

## **The Responsibilities of the Curator in Managing and Selling Bankruptcy Assets Below Market Prices**

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**Abstract.** *Bankruptcy is a process in which a debtor who has financial difficulties paying his debts is declared bankrupt by a court, in this case the Commercial Court, because the debtor cannot pay his debts, the debtor's assets can be distributed to creditors in accordance with applicable laws and regulations. This study aims to find out and analyze the responsibilities of the curator in managing and selling bankruptcy assets below market prices, as well as legal remedies for bankrupt debtors due to selling bankruptcy assets below market prices by the curator. The research was conducted at the Commercial Court at the Semarang District Court. The type of legal material research used is the sociological juridical research method, the author conducts research on a legal provision and phenomena or events that occur in the field along with case examples and decisions. The sociological juridical approach method is a research method by trying to see the suitability of normative rules, namely Act No. 37 of 2004 and also the facts on the ground. As for the responsibility of the curator in managing and selling bankruptcy assets below the market price, the curator should be personally responsible for the losses that arise. Also, the bankrupt debtor has the right to file legal remedies due to losses arising from the curator's negligence. Meanwhile, if the bankrupt debtor suffers a loss due to the negligence of the curator in carrying out the management of bankruptcy assets. Thus, the curator must be personally responsible for the losses arising from the settlement of the bankruptcy estate. Legal remedies that can be taken by a bankrupt debtor are filing a lawsuit against the law for the loss and filing other lawsuits in accordance with the guidelines and provisions of Act No. 37 of 2004 concerning bankruptcy and postponement of debt payment obligations.*

**Keyword :** Bankruptcy; Curator; Debtor.

## 1. Introduction

In running a company, entrepreneurs need workers to be able to help operationalize their company to make a profit. But the business does not necessarily always go according to plan. Every business always carries a risk of loss in it, and that is a natural thing. There are several things that cause a business activity not to go according to plan, even having to experience bankruptcy or bankruptcy. Bankruptcy is a process in which a debtor who has financial difficulties paying his debts is declared bankrupt by a court, in this case the Commercial Court, because the debtor cannot pay his debts, the debtor's assets can be distributed to creditors in accordance with applicable laws and regulations.<sup>1</sup>

One of the legal means that forms the basis for settling debts and is closely related to the bankruptcy of the business world is regulations regarding bankruptcy, including regulations regarding postponement of debt payment obligations.<sup>2</sup>It should be noted that the history and dynamics of bankruptcy law in Indonesia have a long history. In fact, it started since the era of the Indonesian government before gaining independence, until after the reform. Therefore, it cannot be denied that some of the regulations regarding bankruptcy law are colored by the rules established by the Dutch colonial government. However, during the period from 1945 to 1998, there was no renewal of the bankruptcy law. Just entering the post-reform period, the Indonesian government issued Perpu No. 1 of 1998. And until now the regulations regarding bankruptcy law itself have changed and been enacted through Act No. 37 of 2004.<sup>3</sup>

The definition of bankruptcy itself is clearer in Act No. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (hereinafter referred to as "UUK PKPU") Article 1 Number 1 namely, "a general confiscation of all the assets of the bankrupt debtor whose management and settlement are carried out by the curator under the supervision of the supervisory judge".<sup>4</sup>In this case, it should also be noted that bankruptcy is a rule that has the objective

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<sup>1</sup>Dadang Sukandar, The purpose and objectives and business activities of the company, legalaccess.com, <https://www.legalaccess.com/maksud-dan-target-sert-activity-usaha-perseroan/>, accessed on 14 February 2021 at 21.00 WIB

<sup>2</sup>Ahmad Yani and Gunawan Widjaja, Bankruptcy Business Law Series, (Jakarta:PT Raja Grafindo Persada, 2000), p.2

<sup>3</sup>Ahmad Saprudin, "Techniques for solving sharia economic bankruptcy cases", (Yogyakarta: Student Library, 2018), page 25

<sup>4</sup>Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations

of distributing the debtor's assets to his creditors by conducting a general confiscation of all of the debtor's assets which are then distributed to creditors in accordance with their proportionate rights.<sup>5</sup>

Bankruptcy cases can be pursued through a commercial court process which then after having permanent legal force, through a judge intermediary, the creditor can confiscate the debtor's assets to be used as payment money. Etymologically, the term bankruptcy comes from the word bankruptcy which, if traced more fundamentally, this term is found in European treasuries. In Dutch, the word bankruptcy comes from the term failiet, while in French it comes from the word failite, which means a strike or a payment jam. In English-speaking countries, the terms bankrupt and bankruptcy are represented by the words bankrupt and bankruptcy.<sup>6</sup> Or in other words, bankruptcy is a condition or condition of a person or legal entity that is no longer able to pay its obligations and/or stop paying its debts.<sup>7</sup>

If a debtor is decided to become a bankrupt debtor by a commercial court, it will bring legal consequences, namely that the debtor will be subject to general confiscation of all the bankrupt debtor's assets and the bankruptcy debtor's authority to control and manage his bankrupt assets will be lost. Meanwhile, creditors will experience uncertainty about the legal relationship that exists between bankrupt debtors and creditors.<sup>8</sup>

For the purposes above, Act No. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt determines which party will take care of problems between creditors and bankrupt debtors by appointing a curator who will later manage and settle the debtor's bankrupt assets and settle the legal relationship between the bankrupt debtor and his creditors.

Even in a state of bankruptcy, the debtor's debt cannot be written off, the debtor still has to pay his debts to the creditor, this is where the role of the curator is needed, in order to achieve the goal of bankruptcy, when a debtor is declared bankrupt, the curator should not act as an asset seller. However, the curator

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<sup>5</sup>Hadi Shubhan, "Protecting Solven Companies with Good Faith From Bankruptcy Abuse", *Journal of Business Law* Vol 33 No. 1, 2014, Pg 13

<sup>6</sup>Munir Fuady, *Bankruptcy Law*, (Bandung: PT Citra Aditya Bakti, 1999), page 10

<sup>7</sup>Zainal Asikin, *Bankruptcy Law and Suspension of Payments in Indonesia*, (Jakarta: PT Raja Grafindo Persada, 2001), page 26

<sup>8</sup>Imran Nating, "The Role and Responsibilities of the Curator in Management and Settlement of Bankruptcy Assets", PT. Raja Grafindo Persada, Jakarta, 2004, p. 57

must be able to carry out the principle of justice. The principle of justice for a curator is being able to be fair when recording all bankruptcy assets both hidden and real assets, seeking or maximizing bankruptcy assets, maintaining or increasing the value of bankruptcy assets, selling bankruptcy assets at the maximum price, dividing the proceeds from bankruptcy sales to each creditor according to with strata, and dissolve debtors who are insolvent. Moreover, the trend of overseas curators,<sup>9</sup>

The curator has the obligation to perform the duties of managing and/or settling bankruptcy assets in accordance with Article 69 paragraph (1) of the bankruptcy law. According to Jerry Hoff, the purpose of bankruptcy is to pay the rights of creditors that they should have obtained according to their level of order. Therefore the curator must act in the best interests of creditors and debtors. The curator is obliged to ensure that all actions are in the interest of the bankruptcy estate.

The curator starts the settlement of bankruptcy assets after the bankruptcy assets are in a state of being unable to pay and the debtor's business is stopped. The curator decides how to settle bankruptcy assets by taking into account the best value at the time of settlement. Settlements can be made as one or more business units (going concern) or for each bankrupt asset, and the curator can make settlements by selling in public or if underhanded then must obtain approval from the Supervisory Judge.<sup>10</sup>

In carrying out the task of cleaning up the bankrupt assets, the curator is burdened with two responsibilities, namely responsibility in the capacity of the curator and personal responsibility of the curator. Personal responsibility arises due to the actions of the curator which can cause harm to the bankrupt assets, such as embezzling bankrupt assets. In Article 72 UK & PKPU it is explained that a curator can be sued and is obliged to pay compensation if due to his negligence, especially because his mistakes harm several parties involved in bankruptcy.<sup>11</sup>

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<sup>9</sup>Online Law, <https://www.Hukumonline.com/berita/a/curator-bukan-tukang-jual-asset-lt5232fb549d42f> accessed December 6, 2022.

<sup>10</sup>Imran Nating, 2004. *The Roles and Responsibilities of the Curator in Management and Settlement of Bankruptcy Assets*, Raja Grafindo Persada, Jakarta, p. 84

<sup>11</sup> Amanda Raissa, "Weaknesses of curators in settlement of bankruptcy estate", *Journal of Magnum Opus Law*, Volume 3 Number 2, 2020.

At this time it is no stranger to hearing about complex problems in the business world, even bankruptcy problems often occur in companies that are in the form of limited liability companies. Not a few companies that have been established for a long time can be declared bankrupt. One such company is PT. Citra Guna Perkasa, which is engaged in the procurement of mining goods equipment which has been declared bankrupt by the Commercial Court at the Semarang District Court on November 8 2018 with Decision Number: 22/Pdt. Sus-Bankruptcy/2018/PN.SMG.12

Management and settlement of bankruptcy assets in connection with this decision in the course of time experienced problems. After the supervisory judge appoints and appoints a curator to manage the bankruptcy assets belonging to PT. Citra Guna Mighty. One of the problems that arose as a result of the settlement of the bankruptcy estate was the negligence of the curator in selling the bankruptcy estate below the market price, so that the bankrupt debtor suffered a loss of IDR 5,498,600,000.-. The purpose of this study is to find out and analyze the responsibilities of the curator in managing and selling bankruptcy assets below market prices.

## **2. Research Methods**

Research Methodology is the science of the methods that will be used in conducting a research.<sup>13</sup>Legal research is basically divided into two (2) types, namely Normative Research and Empirical Research. Normative research is research using secondary data so it is also called library research, while what is meant by empirical research is direct research in the community through questionnaires or direct interviews.<sup>14</sup>

## **3. Results and Discussion**

### **3.1. Responsibilities of the Curator in Managing and Selling Bankruptcy Assets Below Market Prices**

The results of the research and discussion in this sub-chapter, the authors will analyze the research and discussion using 2 (two) legal principles, namely: the principle of justice and the principle of legal certainty. To start the research and

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<sup>12</sup>Decision Number: 22/Pdt. Sus-Bankruptcy/2018/PN.SMG, November 08, 2018.

<sup>13</sup>Abdurrahmat Sathoni, 2005. Research Methods and Thesis Compilation Techniques, Rineka Cipta, Jakarta, p. 98.

<sup>14</sup>Soerjono Soekanto and Sri Mamudji, 1985. Normative Legal Research A Brief Overview, CV. Rajawali, Jakarta, p. 1

discussion, the author first describes the general description of the background of the bankruptcy case of PT. Citra Guna Mighty. So that in this sub-chapter the author will divide the description into two parts, namely the background to the bankruptcy case of PT. Citra Guna Perkasa and the responsibility of the curator in managing and selling bankruptcy assets. Researchers conducted research at the Semarang Commercial Court and the Curatorial Team of PT. Citra Guna Perkasa, namely Eko Roesanto Fiaryanto, SH, MH, and Amanda Rizky Hutama, SH

### **3.1.1 The background to the bankruptcy case of PT. Citra Guna Perkasa (in bankruptcy)**

That PT. Citra Guna Perkasa is a Limited Liability Company established based on the Deed of Establishment of a Limited Liability Company "PT CITRA GUNA PERKASA" No. 10 dated October 11 2010, drawn up before Notary DWI HASTUTI, SH, MK.n., Notary in Semarang and has been amended several times, most recently as contained in the deed of PT CITRA GUNA PERKASA Meeting Resolutions No. 192 dated 05 April 2018 made before Notary LEKSAMANA WISNU HARTONO, S.Kom., SH, M.Kn., Notary in Kudus. PT. Citra Guna Perkasa has business activities or is engaged in the implementation of general applications/consulting contractors, including planning and carrying out construction work for buildings, roads, bridges in accordance with the aims and objectives and business activities as stated in its articles of association.

The business activities carried out by PT. Citra Guna Perkasa in the field of Contractors certainly requires business partners to supply the needs in the process. One of the business partners who have established business relationships for a long time in terms of supply of building materials (materials) for the benefit of various projects, namely Riza Prasetyo Wibowo, who also has a building material supplier business (materials) for the needs of shophouse housing development projects (rumah shophouses). ) shophouses (office houses), buildings, factories and other projects both on a large, medium and small scale.

The projects that have been undertaken jointly by the two include the Akhmad Yani Semarang International Airport Filling Project, the Semarang-Bawen Toll Road Filling Project, the Semarang Tonotel Hotel Development Project and others. After time has passed in carrying out projects together, then on 2017, PT. Citra Guna Perkasa Breach of promise in carrying out payment obligations for the supply of building materials (materials).<sup>15</sup>

Actions taken by PT. Citra Guna Perkasa is in the form of delays in payment of

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<sup>15</sup>Based on the Researcher's Interview with the Curator Team of PT. Citra Guna Perkasa, On December 20, 2022.

Material Supply No. D1B/RPW CGP117 December 18 2017 with a total payment of IDR 2,339,587,332 (two billion three hundred thirty-nine million five hundred eighty-seven thousand three hundred and three hundred and two rupiahs).

Whereas on this basis, then Riza Prasetyo Wibowo as a business partner and also a creditor in terms of supplier of project goods carried out by PT. Citra Guna Perkasa filed a bankruptcy application with the Commercial Court at the Semarang District Court. Based on the bankruptcy petition, on November 8 2018, PT. Citra Guna Perkasa was declared bankrupt based on the decision of the Commercial Court at the Semarang District Court No. 22/ Rev. Sus-Bankruptcy/2018/PN.SMG, dated 8 November 2018

That with the bankruptcy decision No. 22/ Pdt.SusPailit/2018/PN.SMG, dated 8 November 2018 by the Commercial Court At the Semarang District Court it has permanent legal force (Inkracht Van Gewijsde), so all forms of management and settlement of the bankruptcy assets of PT. Citra Guna Perkasa (In Bankrupt) is conducted by the curatorial team.

### **3.1.2 Responsibilities of Curator in Managing and Selling Bankruptcy Assets.**

That after PT. Citra Guna Perkasa was declared bankrupt by the Commercial Court at the Semarang District Court, based on Decision No. 22/Pdt.Sus-Pailit/2018/PN.SMG, dated 8 November 2018. Therefore, all management and settlement of bankrupt debtors' assets becomes the responsibility of the curator.<sup>16</sup>

In addition, the bankruptcy decision against PT. Citra Guna Perkasa has legal consequences as described in Book II, part two of Act No. 37 of 2004 concerning bankruptcy and suspension of debt payment obligations, including the following:

3.1.2.1 Bankruptcy includes all of the Debtor's assets at the time the bankruptcy declaration decision was pronounced as well as everything that was obtained during the bankruptcy (Article 21);

3.1.2.2 The debtor by law loses his right to control and manage his assets which are included in the bankrupt assets, from the date the bankruptcy declaration decision is pronounced (Article 24 paragraph 1);

3.1.2.3 All lawsuits against bankruptcy assets must be brought against the curator (Article 26);

3.1.2.4 The Curator must obtain permission from the Supervisory Judge to

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<sup>16</sup>Bankruptcy Decision No. 22/Pdt.Sus-Bankrupt/2018/PN.SMG, dated 8 November 2018

appear before the trial (Article 69 paragraph 5);

3.1.2.5 That the curator is responsible for his mistakes or negligence in carrying out management and/or settlement duties which cause losses to bankruptcy assets (Article 72);

Based on this responsibility, as stated in Act No. 37 of 2004 concerning bankruptcy and postponement of debt payment obligations. Then the Curatorial Team of PT. Citra Guna Perkasa carried out several agendas including:

3.1.2.1 First Creditor Meeting;

3.1.2.2 Receipt of Creditor Bill Submissions;

3.1.2.3 Receivables Matching Meeting and Tax Verification;

3.1.2.4 Carrying out an auction at the Semarang City KPKNL for the Bankruptcy Assets of PT. Citra Guna Perkasa (In bankruptcy);

3.1.2.5 Carry out underhand sales of PT. Bankruptcy Assets. Citra Guna Perkasa (In bankruptcy).<sup>17</sup>

Whereas in the above agenda, there were 5 (five) creditors who filed bills, consisting of:

3.1.2.1 PT. Bank BRI Agroniaga

3.1.2.2 PT. MANDIRI BANK (Persero)

3.1.2.3 PT. MUAMALAT BANK

3.1.2.4 RIZA PRASETYO WIBOWO

3.1.2.5 AGUS HARTONO

As for the amount of claims submitted by separatist creditors, respectively, is as follows:

3.1.2.1 PT. Bank BRI Agroniaga is IDR11,554,974,696.35 (Eleven billion five hundred fifty four million nine hundred seventy four thousand six hundred ninety six point thirty five cents rupiah), and

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<sup>17</sup>Based on the Researcher's Interview with the Curator Team of PT. Citra Guna Perkasa, On December 20, 2022.



3.1.2.2 PT. BANK MANDIRI (Persero) is IDR90,010,778,087.14 (Ninety billion ten million seven hundred seventy eight thousand eighty seven point fourteen rupiahs).

WithThus, the total claims of separatist creditors is IDR 101,565,752,783.49 (one hundred and ten billion five hundred sixty five million seven hundred fifty two thousand seven hundred eighty three point forty nine rupiahs and forty nine cents). While the total collateral value of PT. Citra Guna Perkasa is still bigger than the bill from the separatist creditors, which is IDR 110,097,600,000.- (one hundred and ten billion ninety-seven million six hundred thousand rupiah). Furthermore, based on the Decision of the Supervisory Judge of the Commercial Court at the Semarang District Court No.22/Pdt.Sus-Pailit/2018/PN.Niaga Smg dated 05 February 2021, which essentially explains:

That TimThe curator of PT. Citra Guna Perkasa (In bankruptcy) has made a private sale of part of the bankruptcy assets, with a total selling price of IDR 7,600,000,000.- (seven billion six hundred thousand rupiah) Both are in the name of Agus Hartono, located at Central Java Province, Semarang City, Banyumanik District, Sron dol Kulon Village or locally known as Jalan Bukit Seruni No.43 Semarang, costs: IDR 1,600,000,000.- (one billion six hundred million rupiah). The price is based on PT.Citra Guna Perkasa Property Appraisal Report (In bankruptcy) No. 00098/2.0038-01/PI/05/0164/I/VIII/2020 dated 26 August 2020 issued by KJPP AMAR with a liquidation value of IDR 1,585,505,000 (one billion five hundred eighty five million five hundred and five thousand rupiah).

Both are under the name of AGUS HARTONO, located in Java ProvinceTengah, Semarang City, East Semarang District, Pekunden Village or locally known as TONOTEL HOTEL which is located at Jalan Anggrek I No. 18 Semarang, for IDR 6,000,000,000 (six billion rupiah). The price is based on PT.Citra Guna Perkasa Property Appraisal Report (In bankruptcy) No. 00098/2.0038-01/PI/05/0164/I/VIII/2020 dated 26 August 2020 issued by KJPP AMAR with a liquidation value of IDR 5,880,450,000 (five billion eight hundred eighty million four hundred and fifty thousand rupiah).

The magnitudethe value of private sales of part of the bankruptcy assets of PT. Citra Guna Perkasa (In bankruptcy) carried out by the CURATOR TEAM of PT. Citra Guna Perkasa mentioned above, does not match the value of the collateral for the credit facility received by PT. Citra Guna Perkasa from PT. Bank BRI Agroniaga. The collateral value for the credit facility is as follows:

3.1.2.1 Collateral value of IDR8,046,700,000.- (eight billion forty six million seven hundred thousand rupiah), for land and building "Residential House" (currently has become "TONOTEL hotel")

3.1.2.2 Collateral value of IDR5,051,900,000.- (five billion fifty one million nine hundred thousand rupiah), for land and buildings "Residential Houses".

3.1.2.3 The collateral value mentioned above is based on price appraisal by the Public Appraisal Services Office (KJPP) Doli Siregar and Partners ("DSR") No. Lap: DSR-PST/A/I/16/0084 dated 02 February 2016, which was conducted on request PT. Bank BRI Agroniaga.

Thus, the total collateral value of the credit facility received by PT.Citra Guna Perkasa from PT. Bank BRI Agroniaga is IDR 13,098,600,000, - (thirteen billion ninety eight million six hundred thousand rupiah). This value is far greater than the total price of private sales carried out by the Curatorial Team of PT. Citra Guna Perkasa, which is IDR 7,600,000,000.- (seven billion six hundred thousand rupiah). The difference between the collateral value and the private selling price was carried out by the Curator Team of PT. Citra Guna Perkasa (in bankruptcy) is IDR IDR5,498,600,000.- (five billion four hundred ninety eight million six hundred thousand rupiah).<sup>18</sup>

Based on the actions of the Curator Team who had made private sales at a selling price that was far less than the price of the collateral value of PT. Citra Guna Perkasa (In bankruptcy), it was a mistake or at least the negligence committed by the Curator in carrying out the management and/or settlement duties causing loss to the bankruptcy estate or at least negligence committed by the Curator in carrying out the management and/or settlement duties that cause losses to the bankrupt assets are the responsibility of the Curator. This is as regulated in Article 72 of the K-PKPU Law<sup>19</sup>, reads in full as follows:

"The curator is responsible for mistakes or negligence in carrying out management and/or settlement duties that cause losses to the bankrupt assets."

Jerry Hoff revealed that the curator's responsibility was not heavier or even the same as the provisions stipulated in Article 1365 of the Civil Code which regulates unlawful acts. By its nature, the curator can commit acts against the law so that he is also personally responsible for losses received by third parties. this is if it is caused by actions taken by the curator outside his authority, if the curator's actions are carried out in accordance with the authority given to him by law, and are carried out in good faith, but there are things that are beyond the control of the curator and in fact result in losses to the bankruptcy estate , then the curator is not personally responsible and the loss is borne by the bankruptcy

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<sup>18</sup>Based on the Researcher's Interview with PT. Citra Guna Perkasa, On December 3, 2023

<sup>19</sup>See Article 72 Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations

estate.<sup>20</sup>

Therefore, according to the legal analysis, the researcher uses the theory of the legal principles of justice and the theory of the principle of legal certainty. In order to create a sense of justice and legal certainty for bankrupt debtors and creditors, the Curatorial Team of PT. Citra Guna Perkasa should be personally responsible for losses arising from the sale of bankruptcy assets below the market price by means of underhand sales of IDR IDR 5,498,600,000.- (five billion four hundred ninety eight million six hundred thousand rupiah).

### **3.2. Legal Remedies for Bankrupt Debtors as a Result of Selling Bankruptcy Assets Below Market Price by the Curator.**

The results of the research and discussion in this sub-chapter, the author will analyze the research and discussion using the principle of legal protection according to Sutan Remy Sjahdeini, which explains that a good bankruptcy law must be based on the principle of providing equal protection for all related and interested parties against the bankruptcy of a person or company. So that in this sub-chapter the author will divide the legal efforts of the bankrupt debtor due to the sale of bankruptcy assets below market price by the curator in two parts of the description, namely conducting mediation with the curator with the permission of the supervisory judge and filing a lawsuit through the commercial court at the Semarang district court. Researchers conducted research through the Commercial Court at the Semarang District Court and the Attorney of the Debtor PT. Citra Guna Mighty.

#### **3.2.1 Conduct Mediation with the Curator with the Permission of the Supervisory Judge**

Dispute resolution can be carried out through a litigation process or a non-litigation process. Dispute resolution through the litigation process is a dispute resolution process through the courts. Meanwhile, settlement through non-litigation is a dispute resolution process that is carried out outside the court or often referred to as alternative dispute resolution. There are several ways to resolve non-litigation disputes, one of which is through Mediation. Provisions for mediation are regulated in the RI Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court (hereinafter referred to as PERMA No. 1/2016) which is a substitute for Supreme Court Regulation Number 1 of 2008. In dispute resolution, the mediation process must be carried out first. If you do not

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<sup>20</sup>Imran Nating, Op. Cit, p. 114-115

go through the mediation procedure,<sup>21</sup>

Mediation efforts between the two parties to the dispute at the commercial court as referred to above, in accordance with Article 109 of Act No. 37 of 2004 concerning Bankruptcy and postponement of debt payment obligations, which reads:

*"The curator after asking for advice from the interim creditor committee, if any, and with the permission of the supervisory judge, has the authority to make peace in order to end an ongoing case or prevent a case from arising."<sup>22</sup>*

That in order to end an ongoing case, namely regarding the settlement and sale of underhanded bankrupt assets by selling below market prices carried out by the curator so as to cause losses to the bankrupt debtor, the supervising judge should make peace first in order to prevent another case from arising in connection with the settlement of bankruptcy assets.

If mediation efforts between the curator and the debtor do not find peace. Thus, the bankrupt debtor has the right to propose other legal remedies in order to create the principles of justice and legal certainty in the bankruptcy process.

### **3.2.2 File a lawsuit through the Commercial Court at the local District Court**

Based on the actions of the Curatorial Team of PT. Citra Guna Perkasa, which has made private sales at a selling price that is far less than the price of the bankrupt debtor's collateral value (PT. Citra Guna Perkasa). So, the action is an error or at least the curator's negligence in carrying out the management and/or settlement duties which causes loss to the bankrupt assets. Therefore, the curator appointed by the supervisory judge in carrying out his duties of managing and/or settling the bankrupt debtor's assets must be responsible for losses arising from his mistakes or negligence. The legal remedies that can be taken by a bankrupt debtor as a result of selling bankruptcy assets below the market price by the curator are as follows:

#### **3.2.2.1 Miscellaneous Lawsuits**

The legal remedy that can be taken by a bankrupt debtor against a curator who has made a mistake in the settlement and management of bankruptcy assets resulting in losses to the bankruptcy assets is by filing other lawsuits through the

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<sup>21</sup> <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13448/Penyelesaian-Sengketa-Non-Litigasi-Melalui-Proses-Mediasi.html>, accessed on January 17 2023, at 08:00 WIB

<sup>22</sup> See Article 109 of Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations

commercial court at the local district court.

The Other Lawsuits are in accordance with the law and are guided by the provisions of Act No. 37 of 2004 concerning bankruptcy and suspension of debt payment obligations (UUK-PKPU) Article 3, which reads as follows:

Article 3 paragraph (1) Act No. 37 of 2004 concerning Bankruptcy and Suspension of Payment Obligations, which reads:

*"The decision on the application for a declaration of bankruptcy and other matters related to and/or regulated in this Law is made by the Court whose jurisdiction covers the area where the Debtor's legal domicile is."*<sup>23</sup>

Furthermore, the Elucidation of Article 3 Paragraph (1) of the KPKPU Law reads:

*"What is meant by "other matters", are among others, actio pauliana, third party resistance against confiscation, or cases where the Debtor, Creditor, Curator, or administrator becomes one of the parties in cases related to bankrupt assets including the Curator's lawsuit against Directors who caused the company to be declared bankrupt due to their negligence or mistakes."*

### **3.2.2.2 Unlawful Act Lawsuit**

According to Jerry Hoff, the responsibility of the curator is not heavier or even the same as the provisions stipulated in Article 1365 of the Civil Code, which reads:

*"Every act that violates the law that causes harm to other people, obliges the person who because of his mistake to issue the loss, compensate for the loss."*<sup>24</sup>

By its nature, the curator can commit acts against the law so that he is also personally responsible for losses received by third parties.<sup>25</sup> This is if it is caused by actions taken by the curator outside their authority, if the curator's actions are carried out in accordance with the authority given to him by law, and are carried out in good faith, but there are things that are beyond the control of the curator and it turns out to result in loss of property bankrupt, then the curator is not personally responsible and the loss is borne by the bankrupt assets.

Based on the description explained by the researcher in this sub-chapter.

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<sup>23</sup>See Article 3 paragraph (1) of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Payment of Debt

<sup>24</sup>See Article 1365 of the Civil Code

<sup>25</sup>Imran Nating, Op. Cit, p. 114-115

Curatorial Team of PT. Citra Guna Perkasa has also met the elements of committing an unlawful act (PMH), namely the Curator Team of PT. Citra Guna Perkasa sells underhanded at a selling price that is much smaller than the price of the collateral value of PT.Citra Guna Perkasa (In bankruptcy), resulting in losses suffered by the Bankrupt Debtor, in the form of the difference between the selling price underhanded and the PT collateral Citra Guna Perkasa (In bankruptcy).

Regarding all discussions regarding legal remedies for bankrupt debtors due to the sale of bankruptcy assets below market prices by the curator, it can be analyzed that according to the theory of legal protection according to Satjipto Rahardjo says that law is present in society is to integrate and coordinate interests that can collide with one another. The coordination of these interests is carried out by limiting and protecting these interests.<sup>26</sup>

Therefore, according to the legal analysis of the researcher using the theory of the principle of legal protection above. In order to realize legal protection for bankrupt debtors, bankrupt debtors can submit several legal efforts, namely in the form of mediation efforts and filing lawsuits through the commercial court at the local district court.

#### **4. Conclusion**

The curator appointed by the supervisory judge in carrying out his duties of managing and/or settling the bankrupt debtor's assets must be responsible for losses arising from errors or negligence in payment as well as, bankrupt debtors can submit several legal remedies, namely in the form of mediation efforts and filing lawsuits through the commercial court at the local district court.

#### **5. References**

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