

## CROSS-BORDER BANKRUPTCY REVIEWED FROM THE PERSPECTIVE OF LEGAL CERTAINTY

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### Abstract

This study aims to identify and analyze the legal implications related to bankruptcy boedel abroad and assess whether Indonesia's bankruptcy law can be applied in other countries where the debtor's assets are located. Based on Law Number 37 of 2004 concerning Bankruptcy & Debt Payment Obligation Suspension Law, Article 212 of the Bankruptcy & Debt Payment Obligation Suspension Law explains that after a judgment regarding bankruptcy is issued, all assets of a debtor become bankruptcy bonds, both assets located in the territory of Indonesia and assets located outside the territory of Indonesia. When the bankruptcy process has entered the insolvency stage, the curator will settle all debtor bankruptcy assets, both in Indonesia and outside Indonesia. But in reality, the execution of bankruptcy assets outside the territory of Indonesia cannot be carried out. The theory used in this study is the theory of legal certainty by Roscoe Pound which considers that law is a social engineering tool that aims to create harmony and harmony so that it can optimally meet the needs and interests of humans in society. Through normative juridical research, based on the results of the study, it can be found that bankruptcy judgments imposed in Indonesia against bankruptcy assets located outside the territory of Indonesia cannot be enforced. Bankruptcy laws decided in one country do not apply to other countries where the bankruptcy estate is located. This is because it is contrary to the principle of territorial and state sovereignty. These two principles hinder the execution of law from one country to another, unless there is a bilateral agreement that regulates it between the countries concerned. Legal certainty in cross-border bankruptcy decisions has not been fulfilled, because even though court decisions have permanent legal force, in reality they are still unenforceable. So that this is considered not to be able to realize harmony and has not met the needs of the community in obtaining justice.

**Keywords:** Bankruptcy Law, Cross-Border Insolvency, Legal Certainty.

### INTRODUCTION

The development of science and technology in this world continues to accelerate, encouraging an increasingly fierce level of competition in the business world. Globalization creates conditions where the world's communities are increasingly connected and interact with each other in various aspects of life, such as culture, economy, politics, technology, and the environment. This process allows for deeper integration between countries, thus influencing business patterns and daily life in various parts of the world (Winarno, 2004). Today's business is no longer limited to one country, but has expanded to a global scale through transnational business relationships. This causes the assets owned by debtors and creditors to be spread across various countries, not just in their home countries. Although foreign investment offers great profit opportunities, the relationship between debtors and creditors is not always smooth. Multinational companies that actively invest abroad often face a fairly high risk of bankruptcy or bankruptcy due to the complexity and uncertainty of cross-border business (Ratri & Latifah, 2016).

This problem is even more complicated when the assets of a bankrupt debtor are spread across many countries, not only in the country where the bankruptcy decision was imposed. The curator will face great challenges in managing and managing the

assets, especially if the debtor's assets are outside the jurisdiction of the country that issued the bankruptcy decree. This condition is even more difficult when there is a jurisdictional conflict between several countries, known as cross-border insolvency or cross-border insolvency. According to Marek Porzycki, cross-border bankruptcy occurs when debtors have assets abroad, creditors from various countries, carry out some of their business activities internationally, or have subsidiaries spread across several countries (Sjahdeini, 2010). Bankruptcy that occurs between countries must have a foreign element in it (Suryana, 2007). Foreign elements arise when debtors and creditors are involved in business cooperation involving several countries. In this situation, International Civil Law (HPI) has an important role in resolving bankruptcy disputes that contain foreign elements. The settlement of bankruptcy cases involving foreign parties is often known as Cross-Border Insolvency or, in the Anglo Saxon legal system, it is referred to as Transnational Insolvency (Adolf, 2009).

Cross-border insolvency generally occurs when a debtor's assets or liabilities are in more than one country, or when the debtor is under the legal jurisdiction of two or more countries. In the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW, Article 21 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW explains that "Bankruptcy includes all the assets of the Debtor at the time the bankruptcy declaration is pronounced as well as everything obtained during the bankruptcy".

This is in line with the provisions in Article 212 of the BANKRUPTCY & DEBT PAYMENT OBLIGATION SUSPENSION LAW which reads;

"A creditor who, after the bankruptcy declaration is pronounced, takes all or part of his receivables from objects that include bankruptcy assets located outside the territory of the Republic of Indonesia, which is not bound to him with the right to be preempted, is obliged to replace to the bankruptcy assets all that he has acquired".

From this regulation, we can conclude that all debtor assets are the object of bankruptcy and there is no restriction on where the debtor's assets are, so that the assets abroad are still included in the bankruptcy boedel. However, in practice in the field, it was found that judgments concerning bankruptcy assets outside the territory of Indonesia could not be enforced, so that the curator could not confiscate all the assets of the bankrupt debtor whose existence was outside the jurisdiction of Indonesia. Similarly, the results of bankruptcy decisions of other countries cannot be implemented in Indonesia.

## **METHODS**

The research method used in this study is a juridical-normative approach. This approach focuses on the analysis of literature materials (secondary data) which includes legal principles, legal structures, vertical and horizontal synchronization, legal comparisons, and legal history. This juridical-normative approach places special emphasis on the use of legal sources as the primary source in research.

## **RESULT & DISCUSSION**

### **1. Consequences of Bankruptcy Law for Bankruptcy Bills Outside Indonesia**

A bankruptcy verdict for a debtor has legal consequences. In other words, the debtor loses his authority to manage his assets (Sutan Remy Sjahdeini, 2016). The bankruptcy judgment handed down to the debtor results in legal consequences,

namely the loss of the debtor's authority in managing his assets. After the debtor is declared bankrupt by the commercial court, the execution of the debtor's bankruptcy boedel can be requested, both for assets located in Indonesia and abroad. Although the debtor may have assets outside the jurisdiction of Indonesia, this should not preclude the execution of the execution.

Article 1 number 1 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW, bankruptcy is defined as the general confiscation of all assets of bankruptcy debtors whose management and settlement are carried out by the curator under the supervision of the supervising judge. Article 21 of the BANKRUPTCY & DEBT PAYMENT OBLIGATION SUSPENSION LAW further explains that bankruptcy includes all the debtor's assets at the time the bankruptcy judgment is issued and everything acquired during the bankruptcy period.

As a result of bankruptcy, the curator is authorized to manage and pay off all the debtor's assets, especially the assets received by the debtor at the time of the announcement of the bankruptcy judgment, and the assets acquired during the bankruptcy. This means that the bankrupt debtor no longer has the power to carry out legal acts against his assets.

Article 24 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW states that with the declaration of bankruptcy, "the debtor legally loses the right to release and manage his assets included in the bankruptcy assets from the date of the announcement of the bankruptcy declaration decision."

The bankrupt debtor loses the right to transfer the bankruptcy assets such as making loans, rents and transfers. With a bankruptcy declaration, the curator has the authority to manage and settle all debtor assets, including those acquired since the bankruptcy judgment and during the bankruptcy period.

As a result, a bankrupt debtor loses the right to claim his assets. Article 24 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW stipulates that from the time the bankruptcy judgment is announced, the debtor automatically loses the right to control and manage his bankruptcy assets, and is not allowed to transfer, lease, lend, or take any other action against the assets.

The legal consequences that occur when the debtor is bankrupt are:

- a. General foreclosure is applied to the debtor's assets in the bankruptcy process. Basically, bankruptcy means applying general forfeiture on all debtors' assets. If there is another confiscation, the confiscation is considered null and void because the general confiscation applies to all debtor assets, including: assets that existed at the time the bankruptcy declaration was issued and assets that will be acquired during the bankruptcy period (refer to Article 21 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW). However, there are types of debtor assets that are not included in the scope of general bankruptcy confiscation, such as assets that have been used as debt collateral, including mortgage dependency, pawn, fiduciary, warehouse receipts, and certain income received by the debtor.
- b. Loss of Management Rights by the Debtor. One of the main legal impacts of bankruptcy is the loss of the debtor's right to manage and control his assets. This right is revoked starting at 00.00 on the day the bankruptcy decision is announced (referring to Article 24 of the BANKRUPTCY & DEBT PAYMENT OBLIGATION SUSPENSION LAW).

- c. Valuables owned by bankrupt debtors will be kept by the curator. This is a reasonable step, considering that the curator has responsibility for the management of these goods, but is still under the supervision of the supervising judge.
- d. The bankruptcy judgment is effective immediately. The bankruptcy decision of the Commercial Court of first instance is effective immediately, which means that the decision can be implemented immediately even though it can still be filed on cassation (refer to Article 8 paragraph 7 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW). In other words, curators begin to perform their duties as soon as a bankruptcy judgment is issued by the court of first instance.
- e. When a company is declared bankrupt, the company's directors and commissioners are prohibited from serving as directors or commissioners in other companies. This prohibition applies except after a period of five years since the individual is found guilty of causing the bankruptcy of the company he leads (referring to Article 93 of the Juncto Article 110 of Law No. 40 of 2007 concerning Limited Liability Companies).

Curators have an important role in the management and settlement of bankruptcy assets for the benefit of bankrupt creditors and debtors. The Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW, especially in Chapter I part 3 paragraph 2 which discusses curators, regulates in detail the duties, authorities and responsibilities of bankruptcy guardians. This provision clearly defines the authority, duties and responsibilities of the curator in carrying out his duties (Hartini, 2003).

The main task of a curator is to manage and settle bankruptcy estates. The curator is obliged to carry out these duties with the primary objective of paying the creditors' rights in accordance with the order of their claims. Therefore, the curator must act in the best interests of the creditor, but must also consider the interests of the bankrupt debtor. The balance between these two interests is important and should not be ignored in the bankruptcy process (Firmansyah, 2013).

Integrity requires curators to always maintain honesty and trust and not pursue personal interests at the expense of public trust. In addition, integrity also requires curators to act objectively and carry out their duties carefully and carefully (Nating, 2004).

Article 69 Paragraph (1) of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW regulates the duties of the curator, namely managing and settling bankruptcy assets. In carrying out his duties, the curator is not obliged to obtain prior approval or notification to the debtor or its institutions in carrying out his duties, even though such approval or notification is required in matters other than bankruptcy.

Ricardo Simanjuntak (Former Chairman of the Indonesia Curators and Administrators Association), Entrepreneurs are not always lucky in business. Sometimes there are entrepreneurs whose companies have to go bankrupt. Questions arise regarding the jurisdiction of the courts and the enforcement of bankruptcy decisions. Each country has its own jurisdiction, thus creating obstacles in handling litigation and enforcing court decisions regarding property and assets located in other countries.

Legally, Indonesia's bankruptcy judgment does not apply abroad. As a result, Indonesia's curators have difficulty taking care of boedel from bankrupt debtors. On the other hand, foreign curators also cannot confiscate the assets of foreign debtors whose assets exist in Indonesia (Sinaga, 2012).

In Indonesia, in Article 436 of the Regulation Op De Burgelijke Rechtsvordering (Rv), decisions issued by foreign judges or courts cannot be enforced in the territory of the Republic of Indonesia, except for certain cases regulated in Article 724 of the Commercial Code and other laws and regulations.

It also confirms that the validity of the court's decision is determined by Article 431 Rv which results in:

- a. Court decisions in Indonesia are only valid and enforceable in the territory of Indonesia;
- b. It does not have the power to execute abroad;
- c. In contrast, the decisions of foreign judges are not binding and cannot be recognized in Indonesia.

Indonesia is not bound by international agreements related to cross-border insolvency, so there are no specific guidelines in Indonesia law regarding the implementation of international insolvency. If the debtor hides or moves his assets abroad, it will be difficult for the bankrupt to enforce the creditor's rights to payment of the debtor's assets. In practice, law enforcement in general and the confiscation of assets outside of Indonesia's jurisdiction cannot be applied directly.

Most legal systems in each country adhere to the principle that it is the courts that make decisions, especially in bankruptcy cases, cannot be executed in other countries. Refusal to execute foreign judgments is closely related to the principle of state sovereignty. This is in line with Article 299 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW, which essentially applies the law of civil procedure in the Commercial Court. In accordance with Indonesia's civil procedure law, Article 436 of the Reglement op de Burgerlijke Rechtsvordering (Rv), foreign court judgments are not recognized and cannot be enforced by Indonesia courts (Sutan Remy Sjahdeini, 2016).

Substantially, Indonesia's commercial court rulings face obstacles in accessing debtors' assets located abroad due to the principle of state sovereignty. Every country has a rule of law that cannot be surpassed or influenced by the laws of other countries. Therefore, the bankruptcy judgment issued by the Indonesia Commercial Court does not have the authority to enforce the law against the assets of the bankrupt debtor located outside Indonesia. In other words, the legal consequences of the bankruptcy decision do not apply outside the jurisdiction of Indonesia (Satrio et al., 2020).

The issue of cross-border insolvency often involves challenges related to the recognition and enforcement of bankruptcy decisions across jurisdictions. Common problems that arise in execution involve two main aspects: recognition and enforcement, with execution encompassing more complex aspects compared to recognition.

Currently, Indonesia does not have bilateral or multilateral agreements with other countries regarding the recognition and enforcement of foreign judgments. Therefore, there needs to be legal regulations in Indonesia that regulate the authority of bankruptcy guardians in conducting bankruptcy cases abroad.

However, enforcement is not entirely impossible for merchants who go bankrupt outside of Indonesia's jurisdiction. The principle of territoriality states that the effects of a declaration of bankruptcy, including the proceedings and settlement of

bankruptcy, are limited to the territory of the country where the court issued the judgment. In other words, a country's bankruptcy judgment is only valid in the country where the judgment was issued.

## 2. Cross-Border Insolvency Law

Bankruptcy is the application of the principle of creditorium parity and *pari passu* prorata parte in the wealth law system (*vermogensrechts*). The principle of creditorium parity means that all debtor assets, whether in the form of movable goods, immovable goods, or assets owned by the debtor currently or will be owned by him in the future, must be used to fulfill the debtor's obligations. Meanwhile, the principle of *pari passu* prorata parte means that the debtor's wealth serves as a joint guarantee for all creditors and the proceeds must be divided proportionally, unless there is a legal provision that sets payment priorities for some creditors.

The term "transnational bankruptcy law" is often replaced by other terms such as "transnational bankruptcy", "cross-border bankruptcy", "transnational insolvency", "cross-border insolvency", or "international insolvency" in United Kingdom.

Susanti Adi Nugroho argued that, "cross-border bankruptcy refers to bankruptcy cases that involve international elements and cross the country's territorial boundaries." Therefore, all rules governing commercial transactions of economic actors must comply with the provisions of the applicable laws in their respective countries (Asnil, 2018).

According to Roman Tomasic, cross-border bankruptcy occurs when the bankrupt debtor has assets in more than one country, or if the creditor involved in the bankruptcy process is not from the country where the bankruptcy process was carried out (Tomasic, 2005).

In general, cross-border insolvency includes basic elements similar to domestic insolvency, such as debtors, creditors, and debts that must be repaid. However, the difference lies in the presence of foreign elements involved. This external factor refers to the relationship with other legal systems outside the country where the court adjudicates the case, and this connection can be seen from the facts of the case itself. The presence of foreign elements in bankruptcy cases makes it part of the realm of international bankruptcy law (HPI).

Marek Porzycki, explained that transnational bankruptcy occurs in the following situations:

- a. Many of the debtor's assets are located overseas;
- b. Some creditors of the debtor are overseas;
- c. The debtor's business activities cross state borders;
- d. Debtors as multinational companies that have companies in many countries; and
- e. As a multinational company, debtors operate in many countries in the legal form of local subsidiaries and have many companies in other countries.

Cross-border bankruptcy arises when a business entity undergoing bankruptcy proceedings in one country has assets in different countries. The main challenge in this case is the lack of uniformity or harmonization of laws between countries. Usually, the execution of bankruptcy judgments from other countries is only allowed if there is

an international agreement between the two countries, including in Indonesia. In addition, multilateral agreements can also regulate cross-border bankruptcy issues, such as those implemented in the European Union. Through such an agreement, EU member states can execute debtor assets located in other member states of the treaty (Mevorach, 2014).

Several countries trying to overcome the problem of cross-border bankruptcy have adopted the Model Law published by the United Nations Commission on International Trade Law (UNCITRAL). The Law On Cross-Border Insolvency Model with its Implementation Guide, introduced in 1997, is designed to update the bankruptcy law to better suit the needs of cross-border cases. By adopting the Model Law, a country allows bankruptcy judgments from foreign courts to be executed in its territory. However, in Indonesia, there are no clear regulations regarding cross-border bankruptcy in both domestic and international law. As a result, Indonesia's commercial courts are unable to enforce the law against the assets of foreign debtors, so that they can harm creditors in enforcing rights to the debtor's assets.

Article 21 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW stipulates that Bankruptcy includes all the debtor's assets at the time of issuance of the bankruptcy order and all assets acquired during the bankruptcy period. It includes movable and immovable property, as well as existing and future property. Therefore, the debtor's bankruptcy liability does not only include assets located in Indonesia, but also assets located abroad. The curator as the party responsible for the management of bankruptcy cases has the authority to confiscate these assets, including those outside the jurisdiction of Indonesia.

In its implementation, this authority often faces challenges. The problem arises because of a conflict in cross-border bankruptcy regulations that adopt two principles, namely the territorial principle and the universal principle. In addition, the principle of state sovereignty hinders the execution of laws from one country to another, making it difficult for curators to handle bankruptcy cases abroad.

This issue is further complicated by the absence of clear provisions in Indonesia law regarding the recognition and enforcement of foreign court judgments in cross-border bankruptcy cases. Without provisions governing how curators can execute bankruptcy boedels outside Indonesia's jurisdiction, it is clear that curators will have difficulty in completing the management of bankruptcy boedels, especially when dealing with differences in existing legal principles. In the context of cross-border insolvency, the distinction between the territorial principle and the universal principle determines the extent to which a bankruptcy judgment can be applied outside the country in which the judgment was issued.

- a. The Principle of Territoriality is the principle that a decision to declare bankruptcy, the implementation and settlement of bankruptcy is only limited to the territory of the court country that adjudicates, decides, and renders a judgment on a bankruptcy application or a judgment to declare bankruptcy. Bankruptcy has been decided to apply only in the country where the bankruptcy decision was taken (Suryana, 2007).

Problems related to the enforcement of debtors' bankruptcy assets outside Indonesia's jurisdiction are often related to the territorial principles adopted by Indonesia. The power to enforce the law is limited by the sovereignty of the state concerned, thus creating obstacles in law enforcement against assets or bankruptcy claims abroad. Based on the principle of territoriality, the decision of the commercial court of Indonesia

does not have the power to adjudicate bankruptcy assets that are outside the jurisdiction of Indonesia.

- b. The principle of universality is a principle that assumes that a bankruptcy judgment taken by a court in a country applies both to the debtor's assets located in the country where the bankruptcy judgment is made and to the assets of the bankrupt debtor located abroad (Shubhan, 2008).

In principle, a bankruptcy order applies to all debtors' assets located inside and outside the jurisdiction of the country that issued the order. This principle assumes that a bankruptcy decision applies worldwide, regardless of where the debtor's bankruptcy estate or bankruptcy assets are located (Fuady, 2017).

The implementation of the bankruptcy judgment will go smoothly if the assets of the bankrupt debtor are in a country that also adheres to the universal principle. The application of universal principles in cross-border bankruptcy is clearly seen in the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW. Article 21 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW stipulates that bankruptcy covers all debtor assets at the time the bankruptcy judgment is pronounced, including everything obtained during the bankruptcy process. Further implementation of this principle is also seen in Articles 212 to 214 of the BANKRUPTCY & DEBT PAYMENT OBLIGATION SUSPENSION LAW. For example, Article 212 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW states that a creditor who, after a bankruptcy judgment, takes repayment from bankruptcy assets outside the territory of Indonesia without privileges is obliged to return what he has earned to the bankruptcy boedel.

In addition, Article 213 of the BANKRUPTCY & DEBT PAYMENT OBLIGATION SUSPENSION LAW states:

"A creditor who transfers part or all of his receivables to the bankrupt debtor to a third party, with the aim that the third party obtains a priority repayment of the debtor's assets that are included in the bankruptcy assets and are outside the territory of the Republic of Indonesia, are obliged to return to the bankruptcy assets all the profits that they have obtained."

- a. Unless it can be proven otherwise, any transfer of receivables must be considered to be carried out in accordance with the provisions stipulated in paragraph (1) if the transfer is carried out by creditors who know that the bankruptcy process is or will be filed. Article 214 of the Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW also states that any individual who transfers part or all of his receivables or debts to a third party, which allows the occurrence of a debt meeting outside the jurisdiction of the Republic of Indonesia and is contrary to the provisions of this law, is obliged to indemnify the bankruptcy property.
- b. Article 213 paragraph (2) of the BANKRUPTCY & DEBT PAYMENT OBLIGATION SUSPENSION LAW, also applies to matters described in paragraph (1)."

The Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW adopts universal principles in handling bankruptcy. This universal principle is closely related to the principle of *pari passu prorata parte*, which later became the basis of the law. The principle of *pari passu prorata parte* means that all of the debtor's wealth functions as a collective guarantee for creditors, with the proceeds of the sale having to be divided proportionally among creditors, unless there is a creditor who has priority rights.

However, the application of this universal principle in the BANKRUPTCY & DEBT PAYMENT OBLIGATION SUSPENSION LAW is contrary to the principle of sovereignty embraced by every country. The principle of sovereignty states that court decisions from one country cannot be directly applied in other countries, because each country has a rule of law that must be respected. This results in difficulties in implementing cross-border bankruptcy decisions, especially when universal principles conflict with the national legal limits applicable in other countries (Bastian, 2005). The principle of sovereignty is also related to the view that the court functions as a tool that reflects the sovereignty of a country. Therefore, if a foreign court decision can be directly enforced in another country, it implicitly indicates that the country recognizes and is subject to the law of the country in which the judgment was issued. In other words, the automatic execution of a foreign court decision will be considered as a recognition of the legal power of the foreign country, which has the potential to reduce the legal sovereignty of the executing state (Juwana, 2012). As an illustration, the example of the bankruptcy of Across Asia Limited involves a company incorporated in Hong Kong and has a representative in Central Jakarta, Indonesia. On March 5, 2013, the Central Jakarta Commercial Court issued Decision Number 64/DEBT PAYMENT OBLIGATION SUSPENSION LAW/2012/PN Niaga Jkt.Pst which declared Across Asia Limited bankrupt.

The main issue in this case is that as a transnational company, most of the assets of Across Asia Limited are located in Hong Kong. The Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW in Indonesia does not regulate cross-border insolvency specifically. The law only includes the rights to collect against the assets owned by debtors who are abroad and compensation for actions that harm the bankruptcy assets by creditors or debtors. Neither Indonesia nor Hong Kong has any international agreements, both bilateral and multilateral, that regulate cross-border insolvency. As a result, the curator was unable to execute Across Asia Limited's assets located in Hong Kong.

If execution of the debtor's assets abroad is not possible, the amount of debtor's assets available to pay creditors will be reduced. Ideally, all debtor assets, both within and outside Indonesia, should be in a state of general foreclosure to meet payment obligations to creditors. Without an adequate mechanism, the bankruptcy goal of ensuring the payment of creditor rights from all debtor assets cannot be achieved optimally. In the context of cross-border insolvency, the United Nations (UN) through the United Nations Commission on International Trade Law (UNCITRAL) offers guidelines to deal with this issue, with the aim of facilitating more consistent and effective international legal arrangements in managing insolvency involving various jurisdictions, in fact has formed an example of regulation in the form of Model Law on Cross-Border Insolvency with Guide to Enactment, This is not binding but serves as a reference and guide for countries that have cross-border bankruptcy problems.

Model Law on Cross-Border Insolvency with Guide to Enactment menjelaskan tentang:

- a. Acceptance of curators from other countries in court.
- b. Recognition that decisions regarding foreign bankruptcy must be recognized along with their legal consequences.
- c. Laying the foundation for cooperation and coordination between courts, between curators and administrators, or cooperation through the UNCITRAL secretariat.

The Model Law issued by UNCITRAL offers a solution for the recognition and enforcement of cross-border bankruptcy judgments by providing a uniform legal framework. However, unfortunately, Indonesia and several other ASEAN countries have not adopted this Model Law.

In handling cross-border bankruptcy cases that do not yet have a specific agreement regarding debts and receivables and dispute resolution, there are several options that can be considered. States can go through general court proceedings by filing a bankruptcy judgment to the country where the bankruptcy assets are located, using bilateral agreements between the countries concerned, taking advantage of the relationship between the two countries or adopting the UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment.

If it is a general court process, the state has to face complex procedures, especially if it involves countries that have different legal systems. Bilateral agreements between Indonesia and other countries can help address the issue of the execution of debtor assets located outside Indonesia's jurisdiction, given that Indonesia's current Law & DEBT PAYMENT OBLIGATION SUSPENSION LAW does not provide adequate authority to deal with debtor assets abroad.

### **3. Legal Certainty in Cross-Border Bankruptcy**

Legal certainty means that a law or regulation after being promulgated must be implemented by the government. Legal certainty emphasizes that legal regulations must have a clear nature and law enforcement officials must be consistent in their efforts to implement them. Law is not just a set of rules, but a social engineering tool that has the goal of creating harmony and harmony in society (Siadari, 2015).

The main role of law is to protect the interests of the community. According to Roscoe Pound, there are three interests that must be protected. namely public interest, individual interest and interest of personality. The details of each individual's interests are not an absolute list and change according to the development of society. When these interests are negotiated as a permanent agreement, the agreement is no longer a social engineering but a political manifesto.

According to Roskow Pound, the main task of law is social engineering. Laws are not only formed based on social interests, but must also be enforced by advocates as a tool of social control in a broader sense, and their enforcement aims to achieve the desired change.

In his view, he emphasized that law is a means of shaping society, especially development. The main idea underlying this theory is that since development efforts require absolute order and order, law in the sense of norms must guide all human activities in the direction of truly desired development.

If the problem of cross-border bankruptcy is associated with the Roscoe Pound theory, bankruptcy decisions do not provide legal certainty, this is because final decisions cannot be implemented consistently due to the territorial principle that says that decisions in a country only apply in the territory where the country is located.

So that bankruptcy boedels outside Indonesia cannot be executed for the benefit of the public and even the state. Roscoe Pound emphasizes the importance of balancing interests in law in general.

## CONCLUSION

Based on the research conducted by the author, bankruptcy judgments in Indonesia do not have permanent legal force to be enforced against the debtor's assets located abroad, or in other words, bankruptcy law enforcement cannot be carried out outside the territory of Indonesia. This is due to the principle of state sovereignty that recognizes the boundaries of national jurisdiction and the fact that Indonesia is not yet bound by international agreements related to cross-border bankruptcy.

Bankruptcy law is national and only applies within the territorial boundaries of the country concerned. Therefore, to address the issue of bankruptcy boedel execution abroad, steps such as establishing international agreements between the countries involved or adopting model laws such as the UNCITRAL Model Law on Cross-Border Insolvency with Implementation Guidelines are needed. This Model Law provides a framework that can help in regulating cross-border insolvency more effectively.

Legal certainty in cross-border bankruptcy decisions has not been fulfilled, because court decisions that already have legal force remain unenforceable. This is considered to be incapable of realizing harmony and has not met the needs of the community in obtaining justice.

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