

**PENERAPAN PUTUSAN PAILIT PENGADILAN ASING DENGAN UNCITRAL
MODEL LAW ON CROSS-BORDER INSOLVENCY DALAM SISTEM HUKUM
KEPAILITAN INDONESIA**

Oleh:

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INTISARI

Tujuan penelitian ini yaitu untuk mengetahui dan mengkaji (1) UNCITRAL *Model Law on Cross-Border Insolvency with Guide to Enactment* dapat diterapkan dalam sistem hukum Indonesia, (2) Penerapan putusan pailit pengadilan asing di Indonesia bila menggunakan UNCITRAL *Model Law on Cross-Border Insolvency with Guide to Enactment*.

Penelitian ini merupakan penelitian hukum normatif yang didukung wawancara narasumber. Penelitian hukum normatif dilakukan dengan penelitian kepustakaan dengan menelusuri data sekunder berupa bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier, dengan metode dokumentasi dan alat berupa studi dokumen. Wawancara dilakukan terhadap narasumber dengan menggunakan alat berupa pedoman wawancara. Analisis data menggunakan analisis kualitatif.

Berdasarkan hasil penelitian dan pembahasan menunjukkan bahwa (1) liberalisasi perekonomian Masyarakat Ekonomi Asean akan diikuti oleh liberalisasi hukum sebagai instrument dari *Cross-Border Economic Activities* masyarakat ekonomi ASEAN, sehingga UNCITRAL *Model Law on Cross-Border Insolvency with Guide to Enactment* dapat dijadikan solusi dalam upaya melakukan harmonisasi dan modernisasi hukum kepailitan negara-negara anggota ASEAN. (2) UNCITRAL *Model Law on Cross-Border Insolvency with Guide to Enactment* tidak mewajibkan negara yang akan mengadopsi *Model Law* untuk meminta persetujuan atau mengajukan permohonan dan dapat memodifikasi *Model Law* ini sesuai kebutuhan negaranya, sehingga mempermudah Indonesia untuk segera melakukan kajian terhadap UNCITRAL *Model Law on Cross-Border Insolvency with Guide to Enactment*.

Berdasarkan hasil penelitian dan pembahasan disimpulkan bahwa (1) melakukan kajian dan menyatukan pemahaman bersama mengenai *Model Law* merupakan langkah utama untuk menerapkan UNCITRAL *Model Law on Cross-Border Insolvency with Guide to Enactment*. (2) *Model Law* sangat membantu Indonesia untuk mengakui dan mengeksekusi putusan pailit pengadilan asing dengan adanya perjanjian *Cross-Border Insolvency* yang berpedoman pada prinsip UNCITRAL *Model Law on Cross-Border Insolvency with Guide to Enactment*. Oleh karena itu disarankan (1) Segera merevisi Undang-undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang sesuai UNCITRAL *Model Law on Cross-Border Insolvency with Guide to Enactment*, (2) Cross-Border Insolvency harus menjadi bagian dari reformasi hukum kepailitan Indonesia.

Kata Kunci: Kepailitan Lintas Batas, UNCITRAL *Model Law on Cross-Border Insolvency with Guide to Enactment*.

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THE APPLICATION OF FOREIGN COURT BANKRUPTCY DECISION WITH UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY IN INDONESIA'S BANKRUPTCY LAW SYSTEM

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ABSTRACT

The purpose of this study is to determine and assess (1) UNCITRAL Model Law on Cross-Border Insolvency with a Guide to Enactment can be applied in the Indonesian legal system, (2) The application of foreign court bankruptcy decision in Indonesia when using the UNCITRAL Model Law on Cross-Border Insolvency with Guidelines for Enactment.

This research is a normative legal research supported by the interview of informants. Normative legal research is carried out with library research by tracing secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials, with documentation methods and tools in the form of document studies. Interviews were conducted with informants using tools in the form of interview guidelines. Data analysis uses qualitative analysis.

Based on the results of research and discussion shows that (1) economic liberalization of the Asean Economic Community will be followed by legal liberalization as an instrument of the Cross-Border Economic Activities of the ASEAN economic community, so that the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment can be used as a solution in an effort to harmonize and modernize the bankruptcy law of ASEAN member countries. (2) UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment does not require countries that will adopt Model Law to seek approval or submit application and can modify this Model Law according to the needs of their countries, making it easier for Indonesia to immediately conduct a study of UNCITRAL Model Law on Cross- Border Insolvency with Guide to Enactment.

Based on the results of the research and discussion it can be concluded that (1) conducting a study and uniting a common understanding of the Model Law is the main step for implementing the UNCITRAL Model Law on Cross-Border Insolvency with a Guide to Enactment. (2) The Model Law is very helpful for Indonesia to acknowledge and execute the decisions of foreign bankruptcy courts with the existence of a Cross-Border Insolvency agreement which is guided by the principle of UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment.

Therefore, it is recommended to (1) Immediately revise Law Number 37 of 2004 concerning Bankruptcy and Delayment of Obligation of Debt Payment in accordance to UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment, (2) Cross-Border Insolvency should be part of legal reform Indonesia's bankruptcy.

Keywords: Cross-border Bankruptcy, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment.

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