

The Shift from Judicial to Administrative Control in Securities Company Bankruptcy Arising from POJK No. 21 of 2022

Pergeseran dari Pengawasan Yudisial ke Pengendalian Administratif dalam Kepailitan Perusahaan Efek yang Timbul dari POJK No. 21 Tahun 2022

Riza Fibriani ✉ 

Fakultas Syariah dan Hukum, Universitas Islam Negeri (UIN) Walisongo
Semarang, Indonesia, <https://orcid.org/0009-0002-5987-8304>

✉ Corresponding email: rizafibriani@walisongo.ac.id

Abstrak

Pemberlakuan Peraturan Otoritas Jasa Keuangan (POJK) No. 21 Tahun 2022 memperkenalkan pergeseran fundamental dalam rezim kepailitan Indonesia bagi perusahaan efek dengan memberikan kewenangan eksklusif kepada Otoritas Jasa Keuangan (OJK) untuk mengajukan permohonan kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU). Penelitian ini secara kritis mengkaji implikasi hukum dari eksklusivitas tersebut serta kesesuaiannya dengan prinsip-prinsip umum hukum kepailitan sebagaimana diatur dalam Undang-Undang No. 37 Tahun 2004, khususnya terkait perlindungan hak kreditor, akses terhadap keadilan, dan kepastian hukum. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan peraturan perundang-undangan dan pendekatan konseptual, serta menganalisis bahan hukum sekunder berupa peraturan, doktrin hukum, dan literatur ilmiah melalui kerangka analisis kualitatif

deskriptifanalitis. Hasil penelitian menunjukkan bahwa sentralisasi kewenangan pada OJK secara signifikan membatasi kedudukan prosedural kreditor dan menggeser proses kepailitan dari mekanisme yudisial menjadi proses administratif, sehingga menimbulkan persoalan terkait konsistensi doktrinal dan prinsip kesetaraan kreditor. Selain itu, tidak adanya batas waktu yang jelas dalam proses pengambilan keputusan oleh OJK berpotensi menimbulkan ketidakpastian hukum serta mengurangi prediktabilitas bagi kreditor dan investor. Meskipun regulasi ini bertujuan menjaga stabilitas sistem keuangan, pada saat yang sama terdapat risiko melemahnya perlindungan hukum dan pengawasan yudisial. Oleh karena itu, penelitian ini menekankan perlunya penataan ulang kerangka regulasi melalui penetapan batasan prosedural yang lebih jelas, pemulihan secara terbatas hak kreditor, serta penguatan kontrol yudisial guna menjamin keseimbangan antara stabilitas pasar dan kepastian hukum.

Kata kunci

Kepailitan; OJK; POJK No. 21 Tahun 2022; Kreditur; Stabilitas Pasar.

Abstract

The enactment of Financial Services Authority Regulation (POJK) No. 21 of 2022 introduces a fundamental shift in Indonesia's insolvency regime for securities companies by granting the Financial Services Authority (OJK) exclusive authority to file bankruptcy and Suspension of Debt Payment Obligations (PKPU) petitions. This study critically examines the legal implications of such exclusivity and its compatibility with the general principles of bankruptcy law as set out in Law No. 37 of 2004, particularly regarding creditor rights, access to justice, and legal certainty. Employing a normative legal research method with statutory and conceptual approaches, this study analyzes secondary legal materials, including legislation, legal doctrines, and scholarly works, using a qualitative descriptive-analytical framework. The results demonstrate that the centralization of authority in OJK significantly restricts creditors' procedural standing and shifts bankruptcy proceedings from a judicial mechanism to an administrative process, thereby raising concerns regarding doctrinal consistency and the principle of creditor equality. Furthermore, the absence of clear

procedural timeframes governing OJK's decision-making process creates potential legal uncertainty and undermines predictability for creditors and investors. While the regulation aims to safeguard financial system stability, it simultaneously risks weakening legal protection and judicial oversight. Accordingly, this study argues for recalibrating the regulatory framework by introducing clearer procedural limits, restoring limited creditor standing, and reinforcing judicial control to ensure a balanced relationship between market stability and legal certainty.

Keywords

Bankruptcy; OJK; Creditors; Market Stability.

I. Introduction

Bankruptcy serves as a pivotal mechanism within the economic legal framework, ensuring both justice for creditors and the sustainability of the financial system. By providing a structured process for the resolution of insolvent entities, bankruptcy laws uphold creditors' rights, facilitating the equitable distribution of a debtor's remaining assets. This legal recourse not only safeguards creditors from potential losses but also maintains trust in financial transactions, thereby promoting economic stability. Moreover, effective bankruptcy regimes can mitigate systemic risks by preventing the cascade effect of financial distress across interconnected institutions, as evidenced during the 2008 financial crisis.¹

The Financial Services Authority (Otoritas Jasa Keuangan or OJK) in Indonesia plays a crucial role in supervising the capital market, particularly in regulating and overseeing securities companies. Established under Law No. 21 of 2011, OJK is empowered to regulate and supervise financial service activities, including the capital market,

¹ Adam Feibelman, "Bankruptcy and the State," *Emory Bankruptcy Developments Journal* 38, no. 1 (2022): 1, <https://scholarlycommons.law.emory.edu/ebdj/vol38/iss1/1>.

to ensure compliance with legal provisions and protect investor interests.²

OJK's role in the bankruptcy of securities companies is explicitly outlined in Article 2, Paragraph (4) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), which states that only OJK has the legal standing to file a bankruptcy petition against securities companies, stock exchanges, clearing and guarantee institutions, as well as depository and settlement institutions.³

In practice, creditors or other entities cannot directly petition for the bankruptcy of a securities company; instead, they must submit their claims to OJK, which will then evaluate the financial condition of the company and determine the appropriate legal steps. This centralized bankruptcy process enhances efficiency in handling potential insolvencies while ensuring transparent and well-regulated financial dispute resolutions.

The Financial Services Authority (OJK) holds a critical role in overseeing Indonesia's financial sector, including the capital market and securities companies. One of its key regulatory instruments is Regulation of the Financial Services Authority (POJK) No. 21 of 2022, which governs the procedures for filing bankruptcy and Suspension of Debt Payment Obligations (PKPU) for securities companies. This regulation strengthens OJK's authority in determining the financial viability of securities companies and initiating bankruptcy or PKPU proceedings when necessary.

Under POJK No. 21 of 2022, OJK has exclusive authority to submit bankruptcy petitions for securities companies, ensuring that such decisions align with broader financial stability objectives. Unlike general bankruptcy law, where creditors or debtors may file for bankruptcy directly with the Commercial Court, this regulation mandates that any bankruptcy or PKPU application for securities companies must go through OJK. This exclusivity is intended to

² Defril Hidayat et al., "The Role of the Financial Services Authority in Supervising Capital Market Flows in Indonesia," *Al-Ishlah: Jurnal Ilmiah Hukum* 26, no. 1 (2023), <https://doi.org/10.56087/aijih.v26i1.368>.

³ Irfan Ifandi et al., "Applicant Legal Standing Bankruptcy Statement Against Securities Company," *Ragam Penelitian Mesin* 1, no. 2 (2019).

prevent disorderly bankruptcies that could disrupt market confidence and investor protection. The rationale behind this regulation is to safeguard the capital market from systemic risks that may arise due to the insolvency of financial institutions.

Furthermore, OJK's role in bankruptcy proceedings extends beyond merely approving or rejecting petitions. It also assesses the financial condition of securities companies, their ability to continue operating, and the potential impact of their insolvency on the market. This regulatory oversight ensures that bankruptcy proceedings are not misused by certain parties and that they comply with the principles of fairness, transparency, and investor protection. The strict procedural framework introduced by POJK No. 21 of 2022 reflects Indonesia's commitment to financial stability while balancing the rights of creditors, investors, and market participants.

Regulation of the Financial Services Authority (POJK) No. 21 of 2022 introduces significant changes to the bankruptcy and Suspension of Debt Payment Obligations (PKPU) procedures for securities companies. While the regulation aims to enhance financial stability and market integrity, it raises several potential legal issues that may conflict with existing bankruptcy principles in Law No. 37 of 2004 on Bankruptcy and PKPU. These concerns include restrictions on creditors' rights, the broad authority of OJK, and potential inconsistencies with the general bankruptcy framework.

One of the most notable legal concerns is the restriction on creditors' rights to directly file for bankruptcy against securities companies. Under Law No. 37 of 2004, creditors are granted the legal standing to submit bankruptcy petitions to the Commercial Court if a debtor fails to meet its financial obligations. However, POJK No. 21 of 2022 mandates that any bankruptcy or PKPU application for securities companies must go through OJK. This eliminates creditors' ability to independently initiate bankruptcy proceedings, potentially violating the principles of legal certainty and equal access to justice. This restriction raises concerns about whether creditors are adequately protected and whether they can effectively exercise their rights in cases where OJK decides not to pursue bankruptcy despite clear financial distress.

Additionally, POJK No. 21 of 2022 grants OJK broad authority in determining the bankruptcy status of securities companies, which

could lead to regulatory overreach. Unlike in general bankruptcy cases where courts assess financial insolvency based on objective legal and financial criteria, OJK's discretionary power in deciding whether a securities company should be declared bankrupt may create uncertainties. This unilateral control by a regulatory body—without direct judicial oversight—raises concerns about transparency, accountability, and potential conflicts of interest in financial supervision. There is also the risk that OJK's decisions may be influenced by non-legal factors, such as market stability considerations, rather than strictly adhering to bankruptcy law principles.

Another critical issue is the potential inconsistency between POJK No. 21 of 2022 and Law No. 37 of 2004 on Bankruptcy and PKPU. Law No. 37 of 2004 establishes clear procedures and criteria for declaring bankruptcy, ensuring that insolvency cases are handled within the judicial system. However, POJK No. 21 of 2022 modifies these procedures by requiring OJK's intervention, effectively altering the legal standing of parties involved in bankruptcy cases. This discrepancy may create conflicts in legal interpretation and enforcement, especially when determining which legal framework takes precedence in securities company bankruptcy cases. Furthermore, it raises constitutional concerns regarding whether an administrative body like OJK should have the exclusive power to control access to bankruptcy proceedings, potentially infringing upon judicial independence and the fundamental rights of creditors.

In conclusion, while POJK No. 21 of 2022 seeks to enhance financial market stability, its restrictive provisions on creditors' rights, OJK's extensive authority, and its potential inconsistencies with Law No. 37 of 2004 pose significant legal challenges. These concerns necessitate further legal review and possible revisions to ensure that the regulation aligns with fundamental bankruptcy principles, maintains legal certainty, and upholds the rights of all stakeholders involved in securities company insolvency cases.

II. Research Method

This study employs a normative legal research approach, which focuses on analyzing legal norms, doctrines, and principles related to the authority of the Financial Services Authority (OJK) in bankruptcy proceedings for securities companies under POJK No. 21 of 2022. The research aims to examine the legal consistency, implications, and potential conflicts between this regulation and Law No. 37 of 2004 on Bankruptcy and PKPU using a conceptual approach. This approach enables a comprehensive evaluation of legal principles governing bankruptcy law and regulatory oversight in the financial sector.⁴

This study is classified as normative legal research, which focuses on examining written legal norms and regulatory frameworks rather than empirical observations (Soekanto & Mamudji, 2003). The research primarily investigates the legal validity, coherence, and implications of OJK's authority in bankruptcy cases involving securities companies. By analyzing statutory laws, judicial decisions, and legal doctrines, the study seeks to determine whether POJK No. 21 of 2022 aligns with or contradicts existing bankruptcy laws in Indonesia.

The study adopts a statute approach, which involves analyzing fundamental legal theories, doctrines, and principles related to bankruptcy law and regulatory authority.⁵ This approach helps evaluate the extent of OJK's legal power in initiating bankruptcy and PKPU processes for securities companies, as well as the potential legal conflicts that may arise from the exclusivity of OJK's role in this domain.

This research relies entirely on secondary data, consisting of primary legal sources, secondary legal sources, and tertiary legal sources.⁶ The primary sources include Law No. 37 of 2004 on Bankruptcy and PKPU, Law No. 21 of 2011 on OJK, and POJK No. 21 of 2022 on the Bankruptcy and PKPU of Securities Companies

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revi (Kencana, 2021).

⁵ H S Salim and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi Buku Kedua*, in *PT Raja Grafindo Persada: Depok* (2017).

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*.

Secondary legal sources include books, journal articles, legal commentaries, and research papers analyzing bankruptcy law, financial regulation, and OJK's legal authority. Tertiary sources such as legal dictionaries and encyclopedias are used to provide context and definitions of key legal terms.

The data in this study is analyzed using qualitative legal analysis, which involves interpreting legal texts, examining inconsistencies, and evaluating the implications of legal norms.⁷ The study systematically assesses the compatibility of POJK No. 21 of 2022 with Indonesia's broader legal framework, identifying any ambiguities or potential conflicts in its implementation. Legal interpretation methods, such as grammatical, systematic, and teleological interpretation, are applied to analyze the scope and limitations of OJK's authority in bankruptcy proceedings.⁸

The research findings are presented using descriptive analysis, which provides a structured and coherent explanation of legal issues, supported by authoritative references and case law (Soekanto & Mamudji, 2003). This method allows the study to articulate the legal reasoning behind OJK's exclusive authority in bankruptcy cases, the implications for creditors' rights, and the potential need for regulatory reforms.

III. General provisions of bankruptcy law in Indonesia under Law No. 37 of 2004

Indonesia's bankruptcy legal framework is primarily governed by Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU). This legislation outlines the procedures and conditions under which debtors—both individuals and legal entities—can be declared bankrupt. According to Article 1, paragraph (1) of the

⁷ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Bayumedia, 2018).

⁸ Indah Kurniati Siregar et al., "Analisis Peranan Otoritas Jasa Keuangan (OJK) Dalam Perlindungan Nasabah Akibat Kepailitan Perusahaan Asuransi," *Ganaya : Jurnal Ilmu Sosial Dan Humaniora* 8, no. 3 (2025), <https://doi.org/10.37329/ganaya.v8i3.4361>; Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Liberty, 2008).

law, bankruptcy is defined as a general confiscation of all assets of a bankrupt debtor, managed and settled by a curator under the supervision of a supervisory judge. The law stipulates that a debtor can be declared bankrupt if they have at least two creditors and fail to pay at least one debt that is due and collectible. This provision aims to ensure a fair distribution of the debtor's assets among multiple creditors. Once declared bankrupt by the Commercial Court, the debtor loses the right to control and manage their assets, which are then administered by the appointed curator. The law also provides mechanisms for debtors to propose a suspension of debt payment obligations (PKPU), allowing for the possibility of debt restructuring and business continuity under court supervision. However, critiques of the law highlight that the current requirements for declaring bankruptcy do not directly indicate the debtor's insolvency, leading to potential injustices for debtors who may still have the capacity to fulfill their obligations.⁹

Under Article 1, Paragraph (1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), bankruptcy in Indonesia is defined as a general confiscation of all assets belonging to the bankrupt debtor. These assets are managed and liquidated by a court-appointed curator under the supervision of a supervisory judge. This legal framework aims to ensure an equitable distribution of the debtor's assets among creditors, providing a structured process for debt resolution.¹⁰ The law distinguishes between bankruptcy and insolvency, where bankruptcy involves the legal process of asset confiscation and liquidation, while insolvency refers to the debtor's inability to pay debts as they become due. Notably, a debtor does not have to be insolvent to be declared bankrupt under this law; the primary criteria are the existence of at least two creditors and a failure to pay at least one due and payable debt. This approach facilitates a more straightforward mechanism for creditors to initiate bankruptcy proceedings, aiming to protect their interests and maintain

⁹ David Tan et al., "The Urgency to Renew Bankruptcy Law Requirements and Summary Proof in Indonesia," *Legal Spirit* 8, no. 1 (2024), <https://doi.org/10.31328/lv8i1.5081>.

¹⁰ Anwar Hidayat et al., "Juridical Review of Bankruptcy Conditions and Delay of Debt Repayment Obligations," *Awang Long Law Review* 6, no. 1 (2023), <https://doi.org/10.56301/awl.v6i1.992>.

financial stability.¹¹

When a debtor is declared bankrupt under Indonesia's Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), several legal consequences ensue. Firstly, the debtor loses the right to control and manage their assets included in the bankruptcy estate from the date the bankruptcy decision is pronounced. The management and settlement of these assets are then carried out by a court-appointed curator under the supervision of a supervisory judge. This transfer of control aims to ensure an equitable distribution of the debtor's assets among creditors. Additionally, secured creditors, such as those holding mortgage rights, may find their previously protected rights affected, as the bankruptcy process can override certain protections, leading to potential challenges in executing collateral claims.¹² Moreover, the declaration of bankruptcy imposes a general confiscation of all assets of the bankrupt debtor, which are managed and settled by the curator to satisfy creditor claims. This process underscores the importance of understanding the comprehensive impact of bankruptcy declarations on both debtors and creditors within the Indonesian legal framework.¹³

IV. Restriction of Creditors' Rights in Filing for Bankruptcy

In Indonesia, the criteria for declaring bankruptcy are outlined in Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU). According to Article 2, Paragraph (1) of this law, a debtor can be declared bankrupt if they have at least two creditors

¹¹ Ermanto Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied?," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 1 (2024), <https://doi.org/10.24090/volksgeist.v7i1.10079>.

¹² Febriana Irma et al., "Implementation of the Provisions of Laws and Regulations Concerning Bankruptcy in the PT Istaka Karya Case," *QISTINA: Jurnal Multidisiplin Indonesia* 2, no. 1 (2023), <https://doi.org/10.57235/qistina.v2i1.515>.

¹³ Maya Tryandari, "Legal Protection for Bankruptcy Curators in the Resolution of Bankruptcy Cases," *Journal of Law and Legal Reform* 2, no. 3 (2021), <https://doi.org/10.15294/jllr.v2i2.46621>.

and fail to pay at least one debt that is due and collectible. This provision does not require the debtor to be insolvent; rather, the existence of multiple creditors and an unpaid, due debt suffices for a bankruptcy declaration. This approach aims to provide a legal mechanism for creditors to collectively address unpaid debts, ensuring an equitable distribution of the debtor's assets. However, this leniency has raised concerns, as it allows for the possibility of solvent debtors being declared bankrupt, potentially leading to unjust outcomes. Consequently, there have been calls for legal reforms to incorporate an insolvency test to better protect debtors who are financially capable but unwilling to pay their debts.¹⁴

In Indonesia, Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU) outlines specific criteria for a bankruptcy declaration. According to Article 2, Paragraph (1), a debtor can be declared bankrupt if they have at least two creditors and fail to pay at least one debt that is due and collectible. This provision aims to protect creditors' rights by ensuring that debtors meet their financial obligations promptly. However, the law does not require proof of the debtor's insolvency; the mere existence of multiple creditors and an unpaid, due debt suffices for a bankruptcy filing. This has led to concerns that solvent debtors might be declared bankrupt, prompting discussions about incorporating an insolvency test to prevent potential misuse of the bankruptcy mechanism.¹⁵

Under Article 2, Paragraph (1) of Indonesia's Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), creditors are granted the legal standing to file a bankruptcy petition against a debtor. This provision stipulates that a debtor possessing at least two creditors and failing to pay at least one due and payable debt can be declared bankrupt upon a creditor's request to the Commercial Court. The law's intent is to provide creditors with a legal mechanism to address unpaid debts, ensuring an equitable

¹⁴ Haries Rahmadika, *Urgensi Insolvency Test Debitur Sebagai Syarat Pengajuan Pailit Ditinjau Dari Asas Keberlangsungan Usaha (Studi Normatif Pasal 2 UU No. 37 Tahun 2004 Tentang Kepailitan Dan PKPU)*, 2018, <https://api.semanticscholar.org/CorpusID:211742930>.

¹⁵ Tan et al., "The Urgency to Renew Bankruptcy Law Requirements and Summary Proof in Indonesia."

distribution of the debtor's assets among all creditors.¹⁶ However, the relatively lenient criteria for initiating bankruptcy—merely the existence of multiple creditors and an unpaid, due debt—have raised concerns. Critics argue that this could lead to solvent debtors being declared bankrupt, potentially resulting in unjust outcomes. Consequently, there have been calls for legal reforms to incorporate an insolvency test, aiming to better protect debtors who are financially capable but unwilling to pay their debts.¹⁷

In Indonesia, the Commercial Court plays a pivotal role in adjudicating bankruptcy petitions, as delineated in Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU). Established in 1998 as part of legal reforms to enhance judicial efficiency and integrity, the Commercial Court is vested with the authority to examine and decide upon bankruptcy cases.¹⁸ Its jurisdiction encompasses the assessment of bankruptcy petitions, verification of creditor claims, and the supervision of asset liquidation or debt restructuring processes. The court's decisions are grounded in both statutory provisions and unwritten legal principles, ensuring that verdicts are not only legally sound but also equitable. By providing a specialized forum for bankruptcy disputes, the Commercial Court aims to foster a more predictable and transparent legal environment, thereby bolstering creditor confidence and contributing to the overall stability of Indonesia's financial system.¹⁹

Regulation of the Financial Services Authority (POJK) No. 21 of 2022 grants exclusive authority to the Otoritas Jasa Keuangan (OJK) to initiate bankruptcy and Suspension of Debt Payment Obligations

¹⁶ Giacinta Nadima and Richard C. Adam, "Analysis of Facts or Circumstances Proven Summarily in Establishing the Existence of Other Creditors in Bankruptcy Petitions," *Jurnal Indonesia Sosial Teknologi* 4, no. 12 (2023), <https://doi.org/10.59141/jist.v4i12.821>.

¹⁷ Serlika Aprita, "Perlindungan Hukum Bagi Debitor Di Indonesia Sehubungan Tidak Adanya Insolvency Test," *ADALAH* 5, no. 3 (2022), <https://doi.org/10.15408/adalah.v5i3.27640>.

¹⁸ Serlika Aprita and Sarah Qosim, "Optimalisasi Wewenang Dan Tanggung Jawab Hakim Pengawas Dalam Hukum Kepailitan Di Indonesia," *Jurnal Ius Constituendum* 7, no. 2 (2022), <https://doi.org/10.26623/jic.v7i2.3963>.

¹⁹ Royana Lumban Gaol, "The Authority of the Commercial Court in Bankruptcy Disputes," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 3 (2023), <https://doi.org/10.31941/pj.v22i3.2461>.

(PKPU) proceedings for securities companies in Indonesia. This regulation restricts creditors, debtors, or other entities from independently filing for bankruptcy against securities companies, ensuring that such decisions are subject to OJK's regulatory oversight.

Under Article 3, Paragraph (1) of POJK No. 21 of 2022, OJK has the sole discretion to submit a bankruptcy petition against a securities company based on the following conditions: a request from at least two creditors with a due and payable debt, a self-petition filed by the securities company itself due to financial distress, and a determination by OJK based on its supervisory authority, indicating that the securities company's financial condition endangers market stability or investor interests.

The rationale behind this exclusive authority is to maintain financial market stability and prevent arbitrary bankruptcy filings that could harm investors and disrupt Indonesia's capital markets. By centralizing bankruptcy decisions under OJK, the regulation ensures that only securities companies experiencing genuine financial distress are declared bankrupt, thereby reducing systemic risks in the financial industry.

However, this regulation has raised legal concerns regarding its potential conflict with Indonesia's bankruptcy law (Law No. 37 of 2004 on Bankruptcy and PKPU). Critics argue that restricting creditors' rights to file for bankruptcy may violate the principles of legal certainty and access to justice. Furthermore, OJK's broad discretion over bankruptcy decisions creates concerns about transparency and potential regulatory overreach, as creditors have no independent recourse to initiate bankruptcy proceedings without OJK's intervention.

In conclusion, POJK No. 21 of 2022 reinforces OJK's role as a financial regulator by granting it exclusive authority over securities company bankruptcies. While this regulation aims to protect financial stability, it also introduces limitations on creditors' rights, raising questions about the balance between market oversight and legal fairness in Indonesia's bankruptcy framework.

V. The Broad Authority of OJK in Bankruptcy Proceedings

Under POJK No. 21 of 2022, the Financial Services Authority (OJK) holds exclusive authority to initiate bankruptcy and Suspension of Debt Payment Obligations (PKPU) proceedings for securities companies in Indonesia. This regulation explicitly limits the ability of creditors, debtors, or other entities to file for bankruptcy independently, ensuring that all bankruptcy petitions for securities companies must go through OJK. According to Article 3, Paragraph (1), only OJK has the right to submit a bankruptcy petition, which is meant to align bankruptcy decisions with broader financial stability and investor protection objectives. This exclusive power is further reinforced in Article 3, Paragraph (2), which outlines that OJK may file for bankruptcy under three conditions: (1) upon request from at least two creditors with outstanding claims, (2) at the request of the securities company itself, or (3) based on OJK's own assessment that the company's financial condition threatens capital market stability.

Before initiating a bankruptcy filing, OJK is required to assess the financial condition of the securities company, as stated in Article 4. This includes analyzing liquidity and solvency ratios, the company's ability to meet financial obligations, and potential risks to market stability. If the company is deemed financially distressed but not yet insolvent, Article 5 allows OJK to opt for regulatory interventions such as capital injections, mergers, or restructuring efforts before pursuing bankruptcy as a last resort. If bankruptcy is deemed necessary, Article 6 mandates that OJK must submit a formal petition to the Commercial Court, accompanied by supporting financial evidence. Additionally, Article 7 sets a maximum period for OJK to review bankruptcy conditions before proceeding with legal action, ensuring that decisions are made transparently and systematically.

Once a securities company is declared bankrupt, Article 8 mandates that the liquidation of assets and creditor claims must follow a structured process under OJK's supervision and the appointed curator. Furthermore, Article 9 establishes that OJK's decision to initiate bankruptcy proceedings is final and cannot be legally challenged by creditors or the securities company itself. While this

regulatory framework is designed to safeguard financial market stability and protect investors, it raises several legal concerns. One major issue is the restriction of creditors' rights, as they cannot independently petition for bankruptcy, even if they are owed significant debts. Additionally, the lack of judicial oversight means that OJK's decisions are final and not subject to independent legal review, potentially leading to regulatory overreach. This exclusive authority also conflicts with Indonesia's Bankruptcy Law (Law No. 37 of 2004), which traditionally grants creditors the right to initiate bankruptcy proceedings.

The legal and market implications of POJK No. 21 of 2022 highlight the need for a balance between financial regulation and creditor rights. While the regulation strengthens OJK's role in preventing financial instability, it also raises concerns about transparency, creditor protection, and the potential for selective enforcement. Moving forward, potential legal reforms may be needed to ensure that OJK's authority does not undermine judicial oversight and that creditors have a fair legal recourse in securities company bankruptcies.

The Regulation of the Financial Services Authority (POJK) No. 21 of 2022 and Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU) present significant differences in how bankruptcy proceedings are initiated and processed in Indonesia. Law No. 37 of 2004 follows a traditional legal framework, allowing creditors, debtors, and authorized institutions to file for bankruptcy directly with the Commercial Court. In contrast, POJK No. 21 of 2022 grants exclusive authority to OJK to initiate bankruptcy and PKPU proceedings for securities companies, effectively restricting creditors and debtors from filing bankruptcy petitions independently. This distinction has important legal and procedural implications.

Under Law No. 37 of 2004, Article 2, Paragraph (1) states that a debtor can be declared bankrupt if they have at least two creditors and one unpaid, due debt, and both creditors and debtors have the legal standing to submit a bankruptcy petition directly to the Commercial Court. The law also allows Bank Indonesia, OJK (for financial institutions), and the Attorney General to file for bankruptcy in cases concerning public interest or financial stability. The bankruptcy process under this law is judicial in nature, meaning the Commercial

Court has primary authority in reviewing petitions and issuing bankruptcy rulings. The court is required to issue a decision within 60 days of receiving the petition, ensuring a structured and time-bound process.

On the other hand, POJK No. 21 of 2022 shifts the authority to OJK, making it the sole entity responsible for initiating bankruptcy and PKPU proceedings for securities companies. According to Article 3, Paragraph (1), creditors and debtors are prohibited from filing bankruptcy petitions independently and must submit their claims to OJK for review. Only after assessing the financial condition of the securities company and determining whether its bankruptcy could affect market stability or investor protection can OJK proceed with filing a petition before the Commercial Court. Unlike Law No. 37 of 2004, which imposes a 60-day deadline for the court to decide, POJK No. 21 of 2022 does not specify a clear timeline for OJK's bankruptcy review process, which could lead to delays and uncertainties for creditors.

The restriction on creditors' rights in POJK No. 21 of 2022 raises legal concerns, particularly regarding transparency and judicial oversight. Under Law No. 37 of 2004, creditors can actively participate in the bankruptcy process, file claims directly to the Commercial Court, and challenge decisions made by the curator or the court itself. However, under POJK No. 21 of 2022, creditors are entirely dependent on OJK's decision, with no clear appeal mechanism if OJK refuses to initiate bankruptcy proceedings. Additionally, while Law No. 37 of 2004 follows a judicial bankruptcy model, where court rulings can be appealed and reviewed, POJK No. 21 of 2022 creates an administrative bankruptcy model, where OJK's decision is final and cannot be legally contested by creditors or securities companies. This shift from judicial to administrative control increases concerns over regulatory overreach, selective enforcement, and lack of transparency.

While POJK No. 21 of 2022 aims to maintain financial stability and prevent market disruptions, it also conflicts with the principles of Indonesia's bankruptcy system under Law No. 37 of 2004, which upholds creditors' access to bankruptcy proceedings. The absence of judicial checks on OJK's authority may lead to inconsistencies in how securities company bankruptcies are handled, potentially impacting creditor rights, legal certainty, and investor confidence. Given these

concerns, future legal reforms may be necessary to strike a balance between OJK's regulatory role and the fundamental rights of creditors within Indonesia's bankruptcy framework.

VI. Potential Inconsistencies with Law No. 37 of 2004 on Bankruptcy and PKPU

The enactment of POJK No. 21 of 2022 introduced a regulatory shift in the bankruptcy framework for securities companies in Indonesia, particularly by granting exclusive authority to the Financial Services Authority (OJK) to initiate bankruptcy and Suspension of Debt Payment Obligations (PKPU) proceedings. However, this regulation raises concerns regarding its compatibility with the fundamental principles established in Law No. 37 of 2004 on Bankruptcy and PKPU, which governs general bankruptcy procedures in Indonesia. The potential inconsistencies between these two regulations may impact creditors' rights, legal certainty, judicial oversight, and overall bankruptcy proceedings.

One of the most apparent inconsistencies between POJK No. 21 of 2022 and Law No. 37 of 2004 lies in the legal standing to initiate bankruptcy petitions. Under Article 2, Paragraph (1) of Law No. 37 of 2004, bankruptcy petitions may be filed by: creditors who are owed a due and payable debt, the debtor itself if it acknowledges its inability to fulfill its financial obligations, and authorized entities such as Bank Indonesia, OJK (for financial institutions), and the Attorney General for cases involving public interest.

This provision reflects the principle of equal access to legal remedies, ensuring that creditors have the ability to protect their financial interests through judicial bankruptcy proceedings. In contrast, Article 3, Paragraph (1) of POJK No. 21 of 2022 restricts this right by limiting the authority to file bankruptcy and PKPU petitions for securities companies exclusively to OJK. This restriction directly contradicts Law No. 37 of 2004, which traditionally allows creditors and debtors to initiate bankruptcy proceedings without requiring regulatory approval. By removing creditors' independent access to the Commercial Court, POJK No. 21 of 2022 potentially undermines creditor protections and the fundamental legal framework established

under Law No. 37 of 2004.

Another major inconsistency arises from the shift in decision-making authority from the Commercial Court to OJK. Under Law No. 37 of 2004, bankruptcy cases are handled within the judicial system, meaning the Commercial Court has the primary authority to determine whether a debtor meets the legal criteria for bankruptcy. This ensures that bankruptcy decisions are subject to judicial review, due process, and independent oversight. However, POJK No. 21 of 2022 grants OJK administrative control over bankruptcy decisions, as the court can only process bankruptcy petitions that have been approved and filed by OJK. This shift raises concerns about transparency and accountability, as OJK's decisions are not subject to direct judicial review, potentially leading to regulatory overreach and selective enforcement.

Under Law No. 37 of 2004, creditors and debtors are afforded legal recourse mechanisms to challenge bankruptcy rulings, asset distributions, or curator decisions. The judicial nature of bankruptcy cases under this law allows parties to appeal court decisions and seek legal remedies if they believe their rights have been violated.²⁰ However, under POJK No. 21 of 2022, creditors and debtors have no direct legal recourse to challenge OJK's decisions not to file a bankruptcy petition, as the regulation does not provide a clear appeal mechanism. This lack of procedural safeguards may violate the principles of fairness and access to justice, as it prevents affected parties from independently seeking legal protection through bankruptcy courts.

A significant strength of Law No. 37 of 2004 is its structured and time-bound process for bankruptcy cases, where the Commercial Court is required to issue a decision within 60 days of receiving a bankruptcy petition. This provision ensures legal certainty and efficiency in resolving financial distress cases. In contrast, POJK No. 21 of 2022 does not impose a strict timeframe on OJK's decision-making process, which could lead to delays in initiating bankruptcy proceedings. If OJK takes an extended period to assess a securities

²⁰ Benito Siregar, "Effectiveness of Law Enforcement on Corporate Bankruptcy Status," *Global Legal Review* 4, no. 1 (2024), <https://doi.org/10.19166/glr.v4i1.6077>.

company's financial condition before filing for bankruptcy, creditors may suffer financial losses due to prolonged uncertainty. Moreover, without a clear deadline for OJK to act, creditors are left without an effective remedy to expedite the bankruptcy process, which contradicts the efficiency principle emphasized in Law No. 37 of 2004.

Another concern is the potential for selective enforcement under POJK No. 21 of 2022. Since OJK has the exclusive authority to determine whether a securities company should be declared bankrupt, there is a risk that some financially distressed companies may be protected from bankruptcy due to regulatory discretion or political considerations. This creates market uncertainty and an uneven playing field, as certain securities companies may benefit from regulatory protection while others are subjected to bankruptcy proceedings. Such inconsistencies may erode investor confidence in Indonesia's financial markets and contradict the principles of fairness and transparency upheld by Law No. 37 of 2004.

The potential inconsistencies between POJK No. 21 of 2022 and Law No. 37 of 2004 highlight critical legal and procedural concerns in Indonesia's bankruptcy framework. While POJK No. 21 of 2022 aims to protect financial market stability, it introduces restrictions on creditors' rights, removes direct judicial oversight, and lacks clear legal recourse for affected parties. These inconsistencies could lead to legal uncertainty, delays in bankruptcy proceedings, and risks of regulatory overreach. To address these concerns, future legal reforms should focus on balancing OJK's regulatory authority with creditor protection, enhancing judicial oversight, and ensuring that bankruptcy decisions remain transparent, consistent, and aligned with Indonesia's broader legal framework.

VII. The Legal Implications of POJK No. 21 of 2022

The Financial Services Authority Regulation (POJK) No. 21 of 2022 introduced a new regulatory framework governing the bankruptcy and Suspension of Debt Payment Obligations (PKPU) for securities companies in Indonesia. This regulation significantly expands the authority of Financial Services Act OJK) by granting it exclusive

control over initiating bankruptcy petitions for securities firms, a role that was previously open to creditors and debtors under Law No. 37 of 2004 on Bankruptcy and PKPU. The legal implications of this regulation impact creditors' rights, financial market stability, judicial authority, and the broader regulatory landscape of financial services in Indonesia.

One of the most critical legal implications of POJK No. 21 of 2022 is the limitation of creditors' rights to file for bankruptcy. Under Law No. 37 of 2004, creditors have direct access to the Commercial Court to file a bankruptcy petition if a debtor fails to meet at least one matured and unpaid financial obligation.²¹ However, Article 3, Paragraph (1) of POJK No. 21 of 2022 restricts this right by stating that only OJK has the authority to submit a bankruptcy petition for securities companies. This restriction raises concerns about legal certainty and fairness, as creditors no longer have an independent legal recourse to recover debts through judicial bankruptcy proceedings unless OJK initiates the process on their behalf.

Another major implication of POJK No. 21 of 2022 is its shift from a judicially managed bankruptcy process to a regulator-controlled mechanism. Traditionally, under Law No. 37 of 2004, bankruptcy cases are handled by the Commercial Court, allowing for independent judicial review and legal recourse for affected parties. However, under POJK No. 21 of 2022, the decision to file a bankruptcy petition is subject to OJK's discretion, which reduces the role of the judiciary in bankruptcy matters concerning securities companies. The lack of judicial oversight raises concerns about transparency, regulatory overreach, and selective enforcement, as creditors and securities firms have no clear mechanism to appeal OJK's decisions regarding bankruptcy petitions. This shift could undermine the principles of legal certainty and due process, which are fundamental to Indonesia's legal system.²²

Under Law No. 37 of 2004, the Commercial Court is required

²¹ Erma Defiana Putriyanti, "The Authority to File Bankruptcy Petitions After the Establishment of Indonesia's Financial Services Authority," *Mimbar Hukum* 27, no. 2 (2015), <https://doi.org/10.22146/jmh.15898>.

²² Suwinto Johan, "Financial Institution and Public Listed Companies: How the Supervision Regulated Under the Indonesian Law?," *Varia Justicia* 17, no. 2 (2021), <https://doi.org/10.31603/variajusticia.v17i2.4064>.

to issue a ruling on a bankruptcy petition within 60 days, ensuring a timely resolution for creditors and financial stakeholders. However, POJK No. 21 of 2022 does not establish a strict timeframe for OJK to review and decide whether a securities company should be declared bankrupt. This regulatory ambiguity creates the risk of prolonged uncertainty for creditors who may be waiting for OJK's decision before taking further legal action. In addition, the delayed resolution of financial distress cases could affect market confidence and increase systemic risks if financially unstable securities firms remain operational due to regulatory inaction.²³

The exclusive authority granted to OJK under POJK No. 21 of 2022 has implications for investor confidence in Indonesia's capital markets. While the regulation aims to protect market stability, it also creates uncertainty in how securities company bankruptcies will be handled. If investors perceive that bankruptcy decisions are subject to regulatory discretion rather than clear legal procedures, it may reduce trust in Indonesia's financial regulatory framework. This is particularly concerning for foreign investors and institutional stakeholders, who rely on transparent legal mechanisms to ensure fair market participation. The lack of clear procedural safeguards and accountability measures could undermine OJK's credibility as a financial regulator, particularly in cases where bankruptcy decisions are delayed or applied inconsistently.

A further implication of POJK No. 21 of 2022 is its potential conflict with Law No. 37 of 2004, which establishes a universal legal framework for bankruptcy proceedings in Indonesia. The primary contradiction lies in the restriction of creditor rights and the shift from judicial to regulatory control. Under Law No. 37 of 2004, the Commercial Court maintains full authority over bankruptcy cases, ensuring equal access to justice for all financial stakeholders. However, POJK No. 21 of 2022 effectively removes this authority from the judiciary and places it under OJK's exclusive discretion. This regulatory conflict may create legal uncertainties and procedural inconsistencies,

²³ Yuanita Suryo, *Fungsi Pengaturan Dan Pengawasan Perbankan Di Indonesia Setelah Disahkannya Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan*, 2013, <https://www.semanticscholar.org/paper/FUNGSI-PENGATURAN-DAN-PENGAWASAN-PERBANKANDI-NOMOR-Suryo/90178b07353c7a250c2f02b864f086f66c451664>.

particularly in cases where creditors seek to challenge OJK's decisions or demand a more expedited bankruptcy process.²⁴

The legal implications of POJK No. 21 of 2022 highlight key challenges in Indonesia's financial regulatory and bankruptcy framework. While the regulation aims to enhance financial stability and prevent reckless bankruptcy filings, it also raises concerns about creditor rights, judicial oversight, procedural delays, and regulatory transparency. The removal of direct creditor access to bankruptcy proceedings, combined with OJK's exclusive authority to initiate bankruptcy petitions, creates legal uncertainty and potential conflicts with existing bankruptcy laws. Additionally, the absence of a strict timeline for OJK's decision-making process could delay the resolution of financial distress cases, further complicating market stability and investor confidence. To address these concerns, future legal reforms should focus on balancing OJK's regulatory authority with creditors' rights, reinforcing judicial oversight, and ensuring that bankruptcy decisions are made transparently and efficiently.

VIII. Recommendations for Legal Reform

The Financial Services Authority Regulation (POJK) No. 21 of 2022 introduces a significant shift in Indonesia's bankruptcy framework for securities companies, granting exclusive authority to Otoritas Jasa Keuangan (OJK) to initiate bankruptcy and PKPU (Suspension of Debt Payment Obligations) proceedings. While this regulation aims to enhance financial stability and prevent reckless bankruptcy filings, it also raises concerns regarding creditor rights, judicial oversight, procedural efficiency, and regulatory transparency. To address these issues, several legal reforms are necessary to ensure that POJK No. 21 of 2022 aligns with Indonesia's broader bankruptcy laws, particularly Law No. 37 of 2004 on Bankruptcy and PKPU.

One of the primary concerns of POJK No. 21 of 2022 is the restriction on creditors' rights to independently file for bankruptcy against securities companies. Under Law No. 37 of 2004, creditors have direct legal standing to initiate bankruptcy petitions when a

²⁴ Johan, "Financial Institution and Public Listed Companies: How the Supervision Regulated Under the Indonesian Law?"

debtor fails to meet a matured and unpaid obligation. However, POJK No. 21 of 2022 removes this right, making creditors entirely dependent on OJK's discretion. To balance financial regulation with legal certainty, the regulation should be amended to restore creditors' ability to file for bankruptcy, subject to OJK's review for financial stability considerations. This can be done through a dual-track system, allowing both OJK and creditors to submit bankruptcy petitions, with OJK retaining the right to intervene in cases of systemic risk.

Furthermore, judicial oversight in securities company bankruptcies must be reinforced. The current framework under POJK No. 21 of 2022 grants OJK full control over bankruptcy decisions, limiting the role of the Commercial Court and eliminating creditor legal recourse. To prevent regulatory overreach and ensure due process, a judicial review mechanism should be introduced, allowing creditors or debtors to challenge OJK's refusal to initiate bankruptcy proceedings. Additionally, OJK should be required to provide formal written justifications for its decisions, which can be reviewed by the Commercial Court to maintain transparency and accountability.

Another critical issue with POJK No. 21 of 2022 is the absence of a clear timeline for OJK to decide on bankruptcy filings. Unlike Law No. 37 of 2004, which mandates that the Commercial Court must issue a bankruptcy ruling within 60 days, POJK No. 21 of 2022 does not establish a strict timeframe for OJK's bankruptcy review process. This regulatory gap could lead to prolonged delays, creating uncertainty for creditors, investors, and market participants. To address this, a specific deadline for OJK's decision-making process should be established, such as a 30-60 day limit, ensuring that bankruptcy petitions are handled efficiently and in a timely manner.

Moreover, transparency and accountability in OJK's bankruptcy decision-making process must be strengthened. Since OJK has exclusive authority over bankruptcy filings, there is a risk of selective enforcement, where certain securities companies may receive preferential treatment. To enhance regulatory trust and consistency, OJK should be required to publish general justifications for its bankruptcy decisions, conduct stakeholder consultations, and undergo periodic audits by an independent regulatory body. This would help ensure fairness in bankruptcy proceedings and uphold market confidence in Indonesia's financial regulatory system.

Additionally, legal harmonization between POJK No. 21 of 2022 and Law No. 37 of 2004 is crucial to prevent contradictions and inconsistencies. The current framework under POJK No. 21 of 2022 conflicts with Indonesia's established bankruptcy principles, particularly regarding who has the legal standing to file for bankruptcy and the extent of judicial involvement. A joint regulatory framework should be developed, clarifying the relationship between OJK's administrative control and the judiciary's role in overseeing bankruptcy cases. One possible solution is to establish a specialized bankruptcy court for financial institutions, where OJK, creditors, and debtors can present cases under a unified legal system that balances financial stability with judicial fairness.

Overall, the legal implications of POJK No. 21 of 2022 necessitate reforms that restore creditor rights, reinforce judicial oversight, improve procedural timelines, enhance transparency, and harmonize Indonesia's bankruptcy laws. By implementing these legal changes, Indonesia can maintain financial stability while ensuring fairness, legal certainty, and investor confidence in its bankruptcy framework. Future regulatory amendments should focus on striking a balance between market supervision and legal protections, ensuring that OJK's authority does not undermine judicial independence or restrict fundamental creditor rights.

IX. Conclusion

The analysis of POJK No. 21 of 2022 and its impact on Indonesia's bankruptcy framework for securities companies highlights significant legal, procedural, and regulatory challenges. While the regulation was introduced to enhance financial stability and prevent reckless bankruptcy filings, it has also raised critical concerns regarding creditor rights, judicial oversight, procedural efficiency, and regulatory transparency. The exclusive authority granted to Otoritas Jasa Keuangan (OJK) to initiate bankruptcy and PKPU (Suspension of Debt Payment Obligations) proceedings marks a departure from the traditional legal framework under Law No. 37 of 2004 on Bankruptcy and PKPU, which provides creditors and debtors with direct access to the Commercial Court for bankruptcy proceedings.

One of the key findings of this research is the restriction on creditors' rights, as POJK No. 21 of 2022 eliminates their ability to independently file for bankruptcy against securities companies, making them entirely reliant on OJK's discretion. This contradicts the principles of fairness and legal certainty established under Law No. 37 of 2004, where creditors play an active role in bankruptcy proceedings. Additionally, the shift from judicial oversight to administrative control raises concerns about transparency, regulatory overreach, and the potential for selective enforcement in bankruptcy decisions. The absence of clear legal recourse for creditors or securities firms further weakens legal protections, as OJK's decisions cannot be directly challenged in court.

Another major concern is the lack of a defined timeline for OJK's bankruptcy decision-making process. Unlike Law No. 37 of 2004, which mandates a 60-day period for the Commercial Court to issue a bankruptcy ruling, POJK No. 21 of 2022 does not specify a clear deadline for OJK to review and file bankruptcy petitions. This regulatory gap could lead to prolonged delays, affecting creditor recoveries, investor confidence, and market stability. Additionally, the potential for regulatory inconsistency is a major risk, as OJK's unilateral discretion in determining bankruptcy cases could result in unequal treatment of securities companies, further exacerbating legal uncertainty in Indonesia's financial sector.

Given these findings, this research emphasizes the need for legal reforms to align POJK No. 21 of 2022 with Indonesia's broader bankruptcy laws. Restoring creditors' rights to file for bankruptcy, introducing judicial oversight mechanisms, establishing strict decision-making timelines for OJK, enhancing regulatory transparency, and harmonizing bankruptcy regulations are crucial steps to ensure that the financial regulatory framework remains both effective and legally consistent. These reforms would balance financial market stability with fundamental legal protections, ensuring that OJK's regulatory authority does not undermine legal certainty, creditor rights, or judicial independence.

In conclusion, while POJK No. 21 of 2022 is a necessary step in strengthening Indonesia's financial regulatory environment, its implementation must be refined to address its legal inconsistencies, procedural inefficiencies, and transparency concerns. Future legal

amendments should focus on enhancing creditor protections, reinforcing checks and balances within bankruptcy proceedings, and ensuring that bankruptcy decisions are made in a fair, accountable, and efficient manner. By adopting these reforms, Indonesia can create a more stable, transparent, and legally sound bankruptcy framework for securities companies, fostering greater confidence in its financial system and upholding the principles of legal certainty, fairness, and market integrity.

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Acknowledgment

The author expresses sincere gratitude to all parties who have provided support in the conduct of this research and the preparation of this article. Special appreciation is extended to the informants and Mandar customary leaders for their openness and invaluable contributions of knowledge. The author also acknowledges the affiliated institution for its academic support and research facilities, as well as the anonymous reviewers for their constructive feedback, which has significantly improved the quality of this manuscript. Any remaining shortcomings in this article are the sole responsibility of the author.

Funding Information

This research was self-funded by the author.

Conflicting Interest Statement

The author declares that there are no conflicts of interest regarding the publication of this article.

Publishing Ethical and Originality Statement

The author affirms that this research is entirely original. This manuscript has not been previously published in any form, whether in print, online, or other media, and is not currently under consideration by any other journal. All sources cited in the references have been properly acknowledged in accordance with applicable academic citation standards and ethical guidelines.

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