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Cross-Border Insolvency of Multinational Companies in Indonesia: Jurisdictional Challenges and the Application of the Universalism Principle

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ABSTRAK

The increasing globalization of business activities has led to a growing number of cross-border insolvency cases involving multinational companies with assets, creditors, and debtors located in multiple jurisdictions. This situation creates various legal challenges, including jurisdictional conflicts, the recognition of foreign court decisions, and differences in national insolvency laws. In Indonesia, the regulation of cross-border insolvency remains limited because **Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations** does not comprehensively regulate insolvency proceedings involving foreign elements. This study aims to analyze jurisdictional conflicts in cross-border insolvency cases involving multinational companies in Indonesia and to examine the application of the **universalism principle** as an approach to resolving such disputes. This research employs a normative legal research method using statutory, conceptual, and comparative approaches. The legal materials consist of legislation, international legal instruments, scholarly books, and journal articles related to international insolvency law. The findings indicate that Indonesia still faces significant legal challenges in handling cross-border insolvency, particularly regarding the recognition of foreign insolvency proceedings and judicial cooperation. Therefore, legal reform through the adoption of internationally recognized principles, including the **UNCITRAL Model Law on Cross-Border Insolvency**, is necessary to enhance legal certainty, judicial efficiency, and cross-border cooperation in insolvency proceedings.

1. Introduction

The rapid growth of globalization has significantly increased cross-border business activities, allowing multinational companies to operate in multiple jurisdictions simultaneously. Companies frequently own assets, establish subsidiaries, and maintain business relationships with creditors located in different countries. While this expansion contributes to economic development and international trade, it also creates complex legal issues when a multinational company experiences financial distress or bankruptcy. In such circumstances, insolvency proceedings may involve different legal systems, raising questions regarding jurisdiction, recognition of foreign court decisions, and the administration of assets located in several countries. These issues are commonly referred to as cross-border insolvency, which has become an increasingly important topic in international commercial law.

The increasing complexity of cross-border insolvency demonstrates that domestic bankruptcy law alone is often insufficient to resolve disputes involving multinational companies. Differences in national insolvency laws may result in conflicting court decisions, multiple insolvency proceedings, and unequal treatment of creditors. In Indonesia, bankruptcy matters are governed by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, yet the law does not specifically regulate insolvency cases involving foreign elements. As a consequence, Indonesian courts may face legal uncertainty when dealing with foreign debtors, foreign creditors, or assets located outside Indonesian territory. This legal gap has encouraged scholars to propose the adoption of international standards for cross-border insolvency.

To address these challenges, the United Nations Commission on International Trade Law (UNCITRAL) introduced the Model Law on Cross-Border Insolvency as an internationally recognized framework for cooperation between courts and insolvency administrators. Rather than unifying national bankruptcy laws, the Model Law provides procedural mechanisms for recognizing foreign insolvency proceedings, facilitating judicial cooperation, and coordinating insolvency cases involving multiple jurisdictions. More than 50 jurisdictions have adopted or incorporated its principles into their national legal systems, demonstrating the increasing acceptance of international cooperation in insolvency matters.

Recent international studies indicate that the development of cross-border insolvency law increasingly emphasizes the concept of modified universalism, which encourages courts in different countries to cooperate while still respecting national sovereignty. Nocilla (2024) explains that the Canadian experience demonstrates how modified universalism strengthens judicial cooperation, improves the recognition of foreign insolvency proceedings, and reduces conflicts between competing jurisdictions. Likewise, recent comparative studies suggest that effective implementation of modified universalism contributes to greater legal certainty, more efficient insolvency administration, and better protection for creditors

Several recent studies have examined the urgency of cross-border insolvency reform. Saputri (2023) argues that Indonesia's bankruptcy law requires reform to strengthen the protection of cross-border creditors and improve the effectiveness of insolvency proceedings involving offshore assets. Likewise, Setiawan and Haryanto (2024) conclude that adopting the UNCITRAL Model Law could provide greater legal certainty in Indonesia because the current bankruptcy system still follows the principle of territoriality, which limits the recognition and enforcement of foreign bankruptcy judgments. Furthermore, Wijayanta (2024), through a comparative study of Indonesia, Malaysia, and Singapore, finds that countries adopting the UNCITRAL Model Law are better able to resolve cross-border insolvency disputes through judicial cooperation and recognition of foreign proceedings.

Although these studies provide valuable insights, most of them focus on the adoption of the UNCITRAL Model Law or comparative legal analysis. Limited attention has been given to the specific issue of jurisdictional conflicts involving multinational companies in Indonesia and the application of the universalism principle as a legal approach to resolving such conflicts. This issue deserves further examination because jurisdictional disputes often lead to overlapping insolvency proceedings, inconsistent legal outcomes, and uncertainty for both creditors and debtors. Therefore, analyzing the relationship between jurisdictional conflicts and the universalism principle is important to identify possible legal reforms that are suitable for the Indonesian legal system.

Based on the above background, this study aims to analyze the jurisdictional conflicts arising in cross-border insolvency involving multinational companies in Indonesia and to examine the application of the universalism principle in resolving such disputes. It is expected that this research will contribute to the development of Indonesian bankruptcy law by providing recommendations for strengthening cross-border insolvency regulation, improving judicial cooperation, and enhancing legal certainty in international business activities.

2. Results and Discussion

2.1 Concept of Cross-Border Insolvency in International Insolvency Law

The rapid development of globalization has significantly transformed international commercial activities by encouraging corporations to conduct business beyond national borders. Companies increasingly establish subsidiaries, branches, investment portfolios, and contractual relationships in multiple jurisdictions, resulting in more integrated global markets (United Nations Commission on International Trade Law., 1997). While such developments stimulate economic growth and international investment, they also create complex legal issues when multinational businesses encounter financial distress. In many cases, the debtor's assets, creditors, and commercial transactions are dispersed across several countries, making domestic insolvency laws insufficient to resolve disputes effectively. Consequently, the concept of cross-border insolvency has become an essential component of international insolvency law, providing legal mechanisms that facilitate cooperation among courts and insolvency practitioners from different jurisdictions (United Nations Commission on International Trade Law (Wessels, 2022).

The term insolvency generally refers to a financial condition in which an individual or corporate debtor is unable to pay debts as they become due or where the value of liabilities exceeds the value of available assets. From a legal perspective, insolvency should be distinguished from bankruptcy. Insolvency describes the economic condition of financial failure, whereas bankruptcy refers to the judicial process initiated under national law to administer the debtor's assets and liabilities (Fletcher, 2005). Modern insolvency law therefore serves broader purposes than debt collection, including preserving viable businesses through restructuring, maximizing the value of the debtor's estate, and ensuring equitable treatment among creditors. Consequently, insolvency law functions as an important instrument for maintaining commercial certainty and financial stability within both domestic and international markets (Hannan, 2017)

Most jurisdictions determine insolvency through two widely recognized legal standards, namely the cash-flow test and the balance-sheet test. The cash-flow test evaluates whether a debtor is capable of paying debts when they become due, while the balance-sheet test assesses whether the debtor's liabilities exceed the value of its assets. These two approaches are widely adopted because they enable courts to identify financial distress before the debtor's economic condition deteriorates further. Early identification of insolvency is particularly important for corporate restructuring, as timely intervention may preserve business continuity and maximize returns for creditors. Therefore, effective insolvency regulation contributes not only to creditor protection but also to broader economic efficiency by minimizing unnecessary liquidation and preserving productive enterprises.

The increasing globalization of business activities has generated a new dimension of insolvency law known as cross-border insolvency. Cross-border insolvency arises when insolvency proceedings involve two or more jurisdictions because the debtor possesses assets, creditors, contractual obligations, or business operations in different countries. Unlike domestic insolvency proceedings, cross-border insolvency requires courts to address issues concerning jurisdiction, recognition of foreign proceedings, access for foreign representatives, and coordination among insolvency administrators. Without an effective international legal framework, simultaneous insolvency proceedings conducted in different jurisdictions may produce inconsistent judgments, duplicate administrative costs, and unequal treatment of creditors. Consequently, international cooperation has become a fundamental principle of contemporary cross-border insolvency law (Das, 2020)

Recognizing these challenges, the United Nations Commission on International Trade Law (United Nations Commission on International Trade Law.,) adopted the Model Law on Cross-Border Insolvency in 1997 to establish a harmonized procedural framework for handling multinational insolvency cases. The Model Law does not replace domestic insolvency legislation; instead, it promotes cooperation through four principal mechanisms: access, recognition, relief, and cooperation. These mechanisms enable foreign insolvency representatives to apply for recognition before domestic courts, facilitate communication between judicial authorities, and improve coordination of concurrent insolvency proceedings. Since its adoption, the UNCITRAL Model Law has become the most influential international instrument governing cross-border insolvency and has been implemented by more than fifty jurisdictions, reflecting growing international consensus regarding the necessity of coordinated insolvency administration in the global economy.

One of the defining characteristics of cross-border insolvency is the existence of multiple legal relationships that extend beyond a single national jurisdiction. Unlike domestic insolvency proceedings, cross-border insolvency involves debtors whose assets, creditors, contractual obligations, or business operations are located in different countries. This situation creates legal uncertainty because each jurisdiction may apply different insolvency rules regarding asset distribution, creditor priorities, and judicial authority. Consequently, parallel insolvency proceedings may occur simultaneously in several jurisdictions, potentially resulting in inconsistent judgments, duplication of litigation costs, and inefficient administration of the debtor's estate. These challenges demonstrate that cross-border insolvency is not merely an extension of domestic bankruptcy law but rather a specialized area requiring international legal coordination and procedural harmonization (Casey et al., 2024)

The increasing prevalence of multinational corporations (MNCs) has significantly contributed to the growing importance of cross-border insolvency regulation. Modern corporations frequently establish complex corporate structures consisting of parent companies, subsidiaries, branches, and affiliated entities operating in multiple jurisdictions. As a result, corporate insolvency rarely affects only one legal system. Instead, insolvency proceedings often involve numerous courts, insolvency practitioners, financial institutions, and regulatory authorities simultaneously. This complexity requires an effective legal framework capable of protecting creditors while maximizing the value of assets dispersed across national borders. Recent scholarship emphasizes that the globalization of business has transformed insolvency from a purely domestic legal issue into a transnational governance challenge requiring coordinated judicial responses and internationally recognized procedural standards.

The international response to these challenges is reflected in the UNCITRAL Model Law on Cross-Border Insolvency, which has become the leading global framework governing multinational insolvency proceedings. Rather than harmonizing substantive bankruptcy law, the Model Law establishes procedural mechanisms that encourage cooperation among courts, insolvency representatives, and competent authorities from different jurisdictions. The framework is built upon four fundamental principles: access, recognition, relief, and cooperation. Access enables foreign representatives to appear before domestic courts; recognition allows domestic courts to acknowledge foreign insolvency proceedings; relief authorizes courts to grant interim protective measures; and cooperation promotes direct communication and coordination between judicial authorities and insolvency practitioners. Collectively, these principles seek to reduce jurisdictional conflicts while preserving the sovereignty of individual States.

The procedural orientation of the UNCITRAL Model Law reflects the principle of modified universalism, which recognizes the need for a primary insolvency proceeding while permitting limited secondary proceedings where necessary. Recent legal scholarship argues that this approach has substantially improved the efficiency of multinational insolvency administration because it minimizes fragmented litigation and promotes coordinated asset management. Nevertheless, scholars have also identified continuing challenges, particularly regarding the determination of the debtor's Centre of Main Interests (COMI), which remains susceptible to forum manipulation and strategic relocation by financially distressed companies. Casey, Gurrea-Martínez, and Rasmussen (2024) therefore propose refinements to the current COMI framework in order to improve predictability and reduce opportunistic forum shopping while maintaining the cooperative philosophy underlying the Model Law.

Another important objective of cross-border insolvency regulation is the promotion of fairness and legal certainty for international creditors. Without an internationally coordinated mechanism, creditors located in different jurisdictions may receive unequal treatment depending on where assets are situated or where insolvency proceedings are initiated. Such fragmentation undermines the principle of *pari passu* distribution and may encourage individual creditors to pursue separate enforcement actions that diminish the overall value of the insolvency estate. Contemporary legal literature therefore emphasizes that effective cross-border insolvency regulation should prioritize collective proceedings, judicial cooperation, transparency, and equal treatment of domestic and foreign creditors. These objectives have increasingly influenced insolvency reforms undertaken in jurisdictions such as Singapore, the United Kingdom, Australia, and the United States, all of which have incorporated the UNCITRAL Model Law into their domestic legal systems with varying degrees of adaptation.

For Indonesia, the discussion on cross-border insolvency has become increasingly relevant due to the rapid growth of international investment and the expansion of multinational corporations. Nevertheless, Indonesian Bankruptcy Law (Law No. 37 of 2004) still adopts a predominantly territorial approach and does not provide comprehensive provisions governing recognition of foreign insolvency proceedings or judicial cooperation with foreign courts. Consequently, Indonesian courts face practical difficulties when insolvency cases involve foreign assets or creditors. Recent Indonesian legal scholarship consistently recommends adopting the UNCITRAL Model Law, either wholly or selectively, to modernize the national insolvency framework while maintaining compatibility with Indonesia's legal system and judicial institutions.

Recent academic studies also indicate that Indonesia's current legal framework is not yet fully prepared to administer multinational insolvency proceedings effectively. Setiawan and Haryanto (2024) argue that the absence of clear rules regarding foreign judgment recognition and cross-border judicial cooperation creates legal uncertainty for international creditors and investors. Similarly, Andrian and Lie (2024) conclude that Indonesia should gradually harmonize its bankruptcy legislation with internationally accepted principles, particularly through adoption of procedural mechanisms contained in the UNCITRAL Model Law. However, Saputri (2023) emphasizes that such reform should be accompanied by improvements in judicial capacity, creditor protection, and institutional readiness to ensure successful implementation.

Based on the foregoing

discussion, it can be concluded that cross-border insolvency has evolved from a purely domestic bankruptcy issue into an essential component of international commercial law. The existing literature consistently demonstrates that the increasing globalization of commerce and the expansion of multinational enterprises have rendered traditional territorial insolvency regimes insufficient to resolve disputes involving multiple jurisdictions. Recent studies further indicate that effective cross-border insolvency administration depends not only on substantive insolvency rules but also on judicial cooperation, recognition of foreign proceedings, coordination among insolvency representatives, and procedural harmonization through internationally accepted instruments such as the UNCITRAL Model Law (Casey et al., 2023; Setiawan & Haryanto, 2024; UNCITRAL, 2022). These findings suggest that jurisdictions seeking to improve legal certainty and creditor protection should gradually adopt internationally recognized procedural standards while maintaining consistency with their respective domestic legal systems. This synthesis provides the conceptual foundation for the subsequent discussion on jurisdictional conflicts, universalism, territorialism, and the challenges faced by Indonesia in regulating cross-border insolvency.

2.2 Jurisdictional Conflicts in Cross-Border Insolvency Cases

Jurisdiction constitutes one of the most fundamental issues in cross-border insolvency proceedings because insolvency cases frequently involve debtors whose assets, creditors, subsidiaries, or commercial activities are located in multiple jurisdictions (Imanullah et al., 2018). Unlike domestic insolvency cases, where jurisdiction is generally determined by national procedural law, cross-border insolvency requires courts to determine which jurisdiction has the primary authority to administer insolvency proceedings and how foreign proceedings should be recognized. The absence of harmonized jurisdictional rules often results in parallel insolvency proceedings before different courts, thereby creating legal uncertainty, inconsistent judicial decisions, and increased administrative costs (Panji Ahmad Setiawan & Imam Haryanto, 2024).

Jurisdiction in cross-border insolvency refers not only to the authority of a court to hear an insolvency case but also to its competence to exercise control over the debtor's assets and to issue decisions capable of being recognized by foreign jurisdictions. Since each country applies different insolvency legislation and procedural rules, competing jurisdictional claims frequently arise when more than one court considers itself competent to administer the same debtor's estate (Muhammad Dzaky et al., 2023). Such conflicts may significantly reduce the value of the insolvency estate because creditors initiate separate proceedings in different jurisdictions, resulting in duplicated litigation, conflicting judicial orders, and unequal treatment among creditors (Andrian & Lie, 2024b).

One of the most frequently discussed jurisdictional problems in international insolvency law is forum shopping. Forum shopping occurs when debtors or creditors intentionally select a particular jurisdiction because its insolvency laws are perceived to provide greater legal advantages than those of other jurisdictions. For example, a debtor may relocate its registered office or principal place of business shortly before filing for insolvency to obtain more favorable restructuring procedures or creditor protection. Similarly, creditors may seek enforcement of claims in jurisdictions where asset recovery is considered more advantageous. Although forum shopping may sometimes increase procedural efficiency, excessive forum shopping undermines legal certainty, creates unfair competition among jurisdictions, and weakens creditor confidence in cross-border insolvency systems (Indrawan et al., 2025).

The rapid globalization of business activities has further intensified jurisdictional conflicts due to the increasingly complex structure of multinational corporations. Modern corporations commonly operate through parent companies, subsidiaries, representative offices, and affiliated entities located in different countries. Consequently, a single insolvency case may involve assets situated in several jurisdictions while creditors originate from multiple legal systems. Under these circumstances, determining which court should exercise primary jurisdiction becomes particularly difficult because different jurisdictions may simultaneously claim authority based on the debtor's incorporation, principal place of business, asset location, or contractual obligations. Such complexity illustrates why cross-border insolvency requires internationally accepted procedural principles rather than relying solely on traditional territorial jurisdiction (Saputri, 2023).

Recent legal scholarship also demonstrates that jurisdictional conflicts extend beyond procedural matters and directly affect commercial certainty and international investment. Investors generally prefer jurisdictions that provide predictable insolvency procedures and clear mechanisms for recognizing foreign proceedings. Conversely, uncertainty regarding jurisdiction often increases transaction costs and discourages cross-border investment because creditors cannot accurately predict how insolvency proceedings will be administered when financial distress occurs. Consequently, numerous jurisdictions have introduced legislative reforms aimed at strengthening judicial cooperation and reducing jurisdictional disputes through internationally recognized principles such as those contained in the UNCITRAL Model Law on Cross-Border Insolvency. These developments indicate that jurisdictional coordination has become an essential prerequisite for achieving efficiency, fairness, and legal certainty in international insolvency administration.

One of the most significant legal developments in resolving jurisdictional conflicts in cross-border insolvency is the introduction of the Centre of Main Interests (COMI) doctrine. COMI serves as the primary connecting factor for determining which jurisdiction should commence the main insolvency proceedings. Instead of relying solely on the debtor's place of incorporation, the COMI approach examines where the debtor regularly administers its business and where such administration is objectively ascertainable by third parties, particularly creditors. This principle reduces the possibility of competing insolvency proceedings while providing greater predictability for creditors and investors. Nevertheless, determining COMI remains challenging because multinational corporations frequently conduct management, financing, and commercial operations across several jurisdictions, making the location of their principal interests difficult to identify. Consequently, courts often evaluate various factual indicators before determining the appropriate jurisdiction for opening insolvency proceedings (Djaya, I., & Utami, 2021)

Closely related to jurisdiction is the principle of lex fori concursus, which provides that the law governing insolvency proceedings is generally the law of the State in which insolvency proceedings are commenced. Under this principle, matters relating to the appointment of insolvency administrators, distribution of assets, creditor ranking, avoidance actions, and procedural rules are governed by the insolvency law of the forum State. The application of *lex fori concursus* enhances procedural consistency because a single legal system governs the administration of the insolvency estate. However, practical difficulties arise when assets are located abroad or when foreign creditors seek recognition of domestic insolvency decisions. Such circumstances require judicial cooperation to prevent conflicting legal obligations and ensure effective administration of the debtor's estate.

Another crucial issue concerns the recognition of foreign insolvency proceedings. Recognition enables domestic courts to acknowledge insolvency proceedings initiated in another jurisdiction so that foreign insolvency representatives may exercise their authority over assets located within the recognizing State. Without recognition mechanisms, insolvency administrators may be required to commence entirely new proceedings in every jurisdiction where assets exist, resulting in unnecessary delays, increased costs, and inconsistent judicial decisions. Comparative studies indicate that countries adopting procedural mechanisms for recognition have achieved greater efficiency in multinational insolvency administration while reducing the likelihood of parallel proceedings. Conversely, Indonesia continues to face legal uncertainty because its bankruptcy legislation does not comprehensively regulate the recognition of foreign insolvency proceedings (Andrian & Lie, 2024)

Jurisdictional conflicts are also closely associated with the recognition and enforcement of foreign judgments. In many jurisdictions, recognition merely acknowledges the legal validity of a foreign judgment, whereas enforcement authorizes the execution of that judgment within the territory of another State. Indonesia generally adheres to the territorial principle, under which foreign court judgments cannot be automatically enforced unless supported by domestic legislation or an applicable international agreement. This limitation creates practical obstacles in cross-border insolvency because insolvency administrators often encounter difficulties when attempting to recover assets located outside the jurisdiction where bankruptcy proceedings were initiated. Consequently, scholars argue that Indonesia should gradually establish procedural mechanisms allowing recognition of foreign insolvency judgments while maintaining judicial supervision to protect national sovereignty and domestic creditors.

Overall, contemporary legal literature demonstrates that jurisdictional conflicts remain one of the principal challenges in cross-border insolvency law. Although doctrines such as COMI and *lex fori concursus* have contributed to greater consistency in determining the competent jurisdiction, their effectiveness ultimately depends on judicial cooperation and mutual recognition among States. Indonesian scholarship consistently emphasizes that the absence of comprehensive cross-border insolvency regulation continues to hinder legal certainty for debtors, creditors, and insolvency practitioners. Therefore, future legal reform should focus not only on adopting internationally recognized procedural principles but also on strengthening institutional cooperation and developing clear mechanisms for recognizing foreign insolvency proceedings and judgments. These findings provide the theoretical basis for the following discussion on the principles of universalism and territorialism, which represent the two dominant approaches in contemporary cross-border insolvency law.

2.3 Universalism Principle and Territorialism Principle

The increasing number of multinational business transactions has significantly influenced the development of cross-border insolvency law. One of the major legal debates concerns the appropriate principle for administering insolvency proceedings involving debtors whose assets and creditors are located in multiple jurisdictions. Legal scholars generally recognize two competing approaches, namely the universalism principle and the territorialism principle. These principles differ in determining which court should exercise authority over insolvency proceedings and how foreign insolvency judgments should be recognized. Consequently, understanding these principles is essential because they determine the effectiveness of cross-border insolvency administration and the level of legal certainty provided to creditors and debtors (Imanullah et al., 2018)

The universalism principle is based on the idea that a multinational insolvency should be administered through a single insolvency proceeding conducted in one principal jurisdiction. Under this principle, the court opening the main proceeding has authority to administer the debtor's assets regardless of where those assets are located, while courts in other jurisdictions are expected to recognize and cooperate with the main proceeding. Such an approach seeks to avoid fragmented litigation, inconsistent judicial decisions, and unnecessary administrative expenses. Universalism also promotes equality among creditors because all claims are administered under one coordinated insolvency process rather than through multiple competing proceedings in different countries (Dewi, 2021)

From an economic perspective, universalism contributes to greater efficiency by maximizing the value of the bankruptcy estate. Instead of allowing separate liquidation in different jurisdictions, all assets are administered collectively so that restructuring or liquidation can be conducted more effectively. Furthermore, centralized administration reduces transaction costs and provides greater certainty for international investors because creditors are able to predict how insolvency proceedings will be conducted. Amalia (2019) argues that jurisdictions adopting internationally recognized cross-border insolvency mechanisms are generally considered more attractive for international business because they provide greater certainty in debt recovery and asset administration. Similarly, Puspitasari et al. (2021) emphasize that coordinated insolvency proceedings are more capable of protecting creditors than fragmented territorial proceedings.

Despite these advantages, universalism has received considerable criticism. The principal concern is that full universalism requires every jurisdiction to recognize and enforce foreign insolvency proceedings even where domestic legal standards differ significantly. Such recognition may raise concerns regarding state sovereignty, public policy, and protection of domestic creditors. Indonesia, for example, still applies a predominantly territorial approach under Law Number 37 of 2004, which does not expressly regulate recognition of foreign insolvency proceedings. Consequently, Indonesian courts remain cautious in recognizing foreign insolvency decisions because no comprehensive legal framework currently governs cross-border insolvency administration (Panji Ahmad Setiawan & Imam Haryanto, 2024)

Recent studies further demonstrate that universalism should not be understood as an absolute doctrine but rather as a legal principle encouraging greater judicial cooperation in multinational insolvency proceedings. Rather than eliminating national sovereignty, universalism seeks to establish procedural coordination capable of balancing efficient insolvency administration with the legitimate interests of domestic legal systems. This development has subsequently given rise to the concept of modified universalism, which attempts to reconcile international cooperation with national legal autonomy. The emergence of modified universalism therefore represents an important evolution in contemporary cross-border insolvency law and provides the foundation for comparing universalism with the territorialism principle discussed in the following section (Dewi, 2021).

2.4 Indonesian Bankruptcy Law and Cross-Border Insolvency

Indonesia regulates bankruptcy through Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law), which serves as the principal legal framework governing insolvency proceedings, debt restructuring, and the administration of bankrupt assets. The enactment of this law represented a significant improvement following the Asian financial crisis by providing greater legal certainty for creditors and debtors. Nevertheless, despite regulating domestic bankruptcy comprehensively, the legislation does not specifically address insolvency proceedings involving foreign assets, multinational corporations, or creditors located in different jurisdictions. Consequently, Indonesian bankruptcy law remains predominantly domestic in orientation and has not fully accommodated the legal complexities arising from international commercial transactions (Dewi, 2021).

The rapid expansion of cross-border investment has increased the likelihood that Indonesian companies possess assets, subsidiaries, or contractual relationships in foreign jurisdictions. Consequently, insolvency proceedings frequently involve legal issues extending beyond Indonesian territory, including jurisdiction, asset recovery, and recognition of foreign proceedings. However, Law Number 37 of 2004 provides no detailed procedural framework governing cooperation between Indonesian courts and foreign judicial authorities. According to Dewi (2021), this legislative gap creates uncertainty regarding the administration of overseas assets and limits the effectiveness of bankruptcy proceedings involving multinational business entities. Likewise, Imanullah et al. (2018) argue that Indonesia requires greater legal harmonization with ASEAN countries to facilitate more effective cross-border insolvency administration.

Another significant weakness of the Indonesian bankruptcy regime is its limited regulation concerning cross-border insolvency. Unlike Singapore and several other jurisdictions that have adopted the UNCITRAL Model Law, Indonesia has not established legal procedures concerning access for foreign insolvency representatives, judicial cooperation, or recognition of foreign insolvency proceedings. This legislative deficiency creates practical obstacles for curators attempting to administer assets located abroad and for foreign creditors seeking legal remedies before Indonesian courts. Recent studies therefore recommend that Indonesia gradually incorporate internationally accepted procedural principles into its bankruptcy legislation while maintaining consistency with domestic legal principles (Haq, 2023).

Furthermore, Indonesian bankruptcy law continues to reflect the territoriality principle, under which bankruptcy decisions primarily produce legal consequences within Indonesian territory. This principle emphasizes state sovereignty by limiting the legal effect of foreign judicial decisions unless otherwise recognized by domestic law. Although territoriality provides greater protection for national legal interests, it may reduce the effectiveness of multinational insolvency administration because foreign insolvency proceedings cannot automatically affect assets located in Indonesia. Hardjaloka (2015) argues that strict adherence to territoriality is increasingly incompatible with the globalization of commerce, where corporate assets and business operations frequently extend across multiple jurisdictions. Similarly, Asnil (2018) emphasizes that adopting procedural mechanisms inspired by the UNCITRAL Model Law would improve coordination without undermining Indonesia's sovereignty.

Recent Indonesian legal scholarship consistently concludes that the existing bankruptcy framework requires further development to respond effectively to cross-border insolvency cases. Rather than replacing Law Number 37 of 2004 entirely, scholars recommend introducing specific provisions governing international judicial cooperation, recognition of foreign insolvency proceedings, and coordination between Indonesian curators and foreign insolvency representatives. Such reforms are considered necessary to improve legal certainty, strengthen creditor protection, and enhance Indonesia's competitiveness in international commerce while preserving the fundamental principles of the national legal system (Sihotang et al., 2023).

One of the most significant legal issues in Indonesian cross-border insolvency is the recognition and enforcement of foreign bankruptcy judgments. Indonesian law generally adheres to the principle that foreign court judgments cannot be directly enforced within Indonesian territory unless specifically provided for by legislation or international agreements. Consequently, bankruptcy decisions issued by foreign courts do not automatically produce legal effects in Indonesia, even when they concern the same debtor or involve assets located within Indonesian jurisdiction. This legal position creates uncertainty for foreign creditors and insolvency representatives because they must initiate separate legal proceedings before Indonesian courts to protect their rights or recover the debtor's assets. As a result, insolvency proceedings often become lengthy, expensive, and procedurally inefficient (Dewi, 2021; Wijayanta, Adistia, Leonardus, & Hermawan, 2024).

The absence of a comprehensive legal mechanism for recognizing foreign insolvency proceedings also affects the effectiveness of bankruptcy administration conducted by Indonesian curators. Although Article 212 of Law Number 37 of 2004 contains limited provisions concerning assets located outside Indonesia, it does not provide procedural rules regarding recognition of foreign representatives, judicial communication, or cooperation between Indonesian courts and foreign insolvency authorities. Consequently, curators frequently encounter practical obstacles when attempting to administer overseas assets because their authority is generally limited to Indonesian territory. This situation reduces the effectiveness of bankruptcy administration and may ultimately diminish the value of the bankruptcy estate available for distribution to creditors (Dewi, 2021; Andrian & Lie, 2024).

Another important implementation challenge concerns the institutional readiness of Indonesia's legal system. Cross-border insolvency cases require judges, curators, and legal practitioners to possess an understanding of private international law, comparative insolvency law, and mechanisms for judicial cooperation. However, because Indonesia has not yet adopted a comprehensive cross-border insolvency framework, such cases remain relatively uncommon and there are limited procedural guidelines for resolving disputes involving foreign elements. Recent studies therefore emphasize that legal reform should be accompanied by institutional strengthening through judicial training, development of practical guidelines, and increased cooperation with foreign courts in handling multinational insolvency disputes (Yusrizal et al., 2025).

Comparative studies further demonstrate that neighbouring jurisdictions such as Singapore and Malaysia have adopted more progressive approaches to cross-border insolvency through judicial cooperation and the implementation of internationally recognized insolvency standards. These jurisdictions provide clearer procedures for recognizing foreign insolvency proceedings, coordinating insolvency administrators, and executing assets located in different jurisdictions. In contrast, Indonesia continues to rely predominantly on the territoriality principle, requiring separate proceedings whenever foreign elements arise. According to Wijayanta et al. (2024), Indonesia could strengthen its bankruptcy regime by gradually modifying its territorial approach through bilateral or multilateral cooperation while considering the adoption of procedural principles contained in the UNCITRAL Model Law.

Based on the foregoing discussion, it can be observed that Indonesia's bankruptcy regime continues to face significant challenges in responding to multinational insolvency disputes. The lack of clear provisions governing recognition of foreign judgments, judicial cooperation, and cross-border asset administration limits the effectiveness of Law Number 37 of 2004 in addressing contemporary commercial realities. Recent Indonesian legal scholarship consistently recommends gradual legal reform through clearer procedural rules, stronger institutional cooperation, and harmonization with internationally accepted insolvency standards. Such reforms are expected to enhance legal certainty, improve creditor protection, and strengthen Indonesia's position in international commercial transactions while remaining consistent with the fundamental principles of the national legal system (Haq, 2023).

2.5 Proposed Legal Reform

The increasing complexity of cross-border commercial transactions demonstrates that Indonesia's existing bankruptcy framework requires substantial legal reform to respond effectively to multinational insolvency cases. As discussed in the previous sections, Law Number 37 of 2004 primarily regulates domestic insolvency proceedings and provides only limited guidance for cases involving foreign creditors, overseas assets, or multinational corporate groups. Consequently, the absence of clear procedural rules has created legal uncertainty regarding jurisdiction, recognition of foreign insolvency proceedings, and international judicial cooperation. Recent Indonesian legal scholarship therefore emphasizes that bankruptcy law reform should focus not only on improving domestic insolvency procedures but also on establishing an internationally compatible legal framework capable of addressing cross-border insolvency disputes (Wijayanta et al., 2024; Dewi, 2021).

One of the most frequently proposed reforms is the amendment of Law Number 37 of 2004 by introducing specific provisions governing cross-border insolvency. Such amendments should provide legal certainty regarding the jurisdiction of Indonesian courts, access for foreign insolvency representatives, recognition of foreign insolvency proceedings, and cooperation between domestic courts and foreign judicial authorities. Rather than replacing the existing bankruptcy regime, these amendments should complement the current legislation by filling regulatory gaps that have become increasingly evident due to the globalization of commercial activities. According to Haq (2023), incorporating specific cross-border insolvency provisions would significantly improve Indonesia's ability to resolve multinational insolvency disputes while maintaining consistency with the national legal system.

Another important reform concerns the gradual adoption of internationally recognized procedural standards contained in the UNCITRAL Model Law on Cross-Border Insolvency. Although the Model Law is not legally binding, it has been widely recognized as an international benchmark for facilitating judicial cooperation and recognition of foreign insolvency proceedings. Indonesian scholars generally argue that adopting the Model Law does not require abandoning national sovereignty because each State retains discretion regarding the manner and extent of its implementation. Instead, selective adoption would enable Indonesia to strengthen legal certainty while adapting international principles to domestic constitutional and procedural requirements (Asnil, 2018; Amalia, 2019).

Legal reform should also prioritize the establishment of a comprehensive framework for judicial cooperation in multinational insolvency proceedings. At present, Indonesian judges possess limited procedural guidance regarding communication with foreign courts or coordination with foreign insolvency representatives. Consequently, disputes involving overseas assets frequently require separate proceedings in multiple jurisdictions, increasing litigation costs and delaying the distribution of bankruptcy assets. Dewi (2021) argues that clearer procedural mechanisms for judicial cooperation would improve the efficiency of bankruptcy administration and reduce conflicts arising from overlapping jurisdictional claims. Likewise, comparative studies by Wijayanta et al. (2024) demonstrate that judicial cooperation has become one of the key factors contributing to the effectiveness of cross-border insolvency administration in Singapore and Malaysia.

The foregoing discussion indicates that legal reform should not merely consist of statutory amendments but should also establish procedural mechanisms capable of supporting international judicial cooperation and enhancing legal certainty in multinational insolvency proceedings. Such reforms would provide a stronger legal foundation for Indonesia to participate more effectively in international commercial activities while protecting the interests of both domestic and foreign creditors. These considerations also provide the basis for discussing the role of the Centre of Main Interests (COMI) and the modified universalism principle as complementary reforms within Indonesia's future cross-border insolvency framework.

In addition to legislative amendments, Indonesia should consider introducing the concept of the Centre of Main Interests (COMI) as the principal connecting factor for determining jurisdiction in cross-border insolvency proceedings. COMI has been widely recognized in international insolvency practice because it enables courts to identify the jurisdiction most closely connected with the debtor's principal business activities rather than relying solely on the place of incorporation. The incorporation of COMI into Indonesian bankruptcy legislation would provide greater legal certainty for creditors, reduce jurisdictional conflicts, and minimize opportunities for forum shopping. According to Wijayanta et al. (2024), adopting internationally accepted jurisdictional standards would also facilitate Indonesia's integration into regional and global commercial systems while maintaining the authority of domestic courts over insolvency proceedings involving Indonesian debtors.

Indonesia should also adopt a modified universalism approach rather than implementing either strict universalism or strict territorialism. Modified universalism recognizes the importance of a principal insolvency proceeding while preserving the right of domestic courts to protect national public policy and the interests of local creditors. This approach is considered more compatible with Indonesia's legal system because it balances international judicial cooperation with the constitutional principle of state sovereignty. As explained by Asnil (2018), modified universalism enables countries to cooperate in multinational insolvency cases without relinquishing full control over domestic legal processes. Consequently, selective adaptation of this principle would represent a practical solution for Indonesia's future insolvency reform.

Legal reform should likewise be

accompanied by institutional development. Clear statutory provisions alone will not ensure effective implementation unless judges, commercial court officials, curators, and legal practitioners possess sufficient knowledge of cross-border insolvency procedures. Therefore, continuous professional training, specialized judicial guidelines, and enhanced cooperation with foreign courts should form an integral part of Indonesia's insolvency reform agenda. Dewi (2021) emphasizes that institutional capacity is a decisive factor in implementing cross-border insolvency mechanisms because effective judicial cooperation depends not only on legislation but also on the competence of legal institutions responsible for administering multinational insolvency proceedings.

Furthermore, Indonesia may strengthen international cooperation through bilateral and regional arrangements before adopting broader multilateral mechanisms. Cooperation within the ASEAN region could serve as an initial stage for harmonizing insolvency procedures, particularly regarding information exchange, recognition of insolvency representatives, and coordination between commercial courts. Such gradual harmonization would enable Indonesia to evaluate the effectiveness of cross-border insolvency mechanisms while minimizing potential legal and institutional challenges. Comparative experiences from Singapore and Malaysia demonstrate that gradual legal reform supported by institutional readiness is more sustainable than immediate and comprehensive legislative change (Imanullah et al., 2018; Dewi, 2021).

Overall, the proposed legal reform should not be viewed solely as an effort to modernize Law Number 37 of 2004, but rather as a strategic initiative to enhance Indonesia's participation in the global economy. The literature consistently indicates that an effective cross-border insolvency framework requires three interrelated components: comprehensive legislation, effective judicial cooperation, and institutional capacity. Accordingly, Indonesia should gradually reform its bankruptcy regime by incorporating internationally accepted procedural principles—such as COMI, judicial cooperation, and modified universalism—while adapting those principles to the country's constitutional framework and legal traditions. Such an approach would improve legal certainty, strengthen creditor protection, facilitate cross-border investment, and ensure that Indonesia's insolvency system remains responsive to the demands of international commercial practice (Haq, 2023; Wijayanta et al., 2024).

3. Conclusion

The increasing globalization of commercial activities has transformed cross-border insolvency into one of the most significant challenges in contemporary international insolvency law. The expansion of multinational corporations, international financing, and cross-border investment has rendered traditional domestic bankruptcy regimes insufficient to resolve insolvency cases involving assets, creditors, and legal relationships across multiple jurisdictions. Consequently, international legal principles such as judicial cooperation, recognition of foreign insolvency proceedings, and coordinated asset administration have become essential components of an effective cross-border insolvency framework.

This study demonstrates that the principles of universalism and territorialism represent two contrasting approaches to resolving cross-border insolvency disputes. While universalism seeks to centralize insolvency proceedings under a single primary jurisdiction to promote efficiency and equal treatment of creditors, territorialism emphasizes state sovereignty by limiting the legal effects of insolvency proceedings to the jurisdiction in which they are commenced. In practice, many jurisdictions have adopted modified universalism, which balances international cooperation with the protection of domestic legal interests. This approach has proven to be more adaptable to the realities of modern international commerce while respecting national sovereignty.

Furthermore, the analysis indicates that Indonesia's current bankruptcy regime, particularly Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, remains predominantly domestic in orientation and has not comprehensively regulated cross-border insolvency. The absence of provisions concerning judicial cooperation, recognition of foreign insolvency proceedings, recognition of foreign judgments, and internationally accepted jurisdictional standards continues to create legal uncertainty for debtors, creditors, and insolvency practitioners. These limitations reduce the effectiveness of bankruptcy administration when insolvency cases involve foreign assets or multinational corporate structures.

Accordingly, this study concludes that Indonesia should undertake gradual legal reform to strengthen its cross-border insolvency framework. Such reform should include amendments to Law Number 37 of 2004 by introducing specific provisions on cross-border insolvency, adopting procedural principles reflected in the UNCITRAL Model Law on Cross-Border Insolvency, establishing a clearer framework for judicial cooperation, recognizing the Centre of Main Interests (COMI) as a jurisdictional connecting factor, and implementing a modified universalism approach that remains consistent with Indonesia's constitutional principles and legal system. These reforms would enhance legal certainty, improve creditor protection, increase investor confidence, and enable Indonesia to respond more effectively to the growing complexity of international commercial transactions without compromising national sovereignty.

Ultimately, developing a comprehensive cross-border insolvency regime is not merely a legislative necessity but also a strategic legal policy to strengthen Indonesia's position in the global economy. By harmonizing domestic bankruptcy law with internationally recognized procedural standards while preserving national legal values, Indonesia will be better equipped to administer multinational insolvency proceedings fairly, efficiently, and transparently in the future.

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