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## IUS CONSTITUENDUM OF CROSS-BORDER INSOLVENCY REGULATION IN ASEAN (ANALYSIS OF THE UNCITRAL MODEL LAW ON CROSS- BORDER INSOLVENCY AND THE EUROPEAN UNION REGULATION ON INSOLVENCY PROCEEDINGS)

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### ABSTRACT

*Currently, ASEAN has an economic integration program that is stated in the ASEAN Economic Community Blueprint. As is well known, the European Union is the only regional organization that has succeeded in creating economic integration in its region supported by a unified law. One of the legal unification that needs to be initiated by ASEAN in supporting its economic integration is cross-border insolvency regulation. Some international legal instruments that can be a reference for the establishment of the ASEAN Cross-border Insolvency Regulation include the UNCITRAL Model Law on Cross-Border Insolvency and EU Regulation 848/2015 on Insolvency Proceedings. However, the comparison between ASEAN and the EU is not equivalent. ASEAN is a regional organization that is intergovernmental in nature, while the EU is a regional organization that is supranational in nature. Therefore, the comparative approach and statute approach are the right approaches in this article's writing. As for the research method used in this article writing is normative research. The objectives of this article are to describe the legal personality of ASEAN and the European Union in relation to the establishment of cross-border insolvency regulation and provide an overview of the substance of the UNCITRAL Model Law on Cross-Border Insolvency and EU Regulation 848/2015 to provide a reference for ASEAN to from cross-border insolvency regulation.*

### KEYWORDS

ASEAN; European Union; Legal Personality; Cross-border Insolvency.



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## INTRODUCTION

Investment flows currently cannot be limited by national boundaries. Current trading patterns have been borderless since technological and digital advances occurred (Borgos et al., 2023). The problem is when that kind of borderless investment and trading gives rise to a dispute, then, legal instruments that are required are the laws that can accommodate the interests of the parties and countries. One of many disputes that can arise from borderless investment and trading is the cross-border insolvency dispute. At this moment, based on international law instruments, we can find the legal reference of cross-border insolvency in the UNCITRAL Model Law on Cross-Border Insolvency (Model Law). Unfortunately, this model law is not widely adopted by countries, including Indonesia.

In Indonesia, insolvency matters are regulated in the Bankruptcy and Suspension of Debt Payment Act No. 37/ 2004. Regarding cross-border insolvency in Act 37/2004, Article 21 states that bankruptcy covers all debtor's assets after the insolvency judgment is pronounced by the court. Moreover, Article 212 states that the creditors that obtained repayment from the debtor's assets located in a foreign country, without any right of precedence, the creditor obliged to return that repayment to the debtor. It means, if interpreted grammatically, a foreign asset of the debtor can be a source of payment of bankruptcy debts to creditors. However, based on Article 199, the procedural law of bankruptcy and suspension of debt payment proceedings refers to civil procedural law.

The civil procedural law in Indonesia is a heritage law from the Dutch colonial, thus, acts like *Herziene Inlandsch Reglement* (HIR), *Reglement op de Rechtsvordering* (RV), and *Algemene Bepalingen* (AB) are still in effect until now. Article 436 RV states that foreign judgment does not have executorial power and is inapplicable in Indonesia (Djaya & Utami, 2021). The matter of that judgment should be recommenced under Indonesian law. Moreover, Article 17 AB states that applicable law and has an effect on immovable objects is the law of the state of that object placed. If we interpret that legal construction with systematic interpretation, an Indonesian receiver can execute domestic bankruptcy judgment in a foreign country, but not vice versa. Foreign receiver can execute their domestic bankruptcy judgment in Indonesia because of the existence of Article 436 RV *juncto* Article 17 AB.

In the ASEAN scope, countries like Singapore, Philippines, and Myanmar already adopted the UNCITRAL Model Law on Cross-Border Insolvency in their bankruptcy act. Currently, guided by the ASEAN Economic Community (AEC) Blueprint, ASEAN is striving for integration in regional economics. However, the diversity of the law system of the members becomes an obstacle to achieving the goal of the AEC Blueprint. Among the 11 members, there are only 3 members (Singapore, Philippines, and Myanmar) that already extend their jurisdiction to apply cross-border insolvency.

ASEAN has its own characteristics that called as ASEAN Way. Under the ASEAN Way, the members adopt the non-interference principle when participating in international relations between members. Non-interference principle is related to

the sovereignty principle that is possessed by each member. The existence of the non-interference principle and sovereignty principle is believed to be an obstacle to achieving the idea of economic integration stated in the AEC Blueprint (Sari & Indrayani, 2022). However, different conditions occurred in the European Union (EU).

In the EU, the factor behind the integration is supranational legal personality. Since the Maastricht Treaty (Treaty on the European Union) was promulgated in 1993, the EU has a supranational personality automatically. Article 2 and Article 3(b) Maastricht Treaty stated that the EU has the task to provide a common commercial policy to promote a harmonious common market and an economic and monetary union. There is no article in the Maastricht Treaty that mentions the non-interference and sovereignty principle, which could be an obstacle for the EU to legislate unified policy in accordance with establishing an integrated market. As long as the action of the EU is subject to the Maastricht Treaty, then that action can be carried out. With a supranational legal personality, the EU has sovereignty and power to create economic integration, which is also supported by unified law. In fact, based on history, discussions regarding the promulgation of insolvency law in the EU have begun since the 1960s and were finally promulgated in 2000, even now it has been replaced with the EU Regulation No. 848/2015 on Insolvency Proceedings (Ghio et al., 2021).

Referring to the progress that has occurred in the EU and several ASEAN member-states regarding cross-border insolvency regulation, ASEAN should take into consideration about cross-border insolvency legislation. However, this recommendation is not as easy as imagined to be realized. Several member-states of ASEAN which still stick to territorial theory in insolvency proceedings should shift to universalism theory. But, adapting to universalism theory purely also not the right solution, because it will harm the state's interest and domestic creditors (Suharsono & Candra, 2013). There is a new theory that can balance universalism and territorialism, namely the modified universalism theory. That modified universalism theory is the core of the UNCITRAL Model Law on Cross-Border Insolvency and EU Regulation No. 848/2015 on Insolvency Proceedings (Sokol, 2021). And because of that, in this article writing, there are 2 main discussions, namely: (1) the comparison between ASEAN and the EU regarding legal personality; and (2) the modified universalism theory in the UNCITRAL Model Law on Cross Border Insolvency and EU Regulation No. 848/2015 on Insolvency Proceedings. Based on these 2 main discussions, there are 2 objectives that will be achieved in this article writing. First, the elaboration between sovereign and non-interference principles adopted by ASEAN and the supranational form of the European Union, it will describe the differences between ASEAN and the European Union as a regional organization to manage their member states. Second, the result from analyzing the UNCITRAL Model Law on Cross-Border Insolvency and EU Regulation No. 848/2015 on Insolvency Proceedings will be referenced for ASEAN to regulate cross-border insolvency regulation.

## RESEARCH METHOD

The methodology of this article writing is juridical-normative research. Juridical research is different with sociological research. In juridical research, there are no phrases of data, qualitative, and quantitative. There is different objective between juridical research and sociological research. Juridical research has objective to prescribe, while sociological research has objective to describe. These differences make juridical research as *sui generis* in types of research method. Because of prescription characteristic of juridical research, the output of this research is legal opinion/recommendation based on elaboration of statute, legal theory, legal principle, so that result in legal arguments regarding the research object (Muhaimin, 2020).

In this article writing, material of research that used is legal material. There are several types of legal material that I will use, namely primary and tertiary (Wignjosoebroto, 2013). For primary material, there is analyzing of ASEAN Charter, EU Charter, UNCITRAL Model Law on Cross-Border Insolvency, and EU 848/2015. And for tertiary, there is analyzing of sovereign and non-interfere principle, universalism theory, territorialism theory, and modified universalism theory.

Moreover, there are several legal approaches that will be use in this article, such as statutory approach and comparative approach (Marzuki, 2017). With comparative approach, I will compare legal personality of ASEAN and EU with comparison between ASEAN Charter and EU Charter. With statutory approach, I will describe and analyze UNCTIRAL Model Law on Cross-Border Insolvency and EU Regulation 848/2015 on Insolvency Proceedings.

## RESULT AND DISCUSSION

### A. The Legal Personality of ASEAN and The European Union

According to Peter Fischer's theory of international organizations, regional organizations are essentially formed with an intergovernmental nature, because there are agreements to form them, similar backgrounds, and have organs/structures (Fischer, 2012). However, this nature can develop into supranational if the organization has authority over its member states, especially in making and enforcing international agreements without requiring consideration from its member states.

Before becoming the European Union, the regional organization in the European region was the European Economic Community (EEC). On January 1, 1958, the EEC was formed with the aim of uniting or integrating all European citizens. Since its inception, the EEC had been plotted by the 6 initiator countries at that time to become a supranational regional organization. In 1963-1964, there were two judgments of the Court of Justice of the European Union that stated that the EEC was different from traditional regional organizations. The EEC member states had permanently ceded significant sovereign powers to the EEC. The affirmation of the EEC as a supranational regional organization was also shown by

the establishment of the European Parliament in June 1970, which since then the EEC has had political and legislative authority (Goebel, 2013).

The European Union, as a regional organization, has a supranational character. ASEAN, as a regional organization, has an intergovernmental character. The difference between the two characters of regional organizations lies in the strength of these organizations in carrying out integration. As in the process of economic integration, the European Union is able to form regulations that are binding and applicable to all its member states. ASEAN, on the other hand, initiates and enforces regulations that are formed based on the coordination and agreement of its member states, so that even if there are regulations formed by ASEAN, they cannot necessarily bind and apply to its member states.

The supranational principle owned by the European Union was born and formed because each member state gave part of its sovereignty to the European Union in order to act as a sovereign international entity. The concept of sovereignty in the European Union does not apply rigidly (absolute), as is the case in ASEAN. The opposite is true in ASEAN, and even sovereignty is one of the characters that is recognized and implemented as known as the ASEAN Way. However, looking at the political tendencies of its member states, it appears that ASEAN now wants to be more flexible and adaptive in carrying out the integration process, especially in economic integration as stated in AEC 2025. This is certainly a new spirit and a new political direction for ASEAN to become a regional organization that has a strong personality status as exemplified by the European Union.

The uniqueness of the supranational nature owned by the European Union is that its member states remain sovereign and independent states but combine their sovereignty. The incorporation of sovereignty referred to here is that member states give up some of their authority in making decisions on common matters/interests to the European Union so that these decisions can be taken democratically at the regional level.

This is not the case in ASEAN. ASEAN was first formed on August 8, 1967, in Bangkok, Thailand, marked by the signing of the ASEAN Declaration (or Bangkok Declaration) by the founders of ASEAN, namely Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei Darussalam joined on January 7, 1984, Vietnam on July 28, 1995, Laos and Myanmar on July 23, 1997, and Cambodia on December 16, 1998, and currently ASEAN consists of 10 (ten) countries. In carrying out its function as an international organization, ASEAN is known for its characteristics known as the ASEAN Way. The principles of the ASEAN Way consist of: sovereign equality, non-recourse to the use of force, non-interference and non-intervention, non-involvement of ASEAN in bilateral conflict, quiet diplomacy, mutual respect, and tolerance (Puspita, 2020).

Based on his theory, sovereignty is the highest and absolute power, and no other instance can control a country. Only the citizens of the country can organize and determine the goals of a country (Fuady, 2013). With the principle of sovereignty adopted by ASEAN, it means that as a regional entity, ASEAN cannot internalize or interfere with its member states. Therefore, the establishment of harmonized and unified law will be a difficult thing to achieve considering that unified law will penetrate the domestic legal systems of ASEAN member states.

Moreover, the establishment of cross-border insolvency regulation in ASEAN, which in essence will cause the occurrence of the process of recognizing insolvency judgments between countries, transferring assets between countries, and other bankruptcy administrative matters.

When compared to the European Union, which has a supranational legal personality, ASEAN will not be comparable to the European Union in terms of the formation and application of regional laws that can apply and bind to all its member states (Sitanggang, 2020). The European Union has sovereignty granted by each of its member states, so it has powers like a country, such as in the formation of regulations. In terms of cross-border insolvency regulations, the European Union has had it since 2000 and has now been replaced by a new regulation, namely EU Regulation No. 848 of 2016. It is different from ASEAN, which only confirmed its legal personality in 2007 through the ASEAN Charter. While the European Union has established its legal personality since the establishment of the EEC in 1958, ASEAN only established its legal personality in 2007. This means that ASEAN is far behind the European Union in all aspects, whether political, economic, legal, and so on.

When it is related to the current AEC Blueprint, ASEAN seems to contradict its adopted principles of sovereignty and non-interference. With the AEC Blueprint, the boundaries of country economic sovereignty should become thinner. This is because the basic idea of the AEC Blueprint is an effort to integrate the economy in ASEAN. To realize economic integration in ASEAN certainly requires legal unification that supports the economic integration process. One of the legal unification that needs to be initiated by ASEAN is cross-border insolvency regulation. Thus, the presence of the AEC Blueprint is a paradox for ASEAN, because on one side ASEAN is a regional organization that upholds the principles of sovereignty and non-interference, while the AEC Blueprint upholds the process of economic integration. However, in addition to this paradoxical phenomenon, of course, the presence of the AEC Blueprint proves that ASEAN is heading towards an integration process like what has happened in the European Union.

## **B. Law Forming of Cross-border Insolvency in ASEAN**

The legal vacuum of CBI is a problem in the ASEAN region due to the absence of uniformity or harmonization of regulations. The idea of establishing cross-border insolvency regulations in ASEAN will have a positive impact on member states of ASEAN to be able to recognize foreign insolvency judgments and facilitate receivers in the process of taking over debtor's assets located abroad, without having to make a new insolvency petition in the country where the assets are located. Currently, legal research on disharmonized and non-unification of laws in ASEAN has been carried out by many legal researchers and the results of these studies boil down to the problem of the existence of sovereign and non-interference principles owned by ASEAN. In this case, ASEAN should look at the European Union as a regional organization that has not only successfully integrated its regional economy, but has also succeeded in uniforming and harmonizing its regional laws (Anggriawan, 2020).

Speaking of international law on cross-border insolvency, other than EU Regulation 848/2015, there is one more reference, namely the UNCITRAL Model Law on Cross-Border Insolvency. UNCITRAL is a body under the United Nations, which was established by the UN General Assembly in 1966. UNCITRAL was formed as an effort to resolve the problem of disparity between the domestic laws of UN member states in international trade. UNCITRAL is mandated by the UN to become a legal body in the international trade sector that can create harmonization and unification of international trade law.

In essence, the legal products created by UNCITRAL consist of two forms, namely legislative text and non-legislative text. Forms of legislative text include: conventions, model laws, and legislative guidelines. While forms of non-legislative text are usually directly applicable by countries in international trade contracts, such as UNCITRAL Arbitration Rules, UNCITRAL Conciliation Rules, UNCITRAL Notes on Organizing Arbitral Proceedings, and so on. Model law is a guideline for country legislators to adopt the substance of the model law into their domestic laws. When a country adopts a model law into its domestic law, then it does not require a signing/authorization from the government, as is usually the case when a country binds itself to a convention.

The UNCITRAL Model Law on Cross-Border Insolvency is the idea of Working Group V of UNCITRAL in cooperation with the International Insolvency Institute (INSOL) and Committee J of the International Bar Association. This idea was established with the aim of providing a universal reference on insolvency law systems for UNCITRAL member states. UNCITRAL member states can apply the model law in flexible ways to their domestic insolvency laws. Therefore, member states have the right to incorporate all/part of the substance of the model law into their domestic laws (Spuling, 2021). However, the flexibility to adopt the model law into the domestic legal system needs to consider uniformity in interpretation and the benefit to other countries that also adopt the model law. In the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency, it is suggested to the countries adopting the model law to limit the distinction/deviation from the text of the model law as minimum as possible. By adopting the model law as identical as possible to the original text, it will increase transparency for other countries in interpreting and proposing cooperation in the cross-border insolvency sector with other countries.

The UNCITRAL Model Law on Cross-Border Insolvency exists to facilitate 2 main conditions, namely: (1) the debtor has assets located in more than one country, and (2) the creditor-debtor is not from the country where the insolvency proceedings take place. The UNCITRAL Model Law on Cross-border Insolvency can apply under 4 conditions, namely:

1. If a foreign court/foreign representation requests assistance to another country regarding cross-border insolvency proceedings;
2. If a domestic court or domestic representative requests assistance to a foreign country regarding cross-border insolvency proceedings;
3. If foreign insolvency proceedings and local insolvency proceedings are conducted simultaneously against the same debtor; and

4. If foreign creditors or other interested parties request the commencement of domestic insolvency proceedings or request to be included in domestic insolvency proceedings.

In the UNCITRAL Model Law on Cross-Border Insolvency, there are 2 proceedings on cross-border insolvency, namely: foreign main proceedings and foreign non-main proceedings. Foreign main proceedings is a foreign proceedings that proceed in the country where the debtor has centre of its main interest (COMI). Whereas, foreign non-main proceedings is a foreign proceedings, outside of foreign main proceedings, that proceed in the country of the debtor's establishment. A foreign proceedings may be recognized as a main proceedings if it is conducted in the country where the debtor is the center of its main interest. Foreign proceedings may be recognized as non-main proceedings if the debtor has an establishment abroad as regulated in Article 2 section f. This COMI approach is also recognized in EU Regulation 848/2015, which will be further discussed below.

Simply put, in the UNCITRAL Model Law on Cross-Border Insolvency there are several legal remedies that can be taken when a cross-border insolvency dispute occurs. First, the foreign representative has the right to file a cross-border insolvency lawsuit within the country. The foreign representation is also entitled to participate in/attend the domestic insolvency proceedings, as conducted under the domestic insolvency law. The foreign representation may also submit a petition to the domestic court for recognition of the insolvency judgment/trial that took place in its country. The petition shall include:

- (a) a certified copy proving the commencement of the foreign proceedings and the appointment of the foreign representation; or
- (b) a certificate from the foreign court recognizing the existence of the foreign proceedings and the appointment of the foreign representation; or
- (c) in the case of the absence of the above documents, any other document may be accepted by the domestic court as long as it can show the existence of the foreign proceedings and the appointment of the foreign representation.

Based on the substance of the UNCITRAL Model Law on Cross-Border Insolvency above, it is clear that the existence of a model law when adopted in a country's law, the administrative affairs of insolvency involving various cross-border agencies are accommodated and certainly have a basis for legal certainty.

Cross-border insolvency regulation in the European Union has undergone two regimes, namely EU Regulation 1346/2000 on Insolvency Proceedings and EU Regulation 848/2015 on Insolvency Proceedings (which is currently in effect). In Europe, discussions regarding the establishment of cross-border insolvency regulation have been conducted since 1963. In that year, a commission was established with the specific task of drafting cross-border insolvency regulations as a follow-up from the Brussels Convention on Jurisdiction and the Enforcement of Judgement in Civil and Commercial Matters. There were several drafts of the insolvency proceedings convention during the period 1963 to 2000. In 1970, the Commission for the Establishment of Cross-Border Insolvency Regulation

produced a draft that adopted a pure universalism approach. The effect of adopting the pure universalism approach was that only one insolvency proceedings could be opened and conducted, which would have a legal effect on the countries involved. In the end, this idea was dropped because European countries at that time had substantial differences in their domestic insolvency laws.

Eventually, in 1990, a draft of the insolvency proceedings convention (Istanbul Convention) emerged. This draft was the forerunner of EU Regulation 1346/2000. This draft adopts a modified universalism approach, which allows for more than one insolvency proceedings. This approach aims to provide more possibilities for coordination between courts and cross-border insolvency practitioners in proceedings. Although this approach was different from the previous drafts, the 1990 draft ultimately failed to be enforced. This was due to a reservation provision (Article 40) which allowed each country not to implement Chapter II (exercise of certain powers of the liquidator) or Chapter III (secondary insolvency) of this draft. The existence of this draft Article 40 will lead to disparity in domestic insolvency laws, which will result in legal uncertainty (IVANOV, 2023).

Long story short, at the end, the 1990 draft underwent several adjustments until it was finally promulgated into EU Regulation 1346/2000, and entered into force after May 31, 2002. EU Regulation 1346/2000 regulates COMI as the determinant of foreign main proceedings. The purpose of regulating COMI is to avoid forum shopping practices, whereby insolvency proceedings will only commence in countries with insolvency laws favorable to the insolvency petitioner. In the end, the applicable insolvency regulation in the European Union is EU Regulation 848/2015, which replaces EU Regulation 1346/2000. The European Union Commission realized the need to reform the insolvency regulation due to several weaknesses of EU Regulation 1346/2000, including inconsistency in the determination of COMI, the handling of group of corporations insolvency, and forum shopping. Setelah konsultasi publik pada bulan Juni 2012 dan sejumlah diskusi lainnya, EU Regulation 848/2015 yang baru disetujui oleh parlemen pada bulan Mei 2015. After a public consultation in June 2012 and a series of other discussions, the new EU Regulation 848/2015 was approved by parliament in May 2015 (Akšamović, 2017).

EU Regulation 848/2015 will only apply to the country conducting the main proceedings (fulfilling the COMI), while the secondary proceedings are applicable to the country's domestic regulations. If a debtor's COMI is located in the territory of a member state, the courts of the other member state have jurisdiction to open insolvency proceedings against the debtor only if the debtor has a company in the territory of the other member state. The effect of such proceedings will be limited to the debtor's assets located in the territory of that other member state.

When a main proceedings has been opened by a court of an EU member state and recognized in another member state, a court in another EU member state that has jurisdiction may commence secondary proceedings in accordance with the provisions set out in EU 2015/848. If the court conducting the main insolvency proceedings decides that the debtor should be insolvent, the insolvency of the debtor may not be re-examined in another country that has jurisdiction to conduct the

secondary proceedings. The effect of the secondary proceedings will be limited to the debtor's assets within the territory of the member state where the secondary proceedings have been opened. In my personal view, the formulation of this article is a wise move by the European Union. This is because it ensures legal certainty for creditors residing in other member states. Imagine if this provision was not formulated, then there would be a legal loophole to make debtors insolvent in various member states, with the aim of creating a time delay, or even creating a judgment to release the debtor from the insolvency snare.

The European Union is a successful example for ASEAN to establish cross-border insolvency regulations that can apply uniformly and harmoniously to all members. However, it should be noted that the concept of COMI regulated in EU 848/2015 often experiences legal uncertainty due to the dualism of court views in determining COMI. In essence, this legal problem has been realized by the European Union Parliament and Commission at any time, considering that this is a classic issue that has not yet found a middle ground. In EU 848/2015, there is an attempt to initiate a petition (secondary proceedings), without the need to initiate the main proceedings first. I underline that given the current state of cross-border insolvency legal vacuum in ASEAN, critique on the legal substance and enforcement of EU 848/2015 is not what ASEAN needs. What is more important for ASEAN at this time is to emulate the adaptive and resolute attitude of the European Union to the legal needs and legal problems it faces. The establishment of regional CBI regulations is not intended to control or exceed the sovereignty of each member state of the regional organization but is intended to protect the interests of creditors in each member state involved in a particular insolvency process.

## CONCLUSION

The existence of ASEAN as a regional organization that accommodates Southeast Asian countries is indeed unique and different from the existence of the European Union. The uniqueness of ASEAN as a regional organization is the existence of the ASEAN Way as an organizational principle. Although many legal studies have concluded that the existence of the ASEAN Way hinders ASEAN integration, but in my opinion, ASEAN can still carry out its activities as a regional organization, as long as there are sovereign and non-interference principles adopted by ASEAN that are not interpreted as a limitation to make uniform laws. This uniqueness of ASEAN also acts as a differentiator from the European Union, which in the UN Charter explicitly provides supranational authority to the European Union. The existence of the AEC Blueprint as a vision of ASEAN economic integration implicitly states that economic integration cannot be carried out without intervening in member states. The intended intervention of ASEAN towards its member states is the establishment of cross-border insolvency regulations that can apply bindingly to all member states.

In the international law sector, references to cross-border insolvency can be found in the UNCITRAL Model Law on Cross-Border Insolvency and EU

Regulation 848/2015 on Insolvency Proceedings. Both the UNCITRAL Model Law on Cross-Border Insolvency and EU Regulation 848/2015 are based on the modified universalism theory. By using modified universalism theory, there is a balance between pure universalism theory and territorial theory. Modified universalism will prevent a single judiciary (universalism) and repeated insolvency petitions (territorialism). The existence of cross-border insolvency regulation will facilitate cross-border courts to interconnect and cooperate in the judicial process. The establishment of cross-border insolvency regulation in ASEAN needs to receive special attention from each member state government, regarding the idea of economic integration stated in the AEC Blueprint. The challenges that need to be faced by ASEAN in establishing a harmonized and unified cross-border insolvency regulation are the dissolution of disparities in the domestic insolvency laws of each member state and the uniforming of the legal politics among member states in viewing the legal needs of cross-border insolvency regulation in ASEAN.

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