

The Authority of the Curator in Resolving Bankrupt Companies Based on Legal Certainty

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Abstract. *The purpose of this study is to determine and analyze the Regulations on Bankrupt Boedel According to Positive Law in Indonesia, to determine and analyze the Authority of the Curator in Resolving Bankrupt Boedel of Companies Based on Legal Certainty. The research conducted by the author is a research that falls into the category of doctrinal research or in Indonesia is often referred to as a normative research method. Doctrinal legal research is a research on laws that are developed and conceptualized based on the doctrine adopted by the conceptor and/or developer. Bankruptcy law in Indonesia, as regulated in Law Number 37 of 2004, faces various challenges in its implementation, although it is based on principles such as paritas creditorium, pari passu prorata parte, and structured creditors. The curator has a central role in the management and settlement of bankrupt assets, including the identification, verification, and distribution of assets to creditors in accordance with legal priorities. However, weaknesses in law enforcement, the absence of strict sanctions, and the imbalance in treatment between creditors and debtors, such as in the application of actio pauliana, often result in the principles of justice and legal certainty being ignored. Therefore, a revision of regulations is needed that strengthens supervision, increases the efficiency of the curator's duties, and ensures a balance of rights and obligations in order to create a fair, transparent, and trustworthy bankruptcy system.*

Keywords: Authority; Bankruptcy; Curator.

1. Introduction

Based on the Opening of the 1945 Constitution of the Republic of Indonesia (UUD 1945), the Fourth Paragraph emphasizes that the purpose of establishing the Indonesian state is "to protect all the people and all of Indonesia's territory and to advance general welfare, improve the life of the nation, and participate in

implementing world order based on independence, eternal peace and social justice.¹

In order to face the potential for bankruptcy in the business world that can have an impact on the inability to meet the achievements that have matured, the government has made drastic changes to regulate it. One of them is forming Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UU KPKPU) which was formed as one of the efforts that became the basis for the settlement of debt obligations and related to the situation of corporate bankruptcy.²

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UU KPKPU) regulates the provisions on bankruptcy that are currently in force in Indonesia. This regulation was designed with the hope of providing a solution for debtors who are facing financial difficulties due to debt collection pressure from their creditors. In addition, this law also provides an opportunity for creditors to receive payment from the debtor's assets, even though the amount of debt assets is not comparable to the debt that must be paid. The establishment of this bankruptcy law aims to formulate a mechanism for distributing the debtor's assets to his creditors as a way to pay off debts which throughout the management process are carried out by a Curator appointed under the supervision of a supervising judge after the issuance of a bankruptcy decision.³

Bankruptcy is a process in which a debtor who is facing financial difficulties in paying off his debts is declared bankrupt by the court, especially the Commercial Court because they are unable to meet their financial obligations. The purpose of bankruptcy law is to arrange the distribution of the debtor's bankrupt estate to creditors in a distributive manner including creditors who need to be prioritized for payment in accordance with applicable regulations. This aims to increase security and protect the interests of all parties involved in the bankruptcy process.⁴

A company that has been declared bankrupt but has not yet reached insolvent status is not considered to have ended so that bankruptcy will not stop business operations or can be called a business going concern.⁵ According to the KPKPU Law, a company can still continue its operations even though it is considered unable to

¹Huda, & Izza, R. Quo Vadis Protection of Sexual Violence: The Urgency of the PKS Bill as Protection for Victims of Sexual Violence. Indonesian Law Student Writers Association Law Journal, 2(2), 2022, pp. 172-187

²M. Taufik Hidayat, Settlement of Disputes Due to Curator's Errors from the Reduction of Bankrupt Debtor's Assets Which is Detrimental to Creditors in Bankruptcy. Al' Adl, Vol VII No 14, July-December 2015. Page 71

³Kartoningrat and Andayani, "Mediation as an Alternative in the Management and Settlement of Bankrupt Assets by Bankruptcy Curators". Halu Oleo Law Review Journal, 2(1), 2018, pp. 291-305,

⁴Isnaini Yuliana Pratiwi, Legal Protection for Consumers in Cases of Developer Bankruptcy. Thesis, Faculty of Law, Syarif Hidayatullah State Islamic University, Jakarta, 2018, p. 36.

⁵I Nyoman Yatna Dwipayana Genta, I Nyoman Suyatna, "Implementation of the Going Concern Concept for Limited Liability Companies That Have Been Declared Bankrupt", Journal of Notary Law, Vol. 5 No. 2. 2020. P. 254.

pay its debts. This is different from what is explained in the Limited Liability Company Law which requires the dissolution of a company after reaching a level of inability to pay debts.

A curator in Indonesian law is a legal professional who has a special role in the bankruptcy process. The appointment of a curator is usually made by a court or institution that has the authority in bankruptcy cases. The legal basis for this curator's role can be found in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUKPKPU). The main legal basis for the role of a curator in bankruptcy is found in Article 1 number 1 of the UUKPKPU. This article defines bankruptcy as a general seizure 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.⁶ Thus, the role of the curator is strictly regulated in the law and is an integral part of the bankruptcy handling mechanism in Indonesia. In addition, Article 17 of the UUKPKPU states that the court may appoint one or more curators in a bankruptcy. The appointment of this curator is carried out to carry out the settlement of the debtor's bankruptcy estate by considering the principles of public interest and the principle of justice. Article 18 adds that the curator must have the expertise and authority determined by law, and can come from lawyers, accountants, and other relevant professions. The main function of the curator is to carry out tasks related to the settlement of bankruptcy, especially related to aspects of management and distribution of the debtor's assets to creditors. The role of the curator is very important in ensuring that the bankruptcy process runs fairly, transparently, and in accordance with applicable legal provisions.⁷

In handling disputes that may arise in the context of the settlement of a bankrupt estate, the curator must ensure that each creditor's claim is evaluated carefully and objectively. Disputes may arise in relation to complex claims, such as claims from third parties claiming rights to part of the estate's assets or unresolved legal disputes. Therefore, the curator must understand the criteria for a bankrupt estate thoroughly in order to be able to group, classify, and manage these assets wisely.

Bankruptcy estate, in the context of bankruptcy law, includes all of the debtor's assets that are the object of the settlement process. The criteria for bankruptcy estate are the main basis for the curator in evaluating, managing, and distributing the assets to meet creditor claims. First of all, bankruptcy estate includes assets that involve assets owned by the debtor at the time the bankruptcy process begins. These assets include movable and immovable property, cash, receivables, and intellectual property rights. Determining these assets is crucial in determining the extent to which the debtor's assets can be used to pay off his debts.

⁶Hartini, R. (2007). *Bankruptcy Law*. Malang: UMM Press, p. 21

⁷Keliat, VU, Sunarmi, BN, & Azwar, TDK The Authority of the Curator in the Management and Settlement of Bankrupt Assets in the Case of the State as a Creditor. *Sciences (JEHSS)*, 4(2), 2021, pp. 608–615.

However, the bankruptcy criteria are not only limited to clear and identifiable assets. In addition to explicitly listed assets, the bankruptcy criteria also include assets that may not have been disclosed or thought of at the beginning of the bankruptcy process. For example, the right to claim that can be obtained by the debtor from third parties, potential claims for compensation, and other rights that may arise in the settlement process. Therefore, the bankruptcy criteria must consider the continuity of asset evaluation during the bankruptcy process, to ensure that all assets that can be used to pay off the debtor's obligations are comprehensively covered. Furthermore, the bankruptcy criteria include the grouping and classification of these assets based on priority in distribution to creditors. The arrangement of the priority of asset distribution can involve classification between preferred creditors, concurrent creditors, and separated creditors. Preferred creditors usually have the right to receive earlier or priority payments in the distribution of assets. Meanwhile, concurrent and separated creditors will receive payments based on a certain priority order. In this context, the criteria for bankruptcy must take into account the laws and regulations governing distribution priorities, which may vary depending on the applicable legal jurisdiction.

The stages passed under the provisions of this law are designed to be effective and efficient with time limits for implementation until completion. This includes the entire trial process starting from the submission of the application, to the stage of settling the bankruptcy boedel in bankruptcy cases, and the stage of ratification of the peace in PKPU cases. One of the important and determining stages in bankruptcy and PKPU is when the debtor is asked to submit a peace plan, which contains methods of debt repayment to creditors, in accordance with Article 144 and Article 265 of the UUK-PKPU. It is at this stage that debt restructuring is carried out for companies that have been declared bankrupt or are in Temporary PKPU or Permanent PKPU status.⁸

2. Research methods

The research conducted by the author is a research that falls into the category of doctrinal research or in Indonesia is often referred to as a normative research method. Doctrinal legal research is research on laws that are developed and conceptualized on the basis of the doctrine adopted by the conceptualizer and/or developer.⁹ The data analysis used in this study is a qualitative analysis, namely data that has been obtained from field studies and literature studies will be collected and grouped systematically according to the facts and characteristics of

⁸Amboro, Indonesian Bankruptcy Law Regulation: A Comparative Study of United States and English Law. *Lex Prudentium Law Journal*, 1(2), 2023, pp. 62–81.

⁹ Soetandyo Wignjosoebroto, Varieties of Legal Research, in Sulistyowati Irianto and Shidarta, ed., 2013, *Legal Research Methods: Constellation and Reflection*, Second Printing of Yayasan Pustaka Obor, Jakarta, pp. 121-141.

the objects being studied precisely and then analyzed qualitatively with the aim of obtaining a conclusion from the research problem.¹⁰

3. Results and Discussion

3.1. Regulations Regarding Bankrupt Boedel According to Positive Law in Indonesia

Article 1 number 1 of the Bankruptcy Law states that Bankruptcy is a general seizure of all assets of the Bankrupt Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as regulated in the Bankruptcy Law. After the bankruptcy declaration decision, based on the provisions above, it will result in a general seizure of all assets of the Bankrupt Debtor.

Basically, the essence of bankruptcy can be said to be a general seizure of the Debtor's assets, both those existing at the time of the Bankruptcy declaration and those obtained during the bankruptcy for the benefit of all Creditors who at the time the Debtor was declared bankrupt had debts, which is carried out under the supervision of the authorities. In relation to the use of the term "general seizure" it needs to be explained, because the seizure is not for the benefit of one or several Creditors, but for all Creditors or in other words to prevent seizure from execution requested by Creditors individually.

There is an exception to the meaning of the whole property, the Debtor's property which is not included in the bankrupt property based on the provisions in Article 22 of the Bankruptcy Law. Article 62 of the Bankruptcy Law also briefly states the exception to the property brought by the bankrupt Debtor's matrilineal spouse who is married with the separation of property is not included in the bankrupt property.¹¹

The regulation regarding bankrupt assets is also contained in Article 1131 of the Civil Code 170 and Article 1132 of the Civil Code. Relating to the provisions governing the Debtor's assets which are joint guarantees for all his Creditors proportionally unless the Creditor holds a preferential right or the right to have his debt repaid first.

Based on several articles mentioned above, it can be said briefly that the Debtor's assets are assets that are truly and legally owned by the Debtor. Regarding this statement, it must first be proven that the assets are indeed the Debtor's property and were obtained legally according to the law.

Bankrupt Assets that are the domain of the curator's management include all wealth and assets of the debtor company as stated in Article 21 that: "Bankruptcy includes all of the Debtor's assets at the time the bankruptcy declaration decision

¹⁰Sudarwan Denim, *Becoming a Qualitative Researcher*, Pustaka Setia, Bandung, 2012, p. 62.

¹¹. Loc. Cit Elyta Ras Ginting, p. 150

is pronounced and everything obtained during the bankruptcy". Therefore, in carrying out the settlement of the bankrupt assets, the Curator must make a record of the bankrupt assets no later than 2 (two) days after receiving the decision letter appointing him as Curator (Article 100 paragraph (1) of the Bankruptcy Law). When recording the bankrupt assets, of course the curator is required to record every asset that is truly owned and controlled by the Debtor Company which is then entered into the bankruptcy register so that it can be adjusted to the receivables given by the creditors. Indonesian Professional and Management Standards number 340 states that the Curator must immediately take the necessary actions immediately after the declaration of bankruptcy. The form of preliminary action is such as requesting a copy of the bankruptcy statement and establishing initial communication with the Debtor with the aim of securing the bankrupt assets and ensuring the cooperation of the bankrupt Debtor in bankruptcy. Actions that must be taken by the Curator in the preliminary examination such as:¹²

- a) Identify all bank accounts and other important assets or material owned by the bankrupt Debtor;
- b) Collecting general information regarding the location, type and scale of the Debtor's business activities;
- c) Collecting general information regarding the Debtor's financial situation;
- d) Open a new bank account in the name of the curator qq. bankrupt debtor to accommodate all funds from the bankrupt debtor's account as referred to in Standard number 341 point 01; and Announce bankruptcy in the State Gazette of the Republic of Indonesia and 2 (two) newspapers determined by the Supervisory Judge.

Bankrupt Boedel can also be called bankrupt assets, as defined above, are the assets of a person or organization that has been declared bankrupt. In the end, the assets are controlled by the Estate Office. Furthermore, the bankruptcy estate will be settled by the curator under the supervision of the supervising judge. The settlement can only be carried out after the bankrupt debtor is truly unable to pay after the bankruptcy declaration decision or known as insolvency.¹³

Verification of bankrupt assets is an important step that must be taken by the Curator to ensure that the assets included in the list of bankrupt assets are truly the assets of the Debtor. This process involves physical verification by directly reviewing the bankrupt assets and legal verification by matching them with documents that form the basis of ownership rights or the legal basis for the assets. In addition, the Curator can seal the bankrupt assets through the permission of the

¹²Wijaya Natalia Panjaitan, State Land Included in Bankruptcy Estate (Case Study of Commercial Court Decision No. 04/Pdt.Sus-Pailit/2023/PN. Niaga.Mdn), *Kanjoli Business Law Review*, Vol. 2, No. 1, 2024, pp. 21-27

¹³Rahmawati Yurist Adhia (et. al), Responsibility of Curator in Seizure of Bankrupt Boedel by the State (Prosecutor's Office) (Case of PT Aliga International Pratama Number 156K/PDT.SUS-PAILIT/2015), *Diponegoro Law Journal*, Vol. 10, No. 1, 2021, pp. 218-234

Supervisory Judge in order to secure the bankrupt assets from potential misuse or unauthorized transfer.

In this context, the assets of the bankrupt estate can be equated with the assets of the Debtor which are divided into three categories, namely assets that are fully owned and controlled by the Debtor, assets owned by the Debtor but controlled by the Creditor as collateral in a debt agreement, and assets previously owned by the Debtor but have been transferred to a third party through legal action. Verification carried out by the Curator ensures that all categories can be identified accurately and treated in accordance with legal provisions in order to implement fair and transparent bankruptcy.¹⁴

For the transfer of assets, there is actually only one regulation in Law Number 37 of 2004 which is clearly written and addressed to the third party which is the legal consequence of the application for *actio pauliana* (cancellation of legal action) which is granted. After that, there is no obligation explicitly written regarding the obligation and obligation to transfer the assets of the bankrupt debtor (assets of the bankrupt debtor) but implicitly. Implicitly what is meant is only based on the moral good faith of the party because if the transfer is not carried out, there will be no deterrent punishment.

Referring to Article 16 of the Republic of Indonesia Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the curator's authority to carry out management and/or settlement begins from the date the bankruptcy decision is pronounced even though an appeal or judicial review is filed against the decision by the interested parties.

3.2. The Authority of the Curator in Resolving Bankrupt Companies Based on Legal Certainty

A curator in Indonesian law is a legal professional who has a special role in the bankruptcy process. The appointment of a curator is usually made by a court or institution that has the authority in bankruptcy cases. The legal basis for the role of this curator can be found in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUKPKPU). The main legal basis for the role of a curator in bankruptcy is contained in Article 1 number 1 of the UUKPKPU. This article defines bankruptcy as a general seizure of all the assets of the Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervising Judge. Thus, the role of the curator is expressly regulated in the law and is an integral part of the bankruptcy handling mechanism in Indonesia. In addition, Article 17 of the UUKPKPU states that the court may appoint one or more curators in a bankruptcy.¹⁵ The appointment of a curator is carried out to carry out the settlement of the debtor's bankruptcy estate by considering the principles of public interest and the principles of justice. Article

¹⁴Etty Mulyati (et. al.), The Principle of Prudence in Analyzing Material Collateral as Security for Banking Credit Agreements, *Acta Diurnal Journal of Notary Law*, Vol. 1, No. 2, 2018. pp. 134-148

¹⁵Hartini, R. (2007). *Bankruptcy Law*. Malang: UMM Press, page 7

18 adds that the curator must have the expertise and authority determined by law, and can come from lawyers, accountants, and other relevant professions. The main function of the curator is to carry out tasks related to the settlement of bankruptcy, especially related to aspects of management and distribution of the debtor's assets to creditors. The role of the curator is very important in ensuring that the bankruptcy process runs fairly, transparently, and in accordance with applicable legal provisions.¹⁶

The role and authority of the curator in handling disputes related to the settlement of the debtor's bankruptcy estate is closely related to the smoothness of the bankruptcy estate settlement process as a whole. In this context, the settlement of the bankruptcy estate becomes the main foundation for the curator in carrying out his duties. First of all, in the settlement process, the curator must be able to identify, manage, and divide the debtor's assets fairly among creditors. This includes a deep understanding of the criteria for the bankruptcy estate, namely the debtor's assets that are the object of the settlement.

In handling disputes that may arise in the context of the settlement of a bankrupt estate, the curator must ensure that each creditor's claim is evaluated carefully and objectively. Disputes may arise in relation to complex claims, such as claims from third parties claiming rights to part of the estate's assets or unresolved legal disputes. Therefore, the curator must understand the criteria for a bankrupt estate thoroughly in order to be able to group, classify, and manage these assets wisely.

The curator's ability to resolve disputes and carry out the settlement process properly will affect the efficiency and fairness in handling bankruptcy. The aspect of the curator's authority in mediating between the disputing parties, such as debtors and creditors, is an important determinant in achieving a fair and mutually beneficial settlement. In addition, transparent and proportional dispute management can also mitigate the risk of conflict of interest and increase the trust of the parties involved in the bankruptcy settlement process.¹⁷

Overall, the bankruptcy criteria include not only the identification and assessment of assets, but also the setting of fair and efficient distribution priorities. The entire process must follow the principles of justice and sustainability to ensure that all parties involved, both debtors and creditors, receive balanced treatment in the context of bankruptcy resolution. By considering these aspects, the bankruptcy criteria become a key instrument in handling bankruptcy that is transparent and meets the standards of legal justice.

In general, it is said that the main task of the Curator is to manage and settle the Bankrupt Assets. Furthermore, in order for a Curator to carry out the tasks given,

¹⁶Keliat, VU, Sunarmi, BN, & Azwar, TDK (2021). The Authority of the Curator in the Management and Settlement of Bankrupt Assets in the Case of the State as a Creditor. *Sciences (JEHSS)*, 4(2), 608–615.

¹⁷Kukus, FM (2015). Legal Protection for the Curator Profession in Bankruptcy Cases. *Lex Privatum*, 3(2). Pg. 61

the Curator is given the authority, namely being exempted from the obligation to obtain approval and/or provide prior notification to the Debtor or one of the Debtor's organs. although in circumstances outside of bankruptcy, such approval or provision is required and making loans from third parties, solely in order to increase the value of the Bankrupt Assets. If in making loans from third parties the Curator needs to burden the Bankrupt Assets with Mortgage Rights, pledges or collateral rights on other objects, then the loan must first obtain the approval of the Supervisory Judge, and the burden can only be made on the part of the Bankrupt Assets that has not been used as collateral for debt.

Specifically, to appear before the Court, the Curator is required to obtain prior permission from the Supervising Judge, unless the matter being dealt with in Court is solely related to disputes regarding the verification of receivables or matters regulated in Articles 37-39 and Article 5 paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and PKPU.

The curator is authorized to carry out the management and settlement of the Bankrupt Assets from the date the Bankruptcy decision is pronounced even though a cassation or judicial review is filed against the decision. The issuance of a bankruptcy decision to the debtor has an impact on the debtor and his assets. For the debtor, since the bankruptcy decision is pronounced, he (the debtor) loses the right to manage and control his assets (*persona standi in inclusio*).

The role and responsibilities of the Curator occupy a very dominant position in a bankruptcy process, because with the declaration of bankruptcy from the Commercial Court, the Curator is legally given a very broad role in carrying out "management" and/or "settlement" of assets (bankruptcy estate). The consequences of this bankruptcy result in the powerlessness of a person (individual) to manage his/her assets and/or the powerlessness of a director in a company (legal entity) to carry out his/her function as a director in managing the company's assets. This is expressly regulated in Article 24 paragraph (1) of the Bankruptcy Law which states that the debtor legally loses his/her right to control and manage his/her assets included in the bankruptcy estate, from the date the bankruptcy declaration decision is pronounced. Based on the bankruptcy decision, the person who has the right and responsibility to manage the debtor's assets is a "Curator", as regulated in Article 69 paragraph (1) of the Bankruptcy Law.

4. Conclusion

The development of bankruptcy law in Indonesia, which is regulated by Law Number 37 of 2004, shows that although there are basic principles such as the principle of *paritas creditorium*, *pari passu* *prorate parte*, and structured creditors, their implementation in the field still faces many obstacles. The management of bankrupt assets by the curator, which includes inventory, verification, and sale of assets, has not been fully effective due to weak law enforcement, lack of strict sanctions, and minimal explicit regulations regarding the transfer of bankrupt assets. The concept of bankruptcy which aims to protect creditors is often felt to

be unbalanced because it gives more freedom to debtors, such as in the application of *actio pauliana* and handling of hidden assets. The absence of adequate sanctions causes the bankruptcy process to stall without legal certainty, so that the principle of justice for creditors is often ignored. Therefore, a revision of regulations is needed that prioritizes legal certainty, balance of rights, and the application of strict sanctions to ensure justice in bankruptcy practices. The curator has a central role in the bankruptcy process as the party responsible for the management and settlement of the bankrupt estate by referring to the principles of justice, transparency, and legal certainty. With the authority regulated in Law Number 37 of 2004 concerning Bankruptcy and PKPU, the curator is tasked with identifying, managing, and distributing the debtor's assets to creditors according to applicable legal priorities, while handling potential disputes professionally and independently. The success of the curator in carrying out this task is highly dependent on the integrity, expertise, and adequate supervision by the supervising judge, in order to ensure efficient, fair, and legal implementation. Thus, the role of the curator is key in creating a balance between the interests of debtors and creditors, while maintaining stability and trust in the business legal system.

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