

Executing Cross-Border Insolvency in Indonesia: A Comparative Study with the EU and the UNCITRAL Model Law

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ABSTRACT

The underlying purpose of this legal research is to study and analyse the comparison of cross-border insolvency regimes in Indonesia, the European Union, and the Model Law of Cross-Border Insolvency provided with Guide to Enactment by the United Nations Commission on International Trade Law and, among the differences found, propose a solution by implementing the features within the European Union insolvency regulation and the Model Law on Cross-Border Insolvency for possible Indonesian bankruptcy reform.

The Author employs a normative legal research utilizing data through literature study from different regulations, international conventions, official publications, books, journals, research papers, articles, and other relevant sources which is analysed in a qualitative and comparative manner.

Based on the results of the research, Indonesia is behind in facilitating the instances of cross-border cases of insolvency compared to the European Union and countries adopting the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment. Issues such as the lack of recognition and enforcement of foreign bankruptcy decision, and the lack of coordination and cooperation of courts and insolvency practitioners is still present in Indonesia, but is not the case in the European Union and countries adopting the Model Law on Cross-Border Insolvency. Accordingly, Indonesia should renew the current bankruptcy regime and include specific provisions on recognition and enforcement of foreign bankruptcy decision, cooperation and coordination of relevant parties, determining international jurisdiction, and execution.

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

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***Mengeksekusi Kepailitan Lintas-Batas di Indonesia: Studi Perbandingan
dengan Uni Eropa dan UNCITRAL Model Law***

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INTISARI

Tujuan yang mendasari penelitian hukum ini adalah untuk mempelajari dan menganalisis perbandingan rezim kepailitan lintas batas di Indonesia, Uni Eropa, dan UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment oleh United Nations Commission on International Trade Law dan, di antara perbedaan yang ditemukan, mengusulkan solusi dengan menerapkan aspek-aspek dalam regulasi kepailitan Uni Eropa dan Model Law on Cross-Border Insolvency untuk kemungkinan reformasi kepailitan Indonesia.

Penulis menggunakan penelitian hukum normatif dengan menggunakan data melalui studi kepustakaan dari berbagai peraturan, konvensi internasional, publikasi resmi, buku, jurnal, makalah penelitian, artikel, dan sumber lain yang relevan yang dianalisis secara kualitatif dan komparatif.

Berdasarkan hasil penelitian, Indonesia tertinggal dalam memfasilitasi kasus-kasus kepailitan lintas batas dibandingkan dengan Uni Eropa dan negara-negara yang mengadopsi UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment. Isu-isu seperti tidak adanya pengakuan dan penegakan putusan pailit asing, serta tidak adanya koordinasi dan kerjasama pengadilan dan praktisi kepailitan masih ada di Indonesia, namun tidak demikian di Uni Eropa dan negara-negara yang mengadopsi Model Law on Cross-Border Insolvency. Dengan demikian, Indonesia harus memperbaharui rezim kepailitan saat ini dan memasukkan ketentuan-ketentuan khusus tentang pengakuan dan pelaksanaan putusan pailit asing, kerjasama dan koordinasi pihak-pihak terkait, penetapan yurisdiksi internasional, dan eksekusi.

Kata Kunci: *Kepailitan Lintas Batas, Undang – Undang Kepailitan Indonesia, EU Recast Regulation, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment.*

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