

**Kepailitan Terhadap Warga Negara Asing dan Kaitannya dengan Kepailitan
Lintas Batas Negara Berdasarkan UNCITRAL *Model Law on Cross-Border
Insolvency***

INTISARI

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Penelitian ini bertujuan untuk mengkaji dan menganalisis mekanisme kepailitan dalam kaitannya dengan debitur Warga Negara Asing (WNA), serta menelaah praktik dan relevansi mekanisme kepailitan lintas batas terhadap sistem hukum di Indonesia berdasarkan UNCITRAL *Model Law on Cross-Border Insolvency*.

Fokus penelitian diarahkan pada bagaimana proses hukum kepailitan berlaku bagi WNA sesuai Undang-Undang Nomor 37 Tahun 2004 dan tantangan kepailitan lintas batas, yang tergambar dalam kasus PT Krama Yudha dan PT Garuda Indonesia (Persero) Tbk. Metode penelitian yang digunakan adalah penelitian hukum normatif.

Hasil penelitian menunjukkan bahwa Pasal 436 *Reglement op de Rechtsvordering* (Rv) yang melarang eksekusi langsung putusan asing masih menjadi hambatan yuridis dalam kepailitan lintas batas, sementara belum adanya adopsi *Model Law* menambah ketidakpastian hukum bagi kreditor. Meski demikian, Pasal 436 Rv dapat ditempatkan sebagai *gatekeeper* untuk menjaga asas kedaulatan dan ketertiban umum, sembari membuka ruang bagi adopsi parsial dan adaptif dari UNCITRAL *Model Law*. Dengan demikian, penelitian ini menegaskan pentingnya harmonisasi hukum kepailitan Indonesia agar mampu menghadapi tantangan globalisasi ekonomi dan melindungi kepentingan kreditor.

Kata Kunci : Kepailitan, Warga Negara Asing, *Cross-Border Insolvency*, UNCITRAL *Model Law*

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The Bankruptcy of Foreign Nationals and Its Link to Cross-Border Insolvency under the UNCITRAL Model Law

ABSTRACT

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This study aims to examine and analyze the bankruptcy mechanism in relation to foreign debtors, as well as to explore the practice and relevance of cross-border insolvency mechanisms within the Indonesian legal system based on the UNCITRAL Model Law on Cross-Border Insolvency.

The research focuses on how bankruptcy proceedings apply to foreign debtors under Law No. 37 of 2004 and the challenges of cross-border insolvency, as illustrated in the cases of PT Krama Yudha and PT Garuda Indonesia (Persero) Tbk. The method employed is normative legal research.

The findings indicate that Article 436 of the Reglement op de Rechtsvordering (Rv), which prohibits the direct enforcement of foreign judgments, remains a legal obstacle in cross-border insolvency, while the absence of adoption of the Model Law further contributes to legal uncertainty for creditors. Nevertheless, Article 436 Rv can be positioned as a gatekeeper to safeguard the principles of sovereignty and public policy, while simultaneously allowing space for partial and adaptive adoption of the UNCITRAL Model Law. Accordingly, this study underscores the importance of harmonizing Indonesia's insolvency law to address the challenges of economic globalization and to protect creditors' interests.

Keywords : *Bankruptcy, Foreign Nationals, Jurisdiction, UNCITRAL*

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