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Analysis of the UNCITRAL Model Law on Cross-Border Insolvency and Its Potential Effectiveness in Indonesia

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Abstract: In the current era of globalization, trade involves numerous countries in both bilateral and multilateral relationships, transforming it into what is known as international business. This rapid development has given rise to various issues, including cross-border insolvency, which involves multiple jurisdictions. Currently, Indonesian law does not address this matter, resulting in a legal vacuum regarding the execution of bankrupt assets outside Indonesia's territory. This research employs a juridical-normative legal method, utilizing statute and comparative approaches. Insolvency in Indonesia is governed by Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. Under the principle of territoriality, bankruptcy rulings in Indonesia are applicable solely within national jurisdiction and lack enforceability abroad. This situation becomes complex when a debtor, who owes creditors from another country, is declared bankrupt, or vice versa. One potential solution to address cross-border insolvency cases is to adopt the UNCITRAL Model Law on Cross-Border Insolvency, formulated by the United Nations. This model aims to provide guidelines for resolving cross-border insolvency cases across different countries, facilitating fair and effective handling of such matters.
Keywords: UNCITRAL, cross-border insolvency, principle of territoriality.

1. Introduction

Bankruptcy law has a long history, originating from ancient practices governed by Egypt, Rome, and Greece, and influenced by the Catholic Church during the Middle Ages, which implemented absolute moral restoration. This law has continuously evolved over time. Significant changes occurred during the Enlightenment, alongside the Industrial Revolution, as society required more systematic regulations. England and the United States were the first to implement bankruptcy laws in the 18th and 19th centuries. As the global economy became increasingly complicated and intricate, many countries revised their bankruptcy laws in the 20th century. Continuous legal reforms were driven by numerous global challenges, aiming to achieve harmony between debtor protection, creditor interests, and economic recovery. The history of bankruptcy law has greatly contributed to creating a legal evolution that is responsive to socio-economic changes and efforts to establish an effective and fair legal system to address difficult monetary conditions.[1]

Since ancient times, bankruptcy practices have existed in Ancient Egypt, where rules regarding bankruptcy and creditor protection are found in Hammurabi's Code, created around 1750 BCE. There were also bankruptcy laws in Ancient Greece regulated by the

[1] Hartini, Rahayu. *Hukum Kepailitan*. (Malang: UMMPress, 2020).

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Solonian Laws around the 6th century BCE. Furthermore, in Ancient Rome, bankruptcy law addressed liquidation procedures for repaying debts of bankrupt and insolvent debtors. During the Middle Ages, the Catholic Church had a significant impact on bankruptcy law, focusing on debt forgiveness and moral rehabilitation, aligning with the principles of canon law. However, during this period, bankruptcy was more associated with moral failure than with difficult monetary conditions.

Significant socio-economic transformations occurred in the 18th century, driven by advancements in the modern banking system alongside the Industrial Revolution. This led to a need for more systematic legal frameworks to address bankruptcy. The Insolvent Debtors Act 1705 was the first bankruptcy law created in Great Britain, establishing procedures for bankruptcy resolution. Subsequently, in the 19th century, bankruptcy law was first enacted in a federal form in the United States with the Bankruptcy Act of 1800. However, the Bankruptcy Act of 1800 underwent continuous revisions and changes, ultimately resulting in the Bankruptcy Act of 1898. In Great Britain, bankruptcy jurisdiction was reformed through the Insolvency Act of 1869 and the Bankruptcy Act of 1883.

The evolution of global economic growth in the 20th century prompted numerous countries to modernize their bankruptcy laws to keep pace with changing circumstances. For example, the United States replaced the Bankruptcy Act of 1898 with the Bankruptcy Reform Act of 1978. Similarly, Indonesia's bankruptcy laws are based on the Faillissement Ordonnantie, enacted in 1906. As part of an ongoing process of reform, many nations have updated their bankruptcy frameworks to address socio-economic shifts, incorporating principles such as the protection of creditor rights, safeguarding debtors, efficient liquidation procedures, effective reorganization, and fostering economic recovery.[2]

Under Indonesia's legal framework for bankruptcy, as set forth in Law No. 37 of 2004 concerning Bankruptcy and the Suspension of Debt Payment Obligations, the concept of bankruptcy is defined as a collective confiscation of all the assets belonging to a debtor who is in a state of financial distress. This process involves the appointment of a curator, who is responsible for managing and overseeing the liquidation of the debtor’s assets. The curator performs these duties under the supervision of a supervising judge, in accordance with the provisions outlined in the national legal system. Bankruptcy is formally declared by a commercial court when a debtor is found to be incapable of fulfilling their financial obligations. Following the declaration of bankruptcy, the debtor’s assets are subject to liquidation, and the proceeds are distributed among the creditors in compliance with applicable legal provisions. This distribution process is carried out under the supervision of the designated curator. The primary aim of the bankruptcy procedure is to protect the interests of both the creditors and the debtor. For the creditors, the process ensures that their rights are protected through the enforcement of legal measures such as asset seizures and liquidation. Additionally, the bankruptcy framework facilitates the fair and equitable distribution of the debtor's assets among the creditors, based on the priority of claims as established by law. In this way, the bankruptcy system serves to strike a balance between

[2] Nyaman, Rizal Syah, and Cokorda Istri Dian Laksmi Dewi. "Prosedur Hukum Permohonan Pailit dalam Hukum Kepailitan di Indonesia." *Jurnal Hukum Saraswati* 5, no. 2 (2023): 441-455.

safeguarding the entitlements of creditors while also considering the financial recovery or rehabilitation opportunities for the debtor.[3]

Trade in the current era, often referred to as the era of globalization, involves various countries around the world, whether between two countries or more, thereby expanding trade beyond the confines of a single nation. This form of trade is known as international business or international trade. In a modern context, one of the most popular consumption trends in border regions between neighboring countries is cross-border shopping. National boundaries no longer pose a barrier to conducting business transactions, especially given the rapid expansion of international business transactions on a massive scale. Transactions that involve foreign elements and are not limited to a single country embody the essence of international business transactions, carried out by cross-border business actors. The objective of international business is to engage with other countries to achieve profit, transcending national boundaries and involving more than one legal system or jurisdiction from various countries.

In the context of cross-border insolvency, which pertains to the enforcement of a bankrupt debtor's assets in multiple countries where the debtor's nationality differs from that of the creditor, Indonesian law does not currently provide specific regulations. This results in a normative gap regarding the execution of bankrupt assets outside of Indonesia's borders. Additionally, due to the principle of territoriality, bankruptcy rulings in Indonesia are only enforceable within its jurisdiction. Consequently, decisions made by Indonesian courts in bankruptcy cases lack validity beyond the country's borders. Each nation operates under its own legal authority, which cannot be overridden by the laws of other countries, reflecting the principle of sovereignty upheld by states worldwide. For instance, when a debtor borrows funds from a creditor located in a different country, the creditor is governed by the legal system of their own nation. If the debtor defaults and is declared bankrupt, the resolution of the bankruptcy issue would be addressed through international law, considering the distinct legal jurisdictions of both parties involved.

International law is essential when dealing with bankruptcy proceedings that involve foreign parties or various jurisdictions. Under the Common Law or Anglo-Saxon legal systems, these situations are known as cross-border insolvency or transnational insolvency. When two or more connected nations are involved, the entire bankruptcy procedure is referred to as cross-border insolvency. The Model Law on Cross-Border Insolvency and a Guide to Enactment have been developed by the United Nations Commission on International Trade Law (UNCITRAL), the principal legal body of the UN for international trade law, in response to the challenges that nations encounter when executing bankrupt assets across borders. This concept offers a structure that enables countries to accept and uphold bankruptcy rulings rendered in other countries.

Established in 1997, the UNCITRAL Model Law on Cross-Border Insolvency offers a framework to assist nations in creating or improving their own insolvency laws, especially when dealing with debtors experiencing financial difficulties in several jurisdictions. It provides guidelines that countries can apply directly, with just little modifications, or as a guide for creating their own laws. Rather than harmonizing the substantive bankruptcy laws of various nations, the Model Law's main goal is to encourage collaboration and

[3] Asnil, Dicky Moallavi. "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): 323-346.

coordination across various jurisdictions in cross-border insolvency situations. It respects the sovereignty of each nation's legal system and recognizes the variations in national procedural laws. However, Indonesia has yet formally adopted the UNCITRAL Model Law on Cross-Border Insolvency, nevertheless. Indonesia's devotion to the territoriality concept, which highlights the significance of national sovereignty in legal concerns, is mostly to blame for this delay. According to Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, Article 299, unless otherwise noted, the national private law governs the appropriate procedural legislation. This prevents the incorporation of outside legal models, like the Model Law, into Indonesia's insolvency system and strengthens the nation's adherence to its own legal structure.[4]

Law Number 37 of 2004 establishes the legal framework for the comprehensive seizure of all assets belonging to a debtor who has been declared bankrupt, including those located outside the territorial boundaries of Indonesia. This provision is in line with Article 212, which mandates that creditors who, following the declaration of bankruptcy, recover all or part of their outstanding claims from assets situated outside Indonesia and not secured by any priority rights, must return the entirety of what they have collected to the bankrupt estate. The intent is to ensure that such assets are included in the collective pool of assets to be distributed among creditors according to the bankruptcy process. Despite the clear legal directive, the practical implementation of general asset seizures, particularly with regard to assets located outside Indonesian territory, presents significant challenges. The enforcement of such measures beyond Indonesia’s borders often lacks the necessary binding authority, which diminishes the effectiveness of the seizure process. The absence of international legal mechanisms or reciprocal enforcement agreements between Indonesia and other countries further complicates the execution of these provisions, making it difficult to fully enforce the seizure of foreign assets in a manner that aligns with national bankruptcy procedures. Consequently, while Indonesian law provides for the inclusion of overseas assets in the bankruptcy estate, the actual enforcement of these provisions remains a challenging and often ineffective process.[5]

A key challenge in the execution of judgments is the issue of recognition and enforcement. In this regard, enforcement holds a broader and more significant meaning than mere recognition. In Indonesia, the Reglement op de Burgerlijke Rechtsvordering (Rv) addresses this issue, with Article 436 stating that "decisions made by foreign judicial bodies cannot be executed or enforced within Indonesia."[6] This is further reinforced by Article 431 of the Rv, which stipulates that court decisions issued in Indonesia are only valid and enforceable within its territorial limits and cannot be executed in foreign jurisdictions. Furthermore, foreign judgments are neither binding nor recognized in Indonesia. According to Article 431 of the Rv, a curator is not permitted to enforce the debtor's assets located outside the Republic of Indonesia's jurisdiction. The enforcement of foreign court decisions in Indonesia is viewed as an infringement on the country's sovereignty, as Indonesia adheres to the principle of territoriality. This principle asserts that decisions made by foreign courts cannot be automatically enforced in another territory based solely on their own authority. Territoriality dictates that the effects, processes, and

[4] Article 299 Indonesian Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations
[5] Article 212 Indonesian Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations
[6] Article 436 Reglement op de Burgerlijke Rechtsvordering (Rv)

outcomes of bankruptcy rulings are confined to the territory of the court that issued the judgment.[7]

Thus, a bankruptcy judgment issued by a country is only effective within the jurisdiction of the issuing country. In cases of bankruptcy involving immovable property located abroad, this is governed by Private International Law, specifically Article 17 of the Algemeene Bepalingen van Wetgeving voor Nederlands Indie (AB), which states that the law applicable to immovable property is the law of the country or place where the property is situated.[8] Furthermore, Article 18 of the AB stipulates that the form of any legal action shall be determined by the court in accordance with the legislation of the country or place where the legal action is conducted.[9]

Based on the issues as described above, the author is interested in conducting further research on how UNCITRAL Model Law on Cross-Border Insolvency can enhance the efficiency of cross-border insolvency resolution, and could UNCITRAL Model Law on Cross-Border Insolvency address the legal gap in Indonesia regarding transnational insolvency?

2. Method

This research is qualitative in nature and aims to describe and analyze social phenomena, attitudes, and perceptions of individuals and groups. The analysis method in this study includes a comparison between bankruptcy laws in Indonesia and those in countries that have adopted the UNCITRAL Model Law on Cross-Border Insolvency, in order to elucidate the benefits and drawbacks of the existing policy differences. This study refers to the principles of normative law as established in legislation and identifies the rules, principles, and legal doctrines necessary to address the legal issues at hand. By employing a normative-legal research approach, the researcher applies a statutory approach to analyze relevant regulations while considering the hierarchy of laws, as well as a comparative approach to link cross-border insolvency issues with law enforcement in other countries. The results of this research are expected to evaluate ideas regarding actions and government programs that need to be regulated, with the primary goal of modernizing and harmonizing the law.

3. Results and Discussion

3.1 UNCITRAL Model Law on Cross-Border Insolvency can enhance the efficiency of cross-border insolvency resolution.

With an emphasis on standardizing business laws worldwide, the United Nations Commission on International Trade Law (UNCITRAL) is a key player in the evolution and modernization of international trade law. Introduced on May 30, 1997, the UNCITRAL Model Law on Cross-Border Insolvency is one of its major contributions. This Model Law offers a methodical framework to help nations deal with the difficulties associated with cross-border insolvency. In order to create a more effective and predictable legal environment, its main goal is to encourage collaboration and coordination among the

[7] Article 431 Reglement op de Burgerlijke Rechtsvordering (Rv)
[8] Article 17 Algemeene Bepalingen van Wetgeving voor Nederlands Indie (AB)
[9] Article 18 Algemeene Bepalingen van Wetgeving voor Nederlands Indie (AB)

jurisdictions engaged in international insolvency proceedings. The Model Law is designed to achieve several important goals. First, it aims to foster collaboration between courts and authorities in different countries handling insolvency cases, ensuring a coordinated approach. Second, it seeks to enhance legal certainty in international trade and investment, providing a stable environment for cross-border business transactions. Third, the law promotes fairness and efficiency in insolvency processes, ensuring that the interests of all creditors, stakeholders, and the debtor are protected. Fourth, it focuses on maximizing the value of the debtor's assets, ensuring that the estate is managed properly for the benefit of all creditors. Finally, the Model Law supports the rescue of distressed businesses, helping to preserve jobs and investments, which contributes to global economic stability.

In order to achieve effective execution and the best results, collaboration is crucial in cross-border insolvency cases, according to the UNCITRAL Model Law on Cross-Border Insolvency and its Guide to Enactment. Direct cooperation between courts and foreign courts or representatives interested in the proceedings is highly encouraged. They are granted the permission to speak with these foreign organizations directly or to ask them for relevant details. Furthermore, the entity responsible for overseeing the reorganization or liquidation process under the applicable national laws is expected to work in close coordination with foreign courts or representatives. While performing its duties under the supervision of the court, this entity is also empowered to engage in direct communication with foreign courts or representatives as required (Articles 25 & 26 of the Model Law).[10]

It establishes several key legal mechanisms to facilitate the resolution of cross-border insolvency cases. These mechanisms include the recognition of a foreign-appointed curator as a legitimate representative in domestic courts, allowing for the integration of international bankruptcy proceedings. It also provides for the recognition and acceptance of foreign bankruptcy judgments, along with the legal consequences that follow such recognition, ensuring that foreign rulings are given due effect. Additionally, the Model Law lays the groundwork for enhanced cooperation and coordination among courts, curators, and administrators across jurisdictions, fostering collaboration through channels such as the UNCITRAL Secretariat to streamline and improve the management of cross-border insolvencies.

Several countries have adopted the UNCITRAL Model Law on Cross-Border Insolvency. In Asia, countries that have adopted this Model Law include Singapore, Thailand, Japan, and South Korea. One notable example is Japan. Before the financial crisis in 1997, Japan relied on the principle of territoriality as its approach to insolvency law. The country previously maintained that foreign bankruptcy cases, including judgments issued by foreign courts, could not encompass the debtor's assets located within Japan. Consequently, foreign bankruptcy judgments were not enforceable within Japanese sovereignty. Similarly, judgments issued by Japanese courts did not extend to areas outside Japan's sovereignty. These regulations were outlined in Japan's Bankruptcy Law and Reorganization Law. However, following the Asian financial crisis in 1997, Japan adopted and integrated the UNCITRAL Model Law on Cross-Border Insolvency into its legal system.

Japan's insolvency law reform began with the creation of the Committee on Insolvency Law Reform, or Tosan ho bukai, which led to the introduction of the Act on Recognition

[10] *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation*.

of and Assistance for Foreign Insolvency Proceedings (Act No. 129 of 2000). Enacted on November 29, 2000, and coming into force on April 1, 2004, the Act aimed to address gaps in Japan's previous bankruptcy laws, particularly regarding cross-border insolvency. By incorporating provisions from the UNCITRAL Model Law on Cross-Border Insolvency, Japan aimed to modernize its legal system and improve international collaboration in insolvency cases by implementing provisions from the UNCITRAL Model Law on Cross-Border Insolvency. A key aspect of the reform was the granting of exclusive jurisdiction over cross-border insolvency matters to the Tokyo District Court. This centralization aimed to streamline the process and ensure consistency in handling international insolvency cases, benefiting both foreign and domestic stakeholders. Through these reforms, Japan sought to align its insolvency laws with global standards and improve the resolution of complex cross-border insolvencies. The court is authorized to receive applications for the recognition of foreign insolvency proceedings, revoke such recognition, or transfer foreign insolvency proceedings to an appropriate court (Article 4 of Act No. 129 of 2000). Thus, this court has indirect jurisdiction, as the enforcement of foreign judgments requires an application to be filed by the debtor or their representative, meaning that such judgments cannot be applied directly in Japan. Indirect jurisdiction means that a court must first recognize foreign insolvency laws before those laws can be applied within the court's jurisdiction. This contrasts with direct jurisdiction, which refers to a court's authority to handle insolvency cases involving foreign elements without requiring prior recognition.[11]

It is crucial to remember that before the legislative revisions, Japanese bankruptcy judgments only applied to assets located in Japan when talking about the acceptance and application of Japanese bankruptcy law abroad. However, if the curator represented the debtor and had the required power, they might take possession of assets outside of Japan (Article 3 of the Bankruptcy Law). The territoriality principle gave way to the universality principle with the passage of Act No. 129 of 2000. As long as foreign courts recognize and accept Japanese bankruptcy judgments, they now have an impact on the debtor's assets located outside of Japan.[12] Conversely, regarding the recognition and enforcement of foreign bankruptcy law in Japan, since the implementation of Act No. 129 of 2000, judgments from foreign courts can be enforced, allowing for the liquidation of insolvency assets within Japan, provided they receive recognition from the competent Japanese court. The application for recognition must be filed by the debtor or a foreign representative, along with evidence demonstrating that the debtor is either domiciled or conducting business in the country where the bankruptcy judgment was issued. Additionally, a deposit must be provided to cover the associated processing costs.[13] However, the Japanese court has the authority to refuse an application for recognizing foreign bankruptcy proceedings under several conditions. Firstly, if the debtor or their legal representative lacks the necessary funds to cover the costs involved in the recognition process, the court may deny the application. Secondly, if the foreign bankruptcy judgment does not address assets located in Japan, it may not be recognized. The court may also refuse recognition if the foreign judgment violates Japan's public order or public policy. Additionally, if the debtor

[11] Hardjaloka, Loura. "Kepailitan Lintas Batas Perspektif Hukum Internasional dan Perbandingannya dengan Instrumen Nasional di Beberapa Negara." *Yuridika* 30, no. 3 (2015): 480-504.

[12] LeMaster, Jane, Clara Downey, and Francis J. Brewerton. "Recent Developments in Selected Asian Countries' Bankruptcy Laws: Should Multinational Company Strategists Be Concerned?" *International Business & Economics Research Journal* 6, no. 10 (2007).

[13] Morton, Jennifer D. "Recognition of Cross-Border Insolvency Proceedings: An Evaluation of Solvent Schemes of Arrangement and Part VII Transfers under US Chapter 15." *Fordham International Law Journal* 29 (2005): 1312.

or their representative fails to report on the enforcement of the foreign judgment as instructed by the court, recognition may be denied. Finally, if the application is made in bad faith, such as through misrepresentation or fraud, the court has the right to reject it. These provisions ensure that foreign bankruptcy proceedings are only recognized when they align with Japan's legal standards and principles.[14]

Once a Japanese court recognizes a foreign insolvency judgment, it can take measures to protect and manage the debtor's assets in Japan. These measures may include suspending the enforcement of local bankruptcy laws and preventing creditors—both preferential and unsecured—from pursuing claims against the debtor's assets during insolvency proceedings. While the court is considering the recognition application, it may appoint a curator to manage the debtor's business or assets in Japan. The curator is authorized to oversee the debtor's operations and take necessary legal actions, but these actions require court approval. If a foreign bankruptcy judgment is recognized but there is also an ongoing local bankruptcy case against the same debtor, the court must revoke the foreign judgment's recognition unless certain conditions are met. Specifically, the foreign judgment must relate to a "foreign main proceeding," and recognizing it must not harm the interests of local creditors. Additionally, the recognition must provide better protection for the creditors' interests. Only if these conditions are satisfied will the court continue to recognize and enforce the foreign judgment.[15]

The term "foreign proceeding" refers to a collective legal or administrative process under bankruptcy law in a jurisdiction outside the debtor's home country. This may involve provisional measures, where a foreign court takes control of the debtor's assets and operations to facilitate restructuring or liquidation. A "foreign main proceeding" refers to a bankruptcy case initiated in the jurisdiction where the debtor's primary place of business is located, provided the debtor is a commercial entity. For individuals without a business or place of business, the foreign main proceeding would occur in their country of residence. In the case of legal entities or associations, the main proceeding takes place in the jurisdiction of their principal establishment. On the other hand, a "foreign non-main proceeding" occurs in a jurisdiction where the debtor has a business presence, but not at its primary location. The "place of business" is defined as any location where the debtor regularly conducts economic activities, such as providing goods or services. In such cases, courts from the relevant jurisdictions are expected to cooperate in determining which court will have jurisdiction over the insolvency case. This cooperation helps ensure a coordinated and efficient resolution of cross-border insolvency matters.

Adopted in 2017, Singapore is another example of a nation that has put the UNCITRAL Model Law on Cross-Border Insolvency into practice. Before this Model Law was adopted, Singapore and Malaysia only had a bilateral agreement on cross-border insolvency that recognized bankruptcy judgments made between the two nations. As a result, only inside Malaysian jurisdiction were the Singapore High Court's jurisdiction and the legal consequences of its bankruptcy rulings acknowledged. The High Court of Singapore has the jurisdiction to consider and rule on bankruptcy cases, including international insolvency lawsuits brought by creditors against debtors. Both domestic and foreign creditors are generally treated equally under Singapore's bankruptcy regulations,

[14] Radu, Bogdan. "International Institutions with Authority in the Matter of Insolvency." *AGORA International Journal of Juridical Sciences* 7 (2013): 190.

[15] Tomasic, Roman. "Insolvency Law Reform in Asia and Emerging Global Insolvency Norms." *Insolvency Law Journal* 15 (2007): 229-242.

which permit them to submit bankruptcy petitions to the Singapore High Court. Prior to the UNCITRAL Model Law on Cross-Border Insolvency being adopted, Singapore was able to accept judgments from foreign courts upon request by the foreign party. The following conditions must be met for recognition to be given:

(a) the decision was rendered by a court with the proper jurisdiction;
(b) the court's decision did not contravene any laws; and
(c) The court's decision did not violate Singapore's public order norms.

Nevertheless, this clause was only applicable to nations that had bilaterally agreed with Singapore.[16]

Two separate pieces of law govern Singapore's bankruptcy laws: the Companies Act (Statutes of the Republic of Singapore, Cap 50), which governs corporate insolvency, and the Bankruptcy Act (Statutes of the Republic of Singapore, Cap 20), which applies to individuals and partnerships. Through the Tenth Schedule of the Companies Act, Singapore has integrated the UNCITRAL Model Law on Cross-Border Insolvency into its legal framework with regard to cross-border insolvency. The goal of this integration was to close existing legal loopholes and make the nation's insolvency rules more predictable and clear, especially when dealing with overseas insolvency processes. Before Singapore's adoption of the UNCITRAL Model Law, the recognition of foreign insolvency proceedings was conditional upon the jurisdiction where those proceedings were initiated also having adopted the Model Law. This meant that Singapore would only recognize and provide assistance to cross-border insolvency cases if the foreign jurisdiction had established a similar legal framework based on the UNCITRAL Model Law. The requirement for reciprocity was a key feature of the legal regime, as it ensured that the country would only extend recognition and assistance to foreign insolvency proceedings if other jurisdictions followed comparable legal principles. By adopting the UNCITRAL Model Law, Singapore sought to modernize its insolvency regime, making it more aligned with international standards and improving the efficiency of handling cross-border insolvency cases. This move was intended to facilitate greater cooperation between jurisdictions in dealing with insolvency matters, ensuring that Singapore's legal system was better equipped to manage the complexities of international insolvency, while also enhancing legal certainty for businesses and creditors operating across borders.

In cross-border insolvency cases involving Singapore, the resolution of such cases is governed by the two regulations mentioned above: the Bankruptcy Act and the Companies Act. It can be said that there are substantial differences between the two, with the Companies Act focusing more on the regulation of corporate liquidation. This regulation includes provisions for the execution of corporate liquidation, whereas the Companies Act addresses transnational insolvency primarily concerning the role of foreign liquidators.[17] Cross-border insolvency is governed by Articles 151 and 152 of the Bankruptcy Act. Article 151 stipulates that the Singapore High Court and officials involved in insolvency cases are expected to assist the courts of designated countries, provided that those countries have jurisdiction in the ongoing cross-border insolvency case involving Singapore.

[16] Hathorn, Phoebe. "Cross-Border Insolvency in the Maritime Context: The United States' Universalism vs. Singapore's Territorialism." *Tulane Maritime Law Journal* 38 (2013): 239.

[17] Sihotang, Angreina Larose, et al. "Analisis Yuridis Komparasi Penyelesaian Kepailitan Transnasional di Singapura dan Malaysia dengan Penyelesaian di Indonesia." *Law, Development and Justice Review* 6, no. 3 (2023): 276-291.

Article 152 provides for the recognition and acceptance of the curator appointed by the courts of designated countries or appointed countries, applicable in cases where the official assignee has authority over the debtor's assets located in Singapore, as if the debtor had been declared bankrupt in Singapore. However, this provision does not apply if a bankruptcy application concerning the same matter has previously been submitted to the Singapore court. The official assignee will regain authority over the debtor's assets in Singapore only after the bankruptcy application in Singapore has been terminated, withdrawn, or if the bankruptcy judgment has been revoked or declared null.[18]

As outlined in Chapter III, Article 15(1) of the UNCITRAL Model Law on Cross-Border Insolvency with the Guide to Enactment, a foreign-appointed curator or representative has the ability to seek formal recognition from the courts of another jurisdiction for the foreign insolvency proceedings and related judgments issued in the country where the representative has been designated. The provision specifically outlines that "a foreign representative may file an application with a court in a different country to seek recognition of the foreign proceedings in which the foreign representative has been appointed." Regarding the foreign insolvency proceedings and judgments to be submitted for recognition, there must be certainty and transparency regarding the ongoing foreign legal process, along with specific provisions governing the application for recognition. These provisions serve as the basis for the judge's considerations when accepting or rejecting applications for the recognition of cross-border insolvency cases. The requirements include:

a. An official copy of the foreign court judgment submitting the application, along with the appointment of the foreign representative (curator);
b. A certificate explaining the court process and the appointment of the representative (curator);
c. If both documents are unavailable, other evidence that is accepted and recognized by the relevant court may be provided.

The application for recognition must include a certificate that explains and identifies all aspects of the insolvency process, translated into the language of the country in which the application is made. It is also stipulated that a court in a country has the right to deny the application for recognition of foreign proceedings if it does not comply with or contradicts the applicable national law. Furthermore, Chapter III, Article 19(1) of the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment states that from the time the application for recognition is submitted until it is decided, a court in a country may, in urgent and critical circumstances, request the foreign representative (curator) to temporarily protect the assets or interests of the debtor. This action is necessary if the debtor's assets, due to their nature or other emergency conditions, cannot be preserved for long or are in a situation that poses a risk and could harm the interested parties.[19] Therefore, the adoption of the UNCITRAL Model Law on Cross-Border Insolvency by each country is essential to ensure the resolution of cross-border insolvency judgments is conducted with a clear legal framework that does not conflict with one another.

From the examples above, one might conclude that the adoption of the UNCITRAL Model Law on Cross-Border Insolvency provides countries around the world with certainty in addressing legal gaps related to cross-border insolvency cases. Countries will

[18] *Singaporean Bankruptcy Act*.
[19] *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment.*

operate under a common legal framework to resolve insolvency matters where the debtor or creditor resides in a different country and holds different citizenship. Furthermore, even countries that previously adhered to the principle of territoriality will shift towards the principle of universality after adopting the UNCITRAL Model Law on Cross-Border Insolvency. This leads to the argument that there will be fewer disputes or contradictions in the respective legal jurisdictions

3.2 UNCITRAL Model Law on Cross-Border Insolvency can address the legal gap in Indonesia regarding transnational insolvency

As a model law, the UNCITRAL Model Law on Cross-Border Insolvency needs to be adopted or adapted into national law to provide a unilateral legislative framework for cross-border insolvency processes. The UNCITRAL Model Law focuses on what is necessary to facilitate the administration of cross-border insolvency cases and aims to provide mechanisms or methods to connect or synchronize different legal systems or jurisdictions, allowing them to communicate and cooperate in handling bankruptcy cases involving multiple countries.[20] Indonesia itself adheres to the principle of territoriality in resolving its bankruptcy cases, which results in the inability to settle cross-border insolvency cases within the Indonesian legal jurisdiction. This means that foreign judgments cannot be directly enforced in Indonesia solely based on the strength of the judgment itself. Foreign rulings in Indonesia will be acknowledged but not enforced. Disputes adjudicated abroad must be re-examined from the initial process. Foreign judgments are merely considered a "fact," representing decisions that do not conform to the legal system in Indonesia. This situation arises from the provisions in the Reglement op de Burgerlijke Rechtsvordering (Rv), which still serves as a guideline in Indonesia. Article 436 of the Rv states, among other things, that "decisions rendered by foreign judicial bodies cannot be executed or enforced in Indonesia."[21]

As previously explained, cross-border insolvency is not without various issues that arise in bankruptcy cases involving multiple jurisdictions, as well as problems related to recognition and enforcement.[22] Enforcement encompasses a broader and deeper meaning compared to recognition, as the enforcement of a judgment has more significant and extensive implications. It can lead to active measures taken by various relevant judicial or administrative authorities. In contrast, recognition does not always necessitate such active measures.[23] Judgments from foreign courts can be recognized in Indonesia as long as no request for execution against assets located within the jurisdiction of Indonesia is submitted by the competent foreign court. Furthermore, the judgment must be rendered lawfully and possess both constitutive and declaratory characteristics, as it only creates rights and obligations for the parties involved in a specific relationship. Another common issue that arises in cross-border insolvency is the location of the bankrupt assets, particularly when a debtor declared bankrupt has assets outside the jurisdiction of their home country. In such cases, a foreign court's decision to execute the bankrupt assets beyond the jurisdiction of

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[20] *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation*.
[21] *Reglement Op De Burgelijke Rechtsvordering staatblaad (Rv).*
[22] Maharany, Arindra. "Tinjauan Hukum Terhadap Penerapan Instrumen Hukum Internasional dalam Pengaturan Kepailitan Lintas Batas di Indonesia." Singapura, Malaysia, Thailand, Korea Selatan, dan Jepang. Fakultas Hukum Universitas Indonesia, Depok, 2011.
[23] Gautama, Sudargo. *Pengantar Hukum Perdata Internasional Indonesia*. (Bandung: Binacipta, 1977).

the debtor's country cannot be recognized due to the principle of territoriality. As a result, the administrator, who is authorized to execute the bankrupt assets, encounters difficulties in carrying out their duties. This situation is certainly detrimental to creditors who are trying to recover their debts from the bankrupt assets that have been executed by the curator.[24]

It can be stated that a country is likely to struggle in achieving optimal economic development if it does not incorporate reforms in its legal system. The lack of clear reforms may lead to legal vacuums within the country, which can hinder economic growth and investment. For example, the absence of proportional protection among parties involved in bankruptcy, such as debtors, creditors, and other stakeholders, poses a threat to the overall economic development of the country. Generally, many legal systems in various countries do not permit the enforcement of foreign court judgments. This is not only the case in countries with Civil Law systems but also in those adhering to Common Law systems. The refusal to enforce foreign court judgments is closely related to the principle of territoriality or the principle of state sovereignty.[25]

Nonetheless, the principle of territoriality can be relaxed through the establishment of reciprocity or mutual beneficial relations. Currently, Indonesia has regulations concerning mutual legal assistance in criminal matters, as outlined in Law No. 1 of 2006 on Mutual Legal Assistance in Criminal Matters.[26] Furthermore, within Indonesian private law, there exists a property right that grants direct authority to an individual over the possession and ownership of an object, regardless of the location of that object. According to the general principles of Indonesian private law, property rights are absolute, meaning that the rights holder has full authority to use, enjoy, and control the object, as well as to assert their rights. Consequently, the bankruptcy estate, which encompasses all of the debtor's assets declared bankrupt, will be managed by a curator. In this context, the assets within the bankruptcy estate become the subject of property rights.

Therefore, in Indonesian law, if at some point the UNCITRAL Model Law on Cross-Border Insolvency is adopted, it will automatically modify several provisions of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. Among the aspects that need to be incorporated in amending the Indonesian Bankruptcy Law, specifically, are:

a) Chapter I of the UNCITRAL Model Law on Cross-Border Insolvency, along with its Guide to Enactment and Interpretation, should be incorporated into Indonesia's national bankruptcy legislation. Specifically, Article 1 emphasizes the need for the recognition and enforcement of cross-border insolvency decisions. The aim is to provide a consistent and harmonious legal framework for handling international bankruptcy cases, focusing on cooperation between courts and authorities in different countries. This is intended to facilitate the efficient and equitable resolution of cases while protecting the rights of creditors and other stakeholders across various jurisdictions. Additionally, Article 2 defines key terms such as "Foreign Proceeding," which refers to insolvency proceedings occurring in another

[24] Puspitasari, Lia Nopiharni, et al. "Problematika Eksekusi Harta Pailit Dalam Cross Border Insolvency." *Jurnal USM Law Review* 4, no. 2 (2021): 743-755.

[25] Adnin, Dasril. "Aspek-Aspek Internasional dalam Hukum Kepailitan." *Jurnal Sains dan Inovasi* 6, no. 1 (2010): 69-75.

[26] Sinaga, Syamsudin M. *Hukum Kepailitan Indonesia*. (Jakarta: Tatanusa, 2012).

country, and "Foreign Representative," which denotes an individual or entity appointed by a foreign court to manage such proceedings (foreign curator).

b) Articles 11 and 12 establish that the recognition of a foreign main proceeding provides protective effects for the debtor's assets and grants authority to the foreign representative, while also facilitating coordination with local procedures in executing cross-border insolvency judgments.
c) Article 13 of the UNCITRAL Model Law on Cross-Border Insolvency addresses the rights of foreign creditors in insolvency proceedings in countries that adopt this law. This article ensures that foreign creditors possess the same rights as local creditors to initiate and participate in bankruptcy proceedings.
d) Article 14 of the UNCITRAL Model Law on Cross-Border Insolvency stipulates that courts must recognize foreign proceedings as either main or non-main proceedings, based on their compliance with local laws and fundamental principles of justice. This recognition grants authority to the foreign representative to act within the jurisdiction and ensures that all creditors are treated fairly.
e) Articles 15, 16, and 17 in Chapter III of the UNCITRAL Model Law on Cross-Border Insolvency broadly establish a framework for the recognition of foreign proceedings and outline how these proceedings should be integrated with domestic law. They ensure that all parties involved receive fair treatment and that the procedures are transparent, while also granting authority to foreign representatives or insolvency practioners to act within a given jurisdiction.
f) Articles 25, 26, and 27 in Chapter IV of the UNCITRAL Model Law on Cross-Border Insolvency, govern the coordination and cooperation among courts in cross-border insolvency proceedings. They establish a framework for collaboration between the court of recognition and the courts handling both local and foreign procedures, aiming to align the management of the debtor's assets and obligations, avoid conflicts, and create a harmonious schedule. These articles also outline the authority and functions of the court in the recognition jurisdiction, ensuring that decisions made comply with the main proceedings and support international cooperation. Furthermore, they emphasize the importance of effective communication between courts in different countries to share information and coordinate decisions, facilitating a coordinated and efficient process.
g) Regarding the proof of cross-border insolvency, Article 31 stipulates that the recognition of a foreign main proceeding is considered conclusive evidence that the debtor is insolvent, unless there is evidence to the contrary.

Based on the incorporation of these articles into Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, it can be concluded that the adoption of the UNCITRAL Model Law on Cross-Border Insolvency within Indonesian bankruptcy law will eliminate legal vacuums and facilitate the resolution of bankruptcy cases where one party is a foreign national along with assets located in other countries. This, of course, will be achieved through the application of the principle of universality, supported by a clear and uniform legal framework in line with countries that have also adopted the UNCITRAL Model Law.

4. Conclusion

The adoption of the UNCITRAL Model Law on Cross-Border Insolvency in Indonesia, particularly in the context of Law No. 37 of 2004, is expected to significantly enhance the legal framework for bankruptcy, especially in managing cross-border

insolvency cases. By integrating key articles from the Model Law, Indonesia can effectively address historical issues related to the principle of territoriality, thereby improving the recognition and enforcement of bankruptcy judgments across jurisdictions. This change aims to create better protection for both creditors and debtors, clarify their rights and obligations, and facilitate cooperation among courts internationally. A clear and consistent legal framework will not only reduce legal uncertainty and fill existing legal vacuums but also enhance Indonesia's attractiveness for investment and stimulate economic growth. To address the legal gaps in transnational bankruptcy, strategic steps are essential, including drafting legislation that incorporates the UNCITRAL Model Law with input from various stakeholders, conducting outreach and training for relevant legal professionals, and fostering cooperation with countries that have adopted the Model Law. Furthermore, enhancing legal and administrative infrastructure, such as IT systems for cross-border communication, establishing protective mechanisms for creditors and debtors, and promoting recognition of foreign court judgments through mutual legal assistance will strengthen Indonesia's position. Regular evaluations post-implementation will help identify challenges and necessary adjustments, ultimately allowing Indonesia to leverage the potential of the UNCITRAL Model Law to improve its bankruptcy system and economic climate.

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