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THE URGENT NEED FOR INDONESIA TO ADOPT THE UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY: OVERCOMING TERRITORIAL LIMITATIONS IN A GLOBALIZED ECONOMY

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Abstract

In an era of intensified globalization, Indonesia's bankruptcy regime under Law No. 37 of 2004 remains anchored in the territoriality principle, which confines enforcement to domestic assets and creates profound inefficiencies in cross-border insolvency proceedings. This manifests in judicial coordination failures, heightened asset flight risks, discriminatory treatment of foreign creditors, and prolonged resolutions that undermine economic competitiveness. Drawing directly from doctrinal, conceptual, and comparative methodologies, this article rigorously evaluates the urgency of adopting the UNCITRAL Model Law on Cross-Border Insolvency (1997). It dissects contemporary challenges, including the complexities of borderless global business, recognition hurdles for foreign entities under PMDN/PMA frameworks, and systemic gaps in Law No. 37/2004. A detailed comparative analysis examines implementations in the United States (Chapter 15 Bankruptcy Code), the United Kingdom, and Singapore, highlighting best practices such as center-of-main-interests (COMI) determinations, court-to-court cooperation protocols, and rapid recognition mechanisms that have reduced litigation costs by 30-50% and improved asset recoveries. The article further elucidates the dire consequences of non-adoption, including eroded foreign direct investment, diminished Ease of Doing Business rankings, escalated litigation expenses, and the risk of Indonesia becoming a haven for asset concealment[1]. Prescriptive recommendations advocate targeted amendments to Articles 16, 21, and 69 of Law No. 37/2004, alongside judicial guidelines and bilateral protocols with key trading partners. Adoption would harmonize Indonesia's framework with international standards, safeguard paritas creditorum across borders, and bolster national economic resilience. Without reform, Indonesia faces deepening legal uncertainty in multinational insolvencies).

Keywords: cross-border insolvency, UNCITRAL Model Law, Indonesian bankruptcy law, territoriality principle, universality principle, legal reform, COMI test, judicial cooperation.

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[1] R. Situmorang, 'Recognition of Foreign Bankruptcy Judgments in Indonesia: A Normative Analysis' (2022) 15(2) Yuridika.

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Introduction

The relentless march of globalization has transformed international trade and investment, rendering national borders increasingly porous for economic activities while exposing legal systems to unprecedented cross-jurisdictional challenges.[2] In Indonesia, the bankruptcy framework enshrined in Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU Law) adheres rigidly to the territoriality principle, whereby bankruptcy rulings apply solely within Indonesian territory and lack enforceability abroad[3]. This approach, while safeguarding domestic sovereignty, generates significant inefficiencies when debtors possess multi-jurisdictional assets or creditors span multiple countries. This article advances a comprehensive normative argument for adopting the UNCITRAL Model Law on Cross-Border Insolvency, contrasting Indonesia's territorial model with the universalist successes of adopting jurisdictions like the United States, United Kingdom, and Singapore. By integrating doctrinal analysis with practical case illustrations, it posits that legislative reform is not merely desirable but imperative for aligning Indonesia's insolvency regime with global economic realities and enhancing creditor protections[4].

Global Business Pressures Driving Reform

The evolution toward borderless global business has fundamentally altered the insolvency landscape, compelling Indonesia to confront the limitations of its territorial framework.[5] Cross-border trade and multi-jurisdictional asset holdings have surged, exposing Indonesian stakeholders to insolvency spillovers from international partners, as evidenced by the intricate interconnections of global supply chains and financial markets. Corporate structures increasingly feature intra-group financing and subsidiary networks, which complicate asset tracing and recovery when territorial rules prevent curators from accessing offshore bankruptcy estate. Moreover, the proliferation of foreign business entities operating in Indonesia through mechanisms like Penanaman Modal Dalam Negeri (PMDN) and Penanaman Modal Asing (PMA) introduces additional layers of complexity, as their branches, subsidiaries, and assets demand recognition of foreign proceedings that current law does not accommodate[6]. These dynamics, ranging from supply chain disruptions to heightened insolvency risks, underscore the inadequacy of Law No. 37/2004, which fails to provide tools for universal asset administration. Transitioning to a modified universalism approach, as embodied in the UNCITRAL Model Law, would enable Indonesia to mitigate these pressures, ensuring equitable treatment of creditors and efficient resolution of disputes in an interconnected economy.

Comparative Analysis with Model Law Adopters

A comparative lens reveals the transformative impact of UNCITRAL Model Law adoption in peer jurisdictions, offering actionable blueprints for Indonesia[7]. In the United States, Chapter 15 of the Bankruptcy Code operationalizes automatic recognition of foreign main proceedings via a center-of-main-interests (COMI) test, as demonstrated in Re PT Tiga Pilar Sejahtera Food (2010), where Indonesian proceedings were seamlessly recognized, enabling coordinated asset distribution across borders and reducing jurisdictional friction. This model provides Indonesia with a clear pathway for COMI-based jurisdictional clarity, preventing forum-shopping while prioritizing the debtor's economic center[8]. The

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[2] Roy R. Goode, *Goode on Commercial Law* (LexisNexis Butterworths 2016).
[3] Law Number 37 Year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (The Republic of Indonesia State Gazette Year 2004 Number 131, Annotation 4443).
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United Kingdom's implementation emphasizes cooperation protocols and modified universalism, exemplified in its handling of Lehman Brothers affiliates, where cross-border coordination minimized duplicative litigation and maximized global recoveries lessons that advocate mandating court-to-court communication protocols in Indonesian practice[9]. Similarly, Singapore's Insolvency, Restructuring and Dissolution Act 2018 (IRDA) facilitates rapid recognition and third-party rights protection, efficiently resolving insolvencies of Indonesian subsidiaries by integrating creditor access provisions and expediting relief, thereby cutting resolution times by up to 50%[10]. Collectively, these jurisdictions illustrate how Model Law principles—recognition, cooperation, and access—yield tangible benefits, including 30-50% litigation reductions and enhanced recoveries, positioning them as superior models for Indonesia's reform agenda[11].

Legal and Economic Consequences of Non-Adoption

Persisting with the status quo exacts severe repercussions on Indonesia's legal and economic stature. Non-adoption erodes international perception, as evidenced by stagnant World Bank Ease of Doing Business rankings in insolvency resolution metrics, deterring foreign direct investment amid competitors' embrace of global standards[12]. Litigation costs escalate through protracted disputes, forum-shopping, and redundant proceedings, burdening courts and creditors alike while delaying economic rehabilitation of distressed entities[13]. Most critically, Indonesia risks morphing into a safe haven for asset hiding, where global debtors exploit territorial limits to disadvantage local creditors in major insolvencies, as seen in patterns of asset flight to non-cooperative jurisdictions. These outcomes not only undermine paritas creditorum but also compromise national economic resilience, amplifying vulnerabilities in supply chain-dependent sectors[14].

Policy Recommendations for Legislative Reform

To address these imperatives, Indonesia must pursue targeted reforms integrating UNCITRAL Model Law provisions. Primary amendments to Law No. 37/2004 should incorporate Articles 13-17 for foreign proceeding recognition, Articles 25-27 for judicial cooperation, and Article 20 for interim relief, specifically revising Articles 16 (curator powers), 21 (boedel execution), and 69 (international aspects) to extend extraterritorial reach conditioned on reciprocity. Complementary measures include enacting Supreme Court guidelines for COMI determinations, standardizing court-to-court protocols, and piloting bilateral insolvency agreements with priority partners like Singapore and the US. These steps would foster a modern, universalist framework while preserving sovereignty through tailored adaptations[15].

Conclusion

Adopting the UNCITRAL Model Law represents a pivotal opportunity for Indonesia to transcend territorial constraints, harmonize with global norms, and cultivate a robust insolvency regime. By advancing legislative action, Indonesia can safeguard creditors, streamline resolutions, and elevate its position in the global economy. Delay risks obsolescence; reform promises resilience..

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