

What Could ASEAN Learn about Bankruptcy Law from ASEAN Partner Countries, China and Japan?

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Abstract: By 2021, Japan will have the third-largest economy in the world, behind China, which is currently the world's second-largest economy. China accounts for 17.9% of the global gross domestic product (GDP), while Japan accounts for 5.4 percent. In 2022, the Association of Southeast Asian Nations (ASEAN) and Asia Pacific countries, such as Australia, will establish the RCEP (Regional Comprehensive Economic Partnership), becoming the world's largest free trade area cooperative bloc. On the other hand, it brings within several investment risks. Undertakings succumbing in the financial hardships or financial default will be manifested. Diverse legal systems result in different approaches to resolving defaulted businesses. For businesspeople, this disparity in the legal system creates legal uncertainty. The goal of this study is to describe how the bankruptcy system works in RCEP member countries and what ASEAN nations may do to improve their bankruptcy laws. The normative legal method is used in this study. This method compares the legal systems of the top ASEAN countries and other RCEP members. This analysis concludes that ASEAN bankruptcy legislation can be improved by using current systems from other ASEAN and RCEP nations. When faced with bankruptcy, the consistency of regulations is supposed to give legal certainty for corporate actors. This will also provide investors from other countries with a sense of security.

Keywords: ASEAN; Bankruptcy Law; Regional Cooperation; Cross-border Bankruptcy

1. Introduction

Due to the several occurrences of financial crisis and pandemic crisis in the South East Asian region, the ASEAN Countries have committed to create and initiate the ASEAN Economic Community Blue Print 2025 aiming to create an Enhanced Dispute Settlement Mechanism (EDSM) and other methods for resolving economic disputes in a more rapid manner.¹ Taking into account that business-based disputes are unavoidable, a precise method for solving disputes is of high necessity. Since financial crisis striking Indonesia, Thailand, Malaysia and Singapore during 1997 until 1999, had caused the financial failure of a large number of undertakings. Multinational creditors have been unable to recover debts owed to them. The Association of Southeast Asian Nations (ASEAN), was established on 8 August 1967 in Bangkok, Thailand. The International Monetary Fund

¹ ASEAN Secretariat, ASEAN Economic Community Blueprint 2025, The ASEAN Secretariat, Jakarta, 2018, <https://doi.org/10.1355/9789814414296-012>.

(IMF) have lent a huge amount of money to these ASEAN Countries to assist them in doing structural adjustment measures to escape from the debt trap during the financial crisis. One of the IMF's main instruments of aid for these Countries was the legislation and implementation of a bankruptcy law.

The Special Drawing Right (SDR) is an international reserve asset, created by the IMF in 1969 to supplement its member countries' official reserves. To date, a total of SDR 660.7 billion (equivalent to about US\$943 billion) have been allocated. This includes the largest-ever allocation of about SDR 456 billion approved on August 2, 2021 (effective on August 23, 2021). This most recent allocation was to address the long-term global need for reserves, and help countries cope with the impact of the COVID-19 pandemic.

One of the IMF's aims is for each country to adopt bankruptcy legislation. Law No. 42 of 1999 on Fiduciary Guarantees and Law No. 37 of 2004 on Bankruptcy were passed in Indonesia.² Historically, prior to the enactment of the Law Number 37 year of 2004 on Bankruptcy, provisions regarding bankruptcy and suspension of payments were regulated in the *Staatsblad* 1905:217 *jo.* *Staatsblad* 1906:348 : *Faillissement Verordening* (Undang-undang tentang Kepailitan), which thus amended by the Government Regulation in Lieu of Law Number 1 year of 1998 and subsequently ratified to be the Act Number 4 year of 1998 on Bankruptcy and Suspension of Payments.

Early in 2022, ASEAN and some Asia-Pacific nations formed the Regional Comprehensive Economic Partnership (RCEP). ASEAN, as well as Australia, China, Japan, South Korea, and New Zealand, are all parties to this pact. The RCEP will be the world's largest free trade agreement. RCEP is the first trade agreement among the largest economies in Asia, including China, Indonesia and Japan. The agreement is signed in November 2020.³ The establishment of RCEP is line with Article XXIV General Agreement on Tariffs and Trade (GATT, now is called World Trade Organization - WTO), which allowed countries to grant special treatment to one another counties by establishing a free trade corporation. Based on Article XXV GATT, the joint parties to have objectives of the signed agreement and each part is in equal position.

This study compares the bankruptcy laws of ASEAN member countries to those of other Asian countries. The disparities in rules between countries are discussed in this study. Explicit comparisons are required in comparative law, and most non-comparative foreign law writing may benefit from being made overtly comparative.⁴ The varied systems and backgrounds are investigated in this research.⁵

² Adam J. Levitin, "Bankruptcy's Lorelei: The Dangerous Allure of Financial Institution Bankruptcy," *North Carolina Law Review* 97, no. 2 (2018), <https://doi.org/10.2139/ssrn.3120145>.

³ Huaxia, "World's Largest Free Trade Deal Takes Effect on First Day of 2022," 2022, <http://www.xinhuanet.com/english/20220101/2aaf3d71cb99477a92f2507caa6740cb/c.html>.

⁴ John C Reitz, "How to Do Comparative Law," *The American Journal of Comparative Law* 46, no. 1980 (1998): 617–36.

⁵ Radion Cojocar and Igor Soroceanu, "The Analysis Of The Comparative Law Elements On The Activity Of Mercenaries In The Experience Of The Commonwealth Of Independent States (CIS)," *Fist Iustitia* 1 (2019): 80–87.

Many ASEAN businesses were experiencing cash flow problems as a result of the COVID-19 in 2020-2021.⁶ The number of businesses declaring bankruptcy is continuously rising.⁷ The number debt suspension (PKPU) cases from 2018 to June 2022 in Indonesia is stated in Figure 1. The issue of bankruptcy is a macroeconomic conditions. Bankruptcy has an impact not only on the company and its employees, but also on the whole country and society.⁸ Corporate insolvency can lead to industrial inefficiency. One example is how the bankruptcy of the airline industry can lead to a monopoly on other companies in the airline industry. Monopoly will result in inefficient industry and harm society.

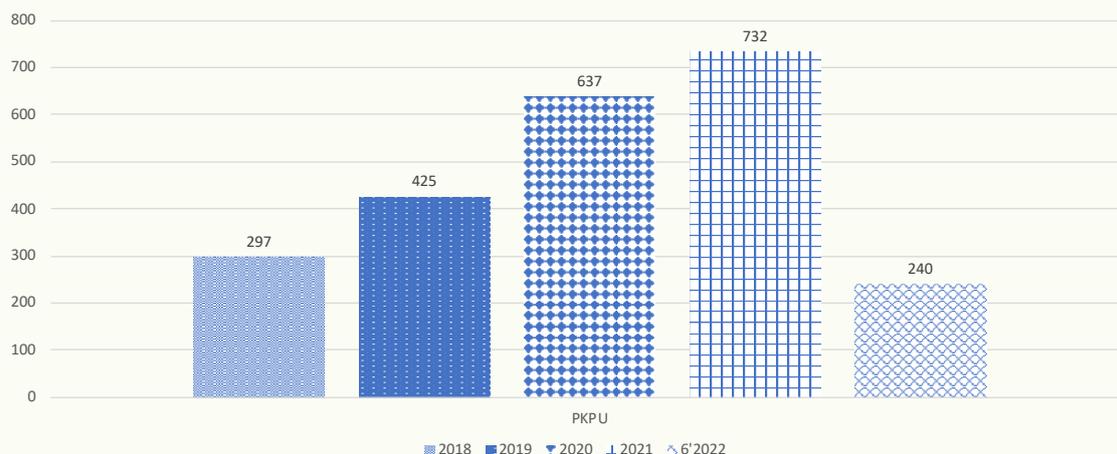


Figure 1 Debt Suspension Case From 2018-June'2022

This study is of highly important for business practitioners who want to understand the Bankruptcy law as well as to what extent this law relates to the regional economic unity particularly in the South East Asian Countries. This study is important for businesspeople who want to understand bankruptcy laws and how they relate to regional economic unity.⁹ Comparative research can also be used to compare how judges make decisions in court. External and internal pressures may have influenced the judge's decision in the case.¹⁰ This study is unique in that it compares bankruptcy laws in ASEAN to those in Asian countries in according to the establishment of RCEP.

⁶ Suwinto Johan, "Potential Systemic Risk Effects Of Credit Relaxation In The Financial Industry As The Effect The COVID-19," *Jurnal Manajemen Bisnis Dan Kewirausahaan* 4, no. 4 (2020): 87–93, <https://doi.org/10.24912/jmbk.v4i4.8661>.

⁷ Suwinto Johan and Ariawan, "Corporate Liability for Creditors' Losses during the Covid-19 Pandemic," *Media Hukum* 28, no. 1 (2021): 15–28, <https://doi.org/10.18196/jmh.v28i1.10566>.

⁸ Jonas Mackevicius, Ruta Sneiderė, and Daiva Tamulevičienė, "The Waves of Enterprises Bankruptcy and The Factors That Determine Them: The Case of Latvia and Lithuania," *Entrepreneurship And Sustainability Issues* 6, no. 1 (2018): 190–210.

⁹ Ishita Das, "The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016," *Vikalpa The Journal of Decision Makers* 45, no. 2 (2020): 104–14, <https://doi.org/10.1177/0256090920946519>.

¹⁰ Lee Epstein, Urška Šadl, and Keren Weinsahl, "The Role of Comparative Law in the Analysis of Judicial Behavior," *American Journal of Comparative Law*, 2020, 1–26.

The most important thing to ask about bankruptcy law is why it is necessary. This is explained by the Creditors' Bargain Theory. There are two possibilities: re-creating a hypothetical ex-ante deal and honoring creditors' non-bankruptcy rights¹¹. This theory teaches that a contract is only binding as far as what is negotiated (bargained) and then agreed upon by the parties. The contract in this study is a contract between a debtor and a creditor. Prior to signing the contract, both parties have negotiated (bargained). Bargaining theory is part of contract law.

The conflict of laws (*Kollisionsrecht*) that causing problem in solving the cross-border bankruptcy or insolvency. Cross-border business actors require a great deal of regulatory harmonization.¹² Harmonization of regulations was carried out by European Union countries in the framework of market unity in 1993. Countries that are members of RCEP also need to harmonize regulations. Harmonization of regulations is to make adjustments to the regulations of each country on a cooperation with minimal differences between members of the cooperation.¹³ This aims to provide certainty for business actors and avoid the emergence of regulatory barriers between countries against business actors. Harmonization of regulations or adjustment of regulations does not replace existing regulations with new regulations.¹⁴ One example of harmonization of regulations is UNCITRAL (United Nations Commission on International Trade Law). Harmonization of regulations can have positive and negative effects on residents of each country. Positive harmonization is the harmonization of regulations that have an impact on the economy of a country and society, otherwise if it is negative.¹⁵ The Bankruptcy Law at the time of its formation in Indonesia was more likely to protect the interests of creditors. This law was enacted at a time when Indonesia was in crisis 1998, where many foreign creditors had difficulty getting their loans back. In certain nations, particularly in the Middle East, bankruptcy laws still contain significant flaws.¹⁶

Involvement of the state as a public authority in bankruptcy is unavoidable. From the Regulatory law theory, the State must not only engage in bankruptcy issues but also engage in variety sectors of economic activities in a state, such as telecommunication, oil and gas, clean water, and public transportation.

¹¹ Anthony J. Casey, "Chapter 11's Renegotiation Framework and The Purpose of Corporate Bankruptcy," *Columbia Law Review* 120, no. 7 (2020): 1709–70, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/clr120&div=44&id=&page=>.

¹² Adrian Walters, "MODIFModified Universalisms & The Role Of Local Legal Culture In The Making Of Cross-Border Insolvency Law," *Am. Bankr. LJ* 93 (2019): 1–85.

¹³ Munsharif Abdul Chalim, "Harmonization Between the National and International Law on the Usage Settings of Natural Resources in the Territory of the Republic of Indonesia," *Jurnal Pembaharuan Hukum* 4, no. 2 (2017): 191, <https://doi.org/10.26532/jph.v4i2.1669>.

¹⁴ Sarah R Wasserman Rajec, "The Harmonization Myth in International Intellectual Property Law," *Ariz. L. Rev.* 62 (2020): 735.

¹⁵ Matthew Ayamga, Bedir Tekinerdogan, and Ayalew Kassahun, "Exploring the Challenges Posed by Regulations for the Use of Drones in Agriculture in the African Context," *Land* 10, no. 2 (2021): 1–13, <https://doi.org/10.3390/land10020164>.

¹⁶ Jason J. Kilborn, "Small Business Bankruptcy Reform in the Arab World: Two Steps Forward, One Step Back," *Arab Law Quarterly* 1 (2020): 1–36, <https://doi.org/10.1163/15730255-BJA10064>.

The creation of a guarantee institution has complimented the government's role. This issue must be revisited.¹⁷ Slovenia, Australia, and Austria, for example, have debtor-unfriendly bankruptcy and restructuring laws. Meanwhile, bankruptcy laws in the United States, Ireland, and Canada are more debtor-friendly.¹⁸ At the time of implementation, bankruptcy rules must consider a variety of issues. A *de lege ferenda* approach to bankruptcy law is required.¹⁹ Furthermore, there is misconception that bankruptcy or debt restructuring is a means of resolving debtors' obligations rather than debt relief.²⁰ Singapore has overhauled its bankruptcy and reorganization laws. Singapore aspires to be a global hub for debt restructuring. Singapore is enacting legislation based on Chapter 11 of the United States Bankruptcy Code.²¹

Singapore Government has adopted the UNCITRAL Model Law for Cross-Border Insolvency 1997 to become the regional hub for bankruptcy settlement. From the official source UNCITRAL Model Law: The Model Law is designed to assist States to equip their insolvency laws with a modern legal framework to more effectively address cross-border insolvency proceedings concerning debtors experiencing severe financial distress or insolvency. It focuses on authorizing and encouraging cooperation and coordination between jurisdictions, rather than attempting the unification of substantive insolvency law, and respects the differences among national procedural laws. For the purposes of the Model Law, a cross-border insolvency is one where the insolvent debtor has assets in more than one State or where some of the creditors of the debtor are not from the State where the insolvency proceeding is taking place.

With regard to the smoothing process of ASEAN economic integration, UNCITRAL Model Law assists the process. Although the number of cross-border insolvency cases has increased significantly since the 1990s, the adoption of national or international legal regimes equipped to address the issues raised by those cases has not kept pace. The lack of such regimes has often resulted in inadequate and uncoordinated approaches to cross-border insolvency that are not only unpredictable and time-consuming in their application, but lack both transparency and the tools necessary to address the disparities and, in some cases, conflicts that may occur between national laws and insolvency regimes. These factors have impeded the protection of the value of the assets of financially troubled businesses and hampered their rescue process.

¹⁷ M Fauzi, "Insolvency within Bankruptcy: The Case in Indonesia," SHS Web of Conferences 54 (2018): 1–5, <https://doi.org/10.1051/shsconf/20185406004>.

¹⁸ Sylwia Morawska et al., "Bankruptcy Law Severity for Debtors: Comparative Analysis Among Selected Countries," *European Research Studies Journal* 23, no. 2 (2020): 659–86, <https://doi.org/10.35808/ersj/1847>.

¹⁹ Jana Kliestikova, Maria Misankova, and Tomas Kliestik, "Bankruptcy in Slovakia: International Comparison of the Creditor's Position," *Oeconomia Copernicana* 8, no. 2 (2017): 221–37, <https://doi.org/10.24136/oc.v8i2.14>.

²⁰ V. Yu Soldatenkov and V. V. Evenko, "Bankruptcy of an Individual in Russia: State and Prospects of Development," *Opcion* 34, no. Special Issue 14 (2018): 1136–56.

²¹ Gerard McCormack and Wai Yee Wan, "Transplanting Chapter 11 of the US Bankruptcy Code into Singapore's Restructuring and Insolvency Laws: Opportunities and Challenges," *Journal of Corporate Law Studies* 19, no. 1 (2019): 69–104, <https://doi.org/10.1080/14735970.2018.1491680>.

To recover the company and give it a fresh start, it is critical to shift from the present idea of bankruptcy to the perception of insolvency processes.²² The risk of business failure is considerably raised during the COVID-19 pandemic, and it is critical to take steps to prevent business failure.²³ Inefficient companies are allowed to close, and resources are allocated to efficient companies.²⁴ Judges, in addition to debtors and creditors, play an important role in the bankruptcy process.²⁵ In addition to the problems, creditors will be hesitant to issue loans due to legal differences. In Poland, bankruptcy settlement takes an average of 853 days.²⁶ Comparison with the PKPU settlement period in Indonesia, which in total is only 335 days and in Singapore it is only 180 days.

The insolvency of a corporation can be foreseen.²⁷ The use of statistical approaches in research also can help anticipate bankruptcy.²⁸ It is possible to utilize machine learning to anticipate bankruptcy.²⁹ The majority of insolvent companies are private companies between the ages of 10 and 15 and public companies between the ages of 25 and 30.³⁰ The bankruptcy of socially owned businesses lasts longer than general corporate bankruptcy.³¹ In the bankruptcy procedure, categorizing creditors into current and privileged creditors is critical.³²

Creditors have a right to participate in bankruptcy proceedings. A simple majority system governs the decision-making process.³³ This demonstrates that creditors and borrowers

²² Alla Bobyleva and Olga Lvova, "The Bankruptcy Law and Its Enforcement in Russia Keywords :," E-Proceeding of the 27th NISPAce Annual Conference 27 (2019).

²³ Tatyana A Skvortsova et al., "The Problem of Bankruptcy of Business Entities as a Consequence of the COVID-19 Pandemic," *International Journal of Economics and Business Administration* VIII, no. 4 (2020): 828–37.

²⁴ Chuyi Wei, "Bailouts and Bankruptcy Law in China : A Confusion of Law and Policy," *Cambridge Journal of China Studies* 12, no. 52 (2017): 50–76.

²⁵ (van Dijck et al., 2020).

²⁶ Piotr Staszkiwicz and Sylwia Morawska, "The Efficiency of Bankruptcy Law: Evidence of Creditor Protection in Poland," *European Journal of Law and Economics* 48, no. 3 (2019): 365–83, <https://doi.org/10.1007/s10657-019-09629-2>.

²⁷ Błażej Prusak, "Review of Research into Enterprise Bankruptcy Prediction in Selected Central and Eastern European Countries," *International Journal of Financial Studies* 6, no. 3 (2018): 1–28, <https://doi.org/10.3390/ijfs6030060>; Irina Anatolievna Kiseleva et al., "Models of Assessing The Probability Bankruptcy of Enterprises," *Journal of Critical Reviews* 7, no. 9 (2020): 1111, <http://creativecommons.org/licenses/by/4.0/>.

²⁸ Marianna Succurro, "Financial Bankruptcy across European Countries," *International Journal of Economics and Finance* 9, no. 7 (2017): 132–46, <https://doi.org/10.5539/ijef.v9n7p132>.

²⁹ Claudiu Clement, "Machine Learning in Bankruptcy Prediction - A Review," *Journal of Public Administration, Finance and Law*, no. 17 (2020): 20.

³⁰ A. Kuzmin, Evgeny, Marina V. Vinogradova, and Andrey S. Novitsky, "Bankruptcy Dynamics of Companies in Russia," *International Transaction Journal of Engineering , Management , & Applied Sciences & Technologies* 11, no. 13 (2020): 1–11, <https://doi.org/10.14456/ITJEMAST.2020.254>.

³¹ Aleksandar S Mojašević and Aleksandar Jovanović, "Reasonable Time And Bankruptcy Of Socially-Owned Enterprises," *Facta Universitatis* 19, no. 1 (2021): 11–25.

³² Serhiy O. Yuldashev and Valentyna P. Kozyreva, "Classification and Protection of the Rights of Creditors in Bankruptcy Cases," *Scientific Works of National Aviation University. Series: Law Journal "Air and Space Law"* 2, no. 51 (2019), <https://doi.org/10.18372/2307-9061.51.13792>.

³³ Mari Schihalejev, "Court Supervision of the Determination of the Votes at the First General Meeting of Creditors in Estonian Bankruptcy Law," *Juridica International* 26, no. 08 (2017): 76, <https://doi.org/10.12697/ji.2017.26.08>.

have an unequal relationship. This is not in accordance with distributive fairness, which places a premium on proportional likeness and balance.³⁴ In European Union countries, bankruptcy proceedings are more creditors-friendly and are eventually altered to a more forgiving path.³⁵ Individual bankruptcy exists in addition to corporate bankruptcy. Individual bankruptcy in the United Kingdom will be erased after 15 years, but there is no write-off in Singapore. Malaysia has an agreement in place, but it has not been finalized.³⁶ Only studies on business bankruptcies in developed economies are currently available. Based on the foregoing context, this study examines the benefits and drawbacks of ASEAN countries' bankruptcy legal systems. The goal of this study is to improve the bankruptcy law systems in ASEAN countries in order to help the ASEAN Economic Community accomplish its goals by 2025.

2. Method

The disparities in bankruptcy laws between ASEAN countries and other Asian countries are discussed in this study. The focus of this study is on the differences in laws between countries, particularly the definition of a debtor, a grouping of creditors, definition of a creditor, the authority of the debtor in filing for bankruptcy, the amount of debt that can be filed for bankruptcy, the definition of debt that can be filed for bankruptcy, the authority to declare a company bankrupt, the number of creditors that can file for bankruptcy, the bankruptcy voting system, and who has the authority to declare a company bankrupt.

The normative legal method is used in this study. The rules and regulations of RECP member countries are compared. The research is normative descriptive in nature.³⁷ Primary research materials, secondary research materials, and other legal normative research materials are included. The primary materials relevant to each country's rules are the focus of this study. Secondary research materials include research materials, scientific articles, and other items pertaining to bankruptcy regulations. Other materials that explore bankruptcy regulations are referred to as tertiary research materials.³⁸ Comparative law is a comparison of the legal systems that apply in each country. Comparative law is better known as part of international law. Comparative law aims to find similarities and differences in the laws that apply in each country.³⁹

³⁴ Agus Nurudin, "Bankruptcy and Postponement of Debt Payments for Large Companies," *International Journal of Economics and Business Administration* 8, no. 2 (2020): 388–95, <https://doi.org/10.35808/ijeba/469>.

³⁵ György Walter and Jens Valdemar Krenchel, "The Leniency of Personal Bankruptcy Regulations in the EU Countries," *Risks* 9, no. 162 (2021): 1–20, <https://doi.org/10.3390/risks9090162>.

³⁶ Ruzita Azmi, Adilah Abd Razak, and Siti Nur Samawati Ahmad, *Discharge in Bankruptcy: A Comparative Analysis of Law and Practice between Malaysia, Singapore and the United Kingdom (UK) – What Can We Learn?*, *Commonwealth Law Bulletin*, vol. 43 (Routledge, 2017), <https://doi.org/10.1080/03050718.2017.1413989>.

³⁷ Suwinto Johan, "Knowing Company Secrets Through Employee Posts on Social Media," *Diponegoro Law Review* 6, no. 2 (2021): 203–16, <https://doi.org/10.14710/dilrev.6.2.2021.203-216>.

³⁸ Suwinto Johan and Ariawan, "Consumer Protection in Financial Services," *Legality : Jurnal Ilmiah Hukum* 29, no. 2 (2021): 173–83.

³⁹ Ratno Lukito, *Perbandingan Hukum : Perdebatan Teori Dan Metode* (Yogyakarta: Gajar Mada University Press, 2019).

3. Bankruptcy Law Comparison between ASEAN, China and Japan

The major focus of this study is a comparison of bankruptcy rules in ASEAN, China and Japan. Behind China, which is currently the world's second-largest economy, Japan will have the third-largest economy by 2021. In comparison to Japan, which makes up 5.4 percent of the world GDP, China accounts for 17.9 percent of it. This study focuses on legal similarities among Asian countries rather than comparing the United States or the European Union.

3.1. Indonesia

In 1998, a large number of Indonesian businesses filed for bankruptcy. The company's debt soared by nearly tenfold. The Jakarta Initiative (JI) was developed by the Indonesian government to assist businesses in negotiating with creditors. These conversations, however, did not proceed as planned. Default happens to a lot of businesses. The Bankruptcy Law No. 37 of 2004 was issued by the Indonesian government in 2004. The Indonesian Bankruptcy Law has been amended several times. Finally, bankruptcy judgements will be appealable to the Supreme Court in 2021. Previously, the commercial court's bankruptcy ruling was final. Furthermore, creditors with collateral will not be able to file for bankruptcy in 2020. However, this will be changed so that creditors with collateral can file in the same year.

The definition of a debtor is not defined in Bankruptcy Law No. 37 of 2004. Individuals or business entities can be debtors. It is not explained in any way. While creditors have a distinct definition, they are divided into two categories: secured and unsecured creditors. The secured is referred to as separate in this bankruptcy law, whereas the unsecured is referred to as concurrent. According to the Civil Code, there are creditors who are referred to as preferred creditors. Preferred creditors are those that are given first priority. Debtors or creditors may petition the commercial court for debt restructuring. Debtors and creditors both have the option of proposing debt restructuring.

There is no minimum amount for a debt restructuring application, but it must include two creditors. One of the creditors' debts must be past due and recoverable. It takes 335 days from filing for reorganization to reaching an agreement or declaring bankruptcy. Meanwhile, the court must decide on the bankruptcy process. Judges have the power to select administrators or curators, who are then overseen by the court. Following the bankruptcy filing, the bankrupt company will be managed by the bankruptcy administrator or curator.

3.2. Vietnam

A debtor is defined clearly in Bankruptcy Law No. 51 of 2014. The debtor is a Vietnamese firm based in the country. Companies that are not based in Vietnam are not eligible to petition for bankruptcy. The Bankruptcy Law of Vietnam divides creditors into three categories: Secured, unsecured, and partly unsecured creditors which are divided into three categories. A creditor is defined as a debtor who has not been paid for 30 months and does not have a guarantee or partial guarantee. Shareholders own 20% of the company and have held their shares for at least six months. Debtors and shareholders can submit restructuring plans. When a creditor files for bankruptcy, the minimum

amount of debt is not determined. The creditor's loan, on the other hand, was due to maturity in three months. A special bankruptcy court makes decisions about bankruptcy and reorganization. The minimum number of creditors is not regulated by this Bankruptcy Law. The time it takes to file for bankruptcy or make a restructuring decision ranges from 63 to 73 days. More than half of the number of unsecured creditors and 65% of the loan value of unsecured creditors must attend decisions about bankruptcy or restructuring, and decisions must be approved by more than half of the number of unsecured creditors and 65% of the loan value of unsecured creditors.

Regarding judges' decisions on bankruptcy or reorganization, the central authority's court in the province or city has the power to adjudicate. There must be no conflict of interest between the judge and the debtor. Collateralized debts are excluded from bankruptcy and restructuring decisions. The order of debt payments is regulated by the Bankruptcy Law, which states that the proceedings must first pay bankruptcy costs, employee wages, debts and duties to the state, unsecured loans, and finally unpaid guaranteed loans. Unsecured creditors have the same rights and responsibilities as secured creditors.

3.3. The Philippines

Bankruptcy is governed by Regulation No. 10142, which was issued on July 27, 2009. A debtor is a private corporation registered with the Department of Trade and Industry, a firm registered with the Securities and Exchange Commission, a company formed under Philippine law, or an individual who is facing financial difficulties. At the same time, a creditor is defined as a person who has a claim against a debtor based on relevant legislation that occurred before or at the time of the claim. While debt is defined as "all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed," it also includes, but is not limited to: (1) all claims of the government, whether national or local, including taxes, tariffs, and customs duties; and (2) claims against directors and officers of the debtor arising from acts done in the course of the debtor's business. This provision does not exclude creditors or third parties from bringing lawsuits against directors and officers acting in their official roles.

Banks, insurance companies, and government entities are not included in the debtor definition. It is both voluntary and involuntary to file for bankruptcy or reorganization. The minimum amount of debt application is one million pesos (Php1,000,000.00) or twenty-five% (25%) of the subscribed capital stock or partners' contributions, which allows the debtor to face involuntary procedures by filing a petition for rehabilitation with the court. These debts are obviously past due. There is no minimum number of creditors required. Within 40 days after the first trial, the bankruptcy decision is made. The bankruptcy or reorganization choices are made by the court. Rehabilitation receivers are the name given to bankruptcy administrators. If the petitioner(s) is/are a creditor or group of creditors, that the petitioner(s) has/have met with the debtor and made a reasonable faith effort to reach a consensus on the proposed Rehabilitation Plan if the debtor has approved the restructuring decision has met with its creditor(s) representing at least three-fourths (3/4) of its total obligations to the extent reasonably possible and made a reasonable faith effort to reach a consensus on the proposed Rehabilitation Plan.

Secured debt is included in the restructuring, but its rights as a secured creditor are not affected. The court will be appointed by the Supreme Court. The court will assess whether owners, directors, or officials are liable for losses incurred as a result of bankruptcy.

3.4. Singapore

A debtor is someone who is unable to pay their debts, and creditors may elect to file for bankruptcy against them. A petitioning creditor can begin a bankruptcy application in Singapore under Section 61 of the Bankruptcy Act if someone owes anyone (any person or even a company) more than S\$15,000.00, has property in Singapore, has resided/carried on business in Singapore within a year of the filing, and is unable to pay their debts. Further requirements are: having a residence in Singapore for at least one year, domiciled in Singapore, having property in Singapore, having carried on business in Singapore for at least one year, having generally been a resident in Singapore for at least one year. In Singapore, however, the different sorts of creditors are not distinguished. The decision to file for bankruptcy or debt restructuring can be voluntary or involuntary. Debts that have not been paid within 21 days of being filed in court or within 14 days of being filed in court can be collected. The minimum amount that must be paid is \$15,000. The number of creditors is not specified in the Singapore Bankruptcy Act. Secured debt is divided into two categories: bankruptcy and restructuring. Bankruptcy decisions are made by the court. The Official Assignee is in charge of bankruptcy administration. A majority vote is required to make restructuring choices.

3.5. Malaysia

A liquidated payment payable immediately or at a certain future time is defined as a debt. In addition to the definition of debt, it is any remuneration for work or labor performed, any obligation or the possibility of an obligation to pay money or money's worth for the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach occurs or does not occur, is or is not likely to occur, or is capable of occurring before the debtor's discharge, and generally it shall include any express or implied engagement, agreement, or undertaking, and it shall include any express or implied engagement. The Malaysian Bankruptcy Act does not distinguish between different types of creditors. However, secured creditors can participate in voting by releasing their collateral.

Both voluntary and involuntary bankruptcy and reorganization can be filed. A creditor may not file a bankruptcy petition against a debtor unless (a) the debt owed by the debtor to the petitioning creditor, or if two or more creditors join in the petition, with the aggregate amount of debts owed to the several petitioning creditors, exceeds *fifty thousand ringgit; (b) the debt is a liquidated sum payable either immediately or at a specific future time; and (c) the act of bankruptcy on which the petition is based has occurred within the

If the submission is made against (a) a social guarantee; or (b) a guarantor other than a social guarantor, a bankruptcy filing cannot be filed unless the petitioning creditor has secured leave from the court. From RM 50,000 in 2017, to RM 100,000 until August 31, 2021, the minimum value for bankruptcy filing has increased from RM 30,000 to RM

100,000. Loans for Individuals were 31% in 2016, 53% in 2020, and 54% in the first four months of 2021. Debt that has been past due for six months and can be recovered. The bankruptcy decision is made by a majority vote of the loan value, and bankruptcy management is handled by nominees. Creditors with collateral interests are not affected in the same way, but there is a caveat: Unsecured creditors are barred from taking further action against a bankrupt person to recover obligations incurred before bankruptcy was declared. Unsecured creditors have no authority over a bankrupt's property, and any unsecured creditor who wishes to pursue legal action against a bankrupt must first obtain the court's permission. Unsecured creditors should file their Proof of Debt in addition to bringing a lawsuit against a bankrupt.

Secured creditors have the legal right to seize a bankrupt's assets. A secured creditor, on the other hand, may deal with a bankrupt property under section 8(2) of the Insolvency Act 1967, and if the property is realized within 12 months of the Bankruptcy Order, the secured creditor is entitled to interest. The surplus from the sale will be given to the DGI, who will credit it back into the bankrupt's estate account and distribute it to the creditors. Payment is made in the following order: According to the law, priority would be given to preferential unsecured creditors such as the company's employees and other preferential claims. Any remaining assets will be allocated equally to the company's unsecured creditors.

3.6. Thailand

Thailand experienced a crisis in 1997 as experienced by Indonesia. At the request of the IMF. Thailand has a Bankruptcy Act.⁴⁰ Subject to the composition meeting certain minimum requirements, creditors may agree to accept the proposal by special resolution of a meeting of creditors, requiring the approval of creditors representing a minimum of 75% of the debt with a majority of the creditors attending the meeting.

There are three types of procedure available for corporate debtors. First, a creditor-initiated bankruptcy, whereby the successful verification of the debtor's insolvency by the creditor leads to a court order of absolute receivership and the process is under judicial supervision. Second, a debtor-initiated bankruptcy through voluntary liquidation as a result of a special resolution of shareholders. Corporate bankruptcy is the ability to seek a temporary receivership order, the ability of the corporate debtor to propose a composition of debt and the methods of release from bankruptcy. The third type of procedure for corporate debtors is a business reorganization procedure, either creditor- or debtor-initiated, with the objective of rehabilitating the business. Thai law does not provide for an out-of-court settlement option.

The Bankruptcy Regulations that apply are almost the same as those of Indonesia. These regulations were both issued during the 1997-1998 crisis at the request of the International Monetary Fund (IMF). However, Thailand has a minimum number of

⁴⁰ Narun Popattanachai, "A Legal Theory of Finance Reinterpretation of the Asian Financial Crisis and the Implications for the Future of Thailand and South East Asia," Columbia University (2018), http://journal.stainkudus.ac.id/index.php/equilibrium/article/view/1268/1127%0Ahttp://publicacoes.caradiol.br/portal/ijcs/portugues/2018/v3103/pdf/3103009.pdf%0Ahttp://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0121-75772018000200067&lng=en&tlng=.

creditors to charge non-paying companies. If the creditor is a company, it must have receivables or bills of two million baht and for individual creditors the minimum is one million baht.

3.7. China

Enterprise Bankruptcy Law No. 54 of 2007 is the name of China's bankruptcy law. The debtor is a business or corporation. Secured and unsecured creditors are the two types of creditors. The term "debt" refers to debt that is past due. Creditors and debtors can both file for bankruptcy and reorganization. There is no minimum valuation for filing for bankruptcy and restructuring, but the claims must be past due.

Bankruptcy and reorganization decisions are made by the courts. The administrator is in charge of bankruptcy. An administrator is appointed by the judge. The court makes its decision based on the debtor's situation. The entire process takes about 50 days from submission to decision. More than half of the attending creditors with a value more than half of the unsecured debts must approve restructuring decisions. Restructuring and bankruptcy do not apply to secured debt. The payment of bankruptcy fees, earnings or salary, social insurance, taxes, and other general claims takes precedence over other claims. Secured creditors are not allowed to vote. If a violation is established, the Board of Directors or management who controls the company is accountable for the company's insolvency. According to the applicable laws and regulations, the Board of Directors or management must be accountable.⁴¹

3.8. Japan

Bankruptcy is governed by Law No. 75, enacted on June 2, 2004. A bankruptcy claim, as defined in this Act, is a claim on property arising against the bankrupt from a cause that happened before the initiation of bankruptcy proceedings (including the claims stated in the items of Article 97) and that is not covered by the estate's claims. A district court before which a bankruptcy case is underway is referred to as the bankruptcy court in this Act. A bankruptcy creditor is a creditor who has a bankruptcy claim, as defined in this Act. Unable to pay debts means the condition in which a debtor is generally and continuously unable to pay their debts as they become due because of a lack of ability to pay (in the case of bankruptcy of the trust property, the condition in which the trustee is generally and continuously unable to pay their debts is covered by the trustee's liability for payment based on the trust property/meanie due to a lack of ability to pay with the trust property due to a lack of ability to pay). The Bankruptcy Code makes no distinction between secured and unsecured debts.

Bankruptcy regulations of various countries are summarized in table 1. There is no one country law that covers everything.

⁴¹ Suwinto Johan and Ariawan Ariawan, "Corporate Liability for Creditors' Losses during the Covid-19 Pandemic," *Media Hukum* 28, no. 1 (2021): 15–28.

Table 1. Summary of Bankruptcy Law in RCEP Countries

	Indonesia	Vietnam	Philippine	Malaysia	Singapore	Thailand	China
Company Debtor	Y	Y	Y	Y	Y	Y	Y
Individual Debtor	N	N	Y	N	Y	Y	N
Creditor Type	Y	Y	N	N	N	Y	Y
Definition of Debt	Y	Y	Y	Y	Y	Y	Y
Minimum Debt Amount	N	N	Y	Y	Y	Y	N
Bankruptcy Court	Y	N	Y	Y	N	n.a.	Y
Voting	Y	Y	Y	Y	Y	Y	Y

Note: Y = Included

N = not available/unclear

Source: Primary data, 2017 (Edited)

4. Bankruptcy Law Harmonization

The definition of creditors in Indonesia is the parties who have receivables and are due. Indonesia does not regulate the minimum amount of debt that can be collected. So that Indonesia and other ASEAN countries need to apply a minimum amount for filing a suspension of debt or bankruptcy. Singapore sets a minimum of SGD 15,000. The definition of debtor in Singapore also includes individuals. While in other countries, debtors are more focused on companies. Vietnam clearly determines that the company that is proposed for suspension of debt is a company established in Vietnam. However, Singapore and Malaysia do not clearly distinguish the types of creditors. Indonesia, China, Vietnam and Thailand distinguish between secured and unsecured creditors.

The number and kind of creditors must be determined in order to be fair to other creditors. It is possible to estimate the number of creditors who will file for bankruptcy. The number of creditors must be considered in bankruptcy court rulings. Creditors are the ones who appoint bankruptcy trustees. Bankruptcy management must be re-defined with the participation of stakeholders with a stake in the company. Stakeholders, not just independent parties, must be involved. The voting method for peace proposals must consider the secured creditor's position, the unsecured creditor's position, the maturity time, and the contribution. Currently, peace initiatives focus solely on guarantees and no guarantees. The term "secured debt" has to be defined more precisely. Is it still regarded as secured debt if there are other creditors who have the same guarantee? It is necessary to include a creditor classification based on the debtor's moral hazard. Priority determines how much money is made from a bankruptcy sale. The main debt, loan interest, and other expenditures take precedence. The Bankruptcy Law should stress the order in which the proceeds from the bankruptcy sale are distributed. Creditors' obligation to follow the bankruptcy process. The peace plan must be accepted by all creditors as the only method to pay the debtor's debt. After losing the peace proposal vote, several creditors bring criminal charges against shareholders or directors.

Petitions can be submitted by debtors or creditors. This term is different in the Philippines, where it is voluntary and involuntary. Voluntary is said to be submitted by the debtor himself, while involuntary is submitted by the creditor. Meanwhile, Vietnam allows shareholders to apply voluntarily as well. The maximum total number of days for bankruptcy proceedings in Indonesia requires 270 days from filing for suspension of debt payment obligations to bankruptcy. Meanwhile, China provides a maximum of 90 days and a minimum of 30 days for companies that file for bankruptcy. Meanwhile, Vietnam requires the court to make a bankruptcy decision within 30 days. Meanwhile, Singapore decided the bankruptcy of the company within a period of 21 days.

Bankruptcy decisions are the authority of the judge or panel of judges in each country. Vietnam named judges and administrators, while the Philippines and Singapore gave authority to administrators. Malaysia appointed nominees as direct supervisors of the implementation of the suspension of debt repayment obligations. After the decision to postpone the payment of debt obligations is approved, the company is run by management with supervision by the receiver. Implementation in Indonesia, every management action to spend funds needs to get approval from the receiver.

Bankruptcy decisions in Indonesia distinguish between secured and unsecured creditors. While in Vietnam and China, only focus on collateral creditors with a minimum amount of 51. However, Vietnam added that it is mandatory to reach 65% of the total debt. The Philippines requires reaching a minimum of 3/4 of the total debt. Meanwhile, Singapore and Malaysia require a majority to be achieved. Thailand requires 75% of creditors' votes to approve every decision up to bankruptcy. The status of the employee remains the same during the period of suspension of debt payment obligations. However, many employees will start looking for work outside.

5. Conclusion

The implementation of bankruptcy rules in ASEAN countries is still uneven. The existence of legal equality regarding bankruptcy is crucial for economic cooperation and giving legal certainty for business people. Business actors in ASEAN, particularly financial institutions, can lend to creditors in other ASEAN nations. Changes are affecting the concept of creditors, their rights and obligations, creditor categorization, voting methods, and other moral hazard-related issues. Investor trust in ASEAN countries will be boosted as a result of this modification. The RCEP and ASEAN members are not given enough attention in this report. Including nation conditions outside of the RCEP in future research will yield different results. Other research on the perspectives of business actors on each country's legal environment is also required.

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