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Principles of Recognition of Indonesian Bankruptcy Decisions Abroad Based on Principles of International Law

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Abstract
Globalization, which drives global economic growth, has caused the boundaries between countries to become increasingly blurred for economic transactions. As a result, global economic activity carries business risks. Liquidity issues, which can lead to bankruptcy, are one potential problem. This problem is further complicated by the involvement of bankruptcy cases in more than one legal jurisdiction, a phenomenon known as "Cross Border Insolvency". Bankruptcy law enforcement around the world, including Indonesia and other ASEAN countries such as Malaysia and South Korea, faces the problem of Cross Border Insolvency. Each country has different rules and practices in handling international insolvency.

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Introduction

Business expansion beyond national borders is nothing new in today's era of free trade and globalization. This aligns with the business goal of maximizing profits. When a company leaves its home jurisdiction, its business activities increase its financial value and strengthen international financial, legal, and political ties. The impacts of these activities are complex and beneficial. Businesses conducting cross-border transactions are no longer constrained by national boundaries due to globalization. Businesses aren't always successful, and they may face challenges, particularly in the legal realm.

Furthermore, transnational relationships pose risks to businesses in related economic sectors, such as financial issues. Businesses, both individuals and corporations, face various insolvency and bankruptcy mechanisms when facing prolonged financial challenges, resulting in bad debts and liquidity disruptions. Cross Border Insolvency (CBI) further complicates these issues.

Globalization, which drives global economic growth, has caused the boundaries between countries to become increasingly blurred for economic transactions. As a result, global economic activity carries business risks. Liquidity issues, which can lead to bankruptcy, are one potential issue. This problem is further complicated by the fact that bankruptcy cases involve more than one legal jurisdiction, a phenomenon known as “Cross Border Insolvency". Bankruptcy law enforcement around the world, including Indonesia and other ASEAN countries such as Malaysia and South Korea, faces the problem of Cross Border Insolvency. Each country has different rules and practices in dealing with international insolvency.

Regardless of the historical factors underlying bankruptcy law in a country, including Indonesia and other ASEAN countries such as Malaysia and South Korea, it turns out that there are several similarities and differences between the history of bankruptcy law in these countries, especially in terms of its formulation [1]. Sunarjati Hartono stated that if there are: (a) foreign debtors, (b) foreign creditors, (c) assets and wealth located abroad, or (d) assets or wealth of a company owned by foreigners, then bankruptcy is an international case. Hikmahanto Juwana stated the same thing: international bankruptcy (Cross Border Insolvency) occurs when a business entity is declared bankrupt by a competent court in a country and the business entity has a

[1]. Tata Wijayanta Muhammad Bagas, 2021, Kerjasama Lintas Batas Antar Lembaga Peradilan, Yogyakarta, p. 61.

subsidiary established under local law in another country. One category of Cross Border Insolvency is as follows: (1) the court sentences a foreign company because it owns shares in a company in Indonesia (for example in the form of a joint venture), (2) a foreign business entity is declared bankrupt by the court because it has an agreement with a business entity in Indonesia (for example in the form of an international trade agreement), or (3) the court declares a foreign company that owns shares in a foreign company bankrupt.

In Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law), there are no clear regulations regarding Cross Border Insolvency, but there are only 3 (three) articles relating to the elements of international bankruptcy related to bankruptcy in Indonesian law, namely Article 212, Article 213, and Article 214 of the Bankruptcy Law [2].

Problem Formulation

What are the principles for recognizing Indonesian bankruptcy decisions abroad based on international law?

Purpose

The purpose of this paper is to discuss and compare the laws and regulations regarding Cross Border Insolvency and analyze the principles of recognition of Indonesian bankruptcy decisions that can be used to handle Cross Border Insolvency problems in Indonesia and other ASEAN countries such as Malaysia and South Korea.

Discussion

Comparison of Bankruptcy Law Regulations in Indonesia, Malaysia, and South Korea

In Indonesia, Law Number 37 of 2004 was enacted on October 18, 2004, and consists of 308 articles. Chapter I discusses general provisions, Chapter II discusses bankruptcy provisions, Chapter III discusses debt repayment suspensions, Chapter IV discusses requests for judicial review, and Chapter V discusses additional provisions.

Currently, Malaysia's bankruptcy laws are the Bankruptcy Act 1967 (revised 2017) for individual debtors and the Companies Act 2016 for corporate insolvency. Both laws have been amended to improve the country's bankruptcy legal system and keep pace with global economic developments.

Meanwhile, in South Korea, on April 1, 2006, the Debtors' Rehabilitation and Bankruptcy Law was enacted as a result of these efforts. This law re-codified South Korea's previous laws governing bankruptcy and insolvency. The purpose of the Debtors' Rehabilitation and Bankruptcy Law was to create more systematic and effective procedures by combining laws governing individual bankruptcy and corporate insolvency. South Korea adopted the provisions of the UNCITRAL Model Law on Cross Border Insolvency, abandoning the territoriality principle of the previous law and adopting the principle of universality as part of a global effort to standardize rules related to cross-border insolvency [3].

A. Cross Border Insolvency Arrangements in Indonesia, Malaysia and South Korea

Under Law Number 37 of 2004, all of a debtor's assets at the time of the bankruptcy decision, as well as anything acquired during the bankruptcy process, are considered assets. "All of the debtor's assets" includes all of the debtor's assets, both within and outside Indonesia. Several provisions in this article appear to indicate that Indonesia adopts a universalist approach to the type of cross-border insolvency approach used. This raises the question of whether the management and settlement of a bankrupt debtor's assets can be extended to assets outside Indonesia, given the provisions in this article.

So far, Malaysia has implemented mutual assistance provisions with Australia and the UK. Furthermore, the Companies Act 2016 regulates overseas insolvency. The liquidation of foreign and local companies is governed by the Companies Act 2016. Therefore, corporate insolvency in Malaysia typically involves liquidation procedures. Malaysia has adapted English private international law to its own circumstances. Malaysia has long recognized the importance of cooperating with other countries in recognizing foreign court judgments. Therefore, the country enacted legislation called the Reciprocal Enforcement of Judgments Act 1958 (REJA Act 1958) to cooperate with Commonwealth countries in recognizing and enforcing judgments in civil and commercial cases.

Meanwhile, in South Korea, the Debtors' Rehabilitation and Bankruptcy Act of 2006, unlike most civil laws, regulates the recognition and enforcement of foreign bankruptcy judgments and the rules regarding cross-border insolvency, which are set out in the International Insolvency chapter. This law adopts the UNCITRAL Model Law on Cross Border Insolvency. Therefore, bankruptcy proceedings conducted in South Korea will have an impact beyond its borders. This allows South Korea to recognize bankruptcy judgments from other countries [4].

Model of International Legal Approach in Settling Cross Border Insolvency Cases

1) Universalism

The universalist approach relies heavily on international treaties and conventions because most countries worldwide refuse to grant control of assets and individuals (debtors) to foreign courts. The universalist approach is highly efficient, which is its main advantage. It increases the success rate of reorganization and distribution of liquid assets. It avoids excessive administrative costs, sells debtors' assets simultaneously, encourages cooperation in reorganization, and creates a conducive investment climate [5].

2) Modified Universalism

Modified Universalism, The United States is one country that implements this approach. The court must select a representative for a foreign debtor filing for bankruptcy when the foreign creditor or debtor files for bankruptcy. The debtor's assets can be sold or transferred to the corporate debtor by the debtor's representative. The foreign debtor's legal representative has the right to seek assistance from a United States court as a secondary forum, under the US Bankruptcy Code. US courts have the authority to oversee and pay assets held domestically [6].

[2] Dhaniel Suryana, 2007, Hukum Kepailitan "Kepailitan Terhadap Badan Usaha Asing oleh Pengadilan Niaga Indonesia", Bandung, p. 48-49.
[3] Tata Wijayanta Muhammad Bagas, op.cit., p. 29-51.
[4] ibid., p. 81-83.
[5] ibid., p. 64-65.
[6] ibid., p. 67.

3) Secondary Insolvency

Furthermore, regarding secondary insolvency, European Union countries have incorporated a secondary insolvency approach into the European Insolvency Regulation. Once insolvency proceedings are opened in the primary forum, this approach is considered an open procedure. "The secondary insolvency approach operates similarly to the application of modified universalism," based on the following similarities:

- Courts in the country at the center of the dispute attempt to ensure that the insolvency procedure has an impact beyond that country's territory (extraterritorial effect) and
- Foreign courts may assist the courts in the country acting as the primary forum within certain limits. A foreign court liquidates or reorganizes the debtor's assets in that country using a secondary insolvency approach. Under the laws of that country, these assets are then awarded to local creditors. If any assets remain from the debtor's transfer at this stage, they are then transferred to that country, which acts as the central administration and resolution process.

One advantage of the secondary insolvency approach is that it avoids most of the issues associated with conflicts of interest between the foreign and primary jurisdictions. This is because the law of the foreign creditor's jurisdiction automatically governs claims filed by foreign creditors. However, this technique allows for cooperation by transferring the debtor's assets awarded to foreign creditors to the court, which serves as the primary jurisdiction for the equitable distribution of those assets [7].

International Legal Instruments in the Settlement of Cross Border Insolvency Cases

1) Convention Abolishing the Requirement of Legalization for Foreign Public Documents (1961)

Nearly every country faces procedural issues in cases involving more than one jurisdiction. Formalities, such as the legalization of documents between the parties, remain poorly addressed. This Convention, established on October 5, 1961, was created to eliminate the need for foreign documents to be created abroad for use in cases before the courts of other countries. The Convention defines the types of documents that do not require approval. These are: (1) documents originating from judicial authorities or officials; (2) administrative documents; and (3) official certificates attached to documents signed by a person in his or her individual capacity, such as official certificates relating to the registration of documents or certifying the authenticity of documents on a specific date, as well as the legalization of documents. The Convention on the Elimination of the Obligation to Legalize Foreign Public Documents was created to address ineffective methods of legalizing foreign documents. It is crucial for creditors filing for bankruptcy against a debtor to obtain the assistance of an attorney experienced in bankruptcy cases. The attorney must have a special power of attorney to act on behalf of the creditor filing for bankruptcy if the creditor is not domiciled in Indonesia. To be valid, the power of attorney must be signed before a notary and legalized by an authorized agency. The power of attorney may only be sent to the embassy of the relevant country after legalization. Ratifying this convention will make it easier for countries that have ratified it to legalize foreign documents by affixing an "Apostille" certificate (a piece of paper affixed or stamped to the document). This will make it easier for member countries to retrieve foreign documents in other member countries simply by affixing this certificate.

2) The Hague Convention on the Taking Evidence Abrood in Civil or Commercial Matters (1970)

This convention was created to simplify the process of gathering evidence through letters of request. Under this convention, a court judge can request evidence or legal action from a state institution or judicial body of another country through a letter of request. The court of another member state can then assume the authority to forward the evidence to law enforcement agencies or judicial bodies. Because this convention allows each country to obtain evidence in cases ongoing within its own jurisdiction, it will facilitate the resolution of cross-border cases [8].

3) Uncurtail Model Law on Cross Border Insolvency with Guide to Enactment (1997)

The United Nations decided to issue a Model Law on Cross Border Insolvency through the United Nations Commission on International Trade Law (UNCITRAL). This model law was drafted due to the numerous problems arising from the recognition and enforcement of bankruptcy decisions between countries due to jurisdictional disputes. Furthermore, many countries still use the principle of territoriality, leaving cross-border insolvency issues unresolved. The lack of legal guarantees and investment security will hamper global economic growth.

The UNCITRAL model law allows for the recognition and enforcement of bankruptcy judgments involving two national jurisdictions. Furthermore, it facilitates judicial cooperation. One of the objectives of this model law is to ensure that countries worldwide can adopt existing regulations to complement their own insolvency laws. This will allow for better outcomes in global insolvency. Because the model law is not legally binding, it only needs to be adopted in statutory form. It is crucial to align it with the legal regulations of the country adopting the model law. The purpose of this model law is to determine whether a country's legal needs align with its provisions. The purpose of this model law is to provide assistance and build: i). increasing legal certainty in the fields of trade and investment; ii). cooperating with courts and other competent institutions in international bankruptcy cases; iii). fair and effective international bankruptcy administration that protects the interests of creditors, debtors, and other interested parties; iv). protecting and maximizing the value of debtors' assets; and v). assisting in the rescue of businesses involving debtors.

Countries that have adopted the UNCITRAL Model Law permit the enforcement of foreign bankruptcy judgments. This Model Law covers the following: the acceptance of receivers from other countries as representatives in court, the acceptance of recognized foreign bankruptcy judgments and the consequences of their recognition, and the establishment of a basis for cooperation and coordination between courts, receivers, and the courts. This offers solutions for businesses

[7] ibid., p. 70.
[8] ibid., p. 75-77.

conducting international trade. A country can determine the extent to which international insolvency provisions are incorporated into its national law through the provisions of the Model Law. Legal security will impact the global economy. In the era of globalization, businesses are growing rapidly, with subsidiaries, business partners, and foreign investors. Therefore, without state protection, businesses will be reluctant to take risks, particularly in bankruptcy law [9].

Principles of Recognition of Indonesian Bankruptcy Decisions Abroad Based on (Model Law on Recognition and Enforcement of Insolvency-Related Judgments) – Vienna 2019 Juncto UNCITRAL (United Nations Commission on International Trade Law) tentang Kepailitan Lintas Batas (Model Law on Cross-Border Insolvency with Guide to Enachment and Interpretation) – New York 2014

The UNCITRAL Model Law on Cross Border Insolvency with Guidelines for its Implementation was adopted in 1997 and aimed to address the common cross-border insolvency issues worldwide. Furthermore, this model law emphasizes authorization, encourages jurisdictional cooperation and coordination, respects differences in national laws, and harmonizes substantive insolvency laws across countries. In general, this legal model consists of five objectives stated in the preamble to the UNCITRAL Model Law on Cross Border Insolvency with its Determination Guidelines, namely:

1) The main objectives of UNCITRAL (Model Law on Cross Border Insolvency with Guide to Enactment and Interpretation) are: a). Cooperation between the courts and other competent authorities of this State and foreign states in the case of cross border insolvency, b). Greater legal certainly for trade and investment, c). Fair and efficient administration of cross border insolvencies that protect the interest of all creditors and other interested persons, including the debtor, d). Protection and Maximization of the value of the debtor's asets, e). The rescue of financially troubled business, thereby investment and preserving employment [10].
2) The scope of UNCITRAL (Model Law on Cross Border Insolvency with Guide to Enactment and Interpretation) is: a). Provision of assistance rendered in this country by a foreign court or foreign recipient (foreign representative) in connection with foreign legal proceedings, b). Assistance is provided in this country in connection with proceedings under the national law of this country regarding bankruptcy, c). Legal proceedings abroad and the national legal proceedings of this country regarding bankruptcy in the case of the same debtor are carried out simultaneously, d). Creditors and other interested parties in foreign countries who have a desire to request the initiation of a bankruptcy decision or participate in the process in accordance with the national law of this country regarding bankruptcy [11].
3) The principles of UNCITRAL (Model Law on Cross Border Insolvency with Guide to Enactment and Interpretation) are: Created to help countries equip their insolvency laws with a modern, harmonized, and fair framework to more efficiently handle cross-border insolvency cases involving financially distressed and insolvent debtors, the UNCITRAL Model Law on Cross-Border Insolvency with Guidelines for Determination was established in 1997. This convention allows countries to recognize and enforce foreign insolvency judgments. The United Nations Commission on Trade Law (UNCITRAL) is a body under the UN General Assembly responsible for drafting model laws or model laws that countries can use when amending various provisions of trade and business law. UNCITRAL model laws, including the UNCITRAL Model Law on International Commercial Arbitration, the UNCITRAL Model Law on Enforcement of Goods, Construction, and Services, and the UNCITRAL Model Law on International Transfers of Credit, provide solutions to problems related to the enforcement of court judgments.

The 1997 Cross-Border Insolvency Model Law did not attempt to substantially unify insolvency law. Instead, it facilitated cooperation between jurisdictions, provided simpler solutions to cross-border insolvency issues, and encouraged uniform enforcement of cross-border insolvency. Furthermore, the Law aimed to reduce uncertainty in international insolvency decisions in order to encourage international investment and capital transfers. The UNCITRAL Cross-Border Insolvency Model Law facilitated the recognition and enforcement of insolvency decisions in countries that had adopted the Model Law into their respective insolvency laws, thereby providing assurance and benefits to businesses engaged in international trade. In the chapter The Judicial Perspective of the UNCITRAL Model Law on Cross-Border Insolvency, several principles are mentioned as follows:

a) The "access principle"

As explained in Chapter II of the Model Law on Cross-Border Insolvency, Access of Foreign Representatives and Creditors to Courts in This State, the concept of access allows a foreign receiver or representative to appear in court in the country concerned in bankruptcy proceedings. The scope of this principle includes: (1) Initiating bankruptcy proceedings under the law of the country concerned (the country that adopted the model law); (2) Recognizing foreign bankruptcy proceedings in the recipient country, so that the foreign representative can: (a) participate in ongoing bankruptcy proceedings in the recipient country; (b) provide assistance under the model law; (c) intervene in bankruptcy proceedings permitted by domestic law.

b) The "recognition" principle

Based on this principle, the court may make an order to recognize a foreign proceeding as a foreign main proceeding or as a foreign non-main proceeding. The main purpose of this principle is to avoid excessively lengthy proceedings and to make a speedy decision on the application for recognition. This creates legal security and allows the receiving court to resolve the case within a short time after recognition. However, to obtain recognition of a foreign proceeding, several requirements must be met and fulfilled, including: (1) the foreign representative may submit an application to the court requesting recognition of the foreign proceeding in which he or she is appointed as representative. (2) The

[9] ibid., p. 78-80.
[10] United Nations, 2014, UNCITRAL (Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation), p. 3.
[11] ibid., p. 4.

application for recognition must be accompanied by one of the following: a) a certified copy of the judgment convening the foreign proceeding and appointing the foreign representative; b) a certificate from the foreign court recognizing the existence of the foreign proceeding and the appointment of the foreign representative; or, c) in cases where the evidence mentioned in parts a and b is not available, all details relating to the recognition of the foreign proceeding and the appointment of the foreign representative are admissible. (3) the application for recognition must be accompanied by a statement indicating all foreign proceedings related to the debtor that are known to the foreign representative. (4) The court may request a translation of the supporting documents for the recognition application into the official language of the receiving country.

c) The "relief" principle

There are three types of assistance available, namely: (1) Interim relief (or urgent relief) can be granted at any time after the application for recognition of foreign legal proceedings is received. Interim relief can be granted from the time the application is submitted until a decision on the application is made. If a foreign representative requests interim relief to protect the debtor's assets or the interests of creditors, such as a) postponing the execution of the debtor's assets; b) entrusting the management or all of the debtor's assets in this country to a foreign representative or other party determined by the court to protect and maintain the value of assets that are vulnerable to damage, vulnerable to devaluation, or in danger by their characteristics. (2) Automatic relief, also known as automatic relief, is the actual result of the recognition of a foreign legal proceeding as a principal foreign legal proceeding. After the recognition that a foreign legal proceeding is a principal foreign legal proceeding: a) the commencement or completion of certain cases or legal proceedings related to the debtor's assets, rights, obligations, or responsibilities is still pending, b) the cessation of the process of executing the debtor's assets; c) the cessation of the right to transfer, burden, or dispose of the debtor's assets. (3) Discretionary relief, also known as discretionary relief, as a result of the recognition of foreign legal proceedings, whether principal or non-principal, which are necessary to protect the debtor's assets or the interests of creditors. After the recognition of foreign legal proceedings, the court may grant appropriate relief, which includes: a) suspending certain legal actions or processes relating to the debtor's assets, rights, obligations or responsibilities that have not been suspended, b) stopping execution against the debtor's assets that have not been suspended, c) suspending the right to transfer, encumber or dispose of the debtor's assets that have not been suspended, d) examining witnesses, obtaining evidence or conveying information relating to the debtor's assets, relationships, rights or responsibilities, e) giving all the debtor's assets in this country to a foreign representative or other party determined by the court to be managed or executed, f) extending the granting of relief, g) granting additional relief in accordance with the laws of the country concerned.

d) The coorperation and coordination principle

Based on this idea, courts and insolvency representatives in different countries should communicate and cooperate to ensure that all debtor assets are registered fairly and efficiently with the aim of prioritizing creditors' interests. Among the forms of such cooperation are: a) Appointing a person or organization to act on court orders; b) Sharing information for any purpose deemed appropriate by the court; c) Safeguarding and monitoring the debtor's assets and relationships; d) Accepting or submitting applications by the court, with approval, to coordinate proceedings; and e) Arranging competing proceedings against the same debtor. In addition to legal models, cooperation can also be achieved through cross-border insolvency treaties; these treaties involve member states bound by each other and all court-appointed representatives to cooperate in managing insolvency proceedings.

Article 15 of Chapter III of the UNCITRAL Model Law on Cross-Border Insolvency with its Determination Guidelines explains that the following methods may be used to apply for recognition of foreign legal proceedings: 1) Foreign representatives may request recognition of legal proceedings in the foreign court where they are appointed; 2) The application for recognition must be accompanied by one of the following: a) a certified copy of the decision appointing the foreign representative for the foreign legal proceedings; b) a certificate from the foreign court confirming the existence of the foreign legal proceedings and the appointment of the foreign representative; or c) in the absence of evidence in subparagraphs (a) and (b), other evidence acceptable to the court of the existence of the foreign person and the appointment of the foreign representative must be included with the application for recognition. d) The statement must also specify all known foreign legal proceedings relating to the debtor. To support the application for recognition, the court may require a translation into the official language of the country concerned.

1) Integration of Model Law into Indonesian Law

It is expected that this model law will be incorporated into existing national insolvency laws as it is limited to certain aspects of insolvency cases. This is demonstrated by the following: (a) not many new terms are introduced into the existing law. New terms such as "foreign proceedings" and "foreign representative" relate to cross-border insolvency. The terms used in the model law do not appear to contradict existing terms. However, these terms often differ between countries. Therefore, the model law allows for the use of certain terms, allowing countries to modify these terms in accordance with applicable laws and regulations. (b) The model law allows the country concerned to adapt the assistance resulting from the recognition of foreign proceedings to the assistance available under its national law (Article 20 of the UNCITRAL Model Law on Cross-Border Insolvency). (c) recognition of foreign legal proceedings does not prevent local creditors from commencing or continuing insolvency proceedings (Article 28 of the UNCITRAL Model Law on Cross-Border Insolvency). (d) the purpose of assistance that may be granted to a foreign country is to protect local creditors and related parties, including protecting the debtor from unnecessary prejudice. Assistance may also be granted to meet the procedural requirements of the country concerned and to comply with notification requirements (Article 22 and Article 19 paragraph 2 of the UNCITRAL Model Law on Cross-Border Insolvency). (e) the model law allows for exceptions or limitations to measures supporting foreign legal proceedings, including recognition of proceedings based on public policy considerations, although it is expected that public policy

exceptions will be used as little as possible (Article 6 of the UNCITRAL Model Law on Cross-Border Insolvency). (f) the model law is a flexible type of law that takes into account the various methods of national insolvency law and the tendency of countries to cooperate in insolvency-related situations (Articles 25-27 of the UNCITRAL Model Law on Cross-Border Insolvency) [12].

Conclusion

From the results of the analysis conducted by the author on the problems described above, it can be concluded that:

1. The United Nations Commission on International Trade Law (UNCITRAL), along with its implementing guidelines, helps countries update and adapt their insolvency laws to address the challenges posed by Cross-Border Insolvency. These guidelines extend the scope of receivers' powers in insolvency cases beyond the geographic boundaries of their home countries. This gives receivers the ability to manage and execute the assets of insolvent companies located abroad. This provision provides receivers with the flexibility to act outside their domestic jurisdictions in an effort to safeguard and maximize the value of the debtor's assets for the benefit of creditors, without being hampered by additional legal procedures or the consent of the country where the assets are located.
2. UNCITRAL reaffirms the principle that receivers can enforce bankruptcy assets located outside their home jurisdiction. This legal framework provides clear guidance on how receivers can enforce bankruptcy assets outside their domestic jurisdictions without being hindered by the boundaries of their domestic jurisdictions. While this model law is not legally binding, its widespread acceptance by many countries promises to better regulate cross-border bankruptcy law practices.

Suggestion

1. The Indonesian government is expected to immediately follow the UNCITRAL Model Law on Transnational Bankruptcy regulations. Indonesia can immediately use the universalism approach model. Indonesia can adopt at least several articles in UNCITRAL to modernize and harmonize the Bankruptcy Law, such as: a) adding international elements to Chapter I Article 1 on General Provisions, such as "foreign main proceedings", or foreign main proceedings, and foreign proceedings, as explained in Article 2 of the UNCITRAL Model Law, and b) adding provisions regarding the requirements for recognition of foreign proceedings and representatives (curators) as mentioned in Article 15 of the UNCITRAL Model Law.
2. The Indonesian government can establish reciprocal agreements regarding the recognition and application of foreign bankruptcy procedures. The drafting team for the Bankruptcy and PKPU Law proposed the use of international agreements as a condition for reciprocal recognition of bankruptcy procedures in foreign insolvency cases. This could be an alternative measure. Cooperation with specific countries could help reduce jurisdictional constraints on asset management and resolution without compromising the state's authority to enforce bankruptcy laws.

References

1. Tata Wijayanta MB. Cross Border Insolvency: Kerjasama Lintas Batas Antar Lembaga Peradilan. Yogyakarta: Gajah Mada University Press; 2021.
2. Suryana D. Hukum Kepailitan: Kepailitan Terhadap Badan Usaha Asing oleh Pengadilan Niaga Indonesia. Bandung: Pustaka Sutra; 2007.
3. Parmono B. Model Law on Cross Border Insolvency dalam Ratifikasi Pengaturan Hukum Kepailitan Lintas Batas di Indonesia. J Negara Keadilan. 2023;12(2).
4. United Nations. UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation. New York: United Nations Publishing; 2014.
5. United Nations. UNCITRAL Model Law on Recognition and Enforcement of Insolvency Related Judgments with Guide to Enactment. Vienna: United Nations Publishing; 2019.

[12] Budi Parmono, "Model Law on Cross Border Insolvency dalam Ratifikasi Pengaturan Hukum Kepailitan Lintas Batas di Indonesia", Jurnal Negara dan Keadilan, Volume 12 Nomor 2/Agustus 2023, p. 126-134.