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**Reforming Indonesiaâ€™s Insolvency Framework: Adopting the Undertaking Mechanism under Article 36 of
the 2015 EU Insolvency Regulation to Optimize Cross-Border Asset Execution in Indonesia**
Vincent Barukh Ethan, Prof. Dr. Drs. Paripurna, S.H., M.Hum., LL.M.
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REFORMING INDONESIA'S INSOLVENCY FRAMEWORK: ADOPTING THE UNDERTAKING MECHANISM UNDER ARTICLE 36 OF THE 2015 EU INSOLVENCY REGULATION TO OPTIMIZE CROSS-BORDER ASSET EXECUTION IN INDONESIA

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ABSTRACT

As the Indonesian Bankruptcy Law adheres to a strict territorial interpretation, it creates a legal vacuum that significantly hinders the efficiency of cross-border asset execution. This research aims to critically examine the extent to which legislative barriers and the non-recognition of foreign proceedings in Indonesia lead to administrative stagnation and a "race" to assets. Furthermore, this research evaluates how the undertaking mechanism under Article 36 of the European Insolvency Regulation 2015 Recast can serve as a synthetic legal model for reforming the current Indonesian insolvency framework to optimize cross-border asset administration.

This research employs normative-juridical and comparative methods by analyzing statutory provisions, scholarly writings, and landmark court decisions. The comparative analysis specifically evaluates the European Insolvency Regulation 2015 Recast against the Indonesian framework to assess the functional equivalency of the undertaking mechanism as a solution.

This research finds that absolute territorialism fails to accommodate the needs of globalized trade, resulting in prohibitive re-litigation costs and judicial isolation. Accordingly, this research concludes that harmonization requires a reform in the current Indonesian insolvency framework, particularly by institutionalizing an undertaking-like model to provide functional equivalency, adopting the Center of Main Interests (COMI) standard, and granting direct access to foreign representatives. These reforms would protect local creditors while reinforcing Indonesia's position as a predictable and competitive global trade hub.

Keywords: Cross-Border Insolvency, European Insolvency Regulation, Indonesian Bankruptcy Law, Undertaking

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REFORMASI KERANGKA HUKUM KEPAILITAN INDONESIA: ADOPSI MEKANISME UNDERTAKING *BERDASARKAN PASAL 36 EU INSOLVENCY REGULATION 2015 UNTUK MENGOPTIMALKAN EKSEKUSI ASET LINTAS BATAS DI INDONESIA*

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INTISARI

*Karena hukum kepailitan Indonesia menganut interpretasi teritorial yang ketat, terdapat kekosongan hukum yang secara signifikan menghambat efisiensi pelaksanaan eksekusi aset lintas batas. Penelitian ini bertujuan untuk mengkaji secara kritis sejauh mana hambatan legislatif dan tidak diakuinya proses kepailitan asing di Indonesia menyebabkan stagnasi administratif serta memicu "perlombaan" untuk memperoleh aset. Selain itu, penelitian ini mengevaluasi bagaimana mekanisme perjanjian (*undertaking*) berdasarkan Pasal 36 European Insolvency Regulation 2015 Recast dapat berfungsi sebagai model hukum sintetik dalam mereformasi kerangka hukum kepailitan Indonesia saat ini guna mengoptimalkan administrasi aset lintas batas.*

*Penelitian ini menggunakan metode yuridis normatif dan komparatif dengan menganalisis ketentuan peraturan perundang-undangan, literatur akademik, serta putusan-putusan pengadilan yang penting. Analisis komparatif secara khusus membandingkan European Insolvency Regulation 2015 Recast dengan kerangka hukum Indonesia untuk menilai kesetaraan fungsional mekanisme perjanjian (*undertaking*) sebagai solusi yang ditawarkan.*

*Penelitian ini menemukan bahwa teritorialisme absolut gagal mengakomodasi kebutuhan perdagangan yang telah terglobalisasi, sehingga menimbulkan biaya litigasi ulang yang tinggi dan isolasi yudisial. Oleh karena itu, penelitian ini menyimpulkan bahwa harmonisasi memerlukan reformasi terhadap kerangka hukum kepailitan Indonesia saat ini, khususnya melalui institusionalisasi model yang menyerupai perjanjian (*undertaking*) guna menciptakan kesetaraan fungsional, pengadopsian standar Center of Main Interests (COMI), serta pemberian akses langsung kepada perwakilan asing. Reformasi tersebut akan melindungi kepentingan kreditor lokal sekaligus memperkuat posisi Indonesia sebagai pusat perdagangan global yang prediktif, kompetitif, dan berdaya saing.*

Kata Kunci: *Kepailitan Lintas Batas,* European Insolvency Regulation*, Hukum Kepailitan Indonesia, Perjanjian* (Undertaking)

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