

Centre of Main Interests (COMI) sebagai Titik Taut Penentu Yurisdiksi Pengadilan Asing pada Permohonan Pengakuan Foreign Insolvency Proceedings = Centre of Main Interests (COMI) as Connecting Factor to Foreign Court Jurisdiction on Recognition Application of Foreign Insolvency Proceedings

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Abstrak

Penelitian ini memaparkan kajian teoritis dan juga praktis terkait Cross-border Insolvency, khususnya mengenai pengakuan proses kepailitan asing sebagai aspeknya yang fundamental. Lingkup penelitian difokuskan terhadap penerapan konsep Centre of Main Interests (COMI) dalam kaitannya dengan Hukum Perdata Internasional secara mendalam, konsep yang telah digunakan oleh negara-negara yang sudah memiliki peraturan yang efisien terkait Cross-border Insolvency, salah satunya adalah Singapura yang telah mengadopsi UNCITRAL Model Law 1995 dalam Hukum Kepailitan Nasional. Hasil penelitian menyarankan agar Pemerintah Indonesia mengadopsi Model Law dan menegakkan kepastian hukum dengan memfokuskan perumusan mengenai faktor COMI yang dapat dijadikan pembantah bagi anggapan yang dimaksud dalam Pasal 16 ayat (3) Model Law, dan juga ketentuan mengenai lingkungan kuasa waktu COMI.

This research explains both theoretical and practical studies on Cross-border Insolvency, particularly regarding the recognition of foreign insolvency proceedings as its fundamental aspect. The scope of research is focused on the application of Centre of Main Interests (COMI) concept in relation to Private International Law, a concept that has been massively used in States with effective Cross-border Insolvency regulation such as Singapore which has adopted the 1995 UNCITRAL Model Law into its national insolvency law. Researcher suggests that Indonesian Government should adopt Model Law and enact legal certainty by focusing on drafting the criteria of COMI factors to displace such presumption as required on Article 16 (3) of Model Law, also to regulate the COMI's sphere of time.