undang-Undang tentang Kepailitan (Faillisements-verordening Staatsblad (S.) 1905:217 juncto (jo.) Staatsblad 1906:348) dan Undang-Undang Nomor 4 Tahun 1998 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 1998 tentang Perubahan Atas Undang-Undang tentang Kepailitan menjadi Undang-Undang (Lembaran Negara Republik Indonesia Tahun 1998 Nomor 135, Tambahan Lembaran Negara Republik Indonesia Nomor 3778), dicabut dan dinyatakan tidak berlaku* (Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004)."

Several predated the Indonesian bankruptcy provisions stipulated in Law No. 37/2004 or Law No. 4/1998, the colonial government's bankruptcy regulations from 1847 to 1926, such as *wet Boek van Koophandel, Reglemen op de Rechtvoordering (Rv) Staatsblad 1847-52, Failisement verordering (Fv) Staatsblad 1905-217, Reglemen Indonesia yang diperbaharui (Het Herziene Indonesisch Reglement, Staatsblad 1926:559 juncto (jo.) Staatsblad 1941: 44, or Rechtsreglement Buitengewesten, Staatsblad 1927* (Lubis, 2013, pp. 263–264), and even the United States' bankruptcy provisions, which were ratified several times from 1800 to 1978 (Bankruptcy Code 1978 by § 101 of The Bankruptcy Reform Act of 1978, 1978; Bracewell & Giuliani, 2012), or Western bankruptcy of England, Italian, French to Dutch from 14th to 16th century (Levinthal, 1918; Stolker, 2023). Even before the word "*Banca rotta*" was first used in the West in the 13th century (Bracewell & Giuliani, 2012). In the 7th century, namely between 611 and 634, or centuries before. In Islam, through the message and prophecy of Muhammad PBUH (571-634 AD), various provisions (legal basis) regulate bankruptcy, covering almost all modern bankruptcy provisions that apply in Indonesia and the West. Among them are those found in the scriptures and sunnah texts, including the word of Allah in Surah Al-Baqarah verse 280, "*And if (the person who owes the debt) is in difficulties, then give him respite until he finds relief. And giving charity (some or all of the debt) is better for you, if you only knew* (Q.S., 1985, v. 2:280)." Until the words of the Prophet Muhammad SAW in the following hadith narrated by Imam Muslim,

"Do you know what a bankrupt person is?" They answered, "The bankrupt person among us is the one who does not have a dirham and does not have eyes' (possessions or anything to please himself)" then the Prophet answered, "Indeed, the bankrupt person from my Ummah is the one who comes on the Day of Resurrection bringing prayers, fasting, and zakat. However, then comes (the person who complains) "He has been gossiping about this (person)," "And making false accusations against this (person), "And consuming this (person's) property," And shedding blood. this (person)," And beat (abuse) this (person)." Then his goodness is given to this (person), his goodness to this (person). When all his goodness is exhausted before the complaint against him is resolved, he takes their (the complainant's) sins and shifts them onto him, then he is thrown into the fires of Hell."(Muslim, n.d., vol. 4 No. 2581 (59), p. 1997).

Explaining this sunnah text, Muhammad Fu'ad Abdulbaqi explained that the *muflis* (person who is bankrupt) referred to in this hadith is the true meaning of muflis. Meanwhile, the meaning of worldly material things as seen by humans, that *muflis* are those who do not have assets (capital) or those whose assets are lacking (not enough to pay debts) is not the essential meaning (Muslim, n.d., vol. 4 No. 2581 (59), p. 1997). Then, if earlier researchers found similarities, it is not surprising that various bankruptcy provisions applicable in Islam are also found in Indonesian and Western bankruptcy regulations (both Common Law and Civil Law). As stated by Siti Anisah in her dissertation, "*Banyak persamaan antara hukum kepailitan Islam dengan Barat, sehingga mungkin sekali hukum kepailitan Islam dapat menjiwai pembaruan hukum kepailitan Indonesia, tanpa perlu memisahkan aturan kepailitan untuk menyelesaikan utang piutang yang muncul dari bisnis syariah dan bisnis konvensional* (*There are many similarities between Islamic and Western bankruptcy law, so it is very possible that Islamic bankruptcy law can inspire the renewal of Indonesian bankruptcy law, without the need to separate bankruptcy regulations to resolve debts arising from Sharia and conventional businesses*) (Anisah, 2008)." as well as as stated by Awad Abed and Robert E. Michael, "...*The treatment of muflis under classical Islamic law is strongly analogous to the traditional civil and common law treatment of bankrupts*....(Michael & Awad, 2010, p. 999)."

Decades after the time of prophecy, from the 8th century, various books emerged discussing bankruptcy from the perspective of the four major schools of thought, guided by these two main Islamic legal principles. For example, in the Shafi'i school, the book "*Al-Umm*" (820 CE/204 AH) by Imam Shafi'i (767-820 CE/150-204 AH) discussed bankruptcy in the chapter "*At-Taflis*," (Asy-Syafi'i, 1990, vol. 3 p. 203) to the 12th century, in the Maliki school, the book "*Bidayatu al-Mujtahid wa Nihayatu al-Muqtashid*" by Ibn Rushd (1126-1198 CE/520-595 AH) discussed bankruptcy in the chapter "*At-Taflis*." Interestingly, despite being a Maliki school, Ibn Rushd presented the discussion from his perspective and that of other schools of thought (Hanafi,

Shafi'i, Hanbali, Laitsi, etc.) (Ibnu Rusyd, 2005). In the Hambali school of thought, one of the fiqh books that discusses bankruptcy issues is *Al-Mughni* (1223 CE/620 AH) by Ibn Qudamah (1147-1223 CE/541-620 AH), discussed in the chapter "*Al-Muflis*" (Ibnu Qudâmah, 1388). Interestingly, in Al-Mughni's bankruptcy provisions, Abed Awad and Robert E. Michael identify several similarities with the United States Bankruptcy Act (Michael & Awad, 2010, p. 976). For novelty, it might be worth examining Indonesian bankruptcy law in comparison with Ibn Qudamah's work, and hope the findings contribute to lighten the load of Islamisation of knowledge, because several provisions are already analogous to *ahkam iflas*, conjecturally derived from the prophetic tradition "*sunnah nabawiyyah*." Therefore, this article reviews how Ibn Qudamah (1147-1223 CE/541-620 AH) discussed bankruptcy provisions in his works in the 12th and 13th centuries, especially in "*Al-Mughni*". Then, this research will try to answer two main questions: 1. What are the provisions on Islamic bankruptcy "*ahkam iflas*" discussed in Ibn Qudamah's book, *Al-Mughni*?; 2. How does the legal substance of *Iflas* in this work of jurists compare with Law No. 37 of 2004 concerning Bankruptcy and Delayment of Debt Payment Obligations?.

Methodology

This normative research process is carried out through a literature review that provides a brief overview of Ibn Qudamah and his *fiqh* of *Iflas* (Soekanto & Mamudji, 2014), then, a brief overview of the bankruptcy law provisions in Indonesia will be provided at the beginning of the discussion. Utilising legal semiotics and a comparison approach to analysing primary and secondary legal material from the statute, Ibn Qudamah's book, and other compatible sources (Marzuki, 2005; Netton, 2006; Wagner & Broekman, 2010). This article will qualitatifvely-descriptively discuss about legal provisions of bankruptcy "*ahkam iflas*" *in Al-Mughni* Ibn Qudamah as the first chapter, which explain about the definition of a bankrupt person (*muflis*), bankruptcy requirements, solvency, and the legal impact of iflas statements for muflis regarding their assets as first sub-chapter; so explain about collateral seizures - executory seizures, separatist creditors, preferential rights - preferential creditors, *hakim*(judge)'s duties and obligations, derived from executory seizures, voluntary or forced execution as second sub-chapter; then, explain about difficult circumstances (*i'sar*) and vice versa (*mumathilah*: solvent but delaying/reluctant to pay) when due and collectable as Ibn Qudamah's *ahkam* of *iflas*. Also discuss the bankruptcy law provision comparison between *Al-Mughni* Ibnu Qudamah and Law No. 37 of 2004 concerning the KPKPU as the end chapter of the discussion.

Results and Discussion

A. About Ibn Qudamah and His Ahkam Iflas

Ibn Qudamah, Abu Muhammad Abdullah bin Muhammad bin Qudamah al-Hambali, was born in the village of *Jama'ili*, Nablus, Palestine, in 1147 and died in Damascus, Syria, in 1223. He was a very influential mufti and a great scholar (*fuqaha*) of the Hambali school of thought. Personally, he was a man of asceticism, wara', and faqih. Even Imam Ibn Taimiyyah admitted that there was no greater *faqih* in all of Syria after the time of Al-Auza'i than Ibn Qudamah. Among his works are: *Al-Mughni, Al-Muqni', Al-Kafi*, and various other books in the field of *fiqh*, *Raudhatu an-Nazhir* in the field of *ushul fiqh*, *Al-Burhan fi masa'ili al-Qur'an* in the field of *ulumu al-Qur'an*, etc (Az-Zirkali, 2002, vol. 4 p. 67).

Many ahkam iflas explained by Ibn Qudamah in his Book, Al-Mughni, is explanation about the word of the Prophet Muhammad PBUH, such as "*Atadruna ma al-muflis...*" narrated by Imam Muslim before and as follow: 1) Narrated by Imam Abu Dawud, PBUH, said, "*Ayyuma rajulun ba'a mata'an fa aflasa alladzi ibta'ahu wa lam yaqbidhi alladzi ba'ahu min tsamanihi syaian fawajada mata'ahu bi'ainihi fahuwa ahaqqun bihi wa in mata al-musytari fa shahibu al-mata' uswatu al-ghurama'* (If a man sells (his) property and the man who buys it becomes insolvent, and the seller does not receive the price of the property he had sold, but finds his very property with him (i.e. the buyer), he is more entitled to it (than others). If the buyer dies, then the owner of the property is equal to the creditors.) (Al-Asy'ats, 1430; *Sunnah; AbuDawud*, 2025)"; 2) PBUH said, "*Delaying (debt payments) for a rich person is an injustice, and if it is permitted (freed from a debt) by a rich person then follow (accept it)*", in other words, "The *wrongdoing (is) delaying (debt payments) by rich people, and if (the debt) of one of you is delegated (the obligation to pay) to a rich person then follow (accept it).*" (Al-Qazwaini, n.d.), etc. The researcher will analyse it in the following analysis

B. A Brief Overview of The Bankruptcy Law Provisions In Indonesia Based on Law No. 37 of 2004 concerning the KPKPU

Different from the etymological definition of bankruptcy as explained in the KBBI. Legally and formally, pursuant to Article 1, paragraph 1, of Law No. 37/2004 concerning the KPKPU, bankruptcy is a general seizure of all assets of a bankrupt debtor, whose management and settlement are carried out by a curator under the supervision of a Supervisory Judge, as regulated by the applicable law. Not as the etymological definition, where bankruptcy is a condition in which the debtor is unable to pay their debts (obligations). However, several legal provisions and rules that apply in bankruptcy, based on Law No. 37/2004 concerning the KPKPU, include the following:

1. Bankruptcy is a decision by the court of a bankrupt debtor who has two or more creditors, but has not paid in full at least one debt that has matured and can be collected, either at his own request or at the request of one or more of his creditors (Article 2 paragraph (1)); In the explanation it is explained that the meaning of due and can be collected is the obligation to pay debts that have matured, either because it has been agreed, because of a delay in the collection time as agreed, because of the imposition of sanctions or fines by the authorized agency, or due to a court decision, arbitrator, or arbitration panel. Furthermore, three types of creditors can file a bankruptcy case against a debtor: concurrent creditors, secured creditors, and preferred creditors. Separatist and preferred creditors can file for bankruptcy without losing their collateral rights over the debtor's assets and their priority right. A bankruptcy declaration changes a person's legal status to one that renders them incapable of performing legal acts, controlling, and managing their assets from the date the bankruptcy declaration is issued. The primary requirement for being declared bankrupt is that a debtor has at least two creditors and has failed to pay one of their debts when it is due. Bankruptcy does not free a person who is declared bankrupt from the obligation to pay his debts;
2. To protect the interests of creditors when the bankruptcy decision has not been decided (pronounced), creditors are permitted to apply for collateral seizure and appoint a temporary curator to supervise (Article 10 paragraph (1));
3. If the debtor's assets are not sufficient to pay the bankruptcy, based on the consideration and the initiative of the creditors, the creditors can revoke the bankruptcy decision (Article 18 paragraph (1));
4. Bankruptcy includes all of the debtor's assets at the time the bankruptcy declaration agreement is made and everything obtained during the bankruptcy, except for things that are not treated as such by law, such as objects for work, maintenance, wages, etc. (Article 21 in conjunction with Article 22);
5. Bankrupt debtors lose their right to control and manage their assets (including bankruptcy assets) from the time the decision is pronounced (Article 24);
6. Debtors can be under detention on the recommendation of a judge, the request of a curator, or a creditor (Article 93);
7. Debtors can submit a peace proposal to creditors (Article 144);
8. Debtors have the right to request a delayment of debt payment obligations to creditors (Article 222);
9. Promising debt payment obligations set by the government based on the creditor's approval (Article 229), etc (Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004).

C. Legal Provisions of Bankruptcy "*Ahkam Iflas*" in *Al-Mughni* Ibn Qudamah

1. *Regarding the definition of a bankrupt person (muflis), bankruptcy requirements, solvency, and the legal impact of iflas statements for muflis regarding their assets*

Discussed in a special discussion titled "*Kitab Al-Muflis*" (The Book of the Bankrupt). Based on the Sunnah text, namely the words of the Prophet PBUH, narrated by Imam Muslim, "*Atadruna ma al-muflis...*" (Muslim, n.d., vol. 4 No. 2581 (59), p. 1997). Inspired by this Sunnah text, according to Ibn Qudamah (1147-1223 AD), a bankrupt person (muflis) is a person who does not have assets (capital), and a person whose assets are unable to pay something to fulfill their needs (their assets are not enough to pay debts, etc.). According to Ibn Qudamah, there are two meanings of bankruptcy among the two types of bankrupt people (muflis): the worldly meaning of muflis, as indicated by the Prophet and explained by the companions, and the meaning of ukhrawi muflis. So, according to Ibn Qudamah, bankrupt people are divided into 2: *first*, bankrupt people in this world (bankrupt people in this world consist of 2 types, as he mentioned); and *second*, bankrupt people in the hereafter (Ibnu Qudâmah, 1388, vol. 4 p. 306).

According to him, the explanation concept of bankruptcy in Islam encompasses bankruptcies from two distinct worlds. The concept of bankruptcy still applies, both in the worldly realm and in the afterlife (the afterlife). Moreover, for Ibn Qudamah, bankruptcy and insolvency in the afterlife are more serious matters than worldly bankruptcy and insolvency. Although in worldly bankruptcy, he likens a bankrupt person to a living corpse because he has no assets except *fulus* (plural of *fals* - the lowest currency below the *dinar* (gold coin) and *dirham* (silver coin); as if only the *dinar* and *dirham* are worthy of being called assets (*mal*/*mata'*/capital)), and only with something considered lowly (*fals*) a person is unable to support his life (Ibnu Qudâmah, 1388, vol. 4 p. 306).

Ibn Qudamah's explanation is in accordance with As-San'ânî's and Ibn Manzhur's (1232-1311) explanation of the word "*Iflas*" or "*taflis*," which means "*Falasa*". *Taflis*, the masculine form of *fallasa*, is a synonym for "*Iflas*." *Iflas* is the masculine form of "*aflas - aflasa ar-rajulu*," meaning to make someone possess false wealth (plural "*fulus*") after having no *dirhams*, and "*Iflas*" means to make someone *muflis* (possess false wealth)—as if their dirhams (wealth) had become false money. Or even worse, he has nothing left of his wealth (*mal*/*mata'*/capital), which is to describe the state of someone who does not even have *falsun* because he has been declared bankrupt through the *hakim's* announcement that he has "*Aflasa - muflisan*/become a bankrupt person" (As-San'ânî, n.d., vol. 2 p. 74; Ibnu Manẓûr, 1414, vol. 6 p. 165-166).

Quoting from the opinions of other jurists. Ibn Qudamah further explained that *muflis* are those whose debts exceed their assets, and whose expenses exceed their income, thus becoming insolvent by decree of *hakim* (implicit) - similar to the definition of *iflas* from the *hanafiyyah* - *Shafi'iyyah* (even though he follows the Hanbali school of thought). In relation to a person's solvency, even though they have assets, a group or party that fulfills these two elements is called muflis because the assets they own are transferred to the debt side as if they were useless, not valid as their assets. As in the hadith of the Prophet, those who have good deeds (wealth) as many as mountains from their deeds. However, the good deeds from various deeds are not enough to be distributed to creditors, and there is nothing left for them. In fact, some creditors do not receive their share of good deeds and are forced to pass on the creditors' mistakes or sins to the debtors. Therefore, as a consequence of the example, Ibn Qudamah explained why people are declared bankrupt (worldly) is because the legal impact is that they are prohibited from using their wealth, except for something low, even they cannot live only on it, such as living with *fulus* (plural of *falsun*) and the like which are not sufficient for the necessities of life (Ibnu Qudâmah, 1388, vol. 4 p. 306).

2. *Regarding collateral seizures - executory seizures, separatist creditors, preferential rights - preferential creditors, hakim(judge)'s duties and obligations, derived from executory seizures, voluntary or forced execution*

Regarding confiscated assets later determined to be bankruptcy assets. In accordance with the hadith of Mu'adz bin Jabal, which the Prophet PBUH forbade Mu'adz bin Jabal from using (his wealth, and he auctioned (sold) it to pay off Mu'adz bin Jabal's debt (see too Al-'Asqalâni, 1424, p. 256; Al-Baihaqi, 1410, vol. 2 p. 293; As-San'ânî, n.d.). According to Ibn Qudamah's explanation, the legal impact of the debtor's assets, which have been determined by the *hakim* as confiscated assets (*mahjur' alaihi*), is more or less as a safeguard to avoid their use and exploitation in *muamalah* (any economic activities) by the debtor. In Ibn Qudamah's explanation, the concept of collateral confiscation is depicted, which served to secure creditors' interests before executory confiscation was known in his time. This conception in Ibn Qudama's time have been explained in the word, "*mahjur 'alaihi*", is *mashdar mimi* from *hajara*, a synonym of *harama* (forbid), which contains the meaning of prohibiting (*mana'a*) and having an tightness (*dhayyaqa*). In the context of *iflas*, *mahjur 'alaihi* is a term for the status of the debtor's assets which means "Something that is prohibited on it." The meaning of the debtor's assets are detained and/or confiscated by the *hakim* so that their status becomes prohibited for use by the debtor based on the *hakim's* statement called "*Al-hajru*", which is the *hakim's* word for the debtor - for his assets - such as "*I detain you (your assets)... or I forbid you from your assets from any form of change - transfer -*

utilisation in economic activities (at-tasharruf) on your assets." Ibn Qudamah implicitly explain that the "*Hajru*" concepts mean a prohibition on a person's use of his wealth, divided into two: 1) a person's prohibition on his personal rights, and 2) a person's prohibition on the rights of others. This second type is what applies in the context of *muflis* - a bankrupt person, a guardian of the wealth of orphans under his guardianship, etc. (Ibnu Qudâmah, 1388, vol. 4 p. 343). More clearly, specifically in *iflas*, according to Ibn Qudamah there are 4 impacts on the debtor's assets that are placed - determined above the status of "*Mahjur 'Alaihi*", including: *First* , the creditor's rights (*ghurama'*) attached to the debtor's assets *('ain mal*). *Second* , the prohibition of all forms of civil use - utilisation (*tasharruf*) of the debtor's assets (*'ain mal*). *Third*, for the creditor who finds the debtor's assets in his possession, he (the creditor) is the person who has more rights over them (is prioritised) than other creditors (*ghurama'*) if so required. Here, there are provisions regarding preferential rights and preferred creditors, although they are not yet explicitly mentioned. *Fourth*, for *hakim* (judges/*qadhi* - curators (neutral parties)) have an obligation to sell or auction the debtor's assets to be used to pay off - fulfill the rights of the creditors (*ghurama'*) according to their respective proportions (Ibnu Qudâmah, 1388, vol. 4 p. 306-307, 343).

Worth to know! Just as in the *Bidayah al-Mujtahid* Ibn Rushd. In *Al-Mughni*, both collateral seizure and executorial seizure are still under the same term related to *hajru* (prohibition-detention) - *mahjur 'alaihi*. Likewise, the term *Hakim* (*iflas* judge) is sometimes understood, explicitly or implicitly, to have the authority of a *qadhi*, supervisor, and curator. It is because the explanation is not technical or detailed; it is only general enough for the reader to understand. So the term "*Hakim*" here is different from the usual use of "*Qadhi*" (judges). The use of the term *Hakim* in the explanation and context of Islamic *iflas* - *taflis* seems to be a combination and a judge (*qadhi*), supervisory judge and curator today; Or in the time of Ibn Rushd or Ibn Qudamah there was no distinction of terms, but what is certain is that *iflas* - *taflis* judges "*Hakim*" serve as neutral parties (mediators) who declare bankruptcy, detain debtors, secure bankruptcy assets or creditor rights, distribute debtor assets to creditors, etc. Now the task is divided and assigned to each party, starting from the judge, the supervisory judge, and the curator (Ibnu Qudâmah, n.d., 1388; Ibnu Rusyd, 1425). It is because none other than Ibn Manzhur in explaining the meaning of the word "*Hakim*" in the Arabic sense encompasses three meanings, including: 1) a judge which means as a *qadhi* (judge) who judges something and determines (decides) it; 2) a judge which means as a neutral party who mediates cases and prevents injustice from the parties who complain about the problem to him, so that it is said to be a judge because he is a person who prohibits oppressors from their injustice among humans; and 3) a judge

which means as a person who applies - implements - executes the law (*munaffidzu al-hukm*) (Ibnu Manẓûr, 1414, vol. 12 p. 140-142). Therefore, it is understandable why, in relation to *iflas* and *muflis*, the *fuqaha'* of Ibn Rushd and Ibn Qudamah use the word "*Hakim*" instead of *iflas qadhi*, because their authority, function, and role are now divided into three as explained above.

Ibn Qudamah explained that if the *hakim* (*iflas* judge) has determined *muflis* to be *hujira' alaih* (a party prohibited from using his assets). From that point onward, the bankrupt debtor is not allowed (prohibited) from using his assets. Any economic activity he undertakes to utilise or transfer his assets in the form of buying and selling, gifts, alms (*waqf*), maintenance, etc., is invalid "*la yaasihhu*". Thus is the opinion of Imam Malik and Shafei. According to other opinions, it is stated that it only results in all forms of changes (*tasharruf* - transfer, etc.) being stopped because it is considered invalid without the details as stated at the beginning, not because the assets are used to fulfil his obligations to creditors. However, according to Ibn Qudamah, with the determination of *hajru* by a *hakim's* decision, the form of *tasharruf* that is invalid is only in assets to which the creditor's rights are attached, such as in pawning (*rahn*) or in pawned goods to which the creditor's rights are attached. Meanwhile, in *tasharruf* related to the liability (*dhimmatihi*), such as buying and selling activities, *qardh*, and *takafful*, it is valid, because what is held is the property, not the debtor's liability (Ibnu Qudâmah, 1388, vol. 4 p. 306-307, 330, 343). If Qudamah's legal opinion is carefully considered, this opinion suggests the existence of a concept now known as a separatist creditor (a creditor who has collateral rights, pledges or guarantees, mortgages, etc., who has the right to collect his rights (bankrupt the debtor), and therefore the debtor is prohibited from using the property that is the right of the separatist creditor, etc.).

Furthermore, Ibn Qudamah explained, in the case or condition where the debtor's assets have not been confiscated or determined as *mahjur' alaih*. Everything the debtor does with his assets before the *hakim* (neutral/curator) stops him is *jaiz*. In another sense, the debtor may still use his assets. The reason is that it is excluded - confiscation of assets that occurs after being determined by the *hakim*, namely if there is a creditor (loan owner) who sues the debtor (debt owner), asking the *hakim* to confiscate his assets, where the lawsuit is not answered, granted unless it has been proven or acknowledged by the debtor. If it has been determined, then the *hakim* looks at the assets (calculates the debtor's solvency). Then, if sufficient to pay off the debt, then the debtor's assets cannot be confiscated - detained (the *hakim* does not detain - *lam yahjur 'alaih*), but the *hakim* orders the debtor to pay off his debt (amara biqadha'ihi). If he is reluctant or does not comply, the debtor is detained (yuhbasu), and the *hakim* seizes his assets (confiscates) to pay off the debt, which was taken from

his assets by force. Even if necessary, the *hakim* may sell (auction) it to pay off his debt. debtor, even if the debtor does not consent. However, if his assets are insufficient to cover his debts (insolvent) and his debts are lifelong (*mu'ajjalah*). For these two reasons, according to Ibn Qudamah, his assets cannot be confiscated by the *hakim* (*lam yahjuru 'alaihi*) (Ibnu Qudâmah, 1388, vol. 4 p. 328-329).

Furthermore, according to Ibn Qudamah, another matter related to the debtor's solvency that makes the debtor's assets also not confiscated by the *hakim* (*lam yahjuru 'alaihi*) is if some of his debts are sealed (*muajjal*), others are *hallan*, and his assets are only sufficient for the *hallan*. In addition, several basic rules in determining hajru (detention/confiscation of debtor assets) according to Ibn Qudamah include: *First*, a *hakim* is not allowed to withhold the debtor's assets without asking and with the creditor's approval, because this is the creditor's right, and hajru is only valid if the creditor agrees to it and requests it. *Second*, if there is more than one creditor and a dispute arises between them, the *hakim* will issue a confiscation order against the creditor seeking only his rights. (This is actually the opinion of Maliki and Syafei). *Third*, *hakim* are also prohibited from misusing the debtor's assets for economic activities because it is not their authority or power, except for the benefit of the creditor, such as selling it to fulfil the creditor's rights, the *hakim* may force such a thing if necessary or if the debt repayment cannot be achieved without auction – selling (Ibnu Qudâmah, 1388, vol. 4 p. 328-329).

Then, in the case that the *hakim* declares someone bankrupt (*fallasa*) and there is property from one of the creditors (*ghurama'*) in the debtor's bankruptcy, then the creditor has more rights over it, unless he takes or leaves it (*tarakahu*). It becomes the joint property of the other creditors (*uswatu al-ghurama'*). For example, between the debtor and the creditor, there is a transaction in the sale and purchase of goods (*sil'ah*), or a pawn (*rahn*) of goods/land (hypotik), etc., when the debtor is declared bankrupt (*muflis*). The creditor finds that his goods from his *muamalah maliyah* activities (sale and purchase or pawn) are still intact with the debtor, the sale and purchase or pawn becomes faskh, and the creditor can take the goods (Ibnu Qudâmah, 1388, vol. 4 p. 307). Ibn Qudamah explained that this (preferential right) is in accordance with the saying of the Prophet Muhammad (PBUH): "*Whoever finds his property intact with someone who is bankrupt has more rights over it* ." (HR. Muttafaq' alaih) (Al-'Asqalâni, 1424, p. 254; As-San'ânî, n.d., vol. 2 p. 75). This is similar to the previous discussion regarding the concept of preferential rights and preferential creditors discussed by Ibn Rushd in his work. However, the concept of separatist creditors related to mortgage rights was also found, where the discussion of preferential and separatist creditors is

still integrated into the discussion regarding *ghurama* (creditors) (Ibnu Qudâmah, 1388; Ibnu Rusyd, 1425).

3. *Regarding difficult circumstances (i'sar) and vice versa (mumathilah: solvent but delaying/reluctant to pay) when due and collectable*

In difficult (*i'sar*) times, such as a pandemic, disaster, or crisis, Ibn Qudamah explicitly discusses this, with a difference in the discussion over whether the status of *I'sar* is initiated by a *hakim* or by the debtor and/or the creditor. Difficult times, initiated by a *hakim*, are when the *hakim* finds and determines that the debtor is in a difficult situation, even in the absence of a request (*muthalabah*) or *mulazamah* (request for rights) from the creditor or debtor. Ibn Qudamah does not discuss it further. However, regarding requests coming from the debtor and/or creditor. At the time the obligation comes due (the debt maturity date), the debtor becomes insolvent because it falls into a problematic situation or becomes a "*Mu'sir* or *Mu'assir*". Then the debtor is detained until evidence or witnesses come to prove his difficulties (Ibnu Qudâmah, 1388, vol. 4 p. 338-339). Similar to Ibn Rushd's previous discussion, in Ibn Qudamah's explanation of this process, there is a concept of delayed bankruptcy, giving the debtor time to try to repay the debt by placing the debtor under supervision, if indeed in difficult times.

Regarding explanation above, Ibn Qudamah explained the series of processes. In his explanation, when the debtor's debt matures and is required to be paid in cash, and the debtor does not fulfil it. The *hakim* supervises and assesses (*munazharah*) the debtor's solvency: if the *hakim* finds that the debtor has applicable and available assets to pay debts (*malan zhahiran* - assets subject to *zakat* or tax), then he orders the debtor to fulfil his obligations. If the debtor says it belongs to someone else and does not get his property from the type of *malan zhahiran*. In fact, regarding words, "*malun zhahirun*, each school of thought has a different interpretation. Still, in the sense of wealth that is subject to zakat, Hanafi added that it is also subject to tax. It can be seen as follows: The Hanafi school of thought interprets it as every wealth that is subject to zakat, including livestock (*sawa'im* - goats), livestock (*al-'asyr* - raising) and those subject to tax (*Kharraj*), and what is more than ten (*wa ma yamurru bi' ala al-'asyir*). While in the Shafei school, it is every property that produces or grows on its own, such as agricultural products and fruit. According to the Hanbali school, everything that includes *as-Sa'imah* (livestock), which is zakatable, and what is eaten from grains (*hubub* - food) and fruits (*ats-Tsimar*) is zakatable. Moreover, according to the Hanbali school, the opposite of *malun bathinun* is money and various merchandise (Abu Habib, 1408, p. 344; Ibnu Qudâmah, 1388), and admits that he is having difficulties (*idda'a i'sar*). However, if the creditor gives it in charity, the debtor is not detained but is in a status of supervision (inzhar), and the creditor is no longer permitted to carry out

mulazamah (attempting to collect rights as usual, including issuing a summons). similar to the word of Allah in Surah Al-Baqarah 280 and the words of SAW "*Tashaddaqu' alaihi - give charity on it*"(Q.S., 1985, v. 2:280) and "*Khudzu ma wajadtumwalaisa lakum illa dzalik - take what you find (from the debtor's property), and there is nothing for you except that*"(Al-'Asqalâni, 1424, p. 255; Muslim, n.d.), because in the opinion of Ibn Qudamah, being chosen is an act that is futile and useless when the debtor is determined to be in difficulty and is also determined to pay his obligations (pay his debt), while the debtor is still in difficulty and the difficulty is the cause or '*uzr* of not being able to pay his debt (insolvent). For that reason, more or less, according to Ibn Qudamah, the debtor is not detained so that he can try to get out of his difficult period and immediately fulfil his obligations. Moreover, to avoid any bad intentions, the debtor is under supervision. However, if the creditor disputes the truth of the debtor, then the creditor's doubt cannot be denied (*la yakhlu*), whether the debtor admits it or does not admit it. If the creditor's doubts are correct and the debtor admits that he has assets in the form of mu'awadhah (assets-receivables), whether from the proceeds of a sale, qardh, or recognising other forms of it, then the creditor's denial and doubt are accepted. However, if the debtor denies, under oath (*halafa*), that he has no assets and is in a difficult situation, then the debtor is detained until he proves his difficulties (Ibnu Qudâmah, 1388, vol. 4 p. 338-339). With the difference lying in the attention to the debtor's condition (difficult times - i'sar), this discussion is similar to what Ibn Rushd, which is given time to postpone or delay the obligation to pay debts (Ibnu Rusyd, 1425).

Then, in the following explanation, Ibn Qudamah discusses the opposite situation, namely if the debtor gave the opportunity "*Musir*" (having the opportunity - ease - abundant wealth - having solvency), but there is a deliberate delay which is also called "*Muthill - mumathilah* delayer" - reluctant to pay his debt or doing "*Mumatholah* - delaying obligations ". Then the creditor requires *mulazamah*, and requests to ask (*muthalabah*), and humiliates his honour (*ighladh lahu*) verbally, such as by saying "*O unjust people..., O mu'tad, etc*.", even has the right to choose the debtor (Ibnu Qudâmah, 1388, p. 4 p. 341). According to Ibn Qudamah, this is in accordance with the PBUH saying, "*Mathlu al-ghaniy julmun - Delaying (debt payments) for rich people is tyrannical*"(Al-Bukhârî, 1422, vol. 3118), In the history of Ibn Majjah, PBUH said, "*Delaying (debt payments) for a rich person is an injustice, and if it is permitted (freed from a debt) by a rich person, then follow (accept it)*," in other words "*The wrongdoing (is) delaying (debt payments) by rich people, and if (the debt) of one of you is delegated (the obligation to pay) to a rich person, then follow (accept it)*"(Al-Qazwaini, n.d., vol. 3 p. 481), and the words of the Prophet, PBUH, "*Layyu al-wajid yuhillu 'irdhahu wa 'uqubatahu- The*

procrastination of capable people to pay off his debt (al-wajid) to allow (allow the creditor) to humiliate his honour (sarcastically) and to punish him (beg the debtor to be removed)" (Al-Asy'ats, 1430, vol. 3 p. 313). In Bukhari's history, it is reversed: punish first and then insult his honour (Ibnu Qudâmah, 1388, p. 4 p. 341). In addition to the discussions explained above, Ibn Qudamah actually discusses several issues related to bankruptcy in his *Al-Mughni*, such as the relationship between bankruptcy and the economic activities of particular objects, such as *muzara'ah* (land), *isti'jar* (objects), '*amal* (work and wages for the debtor as '*amil*/worker), issues related to the debtor's death, and the issue of the separation of bankrupt assets in the confiscation (hajru) decree (Ibnu Qudâmah, 1388, vol. 4 p. 309, 328, 341, 337).

D. Bankruptcy Law Provision Comparison Between Al-Mughni Ibnu Qudamah and Law No. 37 of 2004 concerning the KPKPU

At a glance, if compared with positive law in the 21st century, such as Law No. 37/2004 concerning the KPKPU, as described above. Although the two works of Ibn Rushd and Ibn Qudamah above are not as complete or detailed as the various provisions of bankruptcy law currently in force in Indonesia, they do not yet fully reflect bankruptcy law in Islam, even for literary works from the 12th and 13th centuries. The various bankruptcy provisions contained in the two works above are a record of the progress of bankruptcy law at that time. They are nothing less than masterpieces in the field of law, especially Islamic bankruptcy law. Therefore, if until now we can still find various similarities and relevance to modern bankruptcy law, it is not surprising. One example is the bankruptcy provisions of Article 2 paragraph (1) of Law No. 37/2004 concerning the KPKPU, which are narrower than the provisions and understanding of iflas-taflis in Islam because it is only one discussion of *iflas - taflis* regarding *mumathalah* related to difficult times (*i'sar*) and times of ease (*isar*). In Islam, it can also be detained and declared bankrupt if the *muthil* (debtor who is reluctant, delays, or does not pay in full by the due and collectable period) turns out to be insolvent. Although in fiqh or in the context of the time of Ibn Rushd or Ibn Qudamah, usually the term *muthil* (delayer) in *mumathalah* is identical to a person who has solvency - solvent but delays fulfilling his debt obligations (Anisah, 2008; Ibnu Qudâmah, 1388; Ibnu Rusyd, 1425; Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004).

Another example of similarity is the matter of peace efforts in the hadith of Jabir bin Abdullah, although not as detailed as the provisions in Law No. 37/2004 concerning the KPKPU from Article 144 to Article 175, etc. Alternatively, regarding the delayment of debt payment obligations (PKPU) in the hadith of Jabir bin Abdullah, which was mediated and initiated by the Prophet himself as a *hakim* or initiated by the

creditor if the debtor experiences difficulties (QS. 2:280). The provisions is also found in Law No. 37/2004 concerning the KPKPU. However, in Article 222, etc., the initiation of PKPU comes from the debtor or creditor, applies generally to all debts not only if the debtor experiences difficulties, the role of the creditor in the decision and implementation of PKPU is decisive (Article 229 and Article 255 paragraph (1)), and various others that are more detailed than the instructions contained in the existing text.

Furthermore, after reviewing the various provisions discussed by Ibn Qudamah in their works, a brief comparison of the provisions in these two works with the bankruptcy provisions contained in Law No. 37 of 2004 concerning the KPKPU reveals a general comparison of some of these provisions:

Table 1. Comparison and Similarities Provision Between Indonesia Bankruptcy Law and Ibn Qudamah's Ahkam Iflas in Al-Mughni

Provision	Law 37/2004 KPKPU	Al-Mughni
Bankruptcy requirements	Debts that are due and collectible; and not paying in full at least 1 debt from existing creditors (Article 2)	Debt due and payable (implied); becomes insolvent because debts exceed assets and expenses exceed income
Types of creditors who are entitled	Concurrent, secessionist and preferred creditors (Article 2)	Concurrent (implied), separatist and preference creditors
Type of seizure	General seizure (Article 1 number 1) and collateral seizure (Article 10 paragraph (1) letter a)	*Hajru* (covering executory seizure and guarantee)
The nature of bankruptcy as a general seizure of all the debtor's assets	Idem (general seizure of all the debtor's assets after the decision and during bankruptcy) (Article 1 number 1 in conjunction with Article 21)	General seizure according to creditor's rights
Nature of the decision towards the debtor	Imperative (Article 1 number 1)	Voluntary (if solvent) - mandatory if insolvent or solvent but reluctant
Suspension or delayment instrument	Judge - curator - supervising judge	The *hakim* has the plural duties as curator and supervisory judge too
Checking solvency	There are several conditions: 1) if the debtor submits a	There are - obligations of *hakim* in the examination

	peace proposal to the creditor; 2) in the process of submitting a PKPU by the debtor (Article 159 in conjunction with Article 178 in conjunction with Article 222-Article 224 in conjunction with Article 285)	process
Determination of insolvency status	It depends on the judge and creditor when the debtor agrees to the peace or PKPU ((Article 159 jo. Article 178 jo. Article 222-Article 224 jo Article 285) and bankruptcy means bankrupt (Article 292)	Depends on the *hakim* and the facts regarding the debtor's assets after examining his assets and determining if he is insolvent.
Supervisory Role	Supervising judge - curator (Article 10 paragraph (1) letter b)	*Hakim*
Time and Scope of Supervision	Before and after a bankruptcy or PKPU decision is made (Article 1 number 8 in conjunction with Article 10)	During the case examination process and after the verdict or after the process (especially when given a delay due to *i'sar*)
The impact of the decision and bankruptcy status on the debtor's payment obligations	No impact - liability remains	Eliminating liabilities – becoming a creditor's charity
The impact of bankruptcy decisions in general	Loss of the right to control and manage his assets (including bankrupt assets) from the date the decision is pronounced (Article 24)	Loss of *tasharruf* rights over assets which become the creditor's rights
detention and initiation	There is - by judge, curator or creditor (Article 93)	There is - by *hakim* or creditor
Peace initiation	There is by the debtor (Article 144)	Not discussed
PKPU Initiation	There is by the debtor (Article 222)	There is by *hakim* or debtor or creditor
Difficult time considerations	There is none, you can even go bankrupt if you don't pay in difficult times.	There are - creditors or *hakim* are advised to grant PKPU to debtors

If we look closely at the comparation and similarity in the table above, we will notice that most of the general provisions are similar. However, there are also fundamental differences, including:

1. The bankruptcy requirements in the law are narrower than the iflas requirements in the works of Ibn Qudamah or Ibn Rushd. It makes bankruptcy under the law much easier than the iflas in Islam, as reflected in the works of these two jurists.
2. The law removes the obligation to repay debts through a bankruptcy decree and the debtor's bankruptcy status. Therefore, under the law, even after a bankruptcy declaration, the debtor remains obligated to fulfil their debt obligations, no longer freeing the bankrupt debtor from the obligation to repay debts. Meanwhile, according to two jurists in their works, in Islam, being declared bankrupt and having the debtor's assets seized frees them from the obligation to repay debts. This is an implementation and reflection of the text that teaches the principle of charity (sadaqah).
3. The law eliminates the obligation for judges to consider a debtor's solvency as a condition for bankruptcy, because the definition of "failure to pay" is not the same as "unable to pay." A solvency examination is actually only necessary if the debtor files for a reconciliation or PKPU (Deferred Payment Order). It is also evident in the provision for the revocation of a bankruptcy declaration if the supervisory judge later proposes it due to finding that the debtor's assets are insufficient to cover bankruptcy costs after the bankruptcy separation (used only by the supervisory judge and the creditor committee to revoke the bankruptcy decision of their insolvent debtor). There is no obligation for the judge to conduct a solvency examination during the examination process. Solvency examinations are typically carried out only when necessary or beneficial to the creditor. They are initiated by the debtor, in which case the creditor plays a significant role in determining insolvency (Article 178). It can be seen in the provisions for filing for a reconciliation or PKPU, as explained previously. Meanwhile, according to the jurists, an examination of the ability to pay is one of the judge's obligations when a person's iflas/taflis case is received by him.
4. The law does not recognise the revocation of a debtor's bankruptcy decision because it does not recognise the principle of charity. Meanwhile, in Islam, as explained by two jurists in their work, the revocation of a debtor's bankruptcy is not recognised because there is the principle of charity if the debtor is insolvent, where the judge is required to check the debtor's ability to pay before issuing a bankruptcy decision and hajru on his (the debtor's) assets.

5. The formulation expressed in the third point shows another fundamental difference. In addition to eliminating the principle of charity, the law also eliminates the principle of social responsibility, as reflected in the disregard for the circumstances surrounding the debtor, namely the time of I'sar or difficult times. It is because the law was created to "ignore" the difficult circumstances that lead to a debtor's bankruptcy. However, in Islam, as revealed in the works of the fuqaha (Islamic jurists), this is not the case. In other words, points 1) to 5) seem to explain that the law tends to favour creditors in order to oppress debtors.
6. In the law, bankruptcy is a general seizure of all the assets of a bankrupt debtor during the bankruptcy status. However, according to jurists, this is not necessarily the case; rather, it is a seizure of the creditor's rights. If the debtor is insolvent, this does not apply to all the debtor's assets. It is where the primary function of examining the debtor's solvency is mandatory for the judge in iflas cases.
7. In the law, the nature of bankruptcy decisions is an absolute imperative, whereas, according to jurists, the decision is only imperative if the debtor is insolvent or solvent but reluctant. This difference is closely related to a person's faith or good faith, which was still high during the era of the jurists, but is no longer the case today.
8. The law clearly distinguishes between judges, supervisory judges, and curators. However, in jurists' works, their authority and function are not yet differentiated, as they are combined under the term "*hakim*."
9. Under the law, a debtor's difficult circumstances have no effect and do not require creditors or judges to extend the debt repayment obligation. However, jurists' works explain that it does have an effect. It is because judges and creditors are accustomed to granting a debtor a delayment period if the debtor is found to be insolvent and in a difficult financial position.

Despite the similarities and differences mentioned above, philosophically, these differences indicate that Law No. 37 of 2004 is indeed based on a liberal capitalist paradigm that tends toward secularism, materialism, and anthropocentrism. In contrast, Islam, through the prayer of the fuqaha mentioned above, has a more theocentric, materialistic dimension, viewing capital as merely an instrument for achieving falah (good deeds) in this world and the hereafter. The provision of iflas is not intended to oppress, as it is merely a process of granting rights to each person. There are even teachings or commands to give alms, where God's pleasure is the primary and ultimate goal.

Conclusion

Based on the discussion above, implicitly or explicitly, it can be concluded that: in the book Al-Mughni by Ibn Qudamah, various provisions are discussed regarding the definition of a bankrupt person (*muflis*), the conditions for bankruptcy, solvency, the legal impact of the iflas statement for muflis regarding his assets, separatist creditors, collateral seizures - executory seizures, preferential rights - preferential creditors, the duties of judges, conveying from executory seizures, either by force or by force, provisions regarding difficult circumstances (*i'sar*) for PKPU and vice versa (*isar* but does *mumathilah* - solvent but delays/reluctant to pay) when due and collectible. In addition, what has not been discussed but revealed by the author are provisions related to the relationship of bankruptcy with economic activities of particular objects, such as *muzara'ah* (land-related contracts), *isti'jar* (object-related contracts), charity-work (related to the debtor's work and wages as '*amil*/worker), problems related to the debtor's death, problems related to confiscation and separation of bankruptcy assets, confiscation decisions (*hajru*). A comparison of the work with the Indonesian Bankruptcy Law reveals several similarities between Law No. 37 of 2004 concerning the KPKPU and the work of the *faqih* between the 12th and 13th centuries AD. Some of the similarities include the understanding and definition of bankruptcy, the exclusion of debtors, preferential rights, types of creditors, peace, and the delayment of debt payment obligations. Some of the differences include bankruptcy status, which releases debtors from their obligations; differences in terms; the presence or absence of bankruptcy revocation; the absence of recommendations for creditors to grant PKPU if the debtor experiences difficult times; differences in paradigms between anthropocentric and theocentric materialism.

References

Al-Qur'an dan Terjemahnya; Juz 1 - Juz 30. Departemen Agama Republik Indonesia.

Abu Habib, S. (1408). *Al-Qamus Al-Fiqhi*. Dar al-Fikr.

Al-'Asqalâni, A. bin H. (1424). *Bulûgh al-Marâm; Min Adillati al-Ahkâm*. Dar al-Falaq.

Al-Asy'ats, A. D. S. bin. (1430). *Sunan Abû Dâwud*. Dar ar-Risalah al-'Alamiyyah.

Al-Baihaqi, A. B. (1410). *As-Sunan As-Saghir li Al-Baihaqi*. Jami'atu Ad-Dirasat Al-Islamiyyah.

Al-Bukhârî, M. bin I. (1422). *Al-Jâmi' al-Musnad as-Ṣaḥîḥ al-Mukhtaṣar; Ṣaḥîḥ al-Bukhârî*. Dâr at-Ṭauqu an-Najât.

Al-Qazwaini, M. bin Y. (n.d.). *Sunan Ibnu Majjah*. Mauqi'u Wuzarat al-Auqaf al-Misriyyah.

Bankruptcy Code 1978 by § 101 of The Bankruptcy Reform Act of 1978, Pub. L. No. 101 (1978).

Anisah, S. (2008). *Perlindungan Kepentingan Kreditur dan Debitur Dalam Hukum*

Kepailitan di Indonesia. Universitas Indonesia.

As-San'ânî, M. bin A. A.-K. (n.d.). *Subulu as-Salâm; Syarḥ Bulûgh al-Marâm*. Dar al-Hadits.

Asy-Syafi'i, M. bin I. (1990). *Al-Umm*. Dar al-Ma'rifah.

Az-Zirkali, K. (2002). *Al-A'lam*. Dar al-'Illm li al-Malayin.

Bracewell, & Giuliani. (2012). *Chapter 11 of the United States Bankruptcy Code; Background and Summary 2012*. INSOL International.

Echols, J. M., & Shadily, H. (2003). *Kamus Inggris – Indonesia*. PT. Gramedia Putaka Utama.

Fuady, M. (2005). *Hukum Pailit Dalam Teori dan Praktek*. Citra Aditya Bakti.

Ibnu Manẓûr, J. M. (1414). *Lisân al-'Arab*. Dâr Ṣâdir.

Ibnu Qudâmah, A. M. (n.d.). *Al-Kâfi fi Fiqhi al-Imâm Aḥmad*. Dar al-Kutub al-'Ilmiyyah.

Ibnu Qudâmah, A. M. (1388). *Al-Mughnî*. Maktabah al-Qahirah.

Ibnu Rusyd, A. al-W. (1425). *Bidâyatu al-Mujtahid wa Nihâyatu al-Muqtaṣid*. Dar al-Hadits.

Ibnu Rusyd, A. al-W. (2005). *Bidāyatu al-Mujtahid wa Nihāyatu al-Muqtaṣid*. Dar al-Fikr.

Levinthal, L. E. (1918). The Early History of Bankruptcy Law. *University of Pennsylvania Law Review and American Law Register*, *66*(5/6).

Lubis, D. A. (2013). Kepailitan Menurut Ibnu Rusyd dan Perbandingannya Dengan Hukum Kepalitan Indonesia. *Hukum Islam*, *XIII*(2 November).

Marzuki, P. M. (2005). *Penelitian Hukum*. Kencana.

Michael, R. E., & Awad, A. (2010). Iflas and Chapter 11: Classical Islamic Law and Modern Bankruptcy. *The International Lawyer*, *44*(3).

Muslim, A. al-Ḥasan bin A.-Ḥajjaj. (n.d.). *Al-Musnad aṣ-Ṣaḥîḥ al-Mukhtaṣar; Ṣaḥîḥ Muslim*. Dar Iḥyâ'i at-Turats al-'Araby.

Netton, I. R. (2006). *Allah Transcendent; Studies In The Structure and Semiotics of Islamic Philosophy, Theology, and Cosmology*. Routledge.

Q.S. (1985). *Al-Qur'an dan Terjemahnya; Juz 1 - Juz 30*. Departemen Agama Republik Indonesia.

Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Pub. L. No. 37 (2004).

Soekanto, S., & Mamudji, S. (2014). *Penelitian Hukum Normatif; Suatu Tinjauan Singkat*. Rajawali Pers.

Stolker, F. (2023). The Forgotten History of Bankruptcy, 1543–1624. *The Journal of Legal History*, *44*(3), 295–324. https://doi.org/10.1080/01440365.2023.2274693

Sunnah; AbuDawud. (2025). Https://Sunnah.Com. https://sunnah.com/abudawud:3520

Tim Penyusun. (2023). *Kamus Besar Bahasa Indonesia, Edisi Kelima; KBBI V Aplikasi*

Daring V 0.5.0 (50) (0.3.2 Beta (32)). Kemendikbud.

Wagner, A., & Broekman, J. M. (2010). Promises and Prospects of Legal Semiotics—An Introduction. In A. Wagner & J. M. Broekman (Eds.), *Prospects of Legal Semiotics*. Springer.

Widijowati, D. (2012). *Hukum Dagang*. Andi Offset.