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The Principles of Model Law Regarding the Implementation of Estate Execution in Transnational Bankruptcy Cases

Fafta Aini Putriana [1], Fahmi Fairuzzaman [2], Akbar Hidayat [3]
[1,2.] Universitas Muhammadiyah Surakarta, Surakarta
[3]Regionales Berufliches Bildungszentrum Des Landkreise Vorpommern, Greifswald, Jerman
**Email korespondensi: fahmi.fairuzzaman@ums.ac.id*

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Abstrak

This research is important to find out what system should be used to create legal certainty regarding the execution of transnational bankruptcy cases. The purposes to be achieved are, first, to know the system that works within the principles of the Model Law developed by the United Nations in handling transnational bankruptcy execution cases. Second, knowing how national law creates execution rules if the foreign debtor's bankruptcy assets are in Indonesia's jurisdictionUsing juridical-normative research methods, the author attempts to analyze transnational bankruptcy based on international and national regulations. International rules are regulated in UNCITRAL: Model Law created by the UN and is a legal reference for countries that have transnational bankruptcy legal instruments with reference to this Model Law. Meanwhile, the national regulations are in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, which became known as UUK-PKPU. Model Law regulations provide legal certainty regarding transnational bankruptcy. different from national legal rules which are limited by jurisdiction. The substance of the Model Law provides an opportunity for foreign parties to participate in solving problems. The conclusion of this research is that the adoption of the Model Law by several countries will provide greater convenience and legal certainty in the field of bankruptcy law, especially transnational bankruptcy.

Keywords: *Boedel; Transnational Bankruptcy; UNCITRAL: Model Law.*

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1. Introduction

The social disparities inherent in the liberal economic system have given rise to the welfare state. The state has the flexibility to engage in all social, political, and economic endeavors with the ultimate goal of advancing the general welfare to the greatest extent possible, known as "freis ermessen" in the definition of a welfare state.[1] The recent trend of increased opportunities for investment has become quite popular among business circles. Moreover, in an era of globalization, which is increasingly making the world seem smaller, the reach of investment is no longer limited by territorial boundaries. Investments are made not only in the buying and selling of goods or services but also in

[1] Mutimatun Ni'ami, "The Urgency Of Authentication And Protection Of Personal Data In Online Transactions," *Law and Justice* 7, no. 2 (2022): 198.

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capital investment in large-scale production companies, resulting in outputs ready for export to various countries.

Discussing international business, it is stated by an expert named Warren J. Keegen that, "there are five approaches to approach the topic of this international business: export-import, licensing, franchising, joint ventures, mergers, and acquisitions.".[2] Indonesia is one of the countries participating in investments involving foreign parties. This is evidenced by Indonesia's participation in investment agreements made with other countries, such as the ASEAN Free Trade Area (AFTA) since 1992, where the impact is that after a country joins this organization, it is no longer subject to any economic constraints.[3]

Efforts to develop a new economic foundation require capital fulfillment to achieve the desired targets. Capital fulfillment by foreign companies or business entities certainly does not come from a single source of capital alone. It is undeniable that borrowing or lending activities will still be carried out with third parties.[4] The risk faced if the company does not perform as planned is that the debtor will face difficulties in fulfilling its performance or debts. Therefore, in terms of bankruptcy, it is then known as bankruptcy. Bankruptcy is defined as a condition where a debtor company is declared unable to settle its debts to creditors, thus the company is declared bankrupt.[5] In business transactions, bankruptcy will often be encountered if the intended performance is not fulfilled by the debtor.

In Indonesia, the resolution of bankruptcy must be based on applicable law. This is because according to the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3) states that "Indonesia is a state of law."[6] Based on the legal system in Indonesia, the provisions regarding bankruptcy are regulated using formal legal rules, namely Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

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[2] J Keegan Warren, "Global Marketing Management," *United State: Prentice Hall*, 2002, 11.
[3] Sutan Remy Sjahdeni, *Sejarah, Asas, Dan Teori Hukum Kepailitan Memahami Undang – Undang No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*, Kedua (Jakarta: Kencana Prenadamedia Group, 2016).
[4] Mutiara Hikmah, *Hukum Perdata Internasional Dalam Perkara-Perkara Kepailitan* (Bandung: PT. Refika Aditama, 2007).
[5] Mutiara Hikmah, *Aspek – Aspek Hukum Perdata Internasional Dalam Perkara – Perkara Kepailitan* (Jakarta: PT. Refika Aditama, 2007).
[6] Nuria Siswi Enggarani, "Independensi Peradilan Dan Negara Hukum," *Journal Law and Justice* 3, no. 2 (2018): 83.

Exploring bankruptcy associated with cross-border economic systems will lead to what is known as cross-border insolvency. The law used will differ when the bankruptcy system intersects with international law or the law of other countries, thus it needs to be understood as part of international commercial law as well. The term cross-border insolvency is Cross-Border Insolvency or it can also be called Transnational Insolvency (in the Anglo-Saxon legal system).[7]

For a case to be categorized as a cross-border case, the debtor involved is a debtor who has assets and resides in several countries other than the place where the bankruptcy legal process is conducted.[8] The scope construed as the main principles of cross-border insolvency are territoriality and universality. The principle of universality or universal principle is a principle where the decision against the debtor covers all of his assets both domestically and abroad. In other words, it is not limited to the territory of the country where the decision is made.[9] Meanwhile, the principle of territoriality is a principle where the territory where the decision is made is where the decision will be applied. Thus, it will be limited to the boundaries of the territory where the case and the decision are made. Therefore, the decision will only affect the debtor's assets within the territory where the decision is made.[10]

Indonesian national law places the bankruptcy legal system within the jurisdiction of the state. Thus, all forms of execution and judicial processes that take place will be limited to the jurisdiction of Indonesia. If cases related to bankruptcy involving foreign elements are found, a reassessment by the court is needed to determine whether the case can be tried and executed in Indonesia. This limitation is what then poses obstacles in the process of resolving cross-border bankruptcy cases. Similarly, with the existence of limited national bankruptcy law, bankruptcy law in other countries also has its own substance and limitations.

A depiction of mechanisms from other countries includes legal regulations in Singapore. Singapore is a country with a common law system, which also encounters similar difficulties in the process of resolving cross-border insolvency cases, namely the lack of legal certainty and difficulties in

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[7] Huala Adolf, "Perlindungan Hukum Terhadap Investor Dalam Masalah Hukum Kepailitan: Tinjauan Hukum Internasional Dan Penerapannya," *Jurnal Hukum Bisnis* 28 (2009): 24.

[8] Daniel Suryana, *Kepailitan Terhadap Badan Usaha Asing Oleh Pengadilan Niaga Indonesia* (Bandung: Pustaka Sutra, 2007).

[9] Sjahdeni, *Sejarah, Asas, Dan Teori Hukum Kepailitan Memahami Undang – Undang No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

[10] Rahmadi Indra Tektona and Dwi Ruli Handoko, "Implikasi Hukum Pailitnya Perseroan Perorangan Terhadap Direksi Di Indonesia," *Jurnal Ilmiah Dunia Hukum* 6, no. 2 (2022): 10.

recognizing foreign or other countries' laws, limited laws providing constraints for trustees to carry out their duties if the assets in question are outside their jurisdiction, and the discovery of difficulties in coordinating between the Singaporean court and other courts.[11]

Due to the differences in laws between countries, the implementation of court decisions will also differ. Decisions rendered against debtors in one country cannot be used to execute assets owned by debtors located outside the country where the decision was made. Thus, the authority for execution cannot be granted to the trustee. To carry out execution, another decision or agreement is required from the court in the country where the assets are located to approve the bankruptcy asset execution process (reciprocal/mutual recognition and enforcement of court decisions of contracting countries). Such a provision is also included by an expert in his book, namely Sutan Remy Syahdeni, stating that the execution process of bankruptcy debtor assets outside its jurisdiction must be executed using the bankruptcy law of the country where the assets are located (le rei sitae).

The ineffectiveness of bankruptcy law regulations is also evident from cases brought to Indonesian commercial courts. One case that was accepted is the Suba Indah case.[12] Which was based on a foreign arbitration decision. However, not all cases brought to Indonesian courts can be accepted and processed using Indonesian law. One case that was rejected is the bankruptcy case linking Manwani Santosh with OCBC, with the reason that under Indonesian law, a person cannot be sued twice for the same case (ne bis in idem). The provided case examples illustrate the lack of national laws in Indonesia to handle and resolve disputes related to cross-border insolvency.

The emergence of legal imbalances and inconsistencies has led to the creation of an International mechanism known as Cross-Border Insolvency (CBI), which can facilitate the execution process using the services of lawyers in the country where the bankruptcy assets are located. The realization of this is the formation of an International Convention, namely the "UNCITRAL Model Law On Cross Border Insolvency 1997." These rules are non-binding, so each country can decide whether to adopt them or not for the purpose of resolving bankruptcy disputes.[13]

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[11] Lee Kiat Seng, "Cross-Border Insolvency Issues," Law Gazette, 2009.
[12] Kml, "Suba Dipailitkan Akibat Kesepakatan Diam-Diam," Hukum Online, 2007.
[13] Look Chan Ho, "Smoothing Cross-Border Insolvency by Synchronising the UNCITRAL Model Law: In Re Samsun Logix Corporation," *Journal of International Banking and Financial Law*, 2009, 135.

The Model Law as an internationally-based legal product still provides ample space for the national laws of each country. Therefore, its substance is not subjected to standardization or amalgamation, and changes in its resolution process also involve cooperation between jurisdictions, resulting in solutions that are not unilaterally imposed. The Model Law is created to provide legal certainty in cross-border insolvency cases and aims to fill legal voids that may occur between countries in a more modern, dynamic, and justice-oriented manner. Thus, the Model Law is considered a solution for legal certainty in the resolution process of transnational insolvency disputes.[14]

Similar research has been conducted previously, published in a journal written by Dicky Moallavi Afnil titled "UNCITRAL Model Law on Cross-Border Insolvency as the Model of Indonesian Cross-Border Insolvency Arrangement in ASEAN Economic Integration," published in the Undang: Jurnal Hukum journal in 2018. The results of this study provide an overview that the rules of the Model Law published by UNCITRAL shed light on the issues of transnational insolvency law. These legal rules facilitate cross-country access, change the concept of international problem resolution, and provide comprehensive integration of legal rules among several countries, particularly within ASEAN.[15]

Another study was conducted by Jihan Amalia in her article titled "The Urgency of Implementing UNCITRAL Model Law On Cross-Border Insolvency in Indonesia: A Comparative Study of Indonesian and Singaporean Cross-Border Insolvency Laws," published in the Bonum Commune Business Law Journal in 2019. The results of this study provide an explanation that from the comparative study conducted, it is known that the laws implemented in Indonesia and Singapore are not significantly different. Both have similar characteristics, namely providing clear territorial boundaries in the execution of their legal rules. The difference lies in the exception in Singaporean law, where bankruptcy decisions from Malaysia or vice versa connecting the two countries

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[14] Ricardo Simanjuntak, "Aspek-Aspek Transnasional Hukum Kepailitan Indonesia Dihubungkan Dengan Kewenangan Kurator Untuk Pengurusan Dan Pemberesan Harta Pailit Dalam Rangka Pengembangan Perekonomian Indonesia," *Fakultas Hukum Universitas Padjadjaran*, 2012.

[15] Dicky Moallavi Asnil, "UNCITRAL Model Law on Cross Border Insolvency Sebagai Model Pengaturan Kepailitan Lintas Batas Indonesia Dalam Integrasi Ekonomi ASEAN," *Undang: Jurnal Hukum* 1, no. 2 (2018).

provide flexibility between them in conducting legal proceedings. This is due to the binding nature of bilateral agreements between the two countries.[16]

Therefore, after examining the rules related to transnational insolvency from the perspective of Indonesian national law, and based on the originality of the research above, it is known that crucial issues such as the lack of legal certainty and ambiguity in dispute resolution mechanisms serve as the background for conducting this research. The outputs to be produced are first, understanding the system operating under the Model Law principles developed by the UN in handling cases of cross-border insolvency execution. Second, understanding how national law creates execution rules when the bankrupt debtor's assets are located within Indonesia's jurisdiction. Therefore, research on the rules established by UNCITRAL, namely this Model Law, is expected to be a catalyst for change in Indonesia's imperfect legal system.

2. Research Method

The research conducted by the author in examining the issue of transnational insolvency employs a juridical-normative method with a qualitative approach, referring to positive legal regulations in Indonesia. It also includes a comprehensive substantive analysis approach obtained through literature studies from various legal sources.[17] The type of data used in this normative research with a doctrinal method utilizes secondary data, which is indirectly obtained. The review of norms is conducted based on positive law related to bankruptcy, including Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU). This research employs a normative-qualitative data analysis, where data are obtained based on words or verbal expressions. The perspective presented in this research is from the angle of the application of developments in theory, especially in bankruptcy law.[18]

3. Research Results and Discussion

3.1. Legal Resolution System of Transnational Bankruptcy in UNCITRAL: Model Law

The legal concept provided for transnational bankruptcy has existed since 1997, when the Model Law was established by UNCITRAL, a UN body.

[16] Jihan Amalia, "Urgensi Implementasi Uncitral Model Law On Cross-Border Insolvency Di Indonesia: Studi Komparasi Hukum Kepailitan Lintas Batas Indonesia Dan Singapura," *Jurnal Hukum Bisnis Bonum Commune* 2, no. 2 (2019).
[17] Peter Mahmud Marzuki, *Penelitian Hukum*, 2016.
[18] Siti Nurhayati, "Metodologi Penelitian Praktis Edisi Dua," *Fakultas Ekonomi Universitas Pekalongan*, 2012, 8.

The term used is not only transnational bankruptcy, but also cross-border bankruptcy, with the same interpretation. Meanwhile, foreign terms used include transnational insolvency, cross-border insolvency, international insolvency, and transnational bankruptcy.

The explanation provided by the UNCITRAL Model Law regarding transnational bankruptcy is not explicitly stated. However, it is noted that in some bankruptcy cases between debtors and creditors, they not only occur and originate from the country where the bankruptcy process takes place.[19] The international elements in this context can be interpreted into two aspects: first, the condition where the relevant creditor originates from a different country (which may involve more than one country), and second, the condition where the location of the debtor's assets differs from the debtor's home country or the country where the bankruptcy petition is filed. According to Mazek Porzycki, the relevant conditions for understanding transnational bankruptcy include: Debtors with assets outside the jurisdiction of their home country; Debtors with creditors outside the jurisdiction of their home country; Debtors engaged in economic activities across different countries; Multinational debtors with subsidiaries in various countries; Multinational debtors with businesses operating in several countries with respective legal regulations (legal form of local subsidiaries).

Based on these conditions, transnational bankruptcy is defined as a condition that involves foreign elements and extends beyond territorial boundaries within a country.[20] The issues commonly encountered in transnational bankruptcy cases include:

1) Legalization and execution processes of bankruptcy judgments from other countries
2) The amount of estate that can be executed and the location of the estate specified in the judgment.

The establishment of rules by UNCITRAL, namely the Model Law, is motivated by the lack of synchronization encountered when court judgments do not align with the laws and territorial principles of each country, thus hindering or even preventing execution efforts. This Model

[19] Ignatius Andi, "Undang-Undang Kepailitan Dan Perkembangannya: Aspek Komparasi Dari Kepailitan (Cross-Border Bankruptcy) Dan Studi Kasus," *Prosiding, Pusat Pengkajian Hukum*, 2004, 315.
[20] Tomasic, "Insolvency Law in East Asia" 34, no. 2 (2012): 536.

Law is a set of rules in the field of commercial law designed to facilitate legal provisions in the business and commerce sectors.

The Model Law created to provide legal certainty in transnational bankruptcy cases also aims to fill legal gaps that may arise between countries in a more modern, dynamic, and justice-oriented manner in resolving cases. Therefore, the main objectives of establishing the Model Law are:[21]

a. Facilitating good cooperation between courts and law enforcement agencies in one country or another in addressing transnational bankruptcy cases;

b. Providing legally binding certainty in the field of business and commerce;

c. Striving for a fast and efficient administrative process to prevent imbalances of interests between creditors and debtors with the aim of ensuring both parties' interests;

d. Ensuring the security of assets lent to creditors by debtors;

e. Providing facilities to international businesses experiencing financial downturns.

The substance structure contained in this Model Law consists of 2 parts with several chapters within. There are 32 articles included in this regulation, among them:[22]

a) Article 4 of the Model Law states that even if the request for transnational bankruptcy originates from a foreign party, the court within that jurisdiction may have the authority to adjudicate the case.

b) Article 5 of the Model Law states that all operational aspects pertaining to the judicial process will be carried out by the government entity empowered to take legal actions based on foreign law.

[21] United Nations, "Model Law in Cross – Border Insolvency with Guide to Enactment," *United Nations Publishing*, 1997, 3.
[22] Nations. *Ibid.*

c) Chapter II of the Model Law specifies that this system provides convenience and adequate means for foreign representatives or, in this case, foreign creditors to participate in the judicial process.

d) Article 6 of the Model Law regulates the prohibition imposed on the respective court from refusing to process transnational bankruptcy cases. Exceptions may occur if the case and its handling efforts are found to potentially conflict with the integrity and norms of the state.

e) Article 22 of Chapter III of the Model Law regulates efforts to protect the personal legal rights granted to creditors and parties involved in litigation.

f) Article 27 of Chapter IV of the Model Law grants freedom to legislators to establish cooperation between foreign courts and foreign representatives outside the provisions of the Model Law.

g) Chapter V of the Model Law regulates the execution process and rules regarding the bankruptcy estate of debtors.

The Model Law provides the possibility for foreign representatives involved in disputes to have access and legal standing to manage and settle the liquidation process of the debtor's assets (bankruptcy estate) independently, and to act for and on behalf of the debtor in transnational bankruptcy cases. The focus of this Model Law is to ensure justice for the parties involved so that no interests are harmed, thereby allowing the process of transnational bankruptcy resolution to proceed smoothly.

Therefore, in the Model Law, there are 5 principles known as the basis for enforcement. Among these are, firstly, the principle of accessibility, which grants judges the opportunity to recognize foreign bankruptcy judgments in terms of opinions or proceedings from the home country's bankruptcy judgment. Thus, access is provided regarding the use of the applicable law in the resolution effort (enacting state) as well as in recognizing ongoing foreign legal processes, thereby allowing foreign representatives to participate in determining the proceedings used and to request assistance using the Model Law legal procedures.[23]

[23] Nations. *Ibid.*

The second principle aims at recognition to facilitate a swift and concise judicial process, minimizing time consumption. In this regard, foreign representatives can make an application for recognition of proceedings established under the Model Law. Thirdly, the process of recognition of these foreign proceedings so that they may be accepted as valid law. Fourthly, assistance, the assistance provided by the Model Law is urgent or temporary assistance that can be requested anytime after the recognition application is made. Lastly, cooperation and coordination, in line with the objective of establishing the Model Law which is to create continuous coordination between foreign representatives and courts in different countries with the aim of creating fair and effective legal resolutions so that no party's interests feel compromised.

3.2. National Legal Regulations Regarding the Resolution of Transnational Bankruptcy Cases

Based on the changes that have occurred since facing the monetary crisis in 1997, the economic system in Indonesia has undergone quite significant changes.[24] This is evident from the depreciation of the Indonesian rupiah currency, eventually leading to inflation. The impact resulted in numerous debts for large companies aiming to sustain their business. However, many of them were unable to cover all of their debts, eventually leading to bankruptcy.[25]

The law in effect at that time, namely the Faillissements-Verordening (FV), was a legacy regulation from the Netherlands which the public felt was insufficient to address the arising issues. Therefore, restructuring was deemed necessary, leading the government to issue Government Regulation in Lieu of Law No. 1 of 1998, which was later formally enacted into Law No. 4 of 1998 concerning Bankruptcy on September 9, 1998.[26] Furthermore, this update didn't stop there. Law No. 4 of 1998 was subsequently amended and transformed into Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, commonly known as the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK-PKPU).[27]

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[24] Lepi T. Tarmidi, "Krisis Moneter Indonesia: Sebab, Dampak, Peran IMF Dan Saran," in *Krisis Moneter Tahun 1997/1998 Dan Peran IMF* (Universitas Indonesia, 1998).
[25] Detikfinance, "Sri Mulyani Beberkan Penyebab Banyak Perusahaan Bangkrut Saat Krisis," 2020.
[26] Oh Soogeun, "Comparative Overview of Asian Insolvency Reforms in the Last Decade," 2007, 5.
[27] Jeery Hoff, *Undang-Undang Kepailitan Di Indonesia* (Jakarta: PT. Tatanusa, 2000).

The Faillissements-Verordening (FV) or Bankruptcy Ordinance contains regulations regarding bankruptcy criteria, where a debtor declared bankrupt must genuinely be unable to settle their debts to be declared bankrupt. Additionally, Indonesian law also regulates bankruptcy criteria and principles, such as concursus creditorirum, a condition where there are two or more creditors.[28] Paritas creditorium, meaning each creditor has equal rights to the debtor's assets (bankruptcy estate).[29] Pari passu prorata parte, where the debtor's assets serving as collateral must be fairly divided among creditors unless there are other prioritized rules based on the law.

Indonesian bankruptcy law, namely the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK-PKPU), does not address transnational bankruptcy at all. Therefore, foreign creditors and debtors filing for bankruptcy will be subject to Indonesian law, similar to local debtors and creditors.[30] It is known that transnational bankruptcy entails aspects of international civil law, thus further examination is needed regarding the relevance between the two. The choice of law elements in transnational bankruptcy cases cannot be applied because the choice of law can only be made if it relates to the law of the cooperation contract containing the choice of law that can be taken by both parties in case of disputes.[31]

UUK-PKPU has procedural law stating that if the rules are not regulated in the UUK-PKPU, they will be further regulated in the Civil Procedure Law. Therefore, the substance obtained is that bankruptcy law applied in Indonesia does not recognize the recognition and enforcement of foreign bankruptcy judgments. This is reinforced in Article 436 of the Reglement op de Rechtsvordering.[32]

Such affirmation implies that Indonesia employs the principle that all cases involving bankruptcy law will be executed but limited by the territorial or jurisdictional boundaries where the case is decided by the court. This

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[28] Bintang Adita Putri, "Tinjauan Yuridis Tentang Hak Kreditor Dalam Melaksanakan Eksekusi Selaku Pemegang Jaminan Dengan Hak Tanggungan," *Fakultas Hukum Universitas Muhammadiyah Surakarta*, 2014, 6.
[29] "Kitab Undang-Undang Hukum Pidana (Wetboek van Straftrecht)" (n.d.).
[30] Hadi Subhan, *Hukum Kepailitan*, 2nd ed. (Jakarta: Kencana Prenadamedia Group, 2009).
[31] Tedjasukman, "Aspek Hukum Perdata Internasional Dalam Perkara-Perkara Kepailitan Dan Pelaksanaannya Dalam Praktek Berdasarkan Undang-Undang No.4 Tahun 1998 Jo. Peraturan Pemerintah Pengganti Undang-Undang (Perpu) No. 1 Tahun 1998," n.d.
[32] Wirjono Prodjodikoro, "Asas-Asas Hukum Perdata Internasional," *N.V. Van Drop & Co* 2, no. 1 (2010): 40.

principle is known as the territorial principle.[33] This rule relates to Indonesia's jurisdictional provisions. If there is a new bankruptcy case with foreign elements, then the decision of the foreign judge will only be recognized as documentary evidence to strengthen the parties involved in the litigation.[34] Whereas the Model Law provides an opportunity for foreign representatives to file a court application to the relevant country regarding the foreign decision previously issued where the dispute is adjudicated.

Foreign bankruptcy cases entering Indonesia will only be used as documentary evidence here, meaning that the foreign decision cannot be executed in Indonesia, especially condemnatory decisions. Conversely, Indonesian bankruptcy judgments cannot be executed if the bankrupt's assets are located abroad.[35] Conversely, the provisions in the Model Law provide space to execute the debtor's estate as explained in Chapter II Article 12 aimed at the relevant trustee.

The article explains that the authority held by foreign trustees includes participating in the bankruptcy process, including the execution process of the debtor's bankrupt estate. Indirectly, trustees have legitimacy rights to file cooperation requests from foreign parties. "Efforts to codify these Model Law rules have been made in other countries in the ASEAN region, including (1) Singapore, (2) Malaysia, (3) Japan, (4) South Korea, (5) Thailand. Whereas other countries that have adopted these rules are (1) Australia 2008, (2) Canada 2009, (3) Colombia 2006, (4) Eritrea 1998, (5) Greece 2010, (6) Mauritius 2009, (7) Mexico 2000, (8) Montenegro 2002, (9) New Zealand 2006, (10) Poland 2003, (11) Romania 2003, (12) Serbia 2004, (13) Slovenia 2007, (14) South Africa 2000, (15) UK and Ireland 2006, (16) Virginia 2003, (17) USA 2005."[36]

[33] Ulil Afwa dan Sindy Riani Putri Nurhasanah Maryono, Antonius Sidik, "Quo Vadis Esensi Lembaga PKPU Pasca-Putusan Mahkamah Konstitusi Nomor 23/PUU-XIX/2021," *Rewang Rencang: Jurnal Hukum Lex Generalis* 3, no. 4 (2022).
[34] Yahya Harahap, *Hukum Acara Perdata* (Jakarta: Sinar Grafika, 2015).
[35] Laura Hardjaloka, "Kepailitan Lintas Batas: Perspektif Hukum Internasional Dan Perbandingannya Dengan Instrumen Nasional Di Beberapa Negara," *Yuridika* 30, no. 3 (2015): 480–504, https://doi.org/10.20473/ydk.v30i3.1952.
[36] UNCITRAL, "Status 1997 - Model Law on Cross-Border Insolvency," *UNCITRAL*, 2011.

4. Closing

4.1. Conclusions

Based on the study and analysis of several legal instruments, both national and international, related to transnational bankruptcy above, the Author can draw conclusions on the two main topics examined in this research as follows:

a. The issuance of regulations by UNCITRAL UN in the form of this Model Law is a method of developing legal rules in the international arena. Its establishment is also based on efforts to provide guidance for transnational bankruptcy cases. One of them is the Model Law legal system which provides access for foreign representatives as well as foreign debtors/creditors involved in transnational bankruptcy cases. Thus, if a trustee carries out the execution process of a debtor's bankrupt assets located outside the territorial boundaries of Indonesia, they will be faced with clear laws and regulations regarding the execution mechanisms that should be applied.

b. The resolution of transnational bankruptcy cases occurring in Indonesia basically does not yet have clear and specific rules. Therefore, if a foreign debtor has bankrupt assets located within the jurisdiction of Indonesia, then the application for the resolution of the bankruptcy case must be submitted to the Indonesian court first so that the bankrupt assets can undergo the execution process. The execution process will also be carried out using Indonesian bankruptcy law, from the judicial mechanism to the mechanism of seizure of bankrupt assets. Foreign judgments declaring the bankruptcy of the respective company will only serve as written evidence used to give legal force to statements from the parties involved in the case. However, the Model Law states that the trial and execution processes conducted by another country where the bankrupt assets are located can be carried out by foreign trustees or foreign representatives. Legitimacy rights are granted to foreign representatives or foreign trustees in this transnational bankruptcy court process as executors.

4.2. Suggestions

The lack of clear legal certainty in the event of transnational disputes leads foreign parties to feel that the legal protection they receive will not be optimal. The concept of the Model Law, which provides broader space for foreign investors to resolve disputes when they arise, is not adopted by Indonesia. Hence, there is a high likelihood that the concerned foreign investors in such

disputes will not receive adequate rights when collaborating with domestic investors due to the lack of legal certainty. Therefore, given this condition, the author suggests adjustments to the existing Bankruptcy Law in Indonesia to be more open to the developments in the global market. The only concern about not ratifying it is because the Model Law has the potential to encroach upon Indonesia's sovereignty. According to the author, further review and reconsideration of the concepts brought by the Model Law are necessary, considering that the ratification process will not eliminate the recipient country's authority to adjudicate cases. Instead, the concept here only sets limitations on optimizing and adjusting trial processes involving foreign parties with procedures and provisions remaining consistent with the bankrupt petitioner of the respective country. Another solution proposed by the author, due to the absence of an international agreement on transnational bankruptcy held by Indonesia, is to provide an opportunity to ratify regulations through legislation or presidential decree to provide guidance and facilitate cooperation in the international arena.

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