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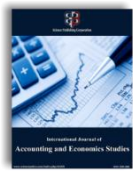

Reinforcing Creditor Protection: The Imperative for The Cross-Border Insolvency Regulation

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Abstract

The rapid expansion of globalization has significantly increased cross-border economic activities, intensifying legal complexities in insolvency cases involving multinational entities. In Indonesia, Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations governs domestic insolvency but lacks explicit provisions addressing cross-border insolvency. This regulatory gap exposes Indonesian creditors to heightened legal uncertainty and potential financial losses, particularly when debtor assets are located abroad and foreign proceedings are not recognized domestically.

This paper critically examines the extent of legal protection afforded to Indonesian creditors in cross-border insolvency scenarios. It evaluates the relevance and potential adoption of the UNCITRAL Model Law on Cross-Border Insolvency as a framework for reform. Through a comparative analysis of Indonesia's legal regime with that of Singapore and the Philippines, both of which have adopted the Model Law. The study underscores the benefits of harmonized international insolvency procedures. Findings reveal that Indonesia's current reliance on reciprocity and ad hoc recognition mechanisms undermines predictability, judicial cooperation, and creditor confidence.

The study concludes by advocating for Indonesia's adoption of the UNCITRAL Model Law to align its insolvency framework with global standards. Such a reform would improve cross-border asset recovery, enhance creditor protection, and foster a more stable and attractive investment environment.

Keywords: *Bankruptcy Law; Creditor Protection; Cross-Border Insolvency; UNCITRAL Model Law.*

1. Introduction

Contemporary economic globalization has brought about significant transformations in the global economic landscape, including the liberalization of international markets, the rise of systemic interdependence in political and economic domains, the emergence of regional economic blocs, the rapid expansion of transnational economic actors such as multinational corporations, and the consolidation of the Military-Industrial Complex. These developments cannot operate within a legal vacuum; hence, robust legal regulations are indispensable to structure legal relations, manage transnational interactions, and prevent conflicts of interest that may hinder a nation's economic growth and stability.(Abdul, 2017)

In the Indonesian context, economic development, as mandated by the 1945 Constitution, must be pursued autonomously, harnessing the full potential of society, including the ability to independently finance national development. This principle is clearly articulated in Article 33, paragraph (4) of the 1945 Constitution, which emphasizes that the national economy shall be organized based on economic democracy, upholding principles of sustainability, equity, efficiency, environmental insight, independence, and maintaining a balance between progress and national economic unity. (Iyah, 2018)

Article 33, paragraph 4, elucidates that national economic operations are conducted for the populace based on democratic principles; yet, their execution necessitates governmental regulation to attain national economic unity.

Human existence perpetually evolves in accordance with temporal advancements, with globalization playing a significant role in this dynamic progression. Globalization affects not only the social, cultural, and educational domains but also the economic and legal sectors. Legal globalization is a consequence of economic globalization, resulting in the formulation of diverse laws and agreements that transcend national boundaries. (Sunarmi, 2010)

In a commercial transaction, to fulfill capital requirements, business entities frequently engage in loan agreements with third parties. In the business realm, borrowing and lending operations are inescapable, as capital is essential, particularly in navigating the intensifying competitiveness of globalization. The loan agreement establishes a responsibility for the debtor to repay the debt. (I, 2000) The debt or obligation resulting from the agreement is an obligation that must be fulfilled by the parties involved, where the creditor possesses the right, while the debtor is obligated to perform the required action. (Mutiara, 2007)

With the swift advancement of the global economy and the influence of globalization, business participants, whether individuals or legal entities, engage in commercial interactions or investments that extend beyond national borders, involving foreign elements and interacting with counterparts from different countries and citizenships. The actions of commercial entities characterized in this manner fall under "international business transactions." Entities engaged in foreign business dealings may be declared bankrupt or may petition for bankruptcy. This may result in cross-border insolvency when the subject, object, or asset in bankruptcy is located outside Indonesia's sovereign territory. The existing legislation governing bankruptcy is Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (hereafter referred to as UUK-PKPU). (Mutiara, 2007)

Bankruptcy encompasses all aspects associated with the occurrence of bankruptcy, namely a scenario in which the debtor ceases to fulfill payment obligations, not implying a complete cessation of payments, but rather indicating that the debtor is in a condition of non-payment at the time the bankruptcy petition is submitted. (Kansil et al., 2002)

An individual who is unable to pay debts that have fallen due is classified as insolvent. A declaration of bankruptcy by the court can only be rendered if such insolvency is established. The primary objective of bankruptcy, as stipulated in the Faillissementsverordening (Fv)—Indonesia's Bankruptcy Ordinance, inherited from Dutch colonial law—is to provide legal protection for concurrent creditors in asserting their claims. This protection is grounded in the fundamental legal principle that creditors have the right to satisfaction from the assets of the debtor, which must be administered fairly and proportionally to ensure equitable treatment among all creditors. (Hartini, 2017)

Indonesia's bankruptcy regime, as governed by UUK-PKPU, establishes that the principal objective of bankruptcy proceedings is to provide legal protection for both creditors and the public interest. In accordance with this legal mandate, once a debtor, particularly a business entity, is declared bankrupt, the entirety of their assets, whether existing or future, movable or immovable, becomes subject to judicial seizure and is placed under the management and supervision of a court-appointed curator.

Within this legal framework, creditors occupy a central position as parties whose rights must be protected, in line to ensure the orderly settlement of debts and the equitable distribution of the debtor's estate. Law No. 37 of 2004 reflects the commitment of the Indonesian legal system to safeguard the rights of creditors by facilitating the realization of their receivables through a transparent and accountable insolvency process.

The challenges in facilitating payments from debtors to creditors ultimately prompted the enactment of the Faillissementsverordering in 1905, as per Stb. 1905-217, officially titled Verordening op het Faillissement en de Surseance van Betalin voor de Europeanen in Nederlands Indie (Regulations for Bankruptcy and Suspension of Payments for Europeans), which came into effect on November 1, 1906, according to Verordening ter invoering van de Faillissementsverordening (Stb 1906-348).(Man, 2006)

Over time, following the implementation of the Faillissementsverordening, Indonesia encountered a monetary crisis in 1997, which served as a benchmark to reassess the efficacy of the Faillissementsverordening as a bankruptcy regulation capable of addressing bankruptcy issues swiftly and effectively. Consequently, the Indonesian government agreed to promptly amend the Faillissementsverordening to address the monetary turbulence that, if unaddressed, might have structural repercussions on the Indonesian economy. The government's initiative to amend the Faillissementsverordening originated from "pressure" exerted by the International Monetary Fund (IMF), which deemed the bankruptcy regulations, a remnant of the Dutch colonial administration, insufficient to address contemporary requirements.(Rachmadi, 2004)

The objective of instituting bankruptcy regulations is to govern the rights and responsibilities of insolvent debtors as well as those of creditors. (Adrian, 2009)

Nevertheless, amendments to bankruptcy legislation from the Faillissementsverordening, the 1998 bankruptcy statute, and the latest 2004 bankruptcy law have failed to address the numerous challenges and issues that occur in practice. Numerous bankruptcy litigations remain unresolved, trials are protracted, and legal certainty is lacking for both creditors and debtors with nefarious motives, such as transferring all assets to evade obligations to creditors.(Gunawan, 2009)

UUK-PKPU does not address cross-border bankruptcy, including its processes or procedures. In international trade, cross-border legal concerns, including bankruptcy, are quite probable, necessitating explicit legal controls. Cross-border bankruptcy transpires when a debtor possesses assets or creditors in many nations.

Bankruptcy matters pertain to international civil law. The significance of international law in this bankruptcy matter will be pertinent when the bankruptcy involves a cross-border foreign component. The term utilized in the domain of bankruptcy law is Cross-Border Insolvency, referred to as Transnational Insolvency by Anglo-Saxon authors. In Indonesia, a discrepancy exists between the phrases bankruptcy and insolvency. (Huala, 2009) Bankruptcy, as defined in Article 1, Section 1 of the Bankruptcy Law, constitutes a comprehensive confiscation of all assets belonging to the Bankrupt Debtor, with management and resolution conducted by the Curator under the oversight of the Supervisory Judge. Cross-border insolvency governed by the UNCITRAL Model Law is equivalent to bankruptcy in Indonesia.(Ricardo, 2013)

Each nation possesses its unique jurisdiction, which hinders the administration of cases or the enforcement of judicial rulings regarding assets situated in foreign territories. Indonesian bankruptcy rulings lack legal validity outside the country. Consequently, Indonesian curators encounter challenges in administering insolvent estates situated overseas. Similarly, foreign curators are unable to confiscate assets of foreign debtors situated in Indonesia. (Rosalind, 2008) This necessitates the establishment of specific legislation for cross-border insolvency to safeguard creditors in cases of international bankruptcy. (Neil Cooper et al., 1996)

The remarkable expansion of international trade and investment has heightened the prevalence of corporations operating with enterprises, assets, debtors, and creditors across multiple countries. A disadvantage of a global market is the potential for cross-border bankruptcy.(Syamsudin, 2012)

The expansion of international trade and investment activities has increasingly transcended national borders. An inevitable consequence of this global economic integration, driven by the intensification of cross-border commercial transactions and the widespread operations of multinational corporations, is the emergence of cross-border insolvency as a complex legal and financial challenge.

In developed legal systems, mechanisms for dealing with cross-border insolvency have evolved in tandem with global economic dynamics. However, in many developing countries, including Indonesia, the legal infrastructure has not kept pace with the increasing complexity of transnational economic relations. The absence of clear legal frameworks to manage insolvency cases involving foreign elements creates significant risks, particularly for creditors and investors whose claims and interests extend beyond national jurisdictions.

From a legal standpoint, this underscores the urgent need for regulatory reform and international cooperation. Without a coherent and harmonized approach to cross-border insolvency, such as that offered by the UNCITRAL Model Law, countries like Indonesia remain vulnerable to legal uncertainty, inconsistent judicial treatment, and limited enforceability of foreign insolvency proceedings. As global economic integration deepens, addressing cross-border insolvency is no longer optional but essential to uphold legal certainty, protect creditor rights, and sustain economic resilience in an interdependent world. The lack of uniformity or harmonization in bankruptcy laws

across nations concerning bankruptcy rulings filed in one country against insolvent corporations in other jurisdictions presents significant challenges that require resolution.(Seymour, 1995)

The amalgamation of multinational enterprises and their proliferation over international boundaries has resulted in intricate networks of individuals and organizations that have generated substantial financial value and reinforced transnational connections in finance, law, and politics. Consequently, international trade agreements, economies of scale, and the deregulation of previously nationalized industries have facilitated the movement of enterprises across national borders.

A significant number of businesspeople and lawyers engaged in international trade and investment acknowledge the necessity for a unified framework of insolvency regulations across nations, given the rising globalization of companies with assets distributed in multiple countries. This issue frequently manifests in the bankruptcy of a significant corporation with assets distributed across multiple jurisdictions, as exemplified by the notable cases of Maxwell Communications Corporation, Bank of Credit and Commerce International, and Lehman Brothers.

The UNCITRAL model law is regarded as a benchmark for cross-border insolvency regulations in Indonesia. A quintessential illustration of a corporation facing financial challenges in the Asian market is the bankruptcy of Asia Pulp & Paper. The incident transpired in 2001 in Singapore and garnered global notice. The Singapore court denied the creditors' request to appoint a judicial manager due to his inability to operate in other jurisdictions, such as China or Indonesia, where he would lack the necessary authority under local insolvency legislation.

Furthermore, in 2002, the Central Jakarta Commercial District Court rendered Decision No. 30/PAILIT/2002/PN.NIAGA/JKT/PST concerning a dispute involving Mrs. Nyoman Soe R. Abratha and Ir. Marcus Pramono S is the bankruptcy applicant against the respondent, The Ortrich Meat & Marketing Co. (Australia) Ltd, a global corporation based in Australia that conducts business in the Asian region, including Indonesia. The court declined to accept the bankruptcy petition since the international corporation was not demonstrated to be domiciled in Indonesia and lacked a representative office in compliance with the legislation governing Companies and Foreign Investment in Indonesia.

On October 7, 2002, the Bankruptcy Applicants, Nyoman Soebratha (an Indonesian citizen residing at Jalan Damai Raya Blok C No. 15 Rt.. 005/Rw 05, Petukangan Indah, South Jakarta) and Ir Marcus Pramono S., Indonesian citizens, residing at Jalan H. Nawi Raya No. 58 Rt. 010/002, Kel. Gandaria Selatan, Cilandak, South Jakarta, represented by their attorneys Yuhelson SH, Dewi Susianti SH, and Pandji Heraspati SH MH, submitted a Bankruptcy Declaration Application against the Bankruptcy Respondent, The Ostrich Meat & Marketing Co. “TOMM” (an Australian legal entity located at Ground Floor I, Altona Street, West Perth, Western Australia 6005) at the Commercial Court Clerk's Office of the Central Jakarta District Court, under case register number: 30/Pailit/2002/PN.Niaga/Jkt.Pst.(Riris, 2016)

The Bankruptcy Application was submitted because the Bankrupt Respondent (TOMM) failed to meet its responsibility to remit payments on matured debts that were collectible from the Bankruptcy Applicants. Furthermore, according to the case facts outlined in the decision, the Bankrupt Respondent, in addition to owing debts to the Bankruptcy Applicants, also has obligations to other creditors, specifically Agus Dharmadi et al., each arising from the Agreement for the Sale of Ostriches, accompanied by proof of payment receipts.

The Bankrupt Applicant has developed and sold their cooperative enterprise through brochures and adverts in Kompas Daily. The Bankrupt Applicants contend that the Bankrupt Applicant operates its business in the Republic of Indonesia through a Sole Agent located at Wisma Tugu Wahid Haysim, 7th floor, Jalan KH. Wahid Hayim No. 100-102, Jakarta. In Decision Number: 30 / PAILIT / 2002 / PN.Niaga / Jkt.Pst, the panel of judges articulated that the Commercial Court at the Central Jakarta District Court lacks jurisdiction to review and adjudicate the bankruptcy declaration application. (Dessi, et all)

Empirically, the effectiveness of the UUK-PKPU in providing creditor protection in cross-border cases is still questionable. The World Bank's Resolving Insolvency Report noted that the creditor recovery rate in Indonesia was only around 14.2 cents per dollar, with an average settlement time of more than 5 years, far below Singapore, which, after adopting the UNCITRAL Model Law, recorded a recovery of up to 88 cents per dollar with an average settlement time of 0.8 years. (World Bank, 2020) This limitation was also reflected in the case of Asia Pulp & Paper (2001), when foreign creditors suffered billions of dollars in losses due to the lack of a cross-border recognition mechanism, resulting in the judicial manager's application in Singapore being rejected because it was not recognized in the jurisdictions of Indonesia and China. Similarly, in the case of Ostrich Meat & Marketing Co. (2002), the Central Jakarta Commercial Court rejected a domestic creditor's bankruptcy petition because the foreign debtor did not have an official domicile in Indonesia despite actively operating in the domestic market. These facts demonstrate a serious gap between the national legal framework and global needs, and indicate that the adoption of the Model Law has the potential to provide legal certainty, increase recovery rates, and strengthen creditors' confidence in the Indonesian legal system.

Based on the background described above, this study seeks to identify the core legal issue concerning the extent of legal protection available to Indonesian creditors in cases of cross-border insolvency. The issue arises particularly when a debtor possesses assets or liabilities that extend beyond Indonesian territory, while UUK-PKPU provides limited regulation, especially in relation to the recognition and enforcement of foreign insolvency proceedings or court decisions.

The absence of comprehensive legal provisions governing cross-border insolvency in Indonesia creates significant legal uncertainty for creditors. In contrast, the UNCITRAL Model Law on Cross-Border Insolvency offers an internationally recognized framework that promotes legal certainty, judicial cooperation, and the equitable treatment of creditors in transnational insolvency proceedings. Accordingly, the central problem addressed in this research is that the legal protection for Indonesian creditors in cross-border insolvency cases remains partial and unsystematic, making the UNCITRAL Model Law on Cross-Border Insolvency a suitable normative basis for reforming Indonesia’s insolvency framework to effectively address the complexities of cross-border legal relations.

2. Methodologies for Research

In legal research, a method refers to the structured procedure or analytical technique used to examine legal norms, doctrines, and practices. Research in this context is a systematic and disciplined process aimed at uncovering legal facts, interpreting principles, and evaluating their application through a careful, logical, and evidence-based investigation. It serves as a means to attain a deeper understanding of legal phenomena and to formulate solutions to legal problems based on doctrinal, comparative, or empirical approaches.

This research employs a normative legal methodology. Normative legal study is a form of legal inquiry that positions law as the foundation of a normative system. The normative system pertains to the principles, norms, legal rules and regulations, judicial decisions, agreements, and doctrines. Peter Mahmud Marzuki elucidates that normative legal research entails the identification of legal rules and principles to address legal issues. This research aims to generate novel arguments, theories, or conceptions as prescriptive evaluations for the challenges encountered. (Peter, 2011)

A method can be defined as a structured technique or procedure employed during a research process to systematically address a research question. Research, particularly within the scientific and legal domains, is a methodical endeavor aimed at uncovering facts, identifying principles, and establishing truths through diligent, analytical, and critical investigation.

This study adopts a Juridical Normative Research Method, which is primarily concerned with examining legal norms, principles, and statutory regulations as contained in legal texts and authoritative legal sources. The normative legal approach seeks to determine the truth in legal analysis through deductive reasoning, logical coherence, and consistent application of legal doctrine. Unlike empirical methods, the validity of findings in normative legal research does not rely on testing through observation or experimentation but rather on the soundness and consistency of legal argumentation.

Verification in normative legal research is conducted by evaluating the logical strength and doctrinal consistency of the conclusions, often through academic scrutiny or peer assessment. The robustness of legal reasoning, whether it aligns with established legal principles and precedents, serves as the benchmark for its reliability.

This method is particularly useful in analyzing the application, interpretation, and development of legal norms. It is also employed to assess the adequacy of existing legal frameworks, such as the use of insolvency law in addressing cross-border financial disputes, or the implementation of legal instruments aimed at crime prevention or creditor protection.

This study employs a normative legal research methodology, conducted primarily through library-based research. The analysis is grounded in the examination of primary legal materials, including statutory provisions, regulatory instruments, and judicial decisions, as well as secondary legal sources, such as scholarly writings, legal commentaries, and peer-reviewed journal articles.

This methodological approach facilitates a thorough and doctrinally sound evaluation of Indonesia's existing legal framework. It also allows for a comparative analysis with international legal standards, particularly in relation to the regulation of cross-border insolvency, with the aim of identifying gaps, inconsistencies, and potential areas for legal reform.

Simultaneously, the hermeneutic technique pertains to the analysis of comprehension, particularly the endeavor of interpreting texts. Hermeneutics encompasses three elements: (1) the textual realm (the content of the text), (2) the speaker's context, and (3) the reader's perspective. These three components possess distinct problems yet are interconnected.(Richard, 2003)

Hermeneutics, linguistically, derives from the Greek term hermeneuein, signifying to reinterpret. Subsequently, it was associated with the term hermeneutics (interpretation). According to Hans Georg Gadamer, hermeneutics refers to the endeavor of comprehending and interpreting a text. This pertains to the correlation between meanings within the text and the comprehension of the reality under discussion.

3. Cross-Border Insolvency in Indonesia, Singapore, the Philippines, and Malaysia

To date, Indonesia lacks legislation that addresses cross-border bankruptcy matters, including processes and procedures. The existing Bankruptcy Law comprises three articles governing cross-border bankruptcy, rendering it inadequate.

UUK-PKPU acknowledges the comprehensive confiscation of all assets belonging to insolvent debtors situated beyond the jurisdiction of Indonesia. This aligns with the stipulations of Article 212, which states that A creditor who, following the declaration of bankruptcy, receives full or partial payment of debts from assets within the bankrupt estate situated outside the Republic of Indonesia, which are not secured by a priority right, is required to return all obtained assets to the bankrupt estate.

Article 212 of UUK-PKPU stipulates that cross-border bankruptcy may occur when the bankrupt's assets are situated outside Indonesia and can be seized in accordance with Indonesian bankruptcy regulations.

Furthermore, Article 436 of the Regulation op de Burgerlijke Rechtsvordering (Rv) stipulates that, except as otherwise provided in Article 724 of the Commercial Code or in relevant specific legislation, judgments rendered by foreign courts or judges are not enforceable within the territory of the Republic of Indonesia. This provision reflects the general principle of non-recognition of foreign court decisions in the absence of explicit legal authorization.

In addition, Article 431 Rv reaffirms the principle of legality in judicial decisions, stipulating the binding nature and legal force of court rulings within the Indonesian legal system. Together, these provisions underscore the closed nature of the Indonesian civil procedural framework regarding the recognition and enforcement of foreign judgments, thereby highlighting the challenges faced in cross-border insolvency cases where foreign elements are involved. Court rulings in Indonesia possess validity and enforceability solely within the jurisdiction of Indonesia.

1) Lacks the authority for execution internationally;
2) Similarly, rulings from foreign judges are non-binding and lack recognition in Indonesia.

Bankruptcy cases involving immovable property situated overseas are governed by International Civil Law (ICL), particularly Articles 17-18 AB. This article asserts that the laws and regulations of the jurisdiction where the property is situated govern immovable property (AB. 18). In Indonesia, executing an object beyond its territorial boundaries is not permissible without proper authorization. (sip)

This also prevents a creditor from executing the seizure of debtor assets situated overseas. This is harmful to creditors, as the debtor is obligated to fulfill and resolve his debts. Consequently, it is essential to safeguard creditors, one method being the establishment of legislation concerning cross-border insolvency to ensure that debts owed by debtors to creditors are settled. One of the legal frameworks utilized in this cross-border insolvency case is provided by UNCITRAL.

The UNCITRAL Model Cross-Border Bankruptcy Act was enacted in 1997 to enable countries to revise their bankruptcy laws in accordance with the principles of the UNCITRAL Model Law. The purpose of the UNCITRAL Model Law is to acknowledge the growing necessity for cross-border bankruptcy cases globally, leading to the development of a bankruptcy law that is recognizable by the majority of nations. The legal alternatives provided by the UNCITRAL Model Law are:

1) Recognition of foreign trustees as representatives in court;
2) Receipt of a bankruptcy order or ruling from a reputable foreign authority and the implications of such recognition; and
3) Establishing the foundation for collaboration and coordination among courts, guardians, and administrators, or through the UNCITRAL Secretariat.

Indonesia shares regional proximity with several ASEAN member states, including Singapore and the Philippines. Within this regional framework, the establishment of the ASEAN Free Trade Area (AFTA) serves as a key mechanism for cross-national economic integration, designed to facilitate free trade in goods, services, and investments among ASEAN countries and other mutually recognized partners. AFTA provides a strategic platform for promoting the movement of capital, enhancing trade liberalization, and encouraging regional economic cooperation.

The operationalization of AFTA creates a more open and competitive economic environment, enabling international corporations to expand their economic activities within Indonesia, while also offering greater opportunities for Indonesian enterprises to access regional markets. This growing interconnectedness, however, inevitably intensifies competition and the pursuit of profit, which may give rise to commercial disputes, contractual breaches, and transnational business conflicts.

In this context, robust legal regulation becomes imperative to ensure that such disputes are managed effectively and that legal certainty is preserved. The absence of adequate legal frameworks, particularly in areas such as cross-border insolvency, dispute resolution, and enforcement of foreign judgments, may lead to uncertainty, deter foreign investment, and impair the functioning of an integrated regional economy.

Therefore, in addition to economic instruments like AFTA, harmonized legal structures and cross-border cooperation among ASEAN legal systems are essential. These include the adoption of international best practices, such as the UNCITRAL Model Law, and the development of regional legal instruments to resolve transnational business issues in a fair, efficient, and predictable manner. Such legal harmonization not only supports regional economic development but also enhances Indonesia's legal preparedness in navigating complex international commercial environments.

Indonesia, being a member of ASEAN, currently lacks legislation that addresses cross-border bankruptcy issues, including processes and procedures. In Southeast Asia, countries such as Singapore and the Philippines adhere to the UNCITRAL Model Law as a framework for cross-border insolvency, which serves as a benchmark for Indonesia's approach to bankruptcy implementation.

The Insolvency, Restructuring and Dissolution Act 2018 ("IRDA") constitutes the foundation of insolvency law in Singapore. In 2017, Singapore implemented the UNCITRAL Model Law on Cross-Border Insolvency. The Model Law offers a structure that is comprehensible and reliable for managing the bankruptcy proceedings of foreign entrepreneurs in Singapore. This thus enhances certainty for borrowers, creditors, and all other stakeholders who engage with Singapore's cross-border insolvency legislation. This Model Law is supplemented by additional institutions that enhance the broader ecosystem, including the Judicial Insolvency Network (JIN) and the Singapore International Commercial Court (SICC). At the core of these innovations are the principles of modified universalism, which advocate for a comprehensive approach to international insolvency, aiming to resolve conflicts and promote effective bankruptcy solutions, cooperation, and inter-jurisdictional coordination.

Before 2017, liquidators of foreign firms were mandated to safeguard assets in Singapore to settle debts incurred there before repatriating any net proceeds to the foreign company's primary liquidation jurisdiction, known as the "ring-fencing rule." The rationale for this differential treatment is not predicated on nationality; rather, it is contingent upon the geographical location of the incurred obligations.

In 2022, the jurisdiction of the SICC was formally defined to encompass cross-border insolvencies. Local and foreign attorneys must address cross-border bankruptcy cases before the SICC. Foreign attorneys may also seek an insolvency practitioner license under IRDA to represent in cross-border insolvency matters at the SICC.

The Singapore International Commercial Court (SICC), as an integral part of the Supreme Court of Singapore and a division within the General Division of the High Court, conducts its proceedings and issues decisions with the same legal standing and enforceability as other Singaporean courts.

In the realm of insolvency law, Singapore's insolvency proceedings and the authority of its court-appointed office-holders have been recognized in multiple jurisdictions that have adopted the UNCITRAL Model Law on Cross-Border Insolvency, including Australia, Brazil, the United Kingdom, and the United States. Notably, such recognition has also occurred in jurisdictions that have not formally adopted the Model Law, such as Indonesia, China, and Hong Kong, reflecting Singapore's growing credibility and influence in international insolvency cooperation.

The UNCITRAL Model Law on Cross-Border Insolvency provides a harmonized legal framework aimed at facilitating the fair and efficient management of insolvency cases that involve assets, creditors, or legal proceedings across multiple jurisdictions. It comprises four primary components, each of which plays a vital role in ensuring legal certainty and cooperation in cross-border insolvency matters: (Harold, 2023)

1) Access to Local Courts

The Model Law guarantees direct access to domestic courts for foreign representatives (e.g., liquidators, trustees, or administrators appointed by a foreign court) and foreign creditors. This access ensures that parties involved in foreign insolvency proceedings are able to initiate actions, seek recognition, and participate in local legal processes without discrimination or unnecessary procedural hurdles.

Moreover, it upholds the principle of non-discrimination, stipulating that foreign creditors shall enjoy the same legal rights and remedies as domestic creditors, including the right to file claims, receive notices, and engage in the distribution of the debtor's estate.

This provision eliminates traditional barriers under private international law, which often required complex procedures to recognize foreign legal standing, and instead promotes a more inclusive and cooperative insolvency regime, particularly important in an era of increasing international economic integration.;

2) Recognition of Foreign Proceedings

A core objective of the Model Law is to establish clear criteria for the recognition of foreign insolvency proceedings. Once recognized, a foreign proceeding, whether as a "main proceeding" (in the country where the debtor has its center of main interests, or COMI) or a "non-main proceeding" (in countries where the debtor has an establishment) can trigger automatic or discretionary relief under local law.

Recognition is essential not only for enabling cooperation but also for ensuring judicial respect across jurisdictions. It allows foreign court decisions to be given effect, enables stays on creditor enforcement actions, and fosters uniformity in the treatment of transnational insolvency cases.

For jurisdictions like Indonesia, which currently lack a formal recognition framework, the adoption of this principle would help overcome legal uncertainty in dealing with foreign bankruptcy judgments or court orders.

3) Relief and Elimination of Ring-Fencing

The Model Law empowers local courts to grant provisional and discretionary relief to support the effective administration of cross-border insolvency proceedings. This includes staying enforcement actions, suspending the right to transfer or dispose of the debtor's assets, and entrusting the foreign representative with the administration or realization of assets located within the jurisdiction.

One of the key improvements the Model Law promotes is the elimination of ring-fencing rules, a common feature in traditional insolvency regimes that restricts foreign creditors from accessing local assets. By facilitating unified administration of the debtor's global estate, the Model Law ensures that all creditors, regardless of nationality, are treated equitably.

Although the original Model Law was adopted by UNCITRAL in 1997, its relevance continues to grow, and various jurisdictions have adapted it to their domestic legal systems, including through updates and enactments in later years (e.g., Singapore in 2017).

4) Cooperation and Direct Communication

The Model Law encourages active cooperation and direct communication between domestic courts, foreign courts, and insolvency representatives. It recognizes that effective resolution of cross-border insolvency cases often requires real-time coordination across legal systems.

To this end, the Model Law provides a legal basis for courts and insolvency practitioners to exchange information, request assistance, and coordinate parallel proceedings. This includes joint hearings, recognition of procedural steps taken in other jurisdictions, and the appointment of single or cooperating representatives to manage the debtor's estate in multiple countries.

This element is particularly significant in enhancing judicial efficiency and predictability, minimizing the risk of conflicting rulings, and ensuring that the interests of creditors and other stakeholders are managed coherently in a globalized insolvency context..

The UNCITRAL Model Law has been adopted in the Philippines through the Financial Rehabilitation and Insolvency Act (FRIA) No. 10142, which expressly recognizes foreign insolvency proceedings and incorporates the principles of the Model Law on Cross-Border Insolvency. The implementation of these provisions is governed by the Financial Rehabilitation Rules of Procedure (FR Rules), which provide the procedural framework for administering cross-border insolvency cases under Philippine jurisdiction.

The FR Rules apply in situations involving foreign entities or representatives seeking recognition of foreign proceedings, cooperation with Philippine courts, or access to judicial relief in accordance with the provisions of the FRIA. These regulations ensure that cross-border insolvency cases are handled with procedural clarity, judicial cooperation, and alignment with international standards, thus reinforcing the Philippines' commitment to a transparent and efficient insolvency regime :

1) When foreign courts or foreign insolvency representatives seek assistance from Philippine courts, particularly in relation to insolvency or rehabilitation proceedings with transnational elements, thereby engaging mechanisms of international judicial cooperation;
2) When assistance is requested from a foreign jurisdiction in connection with insolvency-related actions governed by the FRIA and FR Rules, including the recognition or enforcement of Philippine rehabilitation or liquidation proceedings abroad;
3) When offshore insolvency proceedings and proceedings under the FRIA are conducted concurrently, indicating the need for coordination and cooperation between the Philippine legal system and foreign jurisdictions to ensure consistency and efficiency; or
4) When foreign creditors seek to initiate or participate in legal processes governed by the FR Rules, such as court-supervised rehabilitation, pre-negotiated rehabilitation, or Out-of-Court or Informal Restructuring/Work-Out Agreements (OCRA);
5) When foreign creditors are entitled to rights equivalent to those of domestic creditors in all types of rehabilitation proceedings mentioned above, thereby upholding the principle of non-discrimination and ensuring equal treatment of creditors regardless of nationality or domicile, in accordance with the objectives of the FRIA and aligned with the UNCITRAL Model Law.

Foreign creditors possess equivalent rights to those of domestic creditors in court-supervised rehabilitation, pre-negotiated rehabilitation, and OCRA processes regulated by FR Regulation.

Nevertheless, the court is obligated to abstain from any action in cross-border insolvency proceedings if:

1) This behavior is evidently in violation of Philippine public policy; and
2) The court determined that the nation in which the foreign rehabilitation procedure occurred did not acknowledge the Philippine rehabilitation process, nor did it afford the same rights to Filipino nationals as it did to the foreign creditors of non-national status.(Baker, 2017)

This issue presents challenges not only for politicians but also for courts and other authorities. Moreover, the entities engaged in cross-border bankruptcy processes are effectively incapacitated, resulting in the forfeiture of debts that ought to have been settled.

Article 21 of UUK-PKPU stipulates that bankruptcy encompasses all assets of the debtor at the time the bankruptcy declaration is issued, along with any acquisitions made during the bankruptcy period.

For a foreign court's decision to be enforced, it must get recognition by the jurisdiction in which enforcement is sought. Such recognition can only be attained if a nation establishes a bilateral agreement with another nation, wherein the jurisdiction of the decision is the same as that of enforcement, or if the nation is a participant in a multilateral, universal, and binding international agreement. (Ida, 2000) This contradicts bankruptcy procedural legislation, which mandates a swift process, specifically a maximum of 60 days for resolution, to prevent delays in decision-making that could disturb the business environment and ensure its continued operation. The lack of such regulations necessitates the establishment of specific cross-border insolvency laws to prevent endless enforcement of court rulings.

The UNCITRAL Model Law on Cross-Border Insolvency was created in 1997 to facilitate countries in amending their insolvency laws to adhere to or apply the fundamental principles of the UNCITRAL Model Law. The objective of the UNCITRAL Model Law is to acknowledge the growing necessity for cross-border bankruptcy proceedings in all nations, thereby resulting in the establishment of bankruptcy legislation that is recognizable by the majority of countries globally.

The UNCITRAL Model Law delineates five critical aspects that can be interpreted and defined in the formulation of cross-border bankruptcy legislation in ratifying countries: the Accessibility Principle, the Recognition Principle, the Recognition Process Principle, the Assistance and Cooperation Principle, and the Coordination Principle. The Accessibility Principle permits a nation's judiciary to recognize the procedures for foreign bankruptcy rulings within that jurisdiction. An access request may necessitate:

1) procedures governed by relevant national legislation; and
2) Protocols for the acknowledgment of foreign judicial rulings in each nation, enabling foreign representatives to undertake the following:

a) engage in continuous activities within the nation;
b) Soliciting assistance pursuant to the UNCITRAL Model Law framework.

The Recognition Principle seeks to circumvent protracted and laborious procedures by offering an expedient resolution to requests for acknowledgment. Foreign representatives may submit a request for the acknowledgment of foreign proceedings pursuant to the UNCITRAL Model Law. The approval or rejection of an application is governed by Article 17 of the UNCITRAL Model Law. Recognition occurs in two forms: foreign main proceeding, applicable when the debtor's principal business activity is in that country, and foreign non-main proceeding, relevant when the debtor has a location for economic activities that lacks fixed facilities, goods, or human services in that country. The UNCITRAL Model Law does not impose a reciprocity requirement; recognition of a foreign proceeding is not contingent upon the court of the jurisdiction where the process occurs being willing to extend similar assistance to the bankruptcy representative and their place of origin. The court of the host country may deny recognition if it contradicts the host country's public policy.

The process of recognition. The procedure must be acknowledged if it is deemed a competitive endeavor. Consequently, the foreign representative must be capable of elucidating the procedure:

1) Initial or ultimate judicial processes or official proceedings are ongoing abroad;
2) has been governed under bankruptcy law, wherein the debtor's assets and affairs are managed or overseen by a foreign court;
3) allocated for restructuring or dissolution.

Besides Singapore and the Philippines, Malaysia can also serve as a relevant example in the ASEAN context. Malaysia has not yet formally adopted the UNCITRAL Model Law on Cross-Border Insolvency. Malaysia's bankruptcy regime is regulated by the Insolvency Act 1967 (as amended through the Bankruptcy (Amendment) Act 2017) and the Companies Act 2016, which regulates corporate insolvency. In practice, Malaysian courts still apply common law principles and the principle of limited reciprocity in recognizing foreign judgments. This means that courts can only consider recognizing a foreign bankruptcy judgment if there is a close connection to Malaysian jurisdiction, for example, if the debtor has assets or a principal place of business in Malaysia.

This approach demonstrates that, despite Malaysia's regional location with Singapore and the Philippines, the level of harmonization of cross-border bankruptcy law remains low. Unlike Singapore, which has proactively adopted the Model Law and established institutional infrastructure such as the Singapore International Commercial Court (SICC), Malaysia still relies on the traditional principle of territorialism, which limits the scope of jurisdiction. This creates challenges for cross-border creditors in the ASEAN region, as there is no uniform legal standard for handling cross-border insolvency.

Including Malaysia in the analysis further clarifies that ASEAN faces regulatory fragmentation: Singapore and the Philippines are on the path to global harmonization through the Model Law, while Indonesia and Malaysia remain stuck within siloed domestic frameworks. This situation underscores the importance of ASEAN regional cooperation to promote the harmonization of cross-border insolvency laws, thereby creating legal certainty and equitable creditor protection across the region.

Recent literature confirms that the debate between universalism and territorialism in cross-border insolvency regimes remains highly relevant. Porral (2025) argues that while universalism offers efficiency and consistency in international law, in practice, countries tend to adopt modified universalism, where domestic courts retain the discretion to assess the conformity of foreign procedures with principles of justice and national public policy. (Alba, 2025) Recent developments in the ASEAN region also reinforce this trend. Malaysia passed the Cross-Border Insolvency Bill 2025 in July 2025, a significant step towards adopting the UNCITRAL Model Law with several modifications, including a limited definition of debtor, an exception for regulated entities, and a more lenient application of public policy exemption standards. (Global, 2025) This suggests that even countries that have recently adopted the Model Law are choosing a compromise path, combining international legal certainty with the protection of domestic interests.

4. Safeguarding Creditors in Cross-Border Insolvency in Indonesia

The adoption of the UNCITRAL Model Law in Indonesia requires structured implementation steps to ensure it does not remain merely normative discourse. First, from a legislative perspective, the government, together with the House of Representatives (DPR), needs to amend the Law on the Debt of Disability (UUK-PKPU) or draft a new law that explicitly regulates the mechanism for recognizing and enforcing foreign bankruptcy judgments. This can be achieved through the formation of a cross-ministerial task force involving the Ministry of Law and Human Rights, the Ministry of Finance, the Financial Services Authority (OJK), and the Investment Coordinating Board (BKPM) to ensure harmonization with the principles of the Model Law while maintaining consistency with the national legal system. Without an explicit legal basis, the recognition of foreign judgments will remain hampered by the principle of reciprocity and the limitations of Article 436 of the Regulation on Rechtsvordering (Rv).

Second, strengthening judicial capacity is key to successful implementation. Commercial judges, curators, and law enforcement officials need to receive comprehensive judicial training on the principle of modified universalism, the procedures for recognizing foreign proceedings (main vs. non-main), and cross-jurisdictional coordination techniques. This training can be provided through international collaboration with UNCITRAL, INSOL International, and the Judicial Insolvency Network (JIN), as Singapore has done following the implementation of the Model Law. Without strengthening human resource capacity, the adoption of the Model Law risks becoming merely a legal formality that is difficult to operationalize.

Third, infrastructure and coordination mechanisms must also be strengthened. Indonesia needs to establish a cross-border coordination center under the Supreme Court to facilitate direct communication with foreign courts. Furthermore, digitizing the bankruptcy information system is crucial to enable receivers to transparently report and manage cross-border assets. This transparency and data connectivity will expedite the execution process, minimize jurisdictional conflicts, and enhance creditor protection.

However, implementing these reforms is not without several challenges. Cost-wise, significant investment is required for judge training, judicial modernization, and system digitization. Politically, resistance may arise due to concerns that recognizing foreign judgments will undermine national legal sovereignty. Furthermore, resistance from domestic businesses may also arise due to concerns that foreign creditors will have an easier time executing their assets. To anticipate this, the implementation of public policy exceptions needs to be incorporated into the legislative framework to ensure national interests are protected. Furthermore, public outreach needs to emphasize that this reform brings long-term benefits in the form of increased legal certainty, improved creditor recovery rates, and increased attractiveness to foreign investment in Indonesia.

5. Conclusion

The rapid growth of international trade and investment has made cross-border insolvency an unavoidable legal reality. Indonesia’s current insolvency framework under UUK-PKPU lacks specific provisions to manage cross-border elements effectively, especially in the recognition and enforcement of foreign insolvency proceedings. As a result, Indonesian and foreign creditors are exposed to significant legal uncertainty, delayed justice, and limited access to equitable debt recovery.

The absence of comprehensive legal mechanisms to address international insolvency conflicts has created a legal vacuum, impairing the ability of creditors to protect their interests when debtor assets or proceedings are located outside national borders. In such a setting, legal protection becomes essential, not only in its repressive form (resolving disputes after they occur through the Commercial Court), but also in a preventive manner by ensuring that creditors can anticipate risks and participate in insolvency processes through a fair, transparent, and predictable legal system.

Indonesia’s existing reliance on the principle of reciprocity further complicates legal certainty, as it requires foreign decisions to be recognized only when reciprocal treatment is guaranteed, something that is not always possible in practice. This creates structural barriers for both domestic creditors seeking access to foreign assets and foreign creditors attempting to recover claims within Indonesia, weakening the overall legal protection afforded to creditors.

Accordingly, this study concludes that the adoption or partial incorporation of the UNCITRAL Model Law is a critical step toward strengthening legal protection for creditors in Indonesia. It would reinforce preventive protection by establishing transparent procedures

and equal access for foreign parties, and enhance repressive protection by facilitating enforcement and judicial remedies post-default or insolvency.

Ultimately, harmonizing Indonesia's bankruptcy framework with international standards is not merely a legal reform—it is a strategic imperative to foster economic stability, uphold the rule of law, and secure the rights of creditors in an increasingly interconnected global economy.

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