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Prophetic Study on Cross Border Insolvency and its Impact on the Economic Protection of Creditors and Debtors

Kajian Prophetik atas Kepailitan Lintas Negara dan Dampaknya terhadap Perlindungan Ekonomi Kreditur dan Debitur

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ABSTRACT

The complexity of cross-border insolvency issues poses challenges in economic protection for creditors and debtors. This research aims to analyze the international and national legal frameworks regarding cross-border insolvency, as well as examine prophetic values in insolvency from an Islamic perspective in order to find a more comprehensive solution to economic justice. The research method used is a normative and conceptual approach with an in-depth literature review on international law, national law, and Islamic principles related to the concepts of *iflās*, *maslahah*, and economic justice. The results show that the normative analysis of cross-border insolvency reveals an imbalance of legal protection that requires reconstruction of prophetic values through the integration of the concepts of *iflās* and *maslahah*, resulting in an integrative model of economic protection of creditors and debtors based on the principles of economic justice in Islam, providing a more inclusive and equitable legal solution in handling cross-border insolvency.

Keywords : Prophetic; Cross Border Insolvency; Protection of Creditors and Debtors

ABSTRAK

*Kompleksitas masalah kepailitan lintas negara yang menimbulkan tantangan dalam perlindungan ekonomi bagi kreditur dan debitur. Penelitian ini bertujuan untuk menganalisis kerangka hukum internasional dan nasional mengenai cross border insolvency, sekaligus mengkaji nilai-nilai prophetik dalam kepailitan dari perspektif Islam guna menemukan solusi keadilan ekonomi yang lebih komprehensif. Metode penelitian yang digunakan adalah pendekatan normatif dan konseptual dengan telaah literatur mendalam pada hukum internasional, hukum nasional, serta prinsip-prinsip Islam terkait konsep *iflās*, *maslahah*, dan keadilan ekonomi. Hasil penelitian menunjukkan bahwa analisis normatif cross border insolvency mengungkap ketidakseimbangan perlindungan hukum yang memerlukan rekonstruksi nilai prophetik melalui integrasi konsep *iflās* dan *maslahah*, sehingga menghasilkan model integratif perlindungan ekonomi kreditur dan debitur yang berlandaskan prinsip keadilan ekonomi dalam Islam, memberikan solusi hukum yang lebih inklusif dan berkeadilan dalam menangani kepailitan lintas batas negara.*

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INTRODUCTION

In the dynamics of the global economy, the phenomenon of cross-border insolvency, a condition in which a business entity experiences bankruptcy that has cross-border implications, has become a complex legal and economic challenge. International positive law systems, such as UNCITRAL's Model Law on Cross Border Insolvency, have developed mechanisms for coordination between countries.¹ However, in the context of Muslim societies and Islamic financial systems, the dominant approach remains trapped in a secular-legalistic paradigm that tends to ignore prophetic values, particularly in the balanced and ethical protection of the economic rights of creditors and debtors.² In Islam, principles such as '*adl* (justice), *maslahah* (public interest), and *amanah* (trust) are the main foundations in the settlement of debts, including in the context of bankruptcy. Unfortunately, modern international bankruptcy law literature rarely includes a normative-prophetic approach that bridges the gap between the needs of economic globalisation and the transcendent values of Islam.³

Several related studies have been conducted by previous researchers, including, first, Zinian Zhang's research, which focused on the use of cross-border insolvency law in the Chinese context and the recognition and treatment of foreign judgments and the application of the UNCITRAL Model Law mechanism.⁴ This study focused on the practices and role of Chinese courts but did not evaluate its impact on the welfare of creditors and debtors. The gap is that there are no elements of ethical/spiritual values or principles of justice in the prophetic (Islamic) perspective on the protection of the economic rights of the parties. *Second*, the research by Debaranjan Goswami and Andrew Godwin,

¹ Diksha Vohra. (2021). Steering through Cross-Border Insolvency Law: Insights from India's Legal Landscape. *International Journal of Legal Science and Innovation*, 6(4), 825-835. <https://doi.org/10.10000/IJLSI.112166>.

² Siswanto, Adang Darmawan Achmad, Hudzaifah Achmad Qotadah & Mohd Anuar Ramli. (2023). Conflict Resolution in Sharia Business Bankruptcies in Indonesia: Ethical and Legal Challenges. *Az-Zarqa': Jurnal Hukum Bisnis Islam*, 15(2), 149-173. <https://doi.org/10.14421/azzarqa.v15i2.3182>.

³ Farhan Zikry, Makhda Intan Sanusi Intan, Ahmad Hasan Basri. (2024). The Public Interest Implications (Maslahah) of The OJK's Regulatory Amendments Pertaining to Islamic Peer-To-Peer Lending in Indonesia. *Ijtihad: Jurnal Hukum dan Ekonomi Islam*, 18(2), 1-11. <https://doi.org/10.21111/ijtihad.v18i2.12737>.

⁴ Zinian Zhang. (2022). Globalized Cross-Border Insolvency Law: The Roles Played by China. *European Business Organization Law Review*, 23, 735-780. <https://doi.org/10.1007/s40804-021-00222-2>.

which examines the comparison between the draft Cross-Border Insolvency Law in India and the UNCITRAL Model Law, including legal harmonisation, reciprocity requirements, access to foreign representation, and the principles of modified universalism vs. territoriality.⁵ The weakness of this study is that it does not discuss the concrete implications for the daily economic protection of creditors/debtors. The gap is that it does not touch on moral values, socio-economic rights based on prophetic ethics and integrity, and how the legal system should ensure distributive justice and balanced protection in accordance with prophetic principles. *Third*, the research by Tarun Madan Kanade, Sarika Patil, Jonathan Joseph and CMA Rajendra Shirsat, which focuses on a general review of the legal framework for cross-border insolvency, jurisdictional conflicts, recognition of foreign proceedings, as well as recommendations for improvements and future trends using a case study approach.⁶ Its weakness is that it is very overview and conceptual in nature, without empirical analysis of the economic impact on creditors and debtors; it also lacks a philosophical/spiritual approach. The gap is that it does not integrate prophetic values.

Although this research has made a significant contribution, there has been no research that explicitly integrates the international legal system with Sharia principles in the settlement of cross-border insolvency cases within the framework of global legal pluralism. Therefore, this study aims to analyse the phenomenon of cross-border insolvency from the perspective of Islamic law based on prophetic values, formulate principles of fair and ethical economic protection for creditors and debtors in cross-border insolvency cases, and examine the possibility of integrating the international legal system (UNCITRAL) with Sharia principles within the framework of global legal pluralism.

The novelty of this research is that it offers a prophetic approach as an alternative paradigm in understanding cross-border insolvency, namely by exploring prophetic values as a normative and ethical basis for protecting parties involved in international bankruptcy. This approach has not been widely used as an analytical framework in the literature on cross-border insolvency, either in the national or international academic context.

⁵ Debaranjan Goswami & Andrew Godwin. (2024). India's Journey Towards Cross-Border Insolvency Law Reform. *Asian Journal of Comparative Law*, 19(2), 197-215. <https://doi.org/10.1017/asjcl.2024.12>.

⁶ Tarun Madan Kanade, Sarika Patil, Jonathan Joseph dan CMA Rajendra Shirsat. (2024). Navigating Cross-Border Insolvency: Legal Frameworks, Challenges and Future Directions in a Globalized Economy. *Asian Journal of Advances in Research*, 7(1), 128-132.

In an era of increasingly integrated economic globalisation, legal conflicts arising from cross-border insolvency have become very real and have a direct impact on the economic stability of the parties involved, particularly Sharia-based MSMEs and Islamic financial institutions. Given the limited number of Islamic value-based settlement systems that are able to compete globally, this research is important for formulating an alternative legal framework that is inclusive, ethical, and in line with the spirit of Islamic justice. This study also serves as a bridge for dialogue between international law and transcendent Islamic values in facing cross-border economic crises.

RESEARCH METHOD

This research is a normative-qualitative legal study with an interdisciplinary approach, combining positive international law, Islamic law, and a prophetic-transcendental approach. This approach is used to examine the principles of cross-border insolvency within the ethical and normative framework of Islamic law, which is oriented towards substantive justice. The approaches used are the statute approach, conceptual approach, and prophetic-transcendental approach. The legal sources used consist of primary, secondary, and tertiary legal materials. The technique of collecting legal materials was carried out through literature studies, comparative studies, and content analysis. The legal materials are analysed qualitatively using depth of law analytics (in-depth legal analysis),⁷ with the steps of inventory (positive and Islamic legal norms related to cross-border insolvency), interpretation (Islamic legal texts in the framework of *maqashid al-shariah* and prophetic values), normative reconstruction (principles of creditor and debtor protection in cross-border bankruptcy with an ethical-transcendental approach) and comparative evaluation (international norms and Islamic legal values to find the potential for legal integration or synthesis).

RESULT AND DISCUSSION

Normative Analysis of Cross-Border Insolvency from an International and National Legal Perspective

Cross-border insolvency occurs when a debtor becomes insolvent and has assets or creditors in more than one country, or when the jurisdiction of a foreign

⁷ M. Nur Syafiuddin. (2022). Accentuation of the Best Interest of Children in Livelihood Decision as an Effort to Guarantee Children's Human Rights. *Jurnal HAM*, 13(2), 235-252. <https://doi.org/10.30641/ham.2022.13.235-252>.

court is also involved in the case. The UNCITRAL Model Law on Cross-Border Insolvency, published in 1997, was designed to assist countries in developing a modern legal framework for handling such cross-border cases, without imposing substantive legal unification, but rather promoting coordination and assistance between jurisdictions.⁸

The Model Law bases its mechanisms on four main principles: access (access for foreign representatives or creditors to local courts), recognition (recognition of 'foreign proceedings' as main or non-main), relief (provision of legal assistance such as automatic stays and interim relief), and cooperation and coordination between courts and trustees from various countries. These principles reflect a modified universalism approach, namely the consolidation of assets and single administration of the estate through either main or non-main proceedings, insofar as this does not conflict with the public policy of the local country.⁹

In Indonesia, national bankruptcy law is regulated by Law No. 37 of 2004. Although this law mentions universal principles and recognises the existence of foreign assets (for example, in Articles 212 and 299), its implementation remains subject to the principle of territoriality, meaning that court decisions are only valid within the country and have no executory power outside Indonesia. Indonesia has not yet ratified or fully adopted the Model Law, so the recognition of foreign judgments and coordination between foreign and domestic courts remains very limited. The Model Law provides foreign creditors and representatives with access to the courts of the contracting state and ensures that valid foreign insolvency proceedings are recognised as 'foreign proceedings' so that creditors can claim their rights transparently in other local jurisdictions. This recognition mechanism protects foreign creditors from favouritism towards domestic creditors in local jurisdictions.¹⁰

Following recognition, relief such as an automatic stay in main proceedings and interim relief in non-main proceedings provides legal protection for the debtor's assets against fragmentation. This ensures fair administration of the debtor's assets, including for the interests of creditors in various jurisdictions. For

⁸ United Nations Commission On International Trade Law. (1997). UNCITRAL Model Law on Cross-Border Insolvency (1997). 30-05-1997. https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency, diakses pada tanggal 20 Mei 2025.

⁹ Irit Mevorach. (2021). Overlapping International Instruments for Enforcement of Insolvency Judgments: Undermining or Strengthening Universalism?. *European Business Organization Law Review*, 22, 283-315. <https://doi.org/10.1007/s40804-021-00204-4>.

¹⁰ Panji Ahmad Setiawan & Imam Haryanto. (2024). Analysis of the UNCITRAL Model Law on Cross-Border Insolvency and Its Potential Effectiveness in Indonesia. *Jurnal Jurisprudentie*, 11(2), 137-151. <https://doi.org/10.24252/jurisprudentie.v11i2.51976>.

debtors, the Model Law encourages cooperation and coordination to streamline cross-border insolvency proceedings, avoid simultaneous forum shopping and minimise legal costs. This system allows for more systematic and efficient reorganization or liquidation for multi-jurisdictional debtors.¹¹ The determination of the primary jurisdiction depends on the concept of the debtor's centre of main interest (COMI) – the place where the business is regularly managed. Main proceedings are opened in the country where the COMI is located, while non-main proceedings are opened in countries where the debtor has a commercial 'establishment'. This provides jurisdictional certainty and a more stable legal protection system for all parties.¹²

Although the Model Law provides a global structure, its effectiveness depends on national adoption. ASEAN countries, including Indonesia, do not yet have a mutually binding cross-border insolvency regime, so harmonisation of laws and mechanisms for the recognition of foreign judgments has not been achieved.¹³ For example, in the European Union, the European Insolvency Regulation guarantees automatic recognition between member states, something that is not yet available in the ASEAN region or Indonesia. To protect the rights of Indonesian creditors over foreign assets, institutions such as curators and courts need to have legal tools in the form of bilateral or multilateral instruments and ratification of the Model Law. Without these, Indonesian bankruptcy decisions cannot be enforced abroad and foreign creditors find it difficult to effectively claim their rights in Indonesia.¹⁴

Indonesia still adheres to the territorial principle, which limits the scope of bankruptcy rulings to domestic assets only, meaning that the debtor's assets abroad are not covered by national law. This creates a serious gap in creditor protection and the effectiveness of global settlements. The Model Law offers a modified universalism approach that addresses these weaknesses, but Indonesia has not yet fully adopted it. Without the adoption of the Model Law or an

¹¹ Ishita Das. (2020). The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016. *Vikalpa: The Journal for Decision Makers*, 45(2), 104-114. <https://doi.org/10.1177/02560909209465>.

¹² Rizaldy Anggriawan. (2020). Insolvency Proceedings: ASEAN and EU Comparisonon the Rulesof Foreign CourtJurisdiction. *Indonesian Comparative Law Review*, 3(1), 35-44. <https://doi.org/10.18196/iclr.v3i1.11621>.

¹³ Elirica Aliyah Irwan Bauw & Ema Nurkhaerani. (2025). Keterbatasan Kekuatan Eksekutorial Putusan Pailit Indonesia dalam Perkara Kepailitan Lintas Negara. *Amandemen: Jurnal Ilmu Pertahanan, Politik dan Hukum Indonesia*, 2(3), 60-70. <https://doi.org/10.62383/amandemen.v2i3.966>.

¹⁴ Dicky Moallavi Asnil. (2018). UNCITRAL Model Law on Cross Border Insolvency Sebagai Model Pengaturan Kepailitan Lintas Batas Indonesia dalam Integrasi Ekonomi ASEAN. *Undang*, 1(2), 324-346. <https://doi.org/10.22437/ujh.1.2.323-346>.

international agreement, Indonesian national courts do not recognise foreign bankruptcy decisions, and conversely, Indonesian decisions are not recognised abroad. This situation means that foreign debtors and creditors do not have legal certainty and cross-border asset enforcement cannot be carried out effectively.

Countries with dual legal systems (e.g. a combination of common law and Sharia law) face specific challenges: not all conventional insolvency procedures are compatible with Sharia interpretations of insolvency (usury, compensation, recovery). The lack of harmonisation between general positive law and Sharia commercial law has created a legal vacuum in integrating the Model Law with both Sharia and international principles.¹⁵ Indonesia does not yet have any practical experience or court precedents regarding the recognition of foreign judgments or the coordination of cross-border cases. This exacerbates uncertainty, as judges and trustees do not yet have consistent operational guidelines to refer to in transnational cases. To close this gap, Indonesia's Bankruptcy Law needs to be revised to include provisions on recognition, foreign proceedings, access for foreign representatives, and the specific requirement for cooperation between courts.¹⁶ Without these modifications, Indonesia will only be able to rely on bilateral agreements that are limited in scope and unsystematic.

In the ASEAN region, there is still no binding harmonisation of cross-border insolvency.¹⁷ Furthermore, the legal systems in countries such as Malaysia, Indonesia and Brunei, which integrate Sharia principles, create complex dynamics of legal integration. This void calls for regional dialogue to develop an inclusive framework that respects the plurality of legal systems while adopting modern principles such as the Model Law.

Reconstructing Prophetic Values in Bankruptcy: An Analysis of the Concepts of *Iflās*, *Maslahah*, and Economic Justice in Islam

In the tradition of *fiqh mu'amalah*, the term *iflās* refers to a situation in which a debtor is no longer able to meet their payment obligations, and their assets are insufficient to cover their debts. Although formal terms such as 'bankruptcy'

¹⁵ Saurav Panda & Ahkam Khan. "Navigating Through the Asian Reluctance in Implementing the Model Law: Bridging the Pacific Divide". Insolvency Law Academy, June 2025, diakses 30 Juni 2025, <https://insolvencylawacademy.com/navigating-through-the-asian-reluctance-in-implementing-the-model-law-bridging-the-pacific-divide/>.

¹⁶ Jihan Amalia. (2019). Urgensi Implementasi UNCITRAL Model Law di Indonesia: Studi Komparasi dengan Singapura. *Jurnal Hukum Bisnis Bonum Commune*, 2(2), 162-172. <https://doi.org/10.30996/jhbcb.v2i2.2499>.

¹⁷ Moh. Harish Mubrizul Haq. (2023). Model Law on Cross Border Insolvency sebagai Ratifikasi Pengaturan Hukum Kepailitan Lintas Batas di Indonesia. *Negara dan Keadilan*, 12(2), 123-142. <https://doi.org/10.33474/negkeav12i2.20034>.

may be more modern, the analogous concept exists in classical *fiqh* as a form of balancing the protection of the rights of creditors and maintaining the social and moral livelihood of debtors.¹⁸ According to the principle of *maqāṣid al shari‘ah*, the main objectives are to maintain *hifz al māl* (protection of property) and *hifz al nafs* (protection of life), so that debt settlement must be carried out fairly without causing further damage.

Islam takes a balanced view of protecting creditors and debtors through the concepts of mutual assistance (*ta’āwun*) and financing without usury (e.g. *qardh al-hasan*).¹⁹ Creditors are entitled to recover their debts to the extent that debtors are able to pay, while debtors are given certain concessions such as payment deferrals and rescheduling, especially when the debt is *qardh al-hasan*, in accordance with humanitarian and social values (*rahmah*) and the principle of *amanah* (responsibility) in Islamic financial contracts.²⁰ The value of ‘*adl* (justice) in the context of *fiqh mu‘āmalah* requires that every transaction must result in a balance between the rights of the parties involved. In debt contracts and settlements, justice means not burdening one party beyond its means, and creditors must act without exploitation.²¹ Normative studies show that this principle of justice is translated into requirements for contract transparency, the absence of *gharar* (uncertainty) and the absence of urgency that is detrimental to one of the parties.²²

The principle of *maṣlahah* (public interest) is the fundamental basis for all transactions and regulations in modern *mu‘āmalah fiqh*. Based on *maqāṣid al shari‘ah*, economic practices such as *mu‘āmalah* must uphold five main objectives, namely religion, life, intellect, lineage, and wealth, including the resolution of

¹⁸ Adinda Lia Analia, Abdul Hakim, Mohammad Bektı Hendrie Anto & Andika Ridha Ayu Perdana. (2024). Implementing maqasid sharia: Impact on stability of Indonesian Islamic banks. *Jurnal Ekonomi dan Keuangan Islam*, 10(2), 164-176. <https://doi.org/10.20885/JEKI.vol10.iss2.art2>.

¹⁹ Hisam Ahyani, Naeli Mutmainah, Nurul Ilyana Muhd Adnan, Ending Solehudin, Encep Taufik Rahman & Miftakhul Huda. (2024). Leveraging Qardhul Hasan Practices from Zakat Funds Through Maqasid Shariah: Lessons From Indonesia and Malaysia. *Mu‘āmalah: Jurnal Hukum Ekonomi Syariah*, 3(2), 223-254. <https://doi.org/10.32332/muamalah.v3i2.9718>.

²⁰ Abdul Azis Ibrahim & Abdulrahman Alenezi. (2024). Leveraging Qardh al-Hasan within Islamic Finance: A Conceptual Framework for Advancing Sustainable Development among Early-stage Enterprises. *Tazkia Islamic Finance and Business Review*, 18(1), 18-54. <https://doi.org/10.30993/tifbr.v18i1.368>

²¹ Md. Faruk Abdullah, Muhammad Nazmul Hoque, Md. Habibur Rahman & Jamaliah Said. (2022). Can Islamic Financial Literacy Minimize Bankruptcy Among the Muslims? An Exploratory Study in Malaysia. *Sage Journals*, 12(4). <https://doi.org/10.1177/21582440221134898>.

²² Sugiyarti Fatma Laela & Abdul Latif. (2023). Income Smoothing, Displaced Commercial Risk and Bankruptcy in Indonesian Islamic Banks During the COVID-19 Pandemic. *JASF (Journal of Accounting and Strategic Finance)*, 6(2), 383-403. <https://doi.org/10.33005/jasf.v6i2.507>.

insolvency that guarantees the interests of all parties without causing social harm.²³ *Rahmah* (social compassion) emphasises empathy and humanity in debt resolution.²⁴ In Islamic tradition, if a debtor faces real difficulties, creditors are encouraged to provide leniency or even debt forgiveness (*kārahāt al iflāsiyah*) as a form of compassion, as long as it does not conflict with responsibility and justice. The value of *amanah* (responsibility) implies that every contract and loan must be made in good faith and with accountability. Both creditors and debtors are obliged to fulfil their obligations in accordance with the contract with the intention of protecting the rights of all parties in accordance with sharia.²⁵ *Amanah* also means that the curator or guarantor (such as in modern *kafalah* contracts) has a clear moral and legal responsibility to protect the interests of both the debtor and the creditor proportionally.²⁶

In contemporary practices such as digital finance or Islamic fintech, these values are applied through non-riba instruments (*mudharabah*, *musyarakah*, *ijarah*) designed to fulfil the elements of fairness, transparency, mutual benefit, and trustworthiness in the management of entrusted funds.²⁷ The implementation of these principles is reinforced by the fatwa of the DSN-MUI and OJK regulations, which require clarity of contract, balance of benefits, and protection of vulnerable parties (small or micro debtors), as well as the need to maintain the stability of the national Islamic financial system.²⁸

Prophetic Islamic values such as '*adl* (justice), *maslahah* (public interest), *rahmah* (social compassion), and *amānah* (responsibility) are highly likely,²⁹ and even deeply relevant, to be used as an ethical-normative framework in dealing

²³ Muhammad Hashim Kamali. *Principles of Islamic Jurisprudence*. (Cambridge: Islamic Texts Society, 2003), p. 367.

²⁴ Ahmad Maulidizen & Abdul Haris Muchtar. (2020). A Kafalah Issues: Concept and It's Application in Indonesian Islamic Banks. *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan dan Ekonomi Islam*, 12(2), 139-154. <https://doi.org/10.32505/jurisprudensi.v12i2.2178>.

²⁵ Nabil B. Abozaid,. *Ethics of Dispute Resolution in Islamic Law*. (Leiden: Brill, 2017), p. 135.

²⁶ Yusuf al-Qaradawi. *Fiqh al-Zakah: A Comparative Study*. (Beirut: Dar al-Taqwa, 1999), p. 56.

²⁷ Ahmad Fathorrozi & Moh. Hamzah. (2024). Kepatuhan Syariah Pada Fintech Lending Syariah: Analisis Akad dan Implementasinya. *Qawāniin Journal of Economic Syaria Law*, 8(1), 84-101. <https://doi.org/10.30762/qaw.v8i1.494>.

²⁸ Rahmad Lubis, Nuranisah, Desi Purnama & Atmo Prawiro. (2024). Peran Fatwa DSN MUI Dalam Penyesuaian Praktik Akad Murabahah Pada Bank Syariah: Perspektif Hukum Ekonomi Islam. *An-Nawawi: Jurnal Hukum dan Ekonomi Islam*, 4(2), 227-240. <https://doi.org/10.55252/annawawi.v4i2.69>.

²⁹ Burhanudin Harahap, Tastaftiyan Risandy & Inas Nurfadia Futri. (2023). Islamic Law, Islamic Finance, and Sustainable Development Goals: A Systematic Literature Review. *Sustainability* 15(8), 6626. <https://doi.org/10.3390/su15086626>.

with cross-border insolvency issues. The following table shows the prophetic ethical-normative framework in cross-border insolvency:

Table 1.
Prophetic Normative-Ethical Framework in Cross-Border Insolvency

Prophetic Values	Meaning and Principles	Implications in Cross Border Insolvency	Relevance to the UNCITRAL Model Law
<i>Adl</i> (Justice)	Upholding the balance of rights and obligations between parties	<ul style="list-style-type: none"> - Equal treatment between domestic and foreign creditors. - Protection of fair legal proceedings for debtors. 	In line with the principles access, non-discretion, and recognition
<i>Maslahah</i> (Public Interest)	Maintaining public benefit and preventing social harm	<ul style="list-style-type: none"> - Promoting coordination between countries for an efficient insolvency system - Focusing on business rescue and long-term economic impact 	Relevant to the principles cooperation and efficient administration
<i>Rahmah</i> (Social Compassion)	Concern for the vulnerable and affected parties	<ul style="list-style-type: none"> - Relief for debtors experiencing genuine economic hardship - Partial debt forgiveness where socially necessary 	Supporting relief mechanisms, stays of proceedings, and a humane approach
<i>Amanah</i> (Responsibility)	Upholding integrity, accountability, and transparency	<ul style="list-style-type: none"> - Fair administration of insolvency by the curator and judge. - Responsible management of the debtor's assets across borders. 	In accordance with the principles of good faith, cooperation, and openness

Source: compiled from various legal sources.

The value of 'adl provides an ethical basis that cross-border insolvency resolutions must guarantee equal access for both parties (creditors and debtors) in international courts of jurisdiction.³⁰ For example, debt victims should not be ignored simply because they are located overseas, and debtors are entitled to non-discriminatory legal protection. This is in line with the UNCITRAL Model Law, which promotes fair access to and recognition of foreign judgments.

Maslahah guides countries and Shariah regulators to harmonise cross-border insolvency regulations in order to achieve global solutions for the common good,³¹ such as implementing international debt rescheduling schemes

³⁰ Panji Ahmad Setiawan & Imam Haryanto. (2024). Analysis of the UNCITRAL Model Law on Cross-Border Insolvency and Its Potential Effectiveness in Indonesia. *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum*, 11(2), 137-151. <https://doi.org/10.24252/jurisprudentie.v11i2.51976>.

³¹ Nurul Hikmah. (2024). Legal Implications of the Territorial Principle on Cross-Border Insolvency in Indonesian Bankruptcy Law. *Justice Voice*, 3(2), 87-96. <https://doi.org/10.37893/jv.v3i2.1136>.

that take into account the circumstances of debtors without sacrificing the rights of international creditors. This approach can support cross-border economic stability and prevent social distortion.

Rahmah inspires the creation of up-to-date policies such as payment moratoriums, debt concessions, or humane international restructuring, especially in cases of disaster or crisis.³² In the context of cross-border insolvency, this can be realised through international coordination that takes into account the conditions of the debtor and the broader social impact. The use of the principle of trust in the context of cross-border insolvency means that actors such as curators or liquidation administrators must be morally and legally responsible not only for domestic assets but also for foreign assets and cross-border creditors. They must act accountably, transparently, and with integrity in accordance with Islamic norms and international law.³³

As an ethical-normative framework, the combination of these four values can form internal guidelines for countries that adopt the Sharia-aware version of the UNCITRAL Model Law: such as ensuring the recognition of foreign judgments through the principle of *adl*, restructuring procedures based on *maṣlahah*, social assistance based on *rahmah*, and asset management based on *amanah*.³⁴ However, the practical challenges are very real, namely that integrating these Sharia values with modern insolvency systems and international positive law requires textual and institutional harmonisation, training of Sharia-aware judges/curators, and adaptive bilateral/multilateral agreements on Islamic ethics. This requires a multidisciplinary approach between international law and Islamic law.

The framework as outlined in the table above serves as an ethical-normative guideline in formulating insolvency policies that are in accordance with sharia principles and consistent with international law.³⁵ For countries that adhere to a

³² Klemens Katterbauer, Hassan Syed, Sema Yilmaz Genc & Laurent Cleenewerck. (2023). Insolvency and bankruptcy based on Islamic principles within China – a data-driven analysis and framework. *EJIF: European Journal of Islamic Finance*, 10(3), 20-27. <https://doi.org/10.13135/2421-2172/7301>.

³³ Ahmad Hidayat bin Md Nor, Aishath Muneeza & Magda Mohsin. (2025). What is the insolvency regime applied under Shariah for Islamic banks? *International Journal of Law and Management*, 67(1): 56-77. <https://doi.org/10.1108/IJLMA-08-2023-0191>.

³⁴ Sarah Nursaadah Mohd Zameri, Syarifah Faigah Syed Alwi, Mohammad Firdaus Mohammad Hattac & Aula Ahmad Hafidh Saiful Fikri. (2024). Maslahah and ITS Application in Islamic Finance. *International Journal of Islamic Business*, 9(1), 82–94. <https://doi.org/10.32890/ijib2024.9.1.5>.

³⁵ Rozita Abd Hafiz, Zariah Abu Samah & Rusni Hassan. (2017). Challenges of Islamic Debt Restructuring in a Multi Creditor Environment. *Journal of Islamic Finance*, 6(special issue), 54-72. <https://doi.org/10.31436/jif.v6i0.256>.

dual legal system, the above framework is also useful in developing policies to harmonise national and international law. In addition, the values contained therein can serve as guidelines for judges and legal practitioners in interpreting insolvency law not merely textually, but with an orientation towards the underlying values of justice and ethics.

Formulation of an Integrative Model for Creditor and Debtor Economic Protection Based on a Prophetic Approach

Globalisation has expanded the scale of cross-border business transactions, which ultimately also increases the potential for cross-jurisdictional insolvency. When a business entity experiences bankruptcy involving creditors or assets in several countries, national legal systems are often inadequate to deal with such complexities. On the other hand, global society now increasingly demands a legal approach that is not only effective, but also ethically and culturally fair. Therefore, a conceptual model is needed that integrates international law - which tends to be formalistic and rule-based - with Islamic legal values that emphasise social justice, humanity and moral balance.³⁶

International law has developed a number of instruments to deal with cross-border insolvency, with the UNCITRAL Model Law as the main reference. Principles such as universalism, recognition of foreign court decisions, and cooperation between judicial authorities are important foundations.³⁷ The aim is to create an efficient and coordinated system, protect debtor assets in various countries, and ensure the proportional interests of creditors.³⁸ However, in practice, this approach is often technocratic and ignores moral aspects and local or religious values.

Insolvency in Islamic law is known as *taflīs*, which is the condition of a person or entity being unable to pay their debts. Sharia encourages the resolution of this issue through values such as *'adl* (justice), *rahmah* (compassion), and *maslahah* (public interest). Instruments such as *sulh* (reconciliation), *tahkim* (arbitration), and protection of the weak (*mustad'afin*) are more humane

³⁶ Halima Alisic, Betul Dinc & Anite Salihu. (2024). Islamic Finance as a Crisis-Resilient Framework: Insights from the Global Financial Crisis. *Journal of Economics Law and Society*, 1(2), 37-53. <https://doi.org/10.70009/jels.2024.1.2.3>.

³⁷ Al Jammas Raya Idan Mebid, Syajarul Imna Mohd, Aisyah Abdul-Rahman & Mohd Fahmi Ghazali. (2024). The Influence of Corporate Governance and Shariah Governance on Insolvency Risk: Evidence from Developing Market. *Periodicals of Engineering and Natural Sciences*, 12(1), 205-222. <https://doi.org/10.21533/pen.v12.i1.31>.

³⁸ Yusup Hidayat. (2024). Islamic Legal Perspective Resolution of Bankruptcy in Sharia Business Disputes. *Journal of Law and Sustainable Development*, 12(5), <https://doi.org/10.55908/sdgs.v12i5.3678>.

mechanisms for resolution. In addition, the prohibition of usury and the encouragement to repay debts without burdening the debtor (the principle of *istita'ah*) show that Islamic law does not only focus on legal certainty, but also on moral and social aspects. The proposed conceptual model aims to unite the strengths of the international legal system and Islamic legal values within a single integrated framework. This model is built on three main foundations: (1) Harmonisation of legal principles, namely bridging international norms and Islamic values; (2) Inclusive cross-jurisdictional recognition, by adopting elements of Sharia law within the framework of international legal recognition; and (3) Resolution based on moral justice and ethics, involving mediation or arbitration based on Islamic values. With this model, the insolvency process becomes not only procedural, but also guarantees comprehensive and value-based justice.

In practice, this model can be implemented through the establishment of cross-border arbitration or mediation institutions based on Sharia law, which remain subject to the principle of international cross-jurisdictional recognition. For example, in the case of a sharia company in Malaysia that goes bankrupt and has creditors in the United Kingdom, dispute resolution can use Sharia-based arbitration, the results of which are recognised by the British legal system in accordance with the UNCITRAL Model Law.³⁹ Here, the international mechanism functions as a legal framework, while Islamic principles serve as the ethical and moral basis.

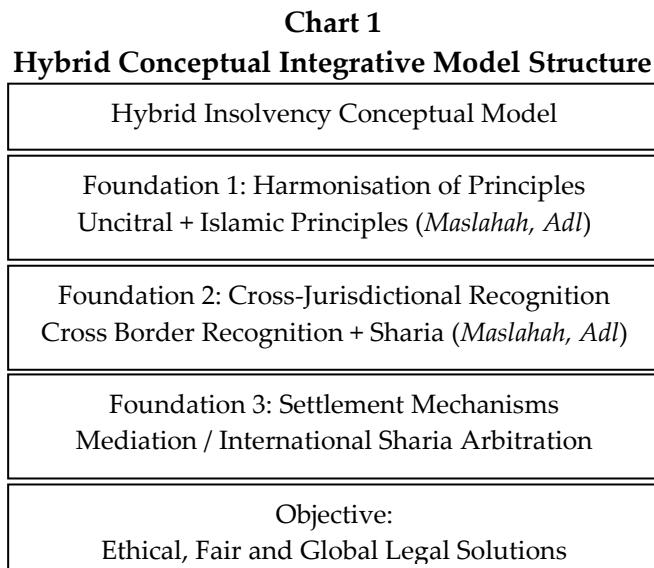
Table 2
Integration of International Law and Islamic Law Principles
in Insolvency Resolution

Aspects	International Law (Uncitral)	Islamic Law (Sharia)	Conceptual Model Integration
Objectives	Efficiency, creditor protection	Fairness, public interest, morality	Ethically efficient and fair
Mechanism	Court, cross-border recognition	Conciliation, arbitration, <i>istita'ah</i> , without usury	Hybrid: Sharia mediation/arbitration
Key Principles	Universalism, cooperation, recognition	Justice, benefit, trustworthiness, protection of the weak	Harmony between legal principles and moral values
Implementation	UNCITRAL Model Law	Fiqh Muamalah and sharia insolvency principles	Recognition of jurisdiction under sharia
Output	Formal legal resolution	Fair and humane resolution	Ethical formal resolution

Source: compiled from various sources

³⁹ Syed Khalid Rashid. (2007). Sundra Rajoo & WSW Davidson (2007), The Arbitration Act 2005: UNCITRAL Model Law as Applied in Malaysia. *IIUM Law Journal*, 15(1), 149-153. <https://doi.org/10.31436/iiumlj.v15i1.64>.

The structure of an integrative model for the economic protection of creditors and debtors based on a prophetic approach can be created as a hybrid conceptual model structure, which is illustrated in the following chart:



Source: compiled from various sources

This integrative model provides a promising middle ground between international legal certainty and Islamic ethics of justice. It is not only relevant to Muslim countries, but also contributes to the development of a more inclusive and value-oriented global legal system.⁴⁰ In the long term, this approach has the potential to create a cross-border insolvency legal framework that is adaptive, fair, and capable of responding to the dynamics of a multicultural world.

The guiding principles to ensure the protection of the economic rights of parties in a fair, humane, and transcendent manner are: the principle of justice ('*adl*) as an operational foundation. In an integrative model based on a prophetic approach, the principle of justice becomes the main foundation. Justice is not only the proportional distribution of rights, but also ensuring a fair balance of rights and obligations between creditors and debtors.⁴¹ Preventive and repressive principles in creditor protection, such as cross default, cross collateral, and *actio pauliana*, demonstrate the operation of legal justice: protecting creditors from debtor default and ensuring that debtors are not unilaterally disadvantaged. In a prophetic context, justice is integrated through dialogue, transparency of

⁴⁰ Arivan Halim. (2023). Prinsip Resiprositas dalam Sengketa Kepailitan Lintas Batas Negara (Cross-Border Insolvency). *Al-Qalam*, 17(4), 2609-2621. <http://dx.doi.org/10.35931/aq.v17i4.2368>.

⁴¹ Moch Najib Imanullah; Emmy Latifah & Pramesthi Dinar Kirana Ratri. (2018). International and Domestic Law Aspects of Cross-Border Insolvency in Order to Establishing Cross-Border Insolvency Regulation in Asean: Indonesian Perspective. *Indonesia Law Review*, 8(2), 190-202. <https://doi.org/10.15742/ilrev.v8n2.265>.

contracts, and humane dispute resolution procedures, not selective enforcement.⁴²

The principle of humanity (*ihsān*) and the soft law approach. The operationalisation of *ihsān* requires creditors and financial institutions to prioritise a humanitarian approach: providing tolerance in restructuring, financial education, and integrative protection for debtors in difficulty.⁴³ The case study of extrajudicial fiduciary execution as referred to in Article 15 paragraphs (2-3) of Law Number 42 of 1999 concerning Fiduciary Guarantees reflects the risk of dehumanisation in coercive practices: in reforming the operational model, there must be mechanisms for complaints, postponement of execution, and court supervision so that the rights of debtors are respected.

The principles of legal certainty and transparency. The integrative prophetic model also emphasises the need for clear and transparent legal certainty: contracts must be written clearly, risks explained, and default procedures ensured through mutual agreement. The principles of cross default and cross collateral, for example, if structured transparently and with adequate legal protection, can be a preventive instrument to maintain the economic welfare of both parties.⁴⁴

The principle of transcendence: ethical values and social welfare. The prophetic approach emphasises transcendent values such as trustworthiness, mutual assistance (*ta'āwun*), and the prohibition of usury and *gharar*.⁴⁵ A comparative study of Islamic and capitalist economics shows that systems based on *mudharabah* and redistribution (*waqf, zakat*) produce less inequality than interest-based or usury-based lending models. Therefore, the operation of a fair integrative model includes redistributive clauses or *tabarru'* (sharia insurance) to ward off economic risks for debtors while maintaining the rights of creditors in an ethical manner.

⁴² Panji Ahmad Setiawan & Imam Haryanto. (2024). Analysis of the UNCITRAL Model Law on Cross-Border Insolvency and Its Potential Effectiveness in Indonesia. *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum*, 11(2), 137-151. <https://doi.org/10.24252/jurisprudentie.v11i2.51976>.

⁴³ Yolanda Tasya Amalia, Muhamad Fikri Asy'ari & Naufal Fauzan Raihansyah. (2025). Pendekatan Soft dan Hard Power dalam Peacebuilding sebagai Resolusi Konflik antara Pemerintah Indonesia dan Organisasi Papua Merdeka (OPM). *Mondial: Jurnal Politik dan Hubungan Internasional*, 2(1), 227-259. <http://dx.doi.org/10.36722/mondial.v2i1.3216>.

⁴⁴ Muhammad Irfan Hielmy. (2020). Penerapan Prinsip Cross Default Dan Cross Collateral Pada Perjanjian Kredit dengan Agunan Hak Atas Tanah (Studi PT. Bank Negara Indonesia (Persero) Tbk.). *Indonesian Notary*, 2(1), 273-292.

⁴⁵ Abdul Hamid & Muhammad Kamal Zubair. (2019). Implementasi Etika Islam Dalam Pemasaran Produk Bank Syariah. *Balanca: Jurnal Ekonomi dan Bisnis Islam*, 1(1), 16-38. <https://doi.org/10.35905/balanca.v1i1.1037>.

Balanced preventive-repressive & procedural principles. Operationally, the principles of risk prediction (preventive) and efforts to achieve justice in the event of default (repressive) are integrated.⁴⁶ The prophetic-based model designs restructuring protocols prior to default, as well as legal mechanisms such as PKPU/individual, bankruptcy, and *actio pauliana*, which are implemented openly and non-discriminatorily.⁴⁷ Debtors are given access to legal assistance and negotiation options, while creditors are protected through fair guarantee agreements and clear laws.

Operational principles *adl*, *ihsan*, transparency, transcendent ethics, and a preventive-repressive approach, this prophetic integrative model is expected to ensure the protection of the economic rights of creditors and debtors in a fair and humane manner, based on the highest moral and social values. Meanwhile, the normative and practical recommendations for the development of a cross-border insolvency system that is not only legal formalistic, but also ethical and in accordance with *maqaṣid al shari’ah*, are as follows:

First, normative recommendations: harmonisation of cross-border insolvency laws with *maqaṣid al shari’ah*. At the normative level, governments and supranational bodies (e.g. ASEAN, UN/UNCITRAL) need to establish a legal framework that integrates the principles of *maqaṣid al shari’ah*, particularly *hifz al māl* (protection of property), *hifz al nāfs* (protection of economic life), and *hifz al ‘adl* (justice).⁴⁸ The application of the UNCITRAL Model Law on cross-border insolvency can be adapted so that the provisions on centre of main interest (COMI), recognition of foreign insolvency officials, and the universal mutualisation framework are modified to include Sharia-based exceptions to the practices of usury, *gharar*, and unfair distribution of creditor assets in a discriminatory manner.⁴⁹ Countries with a Sharia-based legal system or a Muslim majority should adopt amendments that explicitly guarantee that cross-border asset recovery and restructuring are carried out in a transparent and proportionate manner and do not harm small debtors without humane restructuring options.

⁴⁶ Siti Anisah. (2009). Studi Komparasi terhadap Perlindungan Kepentingan Kreditor dan Debitor dalam Hukum Kepailitan. *Jurnal Hukum IUS QUIA IUSTUM*, 16(Khusus), 30-50.

⁴⁷ Nurkhalifah & Romi Faslah. (2025). Transformasi Perspektif Hukum Kepailitan dalam Bisnis: Komparasi antara Hukum Positif Indonesia dan Hukum Islam. *Jurnal Ekonomi dan Bisnis Digital*, 2(4), 2632-2634. <https://doi.org/10.62379/jebd.v2i4.2776>.

⁴⁸ Gerald Fikri Putra Pradita & Darwanto. (2025). Integration of Maqashid Sharia and Human Development: Case Study in Indonesia. *Indonesian Interdisciplinary Journal of Sharia Economics (IJJSE)*, 8(1), 1091-1109. <https://doi.org/10.31538/ijjse.v8i1.5884>.

⁴⁹ Zumiyyati Sanu Ibrahim, Suud Sarim Karimullah, Andi Istiqlal Assaad, Rina Septiani & Huseyin Okur. *Jurnal Hukum Islam (JHI)*, 23(1), 105-144. <https://doi.org/10.28918/jhi.v23i1.04>.

Second, practical recommendations. Ethico-legal resolution mechanisms based on *maqāṣid al-shariah*. In practical terms, bankruptcy authorities and Shariah institutions need to develop operational resolution protocols that prioritise distributive justice and fair access to litigation, such as the international PKPU mechanism, which provides cross-jurisdictional mediation and restructuring with profit-loss sharing schemes (*mudarabah, musyarakah*) as alternatives to debt settlement.⁵⁰ This resolution model must adopt soft law such as voluntary restructuring before forced liquidation, the involvement of an independent Sharia Council in every stage of restructuring, and protection for minority investors or small depositors to ensure that its *maqāṣid* are fulfilled (e.g. *hifż al māl, hifż al dīn*).⁵¹ In addition, the application of *maqāṣid*-based corporate governance, as has been done in the performance of Islamic banks in Southeast Asia, can be adapted to the realm of cross-border insolvency to strengthen transparency, accountability, and participation of affected parties.

Third, ethical principles and Sharia supervision in cross-border resolutions. In the operation of international insolvency systems, it is crucial to ensure that the Sharia Supervisory Board (SSB) or independent panel plays an active role at every stage, from the determination of COMI to the distribution of assets across countries.⁵² This ensures that every step of restructuring or liquidation complies with Sharia norms and upholds the objectives of *maqāṣid*, including the prohibition of usury, *gharar*, and injustice between creditors and debtors.

Fourth, integration of blockchain technology for transparency and accountability. As a further recommendation, the use of decentralised technology such as blockchain can strengthen transparency and accountability in cross-border insolvency proceedings.⁵³ A verified and immutable ledger system allows all parties, creditors, debtors, insolvency administrators, and Sharia supervisors, to access real-time information on restructuring or liquidation, asset distribution, and judicial decisions. This approach is in line with the spirit of

⁵⁰ Nur Kholis. (2025). A normative ethical analysis of Islamic unit-linked insurance using the Maqasid Shariah framework of Abu Zahrah. *Journal of Islamic Economics Lariba*, 11(1), <https://doi.org/10.20885/jielariba.vol11.iss1.art18>.

⁵¹ Wahyu Jatmiko, Abdullah Iqbal & M. Shahid Ebrahim. (2023). On the Ethicality of Islamic Banks' Business Model. *British Journal Management*, 35(1), 115-136. <https://doi.org/10.1111/1467-8551.12703>.

⁵² Faizi & Mohd Sollehudin Bin Shuib. (2024). Sharia Governance in Islamic Financial Institutions: A Comparative Review of Malaysia and Indonesia. *El Dinar: Jurnal Keuangan dan Perbankan Syariah*, 12(1), 89-107. <https://doi.org/10.18860/ed.v12i1.25135>.

⁵³ Aprilia Candra Purnama Wati & Muhammad Yazid. (2023). Blockchain Technology in Financial Transactions under Sharia Banking Practice. *EkBis: Jurnal Ekonomi Dan Bisnis*, 7(2), 81-91. <https://doi.org/10.14421/EkBis.2023.7.2.2049>.

maqāṣid al-shariah, which is to minimise *gharar*, improve the fairness of the process, and strengthen social trust in cross-border economic settlements.

With recommendations for harmonising international law with *maqāṣid al-shariah*, practical mechanisms based on ethical restructuring and protection of vulnerable parties, independent sharia supervision, and transparent technological innovations, cross-border insolvency systems can be developed not only in a formal legalistic manner, but also in an ethical and spiritually and socially meaningful way.

CONCLUSION

This study concludes that cross-border insolvency regulations in Indonesia are still not in line with developments in international law, particularly the UNCITRAL Model Law, resulting in a legal vacuum in terms of legal protection for cross-border creditors and debtors. The approach of Islamic prophetic values in insolvency through the concepts of *iflās*, *maslahah*, and economic justice offers an ethical perspective that balances protection for both parties in a fair and humane manner. Prophetic values rooted in revelation, *maslahah*, and economic justice emphasise protection for the weak (*mustadh'afin*), including honest debtors, without neglecting the rights of creditors. This principle offers a moral framework for balancing economic interests and social justice. Based on this analysis, this study formulates a model for the economic protection of creditors and debtors based on an integrative approach that combines the positive legal framework with Islamic legal values, in order to create a fair, adaptive, and civilised cross-border bankruptcy system.

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