

## **RULING DUE TO BANKRUPTCY ASSETS DEBTORS BEYOND AREAS IN INDONESIA**

**Imam Syaifullah<sup>1</sup>, Surya Sakti Megantoro<sup>2</sup>**

<sup>1</sup>*Faculty of Law, University of Airlangga  
Jl. Dharmawangsa Dalam Selatan, Surabaya, Indonesia 60286  
Email. Imamsyaifullah.legal@gmail.com*

<sup>2</sup>*Faculty of Law, University of Airlangga  
Jl. Dharmawangsa Dalam Selatan, Surabaya, Indonesia 60286  
Email. Saktisurya17@gmail.com*

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**Abstract:** *The purpose of this study is to examine the consequences of bankruptcy decisions on debtor assets outside the territory of Indonesia and to see the extent to which the bankruptcy law provides protection to creditors from debtors whose assets are located outside the territory of Indonesia. This is Normative legal Research with a statutory approach, a conceptual approach and a comparative approach. The results and discussion concluded that the bankruptcy decision handed down by the Commercial Court in Indonesia could have an impact on the debtor's assets outside the territory of Indonesia in accordance with Article 21 of the Bankruptcy Law. The issue of execution is hindered by the principle of territoriality from other countries. The bankruptcy law has not fully provided legal protection for creditors if the debtor has assets outside the territory of Indonesia, as a way for curators to carry out private selling. Indonesia should adopt the Uncitral Model Law on cross-border insolvency (1997) or enter into international agreements, either bilateral or multilateral.*

**Keywords:** *Bankruptcy; Due to Bankruptcy Decision; Creditors Protection.*

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### **INTRODUCTION**

The economic development in Indonesia has had such a rapid impact that conducting business transactions does not only involve domestic business actors but also involves

countries outside the territory of Indonesia. The bussiness people in running a business are certainly inseparable from the debt and receivables between creditors and debtors. As a form of giving trust to creditors, in debt and

creditors, debtors provide guarantees or assets in the form of objects or otherwise to creditors. As a result of the debts and receivables between creditors and debtors, if the debtors cannot pay their debts or perform their achievements, this is where the role of bankruptcy law plays.

The law of bankruptcy in Indonesia is regulated in Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law). The increase in bankruptcy cases in Indonesia has been proven that in 2018 there were 114 cases while in 2019 it increased to 124 cases.<sup>1</sup> Of the many bankruptcy cases in Indonesia, the bankruptcy arrangement should be better. Given the current development of business is increasingly advanced where business transactions not only involve one country but involve other countries or on an international scale. The unavoidable result of this international scale business is bankruptcy involving two different countries or across countries.

Transnational bankruptcy is a problem in Indonesian national law because the Bankruptcy Law has not been carefully regulated across border bankruptcies. So that this has not provided legal certainty in the case of cross-border bankruptcy. In the case of cross-border bankruptcy, situations are often found where the bankrupt debtor has assets of more than one country so that the place of the bankruptcy estate is in a different country from the country where the bankruptcy decision is located. This is related to how the enforceabil-

ity of bankruptcy decisions / other countries, often it can cause legal problems as a result of the bankruptcy decisions so that legal protection for creditors has not been maximally achieved.

The Bankruptcy Law in Article 21 states that “bankruptcy covers the entire assets of the debtor at the time. The decision to declare bankruptcy is pronounced as well as everything that was obtained during the bankruptcy”. This provision materially states that the decision of the Commercial Court on the application for a bankruptcy statement includes all assets of the debtor, both assets located in Indonesia and outside the territory of Indonesia. Then a problem arises if the debtor is declared bankrupt by the Indonesian Commercial Court, which has a number of assets abroad, because in this case the sovereignty of 2 (two) different countries is involved. Debtors who have assets that are outside the territory of Indonesia will have an international aspect.<sup>2</sup>

Especially after the debtor is declared bankrupt, all authority is transferred to the curator as stipulated in Article 69 paragraph (1) of the Bankruptcy Law. This is a challenge in itself for curators to provide legal protection for creditors if the debtor has assets outside the territory of Indonesia. So that the curator can execute the debtor’s assets outside the territory of Indonesia. Because so far the bankruptcy law does not have clear rules on how to resolve bankruptcy decisions at the Indonesian Commercial Court against debtor assets that are outside the territory of Indonesia, so it has not provided more protection to creditors.

For example, the bankruptcy decision at the Indonesian Commercial Court against a debtor having assets outside the territory of

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<sup>1</sup> Vendi Yhulia Susanto, “Sepanjang 2019, Perkara PKPU Dan Kepailitan Meningkat,” *Kontan.co.id*, last modified December 2019 accessed August 12, 2020, <https://nasional.kontan.co.id/news/sepanjang-2019-perkara-pkpu-dan-kepailitan-meningkat>.

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<sup>2</sup> Jono, *Hukum Kepailitan* (Jakarta: Sinar Grafika, 2017), 188.

Indonesia, The decision No. 30 / Pailit / 2002 / PN.NIAGA / JKT / PST in 2002 the case between Mrs. Nyoman Soe rabratha and ir. Marcus Pramono S as the applicant for bankruptcy against the defendant The Ostrich Meat & Marketing Co. (Australia) Ltd, a company from Australia that conducts business in the Asian region including Indonesia. From this case, the problems that arise are not fulfilling the principles of justice and legal certainty because companies that have assets outside the territory of Indonesia cannot have their assets executed.<sup>3</sup>

Another example of *cross border insolvency* in 2013, the company Across Asia Limited was declared bankrupt by the Central Jakarta District Court as Decision Number 64 / PKPU / 2012 / PN Niaga Jkt.Pst. The problem that arises over the bankruptcy decision is that Across Asia Limited owns the majority of its assets in Hong Kong, resulting in difficulties in executing it.<sup>4</sup>

The problems that arise from the above explanation are the legal consequences of the bankruptcy decision on debtor assets outside the territory of Indonesia and what is the legal protection for creditors for debtor assets that are outside the territory of Indonesia.

On this issue, the purpose of this paper is to determine the legal consequences of the bankruptcy decision on debtor assets outside

the territory of Indonesia. As well as to find out legal protection for creditors for debtor assets that are outside the territory of Indonesia.

## METHOD

This research uses a type of normative research, whis is the research that starts on a process to obtain legal principles, legal principles and legal doctrines to provide answers or legal issues faced so that new arguments, theories or concepts are obtained as prescriptions in solve the problem.

The approach used is a statute approach, a conceptual approach and a comparative approach.<sup>5</sup> The statute approach is carried out by examining all laws and regulations relating to the legal issue under investigation by reviewing all bankruptcy regulations. A conceptual approach that departs from the views and doctrines that develop in legal science. The comparative approach, which is carried out by comparing one or more laws with other countries, in which this study makes a comparison between bankruptcy regulations in Indonesia and abroad related to *cross border insolvency*.

This research is descriptive analytical, which is a study that aims to describe or explain legal symptoms, in this case finding the right concept in bankruptcy resolution, especially the problem of bankruptcy decisions on debtor assets that are outside the territory of Indonesia in order to create legal protection for creditors.

Source of Legal Materials In this study using primary legal materials and secondary legal materials, which are:

<sup>3</sup> 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): 327, <https://ujh.unja.ac.id/index.php/home/article/view/22>.

<sup>4</sup> Adi Satrio, R. Kartikasari and Pupung Faisal, "Eksekusi Harta Debitor Pailit yang terdapat di Luar Indonesia Dihubungkan dengan Pemenuhan Hak-Hak Kreditor," *Ganesh Law Review* 2, no. 1 (2020): 98, <https://ejournal2.undiksha.ac.id/index.php/GLR/article/view/126>.

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: PT.Kharisma Putra Utama, 2005), 133-135.

1. Primary legal materials are legal materials that are binding: Civil Code (KUH-Perdata), Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, UNCITRAL *Model Law On Cross Border Insolvency with Guide to Enactment* (1997).
2. Secondary legal materials are legal materials in the form of text books, legal journals and legal expert opinions relevant to the subject matter.

The technique of collecting legal materials used in this writing is literature study. Literature study is carried out by reading, analyzing, taking notes, making reviews of legal materials that are related to the rules and concepts of bankruptcy, then systematically processed and analyzed to obtain conclusions consistent with the research objectives.

## ANALYSIS AND DISCUSSION

### As a result of the Decision of Bankruptcy of the Commercial Court in Indonesia on Foreign Debtor Assets

In the Bankruptcy Law Article 1 paragraph (1), which is meant by bankruptcy, is general confiscation of all the assets of the bankrupt debtor whose management and settlement is carried out by a curator under the supervision of the supervisory judge as regulated in this law. From this provision, it can be interpreted simply as a seizure of all debtor assets that are included in the application for bankruptcy.

Bankruptcy is the manifestation of the implementation of Articles 1131 and 1132 of the Civil Code. The debtor is declared bankrupt and will result in the loss of all assets and what was obtained during the bankruptcy in accordance with Article 21 of the Bankruptcy Law and in accordance with the provisions

of Article 1131 of the Civil Code. With the meaning that after being declared bankrupt, the debtor will lose all his assets which are not limited in nature, either in the country or outside the territory of Indonesia.

Basically, debtors who are declared bankrupt by the Indonesian Commercial Court who have assets outside the Indonesian territory will certainly involve foreign elements in them. This is called *cross-border insolvency*, which is bankruptcy that involves foreign elements in it because of international business transactions that allow debtors to have creditors abroad or debtors to have assets abroad.<sup>6</sup> The scope of *cross-border insolvency* is the same as bankruptcy in general, which must consist of debtors, creditors, and debts, which only have a foreign element added to it. The foreign element is an association with other legal systems outside of the “forum” specified in the agreement (the country where the court hears the case) and the linkage actually exists in the facts of the case.<sup>7</sup>

*Cross-border insolvency* certainly involves the interests of 2 (two) different countries, for example, there is a situation where the creditor and debtor are 2 (two) legal subjects domiciled in different countries so that the country where the creditor and debtor is domiciled has different sovereignty or there are assets outside the territory of Indonesia. In this situation, for example, the creditors and debtors are located in the country of Indonesia, but after the decision of bankruptcy was imposed by the Indonesian commercial court and the debtor was proven to have assets out-

<sup>6</sup> Susanti Adi Nugroho, *Hukum Kepailitan Indonesia dalam Teori dan Praktik Serta Penerapan Hukumnya* (Jakarta: Kencana Pranadamedia Group, 2018), 418.

<sup>7</sup> Bayu Seto Hardjowahono, *Dasar-dasar Hukum Perdata Internasional Buku Kesatu* (Bandung: PT Citra Aditya Bakti, 2006), 4.

side the country. In this situation, assets located outside the country are classified as bankruptcy assets, which means that the existence of the bankruptcy estate is certainly outside the territorial sovereignty of the Indonesian state or the residence of the bankrupt debtor.

In connection with *Cross-border Insolvency*, there are two principles that become guidelines and their application, and territorial principles as can be seen in the following explanations:

#### 1. Universal principles

This principle implies that the bankruptcy decision of a court in a country, then The bankruptcy decision applies to all assets of the debtor, both in the country where the bankruptcy decision was made and the assets of the debtor who are abroad.

#### 2. Territorial Principles

The general principle regarding the territorial decision of a country's court also applies to bankruptcy decisions by foreign courts. The court decisions of one country cannot be recognized and therefore cannot be executed by the courts of other countries.<sup>8</sup>

Based on the territorial principle, the decision to declare bankruptcy from a foreign court that cannot be executed at the Indonesian Commercial Court also applies to the bankruptcy statement of the Indonesian Commercial Court which cannot execute the bankruptcy property of a debtor outside the country. This happened because it was assumed to be a violation of the assets of state sovereignty.<sup>9</sup>

From the two principles above, the Bankruptcy Law in Indonesia adheres to the Universal principle. This is evident in Articles 21, 212, 213 and 214 of the Bankruptcy Law, which are as follows:

1. Based on Article 21 of the Bankruptcy Law, the debtor's bankruptcy assets include the entire debtor's assets wherever the assets are located. This means covering the entire assets of the bankrupt debtor or both in Indonesia and abroad;
2. Pursuant to Articles 212-214 of the Bankruptcy Law, where a creditor or any person must do a replacement, in the following circumstances:
  - a. If a creditor who does not have the right to take precedence, after the decision to declare bankruptcy is pronounced, he will take full or part of the receivables from the assets included in bankruptcy which is located outside the territory of Indonesia.
  - b. If the creditors have transferred part or all of their receivables to a third party (after knowing that there is or will be filed a request for a bankruptcy statement), so that the third party can take full or part of the receivables, including the bankruptcy assets located outside the territory of Indonesia. . Unless it can be proven otherwise, any transfer of accounts receivable made by the creditor or any person who has carried out the transfer, must be deemed to have done so with the stated intention, if this was done with his knowledge that the request for a bankruptcy statement has been or will be requested. .
  - c. If any person (after knowing that there is or will be filed for a bank-

<sup>8</sup> M. Hadi Shubhan, *Hukum Kepailitan Prinsip Norma dan Praktik di Pengadilan* (Jakarta: Kencana Pranadamedia Group, 2008), 47.

<sup>9</sup> Nugroho, *Hukum Kepailitan Indonesia dalam Teori dan Praktik Serta Penerapan Hukumnya*, 425.

ruptcy declaration) has transferred both debts and receivables partially or completely to a third party, so that the third party has the opportunity to make a comparison or calculation of debt or accounts receivable with a ribbon or debt outside Indonesia.

The aforementioned provisions show that Indonesia's bankruptcy law against debtor bankruptcy adheres to a universal principle. The problem is that the universal principles adopted by the Bankruptcy Law are contrary to the principles of territorial sovereignty adhered to by the Indonesian state. This is evident in Article 436 *Reglement op de Rechtsvordering* which reads as follows:

1. Except in matters stipulated by Article 724 of the KUHD and other laws, decisions pronounced by foreign judges or lawyers cannot be implemented. foreign courts in the Republic of Indonesia territory.
2. The cases concerned can be filed, examined and decided again before the Indonesian Court.
3. In the circumstances except in paragraph (1), judges of a foreign country can only be made after an application has been made and there is a permit from a judge in Indonesia, where the decision must be carried out.
4. In the case of applying for and granting this permission the case will not be re-examined.

This provision shows that Indonesia adheres to the principle of territorial sovereignty, so that if a foreign judge goes bankrupt, the decision cannot be enforced in Indonesia. Foreign court decisions are only recognized as documentary evidence to corroborate new bankruptcy applications in Indonesia. Vice

versa, it can be interpreted that the Indonesian judge's decision cannot be enforced against the assets of debtors or bankrupt criminals who are outside the territory of Indonesia.

Based on the international civil law system in Indonesia, the decision to declare bankruptcy against a debtor who owns a number of assets outside the territory of the Republic of Indonesia adheres to the territorial principle, so that the decision on the bankruptcy statement which states in the Indonesian commercial court has no legal consequences for the debtor's assets outside the territory of the Republic of Indonesia. The bankruptcy statement only has legal consequences on debtor assets that are within the territory of Indonesia.<sup>10</sup>

As an example of a case that has occurred in Indonesia, namely decision No.021 / PKPU / 2000 / PN.Niaga.Jkt Pst. Jo. Decision No.78 / Pailit / 2001 / PN. Niaga.Jkt.Pst decided the debt of an Indonesian businessman debtor with a total debt of Rp. 176 billion to its creditors. The decision has reached the Reconsideration stage and the panel of judges has declared that the debtor is bankrupt. Based on the curator's verification, the bankrupt debtor has several assets and deposits in the territory of Saudi Arabia. However, the curator, as the party authorized to carry out the execution of the bankruptcy assets, has difficulty in carrying out his duties because of collisions with Saudi jurisdiction. Arabia.<sup>11</sup> From this case, it can be seen that to execute debtor's assets outside the territory of Indonesia there is a problem with the sovereignty of a country,

<sup>10</sup> Ibid, 422.

<sup>11</sup> Ranitya Ganindha and Nadhira Putri Indira, "Kewenangan Kurator dalam Eksekusi Aset Debitor pada Kepailitan Lintas Batas Negara," *Arena Hukum* 13, no. 2 (2020): 338, <https://arenahukum.ub.ac.id/index.php/arena/article/view/971>

where the commercial court decision cannot be used to execute debtor assets that are outside the sovereignty of the Indonesian State.

Apart from contradicting the principle of territorial sovereignty, based on Article 17 AB (*Algemene Bepalingen van wetgeving*) or the principle *lex rei sitae*, which basically stipulates that immovable objects apply the legal provisions of the place where the object is located. This provision applies not only to fixed objects, because in practice it also applies to moving objects.<sup>12</sup> So from these provisions, the applicable law regarding the issue of bankruptcy assets outside the territory of Indonesia also depends on the law of the property located (*lex rei sitae*). It can be said that bankruptcy assets located outside the territory of Indonesia do not include bankruptcy assets which can be subject to general confiscation, because the applicable law on assets that are located separately between countries is regulated by different laws, namely the law where the debtor's assets are located.

Starting from the explanation above, it is clear that the result of the bankruptcy decision handed down by the Indonesian commercial court has an impact on the assets of debtors who are outside the territory of Indonesia. This is an implementation of Article 21 of the Bankruptcy Law. The obstacles in executing bankruptcy assets outside the territory of Indonesia are under the jurisdiction of another country. Due to the *collision of the sovereignty principle*, that is, each country has a legal sovereignty that cannot be penetrated or challenged by the laws of other countries.<sup>13</sup>

<sup>12</sup> Sudargo Gautama, *Hukum perdata Internasional Indonesia buku ke tujuh*. (Bandung: Alumni, 2010), 497.

<sup>13</sup> Doni Budiono, "Analisis Pengaturan Hukum Acara Kepailitan dan Penundaan Kewajiban Pembayaran Utang," *Adhaper: Jurnal Hukum Acara Perdata*

The problems described above in executing debtor assets outside the territory of Indonesia, one of the efforts that can be done is that the curator can conduct *private selling*. The curator can carry out *private selling* of the debtor's assets outside the territory of Indonesia, which will be explained in the next sub-chapter. Meanwhile, other ways that can be done are by means of bilateral or multilateral agreements so that it will facilitate the execution of debtor assets outside the territory of Indonesia.

Some examples of international agreements that deal with problems regarding *cross border insolvency* are:<sup>14</sup>

- a. UNCITRAL *Model Law On Cross Border Insolvency with Guide to Enactment* (1997)
- b. *Mutual Recognition and Mutual Enforcement of Republic of Singapore and Malaysia*
- c. *ASEAN Cross Border Insolvency Regulation*

By conducting international agreements, it is hoped that the problems in cross-border bankruptcy regarding the authority of curators in executing bankruptcy boards which are obstructed by jurisdictions of other countries will be resolved.

### **Legal Protection for Creditors for Bankrupt Debtor Assets Outside the Territory of Indonesia**

As previously explained, Article 21 of the Bankruptcy Law states that bankruptcy covers

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4, no. 2 (2018): 121, <http://jhaper.org/index.php/JHAPER/article/view/81>

<sup>14</sup> Nadhira Andri Putri, "Kewenangan Kurator Dalam Mengeksekusi Boedel Pailit Di Luar Batas Yurisdiksi Indonesia" (Universitas Brawijaya, 2018), 77, [http://repository.ub.ac.id/11378/1/NADHIRA\\_ANDRI\\_PUTRI.pdf](http://repository.ub.ac.id/11378/1/NADHIRA_ANDRI_PUTRI.pdf).

all assets of the debtor at the time the bankruptcy declaration was pronounced as well as everything he obtained during the bankruptcy. If we look closely at this article, there is an opening to confiscate debtor's assets outside the territory of Indonesia, which is the phrase all debtor's assets, meaning that it includes debtor's assets or debtor's assets both inside and outside the territory of Indonesia.

Debtors who have assets outside the territory of Indonesia who have already been given a bankruptcy decision by the Indonesian commercial court will result in the bankruptcy decision not being able to reach the assets of debtors who are outside the country. Considering that until now Indonesia does not have rules regarding guidelines for implementing *cross border insolvency*. In fact, with the bankruptcy verdict by the Indonesian Commercial Court, the debtor has directly lost his rights as regulated in Article 24 paragraph (1) of the Bankruptcy Law.

After being declared bankrupt, the next process cannot be separated from the role of the curator, where a curator is in charge of managing and clearing the assets of the bankrupt debtor in accordance with Article 69 paragraph (1) of the Bankruptcy Law. Because the decision of the Indonesian Commercial Court cannot reach the debtor's assets that are outside the territory of Indonesia, this will be a challenge or difficulty for a curator in terms of its execution. This situation will certainly not create legal protection for creditors which results in the creditors being disadvantaged who should be entitled to the bankruptcy assets.

In this problem, according to Ricardo Simanjuntak, curators can use the mechanism *private selling*, with the initial step of filing other claims against the bankrupt debtor with

the aim of the debtor giving a power of attorney to the curator to carry out management and settlement of the bankrupt debtor's assets outside Indonesia. <sup>15</sup>

If we describe the mechanism *private selling* as stated by Ricardo Simanjuntak, first a curator filed a miscellaneous lawsuit against the debtor with the aim of forcing the bankrupt debtor to issue a power of attorney to the curator which essentially is to give power to the curator to carry out management and settlement of the assets of the bankrupt debtor outside Indonesia. With this power, the curator is given special rights, although basically after the bankruptcy decision is pronounced by the court the debtor has lost his right to control and manage his assets.

This is in line with Sutan Remy Sjahdeini, that the authority of the debtor is transferred to the curator as the party who gets the *statutory duty* from the KPKPU Law to carry out management and settlement of bankruptcy assets. <sup>16</sup> Regarding the power of attorney to the curator, as a basis for carrying out something on behalf of the grantor, this is in accordance with Article 1792 of the Civil Code.

The power of attorney given to the curator to carry out management and settlement of his assets outside the territory of Indonesia, the curator is authorized to carry out management and settlement of the bankrupt debtor's assets outside the territory of Indonesia, then the next step is for the curator to conduct a *private sale* of the debtor's assets. bankruptcy that exists outside Indonesia as an attempt to

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<sup>15</sup> Satrio, Kartikasari, Faisal, "Eksekusi Harta Debitor Pailit yang terdapat di Luar Indonesia Dihubungkan dengan Pemenuhan Hak-Hak Kreditor." 104.

<sup>16</sup> Sutan Remy Sjahdeini, *Hukum Kepailitan Memahami UU No. 37 tahun 2004 tentang Kepailitan* (Jakarta: Pustaka Utama Grafiti, 2010), 326.

clear up bankruptcy assets. This step is a form so that the creditor gets the debtor's receivables from the debtor's assets.

In addition to the above methods, there are other protections that can protect creditors for debtor assets located abroad, which is by means of international agreements, both bilaterally and multilaterally. Mochtar Kusumaatmadja defines an international agreement as an agreement that is entered into between members of the community of nations and is intended to result in certain legal consequences.<sup>17</sup> With the existence of an international agreement, it provides enormous benefits in relations between countries, either cooperation, activities in state relations or solving various problems. So that in the problem of *cross border insolvency*, we can find a solution to solve it with the international agreement.

One of the most frequently used international agreements related to bankruptcy across national borders is the adoption of the *UNCITRAL Model Law on Cross Border Insolvency*. *United Nations Commission on International Trade Law* (UNCITRAL) provides a breakthrough that allows a country to recognize and enforce bankruptcy decisions issued by foreign courts so that it can be executed by a court of a country called *UNCITRAL Model Law on Cross Border Insolvency*.<sup>18</sup>

With the uncitral law model, it is intended that countries complete bankruptcy laws in a modern, dynamic, and fair manner in resolving cross-border bankruptcy cases. Also aims to reduce uncertainty in bankruptcy cases

across national borders.<sup>19</sup>

*UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment* in Article 4 states that the curator's authority to execute a bankruptcy bill outside the jurisdiction of his country is not limited in accordance with the applicable law. This means that curators can execute a bankruptcy cases abroad without being obstructed by the sovereignty of other countries. This article states that the jurisdiction of a court that is competent for a *cross-border-insolvency* case is not limited by another court at the request of the disputing foreign party in that case. Furthermore, Article 7 also stipulates that the curator's authority to execute a bankruptcy bill outside the jurisdiction of the country is not limited in accordance with the applicable law. So that the curator can execute bankruptcy boedel abroad without being obstructed by the sovereignty of other countries.<sup>20</sup>

By adopting the *UNCITRAL Model Law On Cross Border Insolvency with Guide to Enactment* in the bankruptcy law in Indonesia, it makes it easier for a country to obtain recognition and implement bankruptcy declarations in other countries. As well as providing the right solution related to the execution of bankruptcy boedel outside the territory of Indonesia without having to be constrained by the jurisdiction of other countries so that legal protection for creditors is achieved.

Unlike the case with South Korea, which has adopted the *UNCITRAL Model Law* in

<sup>17</sup> Mochtar Kusumaatmadja and Etty R. Agoes, *Pengantar Hukum Internasional* (Bandung: Alumni, 2003), 117.

<sup>18</sup> Syamsudin Sinaga, *Hukum Kepailitan Indonesia*, Cetakan I. (Jakarta: PT. Tatanusa, 2012), 178.

<sup>19</sup> Pramesthi Dinar Kirana Ratri and Emmy Latifah, "Urgensi Penerapan Aturan Kepailitan Lintas Batas Berdasarkan Uncitral Model Law On Cross-Border Insolvency Di Asean," *Belli ac Pacis: Jurnal Hukum Internasional* 2, no. 2 (2016): 9, <https://jurnal.uns.ac.id/belli/article/view/27448>

<sup>20</sup> *UNCITRAL Model Law On Cross Border Insolvency with Guide to Enactment* (1997).

the *Debtor Rehabilitation and Bankruptcy Act (DBRA)* or better known as the *Unified Insolvency Act (UIA)* on March 21, 2005. The passing of the Foreign UIA or *Representative Representatives Of Foreign Insolvency Proceedings*, can apply for cooperation with the Seoul District Court. Through the UIA, South Korea's bankruptcy law no longer adheres to the principle of territoriality but the principle of universality. So that the curator has the authority to manage and resolve debtor bankruptcy issues outside South Korea as long as there is authority granted by foreign law where the debtor's bankruptcy property is located. If the country that will be petitioned for implementation of the South Korean bankruptcy decision recognizes the decision, the South Korean bankruptcy decision can include the assets of the bankrupt debtor who are in the territory of the requested country. This can be done as long as the respondent country adheres to universal principles in its Bankruptcy Law, or the existence of an international cooperation agreement between the country concerned and South Korea and the bankruptcy law procedures in force in South Korea do not conflict with legal procedures in the requested country.<sup>21</sup>

## CONCLUSION

The bankruptcy decision handed down at the Indonesian Commercial Court may affect debtors' assets outside the territory of Indonesia. As the implementation of Article 21 of the Bankruptcy Law, however, in the execution of the debtor's assets, the territorial principle

is hindered.

The Bankruptcy Law has not fully provided protection for creditors if the debtor has assets outside the Indonesian wil-father. As a way out to provide legal protection, curators can carry out *private selling* to execute assets located outside Indonesia, considering that Indonesia is not bound by any international agreements related to *Cross Border Insolvency*.

## Suggestion

The need for clear rules regarding the status of debtor assets outside the territory of Indonesia and clear mechanisms related to *Cross Border Insolvency* in Indonesian bankruptcy law. The need for clear legal protection so that creditors are not harmed if there are debtors assets outside the territory of Indonesia by way of Indonesia adopting the Uncitral Model Law in bankruptcy law so that the *Cross Border Insolvency problem* is resolved.

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<sup>21</sup> Loura Hardjaloka, "Kepailitan Lintas Batas Perspektif Hukum Internasional dan Perbandingannya dengan Instrumen Nasional di Beberapa Negara," *Yuridika* 30, no. 3 (2015): 403-404, <https://e-journal.unair.ac.id/YDK/article/view/1952>

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