The Indonesian Journal of Southeast Asian Studies
Vol. 5, No. 1, July 2021, pp. 47-59
ISSN 2580-6580, E-ISSN 2597-9817
DOI: 10.22146/ikat.v5i1.64157

The Execution of Bankrupt Assets in the Case of Cross-Border Insolvency: A Comparative Study between Indonesia, Malaysia, Singapore, and the Philippines

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Submitted: 18 February 2021 **Accepted**: 22 July 2021

Abstract
Insolvency institutions have an important role in realizing legal certainty in the settlement of debt and credit disputes, which is one of the risks that arise from the rapid development of international business transactions. Bankruptcy cases containing foreign elements are called cross-border insolvency. The problems that arise in cross-border insolvency are more complex, especially regarding the execution of assets of bankrupt debtors situated outside Indonesia's jurisdiction. This study uses a doctrinal legal research method with a statutory approach. Bankruptcy in Indonesia is regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. In this law, the execution of assets of bankrupt debtors outside the jurisdiction of Indonesia has not been regulated so that the curator as the body appointed to carry out the execution cannot carry out the task as mandated by the law. The non-executable assets of the bankrupt debtor outside the jurisdiction of Indonesia have caused the bankruptcy estate (de boedel) ineffective; therefore, creditors do not receive a maximum payment related to debtor's debt. For this reason, Indonesia needs to adopt the UNCITRAL model of law on cross-border insolvency or to make bilateral and/or multilateral agreements that are reciprocal in nature related to the execution of bankrupt debtors' assets located outside Indonesia's jurisdiction.

Keywords: Cross-Border Insolvency; Bankruptcy Law; Southeast Asia; Execution

Introduction

In the era of globalization, trade is no longer only carried out within one country, but can also be carried out between countries, known as international trade or international business. In the contemporary context, cross-border shopping is one of the most popular trends in people's consumption practices in the border areas of neighboring countries (Stepanova & Shlapeko, 2018). The rapid pace of international business transactions means that national borders are no longer an obstacle in conducting business transactions. International business transactions are business transactions involving foreign elements, such as cross-border business actors. International business relations are activities aimed at obtaining profits carried out by business actors containing foreign elements (crossing national borders/involving more than one legal system of different countries) (Aminah, 2019).

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An accounts-payable agreement is a familiar model in international business transactions. The agreement regulates the parties' rights and obligations, namely the debtor and the creditor. If the parties do not set a deadline for performance implementation, the agreement must firstly be invoiced. If the performance implementation is not made immediately, a proper grace period is required for the debtor to carry out the agreement (Sudjana, 2019). This is important to consider that in business there are risks that cannot be eliminated. One of the business risks that often occurs is when the debtor is unable to fulfill his obligations, in this case, to return the loan according to the initial agreement.

In this context, bankruptcy law plays its role. Bankruptcy is a process in which a debtor who has financial difficulties is declared bankrupt by a court, in this case a commercial court because he is unable to pay his debt (Asnil, 2018). The provisions regarding bankruptcy in Indonesia are regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter Bankruptcy Law). According to Article 1 point 1 of Bankruptcy Law, bankruptcy is defined as "general confiscation of all the assets of the bankrupt debtor whose management and settlement are carried out by the curator under the supervision of a Supervisory Judge."

Each country that has bankruptcy laws will certainly apply this positive law in solving a bankruptcy case. However, in cross-border bankruptcy cases, there is more than one bankruptcy law becoming the variable (Amalia, 2019). Bankruptcy involving foreign parties or business actors that are cross-border is known as cross-border bankruptcy. In English, it is used with several terms, namely transnational bankruptcy, cross-border bankruptcy, transnational insolvency, and cross-border insolvency. In addition, it is also called international insolvency (Sjahdeini, 2016). The possible application of more than one bankrupcy laws from different countries causes cross-border insolvency becomes more complex than bankruptcy in general.

One of the difficulties in cross-border insolvency is the difficulty in implementing the execution of the bankruptcy debtor's assets abroad because it deals with the jurisdiction of other countries. Therefore, it is necessary to pay attention to the laws of the other countries where the bankruptcy assets are located. Historically, most legal systems have developed on a territorial basis, and this also applies in relation to bankruptcy (Imanullah, Latifah, & Ratri, 2018). In fact, Bankruptcy Law in Indonesia has not regulated cross-border insolvency, namely the execution of bankrupt debtor assets located outside the territory of Indonesia. In addition to the vacuum of norm on the execution of debtor assets outside the territory of Indonesia, the State of Indonesia also adheres to the principle of territoriality so that bankruptcy decisions only apply and have execution power in Indonesian jurisdiction and do not apply and do not have the power of execution beyond its jurisdiction. In addition, this is also related to the sovereignty principle adopted by countries in which each country has a legal sovereignty that cannot be penetrated or challenged by the laws of other countries.

The vacuum of norms regarding cross-border insolvency in Indonesia will certainly open opportunities for rogue business actors who will ultimately injure the sense of fairness for parties who use the bankruptcy route to solve their debt problems. Thus, the bankruptcy institution will lose the public trust because it cannot provide legal protection and certainty for the parties. Several neighboring countries, such as Malaysia, Singapore and the Philippines, have given serious attention regarding the problem of cross-border insolvency. Accordingly, their bankruptcy law has been improved considerably in order to to find a solution related to the cross-border insolvency, namely the execution of bankrupt debtor's assets abroad.

Therefore, this article aims at discussing the state of Indonesian Bankruptcy Law concerning the execution of bankrupt assets located outside its jurisdiction. In doing so, a comparative study with other neighbouring countries, such as Malaysia, Singapore and the Philippines would be employed in order to provide a lesson learn how they deal with the issue.

Literature Review

The role of the bankruptcy institution is basically very important to ensure that the parties, namely debtors and creditors, receive fairness from the bankruptcy process. According to Edward A. Haman (2005), bankruptcy is a legal procedure that debtors can use to get out of debt and restart their business (Haman, 2005). Bankruptcy is also regarded as a constitutional right (Ventura, 2004). Bankruptcy legal instruments are very important, namely as an institution that provides justice for the distribution of assets of bankrupt debtors to their creditors and a "fresh start" for debtors, namely as a new start financially for debtors who no longer have the ability to pay their debts to their creditors. Bankruptcy is actually one way to resolve debt disputes.

Since 2013, there have been many cases of debtor's assets abroad which have caused the curators difficult to take over those assets. Since 2013, the ASEAN Cross-Border Insolvency Regulation has proclaimed for the purposes of the bankruptcy process in ASEAN countries, but unfortunately but there has been no meaningful realization (Aritonang, 2012). If this matter is not regulated, there are a number of difficulties for both Indonesian and foreign parties in filing a bankruptcy case before a competent court as well as in executing the assets. This is related to the existence of state boundaries or the sovereignty of a country. Cross-border bankruptcy is a term used to describe a situation in which a bankrupt debtor has assets and/or creditors in more than one country (Commonwealth of Australia, 2002).

On January 30, 1998, the United Nations Commission on International Trade Law (UNCITRAL) adopted a framework for bankruptcy across borders known as the Model Law on Cross-Border Insolvency (MLCBI). The UNCITRAL Legislative Guide on Insolvency Law provides a reference for national authorities and legislative bodies in preparing new laws and regulations or reviewing existing laws and regulations regarding bankruptcy across national borders. Sections one and two of the UNCITRAL Legislative Guide on Insolvency Law were completed in 2004 discussing the main objectives and effectiveness of the insolvency/insolvency law. The third part of the UNCITRAL Legislative Guide on Insolvency Law was adopted in 2010 and focused on groups of companies that are under insolvency, both nationally and internationally. Part four of 2013 focuses on the obligations of corporate decision-makers in insolvency. The UNCITRAL Legislative Guide on Insolvency Law provides a detailed set of legislative recommendations, covering various options and approaches.

Methods

The research method used in this article is doctrinal legal research with a statutory approach. In this approach, legal norms need to be understood as a hierarchical arrangement (Marzuki, 2017). This approach looks not only at the form of legislation, but also at the content of the norms, the philosophical basis of the norms, as well as the ratio legis of the provisions of the norms (Marzuki, 2017). In this regard, Terry Hutchinson puts: "if you know the name of one Act, then you should be able to use this piece of information to locate: 1) An updated version of the Act and any amendments through the annotations: Cases discussing the legislation through the annotations and encyclopedias. 2) you will be using existing knowledge to link to further information relevant to your subject" (Hutchinson, 2002).

This study examines the voidness of norms related to the problems of cross-border bankruptcy mechanisms and procedures, which include the implementation of foreign bankruptcy decisions and the execution of bankrupt debtor assets outside the jurisdiction of Indonesia. Basically, according to Article 431 Rv., court decisions in Indonesia are only valid and have the power of execution in Indonesian territory and the decisions of foreign court judges are not binding and are not recognized in Indonesia. Referring to this article, decisions of foreign courts are not recognized in Indonesia as well as bankruptcy decisions in Indonesian courts are not recognized abroad so that curators cannot execute debtors' assets outside the jurisdiction of Indonesia. A country is allowed to carry out the execution of a bankruptcy decision from another country if there is an international agreement between the two countries, either a bilateral or a multilateral agreement, and has bankruptcy rules governing it.

Results and Discussion

Cross-Border Insolvency in the Execution of Bankrupt Assets in Indonesia

Chapter II Part X of Indonesian Bankruptcy Law stipulates cross-border insolvency briefly in the Provisions of International Law, namely Article 212, Article 213, and Article 214. However, those three articles do not clearly regulate the bankruptcy procedure across national borders. The unregulated mechanisms and procedures include the implementation of foreign bankruptcy decisions and the execution of bankrupt debtor assets located abroad.

Article 212 of Bankruptcy Law stipulates that creditors who, after pronouncing the declaration of bankruptcy, take full or part of their receivables in full from the assets including bankruptcy which are located outside the territory of Indonesia, which are not bound to them with the right to take precedence, are obliged to replace all bankruptcy assets what they have received. Furthermore, in Article 213 paragraph (1) Bankruptcy Law stipulates that creditors are transferring all or part of their receivables from the bankrupt debtor to a third party, with the intention that the third party takes full or part of the receivables from the assets included in the bankruptcy located outside the territory of Indonesia, it is obliged to replace the bankruptcy assets with what they have. However, what is stipulated in Article 213 paragraph (1) there is an exception in Article 213 paragraph (2), namely if it is proven otherwise, any transfer of accounts receivable must be deemed to have been carried out in accordance with the provisions referred to in paragraph (1), if the transfer is carried out by the creditors and they know that a bankruptcy statement has been or will be filed. Article 214 of Bankruptcy Law stipulates that every person who transfers all or part of his receivables or debts to a third party, who, because of this, has the opportunity to meet debts outside the territory of Indonesia which is not permitted by this law, is obliged to replace them with bankrupt assets.

The provisions of international law in Bankruptcy Law only regulate the transfer of objects including bankruptcy assets located outside the territory of Indonesia and the transfer of all/part of debts/receivables to third parties to meet debts outside the territory of Indonesia. In the section on International Law in Bankruptcy Law, it is still unclear about the mechanisms and procedures for cross-border bankruptcy related to the implementation of foreign bankruptcy decisions and the execution of debtor's assets that are included in bankruptcy boards located abroad.

In principle, the embryo of cross-border insolvency is stated in Chapter II Part X concerning Provisions on International Law of Bankruptcy Law. However, regarding the implementation of the rule, it is still lack of norms related to the execution of bankrupt debtor's assets that are outside the jurisdiction of Indonesia. The reasons for the inability to execute the assets of the bankrupt debtor that are outside the jurisdiction of Indonesia are as follows:

1. Article 431 of the Code of Civil Procedures (*Reglement op de Rechtsvordering*/Rv) basically regulates:
    a. Court decisions in Indonesia are only valid and have the power of execution in Indonesian territory;
    b. Therefore, it has no power of execution abroad;
    c. Likewise, *vice versa*, decisions of foreign court judges are not binding and are not recognized in Indonesia.

    Referring to Article 431 of the Code of Civil Procedure, the curator cannot execute the debtor's assets that are outside the jurisdiction of the Republic of Indonesia.

2. The principle of territoriality adhered to by the Indonesian nation:

    Mukesh Chand (2018) in his writing entitled *Cross-Border Insolvency: From Territorialism To Universalism To Modified Universalism* explains as follows:

    > As the term itself explains, "territorialism" is based on the principle of supremacy of local jurisdiction and recognizes multiple proceedings operating in different and diverse national systems and leads to a "divided administration of debtor's insolvency". This limits the effect of insolvency of an enterprise to the local limits of the country where insolvency proceedings are initiated. It does not recognize or give effect to the proceedings initiated in other countries. This principle is based upon states' sovereignty and vested rights of local players. Under this system action may be initiated against a debtor and its assets independently in deferent countries where such assets might be located. Due to emphasis on localism, this system is also sometimes called "Grab Rule" as different legal systems apply their own law in respect of a single debtor with no regard to proceedings in foreign states. Thus, it practically deglobalizes the business and fails to work for collective benefit of stakeholders and totally disregards the fact that even a domestic enterprise may have assets and financial transactions and creditors in many jurisdictions across many countries (Chand, 2018).

    In Bankruptcy Law, according to this principle, bankruptcy only concerns parts of the assets located in the country's territory where it is pronounced. In essence, a bankruptcy decision pronounced abroad does not have legal consequences in the country (Gautama, 2013).

3. The principle of sovereignty adopted by countries, meaning that each country has a legal sovereignty that cannot be penetrated or challenged by the laws of other countries.

4. The dual principles adhered to by Bankruptcy Law in Indonesia.
   The bankruptcy law in Indonesia adheres to two principles, namely the principle of universality and the principle of territoriality. The principle of universality, bankruptcy law in Indonesia is the implementation of *paritas creditorium* principle as stipulated in Article 1131 of the Civil Code and the principle of *pari passu pro rata parte* in Article 1132 of the Civil Code. Article 1131 of the Civil Code is reflected in the principle of universality of all assets belonging to the debtor, which is a guarantee for repayment of debts to creditors, in which the scope of the material area in question includes all assets belonging to the debtor wherever the assets are located, both within the territory of Indonesia and outside the territory of Indonesia.

Further implementation of the universal principle can be seen through the arrangement of "provisions of international law", Articles 212-214 of the Bankruptcy Law which are a legacy of the *Faillissements-Verordening* arrangement (Stb. 1905-217 jo. Stb. 1906-348). The regulation of the universality principle in the Bankruptcy Law is to provide legal protection and certainty for creditors' economic rights to obtain payment of receivables from bankrupt debtors through general confiscation of all assets belonging to bankrupt debtors, including assets that are outside the territory of the Indonesian State. Therefore, with the application of the principle of universality in the Bankruptcy Law, the decision on the bankruptcy of the Commercial Court in Indonesia should be enforced not only within the territory of Indonesia but also outside the territory of Indonesia. In practice, this is constrained by the sovereignty factor of the state (sovereignty) which hinders the application of the universality principle. The same thing is stated by Jerry Hoff that: "[o]bviously, this principle is limited by the concept of sovereignty; the powers and authorities of the Indonesian receiver under the Bankruptcy Law can be exercised in a foreign country only if the laws of the country in which the receiver attempts to exercise them allow it" (Gautama, 2013, pp. 302-303).

The second principle is the principle of territoriality. In the legal system in Indonesia itself, the decisions of foreign judges cannot be directly implemented within the territory of the Republic of Indonesia, especially the decisions of foreign judges which are condemnatory (sentencing). This also has an impact on the bankruptcy decision of judges in Indonesia who are unable to execute the assets of bankrupt debtors abroad. This thing appears because it is considered a violation of the principle of state sovereignty as an independent and sovereign state. This is due to the enactment of the "principle of territoriality" or "principle of territorial sovereignty" which requires that decisions made abroad cannot be directly enforced in other areas on one's own authority. Therefore, one side of the Bankruptcy Law adheres to the principle of universality and on the other hand, territoriality. However, if the principle of universality and the principle of territoriality collide, then what applies is the principle of territoriality, this is what causes the execution of the assets of the bankrupt debtor who is abroad cannot be executed.

The vacuum of norms related to the implementing rule of cross-border insolvency in the Bankruptcy Law in Indonesia is certainly an urgent matter to find a solution, given the increasingly rapid development of international business and trade. A country is allowed to carry out the execution of bankruptcy decisions from other countries if there is a bilateral or multilateral agreement between these countries. The countries that have made bilateral agreements in facilitating cross-border insolvency are Malaysia and Singapore, then the Netherlands and Belgium through the signing of the Netherlands-Belgium Treaty regards, an agreement to mutually recognize and mutually acknowledge and implement the bankruptcy decision. Countries that have entered into multilateral agreements are the European Union (EU). Hence, EU countries that are members of the multilateral agreement can execute the assets of the debtors in the member countries of the agreement which are decided bankrupt by the court.

Cross-Border Insolvency in Malaysia, Singapore and the Philippines

The United Nations Commission on International Trade Law (UNCITRAL) has issued a breakthrough to overcome and anticipate problems in cross-border bankruptcy cases. It is undertaken by issuing a Model Law, namely the Law on Cross-Border Insolvency with Guide to Enactment, which several countries have adopted since 1997 (Mason, 1999). The model law's stated purpose is to provide effective mechanisms for dealing with cases of cross-border insolvency. The interpretation of the model law is to assist with the promotion of the following objectives which are contained in its preamble:

(a) cooperation between local and foreign courts and other competent authorities involved in case of cross-border insolvency;
(b) greater legal certainty for trade and investment;
(c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
(d) protection and maximisation of the value of the debtor's assets; and
(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Neil Hannan (2017) explains the four main concepts in the UNCITRAL model of law on cross-border insolvency as follows:

The model law is premised on four primary concepts: access, recognition, relief and cooperation. The model law in general has three key elements:

(a) It provides for expedited control of the debtors' local assets and their protection from unilateral actions by creditors.

(b) It then gives the local court considerable discretion to grant all sorts of relief to an administrator from a main foreign proceeding.
(c) The discretion is accompanied by a statutory mandate to cooperate subject to ensuring that the debtor and its creditors are adequately protected (Hannan, 2017)

UNCITRAL Model Law on Cross-Border Insolvency focuses on four key elements in dealing with transnational bankruptcies (CBI cases): access, recognition, relief (assistance), and cooperation. Regarding the problem of cross-border insolvency in Indonesia, these elements can be adopted according to the legal needs of our country or ratify the provisions of the law model.

Cross-Border Insolvency in Malaysia

Bankruptcy in Malaysia was first regulated in the Insolvency Act 1967 (*Akta Kebankrapan 1967*) which was based on the UK Bankruptcy Act, namely the Bankruptcy Act of England 1914. However, since 1967 there have been several amendments to the bankruptcy law in Malaysia.

The 1967 Bankruptcy Act is the main law, but it is not the only law regulating bankruptcy in Malaysia. There are various other laws, namely the Malaysian Limited Liability Company Law known as the 1965 Syarikat Act, which regulates companies' inability to pay debts (insolvency) due to the company's inability to pay debts. According to the 1965 Syarikat Act, if the debtor is unable to pay the debt, the bankruptcy notification may begin. Although the 1965 Company Act is based on the UK Bankruptcy Act, namely the Bankruptcy Act of England 1914, there are differences between them. In Malaysia, individual bankruptcy and corporate insolvency are governed by separate laws. Individual bankruptcy is regulated in the 1967 Bankruptcy Act, while the company's insolvency is regulated in the 1965 Syarikat Act (Wijayanta, 2016). The most recent Bankruptcy Act is the Bankruptcy (amendment) Act 2017.

The Bankruptcy (amendment) Act 2017 basically does not regulate bankruptcy across national borders, except in cross-border bankruptcy cases with Singapore. The international cooperation carried out by Malaysia with Singapore in the cross-border bankruptcy sector is partly due to the similarities in the two countries' bankruptcy laws, which are mostly adapted from British law, the United Kingdom Bankruptcy Act 1883 (Omar, 2008). This bilateral cross-border bankruptcy cooperation between Malaysia and Singapore can also be seen in Article 105 which regulates the cancellation of the bankruptcy order by stating: (1) where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, or where it appears to the court that proceedings are pending in the Republic of Singapore for the distribution of the bankrupt's estate and effects among his creditors under the bankruptcy or insolvency laws of the Republic of Singapore and that the distribution ought to take place in that country, the court may annul the bankruptcy order; (2) where a bankruptcy order is annulled under this section, all sales and dispositions of property, and payments are first made, and all acts thereto done by the Director General of Insolvency, or other person acting under his authority, or by the court, shall be valid, but the property of the debtor adjudged bankrupt shall vest in such person as the court appoints, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court declares by order; (3) notice of the order annulling a bankruptcy order shall be forthwith gazetted and published in at least one local paper; (4) For the purposes of this section any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into court.

Cross-Border Insolvency in Singapore

Singapore has become the 42nd state to implement UNCITRAL's Law on Cross-Border Insolvency Model. The 2017 Singapore Companies Act (Amendment) facilitates the recognition of the cross-border insolvency process in Singapore. According to Prakash Pillai and Junxiang Koh (2017), "[u]nder the Model Law, a foreign representative can apply to the Singapore High Court for recognition of foreign insolvency proceedings. The application must be accompanied by: (a) a certified copy of the decision commencing the foreign insolvency proceedings and appointing the foreign representative; and (b) a statement identifying all insolvency proceedings in respect of the debtor that is known to the foreign representative" (Pillai & Koh, 2017, p. 1).

The Singapore Companies (Amendment) Act 2017 has introduced the UNCITRAL Model Law on Cross-Border Insolvency into Singapore law. This provision facilitates the recognition of the cross-border bankruptcy process in Singapore and introduces new legislative tools to rescue distressed companies (Minjee, 2019). Article 354A states in this division that "Model Law" means the UNCITRAL Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on May 30, 1997. The Tenth Schedule Sections 354B and 354C UNCITRAL Model Law On Cross-Border Insolvency The Singapore Companies (Amendment) Act 2017 states the following:

The purpose of this law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of —

(a) cooperation between the courts and other competent authorities of Singapore and foreign States involved in cases of cross-border insolvency;
(b) greater legal certainty for trade and investment;
(c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
(d) protection and maximisation of the value of the debtor's property; and
(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Prior to the application of the Model Law, applications for the foreign insolvency process are finalized on a case by case basis. Singaporean courts are not required to recognize foreign insolvency proceedings unless the Singapore government has a bilateral agreement on this (bilateral bankruptcy agreement between Singapore and Malaysia). According to S. Chandra Mohan (2012), "[i]n addition, a series of regional insolvency agreements, treaties and conventions have provided consenting States a basis to deal with cross-border issues that may arise between them" (Mohan, 2012). After adopting the Law on Cross-Border Insolvency Model from UNCITRAL into the Companies Law (Amendment) 2017, Singapore facilitates the recognition of the cross-border insolvency process in Singapore.

Cross-Border Insolvency in the Philippines

The Philippines Bankruptcy Act was first promulgated in 1909. This provision represented a modernization of law in the Philippines. The Bankruptcy Act of 1909 attempted to amend the Corporation Code and Securities Act (Torrijos, 2012). In its journey, the Philippines has two main laws, namely the Insolvency Law 1956 and Presidential Decree 902 as amended and known as the Rules of Procedure on Corporation Rehabilitation. The Philippines Congress then began discussions on the Corporate Recovery Act which aims to streamline the bankruptcy regime in the Philippines (Sjahdeini, 2016).

The provisions of cross-border bankruptcy in the Philippines have basically accepted and respected the jurisdiction of foreign courts. This can be seen in the provisions in Section 140 on Initiation of Proceedings. The court shall set a hearing in connection with an insolvency or rehabilitation proceeding taking place in a foreign jurisdiction upon the submission of a petition by the representative of the foreign entity that is the subject of the foreign proceeding. The court will hold a hearing in connection with bankruptcy or a rehabilitation process taking place in a foreign jurisdiction, after filing a petition by a representative of a foreign entity that is the subject of a foreign legal process.

The bankruptcy rule that is enforced in the Philippines, which is one of its articles regulates the possibility for judges of that country to be able to enforce judicial decisions of foreign countries without having to carry out relocation, if the decision is considered feasible to be immediately implemented in the jurisdiction of the country (Simanjuntak, 2015). In connection with the issue of recognition, the Philippines considers unilateral discretionary legislation as an effort to reform their bankruptcy legal instruments. The Philippines is currently preparing several drafts of legal instruments related to corporate rehabilitation, known as the Corporate Recovery Act (CR Act).

The development of international business is accompanied by the need for accommodative laws as well as bankruptcy law. The execution of bankrupt debtor's assets abroad would not have been possible if there is no law regulated cross-border insolvency in Indonesia. As mandated by the Bankruptcy Law, the curator has the main task of carrying out the sale and settlement of bankruptcy boards. The meaning of the word "settlement" in the context of bankruptcy law based on the Bankruptcy Law is to liquidate bankruptcy assets. The curator in the process of clearing bankruptcy assets adheres to the principle of cash is the king, in which the curator must liquidate the bankruptcy assets (in the sense of selling all bankruptcy assets, to be distributed to creditors in accordance with applicable regulations) (Jonifianto & Wijaya, 2018). However, in the absence of arrangements for procedures and procedures for executing the assets of a bankrupt debtor outside Indonesia's jurisdiction, this main task is hampered and cannot even be carried out.

Bankruptcy debtor's assets outside Indonesia's jurisdiction cannot be executed, of course, will have an impact on ineffectiveness of the bankruptcy estate which will be shared with creditors in accordance with the principle of *pari pasu pro rata parte*. This is very detrimental to creditors, especially if debtors take advantage of the existing legal loophole by deliberately making investments or transferring assets abroad. Thomas H. Jackson and Robert E. Scott (1989) state that: "finance theorists have a long recognized that bankruptcy is a key component in any general theory of the capital structure of business entities. Legal theorists have been similarly sensitive to the bankruptcy law's substantial allocational and distributional effects (Jackson & Scott, 1989).

The practice of collecting debt and liquidating bankruptcy assets is ineffective and costly. On the other hand, creditors are not always able to obtain maximum payment of their debt only by liquidating bankruptcy assets. In fact, not infrequently, when a debtor is declared bankrupt, no debtor's assets can be executed for payment of his debt. This condition, known as a common pool, is a condition in which the accumulated claims of creditors cannot be paid from the existing bankruptcy assets because the debtor's liabilities are greater than the value of the assets. To avoid this common pool condition, the efficiency of managing and resolving bankruptcy assets must be increased with the main focus on increasing or accumulating the value of bankruptcy assets and at the same time reducing bankruptcy costs in the best manner agreed by creditors. For this purpose, bankruptcy law as a collective debt payment instrument or collectivized debt collection service should ideally be aimed at providing maximum payment to each creditor by making the best efforts applicable to bankruptcy assets (the best use of the common pool). This best effort can be achieved by bargaining the interests of fellow creditors (creditor's bargaining). In this way, creditors agree to determine the best way to go about increasing the value of the bankruptcy's assets (Jackson, 1986).

To maximize bankruptcy estate, it is necessary to have comprehensive arrangements regarding the execution of bankrupt debtor assets abroad (cross-border insolvency) either by adopting the UNCITRAL model of law on cross-border insolvency as has been done by the Philippines and Singapore or making a bilateral bankruptcy agreement related to execution the assets of the bankrupt debtor who are located outside the country such as that of Singapore and Malaysia. With the existence of regulations related to cross-border insolvency, of course the benefits of bankruptcy institutions can be maximized and legal certainty of the rights of business actors will be guaranteed so that the domestic economic investment climate increases.

Conclusion

The implementation of cross-border insolvency in the execution of bankruptcy assets outside the jurisdiction of Indonesia cannot run optimally because Indonesia adheres to the principle of territoriality. Therefore, the court decisions in Indonesia only apply and have an execution power in Indonesian territory so that they do not have the power of execution abroad. The principle of sovereignty adopted by countries is also an obstacle in implementing cross-border insolvency. In addition, the implementation of cross-border insolvency in the execution of bankruptcy assets outside Indonesia's jurisdiction cannot run optimally because Indonesia has not adopted the UNCITRAL model of law on cross-border insolvency which is a framework for cross-border insolvency regulations that can be implemented in bankruptcy laws and international agreements in Indonesia and other countries with reciprocal characteristics related to the execution of bankruptcy assets abroad, such as those that have been carried out by Malaysia, Singapore and Philippines.

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