

Kewenangan Kurator dalam Pelunasan Piutang Kreditor: Cross Border Insolvency = Curator's Authority in Repayment of Creditors Receivables: Cross Border Insolvency

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Abstrak

Tulisan ini menganalisis tentang bagaimana pengaturan tentang pelunasan piutang atas beban harta Debitor yang berada di luar negeri berdasarkan undang-undang kepailitan dan bagaimana upaya kerjasama antarnegara untuk dapat meningkatkan efektifitas kewenangan kurator dalam menangani pelunasan piutang Kreditor dalam konteks Cross Border Insolvency. Tulisan ini disusun dengan menggunakan metode penelitian doktrinal. Pelunasan utang atas harta debitor di luar negeri berdasarkan Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Pembayaran Utang terbatas oleh prinsip teritorialitas, sehingga menghalangi eksekusi keputusan pengadilan asing di Indonesia. Pasal 436 Rv menegaskan bahwa keputusan hakim asing tidak berlaku kecuali ditentukan oleh undang-undang tertentu. Prinsip ini menyulitkan kurator dan merugikan kreditor. Penyelesaian sengketa kepailitan lintas batas dapat dilakukan melalui hukum dalam perjanjian utang-piutang, pengadilan umum, perjanjian bilateral, hubungan diplomatik, atau UNCITRAL Model Law on Cross Border Insolvency, dengan prinsip universalitas dan teritorialitas. Undang-Undang Kepailitan Indonesia saat ini terbatas dalam menangani kasus kepailitan yang melibatkan aset di luar negeri, dengan keputusan pengadilan asing tidak diakui di Indonesia. Diperlukan peningkatan kerjasama hukum internasional, terutama melalui adopsi Model Law dari UNCITRAL, yang sedang dalam tahap finalisasi. Fokusnya termasuk penelusuran aset digital di luar negeri, yang menghadapi tantangan teknis. Harmonisasi hukum kepailitan internasional diakui sebagai kunci untuk mengatasi hambatan dari perbedaan hukum nasional dan memfasilitasi penyelesaian aset pailit lintas batas. Pentingnya Mutual Legal Assistance (MLA) untuk pertukaran informasi adalah untuk memperkuat penegakan hukum kolaboratif di luar yurisdiksi tunggal, dapat dilakukan melalui perjanjian bilateral atau multilateral proaktif.This text analyzes the regulations regarding the repayment of debts against the debtor's assets located abroad based on bankruptcy laws and efforts of international cooperation to enhance the effectiveness of the curator's authority in handling creditor repayment in the context of Cross Border Insolvency. The research is conducted using a doctrinal research method. The repayment of debts on debtor's assets abroad under Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment is limited by the principle of territoriality, which hinders the execution of foreign court decisions in Indonesia. Article 436 Rv asserts that foreign court decisions do not apply unless specified by specific laws. This principle complicates the curator's role and harms creditors. Resolution of cross-border bankruptcy disputes can be conducted through laws in credit agreements, general courts, bilateral agreements, diplomatic relations, or the UNCITRAL Model Law on Cross-Border Insolvency, based on the principles of universality and territoriality. Indonesia's Bankruptcy Law currently has limitations in handling cases involving assets abroad, with foreign court decisions not recognized in Indonesia. Enhanced international legal cooperation is needed, particularly through the adoption of the UNCITRAL Model Law, which is currently in its finalization stage. The focus includes tracing digital assets abroad, facing numerous technical challenges. Harmonization of international bankruptcy laws is recognized as crucial to overcoming national legal differences and facilitating the

resolution of cross-border insolvent assets. The importance of Mutual Legal Assistance (MLA) for information exchange is to strengthen collaborative law enforcement outside single jurisdictions, achievable through proactive bilateral or multilateral agreements.