



ASEAN Cross-Border Insolvency Framework: Harmonizing UNCITRAL Principles and Debt Benchmark Innovation

Ida Nadirah^{1*} and Muhammad Hendry Devano²

¹ Faculty of Law, Universitas Muhammadiyah Sumatera Utara, Indonesia

² Faculty of Law, Universitas Muhammadiyah Sumatera Utara, Indonesia
idanadirah@umsu.ac.id

Abstract. The acceleration of ASEAN economic integration has intensified cross-border insolvency disputes, yet legal fragmentation endures due to divergent regimes and uneven adoption of international standards. Previous scholarship has largely emphasized the UNCITRAL Model Law at the global level. In contrast, this study advances a regional innovation by proposing an ASEAN Cross-Border Insolvency Framework tailored to Southeast Asia's hybrid legal environment. Using normative-juridical and comparative methods across five jurisdictions (Indonesia, Malaysia, Singapore, Thailand, and the Philippines), the research identifies substantive and procedural gaps, including inconsistent recognition of foreign proceedings, lack of reciprocal enforcement, and insufficient digital cooperation mechanisms. The novelty of this study lies in two contributions. First, it formulates a framework that integrates UNCITRAL's four pillars: access, recognition, cooperation, and coordination into ASEAN's institutional structure, balancing harmonization with national sovereignty. Second, it introduces a regional debt benchmark (~USD 22,000) as a harmonized threshold for creditor claims, derived from average minimum debt standards of ASEAN states. This analytical tool, absent in prior literature, aligns creditor access, prevents frivolous petitions, and promotes fairness. Findings reveal that while Singapore, the Philippines, and, more recently, Myanmar have adopted elements of the Model Law, most ASEAN jurisdictions remain tied to territorial regimes, resulting in inefficiencies, creditor inequality, and forum shopping risks. As an additional safeguard, the framework stipulates that a debtor's domestic assets must be exhausted before creditors may enforce claims abroad. This requirement prevents overlapping claims, reinforces the principle of center of main interests (COMI), and ensures balanced creditor protection. To address these challenges, the study recommends regional standardization through reciprocal recognition, adoption of automatic stay provisions, and strengthened court-to-court communication supported by digital platforms. By linking theoretical harmonization with policy-oriented solutions, this research enhances legal certainty and creditor protection while positioning ASEAN as a globally competitive region with a transparent, stable, and investor-friendly insolvency regime.

Keywords: Bankruptcy, Law, ASEAN, UNCITRAL.

1 Introduction

The purpose of bankruptcy law is to protect the interests of creditors, both domestic and foreign [1]. Within the Association of Southeast Asian Nations (ASEAN), the growing scale of regional trade and investment has led to a surge in insolvency proceedings spanning multiple jurisdictions [2]. Economic globalization and ASEAN economic integration have created an open and interconnected commercial ecosystem in which corporations routinely operate, maintain assets, and incur liabilities in several member states [3]. This interconnectedness facilitates cross-border transactions but simultaneously amplifies financial risk exposure, particularly during periods of regional or global market volatility [4].

The complexity of cross-border bankruptcy intensifies when an enterprise operating across ASEAN experiences insolvency, as the transnational structure of assets and creditors obstructs efficient and consistent resolution across jurisdictions [2],[5]. Modern business models increasingly depend on intangible assets such as software, digital platforms, and cryptocurrencies, which are especially vulnerable to excessive leverage due to limited regulatory oversight and heightened investor expectations [6]. The sudden collapse of large digital enterprises illustrates how multinational corporations can fail rapidly and cause widespread losses when legal protections and cross-border coordination mechanisms are inadequate [7]. This phenomenon highlights a critical gap in the current ASEAN legal architecture, which remains fragmented and insufficient to address the dynamic complexity of digital and transnational bankruptcy [8].

Many ASEAN member states still rely on territorially bound domestic bankruptcy regimes [9]. Consequently, cross-border debt settlements often become fragmented, resulting in legal inefficiencies and real losses for creditors across multiple jurisdictions [10]. Although Singapore and a few other jurisdictions have adopted the UNCITRAL Model Law on Cross-Border Insolvency, implementation across ASEAN remains inconsistent and lacks a coordinated mechanism [11]. Recognition and enforcement of foreign bankruptcy judgments pose another major challenge, as creditors must initiate separate proceedings in each jurisdiction where the debtor's assets are located, leading to delays, duplication of costs, and inconsistent outcomes [12]. These shortcomings create incentives for opportunistic behavior and erode investor confidence throughout the region [13].

To address these challenges, harmonization of bankruptcy law among ASEAN member states is urgently needed [14]. Regional cooperation inspired by the UNCITRAL Model Law offers a viable pathway for establishing common procedural standards, fostering judicial cooperation, and safeguarding creditor rights without undermining national sovereignty [15]. A harmonized legal framework would reduce jurisdictional conflicts, create a level playing field for domestic and foreign creditors, and strengthen investor confidence, thereby supporting sustainable economic integration within ASEAN [16].

The analysis of this study is grounded in two complementary theoretical perspectives. The first is the Legal Harmonization Theory, which explains how

diverse legal systems can adapt and align toward common standards without entirely abandoning their national legal traditions. This theory provides the analytical foundation to evaluate how ASEAN can gradually harmonize cross-border insolvency law by selectively adopting principles from the *UNCITRAL Model Law on Cross-Border Insolvency* while preserving the unique legal identities of its member states.

The second is the Limited Sovereignty or Modified Universalism Theory, which recognizes that states retain their sovereignty but may voluntarily limit or coordinate it in specific areas of transnational concern, such as cross-border bankruptcy, to achieve mutual legal efficiency and creditor protection. This theoretical framework is particularly relevant to ASEAN, where the balance between national autonomy and regional cooperation determines the feasibility of implementing a shared insolvency regime.

Through these two theoretical lenses, the research seeks to analyze current disparities among ASEAN member states' insolvency systems and to evaluate the extent to which adopting the *UNCITRAL Model Law* can promote a coherent, equitable, and regionally harmonized framework for cross-border bankruptcy. The application of both theories enables a normative and comparative assessment of ASEAN's legal readiness to establish a collaborative insolvency mechanism that reflects both international best practices and regional legal realities.

2 Research Methods

This research adopts a normative juridical approach, emphasizing the examination of codified legal norms contained in written instruments [9]. A study cannot be considered scientific without a clearly defined methodology. The primary objective of this approach is to identify, interpret, and systematize the legal principles, doctrines, and rules governing the harmonization of cross-border bankruptcy law among ASEAN member states [2]. In legal scholarship, this methodological tradition is well established because it enables a doctrinal and comprehensive analysis of normative structures derived from both national and international legal systems [17].

The data employed are entirely secondary and classified into primary, secondary, and tertiary legal sources. Primary legal materials include international legal instruments such as the *UNCITRAL Model Law on Cross-Border Insolvency*, ASEAN treaties and agreements on economic cooperation, and domestic laws of ASEAN member states that have adopted or adapted the Model Law [11]. Secondary sources include scholarly legal literature, peer-reviewed journal articles, law textbooks, and comparative legal studies focusing on cross-jurisdictional bankruptcy practices [5]. Tertiary sources include legal encyclopedias, legal dictionaries, and authoritative commentaries that clarify key concepts and principles [6].

Data were collected through library research, involving a systematic review of official documents published by UNCITRAL, ASEAN economic community reports, peer-reviewed journals such as the *International Insolvency Review* and the *Journal of*

International Business and Law, and implementation reports from relevant jurisdictions [7]. This method allows researchers to critically examine legal precedents, expert opinions, and comparative legal norms, which are essential to understanding the complexities of cross-border bankruptcy within the ASEAN context [18].

The analytical technique applied is qualitative analysis, focusing on the systematic interpretation of applicable legal norms and their interaction within the ASEAN regional framework [9]. A descriptive-analytical approach is used to evaluate the relationship between international instruments (such as the UNCITRAL Model Law) and their national implementation in selected ASEAN member states [10]. In addition, a comparative legal approach assesses the degree of adoption and practical enforcement of cross-border insolvency mechanisms in key jurisdictions, including Singapore, Malaysia, Thailand, and Indonesia, to measure the effectiveness and limitations of regional legal harmonization [3].

3 Analysis And Discussion

3.1 Principles and Legal Framework of Cross- Border Bankruptcy Based on International Law

Bankruptcy in Indonesia may occur through either a bankruptcy petition or a *Suspension of Debt Payment Obligations* (*Penundaan Kewajiban Pembayaran Utang* or PKPU) that fails to achieve a settlement. The legal basis is Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. Pursuant to Article 1, bankruptcy constitutes a general attachment (*sita umum*) over all assets of the debtor, whether an individual or a legal entity, declared bankrupt by the Commercial Court and administered by a court-appointed curator under the supervision of a supervisory judge [19].

The general public often misunderstands the term bankruptcy as a form of criminal sanction. In reality, it is a civil legal condition that arises when a debtor is unable to fulfill payment obligations to creditors. This cessation of payments usually results from financial distress affecting the debtor's business operations. Bankruptcy is not confined to situations of insolvency where liabilities exceed assets but also applies when a debtor is either unwilling or unable to meet payment obligations as agreed [20].

In principle, judicial decisions in Indonesia have a territorial scope and are enforceable only within Indonesian jurisdiction. Nevertheless, foreign nationals or corporations may still be subject to Indonesian bankruptcy proceedings if they conduct business activities in Indonesia or own assets within the territory. Among ASEAN member states, only three, Singapore, the Philippines, and Myanmar, have explicitly incorporated cross-border insolvency regulations aligned with the *UNCITRAL Model Law on Cross-Border Insolvency*.

Across ASEAN legal systems, the concept of bankruptcy generally centers on a debtor's inability to fulfill financial obligations to creditors. However, the definitions,

procedures, and underlying philosophies vary considerably across member states, reflecting their distinct legal traditions, procedural mechanisms, and policy orientations regarding the balance between creditor protection and debtor rehabilitation.

In Indonesia, Law No. 37 of 2004 defines bankruptcy as a general attachment over all present and future assets of the debtor, managed by a curator under judicial supervision. The Indonesian insolvency regime is founded on the principles of *paritas creditorium* and *pari passu prorata parte*, which ensure equal treatment and proportional distribution among creditors.

In Malaysia, bankruptcy is governed by the Insolvency Act 1967 (formerly the Bankruptcy Act 1967). An individual may be declared bankrupt for failing to pay a debt of at least RM 50,000 that is due and payable. Corporate insolvency, however, is regulated under the Companies Act 2016 through winding-up proceedings. Malaysia's framework prioritizes debt restructuring and financial rehabilitation before liquidation, demonstrating a debtor-friendly approach to insolvency resolution.

Singapore's *Insolvency, Restructuring and Dissolution Act* (IRDA) 2018 consolidates all insolvency legislation and integrates the key principles of the *UNCITRAL Model Law*. Bankruptcy is defined as the inability of an individual or corporate debtor to meet financial obligations when due. The IRDA introduces advanced mechanisms such as judicial management and schemes of arrangement, which facilitate reorganization and cross-border cooperation before liquidation proceedings commence.

Thailand's insolvency system, governed by the Bankruptcy Act B.E. 2483 (1940), as amended, allows corporate debtors to be declared bankrupt for failing to pay debts amounting to at least THB 2 million. The Thai framework combines liquidation and rehabilitation procedures, supervised by an Official Receiver under the court's oversight. This hybrid system reflects Thailand's dual objective of facilitating liquidation while preserving business value through reorganization.

The Philippines regulates bankruptcy under the *Financial Rehabilitation and Insolvency Act* (FRIA) of 2010, defining bankruptcy as the inability of a debtor to meet financial obligations due to actual or imminent insolvency. FRIA establishes two principal mechanisms: rehabilitation and liquidation, and incorporates cross-border insolvency provisions consistent with the *UNCITRAL Model Law*, particularly in relation to recognition and cooperation with foreign proceedings.

Myanmar's *Insolvency Law* 2020 explicitly adopts the *UNCITRAL Model Law*, modernizing its insolvency regime by replacing colonial-era legislation and expanding its scope to include both individuals and corporations. This reform positions Myanmar as one of the most progressive ASEAN jurisdictions by aligning its insolvency framework with international best practices, particularly in creditor protection and cross-border coordination. [2]

Cross-border bankruptcy refers to a situation in which a bankrupt entity has legal ties, creditors, or assets distributed across multiple national jurisdictions [3]. This phenomenon has become increasingly relevant in the context of economic globalization and the expansion of transnational business operations, particularly in the digital economy [4]. To address the legal and procedural challenges posed by such cases, the United Nations Commission on International Trade Law (UNCITRAL) developed the Model Law on Cross-Border Insolvency, which provides a structured framework to facilitate judicial cooperation and coordination between national courts in cases involving foreign bankruptcy proceedings [11].

The Model Law is built on four core principles: access, recognition, cooperation, and coordination [21].

The principle of access grants foreign bankruptcy representatives the right to appear in domestic courts [22].

The principle of recognition enables domestic courts to formally recognize foreign insolvency proceedings and to extend legal effects, such as suspending individual enforcement actions [23].

The principles of cooperation and coordination prevent jurisdictional overlap and legal inconsistencies by encouraging communication between courts and insolvency administrators in different jurisdictions [24].

These principles embody a concept of modified universalism, which seeks a balanced approach between centralized administration and local enforcement. Modified universalism rejects both strict territorialism, in which each state asserts exclusive control over domestic assets, and pure universalism, in which a single global proceeding controls all assets [4]. Instead, it promotes international cooperation while respecting state sovereignty [25].

The Model Law also provides procedural protections for cross-border creditors. Article 13 prohibits discrimination against foreign creditors and ensures equal treatment, while provisions on automatic suspension prevent unilateral enforcement of assets located abroad [6]. These mechanisms promote legal certainty, equitable distribution, and creditor confidence, all of which are critical to international investment and cross-border lending. Empirical studies show that jurisdictions adopting the Model Law experience greater efficiency in insolvency administration and higher rates of creditor recovery [7].

The growing complexity of international trade, accelerated by digitalization and the proliferation of multinational corporate structures, underscores the importance of a practical cross-border bankruptcy framework. Modern insolvency cases often involve debtors, assets, and creditors spread across numerous jurisdictions with differing procedural rules, which can lead to conflicts, inefficiencies, and unequal outcomes if handled separately [8].

Since its introduction in 1997, the UNCITRAL Model Law has become a leading international standard for cross-border insolvency. Its flexible design allows domestic courts to recognize foreign proceedings while maintaining local oversight. This flexibility has inspired regional instruments, such as the European Union Insolvency Regulation and evolving frameworks within Asia, including initiatives by the ASEAN Secretariat to promote legal convergence in cross-border insolvency [14].

Despite these advantages, implementation remains uneven. Differences in national insolvency policies, legal traditions, and economic priorities have led some jurisdictions to resist full adoption. Concerns about sovereignty, creditor protection philosophies, and local control of assets contribute to fragmented recognition and inconsistent judicial cooperation [15]. Practical difficulties also arise from jurisdictional disputes, linguistic and cultural barriers, and varying levels of judicial expertise challenges that are particularly visible in emerging ASEAN economies [23].

Technological developments such as blockchain-based asset registration and secure cross-border communication platforms offer promising tools to enhance transparency and cooperation [12]. Legal scholars advocate reforms to strengthen implementation, including integrated procedural rules, specialized bankruptcy courts, judicial training, and alternative dispute-resolution mechanisms such as mediation or arbitration [12]. The flexibility of the Model Law allows jurisdictions to adapt while retaining core principles, enabling gradual harmonization and eventual integration of domestic insolvency regimes into a coherent regional or global framework [15].

Issues arising in cross-border bankruptcy, such as the treatment of digital assets, cryptocurrencies, and complex global supply chains, further require the adaptation of legal frameworks for asset identification, valuation, and creditor claims [12]. The core principles of the Model Law provide a robust foundation to address these emerging challenges by promoting cooperation, legal certainty, and creditor protection.

In terms of the legal framework, each country has specific laws and regulations governing bankruptcy procedures. Indonesia refers to Law No. 37/2004 on Bankruptcy, Malaysia to the Insolvency Act 1967 and its amendments, Singapore to the Insolvency, Restructuring & Dissolution Act 2018, Thailand to the Bankruptcy Act and the Civil & Commercial Codes, while the Philippines relies on the Financial Rehabilitation and Insolvency Act (FRIA) 2010 [2].

Regarding the recognition of foreign judgments, Singapore is relatively more flexible due to its adoption of the UNCITRAL Model Law. In contrast, Indonesia, Malaysia, Thailand, and the Philippines remain limited and often require additional procedures or bilateral approval [11]. Forum shopping still occurs in Indonesia, Malaysia, and the Philippines, is relatively minimal in Singapore, and remains possible in Thailand [11].

Table 1. Minimum Debt Threshold for Filing Bankruptcy in ASEAN Countries.

Country	Minimum Debt to File Bankruptcy	Notes
Indonesia	No minimum	According to Law No. 37/2004, bankruptcy can be filed if the debt is due, enforceable, and the debtor is unable to pay, regardless of amount.
Malaysia	MYR 50,000 (~USD 11,000)	Insolvency Act 1967 (amendments); debt must be enforceable and due.
Singapore	SGD 15,000 (~USD 11,000)	Bankruptcy Act; debt must be due and unpaid.
Thailand	THB 2 million (~USD 57,000)	Bankruptcy Act; debt must be enforceable and exceed the minimum threshold.
Philippines	PHP 500,000 (~USD 9,000)	FRIA 2010; debt must be due and unpaid.

When comparing bankruptcy laws across ASEAN member states, significant differences emerge regarding the minimum debt required to file for bankruptcy. Indonesia stands out for not establishing a minimum debt threshold, meaning that a bankruptcy petition can be filed regardless of the debt amount, provided the debt is due and enforceable and the debtor is unable to pay [2]. In contrast, other countries set specific nominal thresholds: Malaysia and Singapore at approximately USD 11,000, the Philippines at around USD 9,000, and Thailand at considerably higher levels, about USD 57,000 [2].

Excluding Indonesia, the average minimum debt required to file for bankruptcy in ASEAN is approximately USD 22,000 [2]. This average provides a practical reference point that could serve as a criterion for recognizing cross-border insolvency claims within the region. It highlights the variation in domestic insolvency policies and reflects a balance between preventing trivial claims and protecting creditor rights [2]. Indonesia’s lack of a minimum threshold emphasizes broader accessibility for creditors seeking legal recourse, whereas higher thresholds in countries such as Thailand focus resources on more significant claims [2].

Adopting an average debt benchmark could facilitate the harmonization of cross-border insolvency procedures by providing a uniform criterion for creditor claims, thereby enhancing predictability, fairness, and consistency in regional bankruptcy recognition [2]. This approach aligns with the objectives of ASEAN economic integration, ensuring that cross-border insolvency cases are addressed efficiently while maintaining equitable treatment of all parties involved [2].

A significant issue in ASEAN's cross-border insolvency landscape concerns the recognition of foreign bankruptcy proceedings, particularly when a debtor's assets in the home jurisdiction are insufficient to satisfy creditors. In international practice, this principle is known as *secondary* or *ancillary recognition*, which allows a foreign bankruptcy order to be recognized in another jurisdiction only after it is verified that the debtor's domestic assets are inadequate. This approach ensures procedural efficiency, equitable distribution, and prevents overlapping claims across jurisdictions.

Within ASEAN, however, the application of this principle remains inconsistent and fragmented. When debtors declare bankruptcy in one member state and hold remaining assets elsewhere, creditors must pursue new proceedings in each jurisdiction, which generates delays, duplication, and legal uncertainty. The absence of a harmonized framework for recognizing foreign insolvency judgments undermines regional financial stability and discourages cross-border investment [26].

Only a few ASEAN countries, most notably Singapore, followed by the Philippines and Myanmar, have partially implemented the *UNCITRAL Model Law on Cross-Border Insolvency*, enabling recognition of foreign proceedings once domestic assets are proven insufficient. These systems allow foreign representatives to petition local courts for recognition and manage the debtor's assets collectively. By contrast, Indonesia, Malaysia, and Thailand lack explicit provisions for such recognition, relying instead on reciprocity and domestic procedural rules. As a result, even legitimate foreign bankruptcy judgments may not be enforced, perpetuating legal fragmentation and creditor inequality.

Under the *Limited Sovereignty Theory* or *Modified Universalism*, states may voluntarily limit certain aspects of their sovereignty to achieve greater legal efficiency and proportional creditor protection in cross-border insolvency. This theory rejects the extremes of *pure territorialism*, *exclusive* national control, and *absolute universalism*, a *single* global proceeding. Instead, it promotes coordinated judicial cooperation while respecting domestic authority. Within this framework, ASEAN courts could recognize foreign insolvency judgments so long as they do not violate public policy or national jurisdiction [27].

Developing a regional mechanism for reciprocal recognition, conditional upon the proven insufficiency of a debtor's domestic assets, would mark a critical step toward harmonization. An *ASEAN Cross-Border Insolvency Framework* incorporating UNCITRAL's principles of access, recognition, cooperation, and coordination could ensure orderly, predictable proceedings, proportional asset distribution, and equitable creditor treatment. Such a mechanism would strengthen investor confidence, enhance

regional financial stability, and position ASEAN as a region with a modern, transparent, and internationally aligned insolvency system that ensures fairness and efficiency in transnational debt resolution.

3.2 Challenges Of Implementing Cross-Border Bankruptcy In Asean

Economic integration in Southeast Asia through ASEAN has significantly increased cross-border investment flows and complex commercial transactions. This development demands greater legal certainty, particularly in insolvency proceedings involving creditors and debtors from multiple member states [2], [14]. Yet, the current legal landscape remains fragmented. Divergent regulatory regimes, conflicting legal principles, and limited inter-state cooperation create serious barriers to the enforcement of judgments and the protection of foreign creditors' rights [11], [23].

Bankruptcy represents the implementation and practical application of the principles of *paritas creditorium* and *pari passu prorata parte* within the legal system governing property and assets. The *paritas creditorium* principle signifies that all assets owned by the debtor, both movable and immovable, as well as current and future property, are bound to fulfill the debtor's obligations to creditors. The primary purpose of bankruptcy is to prevent competition among creditors in seizing the debtor's assets, thereby ensuring an orderly, fair, and proportional distribution of the debtor's estate under judicial supervision.

In accordance with Article 1, point (6), of the Bankruptcy Law of Indonesia, a debt is understood as an obligation that has a monetary value, whether existing at present or arising in the future, including contingent liabilities. Such an obligation may originate from an agreement or from statutory provisions and must be fulfilled by the debtor. If the obligation is not fulfilled, the creditor has the right to claim repayment from the debtor's assets. Therefore, the concept of debt under bankruptcy law encompasses a broad scope of financial obligations.

Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations provides a comprehensive definition of debt consistent with the provisions of the Indonesian Civil Code (KUH Perdata). To file for bankruptcy, only two main conditions must be met: the existence of a due and payable debt, and the presence of at least two creditors. This simple legal arrangement gives the impression that declaring a person or business entity bankrupt is relatively easy, particularly given the broad interpretation of "debt" under the statute [27].

The debt collection principle emphasizes the importance of the debtor promptly repaying debts using existing assets. This principle serves as the foundation for an efficient and certain liquidation mechanism that prioritizes a simplified evidentiary process. In practice, this principle enables bankruptcy decisions to be rendered directly through the bankruptcy court. The primary focus of this principle lies in the distribution of the debtor's assets, managed by a court-appointed curator. Once a debtor meets the conditions for bankruptcy, the bankruptcy procedure becomes an inevitable step toward resolving outstanding debt obligations [28].

Several high-profile cases within ASEAN illustrate the intricate nature of cross-border insolvency. In Indonesia, the debt restructuring of PT Garuda Indonesia (Decision No. 425/Pdt.Sus PKPU/2021/PN.Niaga.Jkt.Pst) was recognized by the Singapore court as a foreign main proceeding, signaling the application of the principle of modified universalism [3], [5]. Conversely, in Decision No. 30/Pailit/2022/PN.Niaga/Jkt.Pst, the Central Jakarta Commercial Court rejected a bankruptcy petition against the Australian company The Ostrich Meat & Marketing Co on the ground that it lacked business activities in Indonesia [29]. Likewise, the case of Penaga Timur (M) SDN BHD (Malaysia), declared bankrupt by the Medan Commercial Court (Decision No. 11/Pdt.Sus-PKPU/2018/PN.Niaga.Mdn), demonstrates that cross-border debt relationships can establish jurisdiction despite the absence of physical presence [2],[15]. At the regional level, Malaysia faced a similar challenge in *Re Zetta Jet Pte Ltd* [2018], where the Malaysian court refused to recognize a Singaporean bankruptcy order due to the absence of a statutory framework under the UNCITRAL Model Law, highlighting the limits of cross-border coordination [11],[14].

Legal fragmentation is equally evident in other ASEAN jurisdictions. In Malaysia, despite reforms under the Insolvency Act 1967 (Amendment 2017), recognition of foreign insolvency judgments remains extremely limited, often requiring lengthy bilateral negotiations for asset recovery [2],[15]. In Thailand, the corporate reorganization of Thai Airways International Pcl revealed similar obstacles. Although the Bangkok Bankruptcy Court approved debt restructuring, recognition of foreign creditors' claims still depended on domestic laws that prioritize local creditor protection [2],[14]. Meanwhile, the Philippines, through its Financial Rehabilitation and Insolvency Act (FRIA), provides a narrow avenue for recognition of foreign proceedings but lacks an automatic mechanism to safeguard cross-border creditor rights [2],[14].

These disparities in substantive and procedural law have made courts reluctant to recognize foreign insolvency proceedings, particularly where such recognition might conflict with domestic public policy or disadvantage local creditors [11], [13]. Selective recognition practices delay restructuring processes, increase the risk of unequal asset distribution, and create incentives for debtors to engage in forum shopping [5], [11]. Technical obstacles such as limited court-to-court communication, underdeveloped digital infrastructure, and differences between common law and civil law traditions further complicate coordination [21],[23].

This landscape underscores the urgent need for an ASEAN-wide insolvency framework. Harmonization through the adoption of the UNCITRAL Model Law across member states would provide a more predictable legal environment, enhance foreign creditor protection, and strengthen investor confidence in the region [11],[14], [15]. An ASEAN Cross-Border Insolvency Framework could set minimum standards on non-discrimination, automatic stays, and international mediation, supported by digital platforms for real-time information sharing [24],[30].

Creating a unified insolvency regime for ASEAN does not entail relinquishing national sovereignty. Rather, it establishes a baseline of cooperation that facilitates

judicial assistance, reciprocal recognition of proceedings, and equitable asset distribution [11], [14]. By embracing harmonization, ASEAN can prevent forum shopping, promote fair treatment of all creditors, and reinforce its position as a competitive and legally reliable economic bloc [15],[16]. Such a framework would not only support deeper regional integration but also align Southeast Asia with global best practices in cross-border insolvency [11],[30].

The European Union's success in integrating the principles of the *UNCITRAL Model Law on Cross-Border Insolvency* offers a compelling model for ASEAN countries seeking to strengthen regional legal coherence. The EU's experience demonstrates that cross-border insolvency reform is not only a legal necessity but also a strategic component of economic integration. Through the European Insolvency Regulation (EIR) and its 2015 Recast, the EU has built a cohesive system that enhances judicial cooperation, promotes creditor protection, and facilitates the efficient resolution of transnational insolvency cases. For ASEAN, an increasingly interconnected economic region facing similar challenges of cross-border trade and investment, the European example provides a valuable blueprint for developing its own regional insolvency regime.

ASEAN's economic integration under the *ASEAN Economic Community (AEC)* has significantly increased cross-border transactions, capital flows, and cross-border corporate activities. However, the region's legal framework remains fragmented, with each member state applying its own domestic insolvency laws. Unlike the European Union, ASEAN lacks a supranational legal body or binding regulation that ensures uniformity in insolvency proceedings. Consequently, when a corporation operating in multiple ASEAN jurisdictions faces insolvency, creditors encounter uncertainty regarding jurisdiction, recognition, and enforcement. This legal fragmentation leads to inefficiency, duplication of proceedings, and unequal treatment of creditors [19].

To address these issues, ASEAN can adopt a regional harmonization strategy inspired by the EU's model but adapted to its institutional and cultural realities. The first step involves developing a common legal framework, the *ASEAN Cross-Border Insolvency Regulation*, which establishes minimum standards for recognition, cooperation, and communication between national courts. This framework should incorporate the key principles of the *UNCITRAL Model Law*, including access for foreign representatives, recognition of foreign proceedings, cooperation between courts, and coordination of concurrent cases. Such a regional instrument would create a shared foundation for mutual legal assistance without infringing upon national sovereignty [2].

The second step requires institutionalizing judicial cooperation mechanisms. ASEAN could establish a *Judicial Coordination Network* modeled after the *EU Judicial Cooperation in Civil Matters*, enabling judges and insolvency practitioners across member states to communicate directly in cross-border insolvency cases. This platform could facilitate information exchange, promote consistency in judicial interpretation, and prevent conflicting rulings. To ensure transparency and efficiency, ASEAN could also develop an online insolvency information portal similar to the

European Insolvency Register, allowing creditors and courts to access relevant data on ongoing proceedings across jurisdictions.

Third, ASEAN should promote capacity building and legal harmonization through professional training and model legislation. The European Union achieved legal convergence not only through regulation but also through extensive judicial training, academic collaboration, and professional exchange among insolvency administrators. ASEAN could establish partnerships with institutions such as UNCITRAL, the Asian Development Bank (ADB), and national law academies to provide training for judges, lawyers, and regulators in cross-border insolvency law. Over time, this would cultivate a shared understanding of regional standards and reduce interpretative disparities among national courts [31].

A fourth strategic step is the recognition and enforcement of foreign insolvency judgments within the region. While some ASEAN member states, such as Singapore, have adopted or partially aligned with the UNCITRAL Model Law, others remain constrained by purely domestic legal regimes. ASEAN could introduce a *Mutual Recognition Protocol* to ensure that insolvency proceedings commenced in one member state are recognized by others, provided they meet established procedural and substantive standards. This would significantly enhance creditor confidence and reduce transaction risks in cross-border investments[26].

Furthermore, ASEAN should consider establishing an ASEAN Insolvency Forum, a permanent regional body tasked with monitoring, reviewing, and guiding the implementation of cross-border insolvency cooperation. This body could facilitate dialogue among policymakers, harmonize domestic reforms, and promote the gradual convergence of insolvency practices across the region. By maintaining a flexible, consensus-based structure, the Forum could advance legal harmonization while respecting the sovereignty and diversity of member states' legal systems [32].

The potential benefits of such regional cooperation are substantial. A harmonized insolvency framework would enhance investor confidence, reduce legal uncertainty, and promote equitable treatment of creditors regardless of nationality. It would also streamline the resolution of multinational insolvencies, prevent forum shopping, and strengthen ASEAN's competitiveness as an integrated economic bloc. Most importantly, it would align the region with global best practices in cross-border insolvency, ensuring compatibility with international trade and financial systems [2],[33].

However, successful implementation will require overcoming certain challenges, including disparities in legal traditions (civil law and common law), differences in institutional capacity, and varying degrees of political commitment among member states. To address these barriers, ASEAN should pursue a phased and adaptive approach. Initially, a small group of member states, such as Singapore, Malaysia, Thailand, and Indonesia, could pilot a cooperative framework based on the UNCITRAL principles. Once proven effective, the framework could be gradually expanded to include all member states, thereby promoting incremental but sustainable legal harmonization.

In conclusion, the European Union's success illustrates that legal diversity need not be an obstacle to regional integration. By pragmatically adapting international standards, the EU transformed insolvency law into a tool for economic stability and cross-border cooperation. ASEAN has the opportunity to follow this path by embracing harmonization grounded in the UNCITRAL Model Law. By doing so, it can build a resilient and transparent regional insolvency system, one that strengthens judicial cooperation, protects creditor rights, and reinforces Southeast Asia's position as a reliable and globally competitive economic community [33].

According to the Theory of Sovereignty, every state possesses full authority to enact and enforce its laws within its territorial jurisdiction without external interference. This principle affirms that each country retains the right to determine its own legal mechanisms, including bankruptcy regulation, in accordance with its national interests and legal traditions [34]. In the ASEAN context, this principle manifests in each member state maintaining distinct, territorially bound insolvency regimes. Indonesia, for example, under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, stipulates that its Commercial Courts have jurisdiction only over legal subjects and assets located within Indonesian territory. This reflects the principle of territoriality, where national courts exercise authority strictly within their sovereign borders [31].

This strict application of sovereignty is also evident in Malaysia and Thailand, where recognition of foreign bankruptcy judgments is permitted only under specific bilateral agreements or clear reciprocity principles. Thus, sovereignty is preserved by restricting foreign legal intervention within domestic jurisdiction. However, overly rigid adherence to sovereignty often leads to legal fragmentation, hindering the efficient resolution of cross-border insolvency cases. Creditors with claims in multiple jurisdictions must initiate separate proceedings in each country, leading to duplication, increased costs, and potential inequities in asset distribution [31].

In contrast, the Theory of International Cooperation offers a more adaptive approach to contemporary transnational challenges. This theory posits that in an era of economic globalization, no nation can independently resolve legal issues that inherently transcend borders. International cooperation is therefore founded on mutual understanding, shared interests, and the collective need for legal certainty in global economic relations. In the context of cross-border bankruptcy, this theory underscores the importance of inter-state collaboration to ensure equal and efficient legal protection for creditors and debtors across jurisdictions [33].

4 Conclusion

ASEAN's accelerating economic integration has intensified cross-border bankruptcy disputes, exposing gaps in legal coordination. Cases such as PT Garuda Indonesia's restructuring recognized in Singapore, Malaysia's refusal to enforce *Re Zetta Jet Pte Ltd*, and the *Ostrich Meat & Marketing Co* petition highlight inconsistent recognition of foreign insolvency proceedings and uneven creditor protection. While Singapore has adopted the UNCITRAL Model Law on Cross-Border Insolvency, most member

states still rely on territorial bankruptcy statutes, creating risks of forum shopping, unequal treatment, and delayed debt resolution. To address these challenges, ASEAN should develop a regional cross-border insolvency framework grounded in the UNCITRAL Model Law but adaptable to diverse legal systems. Key measures include reciprocal recognition of judgments, minimum procedural safeguards, court-to-court communication protocols, and capacity-building programs for judges and practitioners [35]. Such harmonization would enhance investor confidence, ensure equitable asset distribution, and promote financial stability across the ASEAN economic community.

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