Jurnal Ilmu Hukum Prima
Vol. 9 No. 1 April 2026
E-ISSN : 2614-2244
ISSN: 2088-5288

Limitations On The Application Of Cross-Border Insolvency Principles In Bankruptcy Proceedings In Indonesia

Dania Pramesywari
Universitas Singaperbangsa Karawang, Indonesia
Email : daniapmsywari@gmail.com

ABSTRACT

According to Roman Tomasic, cross-border insolvency, also known as international insolvency, occurs when a debtor declared insolvent holds assets in more than one country or has creditors from other countries. The primary goal of cross-border insolvency is efficiency, so that the bankruptcy proceedings can be resolved in a single case, without having to file separate proceedings in every country where the debtor has debts or assets. This phenomenon is becoming increasingly common due to economic globalization and the rise in international trade. However, in Indonesia, regulations regarding cross-border insolvency remain limited and often pose challenges in handling cases involving foreign assets or creditors.

Keywords: *Cross Border Insolvency, Bankruptcy Proceedings, Indonesia*

INTRODUCTION

Cross-border insolvency is a legal phenomenon that has been growing in prominence alongside economic globalization, trade liberalization, and the increasing mobility of international capital. This term refers to a situation where a debtor declared insolvent has assets in more than one country, conducts business activities across jurisdictions, or has creditors from various countries (Hardjaloka, 2015, p. 389). In the modern context, cross-border insolvency is no longer viewed as a purely domestic matter but rather as a transnational issue requiring coordination among nations (Westbrook, 2018).

The primary objective of the cross-border insolvency regime is to create efficiency in resolving insolvency cases without having to initiate new legal proceedings in every country where the debtor holds assets or has liabilities. This system is expected to prevent duplication of proceedings, jurisdictional conflicts, and waste of costs and time. Through a coordinated mechanism, there is only one main case managed even though it involves multiple countries (Imanullah, Latifah, & Ratri, 2018). According to UNCITRAL, such coordination is essential to ensure the protection of the value of the debtor's assets and fair treatment for all creditors (UNCITRAL, 2020).

E-ISSN : 2614-2244
ISSN: 2088-5288

However, in Indonesia, the legal framework regarding cross-border bankruptcy remains very limited. Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations has not explicitly regulated the procedures for managing a debtor's assets located abroad or the mechanisms for recognizing foreign bankruptcy rulings in Indonesia (Imanullah et al., 2018). However, without such regulations, Indonesian trustees or creditors will face difficulties when attempting to enforce the debtor's assets in another country (Sjahdeini, 2016).

The absence of clear regulations also raises issues regarding the principle of territoriality in Indonesian bankruptcy law. Traditionally, Indonesian court decisions apply only within the national jurisdiction, so that the debtor's assets abroad cannot automatically be reached. Conversely, bankruptcy rulings from other countries are also not automatically recognized by Indonesian courts without a specific mechanism (Fuady, 2017). This highlights a gap between global business practices and the national legal system.

The need to adopt the UNCITRAL Model Law on Cross-Border Insolvency is becoming increasingly urgent, given that many Indonesian companies are involved in international transactions, whether through trade, investment, or cross-border business cooperation. In an increasingly integrated global economic system, these companies are vulnerable to the risk of bankruptcy, the impact of which is felt not only in Indonesia but also in the countries where they hold assets or have creditors (Ratri & Latifah, 2016). According to the World Bank, uncertainty regarding the resolution of cross-border insolvency can reduce the value of debt recovery and hinder the flow of foreign direct investment (World Bank, 2022).

Furthermore, the urgency of adopting the UNCITRAL Model Law is closely tied to the need to enhance foreign investors' confidence in Indonesia's legal system. International investors generally prefer jurisdictions with transparent, efficient, and predictable dispute resolution mechanisms, including in bankruptcy cases (OECD, 2021). With regulations aligned with international standards, Indonesia can provide greater legal certainty, improve the investment climate, and strengthen global economic ties (ADB, 2020).

As a result, creditors often have to wait longer to recover their debts. This situation not only causes economic harm to creditors but also risks damaging the reputation of Indonesia's judicial system in the eyes of international businesses. If left unaddressed, Indonesia could be perceived as a jurisdiction that is unresponsive to the needs of global business (Westbrook, 2018).

E-ISSN : 2614-2244
ISSN: 2088-5288

On the other hand, there is a significant opportunity for Indonesia to improve its cross-border insolvency system through comprehensive legal reform. One strategic step that needs to be implemented immediately is the adoption of the UNCITRAL Model Law on Cross-Border Insolvency into the national legal system. This instrument provides guidelines on the recognition of foreign judgments, access for foreign insolvency administrators, judicial cooperation, and the coordination of insolvency proceedings across countries (UNCITRAL, 2020, p. 9). To date, more than 50 jurisdictions have adopted this model law in various forms (UNCITRAL).

In addition to regulatory updates, enhancing the capacity of the judiciary, training commercial judges, strengthening the profession of receivers, and expanding international cooperation are also key factors in boosting Indonesia's competitiveness in the global economy. According to the IMF, the effectiveness of an insolvency system is largely determined by the quality of its law enforcement institutions, not merely by the quality of written norms (IMF, 2021). Consequently, the national legal system will be more adaptable to the dynamics of economic globalization and capable of providing more effective protection for creditors, investors, and companies operating across jurisdictions.

Global economic developments require Indonesia to promptly update and strengthen regulations regarding cross-border insolvency to effectively address the challenges of the modern era. To date, Indonesia has not formally adopted the UNCITRAL Model Law on Cross-Border Insolvency, even though this instrument has the potential to serve as a solution to various legal issues in insolvency proceedings involving more than one country (Asnil, 2018). Without adequate regulations, cross-border insolvency in Indonesia will continue to face obstacles, both in terms of process efficiency and the protection of creditors' rights.

Based on this background, this study will examine in greater depth the challenges Indonesia faces in handling cross-border insolvency, including the shortcomings of current regulations and the urgent need for legal reform. This study will also analyze the potential benefits of adopting the UNCITRAL Model Law, as well as concrete steps Indonesia can take to improve its legal framework, thereby enabling it to address global economic dynamics more effectively.

METHODS

E-ISSN : 2614-2244
ISSN: 2088-5288

The normative legal research method used in this study focuses on the collection and analysis of data from written legal sources, such as legislation, legal doctrine, and other scholarly materials. This approach aims to understand how legal norms are applied to the issues under investigation, specifically regarding cross-border insolvency in Indonesia. The focus is on analyzing gaps in existing legal regulations and the challenges in recognizing foreign court judgments as well as managing foreign assets in the context of cross-border insolvency.

In this study, a normative legal approach was employed by examining primary legal sources, such as the laws governing bankruptcy in Indonesia, particularly the Bankruptcy and Suspension of Debt Payment Obligations Act (UUK-PKPU), as well as secondary legal materials in the form of journals, articles, and literature discussing the principles of cross-border insolvency and international legal harmonization in this field. In addition, references to case law and case studies in other countries also serve as an important component to strengthen the legal argumentation in the context of bankruptcy involving creditors and assets from multiple countries.

This study focuses on understanding how Indonesian law addresses situations where a company involved in bankruptcy proceedings has creditors from more than one country, and how current regulations seek to address the challenges of recognizing and enforcing foreign judgments in Indonesia. This study also highlights the need for clearer and more structured regulations regarding cross-border insolvency in Indonesia to provide legal certainty for all parties involved.

Additionally, practical recommendations are formulated based on an analysis of the legal materials and literature collected, with the aim of providing guidance to Indonesian legal regulators to improve the legal system related to cross-border insolvency. These recommendations include proposals to harmonize insolvency regulations with international standards such as the UNCITRAL Model Law on Cross-Border Insolvency, so that Indonesia can be better prepared to face the challenges of cross-border insolvency in the era of economic globalization.

RESULTS

E-ISSN : 2614-2244
ISSN: 2088-5288

Basic Concepts of Cross-Border Insolvency

Cross-border insolvency is a situation in which an insolvency proceeding involves more than one country, either because the parties involved are subject to different jurisdictions or because the debtor's assets are located in multiple countries (Hardjaloka, 2015). This situation arises when the debtor, creditors, or the assets subject to liquidation are subject to a legal system different from that of the forum or country where the insolvency proceedings take place (Westbrook, 2018).

Foreign elements in cross-border bankruptcy may include the nationality of the debtor or creditor, the location of assets, the domicile of the company, or a legal jurisdiction different from that of the court hearing and adjudicating the case (Halim, 2023). Thus, bankruptcy disputes involve not only debt-credit issues but also cross-border legal conflicts, the recognition of foreign judgments, and cross-jurisdictional coordination (Fletcher, 2019).

In principle, cross-border bankruptcy shares relatively similar characteristics with domestic bankruptcy, namely involving three main elements: the debtor, the creditors, and the debt. However, the difference lies in the presence of a foreign element that requires coordination between two or more national legal systems. This foreign element may take the form of foreign creditors, multinational debtors, or assets located outside the territory of the country where the judgment is rendered (Halim, 2023).

Bankruptcy in Indonesia Under the Bankruptcy and Debt Repayment Moratorium Act

Bankruptcy in Indonesia is specifically regulated under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law). This law was enacted to resolve debt-credit issues fairly, swiftly, transparently, and effectively through commercial court mechanisms (Indonesia, 2004).

In Article 1, paragraph (1) of the Bankruptcy Law, bankruptcy is defined as a general seizure of all assets of the bankrupt debtor, the administration and settlement of which are carried out by a trustee under the supervision of a supervising judge (Indonesia, 2004, Article 1, paragraph (1)). The primary purpose of bankruptcy is to provide a collective mechanism so that creditors receive proportional payments in accordance with their respective claims (Marzuki, 2022).

Bankruptcy proceedings are initiated through a petition filed with the Commercial Court by the debtor, one or more creditors, or the Public Prosecutor's Office in the public interest. If the debtor is declared bankrupt, control over the debtor's assets transfers to the trustee,

E-ISSN : 2614-2244
ISSN: 2088-5288

who is tasked with managing, selling, and liquidating the assets to pay debts to the creditors (Hardjaloka, 2015).

In addition to bankruptcy, this law also provides for a Debt Payment Moratorium (PKPU) mechanism. The PKPU allows debtors facing financial difficulties to postpone debt payments and submit a settlement plan to creditors (Gabriel, 2024).

Limitations on the Application of Cross-Border Insolvency in Indonesia

The current Indonesian legal system still faces various limitations in handling cross-border insolvency cases. One of the main obstacles is the continued dominance of the principle of territoriality in Law No. 37 of 2004, which limits the effectiveness of bankruptcy rulings to assets located within Indonesian territory (Fitria, 2020).

Rulings by the Indonesian Commercial Court do not automatically have the legal force to enforce the execution of a debtor's assets located abroad, unless there is an international agreement or recognition from the country where the assets are located (Fitriah, 2024). Consequently, the enforcement of rulings regarding foreign assets is highly dependent on the laws of other countries (Larose et al., 2023).

This situation indicates that Indonesia does not yet have a robust legal mechanism to coordinate cross-border bankruptcy resolutions. The absence of a system for recognizing foreign judgments and formal cooperation between courts results in a process that is costly, slow, and risks causing harm to creditors (Asnil, 2018).

Although Law No. 37 of 2004 incorporates elements of the principle of universality, its implementation has not been fully realized, particularly in the context of cross-border insolvency (Heriani, 2024). The principle of universality essentially requires that a single insolvency ruling apply to all of the debtor's assets wherever they are located, including assets abroad (Westbrook, 2018).

However, the implementation of this norm is hindered because other countries are not obligated to recognize Indonesian bankruptcy rulings in the absence of a mutual recognition agreement (Fitriah, 2024). Consequently, the trustee lacks direct authority to manage or liquidate the debtor's assets outside Indonesian jurisdiction (Larose et al., 2023).

DISCUSSION

The Urgency of Adopting the UNCITRAL Model Law within Indonesia's Bankruptcy Legal Framework

E-ISSN : 2614-2244
ISSN: 2088-5288

The Indonesian government needs to consider adopting the UNCITRAL Model Law on Cross-Border Insolvency to strengthen the national legal framework in handling cross-border insolvency cases. With this adoption, the Indonesian legal system will be more aligned with international standards, thereby facilitating the recognition and enforcement of foreign insolvency rulings (Ratri & Latifah, 2016).

Furthermore, the adoption of the UNCITRAL Model Law will enhance legal certainty for all parties, including creditors, investors, and international businesses. Countries with modern insolvency systems are generally perceived as safer and more attractive for foreign investment (World Bank, 2022). Consequently, Indonesia can strengthen its economic competitiveness on the global stage.

The UNCITRAL Model Law as a Regulatory Solution

The Model Law is designed to assist countries in establishing an effective modern legal framework for handling cross-border insolvency, particularly with regard to debtors experiencing financial difficulties. Its primary focus is on promoting cooperation among nations, rather than standardizing the substantive insolvency laws of individual countries.

One of the key features of the UNCITRAL Model Law is the mechanism for recognizing foreign insolvency proceedings. Article 15 provides that a foreign representative may file a petition for recognition of the insolvency proceedings with the courts of another country. Once recognized, the court may grant protection for the debtor's assets and stay ongoing local legal proceedings (Haq, 2022).

However, the state requested to recognize a foreign judgment may still refuse if it conflicts with public interest or domestic legal policy (public policy exception). This provision maintains a balance between international cooperation and national legal sovereignty (Haq, 2022).

Early Stages of the Transition to Ratification of the UNCITRAL Model Law in Indonesia

If Indonesia adopts the UNCITRAL Model Law, certain provisions of the Bankruptcy Law, particularly Articles 212, 213, and 214, will need to be revised to align with the international legal framework (Ratri & Latifah, 2016).

E-ISSN : 2614-2244
ISSN: 2088-5288

Article 212 should be aligned to support the principle of universality, so that creditors who receive payment from foreign assets without coordination may be subject to a duty to return such funds to the bankruptcy estate.

Article 213 must be harmonized with international recognition mechanisms to ensure that the assignment of claims to third parties does not serve as a means to circumvent cross-border asset liquidation.

Article 214 needs to be clarified regarding the enforcement of bankruptcy rulings abroad, including the possibility of assistance from foreign courts in the execution of the debtor's assets. Thus, third parties cannot exploit legal loopholes between countries to avoid their obligations (Ratri & Latifah, 2016).

More proactive legal reform measures, including the development of a framework that facilitates international cooperation, must be a priority. In this way, Indonesia can adapt to the dynamics of economic globalization, create a better investment climate, and ensure the protection of creditors' rights as well as the sustainability of companies amid existing challenges.

CONCLUSION

The discussion of the findings indicates that cross-border insolvency in Indonesia highlights the highly complex challenges faced by the national legal system in addressing insolvency situations involving debtors and creditors from various countries. Although Law No. 37 of 2004 provides a legal basis for In bankruptcy proceedings, there are significant gaps in the regulations governing the handling of assets located abroad and the recognition of foreign court judgments. Furthermore, the lack of clear provisions in the recognition agreement regarding international cooperation and the procedures for recognizing and enforcing judgments in other countries makes the bankruptcy resolution process difficult and potentially detrimental to all parties involved. This has a negative impact on foreign investor confidence and business continuity in Indonesia.

In light of this, it is important for Indonesia and corporate practitioners to consider adopting the UNCITRAL Model Law on Cross-Border Insolvency. By adopting this model law, Indonesia can enhance openness, transparency, and efficiency in cross-border insolvency proceedings. This will not only strengthen Indonesia's legal standing on the international stage but also provide better protection for creditors and debtors.

E-ISSN : 2614-2244
ISSN: 2088-5288

More proactive legal reform measures, including the development of a framework that facilitates international cooperation, must be a priority. In this way, Indonesia can adapt to the dynamics of economic globalization, create a better investment climate, and ensure the protection of creditors' rights as well as the sustainability of companies amid existing challenges.

To achieve these objectives, enhancing understanding of the principles of cross-border bankruptcy law, both among legal practitioners and within legal education, is also essential so that all parties can contribute to the development of a legal system that is more responsive to global needs.

LIMITATION

This study has several limitations that need to be acknowledged in order to provide a balanced understanding of the scope and findings of the research. First, this research employs a normative legal research method that focuses primarily on statutory regulations, legal doctrines, judicial principles, and comparative legal analysis. As a result, the study does not include empirical data such as interviews, field observations, surveys, or direct responses from judges, curators, creditors, investors, and other practitioners involved in cross-border insolvency cases. Consequently, the practical challenges faced in real case implementation may not be fully captured.

Second, the discussion is limited to the legal framework of cross-border insolvency from the perspective of Indonesian law, with comparative references mainly drawn from selected jurisdictions such as the United States, Singapore, and jurisdictions adopting the UNCITRAL Model Law. Therefore, this study does not comprehensively examine all legal systems or all countries that may have different insolvency mechanisms and policy approaches.

Third, the availability of Indonesian case law specifically concerning cross-border insolvency remains relatively limited. Because of this, the analysis relies more heavily on statutory interpretation, doctrinal writings, international instruments, and comparative jurisprudence rather than abundant domestic judicial precedents. This condition affects the depth of case-based evaluation within the Indonesian context.

Fourth, this research was conducted within limited time and resource constraints. Due to these limitations, the author may not have explored every recent development, unpublished

E-ISSN : 2614-2244
ISSN: 2088-5288

policy discussion, or emerging transnational insolvency practice that continues to evolve rapidly in the global economic environment.

Finally, this study is limited to legal analysis and does not extensively assess the economic, political, or diplomatic consequences of adopting the UNCITRAL Model Law in Indonesia. Those broader dimensions require interdisciplinary research involving economics, international relations, and public policy perspectives.

Despite these limitations, the author expects that this research still provides meaningful academic contribution by identifying normative gaps in Indonesian bankruptcy law and offering recommendations for strengthening the regulation of cross-border insolvency in the future.

REFERENCES

Asian Development Bank. (2020). *Strengthening insolvency frameworks in Asia and the Pacific*. Manila: ADB Publications.

Asnil, D. M. (2018). UNCITRAL Model Law on Cross-Border Insolvency sebagai model pengaturan kepailitan lintas batas Indonesia dalam integrasi ekonomi ASEAN. *Jurnal Hukum Bisnis*, 1(2), 321–334.

Fitria, A. (2020). Tinjauan hukum eksekusi harta pailit debitor di luar negeri. *Jurnal Rechtsvinding*, 17(3), 211–226.

Fitriah, M. (2024). Eksekusi boedel pailit yang berada di luar wilayah hukum Indonesia. *Jurnal Ilmu Hukum*, 8(2), 1341–1348.

Fletcher, I. F. (2019). *Insolvency in private international law* (3rd ed.). Oxford: Oxford University Press.

Fuady, M. (2017). *Hukum pailit dalam teori dan praktik*. Bandung: Citra Aditya Bakti.

Gabriel, N. J. (2024). Proses penundaan kewajiban pembayaran utang. *Lembaga Bantuan Hukum Pengayoman*.

Halim, A. (2023). Prinsip resiprositas dalam sengketa kepailitan lintas batas negara (*cross-border insolvency*). *Jurnal Yudisial*, 17(4), 1–15.

Haq, M. H. M. (2022). Model Law on Cross-Border Insolvency dalam ratifikasi pengaturan hukum kepailitan lintas batas di Indonesia. *Jurnal Legislasi Indonesia*, 12(2), 121–135.

Hardjaloka, L. (2015). Kepailitan lintas batas: Perspektif hukum internasional dan perbandingannya dengan instrumen nasional di beberapa negara. *Yuridika*, 30(3), 389–410.

Heriani, F. N. (2024). Urgensi implementasi Model Law UNCITRAL Cross-Border Insolvency di Indonesia. *Hukumonline*.

Imanullah, M. N., Latifah, E., & Ratri, P. D. K. (2018). International and domestic law aspects of cross-border insolvency in order to establishing cross-border insolvency regulation in ASEAN: Indonesian perspective. *Hasanuddin Law Review*, 8(2), 191–205.

Indonesia. (2004). *Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*. Lembaran Negara Republik Indonesia Tahun 2004 Nomor 131.

International Monetary Fund. (2021). *Resolving insolvency in emerging markets*. Washington, D.C.: IMF Publications.

Larose, A., Mahmudah, S., Musyafa, A. A., & Ardani, M. N. (2023). Analisis yuridis komparasi penyelesaian kepailitan transnasional di Singapura dan Malaysia dengan penyelesaian di Indonesia. *Jurnal Hukum dan Pembangunan*, 6(3), 1–18.

Marzuki, P. M. (2022). *Penelitian hukum* (edisi revisi). Jakarta: Kencana.

Organisation for Economic Co-operation and Development. (2021). *Investment climate and legal certainty in emerging economies*. Paris: OECD Publishing.

Ratri, P. D. K., & Latifah, E. (2016). Urgensi penerapan aturan kepailitan lintas batas berdasarkan UNCITRAL Model Law on Cross-Border Insolvency di ASEAN. *Jurnal Arena Hukum*, 2(2), 1–15.

Sjahdeini, S. R. (2016). *Hukum kepailitan: Memahami Undang-Undang No. 37 Tahun 2004*. Jakarta: Prenadamedia Group.

UNCITRAL. (2020). *UNCITRAL Model Law on Cross-Border Insolvency with guide to enactment and interpretation*. Vienna: United Nations.

Westbrook, J. L. (2018). *A global view of cross-border insolvency systems*. International Insolvency Review, 27(2), 110–126.

World Bank. (2022). *Doing business and insolvency resolution indicators report*. Washington, D.C.: World Bank Publications.