

# Recognition of Foreign Insolvency Proceedings: A Comparative Study between the Laws of Indonesia and South Korea

**M. Bagas Amirul Haq<sup>a</sup>, Tata Wijayanta<sup>b</sup>**, <sup>a</sup>Gadjah Mada University, Indonesia,  
<sup>b</sup>Lecturer of Civil Law Department, Gadjah Mada University, Indonesia, Email:  
<sup>a</sup>[m.bagas.amirul@mail.ugm.ac.id](mailto:m.bagas.amirul@mail.ugm.ac.id) , <sup>b</sup>[wijayanta.tata@yahoo.com](mailto:wijayanta.tata@yahoo.com)

This study aims to identify and analyse the regulation regarding foreign insolvency proceedings' recognition in Indonesia and South Korea, and the recognition of Indonesian insolvency proceedings from the perspective of South Korea's model of cross-border insolvency proceedings. This research is normative legal research. This study uses qualitative and comparative methods to analyse the data from the literature study. The secondary data were analysed by content analysis with statute approach, while the analysis of the interview data was conducted through qualitative analysis. Based on the study, up to recent times, Indonesia has not utilised the universalism model of the cross-border insolvency approach, and under Indonesian civil procedural law, Indonesian courts' decisions are only enforceable within the territory of Indonesia and vice versa. Meanwhile South Korea, under a new consolidated insolvency law, which became effective in the year 2006, has adopted a modified universalism model of cross-border insolvency; thus South Korea regulates provisions regarding the recognition of foreign insolvency proceedings. Under the Indonesian main insolvency act, Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligation, Indonesian debtor's assets situated in a foreign country (including South Korea) may be reached, and according to the South Korean modified universalism approach under Debtor Rehabilitation and Bankruptcy Act, the effect of an insolvency proceeding which has commenced in an Indonesian commercial court would have an effect and may be recognised within the territory of South Korea.

**Key words:** *Cross-border insolvency, Indonesian insolvency law, South Korean insolvency law.*

## Introduction

In recent years, the presence of globalisation and free trade has led the growth of the economy to another level. The growth of economic activity creates borderless trade activity between countries all over the world. As an example, a lot of businessmen carry out their business abroad and companies have formed corporate groups which contain subsidiaries in more than one country. The globalisation of business activity makes contact with a diverse array of national laws and legal systems which often have cross-border consequences. The growth of international business has brought a growth in the number of international business failures. One of the risks which any person may face when running a business is insolvency issues. The problem gets more complicated when the scope of the case includes a multi-jurisdictional debtor, or also known as cross-border insolvency. In such situations, there is a clash of competing national laws on weighty questions including the recognition of security interest, processes related to the disbursement of assets, and different policy preferences underlying the protection of different kinds of creditors. Cross-border insolvency happens when the debtor's properties or debts are located in more than one country, or when the debtor is having two or more courts' jurisdiction. These conditions indicate that cross-border insolvency occurs when the issues of insolvency cases intersect with aspects of private international law, since cross-border insolvency law assists in determining (1) which court has jurisdiction over a cross-border insolvency case, (2) which substantive insolvency law applies to the case (choice-of-law), and (3) whether the judgment opening an insolvency proceeding rendered by a foreign court should be recognised.

On top of that, cross-border insolvency law is always related to the cross-border insolvency legal approach. The major regimes of cross border insolvency approach are universalism and territorialism. Those two regimes represent overarching regimes in most of the countries all over the world. Universalism is a system in which all aspects of a debtor's insolvency are conducted in one central proceeding under one insolvency law, meanwhile, territorialism is the default system for all cross-border insolvency systems, because it relies on actual in rem control over assets. Territorialism makes insolvency proceedings in a country to have no outbound impact outside its territory (Kent Anderson:2000). In such situations, when a debtor has assets outside the debtor's territory in which a proceeding is being held, the debtor should proceed with domestic insolvency proceedings in each forum in which the debtor's assets are located. The difference of cross border insolvency policies between countries has become one of the major problems in cross border insolvency, including Indonesia.

Law No. 34 of 2004 on Bankruptcy and Suspension of Debt Payment Obligation (hereinafter referred to *UUK-PKPU*) is the main legal source of insolvency law in Indonesia. Pursuant to Article 21 of *UUK-PKPU*, the bankruptcy shall include the total wealth of the bankrupt debtor at

the time of bankruptcy declaration, together with that which he acquires during the bankruptcy period. The provision of the previously said article indicates the enactment of the universalism approach because materially, bankruptcy declaration under Indonesian insolvency proceedings, shall include the total wealth of the debtor's assets including the assets situated outside the territory of Indonesia. In contrast, the enactment of the previously said provision is hardly implemented and often obstructed by the sovereignty principle. In order to deal with cross-border insolvency issues, most countries agree in mutual recognition and enforcement of cross-border insolvency.

Dealing with cross-border insolvency issues with International agreement deemed ineffective, therefore, the United Nations Commission on International Trade Law (UNCITRAL) issues a model law named UNCITRAL Model Law on Cross Border Insolvency with a Guide to Enactment. The purpose of issuing the model law is to complete the domestic insolvency law of all countries by adopting the model law, but most of the countries still choose to maintain its sovereignty over it, including Indonesia (Mutiara Hikmah:2007). Despite the issuance of the model law, up to recent times, Indonesia has not accommodated any cross-border insolvency regulation, and the issues remain in a state of confusion. In contrast to the absence of a cross-border insolvency regulation in Indonesia, South Korea regulates systematic cross-border insolvency provisions in insolvency law. South Korea is chosen to be the reference of the comparative study due to the similarity of the legal system, and South Korea once applied the territorialism approach before the year 2006. When the Debtor Rehabilitation and Bankruptcy Act became effective in 2006, South Korea discarded the territorialism approach and now enacts a modified universalism approach. Enacting the modified universalism approach means enlarging the possibility for foreign insolvency proceedings and its effects to be acknowledged. Based on this fact, Indonesian insolvency proceedings may be recognised under the South Korean cross-border insolvency approach, even though Indonesia has utilised the universalism approach. It is necessary to examine the insolvency laws of Indonesia and South Korea to analyse whether bankruptcy proceedings of Indonesia, as a country that has enacted the universalism approach, would be recognised according to South Korean insolvency law.

## **Methodology**

The research is normative legal research. This paper examines and finds the principles, norms, and practices recognising foreign insolvency proceedings, under Indonesian and South Korean bankruptcy law. The data in this study are secondary data sourced from primary, secondary, and tertiary legal materials. The method of secondary data collection has been conducted by documentation which refers to documented library materials contained in primary legal materials, secondary materials, secondary legal materials, and tertiary legal materials (Ranjit Kumar, 1999:104), while the tools are study documents. The study documents were conducted by learning

data from books, research reports, seminar papers, court decisions, and all regulations relating to research material.

This paper is a qualitative research. This paper examines and finds the principles, norms, and practices recognising foreign insolvency proceedings, under Indonesian and South Korean bankruptcy law. This research employed a normative legal research method with a statute approach, a conceptual approach, and a cases approach. The legal object studied was amassed from authoritative legal material, i.e. legislation and court decisions, as well as secondary legal objects such as relevant papers and scientific studies.

## **Results and Discussion**

### ***Indonesian Insolvency Law Norms regarding Recognition of Foreign Insolvency Proceedings***

*UUK-PKPU* is the main act governing both individual and corporate insolvency in Indonesia, which became effective on October 18, 2004, and revoked the enactment of Law Number 4 of 1998 on Government Regulation in Lieu of Law Number 1 of 1998 on Bankruptcy Law. The previous act was revoked due to ineffectiveness in regulating and resolving insolvency issues in Indonesia during the time of the economic crisis in 1997. The crisis led to the increasing number of business failures in most Asian countries, including Indonesia, and made a lot of companies and individuals to go into a state of financial distress. This situation made both individual and corporate debtors have hard times dealing with creditors and were unable to pay their debts, thus eventually led them to go through an insolvency proceeding. The insolvency cases during that time grew in a great number and flooded the court. Despite the hit of the economic crisis, the law governing insolvency in Indonesia was considered ineffective, thus, the enactment of *UUK-PKPU* purports to create an effective and efficient way of insolvency cases settlements.

In order to better understand the ramifications of cross-border insolvency in Indonesian insolvency proceedings, the debt payment system under Indonesian insolvency proceedings should be explained. The *UUK-PKPU* classified insolvency proceedings into these insolvency regimes: (1) bankruptcy proceedings under Chapter 2 of the *UUK-PKPU* for the liquidation of insolvent business entities and individuals, and (2) suspension of debt payment obligation under Chapter 3 of the *UUK-PKPU* to suspend and restructure the debts of financially distressed debtors. In Indonesian insolvency law, bankruptcy means general confiscation of all assets of a bankrupt debtor that will be managed and liquidated by a receiver under the supervision of a supervisory judge. The goal of bankruptcy proceedings is to liquidate and distribute the debtor's assets for the interest of creditors. Meanwhile, the suspension of debt payment obligation is defined as a certain time given by the law through a commercial court judgment, where the debtor and creditors are

given a chance to discuss the debts payment method, whether a whole or partial payment (Munir Fuady:2005). If the court grants the petition, one administrator or more would be appointed to join the debtor in managing his/her assets. In contrast to the bankruptcy proceeding, the main goal of suspension of debt payment obligation proceedings, is to prevent debtors from bankruptcy which means the liquidation of debtor's assets, by restructuring debts.

When a debtor is found bankrupt, the commercial court declares the bankruptcy of a debtor; the bankrupt debtor will lose its authority in the field of property and all of the debtor's assets will go through general confiscation as well. All the assets owned by a bankrupt debtor are managed by the receiver under the supervision of a supervisory judge as to the bankruptcy proceedings continuous to debt verification. In this phase, if a bankrupt debtor fails to propose a composition plan to all the creditors and is found insolvent, the bankrupt debtor will go through bankruptcy estate settlement proceedings. The main duty of a receiver is to liquidate all the assets owned by a bankrupt debtor to obtain cash which will be used to pay off the bankrupt debtor's debts to all of the creditors. A receiver may face some obstacles when carrying out bankruptcy estate if the bankrupt debtor owns assets situated in foreign countries or has multiple jurisdictions. In this situation, the difficulty level of the case might be extremely increased due to cross-border insolvency issues.

Cross-border insolvency happens when insolvency law intersects with foreign elements in private international law aspects. Therefore, the scope of the case gets wider and raises more legal issues, such as Bayu Seto:2015 states:

- (1) which court has jurisdiction over a cross-border insolvency case (choice of forum);
- (2) which substantive insolvency law applies to the case (choice of law); and
- (3) whether the judgment opening an insolvency proceeding rendered by a foreign court should be recognised.

All mentioned above legal issues would be obstacles for a receiver when carrying out a bankruptcy estate abroad. If we narrow down the issues that arise from cross-border insolvency, the major issue would be recognition of foreign insolvency proceedings, or whether and to what extent foreign insolvency proceeding would be recognised in a country. Meanwhile, up to this time, although the act governing insolvency went through several revisions, Indonesia has not yet regulated provisions concerning cross-border insolvency, let alone regulating foreign insolvency proceedings recognition. *UUK-PKPU* has no comprehensive chapter regulating cross-border insolvency, but it is mentioned in several articles that debtor's assets management may reach assets situated in a foreign country. It is clearly said in article 21 *UUK-PKPU* that the bankruptcy shall include the total wealth of the bankrupt debtor which means the debtor's assets located in foreign

countries as well (if any). It is further elaborated in the articles 212, 213 paragraphs (1) and (2), and 214 paragraphs (1) and (2) of the *UU-KPKPU* by regulating a few measurements in terms of debtor's assets which are situated outside the territory of Indonesia.

Even with those few provisions which indirectly indicate that insolvency proceedings commenced in Indonesia would have an extraterritorial effect, practically a receiver would still be troubled on carrying out a bankruptcy estate abroad since there is no further regulation to support the previously mentioned articles. Lack of law governing cross-border insolvency is more than enough to give a receiver hard times in managing and settling bankrupt debtor's assets situated in a foreign country. Moreover, according to article 436 *Rv*, it is said that:

- (1) Indonesian court's decision would only enforceable within the territory of Indonesia;
- (2) thus, it is not executable in foreign countries; and
- (3) contrariwise, the foreign court's decision is not binding and would not be acknowledged within the territory of Indonesia.

In the case of *OCBC Securities Private Ltd v. Manwani Santosh Tekchand*, the High Court of The Republic of Singapore decided that Manwani Santosh Tekchand obliged to pay a certain amount of money to OCBC Securities Private Limited, and due to Manwani Santosh Tekchand unwillingness to pay the debts, OCBC Securities Private Ltd then filed for foreign insolvency proceedings based on the High Court of The Republic of Singapore's decision against Manwani Santosh Tekchand in Indonesia. The Indonesian commercial court declined the petition and one of the considerations was due to the enactment of article 436 *Rv* which prevents foreign court's decision to be acknowledged and enforced within the territory of Indonesia.

The only exception from this provision is the foreign court's judgement in terms of calculation and distribution of a damaged ship or general *avarij* under article 724 of *Wetboek van Koophandel* (Indonesian Commercial Act). According to the article, it is possible to initiate calculation and distribution outside the territory of Indonesia, and if then, a decision or judgment issued by the authority of a foreign court's judge, it shall possess binding power and executable as well within the territory of Indonesia. Apart from this provision, in order to execute foreign judgment, an international agreement is needed that excludes the enactment of article 436 *Rv*, meanwhile, up to recent times, Indonesia has not yet conducted any single international agreement regarding the recognition of foreign judgment or cross-border insolvency. Therefore, it is almost impossible to have foreign insolvency proceedings recognised within the territory of Indonesia and vice versa.

Generally, in order to seek for recognition of a foreign court's decision in Indonesia, pursuant to article 436 paragraph (2) of *Rv*, enforcement of a foreign court's decision requires commencement



of fresh proceedings (re-litigation) along with the decision submitted as documentary evidence; but the power of the evidence would be casuistic and depends on the case with the following possibilities (Yahya Harahap:2009):

- (1) it may be valued as an authentic deed and has binding power; or
- (2) it may be considered merely as legal fact and the judge will be given the freedom to interpret.

These limited provisions regarding cross-border insolvency led to legal uncertainty on the enforcement of insolvency law in Indonesia. For instance, on the jurisdiction issue, in the case of Nyoman Soerabratha and Ir. Marcus Pramono S., v. The Ostrich Meat and Marketing Co., the insolvency petition filed against The Ostrich Meat and Marketing Co., was rejected by Commercial Court on District Court of Central Jakarta due to lack of evidence, which indicates The Ostrich Meat and Marketing Co. is a business entity or having a representative office in Indonesia from the perspective of the Indonesian Company Act. Meanwhile, in the case of Yon-Hak Choi and Chang-Bok Kim v. Young-Soo Hong, the Commercial Court of the District Court of Central Jakarta granted the insolvency proceedings against Young-Soo Hong, even though the evidence was merely a passport of the Republic of South Korea. Based on the previously mentioned cross-border insolvency cases, it is proven that current Indonesian insolvency law is outdated and ineffective to deal with cross-border insolvency issues, especially concerning foreign insolvency proceedings' recognition. Therefore, whether the receiver would be a success in carrying out bankrupt debtor's assets situated in foreign countries depends on each country's insolvency law policies.

### ***South Korean Insolvency Law Norms regarding Recognition of Foreign Insolvency Proceedings***

Since the year of 1962, various laws and regulations were applied to individual and corporate bankruptcies, major statutes governing bankruptcy composed of the Corporate Reorganisation Act, Composition Act, Bankruptcy Act, and Act Concerning the Rehabilitation of Individual Debtor. As the times goes by, these insolvency laws were argued due to several reasons (Yong-Seok Park:2003):

- (1) the rehabilitation procedure is bifurcated into proceedings under the Corporate Reorganisation Act and the Composition Act, resulting in unequal outcome depending on the two proceedings;
- (2) the composition proceedings under the Composition Act, in most cases, is inefficient; and
- (3) the laws are outdated in comparison to international insolvency standard.

In line with the condition which Indonesia faced during the year 1997, the economic crisis struck South Korea as well. After suffering from the economic crisis, the government accepted the International Monetary Fund's recommendation to revise the insolvency laws as soon as possible. A new bankruptcy act entitled the Act Concerning Debtor Rehabilitation and Bankruptcy (DRBA) was enacted and became effective in 2006. The act purports to streamline existing laws and regulations governing corporate and personal bankruptcies in South Korea (Haksoo Ko:2007). In some respect, the current legislation is a consolidation of the prior acts which consisted of the Corporate Reorganisation Act, Composition Act, Bankruptcy Act and Act Concerning the Rehabilitation of Individual Debtor Rehabilitation.

The unified insolvency law of South Korea splits and classifies insolvency proceedings as follows: (1) rehabilitation proceedings under Chapter 2 of the DRBA for the rehabilitation of corporations and other business entities; (2) bankruptcy proceedings under Chapter 3 of the DRBA for liquidation of individuals and business entities; and (3) rehabilitation proceedings under Chapter 4 of the DRBA for the rehabilitation of individual debtors. All these proceedings under DRBA are court-supervised proceedings, each proceeding designed for specific purposes and bearing different consequences. The goal of rehabilitation proceedings is to rehabilitate insolvent debtors through a rehabilitation plan by approval of the courts and the creditors for both individuals, corporations, and the other business entities. Meanwhile, bankruptcy proceedings under DRBA were designed to liquidate the insolvent debtor's assets.

The DRBA has discarded the strict principle of territoriality under the Corporate Reorganisation Act and Bankruptcy Act and adopted the principle of universality. Therefore, the effect of an insolvency proceeding that has commenced in South Korea would affect the debtor's assets located in a foreign country. The scope of application of international insolvency procedure under DRBA pursuant to article 629 paragraph (1) applies to the cases where:

- (1) a representative of foreign insolvency procedures seeks any approval or support from a court of the Republic of Korea in connection with foreign insolvency procedures;
- (2) a representative of a foreign insolvency procedures files an application with a court of the Republic of Korea for domestic insolvency procedures or participates in pending domestic insolvency;
- (3) any custodian, any trustee in insolvency, the debtor and any other person who obtains permission from the court, etc. participates in the procedures of any foreign court and seeks approval and support from any foreign court while carrying out activities overseas;



- (4) domestic insolvency procedures and foreign insolvency procedures for the same debtor are jointly and simultaneously pending in a court of the Republic of Korea and any foreign court and coordination between the two procedures is required.

In order to commence the foreign insolvency procedures, the foreign insolvency procedures representative may file an application to the court. The application must be accompanied by a written statement along with translations. Pursuant to Article 631 of the DRBA the application accompanied by written statements is as follows:

- (1) a written statement concerning the legal basis and a summary of the overall foreign bankruptcy procedures;
- (2) a written statement attesting to the commencement of the foreign bankruptcy procedures;
- (3) a written statement attesting to the qualification and authority of the representative of the foreign bankruptcy procedures;
- (4) a written statement concerning the main points of the foreign bankruptcy procedures for which an application is filed for their approval (including statements of creditors, the debtor and interested parties);
- (5) a written statement concerning all other foreign bankruptcy procedures over the debtor, which are known to the representative of the foreign insolvency procedures.

Court supervised insolvency proceedings, including foreign insolvency procedures shall be under the jurisdiction of the Seoul Bankruptcy Court of the Seoul Central District Court. The court, within one month, shall decide whether to approve the application filed by the representative of the foreign insolvency procedures. The court may dismiss the application of foreign insolvency procedures in these following cases: (1) where expenses determined by the court are not prepaid; (2) where each written statement provided for in each subparagraph of Article 631 (1) is not submitted or the establishment and the contents of any such written statement is not bona fide; (3) where approving the foreign bankruptcy procedures is contrary to the good public morals and social order of the Republic of Korea. When the court decides to approve the application, the court shall publicly notify the operative part of such a decision and the gist of its reasoning therefore and deliver a written decision to the foreign insolvency procedures representative. The approval of the foreign insolvency procedures' application by the court provides the foreign court with two things: 1) support for foreign insolvency procedures; and 2) cooperation between courts.

The support for foreign insolvency procedures under Chapter V Article 636 of the DRBA is a support given by the court in order to protect the debtor's business and properties or the creditor's profit. At the time the court approves foreign insolvency procedures, the court may make decisions as follows:

- (1) The suspension of a lawsuit involving the debtor's business and properties and procedures belonging to any administrative agency;
- (2) The suspension or prohibition of compulsory execution, an auction for the exercise of security rights, provisional seizure, preliminary injunction and preservation procedures with respect to the debtor's business and properties;
- (3) Prohibition of the debtor's repayment or of the disposal of the debtor's properties;
- (4) The appointment of international insolvency custodians;
- (5) Other dispositions necessary to preserve the debtor's business and properties and to protect the profits of creditors.

On the other side, the cooperation mechanism under Chapter V Article 641 of the DRBA is the coordination between foreign and domestic courts in order to ensure the smooth and fair execution of domestic bankruptcy procedures. The scope of cooperation between the courts are: 1) the exchange of opinions; 2) the management and supervision of the debtor's business and properties; 3) the coordination of the progression of multiple procedures; and other necessary matters. It is true that South Korea now has discarded the territoriality insolvency proceedings approach, but whether and to what extent the South Korean insolvency proceeding would, in fact, be recognised in a foreign country in which the debtor's assets are situated, depends upon the laws of that foreign country.

The enactment of DRBA along with the modified universalism approach is proven to give benefit to insolvency law enforcement of South Korea. In the case of the Hanjin Shipping Co. Ltd., once the largest shipping firm in South Korea, Seoul Bankruptcy Court was faced with cross-border insolvency issues. As a multinational company, the Hanjin Shipping Co. Ltd., possessed numerous assets situated in foreign countries, leading to several claims by creditors across numerous jurisdictions against the Hanjin Shipping Co. Ltd., its subsidiaries and its fleet. In this situation, Hanjin sought to stay proceedings against it across numerous jurisdictions to accommodate the rehabilitation proceedings. The Hanjin Shipping Co. Ltd., then filed for bankruptcy protection in South Korea (as the main foreign insolvency proceeding in this case) and also requested stay proceedings to Singapore, the United Kingdom (UK) and the United States of America (US) courts. The UK court granted the relief sought, while Singapore and US courts granted an interim stay order. All these foreign courts' orders protected the Hanjin Shipping Co. Ltd.'s assets situated in foreign countries and recognised the South Korean insolvency proceedings as the main insolvency proceedings. The cross-border insolvency features in the DRBA provides numerous benefits to South Korea in dealing with cross-border insolvency issues.



### ***The Recognition of Indonesian Insolvency Proceedings under South Korean Insolvency Law***

Pursuant to Articles 212, 213 paragraph (1) and (2), 214 paragraph (1) and (2) of the *UUK-PKPU* and Article 436 of *Rv*, Indonesian insolvency law utilises a limited universalism regime in dealing with cross-border insolvency issues. Specifically, Indonesian insolvency proceedings would possibly have an effect on the debtor's assets situated in foreign countries, but at the same time restricting the recognition of foreign insolvency proceedings in Indonesia. Meanwhile, South Korea has discarded the strict territorialism regime through the enactment of the DRBA and utilises the modified universalism regime. International insolvency provisions under Chapter V of the DRBA has proven that South Korea now has removed the principle of territorialism, thus, every insolvency proceeding which has commenced in South Korea would have an effect in foreign countries and vice versa.

Despite the fact that South Korea has adopted the so-called modified universalism through the enactment of the Unified Insolvency Act or DRBA, a question arises in respect to the recognition of foreign insolvency proceedings, and that is 'would South Korea as a country which has enacted universalism regime recognise an insolvency proceeding commenced in Indonesia as a country which has yet utilised a universalism regime?'. Up to recent times, since the enactment of the DRBA, in South Korean insolvency practice, based on this research, there has not been any such insolvency case. The absence of such cross-border insolvency cases does not mean the question remains in a state of confusion. There was a case with a similar condition that happened between Australia and Singapore. Australia is a country that has enacted the universalism approach, while Singapore enacted a strict territorialism approach at the time of the case.

Chow Cho Poon Ltd., a real estate company incorporated under the Companies Act (Cap 50) of the Republic of Singapore suffered financial distress which led the company to be wound up. On November 22, 2007, Chow Cho Poon Ltd., ordered by the High Court of Singapore to be wound up pursuant to section 254 (1) (i) of the Companies Act (Cap 50) of the Republic of Singapore. The liquidator carrying out the Chow Cho Poon liquidation process later found out that the company had funds on deposit with Westpac Bank Corporation in Sydney, Australia. In order to manage the company's accounts the liquidator later sent a copy of the High Court of Singapore's order. At the time of the case, the insolvency law of Singapore enacted a strict territorialism approach, meanwhile, Australia utilised the universalism approach by adopting the UNCITRAL Model Law on Cross-border Insolvency. At first, the Westpac Bank Corporation said that they were not in a position to render the accounts operational as the appointment of the liquidator is required to be recognised by the courts within Australia. The liquidator then approached the court, and after verifying the compliance with Australian insolvency law, the court said that the status of the requesting liquidator has met the requirements to be considered as foreign



proceedings representative; thus the court granted the request and should have acted in aid of and was auxiliary to the High Court of the Republic of Singapore in all matters of insolvency.

In line with Australia, South Korea has enacted the modified universalism approach by adopting the UNCITRAL Model Law on Cross-border Insolvency since the year 2006. The universalism approach raises the possibility for a foreign insolvency proceeding to be recognised even from a country that has not yet enacted universalism like Indonesia. Thus, in respect to the earlier question, South Korean insolvency law would recognise an insolvency proceeding commenced in Indonesia as long as the requirements mentioned in the Articles 631 paragraph (1) and 632 of the DRBA are fulfilled, and the approval of the insolvency proceedings is not contrary to the good public morals and social order of South Korea.

## **Conclusion**

Indonesian insolvency law under the Articles 212, 213 paragraph (1) and (2), and 214 paragraph (1) and (2) of *UUK-PKPU* and Article 436 of the *Rv* utilises a limited universalism approach in dealing with cross-border insolvency issues and creates the possibility to manage bankrupt debtor's assets situated in foreign countries, but restricts the enforcement of foreign insolvency proceedings at the same time. Meanwhile, South Korean insolvency law under the DRBA has enacted the modified universalism approach since the year 2006, thus, South Korean insolvency proceedings would have an effect on the debtor's assets located in a foreign country and vice versa. A country that utilises the universalism approach would grant the recognition of foreign insolvency proceedings, including an application filed by a country that has yet enacted the universalism approach. Therefore, South Korea would grant recognition to Indonesian insolvency proceedings as long as the approval of the insolvency proceedings is not contrary to the good public morals and social order of South Korea.



---

## REFERENCES

- Anderson, Kent, 2000, “The Cross-Border Insolvency Paradigm: A Defense of the Modified Universal Approach Considering the Japanese Experience”, *Penn Law Journals, Pennsylvania*, Vol. 21, No. 4, pp. 679-779.
- Beaver, William, 1996, “Financial Ratios As Predictors of Failure”, *Journal of Accounting Research*, University of Chicago, Vol. 4, Chicago, pp. 71-111.
- Fuady, Munir, 2005, *Hukum Pailit dalam Teori dan Praktik: Edisi Revisi (Disesuaikan dengan UU No. 37 Tahun 2004)*, Bandung: PT Citra Aditya Bakti.
- Gopalan Sandeep, and Guihot, Michael, 2015, “Recognition and Enforcement in Cross border Insolvency Law: A Proposal for Judicial Gap-Filing”, *Vanderbilt Journal of Transnational Law*, Vol. 48, No. 1225, pp. 1226-1284.
- Halimi, Ryan, 2017, “An Analysis of the Three Major Cross border Insolvency Regimes”, *International Immersion Program Papers of University of Chicago Law School*, USA, pp. 3-27.
- Harahap, Yahya, 2009, *Ruang Lingkup Permasalahan Eksekusi Bidang Perdata*, Sinar Grafika. Jakarta.
- Hardjaloka, Loura, 2015, “Kepailitan Lintas Batas Perspektif Hukum Internasional dan Perbandingannya dengan Instrumen Nasional di Beberapa Negara”, *Yuridika*, Vol. 30, No. 3, Fakultas Hukum Universitas Indonesia, pp. 385-412.
- Hardjiwahono, Bayu Seto. 2006, *Dasar-Dasar Hukum Perdata Internasional Buku Kesatu*, Edisi keempat. Bandung: PT Citra Aditya Bakti.
- Hikmah, Mutiara. 2007, *Hukum Perdata Internasional dalam Perkara-Perkara Kepailian*. Bandung: PT Refika Aditama.
- Ho, Look Chan, 2009, Smoothing Cross Border Insolvency by Synchronising the UNCITRAL Model Law: In re Samsun Logix Corporation. *Journal of International Banking and Financial Law*, pp. 395-401.



- Kumar, Ranjit, 1999, *Research Methodology: A Step-by-Step Guide for Beginners*, London: Sage Publications.
- Keong, Chan Sek, 2011, “Cross Border Insolvency Issues Affecting Singapore”, *Singapore of Academy Law Journal*, Vol. 23, No. 1, pp. 413-433.
- Kihwan, Kim, 2006, “1997-98 Korean Financial Crisis: Causes, Policy Response, and Lessons, The International Monetary Fund and The Government of Singapore”, pp. 1-25.
- Ko, Haksoo, 2007, “Korea’s Newly Enacted Unified Bankruptcy Act: The Role of the New Act in Facilitating (or Discouraging) the Transfer of Corporate Control”, *Pacific Basin Law Journal*, Vol. 24, No. 2, pp. 201-224.
- Min Han, 2008, “The Hotchpot Rule in Korean Insolvency Proceedings”, *Journal of Korean Law*, Vol. 7, No. 2, pp. 445-454.
- Mok, Young-Joon, 1989, “The Principle of Reciprocity in the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958”, *Case Western Reserve Journal of International Law*, Vol. 21, No. 2, pp. 123-157.
- Park, Yong-Seok, 2003, “Unified Insolvency Law of Korea”, *Journal of Korean Law*, Vol. 3 No. 2, pp. 161-192.
- Sefriani, 2019, “Ineffectiveness of The Law on Cross Border Insolvency UNCITRAL Model”, *Yustisia*, Vol. 8 No. 1, pp. 30-46.
- Sjahdeini, Sutan Remy, 2002, *Hukum Kepailitan: Memahami Faillissementsverordening juncto Undang-Undang No. 4 Tahun 1998*, Jakarta: PT Temprint.
- Subhan, M. Hadi, 2008, *Hukum Kepailitan*, Jakarta: Kencana.
- Wijayanta, Tata, 2014, “Kajian tentang Pengaturan Syarat Kepailitan Menurut Undang-Undang Nomor 37 Tahun 2004”, *Mimbar Hukum*, Vol. 26, No. 1, pp. 1-13.

### Cases Cited

The Decision of The Commercial Court on Central Jakarta District Court No. 30/PAILIT/2002/PN/NIAGA/JKT/PST, insolvency case of The Ortrich Meat and Marketing Co. Ltd.





The Decision of The Commercial Court on Central Jakarta District Court No. 06/PAILIT/2005/PN.Niaga/Jkt.Pst., Choi Yon Hak and Kim Chang Bok v. Hong Young Soo.

The Decision of The Commercial Court on Central Jakarta District Court No. 26/Pailit/2010/PN.NIAGA.JKT.PST, OCBC Securities Pte. Ltd., v. Manwani Santosh Tekchand.

The Decision of the High Court of The Republic of Singapore, insolvency case of Chow Cho Poon Limited [2007] CWU57/2007/A.

The Decision of the High Court of The Republic of Singapore, OCBC Securities Pte. Ltd., v. Manwani Santosh Tekchand [2009] S870/2008/D.

The Decision of the High Court of The Republic of Singapore, insolvency case of Hanjin Shipping Co. Ltd., [2016] SGHC 195.