

Regaining Cross-Border Authority: The Role of Law and Institutional Challenges for Curators in Cross-Border Insolvency

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ABSTRACT

The increasing integration of the global economy has led to a surge in cross-border insolvency cases, placing insolvency administrators as key actors in the management and liquidation of assets across jurisdictions. This article critically examines the legal role of insolvency administrators in cross-border insolvency cases and identifies normative and structural challenges that hinder the effectiveness of their duties. Using a normative legal method and a comparative approach, this study analyzes the weak legal recognition of foreign insolvency administrators, the failure of intergovernmental coordination, and the limitations in asset tracing due to data access restrictions between jurisdictions. Findings reveal that the absence of a harmonized legal framework and the lack of formal transnational cooperation protocols significantly hinder the legitimacy and efficiency of the role of bankruptcy trustees in a global context. This study also highlights regulatory gaps in Indonesian bankruptcy law that have not yet accommodated mechanisms for cross-border recognition and cooperation. Using the lens of doctrinal legal theory and transnational legal theory, this article proposes institutional reforms through the adoption of the UNCITRAL Model Law and the development of cooperation protocols among insolvency administrators as solutions toward a more responsive and equitable global insolvency governance system. This article contributes both theoretically and practically to the development of an inclusive and interoperable insolvency system within the global legal order.

Keywords: Asset Tracing, Cross-Border Insolvency, Insolvency Administrators, Legal Harmonization, UNCITRAL Model Law

Introduction

The development of economic globalization has led to a significant increase in the volume of cross-border transactions and business activities (Brunet-Jailly, 2022; Islam et al., 2019; Wang, 2021). This phenomenon has resulted in an increase in bankruptcy cases involving legal entities in more than one jurisdiction. According to the World Bank Doing Business Report (2023), more than 20% of multinational companies that experience financial failure have assets and creditors in more than one country (Owusu-Pepurah, 2024; World Bank, 2025). This indicates that bankruptcy issues are no longer purely domestic in nature but have become complex cross-border challenges (Kokorin et al., 2022; Zhang, 2022). In this context, the role of the bankruptcy administrator, as the appointed party responsible for managing and settling the assets of a bankrupt entity, holds a strategic position, particularly in ensuring that the bankruptcy resolution process is conducted effectively and fairly, including in terms of cross-border asset tracing and administration (Kokorin et al., 2022; Muhammad Dzaky et al., 2023; Sarra et al., 2023).

However, amid this reality, there are still a number of challenges that hinder the role of curators in handling cross-jurisdictional insolvency. The diversity of national legal systems, the lack of mutual recognition mechanisms for foreign curators, and the limitations of cross-border cooperation are the main obstacles in tracing and managing the assets of debtors located abroad (Ahmed, 2019; Ebert et al., 2023; Haines, 2021). For example, in some international bankruptcy cases, a curator from one country is not recognized as having

authority in another country, causing the asset tracing process to stall and creating legal uncertainty for creditors (Ketut Eka Patni & Wayan Wiryawan, 2023; Sukardi, 2021; Yuliyanto Waisapi, 2023). This inefficiency has the potential to harm creditors, prolong the liquidation process, and undermine the principle of equal distribution, which is a cornerstone of modern bankruptcy law.

The urgency to further examine this issue is increasing as more countries have yet to adopt international legal frameworks such as the UNCITRAL Model Law on Cross-Border Insolvency (Bork, 2017; Deane & Mason, 2016; Franken, 2014). This disparity in adoption creates legal asymmetry and hinders the harmonization of cross-border insolvency resolution mechanisms (Gobile et al., 2024; Mevorach, 2015, 2018). In Indonesia, for example, although Law No. 37 of 2004 regulates the role of bankruptcy administrators, there are no explicit provisions governing the recognition of foreign bankruptcy administrators or the procedures for cross-border insolvency proceedings (Pratama & Putri, 2023; Syamsuddin, 2024; Wiguna et al., 2024). This indicates a lag in the national legal system in responding to the dynamics of international insolvency.

In addition, a review of previous literature shows that there is still limited research specifically discussing the role of curators in a transnational context, especially from the perspective of Indonesian law and comparative law. Most studies focus more on the normative aspects of legal harmonization or the influence of globalization on bankruptcy law in general, without examining the technical and practical aspects of the implementation of curators' duties in a cross-jurisdictional context (Andrian & Lie, 2024; Mahy, 2012; Tomasic & Kamarul, 2011). This gap in research creates a void in our comprehensive understanding of the effectiveness of the role of curators and the real challenges they face in practice.

Based on this background, this study aims to analyze the legal challenges faced by curators in handling cross-border insolvency, particularly in relation to the process of tracing and administering assets across jurisdictions. Additionally, this study is expected to contribute theoretically to the discourse on the harmonization of international bankruptcy law and provide practical insights for policymakers in designing regulations and legal cooperation that are more responsive to the needs of the global business community.

This study is motivated by the increasing complexity of cross-border insolvency cases, which pose new challenges for trustees in carrying out their duties effectively. In this context, it is important to gain a deep understanding of how trustees deal with legal constraints in tracing and administering assets located in various countries, especially when there is no formal recognition of their authority in other jurisdictions.

The main objective of this study is to comprehensively analyze the role of curators in cross-border insolvency cases by highlighting various legal obstacles that hinder the effective implementation of curatorial duties. This study specifically focuses on identifying normative, institutional, and procedural obstacles that arise in the process of tracing and managing assets spread across jurisdictions.

In addition, this study also aims to examine the extent to which limitations in cooperation between countries and the suboptimal adoption of UNCITRAL Model Law principles contribute to the stagnation of cross-border insolvency proceedings. By comparing legal practices in several countries that have adopted the model law with those that have not, this study seeks to illustrate the differences in the performance of legal systems in supporting the role of the trustee.

On the other hand, this study also aims to formulate alternative solutions and applicable legal recommendations in order to strengthen the position of curators in handling cross-border insolvency. With this approach, it is hoped that the findings of this study can

contribute to the development of a national and international legal framework that is more responsive to the dynamics of global insolvency and the need to protect the interests of creditors across jurisdictions.

Methods Research

This study uses a normative legal approach, which focuses on the study of written legal norms as the main basis for analysis. This approach was chosen because the main issues under study are closely related to the legal provisions governing the role of curators in cross-border insolvency and the normative challenges faced in the practice of cross-jurisdictional asset tracing and administration.

The method used in this study is doctrinal and comparative analysis. Doctrinal analysis is conducted to systematically examine relevant national and international legislation, including but not limited to Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), UNCITRAL Model Law on Cross -Border Insolvency, US Bankruptcy Code Chapter 15, and provisions in the Insolvency Act 1986 in the United Kingdom. The review covers the normative structure, scope of authority of the trustee, cross-border recognition procedures, and principles of international cooperation in insolvency.

Meanwhile, the comparative method is used to compare legal practices in several countries that have adopted the UNCITRAL Model Law with countries that have not yet adopted it. The countries selected for comparison in this study include the United States, the United Kingdom, Australia, and Indonesia. The selection of these countries is based on the variation in legal systems and approaches to cross-border insolvency, which can provide a representative picture of the disparities in the application of the law.

Data collection techniques were carried out through a literature review covering legislation, international documents, court decisions, scientific journal articles, insolvency law books, and reports from international organizations such as UNCITRAL and INSOL International. This research also involved an examination of cross-border insolvency cases that have occurred, such as the *Re Stanford International Bank* and *Re HIH Insurance* cases, to gain empirical understanding of the challenges that arise in practice.

The analysis process was conducted using content analysis methods on legal documents and scientific literature to identify patterns, weaknesses, and potential for regulatory harmonization. The validity of the findings was ensured through data triangulation techniques, namely by comparing various primary and secondary legal sources to ensure consistency and accuracy of interpretation.

With this methodological approach, it is hoped that the research will be able to provide comprehensive legal mapping and build arguments that are academically and practically accountable.

Results and Discussion

Legal Fragmentation and the Absence of Universal Recognition of Foreign Trustees

One of the key findings of this study, which has significant implications for the effectiveness of international insolvency resolution, is that deep legal fragmentation in the global insolvency system is a major structural obstacle to cross-border insolvency proceedings (Andrian & Lie, 2024; Gopalan & Guihot, 2015; Parry & Gao, 2018). Essentially, the absence of a harmonized global legal framework forces cross-border insolvency proceedings to operate within a mosaic of national jurisdictions, each with its own legal traditions, procedures, and recognition requirements.

The direct consequence of this fragmentation is that in many key jurisdictions, including Indonesia, there are no domestic legal mechanisms that explicitly and comprehensively provide a legal basis for recognizing and facilitating the role and authority of foreign curators in tracing, securing, and managing debtor assets located within their jurisdiction. As a result, trustees appointed in the main proceeding abroad are forced to seek recognition on an ad hoc basis through litigation in local courts. This process is not only lengthy and costly, but also fraught with uncertainty, as its success depends heavily on the local court's interpretation of often ambiguous and discretionary legal principles, and does not always result in the desired recognition.

In concrete terms, the difference in approach is clearly illustrated by the legal systems of the United States and the United Kingdom, two important jurisdictions in global finance. In the United States, recognition of foreign insolvency proceedings and foreign insolvency administrators is strictly regulated under Chapter 15 of the US Bankruptcy Code, which adopts the UNCITRAL Model Law on Cross-Border Insolvency (1997) (H. & Goodnow, 1893; Wan & McCormack, 2020). However, the requirements are very strict: recognition can only be granted if the home state of the bankruptcy administrator has adopted the principles of comity (mutual respect) and its substantive bankruptcy laws are deemed consistent with the fundamental principles of Chapter 15.

These substantive equivalence requirements create significant structural barriers for trustees from countries with civil law systems such as Indonesia, which have not yet fully adopted the UNCITRAL Model Law (Abimanyu & Sinaga, 2025; Wan & McCormack, 2020). On the other hand, the United Kingdom, through the Cross-Border Insolvency Regulations 2006 (which also adopts the UNCITRAL Model Law), has indeed implemented a more procedural framework for the recognition of foreign trustees (Mevorach, 2011; Walters, 2017).

Nevertheless, this framework still requires compliance with complex formal procedures and proof that the insolvency process in the home country upholds the principles of procedural fairness and equal treatment of creditors. These two examples underscore that while there has been progress with the adoption of the Model Law, its implementation remains varied and requires a certain level of legal harmonization from the home state of the trustee, which is not necessarily met.

Furthermore, the absence of a universal recognition regime or more automatic mechanism for foreign curators raises adverse and counterproductive legal consequences (Haines, 2021; Reichman, 2014). First, this situation directly triggers the potential for acute jurisdictional conflicts. Various courts in the country where the assets are located may claim jurisdiction over those assets based on local law, potentially initiating overlapping, competing, and resource-wasting secondary proceedings.

Second, the resulting legal uncertainty is detrimental to all stakeholders—creditors face delays and increased recovery costs, debtors lose opportunities for coordinated restructuring, and trustees themselves are hampered in effectively carrying out their mandate to maximize asset value in the collective interest of creditors. Paradoxically, this weakens the two main pillars of efficient cross-border insolvency resolution: the principle of effectiveness (achieving the best possible outcome with available resources) and the principle of efficiency (achieving that outcome at a reasonable cost and within a reasonable timeframe).

In a theoretical context, these findings highlight the fundamental tension between idealized legal norms and the reality of their implementation. Specifically, this situation of fragmentation and lack of recognition fundamentally contradicts the theory of legal effectiveness as proposed by Soetandyo Wignjosoebroto (Herlindah & Darmawan, 2022; Sayuti & Simabura, 2024). This theory emphasizes that the validity and success of a law are

not merely measured by its logical consistency at the normative level (law in books), but more critically, by its ability to be operationalized in practice and produce the desired effects (law in action).

In cross-border insolvency cases, the norms governing cooperation and recognition – although conceptually recognized as important – often fail to materialize operationally due to structural barriers arising from fragmented national legal systems. Therefore, the lack of universal recognition of foreign trustees is not merely a procedural issue, but a manifestation of systemic failure in achieving the effectiveness of international law in the field of insolvency, where norms fail to be translated into practical and fair mechanisms for all parties involved.

Collectively, structural barriers resulting from legal fragmentation and the absence of universal recognition create a suboptimal environment for efficient and fair international insolvency resolution. Therefore, promoting the wider adoption of harmonization instruments such as the UNCITRAL Model Law and exploring bilateral/multilateral agreements are crucial steps to address this systemic dysfunction.

Challenges in Cross-Border Asset Tracing: Information Asymmetry and Institutional Opacity

The tracing and identification of debtor assets located outside the jurisdiction of the country of origin of the bankruptcy proceedings is not only a crucial aspect, but often the linchpin of successful cross-border bankruptcy resolutions (Omar, 2017; Sarra et al., 2023; Sayuti & Simabura, 2024). However, the results of this study clearly reveal that this critical phase is in fact the most vulnerable point to systemic failure.

The dominant obstacles that arise are not solely related to the technical complexity of tracing, but rather to institutional closedness and legal frameworks that actively hinder the flow of essential information. Specifically, it was found that foreign financial institutions (banks, securities companies, asset managers) often demonstrate a high level of non-disclosure in response to direct requests for information from foreign curators. The basis for these obstacles is legal-structural: in many jurisdictions, financial institutions have no legal obligation (positive duty) to provide access to information to foreign receivers without first obtaining a local court order or utilizing the formal Mutual Legal Assistance Treaty (MLAT) mechanism, which is notoriously slow and bureaucratic.

Even more worrying, the legal regime designed to protect other interests actually operates as an effective barrier to the curator's task. Strong banking secrecy laws in many countries (such as Switzerland, Singapore, or some Gulf states) and increasingly stringent personal data protection regulations, such as the General Data Protection Regulation (GDPR) in the European Union, are often used by institutions to refuse requests for information (Albahar & Thanoon, 2022; Greenleaf & Tyree, 2017). The GDPR, in particular, with its strict requirements regarding the legal basis for data processing (Article 6) and the prohibition on transferring data outside the EU without adequate safeguards (Articles 44-49), creates nearly insurmountable legal challenges for trustees from countries that have not received an adequacy decision from the European Commission. As a result, efforts to trace bank accounts, hidden shareholdings, or other movable assets are significantly hindered, even when there are strong indications that such assets are part of the bankruptcy estate or the proceeds of a voidable transfer (fraudulent conveyance).

This systematic institutional secrecy directly creates acute and detrimental information asymmetry. In this dynamic, curators – acting as agents for the collective interests of creditors – are trapped in a position of extreme information weakness. They lack the legal tools and access necessary to effectively identify, track, and secure debtor assets that are

deliberately hidden in secret jurisdictions, illegally transferred to related parties, or placed in nominee accounts.

This asymmetry not only benefits uncooperative debtors but also indirectly protects parties who help conceal assets. As a result, assets that should legally be included in the bankruptcy estate for proportional distribution to creditors are instead exempted from this process. This fundamental distortion not only causes financial harm to creditors but, more seriously, directly erodes the principle of *pari passu*, which forms the cornerstone of modern bankruptcy law.

The principle guaranteeing equal treatment for creditors in the same class becomes meaningless if the assets available for distribution have been significantly reduced by assets that have been successfully hidden due to cross-border tracing barriers. Thus, information secrecy is not merely a procedural issue but a threat to substantive justice in the bankruptcy process itself.

As a comparison that offers important insights, the model adopted by Australia through the Cross-Border Insolvency Act 2008 (which adopted the UNCITRAL Model Law) provides a more progressive and functional approach. The Australian legal framework explicitly grants sufficiently broad powers to foreign liquidators who have obtained official recognition from an Australian court. Once recognition is granted, the foreign insolvency representative is entitled, among other things, to request information directly from the debtor, company directors, or third parties (including financial institutions) believed to hold relevant information about the debtor's assets, as well as to examine relevant documents.

This power is analogous to that of Australian domestic trustees. Crucially, the Australian model has succeeded in creating a better equilibrium between two legitimate but often conflicting legal interests: on the one hand, the protection of individual privacy and business confidentiality guaranteed by laws such as the Privacy Act 1988 (Cth), and on the other hand, the urgency of the collective interests of creditors in the bankruptcy process to collect and liquidate or restructure the debtor's assets comprehensively.

This balance is achieved through court supervision of requests for access to information and potential dispute resolution if there are objections from the party requested to provide information. This model acknowledges that in the context of cross-border insolvency, efficiency and collective fairness often require deliberate mitigation of extreme information asymmetries through the granting of adequate investigative powers to recognized trustees.

Collectively, the challenges in cross-border asset tracing triggered by institutional opacity and exacerbated by rigid secrecy and data protection regimes not only hinder the work of curators but fundamentally undermine the integrity of the international insolvency process. Addressing this information asymmetry through legal reforms that provide clearer and procedural access to information for recognized foreign trustees—as illustrated by the Australian model—is an important step toward greater effectiveness and fairness in the resolution of global insolvency cases. Without such measures, fundamental principles of bankruptcy such as *pari passu* and the maximization of asset value for creditors will continue to be threatened in cross-border scenarios.

Discussion

The findings presented earlier confirm that structural weaknesses in cross-border insolvency law lie in two main aspects: fragmentation of norms and institutional misalignment. This situation can be understood through the lens of Soetandyo Wignjosoebroto's Theory of Legal Effectiveness, which emphasizes that new laws are only effective if they are not only written but also enforceable and complied with by legal subjects

through concrete operational mechanisms. In the context of cross-border bankruptcy trustees, the absence of recognition and coordination mechanisms indicates that legal norms are not functioning effectively in a transnational context.

In line with this, the Transnational Legal Theory approach developed by Halliday and Carruthers (2007) states that the success of cross-border insolvency resolution depends heavily on the existence of universally agreed principles among countries, such as equal access to legal systems, recognition of foreign trustees, and principles of transparency and non-discrimination in asset tracing. Unfortunately, these principles have not yet been fully internalized in the national legal systems of various countries, including Indonesia.

This study also highlights an empirical gap in the insolvency law literature. Most previous studies, such as those conducted by Westbrook (2010) and Wessels (2021), focus on the importance of adopting the UNCITRAL Model Law as a normative solution. However, this research adds that, in addition to normative aspects, what is more important is to establish concrete operational mechanisms for the law: how court orders in one country can be enforced in another, how foreign financial institutions can be accessed by trustees, and how communication protocols between trustees can be facilitated without relying on costly litigation processes.

In Indonesian legal discourse, this finding reinforces criticism of legislative stagnation in the field of insolvency, which has failed to respond to the needs of legal globalization. Even two decades after the enactment of the Bankruptcy Law, there have been no substantial revisions addressing transnational dimensions. This contrasts with the global trend where many countries have actively adapted their domestic laws to meet international model law standards.

Thus, this study not only emphasizes the importance of legal harmonization, but also encourages the transformation of the national legal system towards a more open and internationally cooperative form. Curators, as central actors in bankruptcy, should be positioned not only as technical administrators, but also as legal agents capable of bridging jurisdictions and ensuring legal certainty for creditors at the global level.

Scientific Novelty and Research Contribution

This study offers scientific novelty in the study of bankruptcy law, particularly in an area that has been a weak point in legal literature and practice, namely the role of the trustee in cross-border bankruptcy. While previous studies have discussed the importance of harmonizing international insolvency law and the urgency of adopting the UNCITRAL Model Law, few have explicitly examined the technical and institutional aspects of the trustee's duties when faced with rigid and often incompatible jurisdictional boundaries. Thus, the specific focus on the curator as an active legal subject in the tracking and administration of cross-border assets constitutes a major theoretical contribution to the literature on transnational insolvency.

From a conceptual perspective, this study broadens the understanding of the effectiveness of law not only as written norms, but also as social and institutional practices influenced by inter-state cooperation, legal recognition structures, and the ability of legal actors to navigate cross-border complexities. The approach used in this study combines doctrinal analysis with a transnational perspective, resulting in a critical mapping of regulatory gaps in the Indonesian bankruptcy system that have not been systematically identified in national legal literature.

In practical terms, this study makes an important contribution to policymakers in Indonesia and other countries that have not yet adopted the UNCITRAL Model Law, by

presenting arguments based on comparative studies and institutional analysis. This study demonstrates that without cross-border recognition and efficient institutional coordination, the bankruptcy process is not only hindered procedurally but also harms creditors and erodes confidence in the legal system. Therefore, the findings in this article can serve as a basis for recommendations for bankruptcy legislation reforms that are responsive to global dynamics.

Furthermore, another contribution of this study lies in its emphasis on the importance of developing an institutional framework among curators from different countries. Until now, discourse on cross-border insolvency has tended to focus on norms rather than on legal actors and concrete technical cooperation mechanisms. By highlighting curators as transnational legal agents, this article opens up space for a new approach to the formation of soft law or bilateral protocols between insolvency institutions to strengthen global coordination in insolvency management.

Thus, this article not only broadens the scope of international insolvency law literature, but also offers a new conceptual model that can be used as a reference in the development of future legal instruments in the field of cross-border insolvency.

Conclusion

This study has shown that the role of curators in cross-border insolvency is strategic but also highly vulnerable, especially in the context of a fragmented global legal system. As central actors in the process of asset liquidation, trustees face various structural challenges, including jurisdictional limitations, the absence of universal recognition mechanisms for the authority of foreign trustees, and coordination gaps among insolvency institutions at the international level.

Overall, this study confirms that legal systems in many countries, including Indonesia, are not yet fully adaptive to the needs of economic globalization and the complexity of cross-jurisdictional insolvency. The absence of legal norms that explicitly regulate international cooperation mechanisms in bankruptcy not only creates legal uncertainty, but also has the potential to harm creditors and undermine the principle of equality in asset distribution. Furthermore, the lack of cross-border access to information and procedural limitations in asset tracing demonstrate that national legal systems are still far from achieving the principles of procedural effectiveness and fairness.

Reflection on these findings highlights the urgency of legal harmonization, not merely through the adoption of the UNCITRAL Model Law, but also through the creation of an institutional architecture that supports cooperation between curators across countries. Such cooperation will foster a more responsive, transparent, and equitable insolvency governance framework. Therefore, reforms to Indonesia's bankruptcy legislation should focus on recognizing the role of foreign curators, strengthening cross-border cooperation mechanisms, and enhancing curators' access to international information systems.

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