



Legal Approaches to Healthcare Bankruptcy: A Comparative Study

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Abstrak: Persinggungan antara hukum kepailitan dan hukum kesehatan semakin relevan seiring meningkatnya kondisi kesulitan keuangan rumah sakit yang berujung pada insolvensi. Dalam situasi tersebut, perlindungan dan pemenuhan hak-hak pasien menjadi isu hukum yang krusial. Penelitian ini bertujuan untuk menganalisis bagaimana pengaturan dan perlindungan hak pasien dalam proses kepailitan rumah sakit di berbagai yurisdiksi. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan kualitatif, yang berfokus pada analisis peraturan perundang-undangan, prinsip hukum, dan doktrin hukum secara komparatif di Amerika Serikat, negara-negara Eropa, Jepang, dan Indonesia. Hasil penelitian menunjukkan bahwa setiap yurisdiksi menerapkan mekanisme hukum yang berbeda dalam menyeimbangkan kepentingan pemulihan finansial dengan perlindungan pasien. Amerika Serikat mengatur pengawasan melalui penunjukan *Patient Care Ombudsman*, negara-negara Eropa menekankan keberlanjutan layanan kesehatan melalui regulasi yang ketat, sedangkan Jepang menyediakan mekanisme restrukturisasi alternatif untuk mencegah gangguan layanan. Sebaliknya, Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan PKPU di Indonesia belum mengatur secara khusus kepailitan rumah sakit, sehingga menimbulkan ketidakpastian hukum dan keterbatasan perlindungan pasien. Oleh karena itu, diperlukan reformasi komprehensif untuk mengintegrasikan prinsip perlindungan pasien dalam rezim kepailitan Indonesia.

Kata Kunci: Rumah Sakit, Perlindungan Pasien, Hukum Kesehatan, Perbandingan Hukum, Reformasi Hukum.

Abstract: *The intersection between bankruptcy law and health law has become increasingly significant as hospitals experience financial distress that may lead to insolvency. In such circumstances, safeguarding patient rights emerges as a critical legal concern. This study aims to examine how patient rights are regulated and protected during hospital bankruptcy across several jurisdictions. This research employs normative legal research using a qualitative approach, focusing on the analysis of statutory regulations, legal principles, and comparative legal doctrines in the United States, Europe, Japan, and Indonesia. The findings reveal that each jurisdiction adopts distinct legal mechanisms to balance financial restructuring with patient protection. The United States appoints a Patient Care Ombudsman under Chapter 11 to supervise healthcare quality during bankruptcy proceedings. Several European countries emphasize strict regulatory safeguards to ensure continuity of medical services, while Japan provides alternative restructuring mechanisms to prevent service disruption. In contrast, Indonesia's Bankruptcy Law (Law No. 37 of 2004) lacks specific provisions addressing hospital insolvency, resulting in legal uncertainty and limited*

protection for patients. Therefore, comprehensive reform is necessary to integrate patient protection principles into Indonesia's bankruptcy regime and to ensure the effective protection of the right to health.

Keywords: *Bankruptcy Law, Health Law, Hospital Insolvency, Patient Protection, Legal Reform.*

INTRODUCTION

In the last decade, the growing number of hospitals and healthcare institutions facing financial distress has become a global concern, particularly in the aftermath of the COVID-19 pandemic that exposed the structural fragility of health financing systems. Hospital insolvency is not merely an economic issue but also a social justice problem because it directly affects access to public health services. Empirical evidence demonstrates that hospitals facing financial distress often show negative margins and asset deficits, leading to deteriorating service quality and potential patient neglect. (Beauvais dkk., 2023)

In Indonesia, similar challenges have emerged as several private and public hospitals struggle to maintain liquidity while fulfilling obligations under the National Health Insurance (*Jaminan Kesehatan Nasional*, JKN). The increasing number of bankruptcy filings involving healthcare entities reveals the tension between the state's obligation to ensure health rights and the legal requirements of insolvency proceedings. 6/20/26 1:53:00 PM Although Law No. 37 of 2004 on Bankruptcy provides a general framework, it does not contain provisions specific to healthcare insolvency or the protection of patients as non-creditor stakeholders. (Jusanti dkk., 2025)

Most existing research on healthcare bankruptcy primarily focuses on financial prediction models, emphasizing profitability ratios, solvency indicators, and debt to equity structures. These studies generally assess the likelihood of financial distress using quantitative approaches but pay little attention to the normative and regulatory implications for patient protection. As a result, the legal dimensions of insolvency particularly those concerning patient rights remain insufficiently explored. The absence of this legal perspective limits the ability of such studies to provide comprehensive solutions for balancing financial recovery and public health interests. This gap highlights the need for interdisciplinary research integrating financial analysis with healthcare law and governance. (Rachel Lily Jessica dkk., 2022)

Comparatively, several jurisdictions have developed specialized mechanisms for patient protection during bankruptcy. The United States, for instance, mandates the appointment of a Patient Care Ombudsman in Chapter 11 proceedings to monitor care quality. European countries adopt stricter rules ensuring continuity of medical services during insolvency, while Japan allows hospitals to reorganize debts outside formal bankruptcy court. These comparative practices demonstrate the importance of aligning financial recovery with social protection. They offer valuable models for Indonesia to balance economic efficiency and healthcare rights. (Tsuboi dkk., 2021)

However, the current legal framework in Indonesia still regulates hospital insolvency under general commercial provisions without addressing its broader public health implications. Although the Hospital Law formally acknowledges patients' rights, its practical enforcement during insolvency proceedings remains weak. The absence of specific legal criteria for determining healthcare insolvency leads to inconsistencies in judicial interpretation and regulatory oversight. Limited coordination between health authorities and commercial courts further contributes to fragmented governance. These shortcomings reflect the lack of a coherent and integrated legal system to ensure patient protection during hospital bankruptcy. (Riyanto dkk., 2024)

Theoretically, this study applies the principle of *lex specialis derogat legi generali*, emphasizing that the regulation of hospital bankruptcy must include specific provisions that distinguish it from the general rules governing corporate insolvency. A human-rights-based perspective asserts that the right to health should serve as the dominant normative foundation rather than being subordinated to financial considerations. This framework positions health law as a *lex specialis* responsible for ensuring equitable and fair healthcare services, rather than functioning merely as a commercial mechanism. Local studies indicate that the implementation of the Hospital Law and the Health Law in Indonesia has not yet fully guaranteed patient protection in general healthcare practices, (Heriani dkk., 2019) and that the 2023 Health Law addresses medical malpractice through a specific health-law approach but has not yet covered hospital bankruptcy issues. The integration of explicit provisions on patient protection into healthcare insolvency regulation would therefore strengthen the ethical and justice-based foundation of Indonesia's health law framework. (Soge, 2023)

The novelty of this paper lies in combining comparative and normative legal analyses to address gaps in patient protection during healthcare bankruptcy. It proposes a reform model that balances creditor interests with the sustainability of essential medical services. The objectives are: (1) to analyze comparative legal approaches in selected jurisdictions, (2) to identify gaps in Indonesia's framework, and (3) to recommend reform measures ensuring both financial stability and patient rights. This study contributes theoretically by redefining insolvency as a public welfare issue rather than a purely corporate matter. Practically, it provides legal insights for policymakers and practitioners.

METHODS

This study employs normative research with a qualitative approach, focusing on the analysis of legal norms, principles, and regulatory frameworks governing bankruptcy in the health sector. A comparative approach is applied to examine and contrast legal systems and bankruptcy practices related to healthcare institutions across different jurisdictions. The research utilizes primary legal materials, consisting of legislation, government regulations, official policy documents, and court decisions relevant to hospital bankruptcy and patient protection. In addition, secondary legal materials are drawn from academic books, peer-reviewed journal articles, research reports, and other scholarly works that discuss bankruptcy law, health law, and comparative legal studies. These materials provide theoretical foundations and contextual understanding for the analysis. Data are analyzed through qualitative normative analysis, by interpreting and systematizing legal norms, identifying similarities and differences among jurisdictions, and evaluating their implications for stakeholders in the health sector. This approach enables a comprehensive assessment of existing regulatory models and their effectiveness in ensuring legal certainty, continuity of healthcare services, and protection of patient rights during bankruptcy proceedings.

RESULTS AND DISCUSSION

Comparative Legal Approaches to Hospital Bankruptcy and Patient Protection

Hospital bankruptcy has become an increasingly pressing issue in many countries, including Indonesia. In the Indonesian context, some hospitals face financial problems that make them must file for bankruptcy. Siloam Hospital, which faces major problems in financial and operational management, is a striking example. The hospital faces challenges to survive due to high operating costs and changes in health regulations. This is even though this hospital is highly respected. This suggests that health organizations can die due to external and internal things. (Larest Manuel Manopo & Susanti, 2025)

Another indication that the existing for-profit, employment-based health care system is failing is the fact that most bankruptcies involve middle-class individuals who have health

insurance. According to estimates, one in five Americans lack health insurance or have insufficient coverage; millions more, such as those who have declared bankruptcy due to medical expenses, have restricted access to care because they are unable to pay for health insurance. (Dalen, 2009)

On the other hand, hospital bankruptcies are also common in countries like the United States. The Jones Day report shows that in 2020 there were 752 bankruptcy filings in the health sector, with 458 Chapter 11 filings of those.¹ These cases often involve complex issues of financial obligations and patient protection. In many situations, the appointment of a patient care ombudsman is required by the government to protect the rights of patients during the debt restructuring process. [18] This shows that the legal approach in the US seeks to balance financial interests with patient protection. Bankruptcy instances involving medical facilities. S. 1914, above all, provides patients with a voice in bankruptcy proceedings. To oversee the standard of patient treatment, a patient advocate must be designated in every health care bankruptcy case under S. 1914. The measure also makes clear what a trustee must do when a medical institution closes. According to the proposed changes to the Bankruptcy Code, a trustee has an obligation to help with the orderly transfer of patients when a medical institution shuts and to appropriately dispose of patient information for both present and past patients. To incentivize trustees to adhere to these restrictions, the proposed modifications create a system that would compensate trustees for any expenses related to shutting a healthcare institution (Anonim, 1998).

Medical poverty persists despite calls for financial protection for the health sector from the World Bank, the United Nations, and the World Health Organization. This is because people are willing to take out loans in order to receive medical care, and health systems prioritize clinical risks over financial ones. Given the high rate of medical bankruptcy, some patients can have trouble paying for their medical care. However, due to excessive expenses, other potential patients can decide not to receive care at all or to be non-compliant. Patients with significant problems may die as a result of this choice. Patients are then forced to choose between financial and health protection, and neither of these is impacted by health regulations. (Shrime dkk., 2018)

Financial and operational factors are often the cause of bankruptcies in the health sector. Data shows that in 2023, more than thirty percent of small hospitals in the United States are facing serious financial problems, resulting in bankruptcy. This shows that an increasingly competitive and expensive environment makes many hospitals unable to survive. Other research shows that the health sector accounts for nearly 18% of US GDP. Therefore, instability in this sector can greatly affect how patients get healthcare and how they get good care. (Rusadi dkk., 2024)

How healthcare facilities operate during the bankruptcy process is largely determined by the rules. U.S. regulators are often involved in restructuring processes to safeguard the public interest. According to research, regulator participation can increase transparency and accountability during the restructuring process. Appropriate regulatory interventions can help prevent the negative impact of bankruptcy on healthcare and patients and ensure that financially distressed hospitals can still provide the necessary community services. (Himmelstein dkk., 2019)

Non-business bankruptcy in the US is intended to assist those who are facing uncontrollable financial circumstances, including illness or losing their job. A Chapter 7 bankruptcy, which makes up 70% of all bankruptcies, wipes all unsecured obligations, whereas Chapter 13 bankruptcy allows distressed debtors to restructure their debts. Chapter 7 bankruptcy offers a chance for a new beginning by removing unsecured debts, which makes

¹ Anonim Anonim, "Focus on Health Care Provider Bankruptcies. 2021.," *Jones Day*, 2021.

it attractive. A virtual discharge from the credit market for ten years is necessary, after which the bankruptcy is deleted from the credit file, as is the loss of unsecured assets over the specified limit (Kuklik, 2012).

A case-specific analysis of a particular hospital experiencing bankruptcy can provide valuable insights into the causes and consequences of the problem. For example, a study conducted on small hospitals in the United States showed that a lack of income diversification was a major factor in causing them to experience financial failure. A study found that hospitals that rely on a single source of income and cannot adapt to changes in health financing models are more likely to experience bankruptcy.² Hospitals that implement various revenue streams tend to be more financially stable. This study emphasizes the importance of diversification strategies to improve institutional financial resilience.(Beauvais dkk., 2023)

Another case, Steward Health Care's hospital chain, went bankrupt in May 2024, making it one of the most well-known bankruptcy cases in the U.S. healthcare sector. After the company experienced severe financial difficulties, including debts piling up due to poor financial management and the effects of the COVID-19 pandemic, this bankruptcy occurred. The stewards manage 31 hospitals, and their main goal is to ensure that during the restructuring process no hospitals are closed. Patients' rights are crucial during this bankruptcy process. Despite the difficult situation, Steward Health Care continues to ensure that health services remain available to the community. During this process, U.S. bankruptcy judge Chris Lopez granted Steward permission to borrow \$75 million from the Medical Properties Trust to help with hospital operations. It is possible to provide an additional loan of \$225 million later. This is done to keep the hospital operating and serving patients without interruption.(Serbaroli, 2020)

In the context of Steward's bankruptcy, research on the fulfillment of patient rights shows that authorities and related parties must actively protect the public interest. Although many hospitals have undergone a change in ownership, the Stewards continue to ensure that healthcare services are not interrupted and that patients continue to receive the care they need. In this context, the involvement of regulators in the restructuring process is essential to increase accountability and transparency. The hospital will be sold in June and July 2024, although the settlement of this case has not yet been completed. Stewards hope the debt will be paid off and the hospital will remain operating. However, there are still some issues to be resolved, especially when it comes to obtaining regulatory approvals and ensuring that all hospitals can continue to operate once the new ownership comes in. (He dkk., 2023)

Overall, the bankruptcy case of Steward Health Care shows the problems that many health institutions in the United States face today. During the restructuring process, patients' rights must be protected, and health services must remain available to the community. Therefore, it is important for all stakeholders to work together. The approach to bankruptcy in the health sector in Europe is more structured. Stricter laws regarding patient protection during bankruptcy proceedings apply in many European countries. This creates a balance between the financial interests of the institution and the protection of patient rights. Research shows that the European approach focuses more on health care continuity and patient protection than just financial issues.(Hardjaloka, 2015)

On the other hand, the methods used by several countries in Asia for bankruptcy vary. Japan, for example, has a system that better helps people settle their debts without having to go through a formal bankruptcy process. In contrast, countries like India still struggle to implement effective bankruptcy laws in the health sector. Studies show that cultural and

² Mengying He, Mahshid Jessri, dan Hanze Zhang, "The Impact of COVID-19 on Hospitals' Financial Performance: Evidence from California Hospitals," *International Journal of Healthcare Management* 16, no. 4 (Oktober 2023): 496–503, <https://doi.org/10.1080/20479700.2022.2118168>.

economic differences affect how bankruptcy laws are applied in different Asian countries. (Hartanto & Santoso, 2018)

A new study shows that the main causes of bankruptcy in hospitals are high operating costs, poor financial management, and declining revenues. In addition, changes in health insurance policies have increased the debt of many organizations. A study found that financial management problems often indicate the possibility of bankruptcy. (Rusadi dkk., 2024)

Experts contend that because "the purpose and intent of health care institution bankruptcy is inconsistent with the legal framework provided in the Bankruptcy Code," "health care institutions are not well suited for bankruptcy." It has been extensively explored whether bankruptcy is beneficial for healthcare institutions experiencing financial difficulties. Although this Commentary does not assert that the bankruptcy system is a completely ineffectual means of handling distressed health care organizations, it does contend that the Code has not been very successful in handling for-profit health care companies' bankruptcy. The Code needs to be changed. (Rastogi, 2024)

Unlike in Indonesia, the legal system has not fully protected the rights of patients in bankruptcy proceedings. Although the Indonesian Hospital Law regulates the rights of patients and health services, protection in the context of bankruptcy is still lacking. This is challenging because patients rarely have a say in the process of restructuring or closing their hospitals. Therefore, there needs to be legal reform to guarantee the rights of patients even in bankruptcy.

The theory of legal certainty as articulated by Gustav Radbruch emphasizes that law must be clear, predictable, and consistently applied to ensure justice and prevent arbitrary use of power. According to Radbruch, legal certainty (*Rechtssicherheit*) is one of the three essential aims of law, alongside justice and expediency. (Bartlett dkk., 2025) In the context of hospital bankruptcy, this principle implies that insolvency regulations must provide clarity regarding the rights and obligations of all parties, including creditors, administrators, and patients. When the interpretation of bankruptcy law is inconsistent particularly concerning healthcare institutions it undermines public trust and legal predictability. Therefore, strengthening the normative clarity of hospital insolvency regulations is vital to realizing Radbruch's notion of formal justice through legal certainty

Applying Radbruch's legal certainty theory to Indonesia's hospital bankruptcy framework reveals a fundamental weakness in ensuring predictable and fair outcomes for stakeholders. The absence of specific legal provisions addressing patient protection during insolvency creates uncertainty both for hospital management and for the community that depends on healthcare services. Radbruch's formula highlights that when the law fails to deliver justice due to ambiguity or inconsistency, it loses its binding moral force, requiring legal reform to restore trust and legitimacy. Consequently, the lack of clear procedural rules for managing healthcare insolvency demonstrates a gap between the principle of certainty and the realization of substantive justice. This reinforces the need to codify explicit norms to protect patients and uphold the integrity of Indonesia's legal system in accordance with Radbruch's theory of *Rechtsstaatlichkeit*.

Although several researchers have examined bankruptcy law in Indonesia, the majority of existing scholarship remains confined within a strictly positivistic framework and fails to address the normative complexities of hospital insolvency. Current studies tend to emphasize procedural aspects of *Law No. 37 of 2004 on Bankruptcy* and focus predominantly on the protection of creditor rights, while neglecting the broader implications for society and public services. This approach reflects an incomplete legal analysis because it treats bankruptcy as a purely commercial mechanism, overlooking the unique position of hospitals as providers of essential public services. Such a reductionist understanding leaves a substantial legal research

gap, particularly concerning how insolvency should operate in sectors related to human survival and dignity.

From a theoretical perspective, the application of general bankruptcy procedures to hospitals demonstrates a tension between positive law and material justice. Gustav Radbruch's legal philosophy is highly relevant in this context, particularly his assertion that law must not only secure legal certainty (*Rechtssicherheit*) but also serve justice (*Gerechtigkeit*) and social welfare (*Zweckmäßigkeit*). When the rigid application of bankruptcy law leads to the discontinuation of medical treatment, patient displacement, or denial of access to healthcare, it results in a legal outcome that is formally valid yet substantively unjust. Radbruch's famous formula asserts that positive law loses legitimacy when it produces intolerable injustice. This illustrates a fundamental theoretical deficiency in Indonesia's bankruptcy regime: it adheres to formal legality while failing to protect substantive rights affected by hospital insolvency.

This legal deficiency becomes even more problematic when examined from a constitutional standpoint. Hospital insolvency directly implicates the guarantee of the right to health under Article 28H paragraph (1) of the *1945 Constitution*, which affirms that every individual has the right to access healthcare. Accordingly, any legal mechanism that allows the cessation of essential health services without safeguards for patients stands in contradiction to constitutional principles. The absence of a *lex specialis* to regulate hospital insolvency not only creates legal uncertainty but also risks undermining constitutional justice by subordinating fundamental rights to commercial procedures. In line with Radbruch's theory, bankruptcy law must not ignore moral and constitutional values but must reflect justice as a guiding principle of a *Rechtsstaat*. Therefore, a systematic reform of Indonesia's insolvency framework is necessary to reconcile bankruptcy law with constitutional obligations and societal needs an issue that will be further examined in the following section.

Reforming Indonesia's Legal Framework on Hospital Insolvency

The case of the Sandi Karsa Hospital Foundation is one of the largest bankruptcy cases in Indonesia. In 2022, the company experienced severe financial difficulties and was unable to meet its debt obligations to its creditors, including PT Mulya Husada Jaya and PT Internusa Dua Medika. PT Mulya Husada Jaya applied for Suspension of Debt Payment Obligations (PKPU) to the Makassar Commercial Court, which was received in March 2022. After unsuccessful peace efforts, the Commercial Court ruled the Sandi Karsa Hospital Foundation bankrupt in May 2022. The foundation filed an appeal to the Supreme Court to overturn the decision declaring them bankrupt. This legal process shows that the foundation has sought to protect the rights of patients and maintain the availability of medical services. Because hospital bankruptcy can have a direct impact on patients' access to medical services, patients' rights are crucial in this context. If the debtor rejects the settlement and the creditor submits an application, parties who are unhappy with the PKPU judgment may file a cassation appeal with the Supreme Court. Because they were unhappy with the Makassar Commercial Court's decision about the bankruptcy statement, which was based on Decision Number 1/Pdt.Sus-PKPU/2022/PN.Niaga.Mks, the Sandi Karsa Hospital Foundation also filed a cassation appeal. Decision Number 1262 K/Pdt.Sus-Pailit/2022 states that while submitting an appeal to the Supreme Court, a number of crucial factors need to be taken into account (Rimandita & Gunadi, 2023). (Muhammad Awal Alishakur & Ariawan Gunadi, 2024)

Finally, the Supreme Court overturned the Commercial Court's decision and claimed that the Sandi Karsa Hospital Foundation was not bankrupt. This decision was made after the foundation stated that they still have assets that can be used to pay off their debts. With this decision, the foundation can continue its operations and seek to fulfill its obligations to its

creditors. However, the rights of patients must still be protected even if the foundation is declared not bankrupt. In this case, the foundation is required to use the rest of its assets to pay off debts to its creditors so that justice can be achieved for all parties. If it is later discovered that the foundation's wealth is insufficient to pay off its debts, the foundation should consider strategic measures to ensure that the foundation's operations continue and that the healthcare services provided to patients remain of high quality. The legal processes followed, and the safeguards provided to businesses declaring bankruptcy are the primary distinctions between liquidation in Indonesia and the US. The Bankruptcy Act governs the liquidation process in Indonesia, and the court appoints a liquidator. Chapter 7 governs liquidation bankruptcy in the US, on the other hand, and a trustee is appointed to supervise the liquidation procedure. Furthermore, there are variations in the protections provided to businesses during liquidation as well as the priority of payments. (Tan dkk., 2023)

This case shows how difficult it is for health institutions in Indonesia to manage their finances while fulfilling their responsibilities to patients and creditors. It is important for regulators and other stakeholders to ensure that patient rights are protected during the restructuring process and that healthcare remains available to the community. Introducing a mechanism comparable to the ombudsman of patient care in Indonesia is an important step that can be taken. With an independent institution responsible for protecting the rights of patients during the hospital bankruptcy process, the interests of patients will be protected. Patients can be informed about the hospital's status and alternative treatment options by these institutions.

The healthcare sector's bankruptcy approach also pays attention to patient protection in other countries such as the UK. In many cases, health regulators work closely with financial institutions to ensure that essential healthcare services remain available despite restructuring. For example, when a hospital faces bankruptcy, regulators can take steps to ensure that essential services remain available until there is a long-term solution to the problem. This approach can be a model for Indonesia in dealing with similar problems. In addition, involving the community in the decision-making process about the opening or closing of hospitals is very important. Patients and their families can express their opinions and needs regarding health services through community consultation or public forums. This will increase transparency and increase public trust in the health system. (Coordes, 2020)

Many studies in the context of international law focus on how other countries handle insolvencies in the health sector. For example, research shows that there is a legal mechanism in Germany that allows the reorganization of health institutions without significantly shutting down services. By learning the best practices of these other countries, Indonesia can adopt a more effective strategy in dealing with hospital bankruptcies.³

For hospitals to be better prepared to face financial crises, management capacity building must also be carried out. Hospital managers can get training and education on risk management and finance so that they can spot problems early and prevent bad things from happening. This will reduce the likelihood of bankruptcy and ensure that services to patients are maintained. (O'Grady, 2024) The resurgence of healthcare institutions affects patients and creditors. Patients' access to medical care can be disrupted when hospitals go bankrupt. This raises moral questions about how the law should protect patients in these conditions. Studies show that the social consequences of a hospital revival can far outweigh the financial consequences. (Anonim, 2023)

In addition, reform of the health financing system should be considered. The risk of bankruptcy can be minimized by improving the financing system through financing programs such as national health insurance. Hospitals must have a steady cash flow and be able to meet

³ Anonim Anonim, *Healthcare Restructuring and Bankruptcy* (Holland & Knight, t.t.).

their financial obligations without compromising the quality of their services. (Himmelstein dkk., 2019) Legal reform that is more in line with the needs of the health sector is urgently needed. According to some researchers, the Resurrection Code should have a specific subchapter to deal with the complexities of bankruptcy in the industry. Other studies show that proper legal reforms can help prevent larger financial crises in the future. (Aini dkk., 2022)

Conversely, the problems faced by private equity owners must also be considered. Many healthcare facilities managed by private equity firms are often faced with pressure to make short-term profits without considering how it will impact the quality of the services they provide. Therefore, stricter regulations regarding hospital management by private equity owners must be implemented so that the long-term interests of patients are maintained.⁴ In this case, cooperation between the government, health care providers, and the community is essential to create an environment that supports the sustainability of health institutions. We can ensure that the interests of all parties are protected by involving all stakeholders in the decision-making process related to health policy and bankruptcy risk management. (Ismiantika dkk., 2025)

The Dekker Commission, which was nearly entirely made up of economists, attorneys, and businesspeople, put out a new economic framework for funding and providing health care in its report "The Will to Change." By creating competition among healthcare providers and fostering client-provider connections between patients and healthcare professionals, they sought to lower prices and enhance quality. "At the time, this change in terminology from "patients" to "clients" was viewed as a positive step; "patients" were considered passive terms, but "clients" were terms of activity. People were proud of it. In an effort to improve "market efficiency," the health care industry also adopted other finance-led strategies, such as reducing or even eliminating medical facilities, which in certain situations resulted in hospital bankruptcy. (Mosciaro dkk., 2024)

Hospital bankruptcy is a complicated and urgent issue, especially in Indonesia. Many hospitals have faced significant financial problems in recent years, mainly due to the COVID-19 pandemic. According to research, there are differences in the financial condition of hospitals in Indonesia, with some of them facing significant difficulties. For example, PT Sejahterarraya Anugrah Jaya Tbk (SRAJ) is in danger of bankruptcy due to poor financial conditions before, during, and after the pandemic. (Wiguna & Dewi, 2024) Choosing to file for bankruptcy is a very tough choice that has a big impact on a hospital, its patients, and the community. The only choice for hospitals with dwindling income, dilapidated physical infrastructure, and high debt loads may be bankruptcy. But a well-thought-out and performed bankruptcy can help a hospital get rid of potentially large debt and strengthen its basis for long-term viability. (Serbaroli, 2020)

In contrast, the financial performance of some other hospitals is better. According to the same study, most hospitals on the Indonesia Stock Exchange remain in good financial condition. This gives a positive signal to customers and investors that many healthcare institutions can survive and provide quality healthcare services despite the obstacles. However, it is important to remember that uncertainty in the healthcare field can affect patients' choices about where to place their care. The phenomenon of hospital bankruptcy also occurs in other countries around the world, such as the United States. There, bankruptcies in the health sector increased during the pandemic. States that in 2020, there were 752 bankruptcy filings in the health sector; Many of them are small and medium-sized hospitals that cannot survive due to financial difficulties. This shows that the problem of bankruptcy is not only a local problem but also a global challenge. (Anonim, 2021)

⁴ Anonim Anonim, *Healthcare Sector Bankruptcy Filings Have Slowed, But Financial Challenges Persist* (Gibbins Advisors, 2024).

One of the causes of hospital bankruptcy is poor financial management. Many hospitals do not have an effective financial management system in place to handle fluctuations in operating costs and revenue. Pharmaceutical companies and hospitals should use bankruptcy prediction models such as Altman Z-Score to find possible risks before it's too late. Using this model, management can take preventive measures to improve their financial condition (Rachel Lily Jessica dkk., 2022)

Financial statements must be clear as well. All patients and the public have the right to know about the financial condition of the hospital where they are treated. Unclear information can cause people to lose trust in the health system. Therefore, it is important for the government to encourage the health sector to report financially more transparently. Hospitals do not go bankrupt due to government regulations. This is seen in countries with strong public health systems, such as Germany and the United Kingdom, where governments help struggling hospitals maintain their essential services. In Indonesia, a similar approach can be applied by providing emergency fund assistance to hospitals that are in danger of bankruptcy so that they can continue to operate. (Rachel Lily Jessica dkk., 2022)

But the problems facing private equity owners must also be considered. Many hospitals are managed by private equity firms, which are typically more interested in short-term profitability than prioritizing good healthcare. Reduction in operational costs can lead to a decrease in the quality of patient care. Therefore, to protect the interests of patients, strict regulations must be applied to the management of hospitals by private equity owners. (O'Grady, 2024)

In this case, cooperation between the government, health care providers, and the community is essential to create an environment that supports the sustainability of health institutions. All stakeholders can participate in decision-making processes related to health policy and bankruptcy risk management through community consultation or public forums. This will increase clarity and increase public confidence in the health system. To reduce the risk of bankruptcy, hospital managers must be trained and educated. In order for them to manage resources more effectively, managers must learn financial strategies and risk management, improving management capabilities in the health sector, we can help prevent future financial crises. (Goldsmith, 2017)

Information technology can improve hospital operational efficiency. If there are financial problems, managers can plan recovery strategies and monitor cash flow in real-time by using a hospital management information system (SIMRS) If technology is used in the hospital management process, it will improve operational efficiency and reduce the risk of human error. In addition, periodic evaluations of the hospital's financial performance should be carried out to find immediate problems. The government can prevent financial crises by conducting regular financial audits and operational performance evaluations.⁵

More research is needed to determine the long-term effects of the resurgence on the quality of care and access to health services. It is also very important to conduct research on how effective the legal reforms are implemented. Further research will help understand the impact of regulatory changes on the overall stability of the health sector. By thoroughly analyzing the legal methods for this resurgence in the health sector, we can understand the current challenges and opportunities and how reforms can be made to improve the current legal system for the sustainability of global healthcare. The study found that cooperation between stakeholders is essential to find sustainable solutions to emerging problems in the health sector. (Beauvais dkk., 2023)

Despite extensive economic explanations regarding the causes of hospital bankruptcy such as poor financial management, revenue instability, and operational inefficiency these

⁵ He, Jessri, dan Zhang, "The Impact of COVID-19 on Hospitals' Financial Performance."

perspectives fail to address the legal consequences arising from hospital insolvency. Current studies tend to frame hospital failure as a corporate finance issue rather than a matter of legal responsibility that affects the rights of patients and the continuity of public health services. This approach reveals a normative gap within Indonesia's insolvency system, as *Law No. 37 of 2004 on Bankruptcy* does not distinguish between ordinary commercial debtors and hospitals as providers of essential public services. Consequently, bankruptcy proceedings are executed within a purely creditor-centric framework that neglects patients, who are not legally recognized as stakeholders within insolvency litigation despite being directly affected by it.

This legal deficiency becomes more apparent when examined through the lens of Gustav Radbruch's legal philosophy, particularly his view that law must pursue not only legal certainty (*Rechtssicherheit*) but also justice (*Gerechtigkeit*) and societal benefit (*Zweckmäßigkeit*). The rigid application of bankruptcy law to hospitals without safeguarding the rights of patients may be valid from a procedural standpoint but produces substantive injustice by jeopardizing access to healthcare, which is guaranteed under Article 28H paragraph (1) of the *1945 Constitution*. According to Radbruch's formula, when formal law leads to intolerable injustice, justice must take precedence over strict legality. This principle exposes a deeper conceptual legal gap in Indonesia: the lack of a justice-oriented insolvency model that incorporates patient protection as a legal imperative. The absence of a *lex specialis* on hospital insolvency reflects the failure of current regulation to balance economic recovery with constitutional obligations and public welfare.

CONCLUSIONS

Hospital bankruptcy requires a distinct legal construction because healthcare institutions carry a public service function that cannot be treated under a purely commercial insolvency regime. The absence of *lex specialis* in *Law No. 37 of 2004 on Bankruptcy* creates a normative gap that leaves patients unprotected as non-creditor stakeholders, resulting in potential violations of the constitutional right to health. Through Gustav Radbruch's legal philosophy, it becomes clear that Indonesia's current insolvency framework prioritizes legal certainty (*Rechtssicherheit*) over justice (*Gerechtigkeit*), producing formal legality but substantive injustice when hospital bankruptcy leads to service termination and endangers patient welfare. Therefore, a justice-oriented legal reform is necessary, not only by amending bankruptcy norms but also by establishing a dedicated institutional mechanism such as an independent Patient Protection Supervisory Body to ensure that insolvency proceedings prioritize the continuity of healthcare services and uphold constitutional obligations. This institutional mechanism would operationalize Radbruch's theory by transforming justice from an abstract legal ideal into an enforceable procedural safeguard within Indonesia's insolvency.

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