

The Curator's Authority in The Management & Settlement of Bankruptcy Property

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Abstract. *One of the most thought processes of a company that's a lawful substance to borrow or utilize capital from third parties is the crave to extend the benefits that can be accomplished. The extra modern capital can be utilized to smooth the company's cash stream or commonly utilized as a company commerce improvement. A company is said to be bankrupt (bankrupt), when the company/individual is unable and unwilling to pay its debts. Therefore, in order to prevent creditors from collecting debtors and fighting over the assets of the bankrupt debtor, the law considers it necessary to regulate it, so that the debtors' debts can be paid in an orderly and fair manner. Bankruptcy law institutions emerged to regulate fair procedures regarding the payment of creditors' bills by being guided by the Civil Code (KUHPerdt), especially those contained in Articles 1131 and 1132 concerning privileged receivables, as well as using the Bankruptcy Law and the Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy and Suspension of Debt Payment Obligations). This article used combination of standardizing juridical strategies and experimental juridical strategies, which is carried out by centering on the ponder of the application of positive lawful rules or standards related to legitimate directions (laws). The purpose of this article is to examine the authority of the curator in managing and clearing bankruptcy assets related to the company's actors. The strategy utilized in composing this article is to utilize a combination strategy between standardizing juridical and experimental juridical strategies, which 1 is carried out by centering on the consider of the application of positive legitimate rules or standards related to lawful controls (laws), and after that related to the standards contained in liquidation, to be specific the guideline of adjust, the rule of commerce progression, the rule of equity, and the guideline of integration.*

Keywords: Authority; Bankruptcy; Curator; Property.

1. Introduction

The development and improvement of the national financial division cannot be isolated from the development and improvement of financial performing artists who carry out current financial exercises, and this may happen due to a few variables, counting the presence of a source of stores, since stores are very important as a driving constrain within the operational exercises of the trade world. At this time numerous companies

are encountering troubles in terms of financing. One of the causes is the tall dollar trade rate,¹ which exists within the outside trade advertise and comes about in numerous companies encountering a need of capital or reserves to meet the company's operational needs.

In running its commerce, a company must need to urge most extreme comes about. Companies that have accomplished the target certainly need to create their commerce so that they can accomplish the another greater target. This has come about in numerous companies applying for advance stores to a few managing an account companies or financial service suppliers. One of the most thought processes of a company that's a legitimate entity to borrow or utilize capital from third parties is the want to extend the benefits that can be accomplished. The extra unused capital can be utilized to smooth the company's cash stream or commonly utilized as a company commerce improvement.

On the other hand, one of the main motives of the bank/creditor or lender willing to give a loan is the desire to get a return for the loan (for example, interest). This lending and borrowing activity has become something common in the business world. However, in the business world, it is also inseparable from the risk of losses, even the amount of risk of loss can be the main consideration in determining the amount of compensation for a loan. In case there's a disappointment in doing commerce, the indebted person and leaser will suffer misfortunes. Typically since the debtor cannot pay his obligation to the leaser. Moreover, leasers don't advantage from the anticipated credit intrigued. The disappointment of this company can be said to be "bankrupt".

A company is said to be bankrupt (bankrupt), when the company/individual is unable or unable to pay its debts. Therefore, there needs to be a specific affirmation in the bankruptcy provisions regarding the accountability of the curator because the authority of the curator still requires a definite rule of law and avoids extensive interpretation and considering that the scope of the norms in Article 1365 of the Civil Code is too flexible, in addition to also in practice not a few curators abuse their power as curators.

Within the occasion of insolvency, there are numerous interface included, to be specific in expansion to the interface of the lenders as well as the interface of other partners of the indebted person who is announced bankrupt, especially if the indebted person may be a company. Not only the State is interested within the presence and advancement of companies, but too the more extensive community. Companies give work openings to the community. Of course, the liquidation of a company comes about in End of Work (PHK) for the laborers and workers of the company.

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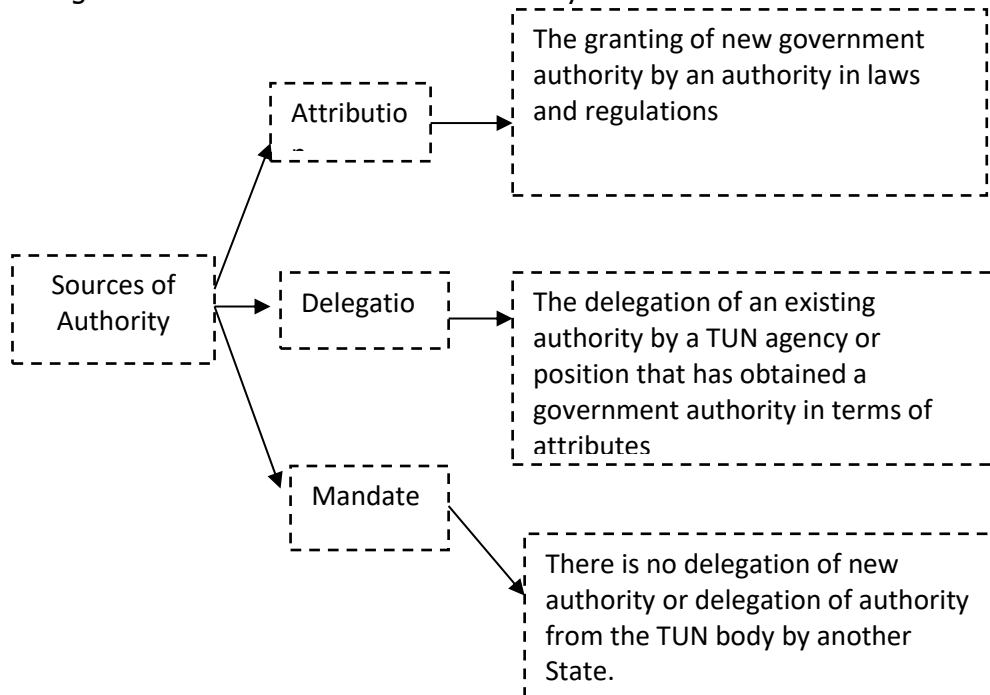
1. Reference and Renewal Studies

a. Definition of Authority

The word "authority" is often identified with the word "authority" with the understanding of the right and power to act. Authority can be synonymous with "*authority*" (Alexandre Kojeve, 2024), which means the right to do something or

order others to do something. The other side of the word authority in legal language is "*macht*" (Heinz Guenther, et.al, 2024), and at the same time it means rights and obligations (*rechten and enplichten*). Related to the meaning of the region is the authority to self-regulate "*zelfregelen*". Another term is that power is usually in the form of a relationship with one party who rules and the other party is certainly ruled (*the rule and the ruled*) (Zachrany Price, 2024). For a further explanation of the meaning of authority and authority in accordance with the concept of the source of authority, the following can be described in the following scheme:

Figure.1. Schema of Sources of Authority



b. Curator Definition

In the bankruptcy stage, the curator and curator are very important, where the curator is an institution established by law to settle the bankruptcy property (Susanti Adi N, 2018). In Law No.37 of 2004 it is stated that the curator is a professional appointed by the Commercial Court to carry out management and settlement, on the other hand his duty is to calculate the assets of the bankrupt company (Bagus Prasetio, et al, 2024).

c. The Meaning of Bankruptcy, and Bankruptcy Assets

The word bankruptcy comes from the word "*failite*" which comes from the French language, which can be interpreted as a payment (Rahayu Hartini, 2007). Another term is for example "*bankruptcy*" from the Dutch language, and in Anglo American law it is known as the "*bankruptcy Act*", which is considered significant in the form of bankruptcy law (Elyta Ras Ginting, 2018). It has also now developed with modern bankruptcy law, which is related to principles related to bankruptcy principles such as the principle of balance, the principle of business continuity, the principle of justice, and the principle of integration. The

assets of the bankruptcy debtor are in the management of the curator for the benefit of all debtors (Faishal Fatahillah, et al., 2024).

2. Research Methods

This article used combination of standardizing juridical strategies and experimental juridical strategies, which is carried out by centering on the ponder of the application of positive lawful rules or standards related to legitimate directions (laws). In the interim, the experimental juridical strategy is to analyze the choice of the insolvency case within the Commercial Court. These two approaches will be combined together, coming about in more exact lawful fabric. As an instrument to analyze this inquire about, two approaches are utilized, specifically the statute approach and the comparative approach. The utilization of two approaches in this think about is to complement one approach with another. On the off chance that all legitimate materials have been gotten and collected, both essential, auxiliary and tertiary lawful materials, at that point they are analyzed subjectively by portraying the legitimate marvels being examined. At that point the materials are organized efficiently, so that it'll deliver a certain classification agreeing to the detailing of the issue talked about in this study.

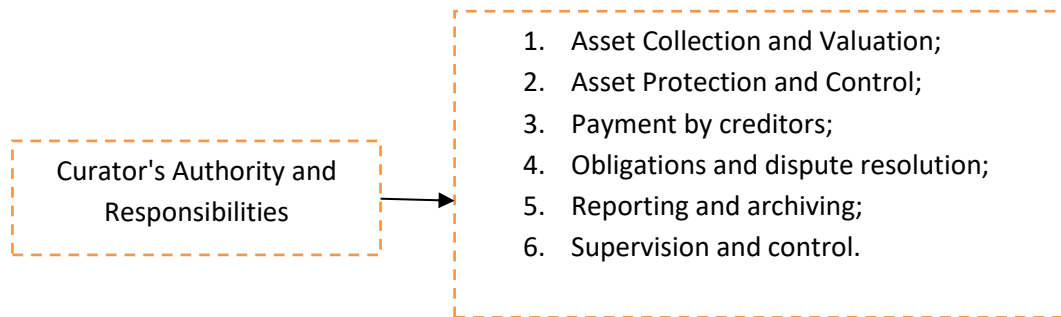
3. Results and Discussion

The Curator's Specialist in Overseeing and Clearing Liquidation Resources

Based on the previous explanation that one of the obligations of the curator's specialist in overseeing and clearing insolvency resources, there are a few articles that have the potential to happen manhandle of obligations and specialist by the curator in managing bankruptcy assets. Article 16 paragraph (1) of the Law which reads "The curator is authorized to carry out the task of managing and/or settling the bankruptcy property from the date the bankruptcy judgment is pronounced even if the decision is filed for cassation or review". In paragraph (2) it is stated that "within the occasion that the liquidation judgment is canceled as a result of cassation or survey, all acts that have been done by the keeper some time recently or on the date the guardian gets notice of the cancellation choice as alluded to in Article 17 of the Law stay substantial and official on the indebted person. On the other hand, the curator's specialist is additionally not required to get endorsement from the indebted person . On the other hand, the curator's authority is also not required to obtain approval from the debtor, make loans from third parties, transfer bankruptcy assets, file a peace, file a lawsuit, and others (Fadila Ilaina Rokhma, et al., 2024).

In the event that the curator's activities that require endorsement are carried out without the earlier endorsement of the curator's supervisory judge, they can be held actually obligated. The guardian must be dependable for carelessness or blunders in carrying out administration and settlement commitments that cause misfortunes or diminished within the esteem of the insolvency property, in other words bankruptcy bankruptcy. The guardian can commit illegal acts so that he is additionally actually capable for misfortunes suffered by third parties. This is often on the off chance that the activities of the guardian that are negative to the bankrupt property and the third party are activities exterior the curator's specialist given to him by law, cannot be charged to the liquidation property, and are the individual duty of the keeper, the following can be described in this scheme:

Figure.2. Duties and Authorities and Responsibilities of the Curator



On the other hand, it is also the opposite if the actions of the curator are carried out in accordance with the authority, as well as duties (Freisy Maria K, 2015), given to him by law and carried out in good faith, but because things beyond the curator's power turn out to be detrimental to the bankrupt property, then the curator cannot be personally accountable to the curator and the losses are charged to the bankruptcy property.

Losses that arise as a result of the curator's actions are the responsibility of the curator (Raisa Inayati, 2024). In this case the keeper is actually capable, the keeper must pay for the misfortunes it causes. This risk can happen, for illustration in case the guardian embezzles the liquidation resources. Misfortunes caused as a result of carelessness or due to the unprofessionalism of the keeper are the obligation of the guardian. Hence, the misfortune cannot be charged to the insolvency property.

Article 71 paragraph (1) of the Constitution, the court may at any time allow the proposition to supplant the guardian, after summoning and hearing the keeper, and designate another guardian and/or delegate an extra guardian with the curator's possess ask and other curator's ask in the event that any, as well as the proposal of the supervisory judge, including the request of the bankruptcy debtor.

In Article 71 paragraph (2) the Court must dismiss or appoint the curator at the request or proposal of the concurrent creditor based on the decision of the creditor meeting held based on the creditor meeting, the supervisory judge can also hold a meeting by determining the day, date, time, and place of the meeting. Furthermore, all creditors who have voting rights and the supervisory judge must also set a grace period (Olivia G.Putri, et al, 2023).

The curator cannot arbitrarily take action against the *bankruptcy boedel*, this is in accordance with the reading of Article 77 of the UUK, namely:

(1)each creditor, creditor committee, and bankruptcy debtor may submit a letter of objection to the Supervisory Judge against the act committed by the curator or request the Supervisory Judge to issue a warrant for the curator to commit certain acts or not to do the planned acts.

(2)The supervising judge must submit a letter of objection to the curator no later than three (3) days after the objection letter is received.

(3)The Curator must provide a response to the Supervisory Judge no later than three (3) days after receiving the objection letter.

(4)The Supervisory Judge must provide a determination no later than three (3) days after the response from the curator is received.

Article 78 paragraph (1) states that the absence of power of attorney or permission from the Supervisory Judge, in the event that power of attorney or permission is required, or the non-compliance with the provisions as referred to in Article 83 and Article 84, does not affect the validity of the act carried out by the curator against a third party. Paragraph (2) states that in connection with the act, the curator himself is responsible for the bankrupt debtor and creditors.

The reason of the article is that in the event that to commit an act against a third party, the keeper needs a control of lawyer or authorization from the supervisory judge but it turns out that the control of lawyer or authorization does not exist or isn't gotten or the keeper in carrying out the act does not notice the arrangements of Article 83 and Article 84 of the Criminal Code, the act against the third party is legally valid. However, as a consequence, according to paragraph (2) of the above article, the curator must be personally responsible for the bankrupt debtor and creditors.

As a result of the arrangements in Article 72 and Article 78 of the Criminal Code, the guardian can be sued and obliged to pay emolument in case due to his carelessness, particularly since his botch (done intentioned) has caused the parties inquisitive about the liquidation property, particularly of course the concurrent lenders, to be hurt. The misfortune is particularly on the off chance that the liquidation property diminishes in esteem so that the concurrent banks get less than they ought to get from the continues of the deal of the liquidation property as a result of the curator's activities.

For the advantage of leasers, concurrent leasers ought to delegate keepers who have adequate budgetary backing up. These conditions are not stipulated by the Law, but in case in practice typically not done, it'll be a botch for leasers to sue the guardian within the occasion that the guardian makes a botch or carelessness so as to cause misfortunes to the insolvency resources as alluded to in Article 72 and Article 78. A court choice that rebuffs the keeper to compensate for harms will as it were be a triumph on paper for the plaintiff's banks in the event that the keeper does not have adequate specialist, since the execution of the judgment will not be palatably realized.

The curator should be protected by insurance (Dede Iskandar, et al., 2020), and an important organ in bankruptcy (Quantri H.O, 2017). This means that if the curator makes a mistake or negligence that causes losses to the bankrupt property and because of his actions he is punished by the court to pay compensation, then the insurance company will pay the compensation. This type of insurance is also usually used to protect members of the board of directors or commissioners of a debtor company in connection with the obligation imposed by law to pay compensation if due to their fault or negligence causes losses to the debtor company and for their actions it is punished by the court to pay compensation to the aggrieved plaintiffs.

Curators have two legal obligations in carrying out their duties and authority. The first obligation is as stipulated in the UUK-PKPU. In other words, the curator carries out

statutory duties, which are obligations determined by law. The second obligation is in the form of *fiduciary duties* or *fiduciary obligations*.

Curators carry out *fiduciary duties* or *fiduciary obligations* because curators have a *fiduciary relationship*. *Fiduciary duties* of curators to the court. Furthermore, in the Indonesian Law, it is represented by the Supervisory Judge, including bankruptcy debtors, creditors and shareholders.

In other words, the guardian carries the believe of the court, the indebted person, the lenders, and the shareholders to carry out their obligations as well as conceivable for the good thing about these parties.

The guardian commitments of the guardian in connection to the indebted person company are to carry out their obligations and specialists indicated within the Law in great faith and for the good thing about the company . Curators should not include, let alone prioritize their personal interests. His personal interests must not clash with his duties. The curator must act independently, must not take sides with the parties, namely debtors and creditors who have their own interests. The guardian must act within the intrigued of the debtor and at the same time within the intrigued of the lender as a entirety.

In connection to banks, the guardian must not as it were not hurt but moreover must not advantage one or portion of his leasers. The benefits gotten by a few lenders will be inconvenient to other lenders. As expressed over, the guardian in carrying out his obligations and specialist isn't for the good thing about certain leasers as it were. But for the whole bank.

So it is exceptionally clear that the individual duty of a guardian is colossal. The wide specialist given by the Law to keepers could be a burden for guardians to use caution and dependable in carrying out their obligations. For this reason, the polished skill of a guardian is required, since a need of judiciousness in overseeing liquidation resources will have juridical suggestions for the guardian himself, in expansion to having an affect on the specialist of the court.

In addition to the state that has an interest in the existence and development of companies, the community also has an equally important interest. That is, companies that provide job opportunities to the community, so that the unemployment rate will decrease and the economic level will improve. This is one of the goals of the state, which is to improve the economic level of the community to be better and prosperous.

If the company goes bankrupt, the first victims are the workers with the occurrence of Termination of Employment (PHK) against the workers and employees of the company. The layoff action against workers will cause concern for workers who work and result in making discomfort in the workplace environment, so that the downturn of companies that have been declared bankrupt can be slumped and do not have the opportunity to settle their debts to creditors. In essence, every company will maintain its company not to go bankrupt or bankrupt, because this can not cause the cessation of business and the repayment of all debts and receivables.

The company too gives life openings to its providers, both providers of products and administrations. Numerous of these providers are medium and little companies that are gathered to be secured by the government. These

medium and little companies more often than not have as it were one or two overwhelming buyers, so their lives depend intensely on fair one or two companies. In this manner, the liquidation of a company can lead to the liquidation of other little companies that are providers.

4. Conclusion

The wide specialist given by the Insolvency Law to the keeper could be a burden for the keeper to watch out and mindful in carrying out his obligations since the parties who are hurt by the activities of the guardian in carrying out his obligations can record a claim for the misfortunes he has endured to the keeper. Keeper may be a legacy domain or an person designated by the Court to oversee and settle the resources of a bankrupt indebted person beneath the supervision of a supervisory judge in accordance with this law. In case the keeper could be a individual, the keeper must be domiciled in Indonesia who has uncommon aptitudes as required to oversee and settle liquidation resources and has been enrolled with the Service of Equity and Human Rights, as referred to in the Bankruptcy Law (Article 69 and Article 70) and its implementing regulations.

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