ANALYSIS OF BANKRUPTCY LAW REFORM IN SEVERAL ASEAN COUNTRIES

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Abstract: *Bankruptcy law has an important role in maintaining economic stability and providing protection for the rights of creditors and debtors. Along with global economic changes and digitalization, countries in the ASEAN region, such as Singapore, Malaysia, and Thailand, Vietnam and the Philippines have made significant reforms to their bankruptcy legal systems. This article aims to analyze the trends of bankruptcy law reform in these countries and identify lessons that can be adopted by Indonesia. Through a normative-comparative approach, it was found that reforms in ASEAN emphasize the unification of insolvency rules, the strengthening of debt restructuring mechanisms, and the acceleration of the resolution of bankruptcy cases through legal innovation. On the other hand, Indonesia's bankruptcy legal system still faces various challenges, such as convoluted procedures, abuse of PKPU and the lack of protection for small creditors such as MSMEs. This article recommends the importance of updating legislation in Indonesia with an emphasis on codification of the law, more balanced protections and simplification of the litigation process to realize a bankruptcy legal system that is more adaptive and responsive to the times.*

Keywords: *Reform; Law; Bankruptcy; ASEAN*

Introduction

Bankruptcy law is an important part of the economic law system that functions as an instrument to resolve the problem of the debtor's inability to fulfill his debt obligations to creditors. In the context of sustainable economic development, bankruptcy law is not only seen as a liquidation mechanism, but also as a means of restructuring that is able to save business entities from total destruction, maintain financial system stability, and provide legal certainty and protection for all parties involved. Along with the dynamics of globalization and the development of the digital economy, various countries in the ASEAN region have carried out reforms to their bankruptcy legal systems. Countries such as Singapore, Malaysia, Thailand, Vietnam and the Philippines are taking a progressive step by introducing more modern, adaptive and pro-business models of bankruptcy law. These reforms include the unification of bankruptcy regulations in a single legal instrument, simplification of procedures, increasing the effectiveness of debt restructuring mechanisms, and strengthening protections for creditors and debtors.

In Indonesia, it still uses the system regulated in Law Number 37 of 2004 which is considered irrelevant in the context of modern business (Usman, 2014; Hafni, 2021).bankruptcy legal system still faces various serious challenges. Some of them are long and complicated procedures, lack of effectiveness in saving companies that still have the potential to rise, and the practice of abusing the Debt Payment Obligation Suspension (PKPU) mechanism for purposes that are not in accordance with the bankruptcy principle itself. This situation raises an urgent need to carry out legal reforms, especially from ASEAN countries that have already carried out systematic reforms. This article aims to examine the reform of bankruptcy law in ASEAN countries and evaluate aspects that can be used as a reference for Indonesia in updating its bankruptcy legal system. Through a comparative approach, this article is expected to be able to

make an academic and practical contribution in formulating a more responsive, efficient, and equitable bankruptcy law reform direction.

Literature Review

Theory of Bankruptcy Law

Bankruptcy law is classically built on the basis of two main approaches, namely the *balance sheet test* and *the cash flow test. The balance sheet test* assesses bankruptcy based on the total liabilities that exceed the debtor's assets, while the cash flow test assesses the debtor's inability to pay its debts that have matured and can be collected. In its development, this approach has developed into a part of the modern economic legal system that must consider justice, efficiency, and *utility-based justice* for all parties. According to Finch and Milman (2017), bankruptcy law should not only emphasize the liquidation of debtors' assets, but also provide room for restructuring to save viable businesses. This is in line with Warren's (1987) view that emphasizes the importance of *the fresh start* principle in the bankruptcy system, which allows debtors to get a second chance without being burdened by past failures.

Bankruptcy Law Reform in ASEAN

The study by UNCITRAL 2005 emphasized the importance of transparent and efficient procedures. In the ASEAN region, legal reforms in Singapore, Malaysia, and Thailand are pointing in a positive direction (Toh, 2022; Rizal & Lee, 2023). Several international studies also emphasize the importance of debtor rehabilitation in the reform of the bankruptcy system (Omar & Yusof, 2020; World Bank, 2020) ASEAN countries have demonstrated a commitment to bankruptcy law reform as part of efforts to create a healthy investment climate and an efficient debt settlement system. Singapore, for example, has adopted the *Insolvency, Restructuring and Dissolution Act (IRDA) 2018* which brings together various regulations related to bankruptcy and restructuring in one unified law. IRDA emphasizes restructuring efforts as the main way forward before liquidation, as well as introducing a *pre-pack scheme* mechanism to speed up settlement. Malaysia introduced the *Insolvency Act 2017* as a form of modernization of the *Bankruptcy Act 1967*. The new law provides better protections to personal debtors, including an increase in the debt threshold and the automatic elimination of bankruptcy status under certain conditions. Thailand is reforming through amendments to *the Bankruptcy Act B.E. 2483 (1940)* that strengthen the process of corporate rehabilitation and allow for debt restructuring under court supervision. Thailand has a bankruptcy legal system set out in *the Bankruptcy Act B.E. 2483* (1940) which has undergone several amendments to conform to international practice. Major reforms were carried out in 1998 in response to the Asian financial crisis, with the introduction of *the Business Reorganization Process*. This process provides a legal mechanism for companies facing financial difficulties to restructure under court supervision. And in Indonesia, there is also still a lack of understanding that bankruptcy law can be an instrument of salvation through debt restructuring or PKPU (Nadirah Ida.2021)

Indonesian Bankruptcy System

Indonesia's bankruptcy legal system is still regulated by Law Number 37 of 2004 concerning Bankruptcy and PKPU. Although this law has replaced the previous legal product *(Faillissementsverordening*), it has not been able to accommodate the dynamics of the modern economy. Some of the problems that often arise include: Convoluted procedures and long turnaround times. The potential for abuse of PKPU to postpone obligations without the intention of restructuring. Lack of legal protections for small creditors and bona fide debtors. Lack of legal innovation to deal with the bankruptcy of digital companies/startups. A study conducted by the

World Bank (2020) in the *Doing Business Report* shows that Indonesia still has a lower rating of bankruptcy settlement effectiveness compared to Singapore and Malaysia, both in terms of settlement time, cost, and *recovery rate*.

Method

This research is a normative legal research that aims to examine and analyze bankruptcy law reform in ASEAN countries, as well as formulate lessons that can be adopted for the reform of the bankruptcy law system in Indonesia (Eka Nam and Chintya 2022). This research uses a statute approach**,** a comparative law approach**,** and a conceptual approach**.** Primary Legal Materials, including applicable laws and regulations in ASEAN countries that are the object of study, such as: *Insolvency, Restructuring and Dissolution Act* (Singapore);*Insolvency Act 2017* (Malaysia);*Bankruptcy Act B.E. 2483 (1940)* and its amendments (Thailand); Law Number 37 of 2004 concerning Bankruptcy and PKPU (Indonesia). The source of data is through secondary data which is then used as legal material to explain legal events or legal products in detail to facilitate legal interpretation (Zainuddin & Ramadhani, 2021). Secondary Legal Materials, including: Scientific literature (books, journal articles, dissertations) related to bankruptcy law and its reforms; Institutional reports (World Bank Doing Business Report, UNCITRAL Guidelines, OECD Insolvency Framework). Tertiary Legal Materials, such as legal dictionaries, legal encyclopedias, and other supporting documents.

Techniques for Collecting and Analyzing Legal Materials

The collection of legal materials is carried out by library research, through access to national and international legal databases, scientific journals, and official websites of government and international institutions.

Data analysis was carried out in a descriptive-comparative manner by comparing the substance, structure, and legal principles of bankruptcy in ASEAN countries that were the object of the study. The author then conducts a critical analysis of the relevance and potential adoption of these principles into the Indonesian legal system, especially from the aspects of efficiency, justice, and legal usefulness.

Result and Discussion

Principles and Directions of Bankruptcy Law Reform in ASEAN Countries

ASEAN countries that have carried out bankruptcy law reforms generally have similar directions and principles, namely: Improving the efficiency of the bankruptcy system through simplifying procedures and cutting processing times. Encourage early restructuring so that companies that are still viable are not immediately dissolved.Unifying the bankruptcy legal system in one comprehensive legislative framework. Provide balanced protection between creditors' rights and the debtor's business continuity. Adopt international best practices, such as *the UNCITRAL Legislative Guide on Insolvency Law* and the principles of cross-border insolvency.

Singapore, for example, through IRDA 2018 has successfully introduced various modern mechanisms, such as pre-pack schemes and judicial management (Toh, 2022). creating a bankruptcy legal regime that is flexible, inclusive, and adaptive to the business world. IRDA allows for a *pre-packaged scheme* to be negotiated in secret and enforced by the courts to prevent destructive liquidation. The bankruptcy system in Singapore underwent a significant update through the passage *of the Insolvency, Restructuring and Dissolution Act* (IRDA) in 2018. IRDA consolidates various legal provisions related to individual and corporate bankruptcy in one integrated legal framework. One of the main innovations of IRDA is the adoption of

restructuring schemes based on the United States model, such as *the pre-packaged scheme of arrangement* and *judicial management*, which provides flexibility and efficiency in the corporate restructuring process. Singapore also introduced the principle *of rescue culture*, which is a legal culture that prioritizes saving businesses rather than liquidation. IRDA gives the court a significant role to grant an automatic moratorium to debtors who submit restructuring proposals, thus giving time for negotiations without pressure from creditors. This makes Singapore one of the jurisdictions with the most modern and creditor-friendly bankruptcy system in the Asian region.

In Malaysia, the abolition of the term "bankrupt" and the strengthening of *the Director General of Insolvency* are considered to be able to reduce social stigma and facilitate economic reintegration (Rashid & Lim, 2021; Lee, 2020) Malaysia also integrates aspects of debtor rehabilitation and the elimination of administrative burdens in the Insolvency Act 2017. Meanwhile, Thailand has successfully introduced corporate rehabilitation procedures based on court supervision, including a voting mechanism by creditors against the restructuring plan. The Bankruptcy System in Malaysia Malaysia underwent major reforms to its bankruptcy legal system through the enactment of *the Insolvency Act 2017* which replaced the Bankruptcy Act 1967. This law aims to simplify bankruptcy procedures and increase rehabilitation opportunities for debtors. One of the important innovations in this new law is the removal of the term "bankrupt" to reduce stigma, and the introduction of a *Voluntary Arrangement* mechanism that allows for the peaceful settlement of debts without going through the court process. Malaysia also introduced *the Automatic Discharge Mechanism*, which allows debtors to obtain discharge from bankruptcy status after a certain period, subject to compliance with the set requirements. By prioritizing the principle of rescue and recovery, Malaysia's bankruptcy system is now more focused on restructuring than simply liquidation. In addition, Malaysia has also established the *Director General of Insolvency (DGI)* as the sole authority to handle the entire bankruptcy process, in order to improve the efficiency and consistency of law enforcement.

The active role of the courts in the rehabilitation process is a hallmark of the Thai system (Nguyen, 2019). Thailand also adopts the practice *of court-supervised restructuring*, similar to the system in Japan (Tanaka, 2018). Thailand has a bankruptcy legal system set out in *the Bankruptcy Act B.E. 2483* (1940) which has undergone several amendments to conform to international practice. Major reforms were carried out in 1998 in response to the Asian financial crisis, with the introduction of *the Business Reorganization Process*. This process provides a legal mechanism for companies facing financial difficulties to restructure under court supervision.

Thailand emphasized the importance of the court's role in the reorganization process, appointing *the Official Receiver* as the official who manages the assets and the negotiation process between debtors and creditors. The debtor or creditor may apply for reorganization if there is an indication of inability to pay the debt. Once the proposal is accepted by the court, it will be granted a moratorium on all legal actions from creditors, leaving room for the company to carry out financial and operational restructuring.

One of the advantages of Thailand's system is its openness to foreign debtors and flexibility in drafting reorganization plans, which makes it one of the most comprehensive systems in ASEAN in terms of business recovery. However, challenges remain, including the length of the process time and the capacity of implementing agencies.

Vietnam implements *Law on Bankruptcy No. 51/2014/QH13* but still faces challenges in effective implementation (Pham, 2020). replacing the previous regulation. This law introduces a more modern and restructuring-oriented approach rather than simply liquidation. The debtor or creditor can file for bankruptcy, and the court will appoint *an Asset Management Officer* or *Asset*

Management and Liquidation Enterprise to handle the process. Vietnam emphasized the importance of drafting *a Recovery Plan* that can be negotiated between debtors and creditors. If approved by the majority of creditors and approved by the court, then the plan becomes binding. This process is expected to be able to maintain the debtor's business continuity and maximize payments to creditors. Although these reforms have shown progress, challenges remain, such as complex bureaucracy, limited court resources, and a lack of practical experience in implementing large-scale business restructuring.

In the Philippines, *the Financial Rehabilitation and Insolvency Act* (FRIA) of 2010 has provided a strong legal basis for restructuring (Santos, 2021; Bello, 2022).Major reforms were carried out through *the Financial Rehabilitation and Insolvency Act* (FRIA) in 2010. FRIA replaces the old law and adopts modern principles, including corporate *rehabilitation*, *pre-negotiated rehabilitation*, and *out-of-court rehabilitation*.

FRIA provides protection to debtors in the form of an automatic moratorium on creditors' legal actions after the rehabilitation process begins. The debtor is obliged to submit a rehabilitation plan that must obtain the approval of the court and creditors. The system aims to provide a second chance for viable businesses while still protecting the rights of creditors.

The Philippines also adopts the principle *of cross-border insolvency* based on *the UNCITRAL Model Law*, making it one of the ASEAN countries that has a cross-border insolvency legal framework. The challenges still faced are inconsistencies in implementation at the court level and the length of the settlement process.

The following is a **comparison table of the bankruptcy system in ASEAN** (Singapore, Malaysia, Thailand, Vietnam, and the Philippines)

Country	Key Regulations	Key Focus	Restructuring Mechanism	Automatic Moratorium	Cross-Border Insolvency Approach
Singapore	Insolvency, Restructuring and Dissolution Act (IRDA) 2018	Rescue culture and efficiency	Pre-pack scheme, Judicial management	Exist	Adopted (UNCITRAL Model Law 2017)
Malaysia	Insolvency Act 2017	Debtor rehabilitation & process efficiency	Voluntary Arrangement, Automatic Discharge	Exist	Not yet fully adopted
Thailand	Bankruptcy Act (last amendment)	Court supervision, restructuring	Business Reorganization	Exist	Limited to certain principles
Vietnam	Law on Bankruptcy 2014	Restructuring based on Recovery Plan	Recovery Plan	Exist	Not yet fully adopted
Philippines	Financial Rehabilitation and Insolvency Act (FRIA) 2010	Corporate rehabilitation & creditor protection	Court-supervised Rehabilitation, Pre-negotiated Rehabilitation	Exist	Adopted (UNCITRAL Model Law)

- **Automatic Moratorium** means automatic legal protection of debtors from creditors' demands during the restructuring process.
- **Cross-Border Insolvency** refers to international recognition and cooperation in handling cross-border bankruptcy cases, referring to *the UNCITRAL Model Law on Cross-Border Insolvency*.

Indonesian Bankruptcy System

Based on comparisons with these ASEAN countries, Indonesia's bankruptcy legal system shows several structural and substantive weaknesses:

- The dualism of bankruptcy procedures and PKPU in Law No. 37/2004 is often abused. Many debtors use PKPU only to delay payments without the intention of restructuring.
- Lack of protection of small creditors and certain preferences, which leads to inequality in the asset allocation process.
- Inefficiencies of the litigation process: bankruptcy settlements are still convoluted and vulnerable to non-juridical intervention.
- There is no dynamic restructuring framework, such as *pre-pack schemes* or the strengthening of special commercial courts.

A World Bank study (2020) shows that Indonesia ranks low in terms of insolvency settlement, with long settlement times and low recovery rates. This shows the need for a thorough renewal (Putra, 2021). Indonesia is far below Singapore and Malaysia in terms of "bankruptcy resolution", with an average turnaround time of 3 years and a recovery rate below 15%, indicating an investment-in-friendly process.

Relevance and Implications Bankruptcy law reform in ASEAN countries provides a number of important lessons for Indonesia, including: The importance of codification and unification of bankruptcy law and PKPU, so that there is no conflict of interpretation or abuse of procedures. Strengthening the restructuring approach rather than going directly to liquidation, especially for business entities that are still producing. The application of the principles of efficiency and justice through simple, transparent, and judicially accountable procedures. Expansion of the jurisdiction of commercial courts and increased capacity of judges in understanding the modern business context. Adoption of a cross-border insolvency mechanism, in order to deal with the challenges of multinational companies and cross-border assets.

Thus, reforms should be directed at strengthening restructuring mechanisms, as Singapore and Malaysia have done and increasing the capacity of judicial institutions (Wijaya, 2023). Indonesia needs to reformulate its bankruptcy legal system through a comparatively-based, efficiency-based, and protection-based approach to national business structures in order to be able to respond to global and regional challenges.

Conclusion and Suggestions

Bankruptcy law reforms in ASEAN countries such as Singapore, Malaysia, and Thailand, Vietnam and the Philippines show that an effective bankruptcy legal system must be adaptive, efficient, and on the principle of fair restructuring. The five countries succeeded in strengthening their legal frameworks through the unification of legislation, the simplification of procedures, and the strengthening of debtor rehabilitation mechanisms. Indonesia's bankruptcy system regulated in Law No. 37 of 2004 still faces a number of fundamental problems, such as procedural dualism, weak supervision of PKPU abuse, and lack of protection for small creditors and business actors who still have the potential to be rescued. It is important that the reform of

the bankruptcy legal system in Indonesia is based on learning from best practices in the ASEAN region while maintaining the characteristics of national law. By carrying out reforms based on the principles of usefulness and efficiency as in ASEAN countries, Indonesia's bankruptcy legal system is expected to be able to provide legal certainty and encourage healthy and equitable economic growth.

Suggestion

1. Total revision of Law No. 37 of 2004, by uniting the bankruptcy mechanism and PKPU into one integrated legal framework.
2. Encourage a restructuring approach as a priority, including the adoption of schemes such as *pre-packaged plans* and *rescue-oriented mechanisms*.
3. Strengthening the capacity and integrity of the commercial court, so that bankruptcy settlement is more professional, fast, and fair.
4. Adopt the principle of cross-border insolvency to face the challenges of globalization and digitalization of the economy.
5. Involving the participation of stakeholders (business actors, banks, academics, and legal practitioners) in the process of reformulating bankruptcy law.

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