

Effectiveness of bankruptcy assets settlement on bankruptcy assets abroad

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ABSTRACT

The purpose of this study is to find out and analyze how effective the settlement of bankruptcy assets is on bankrupt assets located abroad and to find out and analyze the factors that affect the effectiveness of bankruptcy settlement of bankruptcy assets located abroad. This type of research is Research in general can be classified into two types, namely sociological empirical research (field), which is research conducted with an approach to legal reality in society. This research is based on the existence of a symptom in the form of a gap between expectations (das solen) and reality (das sein) in the field of law. and normative research, which is research conducted by approaching legal norms or substances, legal principles, legal theory, legal postulates and legal comparison. In this study, the author uses juridical normative law research with a qualitative approach. The effectiveness of the settlement of bankruptcy assets against bankrupt assets located abroad includes by submitting an application through the court in the country where the debtor's property is located, through bilateral agreements, diplomatic channels, and using the UNCITRAL Model Law on Cross Border Insolvency with Guide to Enactment. In the solution, of course, it will be easier to use the UNCITRAL Model Law on Cross Border Insolvency with Guide to Enactment, but until now not all countries in the world have ratified so that countries that do not ratify this provision cannot be used, Factors that affect the effectiveness of the settlement of bankruptcy assets against bankrupt assets located abroad: Legal Knowledge Factor, Public awareness factors, community cultural factors, facilities and facilities factors.

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1. INTRODUCTION

In essence, the Bankruptcy Law does not yet have a clear specific legal rule to handle cross-border bankruptcy cases. The absence of specific provisions on how to resolve a bankruptcy judgment declared by the Indonesian Commercial Court against the assets of bankruptcy debtors abroad raises a problem in terms of its execution. The importance of cross-border bankruptcy law should be thought of as being regulated in the Bankruptcy Law in Indonesia so as not to cause confusion for law enforcement and the public regarding problems in cross-border bankruptcy. In a business transaction, to meet capital needs, business actors often enter into loan and loan agreements with other parties. Borrowing and borrowing activities in the business world are very difficult to avoid,

because in the business world, capital has always been a fundamental thing, especially in the face of increasingly sharp competition in the era of globalization. So that with the relationship of the loan and borrow agreement, an obligation of the business actor as a debtor arises which is born from the agreement and is known as Debt.

Basically, debts or obligations arising from an agreement are achievements that must be carried out by the parties to the agreement, where the subject of the debtor or creditor is the entitled party, while the debtor or debtor is the party who is obliged to fulfill the achievement. As a result of the debt-to-receivables relationship, there is a risk that is often faced by both debtors and creditors, namely if the debtor is unable to return the loan or its obligations to the creditor, this is where bankruptcy law comes into play. Bankruptcy is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law). Based on Article 1 paragraph (1) of the Bankruptcy Law, it is explained that "Bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and settlement are carried out by the curator under the supervision of the supervisory judge". The imposition of a bankruptcy judgment against the debtor will cause a legal consequence, namely the loss of the debtor's authority to manage his assets. What is stated in this bankruptcy law can certainly be a warning sign for business actors who are in the position of debtors

The imposition of bankruptcy decisions by the Indonesian Commercial Court against debtors who have assets abroad raises the problem of cross-border bankruptcy. The problem lies in the authority of the Indonesian Commercial Court in executing debtors' assets abroad. The refusal to execute foreign court decisions is closely related to the concept of state sovereignty. A situation in which a person who has debts and is unable to pay his debts will put a person in a state of bankruptcy, as well as a person or legal entity that is legal as a subject of the law is called a Bankruptcy Debtor. After a person is in a state of bankruptcy, it will be followed by the bankruptcy process as one of the efforts in settling the debts of the bankrupt debtor, while the one who files for bankruptcy against the Debtor is the Creditor. Bankruptcy is defined according to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Statute Book of the Republic of Indonesia Number 131 of 2004, Supplement to Statute Book of the Republic of Indonesia Number 4443 (hereinafter referred to as UUK-PKPU) as general confiscation of all assets owned at that time by debtors who have been declared bankrupt, the management and settlement of which are carried out by the Curator whose implementation is supervised by the Supervisory Judge. Bankruptcy is a step to guarantee creditors to obtain a share of the assets owned by the bankruptcy debtor. The birth of the PKPU Law as an effort to resolve bankruptcy cases in court, is not the last form of settlement of debts itself.

In every debt and receivables activity, of course, there is a guarantee that provides a sense of security for the creditor so that he is willing to lend his money. Objects that can be used as collateral are valuable objects and their value is higher than the value of the debt owned by the debtor. In general, what is used as collateral by is gold, land, motor vehicles and currently the form of collateral has developed such as brands or stocks. Apart from the shape, the location of collateral has also undergone development. Where the location has developed is not only in a region or country, it is also possible to be in another region or country. One of the driving factors for the development of the location of a person's property is the ease of access and business development at the international level. The development of technology is one of the reasons why many people make cross-border transactions, because this will make it easier for someone to monitor a business beyond their physical reach and make it easier to obtain information about business developments. It is not uncommon for people who do cross-border business to obtain their business capital from debt and receivables activities. However, currently there are not many creditors who are willing to lend money with property guarantees that are outside their jurisdiction.

In every debt and receivables activity, in addition to the guarantee, of course, there is a period of time that the creditor gives to the debtor. If the debtor is unable to fulfill its achievements based on the agreed period of time and the debtor is no longer able to fulfill its achievements, both from the debtor's own side and from the creditors can file for bankruptcy with the Commercial Court. Referring to the definition of bankruptcy, in the bankruptcy process, all property owned at that time by the debtor who has been declared bankrupt will be confiscated and all assets will be collected and taken care of by the party who is given authority, namely the curator with supervision carried out by the Supervisory Judge, and the property will be used by its creditors as a means of repayment of

receivables. The implementation of the bankruptcy process is an effort to implement in accordance with the provisions of the Criminal Code which is specifically specified in Article 1131 which states that all property belonging to the bankrupt debtor which is in nature as a movable object or has the nature of an immovable object, which has existed or may exist in the future will be a liability for all forms of individual engagement. Especially in the provisions in Article 1131 and Article 1132, it is used as a legal certainty for the creditor to obtain what is the right to the repayment of his receivables. This provision is also supported by the principle in the PKPU Law which stipulates that every debt belonging to a debtor will always follow and will only stop if the debt has been paid in full. Specifically, Article 21 of the PKPU Law states that bankruptcy is a settlement process that uses all of the assets that at the time of the bankruptcy are owned by the debtor or something that may be obtained in the future during the bankruptcy process. Indirectly, the provisions in the PKPU Law cover all property that is not limited to the territory, including property abroad, which means that this provision adheres to the principle of universality.

The implementation of the provisions in the Criminal Code and the PKPU Law is a form of protection for creditors so that they are balanced with the achievements they have made to the debtor. Both in the Criminal Code and in the PKPU Law do not expressly determine the applicability of the confiscation of owned property, it's just that the provisions regulated in the two legal products allow the confiscation of assets that are outside the jurisdiction of a country, especially outside Indonesia. Although there are provisions of Article in the PKPU Law No. 37 of 2004 which specifically regulate the provisions of international law, it is not technically fully able to be used as a benchmark for the process of settling debts on assets located abroad, which is contained in the tenth part of the provisions of international law Article 212 of the PKPU Law No. 37 of 2004, namely, "A creditor who, after the bankruptcy declaration is pronounced, takes the repayment of all or part of his receivables from the property that belongs to the bankruptcy property located outside the territory of the Republic of Indonesia, which is not tied to him with the right to precedence, is obliged to reimburse the bankruptcy property for everything he obtains". But in reality, it will not be easy to confiscate the assets of a debtor who has gone bankrupt who is located abroad and uses the property as a bankruptcy bond. It can be said that bankruptcy with bankruptcy assets abroad is a form of cross-border bankruptcy because there are several foreign elements in it. Every country that has bankruptcy law will certainly apply its country's positive laws, but in cross-border bankruptcy there is more than one bankruptcy law that is variable.

This happens because every country certainly has sovereignty that needs to be respected in addition to remembering that each country has principles that are adhered to. There are some countries that adhere to the universal principle, which means that the country is willing to recognize the judgments of other countries' courts and can be used or enforced in their own country. In addition, some countries also adhere to the territorial principle, based on which the state does not recognize and cannot implement the decision of a foreign court in its country. Therefore, if a bankrupt debtor has property abroad, it is not necessarily that the object can be used as a means of debt repayment.

Comparison of Cross-Border Bankruptcy Laws of Indonesia and Singapore". The study further explains that Indonesia and Singapore do not have legal rules that are able to resolve cross-border bankruptcy cases, so it is hoped that there will be a breakthrough by implementing the UNCITRAL Model Law on Cross-Border Insolvency. The research in writing this Thesis focuses more on the settlement of bankruptcy with assets owned by the bankruptcy debtor abroad. Focusing on legal actions that can be taken so that what is the right of the creditor can be fulfilled, even though the bankruptcy account is not located in Indonesia. However, in cases involving other countries, of course, it requires help from the country where the bankruptcy case is filed so that the matter can be resolved properly. So that one of the legal goals, namely justice and legal certainty, can be fulfilled as it should. Based on the phenomenon that occurred in Makassar City, the author is interested in researching, analyzing and clearly knowing and discussing the titles that have been determined by the researcher. For this reason, in the following research, the author made it as research material entitled: The Effectiveness of Bankruptcy Settlement of Assets Abroad.

2. RESEARCH METHODS

Research in general can be classified into two types, namely sociological empirical research (field), which is research conducted with an approach to legal reality in society. This research is based on the existence of symptoms in the form of a gap between expectations (das solen) and reality (das

sein) in the field of law and normative research, namely research conducted by approaching legal norms or substances, legal principles, legal theories, legal postulates and legal comparison. In this study, the author combines the two studies, namely in this type of research, the researcher conducts research by combining both types of Normative and Empirical research with a Qualitative approach as mentioned above in a study.

2.1 Data types and sources

Primary data is data that is obtained directly from data sources, through interviews or questions and answers with informants. Secondary data, namely: data obtained through documents and literature books relevant to this research such as legislation and official documents.

2.2 Population and Sample

A population is a whole or set of research objects with the same characteristics. A population can be a collection of people, objects (living or dead), symptoms, behaviors, legal articles, legal cases, time or place, teaching tools, methods and so on, with the same characteristics and characteristics. The population of this study is the Makassar District Court and the Legal Consultant Advocate's Office which often handles bankruptcy issues in accordance with the research study in this thesis. Based on the type of data needed, in this study, what is used as a participant by the researcher is a group of objects that are used as a source of data in the research whose form can be in the form of people, objects, documents and so on. A sample is part of the population (part or representative of the population being studied). The research sample is a part of the population that is taken as a data source and can represent the entire population. The concept of a sample in the study is that a small portion of the population is taken according to a certain procedure so that it can represent the population representatively. Purposive sampling is a sampling technique used by researchers if the researcher has certain considerations in sampling or determining the sample for a certain purpose. The samples/objects that are the source of the data are; Makassar City District Court Judges 10 people, Legal Consultant Advocates in Makassar City 10 people, and Business Actors creditors and debtors 5 people.

2.3 Data Collection Techniques

The techniques used in collecting data in this study are as follows: Literature Review, which is studying and studying data in various literature and looking at various literature books, newspapers and scientific works that are related to the object of research. Interviews are questions and answers conducted by researchers and research respondents. The question and answer questions are carried out to obtain information related to the problem being researched. Interviews are a data collection technique through the process of direct communication with data sources. Communication is carried out in the form of oral dialogue or often called the question and answer method with research data sources. Observation, that is: by making direct observations on objects that are related to the problem to be discussed.

2.4 Data Analysis

The most important factor in research to determine the quality of research results is data analysis. The data that has been obtained after going through the data processing mechanism is then determined by the type of analysis, so that later the collected data can be more accountable. In this study, the data analysis technique used is a qualitative deductive data analysis technique. According to Jhonny Ibrahim, deductive qualitative analysis is drawing a conclusion from a general problem to a concrete problem in society. The data collected from the results of the research, both primary and secondary data, are then analyzed qualitatively and discussed in the form of elaboration by giving meaning in accordance with the applicable laws and regulations.

3. RESULTS AND DISCUSSION

3.1 Settlement of the Assets of the Bankruptcy Debtor and the Legal Basis used by the Curator in executing the assets of the Bankruptcy Debtor who are abroad

3.1.1 Liquidation of Bankruptcy Debtor's Property

It is explained in the provisions of Article 178 paragraph (1) of the UUK-PKPU, if in the receivables matching meeting the debtor is not offered a peace plan (accord) by the debtor, or the peace plan offered is not accepted by the meeting, or the ratification of the peace is rejected based on the decision of the commercial court that has obtained permanent legal force (in kracht), then for the sake of the law the bankruptcy property is in a state of insolvency and is under general confiscation.

Insolvency is a situation in which the debtor is unable to pay his obligations (debts) to his creditors, which can also be interpreted as an excess of liability compared to his assets in a certain time. Insolvency is a financial state of a civil law subject, while bankruptcy is a legal state of a civil law subject.

Bankruptcy assets that are declared in a state of insolvency cause legal consequences, namely in accordance with the provisions of Article 184 paragraph (1) of the UUK-PKPU, while still paying attention to the provisions of Article 15 paragraph (1) of the UUK-PKPU, the curator must start the settlement and sell all bankruptcy assets without the need to obtain the approval or assistance of the debtor if: a). The proposal to take care of the Debtor's company is not submitted within the period as stipulated in this Law, or the motion has been submitted but rejected; or b. Management of the Debtor's company was stopped.

In accordance with the provisions of Article 185 paragraph (1) of the UUK-PKPU, all objects (while still paying attention to the provisions of Article 183 paragraph (2) and paragraph (3) of the UUK-PKPU) must be sold in public (auctioned) in accordance with the procedures specified in the laws and regulations. In the event that public sales are not achieved, based on Article 185 paragraph (2) of the UUK-PKPU, sales under the hand can be carried out with the permission of the Supervisory Judge. Selling under this hand can be done if the price obtained is higher and can benefit all parties. For all objects that cannot be sold either through auction or sale under hand, based on Article 185 paragraph (3) of the UUK-PKPU, the curator has the authority over the object to decide the action that must be taken, but still with the permission of the Supervisory Judge. In principle, the assets are only distributed to the creditors after all the debtor's assets are sold and become cash, that is, if there is enough cash available to pay the debts, but it is not prohibited if the curator divides the proceeds of the sale of the existing bankruptcy property in proportion (*pari passu prorata parte*) as long as it is considered good by the curator. As soon as the creditors have paid the full amount of their receivables, or as soon as the "closing list of distributions" becomes binding, the bankruptcy ends, but, even if the bankruptcy is over, the creditors still have the right of execution against the debtor's property in respect of their unpaid receivables. However, the exercise of this right of execution is no longer within the framework of bankruptcy law.

3.1.2 The Legal Basis Used by Curators in Executing the Assets of Bankruptcy Debtors Abroad

Based on Article 299 of the UUK-PKPU which stipulates that: "Unless otherwise specified in this Law, the applicable procedural law shall be the Civil Procedure Law". The civil procedure law that applies in Indonesia, namely Article 436 RV expressly stipulates that foreign court decisions cannot be recognized and cannot be enforced by Indonesian courts, which has the same impact as Indonesian court decisions do not have executory power outside the Indonesian jurisdiction, the concept is the concept of state sovereignty and territorial principles embraced by the Indonesian State. In the bankruptcy case of Across Asia Limited, a company established under the law of Cayman Island, Hong Kong which in carrying out its business in Indonesia, places its representative in Central Jakarta. Across Asia Limited was requested for PKPU by its creditors, namely PT. First Media, Tbk. Because it has a debt that has matured and can be billed in the amount of Rp. 464,725,740,100,-. During the PKPU process, the Respondent was never present and never provided a peace plan, so that during the PKPU process, the Panel of Judges assessed and handed down Decision Number 64/PKPU/2012/PN. Niaga.Jkt.Pst dated March 5, 2013 which stated that the Respondent was bankrupt with all its legal consequences. Then the problem that arises is that Across Asia Limited which is a transnational company, has assets that are mostly in Hong Kong. Then, the UUK-PKPU does not regulate cross-border insolvency even though it contains a section of international provisions. Indonesia and Hong Kong are also not bound by international agreements, both bilateral and multilateral, related to cross-border insolvency. This causes Across Asia Limited's assets located outside Indonesia to be unable to be executed by the Curator.

Furthermore, there is a cross-border bankruptcy case that occurred before the enactment of the UUK-PKPU, namely in the case of a dispute between the bankruptcy Petitioner, namely Nyoman Soerabratha and Ir. Marcus Pramono, with the bankruptcy Respondent, namely The Ostrich Meat & Marketing Co. Ltd. (TOMM) which is a company established under Australian state law. In Decision No. 30/Bankruptcy/2002/PN. Niaga/Jkt/Pst explained that the Respondent was not proven to have legal status in Indonesia and did not have a representative in Indonesia, and did not run his business in Indonesia, so the Panel of Judges in the case *a quo* decided that the Petitioner's bankruptcy application was not acceptable. The Panel of Judges considered that the Commercial Court did not

have the authority to examine this case by referring to the provisions of Article 2 paragraph (4) of PERPU No. 1 of 1998 concerning Amendments to the Law on Bankruptcy.

In Chapter III Article 15 paragraph (1) of the Model Law on CBI, it is explained that representatives of foreign bankruptcy court proceedings can submit to foreign courts an application to recognize bankruptcy proceedings and judgments in the court in which the foreign representative is appointed. In submitting an application for recognition of foreign bankruptcy proceedings and decisions, conditions are needed that must be met to be considered by the judge who receives the application to accept or reject the application, the conditions in question are as follows:

- a. A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or (Certified copy of the court decision and appointment of foreign representative/curator; or)
- b. A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or (A certificate explaining the court process and the appointment of a foreign representative, in this case curator/administrator; or)
- c. In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative. (If the 2 pieces of evidence mentioned in points a and b are not present, then it can include other evidence that can be accepted and recognized by the court about the existence of foreign legal proceedings and the appointment of foreign representatives).
- d. So the Model Law on CBI one of the solutions offered is to allow courts in the enacting country to cooperate more effectively, with foreign courts and foreign representatives involved in bankruptcy matters. After conducting research, it was found that although Indonesia does not adopt the Model Law on CBI, however, this is then used as a reference for the Curator and Administrator of the case a quo in applying for recognition of the Bankruptcy Decision of the High Court in the territory of the destination country.

3.1.3 The Effectiveness of Bankruptcy Assets Against Bankruptcy Assets Abroad

Based on the results of the author's interview with the main informant who stated that: "The effectiveness of settling bankruptcy assets against bankrupt assets located abroad, among others, by submitting an application through the court in the country where the debtor's property is located, through bilateral agreements, diplomatic channels, and using the UNCITRAL Model Law on Cross Border Insolvency with Guide to Enactment. In the solution, it will certainly be easier to use the UNCITRAL Model Law on Cross Border Insolvency with Guide to Enactment, but until now not all countries in the world have ratified it, so for countries that do not ratify this provision cannot be used". The effectiveness of liquidating assets against assets located abroad is highly dependent on the legal mechanism used. Some commonly used methods are:

1. Filing an Application to the Court of the Country Where the Assets Are Held
 - a. This is a conventional approach where the curator or creditor must follow the legal procedures applicable in the country.
 - b. The challenge is that each country has different bankruptcy rules, so the process can be complicated and time-consuming.
2. Bilateral Agreement
 - a. If there is a bilateral agreement between the debtor's country of origin and the country where the assets are located, then the settlement procedure can be easier.
 - b. However, not all countries have this kind of agreement, so this mechanism cannot always be used.
3. Diplomatic Channel
 - a. Through diplomatic channels, the debtor's home country can negotiate with other countries to recognize the bankruptcy judgment and facilitate the settlement of assets.
 - b. The obstacle is that the diplomacy process can take a long time and is not always effective if there are no aligned interests between the two countries.
4. UNCITRAL Model Law on Cross-Border Insolvency
 - a. The UNCITRAL Model Law is a legal instrument designed to facilitate coordination between countries in dealing with cross-border bankruptcy.
 - b. One of its advantages is that it allows the recognition of bankruptcy judgments from one country to another, so that assets can be executed more easily.

- c. However, its effectiveness is limited because not all countries have ratified it. Countries that do not ratify are not bound to follow this mechanism, so asset settlement can be more difficult.

Furthermore, based on the results of the author's interview with the main informant who stated that: "The settlement of bankruptcy assets abroad is more effective if the country where the assets are located has rules that are in line with the principles of international bankruptcy. The UNCITRAL Model Law could be an ideal solution, but its limitations in the scope of ratifying countries make other methods such as bilateral agreements and courts still necessary. Therefore, it is important for countries to increase cooperation in cross-border bankruptcy law to speed up and simplify the asset settlement process". Furthermore, based on the results of the author's interview with supporting informants who stated that: "The effectiveness of the settlement of bankruptcy assets against bankruptcy entities located abroad depends on several factors, including legal jurisdiction, principles of international law, and cooperation between countries in bankruptcy cases".

Here are some important aspects related to the effectiveness of settling bankruptcy assets abroad:

1. Territorial Principle vs. Universal Principle
 - a. Territorial Principle: Some countries apply the principle that bankruptcy applies only within the limits of their national jurisdiction, so that assets abroad cannot be settled directly by the trustee.
 - b. Universal Principle: Countries that adhere to the universal principle recognize and allow bankruptcy judgments from other countries to take effect within their jurisdiction, making the settlement of assets more effective.
2. Recognition of Bankruptcy Court Judgment in Other Countries
 - a. The effectiveness of settling assets in bankruptcy abroad depends on whether the country recognizes the bankruptcy judgment issued by the court in Indonesia or the country of origin of the bankruptcy.
 - b. Some countries have strict rules about the recognition of foreign judgments, for example, there must be a legal cooperation agreement or the principle of reciprocity.
3. Conventions and International Cooperation
 - a. There are several international instruments that can assist in the settlement of cross-border bankruptcy assets, such as:
 - 1) UNCITRAL Model Law on Cross-Border Insolvency – provides guidelines for countries in dealing with cross-border insolvency.
 - 2) EU Insolvency Regulation – regulates cooperation in bankruptcy proceedings in the European Union.
 - 3) Bilateral or multilateral agreements between certain countries that govern the recognition and enforcement of bankruptcy judgments.
4. Challenges in Execution of Bankruptcy Assets Abroad
 - a. Differences in legal systems: Each country has different bankruptcy rules, so the curator must adjust to the rules of the country where the bankrupt object is located.
 - b. Complex legal costs and processes: Overseas legal proceedings can be expensive and time-consuming, especially if they have to file a lawsuit or an application for recognition in a local court.
 - c. Unwillingness of foreign parties to cooperate: Not all countries are willing to cooperate in executing foreign bankruptcy assets, especially if they protect the interests of local creditors.
5. Efforts That Can Be Made to Increase Effectiveness
 - a. The Conservator can work with a law firm or bankruptcy authority in the country where the bankruptcy is located.
 - b. Apply for a declaration of bankruptcy in the court of that country if possible.
 - c. Use bilateral agreements or international instruments to speed up the settlement process.

Based on the results of the author's interview with the main informant who stated that:

"The effectiveness of settling bankruptcy assets abroad is highly dependent on international legal cooperation and the recognition of bankruptcy judgments by other countries. If the country where the bankrupt is located has a cooperation agreement or universal principle, then the settlement process is easier. However, if the country refuses to recognize foreign judgments or has different legal principles, then the settlement of assets can be difficult and require additional legal remedies."

3.1.4 Factors That Affect the Effectiveness of Liquidating Bankruptcy Assets Abroad

According to the author's analysis with the results of the author's interview with the main informant who stated that the factors that affect the effectiveness of the settlement of bankruptcy assets against bankruptcy assets abroad include:

1. Legal Knowledge Factor

The legal knowledge possessed by curators, judges, creditors, and other related parties greatly affects the effectiveness of settling bankruptcy assets abroad. These factors include:

- a. An understanding of international bankruptcy law and the rules of the country where the bankruptcy is located.
- b. The ability of curators to take care of the recognition of bankruptcy judgments in foreign countries.
- c. Expertise in using international legal instruments, such as the UNCITRAL Model Law on Cross-Border Insolvency.

If the parties have a good understanding, then the settlement of assets will be more effective. Conversely, a lack of knowledge can slow down the process and increase the risk of execution failure.

2. Public Awareness Factors

Public awareness, especially creditors and debtors, of the importance of transparent and structured bankruptcy affects the success of asset settlement abroad. These factors include:

- a. Creditors' awareness to participate in the bankruptcy legal process.
- b. The readiness of the debtor to cooperate in the settlement of assets, including those abroad.
- c. The role of the community in supporting the legal process, for example by not hiding bankruptcy assets.

Lack of awareness can lead to resistance from debtors or avoidance of obligations, which hinders the effectiveness of asset settlement.

3. Cultural Factors of the Society

Each country has a different legal culture, which can affect how they handle cross-border bankruptcy. Some influential aspects of culture include:

- a. Attitude towards failed businesses: in some countries, bankruptcy is considered a disgrace, so the debtor may try to hide assets.
- b. Legal principle held: countries that are more closed to foreign intervention may not recognize bankruptcy judgments from abroad.
- c. Business ethics: in a country with a strong business culture, the relevant parties are more cooperative in the asset settlement process. These cultural differences can slow down or speed up the process of executing bankruptcy assets abroad.

4. Facilities and Facilities Factor

The existence of adequate legal and technological infrastructure greatly supports the effectiveness of settling assets in cross-border bankruptcy. These factors include:

- a. Access to global financial information systems to track bankrupt assets.
- b. The availability of courts and institutions that handle international bankruptcy.
- c. Ease of communication between curators, courts, and related parties in various countries. If the facilities and facilities are inadequate, the asset settlement process can be hampered by bureaucracy and administrative difficulties.

According to the results of the author's interview with the main informant who stated that: "The effectiveness of the liquidation of bankruptcy assets against bankruptcy assets abroad is greatly influenced by legal knowledge, public awareness, legal culture in the relevant country, and available facilities and facilities. Efforts to increase international legal cooperation, increase awareness and compliance of debtors, and improve legal infrastructure can help facilitate the asset settlement process more effectively". Additional Interview Results Regarding the Effectiveness of Bankruptcy Assets Settlement on Bankruptcy Assets Abroad. Speakers: 1). Dr. Andi Wijaya, S.H., M.H. – Bankruptcy Law Expert. 2), Mr. Rudi Santoso, S.H.-Bankruptcy Curator. 3). Mrs. Siti Marlina – Creditor in a cross-border bankruptcy case

1. Legal Knowledge Factor

Question: How important do you think legal knowledge is in settling bankruptcy assets abroad? Dr. Andi Wijaya: "Legal knowledge is very important, especially for curators and creditors. Many cases of bankruptcy assets settlement abroad have failed because the parties involved do not

understand the differences in the legal system between countries. Curators must have a deep understanding of international bankruptcy law and legal instruments such as the UNCITRAL Model Law."

Mr. Rudi Santoso: "As a curator, I often face challenges in applying for recognition of bankruptcy judgments in other countries. If we don't have a good understanding, we can lose the legal process, and the debtor's assets cannot be executed."

2. Public Awareness Factors

Question: How does public awareness affect the settlement of cross-border bankruptcy assets? Mrs. Siti Marlina: "Many creditors do not know that they can file claims against debtors' assets abroad. They only focus on domestic assets. As a result, debtors often hide their assets abroad to avoid paying debts." Mr. Rudi Santoso: "This awareness also applies to debtors. If they do not understand the legal implications of bankruptcy, they may avoid liability by illegal means. This can actually complicate the process of settling assets and prolong the settlement of cases."

3. Factors of the Community's Culture.

Question: How do cultural factors in different countries affect the settlement of bankruptcy assets abroad? Dr. Andi Wijaya: "Every country has a different legal culture. In some developed countries, bankruptcy is seen as part of the business and there is a more transparent system. However, in some developing countries, bankruptcy is still considered a major failure, so debtors tend to hide their assets." Mr. Rudi Santoso: "I have dealt with cases where debtors hid their assets in countries that are less cooperative in cross-border bankruptcy. The country does not recognize the Indonesian court ruling, so it becomes difficult to settle assets."

4. Facilities and Facilities Factor

Question: How much influence do facilities and facilities have in the settlement of bankruptcy assets abroad? Ms. Siti Marlina: "Access to global information systems such as international banking is very important. Without adequate technology, creditors and curators will find it difficult to keep track of debtors' assets stored abroad." Dr. Andi Wijaya: "Courts and bankruptcy institutions in various countries must also work together. If a country does not have a system that supports cross-border bankruptcy, the process will be very long and bureaucratic." Based on the analysis, the author concluded that: From this interview, it can be concluded that the effectiveness of the settlement of bankruptcy assets against bankrupt assets located abroad is influenced by several main factors: 1). Good legal knowledge will speed up the process of liquidating assets. 2). Public awareness, both creditors and debtors, greatly affects transparency in the bankruptcy process. 3). Legal culture in the country where the assets are located can facilitate or hinder the execution of assets. 4). Legal and technological facilities and facilities are essential to support the effective settlement of assets. To increase the effectiveness of liquidating assets abroad, it is necessary to increase international legal cooperation, education for creditors and debtors, and the use of technology in tracking assets across countries.

Based on the results of the interviews that have been conducted, it can be concluded that the settlement of bankruptcy assets against bankrupt assets located abroad is a complex process and is influenced by various factors. The analysis of each factor can be described as follows:

1. Legal Knowledge Factor

Good legal knowledge, especially in international bankruptcy law, has a great influence on the effectiveness of bankruptcy settlement. Curators who understand the legal systems of other countries will find it easier to file claims against debtors' assets that are abroad. Conversely, a lack of understanding can hinder legal processes and risk leading to failures in executing assets. From the interview with Dr. Andi Wijaya and Mr. Rudi Santoso, it can be seen that international bankruptcy law is still a challenge for many curators. This shows that training and education for curators are needed so that they are better prepared to handle cross-border cases.

2. Public Awareness Factors

Public awareness, especially from creditors and debtors, is also an important factor. Creditors who have no knowledge of their rights in cross-border bankruptcy tend to focus only on domestic assets, thus allowing the debtor to hide their assets abroad. From the interview with Mrs. Siti Marlina, it can be seen that many creditors do not understand that they can file claims against assets that are abroad. Therefore, wider socialization is needed so that creditors can be more proactive in demanding their rights. On the other hand, debtors who have low legal awareness tend to try to avoid obligations in illegal ways. This makes the process of settling bankruptcy assets more difficult. Therefore, stricter legal mechanisms are needed to prevent these kinds of practices.

3. Cultural Factors of the Society

Legal culture in various countries is very influential in the settlement of bankruptcy assets abroad. In developed countries, bankruptcy is often considered part of the business, making the asset settlement process more transparent and efficient. However, in some developing countries, bankruptcy is still seen as a major failure, which causes debtors to be reluctant to cooperate and tend to hide their assets. The statements of Dr. Andi Wijaya and Mr. Rudi Santoso corroborate the fact that there are countries that are not cooperative in handling cross-border bankruptcy. This shows the need for stronger international legal agreements so that the asset settlement process can be more effective and not hampered by differences in legal culture.

4. Facilities and Facilities Factor

The existence of legal and technological infrastructure also plays an important role in the effectiveness of bankruptcy settlement. Lack of access to global financial information systems can make it difficult to track debtors' assets abroad. From the interview with Mrs. Siti Marlina and Dr. Andi Wijaya, it can be seen that technology and inter-agency cooperation in various countries greatly determine the success of this process. If the courts and bankruptcy institutions in different countries have interconnected systems, then asset settlement can run faster and more efficiently. Based on the above analysis, it can be concluded that the effectiveness of the settlement of bankruptcy assets against bankruptcy assets located abroad depends on four main factors: legal knowledge, public awareness, legal culture, and legal facilities and facilities. To increase the effectiveness of settling assets abroad, some recommendations that can be given are: 1). Increasing international bankruptcy law education for curators and creditors so that they better understand legal mechanisms in other countries. 2). Socialization to creditors and debtors about their rights and obligations in cross-border bankruptcy so that the asset settlement process is more transparent. 3). Strengthening international legal cooperation, including through bilateral or multilateral agreements to facilitate the recognition of bankruptcy judgments in other countries. 4). Development of a global financial information system that can help track debtors' assets abroad more effectively. By implementing these steps, it is hoped that the process of settling cross-border bankruptcy assets can run more smoothly and provide better legal protection for creditors.

4. CONCLUSION

The effectiveness of the settlement of bankruptcy assets against bankrupt assets located abroad includes by submitting an application through the court in the country where the debtor's property is located, through bilateral agreements, diplomatic channels, and using the UNCITRAL Model Law on Cross Border Insolvency with Guide to Enactment. In the solution, it will certainly be easier to use the UNCITRAL Model Law on Cross Border Insolvency with Guide to Enactment, but until now not all countries in the world have ratified so that countries that do not ratify this provision cannot be used. Factors that affect the effectiveness of liquidating bankruptcy assets against bankruptcy assets abroad: Legal Knowledge Factors, Public Awareness Factors, Community Cultural Factors, Facilities and Facilities Factors.

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