

ASPECTS OF INTERNATIONAL AND DOMESTIC LAW PERTAINING TO THE ESTABLISHMENT OF ASEAN CROSS-BORDER INSOLVENCY REGULATIONS: AN INDONESIAN PERSPECTIVE

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Article Info

Received : 9/1/2017 | Received in revised form : 1/12/2018 | Accepted : 5/28/2018

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Abstract

Increased cross-border trade has resulted in more companies with assets, business, and presence in multiple jurisdictions. When any of these companies face debt restructuring or insolvency, they face a myriad of complex issues involving the coordination of rescue proposals and multi-jurisdictional enterprises. Prior to the 1997 economic crisis, insolvency laws in most state economies were generally out-of-date and irrelevant to modern commercial needs, particularly with regard to cross-border insolvency issues. ASEAN initiated an integrated regional economy with its launch of the ASEAN Economic Community in late 2015. Its aim was to establish a deeply integrated, highly cohesive regional economy that would support sustained, high economic growth and resilience in the face of global economic shocks. Unfortunately, ASEAN members have still not prepared regulations regarding cross-border insolvency matters that can hamper a fully integrated regional economy. Each member state has its own national insolvency laws and proceedings, but none have schemes that surpass national borders and simplify procedures. That said, international and domestic laws of Indonesia could be adjusted to establish cross-border regulations throughout ASEAN. Hence, in-depth harmonization of cross-border insolvency should be a priority within the Economic Community as it seeks to achieve a fully integrated economy.

Keywords: Cross-border Insolvency, Integrated Economy, International Law, Domestic Law, Indonesia, ASEAN.

Abstrak

Praktik penangkapan ikan yang tidak sah, tidak dilaporkan dan tidak diatur (IUU fishing) merupakan kegiatan yang mengancam sumber daya hayati laut. Mahkamah Internasional untuk Hukum Laut (ITLOS) telah mengeluarkan rekomendasi terkait tanggung jawab negara bendera yang diduga melakukan praktek IUU fishing di wilayah yurisdiksi negara anggota SRFC. Selain itu, ahli hukum internasional dan instrumen hukum internasional telah menunjukkan perlunya pembahasan hal tersebut terutama dikarenakan adanya kekosongan hukum dalam Konvensi Hukum Laut. Hal ini sangat terkait dengan kasus yang baru saja terjadi di zona ekonomi eksklusif Indonesia yang dilakukan oleh kapal berbendera Tiongkok, Kway Fey 10078. Dalam kasus ini, kapal patroli berbendera Tiongkok telah melakukan intervensi yang menyebabkan Indonesia tidak dapat melaksanakan yurisdiksi dan melakukan proses hukum terhadap kapal Kway Fey 10078. Selain itu, Pemerintah Tiongkok meminta Pemerintah Indonesia untuk melepaskan delapan orang warga negara Tiongkok yang ditahan oleh KKP Indonesia. Hal ini menimbulkan pertanyaan apakah hukum internasional memberikan solusi untuk mengatasi masalah IUU fishing secara efektif.

Keywords : IUU fishing, state responsibility, flag state, Itlos, unclos

I. INTRODUCTION

Over recent decades, the benefits of globalization have become manifest as numerous multinational corporations enter into deals that span multiple legal jurisdictions. The insatiable pursuit of economic opportunities and growth reflects how business and trade have become increasingly borderless, as globalization hits every part of the world. As a result, capital and trade can now flow seamlessly through economies in search of new markets and opportunities, spurred undoubtedly by the execution of bilateral and multilateral trade and investment treaties. Add to those, the formulation of multilateral economic groupings. Yet, it seems insolvency is the furthest consideration when investment decisions are made.¹

Insolvency laws have not sufficiently evolved to deal satisfactorily with cross-border matters. However, the risks of rapidly growing, seemingly borderless integrated regional economies tend to be more complicated as the number of parties involved vary, in which corporations engage in a range of transnational investments and partnerships. It has obviously resulted in a legal uncertainty that leaves wary both traders and governments who haven't fully considered the worst incoming situations, such as business collapse, the lack of legal enforcement against the consequences of globalization, and the inevitable economic meltdown caused by the convergence of markets and economic cycles.

Economic or regional integration has become a stepping stone for intergovernmental cooperation. The Association of Southeast Asian Nations (ASEAN) was founded based upon geographic proximity.² Their need of an integrated economy turned their geographic and political affinities into economic reliance between member states. It was also a part of the global regional movement.³ External observers have called the "hub of regionalism" as the realization of the ASEAN way.⁴ It remains a distinctly political counterbalance and an expectation of the degree to which it has been implemented in ASEAN members.

The phenomenon of cross-border insolvency occurred especially during the regionalism era. During discussions of economic integration, it proved particularly difficult to achieve comity amongst nations because of state sovereignty. In ASEAN, it was the establishment of the ASEAN Economic Community (AEC) that triggered discussion of the risks of cross-border insolvency among member states. The beginning of AEC seems to have been the most ambitious facet of the integration project.⁵ Aiming to establish a single market of 625 million people would make ASEAN the world's single largest market. It could even surpass other integrated zones, such as the EU and the North American market.

ASEAN member states mostly consist of countries midway between developing and developed. Integrating the various economic systems of the members is considered a

¹ Kannan Ramesh, Speech at the International Association of Insolvency Regulators' 2016 Annual Conference and General Meeting in Singapore on 6 September 2016. Retrieved from www.supremecourt.gov.sg Ramesh is a judicial commissioner at The Supreme Court of Singapore.

² F. Sugeng Istanto, *Studi Kasus Hukum Internasional* [Case Study of International Law] (Jakarta: Tata-nusa, 1998), p. 17

³ Mark Beeson, *Encyclopedia of Public Policy: Governance in a Global Age* – Philip O'hara Edition, (London: Routledge, 2004), p. 7

⁴ Amindoni Ayomi, "Public Awareness of AEC Remains Low," <http://www.thejakartapost.com/news/2015/12/02/public-awareness-aec-remains-low.html>, accessed 5 December 2016.

⁵ The Brunei Times, "ASEAN Economic Community Launched," <http://www.bt.com.bn/business-asia/2015/11/23/asean-economic-community-launched>, accessed 5 December 2016.

major milestone in the regional economic integration agenda. The AEC arguably holds the key for the association's credibility and longevity, as well as its citizens' economic welfare.

The AEC rests on four pillars—a single market and production base, a competitive economic region, equitable economic development, and integration into the global economy. Instead of outlining the 176 priority actions here, the AEC's goal can be simplified as follows: ASEAN member states seek to increase the size of the economic pie by joining forces, to grow the pie continuously by integration into the global economy, and to distribute it in a better way.

However, due to ASEAN's pronounced diversity, including the political systems, socioeconomic development, even the languages and religions, the economic integration project and policy have faced considerable obstacles. These include multi-jurisdictional proceedings during disputes over the integrated economy, and border less cooperation between ASEAN members over cross-border insolvency. The fact that AEC has still not resolved the cross-border insolvency issue is especially unfortunate, considering its aim of an integrated economy and the high traffic of transnational trade and investment.

As a result of ASEAN cross-border trade, assets are located not only within the state where they're domiciled, but across borders and scattered within other member states. It has become increasingly true as a consequence of ASEAN economic integration. Universal implementation is implied by the universality principle that a bankruptcy decision is key to realizing the justice of the liquidation process of a globally domiciled bankrupt debtor's assets.⁶ Execution of the debt's assets that is granted by a court against a debtor will not be automatically recognized by the state where the debtor's assets are domiciled. That's based on the principle of territorial sovereignty, not the recognition of an administrator appointed by the court in managing and administering the debtor's rescue proceedings. Only a re-litigation procedure could execute the debtor's assets, but it would most likely create a longer delay, extra costs and further legal uncertainty during the period when state jurisdictions would apply.

Inadequacy of the laws dealing with cross-border insolvency of multinational corporations has created an uncertainty for business activities. As globalization takes hold and ASEAN free-trade through AEC becomes more entrenched in the Southeast Asian economies, more companies are expanding their businesses into neighboring countries. How cross-border insolvency affect their trading partners will be processed and ultimately resolved in different countries. It's become a major business issue.⁷ The need for insolvency regulation seems to be inevitable, especially as the region faces the consequences of its Economic Community implementation creating a more unified economic potential and competition among members. The existence of cross-border insolvency regulation within ASEAN will consequently create internationally located assets as the sovereignty region of the ASEAN member states. Assets located in multiple states will lead the commencement of numerous insolvency proceedings and yet more laws will be invoked.⁸

⁶ Ricardo Simanjuntak, *Dispute Settlement Mechanisms Under The ASEAN Legal Frameworks: A Collective Commitment Creating The Ruled Based ASEAN Economic Community* (Jakarta: Kontan Publishing, 2015), p. 178

⁷ Julian Male, "Cross-Border Insolvency Harmonizing Treaties Becoming Important," *Asia Pacific Housing Journal* 13, no. 4 (2017).

⁸ Bob Ramusen, *Where are all the Transnational Bankruptcies?* American Law and Economics Annual Meetings (California: The Berkeley Electronic Press, 2007), p. 15.

There is still no sufficient law regarding cross-border insolvency that addresses commercial and business matters within ASEAN. Members are wary of trader or investor parties and governments. Despite the fact that an integrated economic framework has already been established, it potentially leads to inconsistent administration practices and legal procedures. This would hinder the efficient or fair administration of insolvency, and potentially hamper any prospect of a company's rehabilitation.

II. ASPECTS OF INTERNATIONAL LAW REGARDING CROSS-BORDER INSOLVENCY

Relations between legal subjects have resulted in particular legal consequences. International law is a consequence of interstate relations and cooperation. Since there might be multiple jurisdictions involved in the relations between states, international law has been designed to regulate how states should behave and cooperate. Cross-border insolvency becomes an issue since there are multiple jurisdictions and various national insolvency laws once a cross-border insolvency proceeding takes place. Roman Tomasic has explained how a "cross-border insolvency may occur, for instance, where an insolvent debtor has assets in more than one state, or where creditors are kept from the states where the insolvency proceeding are taking place, yet the cross-border insolvency can apply to an individual or corporation".⁹ A cross-border insolvency may occur because domestic and foreign elements have formed a partnership,¹⁰ but the foreign element has since become dominant. Since there are now foreign parties involved in a cross-border insolvency, there arise multilateral (or multinational) laws and jurisdictional disputes.

Prior to the 1997 economic crisis in Asia and elsewhere, the risks of cross-border insolvency rose rapidly. Unfortunately, there was no adequate regulation for solving such matters. The complexity of cross-border insolvency also overrode previous strict territorial state proceedings which did not extend to assets located in foreign countries or vice versa.¹¹ The [United Nations Commission on International Trade Law](#) adopted a model relating to cross-border insolvency on 30 May 1997. In May 2000, the European Union (EU) also adopted Insolvency Regulation [\(EC\) 1346/2000](#) concerning the rules of jurisdiction operating between EU member states. It focused on creating a framework for the commencement of proceedings and for automatic recognition and co-operation between member states in matters of cross-border insolvency. The multilateral approach provides a choice of law that selects a legal system to apply to the transaction and then adjudicate the disputes. This requires a court first to characterize the issue; next, to select the relevant rule(s) from each legal system, pertaining to the conflicting laws. Given the multidimensional aspects of legal problems that arise in an insolvency with foreign elements, an advantage of this approach is that it allows more flexibility in arriving at suitable solutions.¹²

The foreign elements of cross-border insolvency differ from the usual domestic insolvency. There are four types of foreign elements in cross-border insolvency: foreign debtors, foreign creditors, estates located in foreign country, and estates

⁹ Tomasic, Roman, *Insolvency Law in The East Asia* (London: Ashgate Publishing, 2007).

¹⁰ Simanjuntak, *Dispute Settlement Mechanism*, p. 315.

¹¹ Phillip R. Wood, *Principle of International Insolvency* (London: Thomson Sweer and Maxwell, 2007), p.179.

¹² Paul J. Omar, *Insolvency Law Themes and Perspectives* (Burlington: Ashgate Publishing, 2008), p. 41.

owned by foreign companies.¹³ The phenomenon of cross-border insolvency is encountered where the dispersal of the debtor's assets and the activities generates an array of interests and claims involving potential application of more than a single system of law.¹⁴

There are two main principles related to cross-border insolvency, territorial and universal. Historically, most legal systems have developed on a territorial basis, and this is equally true with relation to bankruptcy or insolvency laws. However, from an early stage there have also been piecemeal attempts to develop cross-border cooperation based on universal principles.¹⁵ A territorial principle basically drives from the doctrine of state sovereignty – the notion that the authority of one system, including its insolvency laws and proceedings, should be confined to the territory of the state.¹⁶ As such, each country exercises its own insolvency laws in relation to all of the debtor's property and all creditors located within its jurisdiction. This approach does not recognise any extraterritorial dimension. Meanwhile, the universal principle is achieved when a single estate consisting of all the debtor's assets, wherever located, is administered by a single trustee appointed by the authorities in the adjudicating country. One bankruptcy court marshals all of the debtor's assets within its jurisdiction and settles all creditor claims against them. Such unitary disposition gives international effect to a local bankruptcy judgment.¹⁷ Under the universal principle or approach, all cross-border insolvencies are administered pursuant to a single global regime and all of the debtor's assets are distributed by a single insolvency office holder regardless of where the assets or claimants are located.

Some experts suggest a hybrid approach combining both principles, resulting in a number of theories and practices, including “modified universalism,” whereby individual countries seek to identify the most relevant jurisdiction in which to conduct the proceedings, and all other states cooperate with and facilitate such proceedings (subject to limits of public policy).¹⁸ There is also “co-operative territorialism,” which is broadly predicated on the territorial approach, supplemented by multi-lateral conventions.¹⁹ It is generally recognised that the universalist approach remains largely a holistic ideal, and that for the most part countries of the world are divided into those which take a purely territorial approach, and those which apply some form of hybrid. The territorial principle is still the most used, as it appears to protect state sovereignty.

Prior to the establishment of UNCITRAL Model Law on Cross-Border Insolvency (1997) with Guide to Enactment and Interpretation (2013), there were various international conventions that pertained to cross-border proceedings. Cross-border proceedings need to be well-adjusted and received by all the state parties to achieve

¹³ Suryana, *Hukum Kepailitan: Kepailitan Terhadap Badan Usaha Asingoleh Pengadilan Niaga Indonesia* (Bandung: Pustaka Sustra, 2007), p. 48.

¹⁴ Michael Freeman, *Current Legal Problems* (Oxford: Oxford University Press, 2003), p. 429.

¹⁵ Andrew Keay and Peter Walton, *Insolvency Law* (London: Jordans, 2011) . p. 387.

¹⁶ Paul J. Omar, “Cross-border Jurisdiction and Assistance in Insolvency: the Position of Malaysia and Singapore” *Potchefstroomse Elektroniese Regsblad* 11 (January-March 2008): 45.

¹⁷ Mark Gross, “Foreign Creditor's Rights: Recognition of Foreign Bankruptcy, Adjudications in United States and The Republic of Singapore,” *Pennsylvania Journal of International Business Law* 12, no. 1 (1991): 28.

¹⁸ Jay Westbrook, “Global Solution to Multinational Default”. *Michigan Law Review* 98 (2000): 2276., accessed 5 December 2016, doi:10.2307/1290306.

¹⁹ Lynn LoPucki, “Cooperation in International Bankruptcy: A Post-Universalist Approach,” *Cornell Law Review* 84, no. 3 (1999): 696, accessed 5 December 2016.

legal certainty. Thus it needs multilateral agreement or convention, which are: Convention Abolishing the Requirement of Legalization for Foreign Public Documents of Apostile Convention (1961), that regulates the legalization of public documents needed for cross-border proceedings; The Hague Convention on the Taking Evidence Abroad in Civil or Commercial Matters (1970), that regulates the evidence (or estate, in insolvency) located in foreign countries to be taken or processed by the court; and The Hague Convention of the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters (1971) and the Supplementary Protocol of 1 February to the Hague Convention of The Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters, that regulates the recognition and enforcement of foreign judgements of civil and commercial matters. These conventions summarize the needs of cross-border proceedings and latter became the basis for the UNCITRAL Model Law.

The UNCITRAL Model Law of Cross-border Insolvency, et al, is the most recent model law that could be employed to solve cross-border insolvency matters. As a model law, unlike other conventions listed above, it has no binding power over the states who ratified it. The basic concept of the Model Law is to establish the “main proceedings” in relation to any international insolvency. All other proceedings are referred to as the “non-main proceedings.” The main proceedings commence where the debtor has its centre of main interest, or “COMI”.²⁰ The non-main proceedings may commence anywhere the debtor has a commercial establishment. The Model Law does not require reciprocity between states, but focuses upon (i) ensuring that states provide assistance to insolvency officials from other countries in relation to main and non-main proceedings, and (ii) eliminate preferences for local creditors over international ones²¹. Its preamble lists the basic purposes of its establishment, which are: cooperation between the courts and other competent authorities of the state and foreign states involved in cases of cross-border insolvency; greater legal certainty for trade and investment; fair and efficient administration of cross-border insolvency that protect the interests of all creditors and other interested parties, including the debtors; protection and maximization of the value of the debtor’s assets; and facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.²²

III.ASPECTS OF INDONESIAN DOMESTIC LAW REGARDINGCROSS-BORDER INSOLVENCY

The national regulation of Indonesia which pertains to bankruptcy or insolvency matters is Law No. 37 Year 2004 on Bankruptcy and Suspension of Payment. There is no specific article regarding this law, but there are some articles implying the recognition and enforcement of foreign judgments on cross-border insolvency and also the foreign element of cross-border insolvency in which Indonesia is a party. Both foreign and domestic debtors and creditors’ rights have to be protected. Law No. 37 describes the jurisdictional matters, choice of law, recognition and enforcement.

The fact that each party might be domiciled in different countries urges legal certainty in cases of cross-border insolvency. Laws that differ from one another

²⁰ [United Nations, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation \(Vienna: United Nations, 2014\). Hereinafter Model Law](#)

²¹ *Ibid.*, Article 13, paragraph 2

²² *Ibid.*, Preamble of UNCITRAL

confuse the contracting parties in the courts where they've submitted the case. Nor is it often clear which jurisdiction applies in certain cases. Based on "actor equitor," the court that has the authority is the court where the respondent is domiciled. The supporting principles are presence and effectiveness.

The most likely issues in cases of cross-border insolvency petitions involving Indonesian parties are recognition and enforcement. Indonesia does not recognize foreign court decisions, as it takes a territorial view of arbitration. Under Article 436 of the RV (*Reglement of de Rechtsvordering*, an Indonesian civil procedural regulation from the colonial era), a foreign court judgment cannot be enforced in Indonesia directly. To enforce such a judgment, a new lawsuit must be filed in Indonesian court. The foreign court judgment may be introduced as evidence in the new proceedings, although in principle the Indonesian court will not be bound by its findings. It must be presented in authentic format, with a certified translation of the judgment into the Indonesian language. Though not directly enforceable, Indonesian courts have recognized declaratory judgments (regarding the ownership of goods, validity or nullity of marriage, etc.) And constitutive judgments (e.g. decisions concerning the appointment of guardians, bankruptcy, etc.) Issued by foreign courts on the basis that these judgments do not need any execution from the Indonesian courts and merely establish rights and duties of persons in certain situations.

The procedure will effectively amount to a retrial. It can take between five months to one year to obtain a district court decision in Indonesia. The losing party may file an appeal in the relevant High Court. It can also take from five to 12 months to obtain a High Court decision. The losing party there may then file an appeal to the Supreme Court. It can take two to five years for that ruling to be issued. The ruling will indicate whether the foreign court judgment can be enforced.

Article 3 of Law No. 37 Year 2004 on Bankruptcy of Suspension of Payment regulates a court's competency to proceed on an insolvency petition belonging to the court where the debtor is domiciled (if the debtor is domiciled in Indonesia). Article 3 (4) of Law No. 37 Year 2004 on Bankruptcy of Suspension of Payment states, "In the event that the debtor does not have a domicile within the territory of the Republic of Indonesia but conducts his profession or business in the territory of the Republic of Indonesia, the competent court to decide is the court having jurisdiction over the region where the domicile of the office from which the debtor conducts his profession or business is located." Unfortunately, the above article is not legally binding because there still remain the principles of presence and effectiveness in private law. Those explain the possibility of submitting the petition outside Indonesia, wherever the debtors and his estates are currently located.

Section 10 of Law No. 37 Year 2004 on Bankruptcy of Suspension of Payment explains the provisions of international law. Articles 212, 213, and 214 imply that the status of foreign elements in cross-border insolvency involving Indonesian party(ies) is not fully recognized and would not be easily enforced.

Article 212 states, "The creditors, who, after the bankruptcy declaration, as their claim on the debt, have taken out a whole or part of the goods owned by the bankrupt debtor that are located beyond Indonesian territory, shall be required to compensate the bankruptcy for what they took out with regard to such priority right." Article 213 (1), states, "The creditors who have transferred their claims of debt against the Bankrupt Debtor, in whole or in part to a third party to enable the third party either entirely or partially, individually or having priority over other parties, so that

the payment for those claims on debt can be taken for settlement from the goods of the bankrupt debtor located beyond the Indonesian territory, shall compensate the bankruptcy estate for anything obtained in such manner." Article 213 (2): "Unless it can be proved otherwise, any transfer of claims on debt shall be deemed already performed in accordance with the provision as referred to in paragraph (1), if the Creditors perform the transfer and the Creditors know that the bankruptcy declaration has been filed or will be filed." Article 214 (1), "The obligation of compensation shall also be applicable to anyone transferring this debt or claims, entirely or partially to third parties and in this way the third party shall have the opportunity to set-off his debts or claims with a debt or claims beyond Indonesia, which is not permitted under this regulation." Article 214 (2), "The provisions of Article 213 paragraph (2) shall also apply to Article 214 paragraph (1)."

Basically, the state (including Indonesia) will recognize and enforce any foreign court decision only if the decision can be accepted by the international standard, has fair proceedings, and if the foreign court decision does not violated the public order.²³ Hence, the execution of cross-border insolvency petition could not be directly handled by the foreign jurisdiction. Particular in Indonesia, there must be a re-litigation and re-petition proceeding to adjust with Indonesian Insolvency law.

IV. THE CHALLENGES OF ESTABLISHING CROSS-BORDER INSOLVENCY IN ASEAN

The ASEAN Economic Community framework may have been established last year, but its journey towards economic integration has actually been underway over decades. It was seen as a way to promote economic, political, social, and cultural cooperation across the region, allowing a free flow of goods, services, labour, investments, and capital across the member states. It would move Southeast Asia towards a globally competitive single market and production base.

The economic cooperation that binds ASEAN has taken root through different channels over time. They include countries sharing complementary roles in manufacturing, improved ease in moving products across borders, and other mechanisms facilitating a smoother flow of goods, services and capital, and skilled labour across the region. This contributes towards the narrative on ASEAN being one of the most dynamic regions in the world, and a key contributor to world economic growth.

The integration has also meant narrowing the economic development gap within the ASEAN members. ASEAN members are midway between developing and developed countries. As a result of its members' various economic capacities, they have each adjusted their competencies to reach the goal of intra-ASEAN economic cooperation.

The ASEAN Economic Community (AEC) was founded in late 2015 and quickly became a huge stepping stone for achieving a regional integrated economy. The alliance's vision for the next nine years, laid out in the *AEC Blueprint 2025*, includes the following visions: a highly integrated, cohesive economy; a competitive, innovative, and dynamic ASEAN, with enhanced connectivity and sectoral cooperation; a resilient, inclusive, people-centric region.

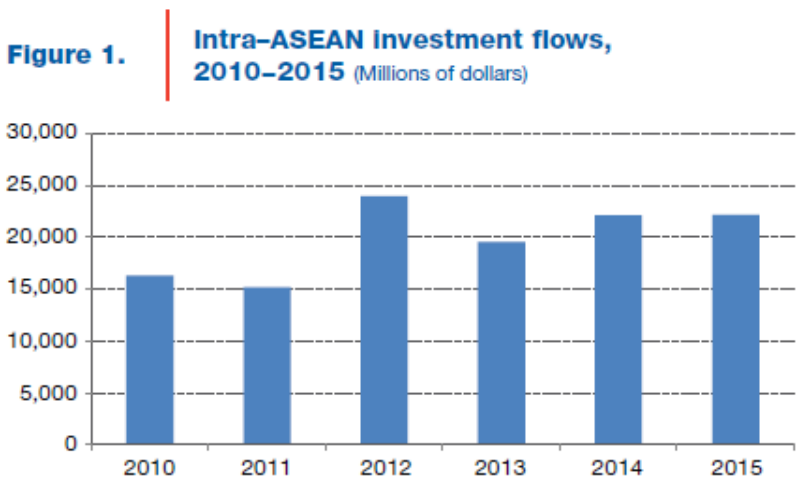
The road to establishing a single market throughout ASEAN has been rough indeed,

²³ Jerry Hoff, *Undang-undang Kepailitan di Indonesia [Bankruptcy Law in Indonesia]* (Jakarta: Tata-nusa, 2000), p. 20.

but the efforts have paid off. Companies now approach it as one region. The regional initiative to allow free movement of goods across borders might be progressing slowly, but the region can only proceed at the behest of national governments. The laws of every ASEAN member are so different that a common vision and region-wide comity is difficult to arrive at. The progress might be slow, but the 2015 ASEAN Investment Report cited a slight advance in achievement from intra-ASEAN investment via Foreign Direct Investment (FDI) inflows, which shows foreign investment progress among the ASEAN members.

The ASEAN Economic Community is touted as a milestone for its member states, and engaged as an eminent establishment. It has been called a stepping stone along a lengthy, on-going, fully integrated process. However, according to a Deloitte survey amongst CEOs in Southeast Asia, instead of 2015, a more realistic date for full implementation of the AEC agenda will be around 2030.²⁴ The member states are fully aware of the situation, and formulation of the post-2015 agenda is in full swing.

The engagement policy of AEC on its blueprints is attracting additional Foreign Direct Investment (FDI) to the intra-ASEAN investments. In 2015, the economy grew and remained the largest source of FDI flows, rising marginally by \$15 million to \$22.1 billion in 2016.



Source: ASEAN Secretariat, ASEAN FDI database.

Figure 1 shows how the share of intra-ASEAN FDI investment flowing to the region rose from 17 per cent in 2014 to 18.5 per cent in 2015. Seven ASEAN member states received higher levels of intraregional investment (Malaysia, the Philippines, Thailand, and CLMV countries), suggesting a further increase in regional connectivity. Intra-ASEAN merger and acquisition activities also grew, contributing to an increase in intraregional corporate investment and activities by ASEAN companies.

²⁴ Deloitte, "The ABC of AEC. To 2015 and beyond", <http://www2.deloitte.com/content/dam/Deloitte/my/Documents/about-deloitte/sea-about-the-abc-of-aec-noexp.pdf>, accessed on 1 November 2016.

Intraregional investment is the largest source of FDI for some ASEAN Member States. FDI flows to the primary, manufacturing and services sectors differed markedly. Flow to manufacturing rose significantly, by 61 per cent, from \$18 billion in 2014 to \$29 billion in 2015. However, flow to the services industries declined by 21 per cent, to \$79 billion – dragged down by the FDI in finance. Investments in the primary industries were flat, at par with their 2014 level.

ASEAN remains a competitive and attractive destination for FDI. Investor perceptions of the region have been largely and increasingly positive. Its long-pursued, market-driven economic integration among its fellow member states, through trade and FDI, resulted in the success of the advanced members of ASEAN joining regional supply chains embedded into global supply chains. The less advanced members are also catching up. The FDI shows how ASEAN members are slowly developing their economies and adjusting to the recent situation. That requires a strong regional economy. It also represents how ASEAN could compete in the global market economy.

Theoretically, cross-border insolvency resolution should also be an objective if ASEAN wants to establish an integrated economy. It seems a little hazardous, seeing as how ASEAN integration is still in full swing. The differences between the legal systems requires that establishing such a cross-border regulation includes a strong will to harmonize the domestic law and realization of the international comity within the ASEAN members. It needs strong mutual recognition and coordinated enforcement.

Consequently, cross-border insolvency regulation has not been a major ASEAN concern. Previous cross-border insolvency laws have been enacted through litigation and repeated proceedings, covering each domestic law affected. The legal uncertainty and the cost of re-litigation reduces the value of bankruptcy estates. Obviously, the lack of specific regulations regarding cross-border insolvency would create future obstacles for the growing ASEAN economy.

Though the situation is not without complexities and uncertainties, still, the AEC might eventually unleash significant, unforeseen potential for the ASEAN region. ASEAN has made steady progress on its internal economic integration, but they're still a long way to a fully integrated economic region. The alliance needs to continue strengthening its internal integration, maintain its centrality, and further deepen AEC and ASEAN policy coordination and harmonization of their laws.

V. CONCLUSION

The ASEAN Economic Community has steadily advanced toward its goals of creating a deeply integrated and highly cohesive economy that will support sustained high economic growth and resilience in the face of global economic shocks and volatilities. The fact that the number of cross-border trades has increase significantly shows that ASEAN is already making great stridel.

Its robust growth and resilience is demonstrates not just by cross-border trade, but by greater investment and cooperation resulting in more companies with more assets, business, and presence in multiple jurisdictions. However, it confronts a myriad of complex issues in coordinating rescue proposals or winding up businesses across jurisdictions. Solving the cross-border insolvency petition becomes complex when bankruptcy estates ere scattered across nation, within the ASEAN.

Previous cases were solved only by serial-litigation and repetitive mechanisms that

create a legal uncertainties and led to decreasing value of bankruptcy estates. In this regard, the multiple jurisdictions and variable law from one member state to another is the main reason for the legal uncertainty and the costly mechanisms. The absence of insolvency regulations within the individual states becomes the reason why the matter of ASEAN cross-border insolvency still lack well-made proper regulation

The international and domestic laws of Indonesia actually contain the potential for harmonizing such a regulation. In fact, cross-border insolvency is already regulated by the United Nations' UNCITRAL Model Law on Cross-Border Insolvency. The model law is designed to solve cross-border insolvency situations. Though each state has its own national laws and proceedings, none have schemes to surpass national borders and simplify procedures. Hence, it would be necessary to use the UNCITRAL model to guide the establishment of such a regulation in ASEAN. An in-depth harmonization of cross-border insolvency regulation should be a priority for the ASEAN Community to achieve a full-integrated regional economy

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