

THE APPLICATION OF CROSS-BORDER INSOLVENCY BANKRUPTCY IN THE EXECUTION OF DEBTOR'S ASSETS IN INDONESIA: A COMPREHENSIVE ANALYSIS

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ABSTRACT

Cross-border insolvency is regulated by Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Payment of Debt (UUK-PKPU) in Indonesia. This law applies to situations where foreign parties are involved and the case extends beyond national and regional borders. The focus of this article is to examine the treatment of assets located abroad. Indonesia follows the territoriality principle, which means that the debtor's assets in foreign jurisdictions cannot be transferred to other countries unless bankruptcy decisions made by those countries are recognized. This study adopts a normative juridical research method to gather relevant materials such as concepts, theories, laws, and regulations pertaining to the subject matter. Due to the varying rules in each jurisdiction, it is challenging to determine the status of assets located in foreign countries. The key issue lies in whether domestic bankruptcy decisions are acknowledged and enforced in other jurisdictions, and vice versa. In conclusion, Indonesia should consider revising its cross-border bankruptcy laws and entering into international agreements or conventions to address these challenges effectively.

Keyword: *Cross-Border Insolvency; Bankruptcy; Execution of Debtor Asset; Foreign Element*

INTRODUCTION

With the continuous development of the business world, debtors often possess assets both within and outside the territory of the Republic of Indonesia. This international aspect poses a significant challenge, particularly when a debtor is declared bankrupt by the Commercial Court of Indonesia while holding assets overseas. Such a situation raises concerns related to state sovereignty and jurisdictional issues. It becomes crucial to address this matter effectively to ensure a fair and efficient resolution for all parties involved.¹ In a cross-border bankruptcy scenario, the interests of two nations come into play. This is evident in the case of creditors and debtors, who are legal entities with different domiciles, leading to the existence of separate sovereignties between their respective domiciles. Due to this distinction, when a creditor initiates legal action against a bankrupt debtor based on applicable creditor laws, the resulting bankruptcy decision cannot be enforced in

the debtor's home country. A legal event is considered to have a foreign element if it is governed by foreign national law, foreign law, or involves property located in a foreign domicile.²

Act No. 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts sets the rules for bankruptcy. "Bankruptcy is a general confiscation of all the assets of bankrupt debtors whose management and settlement is carried out by curators under the supervision of the supervisory judge, according to Article 1 paragraph 1 of the Bankruptcy Law.³ Article 21 of the Bankruptcy Law stipulates that all debtors' wealth at the time of the bankruptcy statement's verdict and all assets acquired during the bankruptcy are covered.

These provisions demonstrate that the debtor's entire property, including his or her overseas assets, was affected by the Commercial Court's decision regarding the debtor's request for a bankruptcy declaration. Therefore, the principle of universality applies when the debtor's property is located outside of Indonesia.⁴ While the formal implementation of the execution of debtor property abroad will be challenging, particularly when dealing with jurisdictional issues, the bankruptcy estate must determine whether the bankruptcy decision will be recognized by local laws.⁵ The absence of a clear legal standard for addressing cross-border insolvency bankruptcy cases poses challenges in executing the Indonesia Commercial Court's declaration of bankruptcy against the debtor's overseas assets. The lack of specific provisions hinders the resolution of such cases. This article aims to shed light on the execution of the debtor's bankruptcy assets beyond Indonesian jurisdiction and clarify the status of the debtor's assets located outside of Indonesia. By examining these issues, a comprehensive understanding of the complexities surrounding cross-border insolvency can be achieved.

LEGAL MATERIALS AND METHODS

The type of research used in this thesis is normative legal research.⁶ It investigates the connection among rules and gives a calculated clarification of the guidelines that oversee a specific lawful class. The execution of bankrupt debtor assets whose assets are located abroad or cross-

¹ Elyta Ras Ginting. (2018). *Hukum Kepailitan*. Jakarta: Sinar Grafika.

² Sudargo Gautama. (2008). *Hukum Perdata Internasional Indonesia*. Bandung: Alumni.

³ Sutan Remy Sjahdeini. (2016). *Sejarah, Asas, Dan Teori Hukum Kepailitan: Memahami Undang-Undang No.37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran*. Jakarta: Kencana.

⁴ Mutiara Hikmah. (2007). *Aspek-Aspek Hukum Perdata Internasional Dalam Perkara-Perkara Kepailitan*. Bandung: Refika Aditama.

⁵ *Ibid*

⁶ Theresia Anita.C. (2016). Normative and Empirical Research Method: Their Usefulness and Relevance in the Study of Law as an Object. *Procedia-Social and Behavioral Science*.

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border insolvency will be the primary focus of this research, as will the status of bankrupt debtor assets outside of Indonesian law. The data in this study be collected through library research by reviewing related literature and reviewing laws and regulations about the subject of this study, particularly those on the use of cross-border bankruptcy and the status and execution of assets of bankrupt debtors. The primary, secondary, and tertiary legal materials on the completion of the execution of debtor assets and the application of cross-border insolvency are not the statistical analysis in this study.

RESULT AND DISCUSSION

1) Status Of The Bankrupt Debtor's Assets Located Outside The Legal Jurisdiction Of The Republic Of Indonesia

Particular legal consequences have arisen from interactions between legal subjects. Interstate relations and cooperation result in international law. International law was created to dictate how states should act and work together because there may be multiple jurisdictions involved in their interactions. When a cross-border insolvency proceeding takes place, Cross-border insolvency is a problem because of the numerous jurisdictions and national insolvency laws.

As per Roman Tomasic, "cross-line bankruptcy might happen, for instance, when a wiped-out account holder has resources in more than one state, or when loan bosses are kept from the states where the indebtedness continuing are occurring, however, the cross-line indebtedness can apply to an individual or enterprise."⁷ It is possible for cross-border insolvency to arise as a result of a partnership between domestic and foreign elements in which the foreign element has since taken over. Since there are presently unfamiliar gatherings associated with cross-line bankruptcy, multilateral (or worldwide) regulations and jurisdictional questions emerge.

Indonesia's national bankruptcy and insolvency regulations are found in Law No. 37 of 2004 on Bankruptcy and Suspension of Payment. Long-term 2004 on Chapter 11 and Installment Suspension This regulation has no particular arrangements, yet a couple of them recommend that unfamiliar decisions on cross-line indebtedness and the unfamiliar part of cross-line bankruptcy to which Indonesia is a party ought to be perceived and upheld. The rights of creditors and debtors

⁷ Roman Tomasic. (2005). *Insolvency Law In The East Esia*. England: Ashgate Publishing Limited.

both domestically and internationally must be safeguarded. Law No. 37 discusses issues pertaining to jurisdiction, the selection of law, recognition, and enforcement.

Under the supervision of the Supervisory Judge, the Curator is in charge of settlement, as stated in Article 1 of the Indonesian Insolvency Law. The general taking of the Debtor's assets is what is meant to be called insolvency. In accordance with Indonesian bankruptcy law, an individual is considered to be in debt if they are experiencing financial difficulties, have two (or more) lenders, or are unable to pay off a single past-due and collectible obligation. When the bankruptcy is over, the debtor loses the right to manage all of his or her assets (programmed stay), and a guardian is expected to distribute the debtor's assets in proportion to the cases of each lender.

Law No. 37 the Year 2004 Article 3 of the Bankruptcy of Suspension of Payment Act of 2004 defines a court's competence to hear an insolvency petition filed by a debtor whose domicile is in Indonesia. Law No. 3 (4) states: Long term 2004 on Chapter 11 of Suspension of Installment states, "In the occasion that the borrower doesn't include a habitation inside the domain of the Republic of Indonesia, however, leads his calling or business in the domain of the Republic of Indonesia, the skilled court to choose is the court having ward over the locale where the residence of the workplace from which the debt holder directs his calling or business is found. "Unfortunately, the principles of presence and effectiveness remain in private law, so the preceding article is not legally binding. Those make sense of the chance of presenting the appeal outside Indonesia, any place the debt holders and his domains are as of now found.

The fact that each party may have their domicile in different nations fosters legal certainty in cross-border insolvency situations. In the courts where they have filed their cases, the contracting parties are bewildered by inconsistent regulations. In addition, it's not always clear which country's laws apply in each case. "Actor equitor" holds that the respondent's home court is the court with authority. The guiding principles are presence and efficiency. In contrast to generally accepted civil law regulations, the concept of bankruptcy is a distinct legal concept. Therefore, the law applies *Lex specialist derogate lex generalis* in this instance; As a result, it is still used in some cases based on the Civil Code, Civil Procedure Code (HIR and RBg), and Rv, which are all general civil law provisions. The Civil Code outlines the general principles of bankruptcy law as follows:

Article 1131: "The debtor is responsible for all individual obligations with all of their movable and immovable assets, including those that already exist and those that will only exist in the future".⁸

Article 1132: "These assets serve as a joint guarantee for all those who owe them, and the proceeds from their sale are divided according to the size of each receivable unless there are valid reasons for taking precedence among the creditors".⁹

According to Indonesian law, the assets that a debtor who has been declared bankrupt owns and the potential assets that will be acquired during bankruptcy can be categorized as bankrupt boedel.¹⁰ Cross-border bankruptcy provisions have not yet become standard business law that can be enforced in Indonesia, according to Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Obligations (UUK-PKPU), or there is still a legal void regarding cross-border bankruptcy. Therefore, for curators who have the legal authority to do so, extorting bankrupt assets or boedel from debtors outside of the Republic of Indonesia's legal system frequently presents challenges.

When a bankruptcy has international components, it is critical to consider the effects of the foreign components' collision with a country's domestic components, which will naturally lead to cross-border bankruptcy.¹¹ We are aware that each nation's bankruptcy law differs significantly. However, as Roman Tomasic previously explained, each local and foreign creditor and debtor must be treated appropriately, particularly to safeguard their rights.

The fact that national bankruptcy laws vary from country to country is the primary issue with cross-border bankruptcy. The political, social, economic, and cultural practices of a nation can all have an impact on these variations. When an investment activity or other international business transaction involves parties from two or more countries, such differences are simple to identify. The explanation that serves as the foundation for the definition of cross-border bankruptcy: When an insolvent debtor has assets in more than one state or when creditors are not from the state where the insolvency proceedings are taking place, for example, cross-border insolvency can occur. However,

⁸ Indonesian Civil Code. (1948). Indonesian Civil Code, no. 23. 1-229.

⁹ *Ibid.*

¹⁰ Adhi Hutama, I. D., & Rudy, D.G. (2020). Penyelesaian Perkara Kepailitan Dengan Harga Pailit Berada Di Luar Negeri. *Acta Comitas*. Doi: 10.24843/ac.2020.v05.i02.p12.

¹¹ Ricardo Simanjuntak. (2004). Ketentuan Hukum Internasional Dalam UU No. 4 Tahun 1998. *Makalah disampaikan pada rangkaian lokakarya Terbatas Masalah-Masalah Kepailitan dan Wawasan Hukum Bisnis Lainnya*.

cross-border insolvency can affect individuals or businesses.¹² Cross-border insolvency is a type of bankruptcy that does not originate in the country where the bankruptcy process is carried out but is the result of an international business transaction that contains foreign elements.¹³

The territoriality principle is utilized in bankruptcy decisions in accordance with the Dutch system of International Civil Law. In essence, a bankruptcy decision made overseas has no domestic legal repercussions. Moreover with Indonesian Worldwide Common Regulation.¹⁴ If this rule is followed, a person who has been declared bankrupt abroad can be declared bankrupt again in Indonesia. This suggests that only things within Indonesia's borders are affected by the bankruptcy decisions it makes.

Before the curator can seize the bankrupt debtor's resources abroad, He should initially present a re-application to the court where the resources or collections of the bankrupt indebted person are found. But doing so would take a long time and cost money. This could happen because Indonesia does not have any international agreements, either bilateral or multilateral, regarding cross-border bankruptcy. The definition of jurisdictional issues can be interpreted broadly as a matter of whether a forum will try and decide on a legal issue submitted to it. In cross-border bankruptcy disputes, the choice of law clause and the choice of forum cannot be separated from the application of bankruptcy decisions. In accordance with the freedom of contract principle of domicile, each party can choose their own choice of law, jurisdiction, and forum in a debt agreement.

CHOICE OF FORUM

The agency that has the authority to examine or try any pending disputes is referred to as the choice of the jurisdiction (forum). A country's choice of jurisdiction does not automatically mean that the law of that jurisdiction will be applied to settle disputes, nor does it do the opposite. A country's choice of law does not always indicate that that country's court has the authority to investigate and decide the case.¹⁵

¹² Tomasic. *Insolvency Law In The East Esia*.

¹³ Daniel Suryana. (2007). *Kepailitan Terhadap Badan Usaha Asing Oleh Pengadilan Niaga Indoneisa*. Bandung: Pustaka Sastra.

¹⁴ Sudargo Gautama. (2008). *Hukum Perdata Internasional Indonesia*. Bandung: Alumnus.

¹⁵ Gautama. *Hukum Perdata Internasional Indonesia*.

Any disagreements that may arise during the implementation of the agreement can be resolved by the parties choosing and agreeing on a forum. This freedom to choose a court is referred to as the choice of forum.¹⁶ There are either exclusive or non-exclusive options in the forum. The exclusive use of the choice of forum may result from the parties' genuine desire or the way the law regulates it.

Any court can hear international civil or commercial cases. Cross-border insolvency issues can be categorized as international civil and trade cases due to the presence of foreign parties. As a result, cross-border insolvency cases can choose their own venue.

CHOICE OF LAW

A clause in a contract called a "choice of law clause" allows the parties to choose which state's law will be used to settle any disagreements about the agreement.¹⁷ In the meantime, the freedom to choose one's own legal system granted to parties to an agreement is what Sudargo Gautama refers to as a choice of law. The judicial body that decides international cases will use the country's law because of the choice of law.

A "choice of law" clause, on the other hand, allows the parties to choose which country's law will be used to resolve any disagreements that may arise from the agreement. Freedom in determining the choice of law in an agreement refers to the agreement as its source and applies as law to the parties, according to Chapter 1338 of the Civil Code's Principles of Freedom of Contract.

Without the presence of a foreign element, a choice of law cannot be exercised.¹⁸ So that foreign parties involved in cross-border bankruptcy cases can select a legal system. The issue of choice of law is connected to the issue of renvoi. An appointment to a particular nation's legal system through a choice of law is known as *sachnorm-verweisung*.¹⁹

¹⁶ Caesar. Analisis Ketentuan Pilihan Hukum dan Pilihan Forum Dalam Hukum Kepailitan Lintas Batas (Cross-Border Insolvency): Tinjauan Hukum Atas UU No. 37 Tahun 2004.

¹⁷ *Ibid.*

¹⁸ *Op.cit.*

¹⁹ Gautama. *Hukum Perdata Intenasional Indonesia*.

CHOICE OF DOMICILE

If the parties do not choose their own choice of law, forum, and domicile, the legal system in this case provides its rules to regulate this matter, governing which law applies, which court is authorized, or which domicile is used.²⁰ In the event that the parties do not choose their own choice of law, choice of forum, and choice of domicile, the legal system in this case provides rules to regulate the situation. These guidelines will be used to decide which law applies, which court is competent, and which country the case is settled in.

The position that a liquidation choice given over by an unfamiliar court can't be perceived and carried out in the Indonesian area is as per one of the fundamental standards in the connection between the general sets of laws of different nations, to be specific the guideline of regional sway, which is complied to by the Indonesian HPI framework. The territoriality principle emphasizes that bankruptcy proceedings and termination are restricted to the territory of the nation in which the bankruptcy court is located as a result of a bankruptcy declaration. As a result, a country's bankruptcy decision only applies to the nation in which it was made.

However, if the Indonesian commercial court decides that a debtor is insolvent, he must be brought back to court using the decision as evidence to ensure that he can be declared bankrupt in another country. The term "method of proof" refers to the process by which authentic copies of letters (affidavits) that can support the establishment of the winning party in new cases in Indonesia can be used to ensure that foreign decisions obtained abroad are not in vain.²¹

A sovereign state owns three types of jurisdiction, namely:²²

1. Legislative or prescriptive jurisdiction is the state's authority to make legal decisions about people, things, events, and actions on its territory.
2. The authority of the State to enforce its national legal provisions (executive jurisdiction or enforcement); and
3. The authority of state courts to try and give legal decisions (judicial jurisdiction).

The UUK-PKPU only governs provisions pertaining to bankrupt assets outside of Indonesia's legal jurisdiction; It does not regulate cross-border bankruptcy arrangements for the

²⁰ Munir Fuady. (2005). Penyelesaian Sengketa Bisnis Melalui Arbitrase. *Jurnal Hukum Bisnis*.

²¹ Sudargo Gautama. (1987). *Pengantar Hukum Perdata Internasional Indonesia*, cet. 5. Bandung: Binacipta.

²² Adhi Utama, I. D., & Rudy. Penyelesaian Perkara Kepailitan Dengan Harta Pailit Berada Di Luar Negeri.

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execution of bankrupt debtor assets outside of Indonesia. This is demonstrated in the tenth international law section of the UUK-PKPU:

Article 212: "Creditors are obligated to replace everything he has with bankruptcy assets if, after the bankruptcy declaration is made, they take a full or partial settlement of their receivables from things like bankruptcy assets that aren't tied to him and aren't on the territory of the Republic of Indonesia".²³

Although bankruptcy law states that the debtor's assets that are outside the Republic of Indonesia's legal jurisdiction are included in the bankrupt boedel list in theory (*das sollen*), there is a reality of implementation that does not always mean that the assets are signed to be included in the bankrupt boedel list. This is because the assets may not always be signed to be included in the bankrupt boedel list. This is because it's possible that the assets have not always signed their names to be on the bankrupt boedel list. The debtor's assets are still included on the list, despite what bankruptcy law says. This is because not all of the assets needed to be added to the bankrupt boedel list are transferred. For the assets of foreign bankrupt debtors or those outside of its jurisdiction, the Republic of Indonesia has two options.

1. The item's status is remembered for the liquidation resources used to pay leasers' obligations on the off chance that the Chapter 11 choice given by the Indonesian Business Court can be perceived and executed on account of a liquidation settlement in an unfamiliar country (the nation where the resources are found). This makes it possible to carry out the execution in accordance with the fundamentals of general bankruptcy confiscation.
2. If the country where the debtor has filed for bankruptcy is unable to execute on the debtor's assets for reasons related to that country's territorial bankruptcy law as well as for reasons that are against public order, the following actions may be taken: Taking is the process of using an asset to pay off a debt to one of the creditors in the order of the amount owed. After that, the creditor has the option of paying cash for the asset's equivalent, which will be added to the total assets of the bankrupt and used to pay off all other creditors' debts.

As a consequence of this, the debtor's abroad resources will presently not be remembered for the bankruptcy estate. However, this must be approved by the curator and supervisory judge.

2) The Application of Cross-Border Insolvency Bankruptcy in the Execution of Debtor's Assets

The typical audience for bankruptcy law is debtors who are unable to pay their debts or, more specifically, who are in an unhealthy financial situation (insolvent). Thus, the state attempts to offer debt holders who are having monetary challenges an exit plan through this liquidation guideline so they can take care of their obligations to some degree but not totally. It is common knowledge that every business transaction involving business actors and other business actors of different nationalities is subject to state regulation. As a result, all provisions governing business transactions must be guided by the applicable country's legal framework.²⁴

The indebted person who declares financial insolvency loses all social liberties to control and deal with the resources that are essential for the liquidation domain. The debtor is free to pursue legal action even if the bankrupt boedel does not include the debtor's assets. Consequently, unless the action in question benefits the bankrupt debtor, the bankrupt debtor loses the authority to manage and transfer the debtor's assets.

Many nations' legal systems generally prohibit their courts from executing foreign decisions. This tendency is present in both countries that follow the common law legal system and those that follow the civil law legal system. Paul J. Omar's explanation: *"The traditional common-law doctrine is that a foreign order, although creating an obligation that is actionable within the jurisdiction, can not be enforced without the institution of fresh legal proceedings."*²⁵

Referring to the goal of bankruptcy law is to distribute the debtor's assets to all creditors in accordance with their rights to the curator. The debtor's bankruptcy assets may be taken away, and the debtor's bankrupt assets may be taken away for the benefit of the creditor if the creditor has received prior guarantees from the debtor.²⁶

It is impossible to separate cross-border insolvency from the issues that arise in various bankruptcy cases that cross state jurisdictions; additionally, recognition and implementation issues

²³ Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang. (2004). *Database Perauran BPK RI*. <https://peraturan.bpk.go.id/Home/Details/40784>.

²⁴ Dicky Moallavi Asnil. (2018). UNCITRAL Model Law on Cross Border Insolvency Sebagai Model Pengaturan Kepailitan Lintas Batas Indonesia Dalam Integrasi Ekonomi ASEAN. *Jurnal Hukum*. Dikutip Dari <https://ujh.unja.ac.id/index.php/home/article/view/22/15>.

²⁵ Paul. J. Omar. (2008). *International Insolvency Law Themes and Perspectives*. Burlington: Ashgate Publishing Company. Student Journal of International Law. Fakultas Hukum Universitas Syiah Kuala, Banda Aceh. 23111. e-ISSN: 807-8497 Open access: <http://www.jim.unsyiah.ac.id/SJIL>

are frequently encountered. Recognition has a narrower and less specific meaning than implementation.²⁷ The execution of a choice has more extensive outcomes, for example, having the option to prompt dynamic activities by particular offices connected with equity or organization of an admission which doesn't necessarily in all cases bring about dynamic activities like that.²⁸

It is impossible to separate cross-border insolvency from the issues that arise in various bankruptcy cases that cross state jurisdictions; additionally, recognition and implementation issues are frequently encountered. Recognition has a narrower and less specific meaning than implementation.²⁹

Assuming that the decision of regulation against the question goal isn't settled upon, the decision of regulation and the decision of still up in the air by the gatherings in an obligation understanding will apply in case of liquidation of enduring property found abroad and in light of worldwide confidential regulation.

Due to the absence of cross-border insolvency provisions in the Indonesian Insolvency Law, there are some legal differences, such as the recognition of Indonesian Court insolvency decisions. Numerous legal issues have arisen as a direct result of this, particularly in relation to the difficulties in carrying out the estates of foreign Debtors. Numerous have been affected by the financial crisis of 1997. In bankruptcy, numerous issues related to unfamiliar components plagued expresses worldwide.

However, the issue of cross-border insolvency was not governed by distinct legal frameworks prior to 1997. As a result, the UN has developed a Model Law on Cross-Border Insolvency with Guide to Enactment as a means of resolving this issue through the UN Commission for International Trade Law (UNCITRAL). This model law can be used to modernize and harmonize insolvency law and serve as a guide. The Model Law does not attempt to substantively unify national insolvency law; rather, it seeks to respect differences in national legal procedures. Instead, it provides uniform rules for cross-border insolvency, a framework for inter-jurisdictional

²⁶ Arindra Maharany. (2011). Tinjauan Hukum Terhadap Penerapan Instrumen Hukum Internasional Dalam Pengaturan Kepailitan Lintas Batas Di Indonesia, Singapura, Malaysia, Thailand, Korea Selatan Dan Jepang. Dikutip dari <https://lib.ui.ac.id/file?file=digital/2027163s317Tinjauanhukum.pdf>.

²⁷ *Ibid.*

²⁸ Gautama. *Hukum Perdata Internasional Indonesia*.

cooperation, and straightforward solutions to cross-border insolvency problems. The Model Law is not legally binding on its members because it is soft law. However, Indonesia can refer to the Model Law when developing the legal framework for a cross-border insolvency regime.

In relation to cross-border insolvency, the Model Law provides a number of legal frameworks that the State can use, including acceptance of proceedings for foreign insolvency; introducing the concept of a "foreign main proceeding" or "foreign main trial process," which refers to a court venue in which the application for an insolvency decision is processed through to the execution of insolvency assets; cooperation between the National Court and courts and representatives in other countries; as well as the method for executing assets insolvently located outside of a State's jurisdiction. Until this point, Indonesia has not effectively partaken in peaceful accords connected with cross-line bankruptcy.

Because the parties have agreed on which law will be used in the bankruptcy case, it won't be hard to resolve disputes in bankruptcy cases where an agreement has already been reached. In contrast to bankruptcy cases, where prior dispute settlement agreements were not made, it will be difficult to determine which law to apply in the event of a debt and receivables issue.

The UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment can be used to resolve cross-border bankruptcy cases in which debt and credit agreements have not been made before. Other options include using bilateral agreements, diplomatic relations, or following the general court process. If a country goes through a general court, it must send the state-decided bankruptcy decision to the country where the bankruptcy body is located and go through all the steps that seem more complicated in a cross-border bankruptcy case involving countries with different legal systems.

Because they can use the agreement as a foundation, the settlement process in cross-border bankruptcy cases that have bilateral agreements, particularly regarding the resolution of bankruptcy disputes, will be simpler. General principles of cooperation and coordination regarding the handling of certain disputes, such as adjournments, procedures for claim settlement, and communication between courts, are typically included in bilateral agreements regarding cross-border bankruptcy.

²⁹ Arindra Maharany. (2011). *Tinjauan Hukum Terhadap Penerapan Instrumen Hukum Internasional Dalam Pengaturan Kepailitan Lintas Batas Di Indonesia, Singapura, Malaysia, Thailand, Korea Selatan Dan Jepang*. Student Journal of International Law. Fakultas Hukum Universitas Syiah Kuala, Banda Aceh. 23111. e-ISSN: 807-8497
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There are provisions in the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment regarding bilateral agreements regarding cross-border bankruptcy.

This agreement is intended to bind the parties or to provide a framework for cooperation, but it is not intended to impose obligations on the parties or have any lasting legal effect. Additionally, the bankruptcy agreement may contain a variety of provisions, some of which are merely statements of good faith while others express the intention to have legal force and bind the parties. Execution can only be carried out in accordance with the applicable national law by adhering to the applicable legal provisions and settlement procedures.

The provisions of the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment have been enacted in an effort to maintain the protection of creditors' rights. The UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment demonstrates that international law must protect the right of creditors to receive payment of receivables because the debtor almost certainly will have violated this right in a bankruptcy case.

It is a form of justice for the parties involved in bankruptcy cases through this international legal product. However, it is important to keep in mind that only nations that have ratified the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment are eligible to apply this provision.

To put it another way, countries that have not ratified the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment can only settle bankruptcy cases through bilateral agreements, diplomatic channels, and a court application in the country where the debtor's assets are located.³⁰

In point of fact, provisions for cross-border insolvency are still uncommon in Indonesian business law. As a result, the section of Chapter 11 that crosses public lines (Cross-border insolvency) has a legitimate void. These conditions apply to receivers who receive authority to manage and settle debtors' bankruptcy assets. When they try to acquire debtor assets or file for bankruptcy outside of Indonesian jurisdiction, they frequently run into difficulties.

³⁰ Adhi Utama, I. D., & Rudy. *Penyelesaian Perkara Kepailitan Dengan Harta Pailit Berada Di Luar Negeri*.

Lex specialist derogate lex generalis is a legal concept. According to Article 299 of the KPKPU Law, bankruptcy procedures are governed by civil procedural law. Naturally, the HIR, RBG, and Rv constitute the civil procedural law referred to here, which also applies to the implementation and execution of bankruptcy decisions. According to the KPKPU Law, there are two possible groupings for the execution of bankruptcy decisions on debtors' overseas assets:

First, the execution of the Indonesian commercial court's decision regarding debtors' assets abroad is governed by Articles 212 to 214 of the KPKPU Law, which refers to Provisions of International Law; however, there is absolutely no additional legal regulation in these articles. Procedures for carrying out the bankruptcy decision. As stated in KPKPU Law 21, which reads:

Because bankruptcy covers all debtors' assets at the time the bankruptcy statement decision was made as well as everything obtained during the bankruptcy, the KPKPU Law actually adheres to the universality principle. Second, the execution of a foreign court's bankruptcy decision against the debtor's assets in Indonesia must be guided by Article 436 Rv, which primarily stipulates that: In accordance with Article 299 UUKPKPU, which states that the procedural law that applies in bankruptcy is civil procedural law,

Decisions made by foreign judges or foreign courts on the territory of the Republic of Indonesia cannot be implemented, with the exception of matters specified by Article 724 WVK and other laws and regulations. The KPKPU Law upholds the territoriality principle in relation to decisions made by foreign courts, which means that decisions made by foreign courts regarding bankruptcy do not have the authority to execute against debtors' assets in Indonesia. According to Article 436 Rv, a bankruptcy decision made by a foreign court or another country cannot be carried out in Indonesia.

There is currently no international agreement that can be universally followed that specifically regulates the execution and implementation of cross-border bankruptcy decisions. There is currently only a regionally applicable international agreement (regional agreement) for cross-border bankruptcy decisions in the European Economic Community. The Convention on Insolvency Proceedings is an international agreement in the field of bankruptcy between European Union members.³¹ The term "execution of a bankruptcy decision on the debtor's assets abroad"

³¹ Rizka Rahmawati. (2019). Eksekusi Aset Debitor Yang Berada Di Luar Negeri Dalam Penyelesaian Sengketa Kepailitan. *Fakultas Hukum Universitas Udayana*.

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refers to an execution that is carried out outside of a country. In other words, "execution of a bankruptcy decision that is carried out outside of a country" refers to carrying out a bankruptcy decision outside of a country. This is done so that the international aspect of the decision will be apparent because the debtor's assets are located in two or more countries.

Naturally, the liquidation and settlement of the debtor's obligations to the creditor through the curator's public sale/auction of all bankruptcy assets (per Article 185 of the KPKPU Law) are the first steps in carrying out the bankruptcy decision referred to here.

CONCLUSION

The implementation of cross-border insolvency involves a reality (*das sein*) where the assets may not necessarily be executed and added to the bankrupt boedel list. Theoretically, assets of the debtor that fall outside the jurisdiction of the Republic of Indonesia are considered part of the bankrupt boedel. To address cross-border bankruptcy cases where debt and credit agreements have not been previously established, the UNCITRAL Model Law on Cross Border Insolvency with Guide to Enactment can be utilized. Additionally, alternative options include leveraging diplomatic relations, bilateral agreements, or following general court proceedings. In the case of general court proceedings, a country must submit a state-decided bankruptcy decision to the country where the bankrupt bank is located. This ensures compliance with the procedure required when different legal systems are involved in a cross-border bankruptcy case.

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