

Pengakuan putusan pailitan yurisdiksi asing di Indonesia dan beberapa negara: Jepang, Selandia Baru, Australia, Malaysia dan Singapura = Recognition of insolvency foreign judgement in Indonesia and some states: Japan, New Zealand, Australia, Malaysia and Singapore

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Abstrak

Timbul permasalahan ketika terdapat putusan pengadilan asing atas pailitnya perusahaan yang mempunyai anak perusahaan yang berada di negara lain dan didirikan berdasarkan hukum setempat, dan perusahaan yang pailit tersebut memiliki aset yang lebih di negara lain. Secara kongkrit, keterkaitan masalah kepailitan dengan hukum perdata internasional dalam hal ini terletak bagaimana keberlakuan putusan pailit pengadilan asing di suatu negara. Mengingat juga banyak negara yang masih berpandangan sangat konservatif terhadap pelaksanaan putusan pengadilan asing utamanya kepailitan, berakibat pada terhambatnya transaksi bisnis internasional. Para pelaku usaha merasa ada kebuntuan (deadlock) dalam memperoleh haknya. Untuk mengatasi kebuntuan ini United Nations Commissions on International Trade Law (UNCITRAL) melakukan terobosan yang memungkinkan sebuah negara mengakui dan melaksanakan putusan pailit yang dikeluarkan oleh pengadilan asing, yakni berupa UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation.

Lalu, bagaimanakah pengakuan putusan pailit yurisdiksi asing di Indonesia sendiri, dan beberapa negara seperti Jepang, Selandia Baru, Australia, Malaysia dan Singapura?

.....Arise issue when there is insolvency foreign judgement of company, which have subsidiary company, located in other country and established by local law, and that bankrupt companies have assets in other states. Concretely in this case, link of insolvency and private international law issue is how the enforceability of insolvency foreign judgment in a state. In view of many states sighted conservatively to the enforcement of foreign judgment especially in isolvency, so that have impact to inhibition of international business transaction. Business feel there?s impasse (deadlock) to acquire their rights. To solve that issue, United Nations Commissions on International Trade Law (UNCITRAL) do breakthrough so that state can recognize and enforce the insolvency foreign judgment, namely UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation.

Then, how the recognition of insolvency foreign judgment in Indonesia itself, and some country like Japan, New Zealand, Australia, Malaysia dna Singapore.