

Problems in the Implementation of Duties and Authorities of Supervisory Judges in Bankruptcy

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Abstract. *This study aims to determine the problems of implementing the duties and authorities of the Supervisory Judge in bankruptcy. This type of research is normative juridical with secondary data collection. The approach used in this study is a conceptual approach and a legislative approach with a theory to analyze the problem, namely three basic values which are then analyzed qualitatively. The results of the study show that The duties and authorities of the Supervisory Judge are to supervise the management and settlement of bankrupt assets by the curator. Problems with the implementation of the duties and authorities of the Supervisory Judge in bankruptcy in Indonesia are limited responsibilities, limited authority in settling bankrupt assets, limited authority in determination, limited authority in disputes over claims, and limited authority in the first creditor meeting. These limitations on the authority of the Supervisory Judge have an impact on There is no certainty regarding the limits of the rights and authority of the supervisory judge and the curator in the task of managing and settling bankrupt assets.*

Keywords: *Authorities; Bankruptcy; Problems.*

1. Introduction

A common problem in accounts receivable is that the debtor's business condition is not running smoothly and is even heading towards bankruptcy, making it difficult to pay his debts according to the initial agreement.¹ Bankruptcy is a condition that the debtor has stopped paying the debt because he is unable to pay and does not want to pay.² A debtor may be declared bankrupt after a court decision at his own request or at the request of one or more of his creditors.³ Condition of bankrupt debtor indicates an inability to pay its debts that have matured. This

¹Walter, György, & Krenchel, Jens Valdemar. "The Leniency of Personal Bankruptcy Regulations in the EU Countries". *Risks*, vol 9 issue 162, 2021, p 2

² Sastrawidjaja, *Bankruptcy Law and Postponement of Debt Payment Obligations*. (Bandung: Alumni, 2010), p.2

³ Khalid, Afif. "Legal Aspects of Bankruptcy Declaration Application". *Al'Adly: Jurnal Hukum*. Vol 14 No 1, 2021, page 224

inability is accompanied by a real action to file, either voluntarily by the debtor himself, or at the request of a third party (outside the debtor), a bankruptcy statement application to the court.⁴

The assets of a debtor who is bankrupt are in a state of general confiscation and the debtor loses the right to manage his assets, the management of which is then handed over to a curator and supervised by a Supervising Judge.⁵ The Supervisory Judge in carrying out his duties in accordance with Article 65 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy and PKPU Law) states that the Supervisory Judge supervises the management and settlement of bankrupt assets, therefore the implementation of bankruptcy law in settling debts is not limited to the existence of a bankruptcy declaration decision but in the implementation of the decision must still be supervised by the supervisory judge.

The Supervisory Judge is appointed by the court in bankruptcy and PKPU decisions.⁶ Therefore, in the bankruptcy process, the direct involvement of the Supervising Judge is very necessary, for example in granting power of attorney, determination or approval. The authority of the Supervisory Judge to supervise the management and settlement of bankrupt assets/estate, which is the task of the Curator, has the consequence that the involvement of the Supervisory Judge is a must.⁷ However, the problem that then arose was the lack of certainty regarding the limits of the curator's rights and authority with the supervising judge in the task of managing and settling bankrupt/PKPU assets.⁸

A number of study Previously, regarding the authority of the Supervisory Judge in bankruptcy, among others, Arimba in 2023 reviewed the responsibility of the Supervisory Judge regarding bankrupt assets.⁹ Humaira & Ansari's 2022 research examines the Legal Review of the Position of Supervisory Judges in Bankruptcy and PKPU.¹⁰ Takalao in 2017 examined the authority of the Supervisory Judge in settling

⁴ Serlika Aprita. *Bankruptcy Law and Postponement of Debt Payment Obligations*. (Palembang: Setara Press, 2018), page 1

⁵ "Slamet, Sri Redjeki." "The Position of the Curator as the Custodian of Bankrupt Debtors, Their Role, Duties and Responsibilities in the Management and Settlement of Bankrupt Assets". *Lex Jurnalica*. Vol 14 (3), 2017, p.120

⁶ Putu Eka Trisna Dewi. "Special Characteristics of Commercial Courts in Adjudicating Bankruptcy Cases". *Saraswati Law Journal (JHS)*, vol 5 (1), 2023, page 332

⁷ Serlika Aprita & Sarah Qosim. "Optimizing the Authority and Responsibilities of Supervisory Judges in Bankruptcy Law in Indonesia". *Jurnal Ius Constituendum*, vol 7 (2), 2022, p. 200

⁸ Serlika Aprita & Hasanul Mulkan. *The Future of Bankruptcy and PKPU in Indonesia in Relation to the Urgency of Revising the Bankruptcy and PKPU Laws Reviewed from the Perspective of Law and Human Rights*. *Unnes Law Review*, vol 5 (4), 2023, page 2301

⁹ Cahya Iradi Arimba. "Responsibility of Supervisory Judges for Bankrupt Assets". *Begawan Abioso*, vol 14 (2), 2023, p.1

¹⁰ Inten Humaira & Muhammad Insa Ansari. "Legal Review of the Position of Supervisory Judges in Bankruptcy and PKPU". *Student Scientific Journal: Civil Law Field*, vol 6 (3), 2022, page 342

bankrupt estates in court.¹¹Utama & Holijah's research in 2017 examined the responsibilities of Supervisory Judges in managing debtor assets after bankruptcy.¹²The difference between this study and the three previous researchers is in the focus of the study and the theory used to analyze the problem. This study focuses on the legal problems of the Supervisory Judge's authority in the management and settlement of bankrupt assets which are then analyzed using the theory of three basic values from Gustav Radbruch which were not used by previous researchers.

The importance of the role of the Supervising Judge in the bankruptcy process, namely: to supervise the bankruptcy process and the duties carried out by the Curator, namely in managing and settling the bankrupt estate (bankrupt assets). The task of settling includes selling the bankrupt assets by auction or underhand and the proceeds of the sale are distributed to creditors proportionally.¹³On this basis then the authority of the Supervisory Judge over the bankruptcy process is interesting to study in this study. This is considering the importance of developing a pattern of prevention and appropriate criminal steps for perpetrators because children as victims are greatly affected by their psychological development throughout their lives. Therefore, the purpose of this study is to analyze the legal problems regarding the authority of the Supervisory Judge in bankruptcy in Indonesia.

2. Research Methods

This type of research is normative research or also called doctrinal legal research is legal research that uses secondary data sources in the form of regulations, legislation, court decisions, legal theories and opinions of certain legal scholars. This research uses a conceptual approach and a statute approach. The conceptual approach is used to build a concept to be used as a reference in this research and in building the concept, the author is based on doctrines, legal principles and basic substances of national law, international law so that the author is able to analyze the problems to be studied. The author will use a statute approach because the statutory approach is able to study whether there is consistency between the Bankruptcy Law and PKPU.

StudyThe law that the author will do will use 3 (three) legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. The data of this research is in the form of secondary data so that to collect the secondary data the researcher does it by means of literature study and document study. Literature study is conducted with the aim of finding secondary data by

¹¹ Taufiq Takalao. "The Authority of the Supervisory Judge in the Settlement of Bankrupt Estates in Court". *Lex Privatum*, vol 5 (1), 2017, p.174

¹²Cholidah Utama & Holijah. "Responsibility of Supervisory Judge in Managing Debtor's Assets Post-Bankruptcy", *Jurnal Muamalah*, vol 3 (1), 2017, p.41

¹³Duarjon Simalango & Marzuki, Mukidi. "Criminal Liability by Curators for Their Actions that Harm Bankrupt Bundles (Case Study of Central Jakarta District Court Decision Number 2081/Pid.B/2011/PN.Jkt.Pst)", *Jurnal Meta Hukum*, vol 2 (2), 2023, page 60

reviewing and analyzing library materials which include books, journals, articles including online libraries related to the research problem. Literature study (library research) is also known as non-reactive research to find secondary data in normative legal research by reviewing library materials such as books, journals, articles and other libraries, including online libraries. While the technique of collecting primary legal materials is carried out using the legal documentary technique (documentary research). The legal documentary technique is a data collection technique through identification and review of legislation and official legal documents, then analyzed and formulated as the main legal material in normative legal research (legal doctrine).

The data analysis was conducted qualitatively through a review of deductive thinking logic. Deductive logic can be interpreted that researchers in making conclusions from this research problem are carried out briefly starting from the general to the specific as in normative research which uses the deductive method as the main reference. In analyzing normative legal data, there are stages, namely first, secondary data and other positive legal data are formulated as legal principles, second, formulating the legal understanding related to the research problem, third, forming applicable legal standards related to the research problem and fourth, the legal constraints encountered are formulated in detail and clearly.¹⁴

3. Results and Discussion

3.1. Authority of the Supervisory Judge in the Management and Settlement of Bankrupt Assets by the Curator.

Article 1 number 8 of the Bankruptcy and PKPU Law explains that the supervisory judge is a judge appointed by the court in a bankruptcy decision or a decision to suspend debt payment obligations. Specifically, provisions regarding the Supervisory Judge can be found in Chapter II of the Bankruptcy Law, Part Three Management of Bankrupt Assets, namely Articles 65 to 68 of the Bankruptcy and PKPU Law. Basically, the Supervisory Judge supervises the management and settlement of bankrupt assets. In addition, the Commercial Court is required to hear the opinion of the Supervisory Judge before making a decision regarding the management or settlement of bankrupt assets. The Supervisory Judge is also authorized to hear witness statements or order investigations by experts to obtain clarity on all matters concerning bankruptcy.

Article 15 of the PKPU Law states that in a bankruptcy decision, a curator and a Supervisory Judge appointed by the Commercial Court Judge must be appointed. Article 65 of the Bankruptcy Law states that the supervisory judge supervises the management and settlement of the bankrupt's assets, therefore the implementation of bankruptcy law in settling debts is not limited to the existence

¹⁴ Amiruddin & Zainal Asikin. Introduction to Legal Research Methods, (Jakarta: PT. RajaGrafindo Persada, 2016), p. 45.

of a bankruptcy declaration decision but in the implementation of the decision must still be supervised by the supervisory judge.

As previously stated, since the bankruptcy decision has been pronounced, the Debtor can no longer control and manage his assets, so it is necessary to appoint and appoint another person, called a curator, to control and manage the Debtor's assets. So that the curator in carrying out his duties does not abuse his authority to do other undesirable things, it is necessary to appoint a supervisor by the court, called a Supervisory Judge.

The duties and authorities of the Supervisory Judge can be summarized as follows:¹⁵Leading the verification meeting; Supervising the actions of the curator in carrying out his duties; providing advice and warnings to the curator regarding the implementation of these duties; Approving or rejecting the lists of claims submitted by creditors; Forwarding claims that cannot be settled in the verification meeting to the Commercial Court Judge who decides the case; Hearing witnesses and experts on all matters relating to bankruptcy; Granting permission or rejecting the bankrupt's request to travel (leave his/her place of residence). The duties and authorities of the Supervisory Judge According to the Bankruptcy and PKPU Laws include:¹⁶

- 1) Determining the time period for implementing reciprocal agreements that have not been or have only been partially fulfilled if no agreement is reached between the creditor and the curator regarding this matter (Article 36).
- 2) Supervise the management and settlement of bankrupt assets (Article 65).
- 3) Provide advice to the Commercial Court before the Commercial Court decides on something related to the management and settlement of bankrupt assets (Article 66).
- 4) Granting approval to the curator if in taking out a loan from a third party it is necessary to burden the bankrupt's assets with property guarantee rights (Article 67 paragraph (3)).
- 5) Granting approval to the curator to obtain loans and third parties if in making the loan, it turns out that the curator needs to burden the bankrupt estate with a pledge, fiduciary guarantee, security right, mortgage or collateral rights over other property (Article 69 paragraph 3).
- 6) Authorized to determine the day, date, time and place for holding the creditors' meeting, and to convey this to the curator (Article 77 paragraph (1) and (2)).
- 7) Offer creditors the opportunity to form a permanent creditors committee after the verification of receivables has been completed (Article 80).

¹⁵ Tami Rusli. Bankruptcy Law in Indonesia. (Lampung: Badar Lampung University, 2019), page 60

¹⁶Joko Sriwidodo, Study of the Development of Bankruptcy Law and PKPU in Indonesia. (Yogyakarta: Kepel Press, 2024), p.123

- 8) Submit to the curator the plan to hold the first creditors' meeting within 3 (three) days after the bankruptcy declaration decision is received (Article 86 paragraph (2)).
- 9) Receive statements from creditors in debt verification meetings regarding information required from bankrupt debtors (Article 121).
- 10) Reconcile disputing parties in relation to receivables against which a rebuttal or examination of the dispute between the parties is carried out (Article 127 paragraph (1)).
- 11) Order parties who have disputes regarding receivables against which objections have been made to resolve the dispute through the Court on a predetermined day without the need for a summons from the court (Article 127 paragraph (1)).
- 12) Authorized to hear witnesses or order examination by experts to explain the circumstances concerning the postponement of debt payment obligations (Article 217D paragraph (1)).
- 13) Has the authority to determine the amount of bills for maintenance, supervision or education costs that must be paid, which have been collected before the postponement of debt payment obligations which are not bills with privileged rights (Article 230 paragraph 1 letter b).
- 14) Authorized to determine whether and to what extent creditors whose claims are disputed may participate in voting on the peace plan (Article 264).
- 15) Obligated to notify the court of the rejection of the peace plan by submitting a copy of the peace plan along with the minutes of the meeting (Article 274).

According to the Bankruptcy and PKPU Law, the Supervisory Judge also has the authority to provide opinions and considerations (recommendations) in determining the amount of bankruptcy costs and curator services. This is as regulated in Article 17 paragraph (2) of the Bankruptcy and PKPU Law which states that "Determination of bankruptcy costs is carried out by the Panel of Court Judges who decide on the bankruptcy case based on the details submitted by the Curator after hearing the considerations of the Supervisory Judge."

Since the decision was made by the Judge, the general bankruptcy process applies, namely the process of settling the bankrupt's assets by the Curator under the supervision of the Supervisory Judge. The appointment of the Supervisory Judge in Article 15 paragraph (1) letter a of the Bankruptcy and PKPU Law appoints a Supervisory Judge appointed by the court Judge. The Supervisory Judge's task is to supervise the management and settlement of the bankrupt's assets carried out by the Curator.

The authority and responsibility of the Supervisory Judge in accordance with the provisions of the Bankruptcy Law and PKPU is to act as chairman in the creditor meeting. In this case, the Supervisory Judge determines the day, date, time, and place of the first creditor meeting, which must be held within a period of no later

than 30 (thirty) days after the date of the bankruptcy decision is pronounced. This shows that all implementation of the duties and authorities of the Supervisory Judge are carried out through various stipulations, so that with this authority the Supervisory Judge has a role as a regulator who is authorized to issue various stipulations, both stipulations that are in the nature of approval of the Curator's steps in managing and settling bankrupt assets and stipulations that are administrative in nature.

3.2. Problematics Regarding the Implementation of Duties and Authorities of Supervisory Judges in Bankruptcy in Indonesia

Problems with the Implementation of the Duties and Authorities of Supervisory Judges in Bankruptcy in Indonesia are in line with the opinion of Gustav Radbruch stated that Three legal values, namely justice (philosophical), legal certainty (juridical) and benefit for society (sociological) must be made the main elements in the legal approach so that order is established in society.¹⁷ The order of priorities taught by Radbruch is: first, Legal Justice; second, Legal Benefit; and third, Legal Certainty. By establishing this order of priorities, it is hoped that the legal system can resolve conflicts of the three legal values.¹⁸

The decision regarding the bankruptcy of the Debtor results in 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 Supervisory Judge with the main aim of using the proceeds from the sale of the assets (boedel) to pay all the debts of the bankrupt Debtor proportionally (prorata parte) and in accordance with the structure or order of creditors.¹⁹

In Bankruptcy involving a curator and a Supervisory Judge, where the curator has the task of managing and/or settling the bankrupt estate while the Supervisory Judge has the task of supervising the management and settlement of the bankrupt estate. In carrying out their duties, the curator and the supervisory judge have one main vision, namely making the best decision to maximize the value of the bankrupt estate.²⁰

The Supervisory Judge in exercising his authority to supervise the process of managing and settling bankruptcy by the curator actually has its own legal

¹⁷Wijayanta, Tata. 2014. The Principles of Legal Certainty, Justice and Benefit in Relation to Bankruptcy Decisions of Commercial Courts. *Journal of Legal Dynamics*. Vol 14 (2), page 45

¹⁸Julyano, Mario. 2019. "Understanding the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning", Diponegoro University, *Journal of the Basics of Legal Thought: Philosophy and Legal Science*, Vol 1 No 1: 256- 266.

¹⁹Rusli, Tami. *Op Cit*, p.20

²⁰ Martunas Sianturi; Dewi Iryani; & Puguh Aji Hari Setiawan. "Duties, Roles and Responsibilities of Curators in Bankruptcy". *Co-Value: Journal of Economics, Cooperatives & Entrepreneurship*, vol 14 (6), 2023, page 756

problems. The legal problems for the Supervisory Judge are the limitations of authority regulated in the Bankruptcy Law and PKPU including:

1) Limitation of liability

The responsibility of the supervising judge is limited to the duties and authorities stipulated in the Law. They can only provide an opinion before the court makes a decision regarding the management or settlement of the bankrupt estate. The responsibility of the curator remains with the curator himself, although the supervising judge can provide an opinion or make a decision regarding the curator's actions that are detrimental to the bankrupt estate.

2) Limited authority in settling bankrupt estates

The supervising judge has the authority to supervise the settlement of the bankrupt estate, including the management and settlement of the bankrupt estate. They must hear the opinion of the supervising judge before making a decision regarding the management or settlement of the bankrupt estate. However, the curator still has the authority to manage and settle the bankrupt estate, which can lead to a lack of authority for the supervising judge in supervising the process.

3) Limited authority in determining

The supervisory judge must issue a determination no later than 3 days after the response from the curator has been received by the supervisory judge. This determination is in the form of approval or rejection of the curator's actions who are responsible for the management and settlement of bankrupt assets. This is regulated in Article 72 paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). However, this determination is only in the form of approval or rejection of the curator's actions, not the authority to directly change the curator's actions.

4) Limitations of authority in billing disputes

In a debtor-creditor debtor dispute, the Supervisory Judge has the authority to resolve the dispute. However, this authority is limited to resolving the dispute and does not involve direct authority to change the curator's actions. In this case, The supervisory judge handles disputes between debtors and creditors in the bankruptcy process in Indonesia in several ways, including supervising the curator, providing opinions before the court makes a decision, hearing witnesses or ordering an investigation, providing approval and instructions to the curator: Issuing a decision that is binding on the parties:

5) Limitations of authority in the first creditors' meeting

The supervisory judge is responsible for determining the day, date, time and place of the first creditor meeting, which must be held within a maximum of 30 days after the bankruptcy decision is pronounced. However, this authority is limited to determining the schedule and place of the meeting, not regulating the contents of the meeting as regulated in Article 86 paragraph (1) of the Bankruptcy and PKPU

Law, namely "The Supervisory Judge determines the day, date, time and place of the first creditor meeting, which must be held within a maximum of 30 (thirty) days after the date the bankruptcy decision is pronounced."

4. Conclusion

Based on the discussion above, it can be concluded that the duties and authorities of the Supervisory Judge are to supervise the management and settlement of bankrupt assets as regulated in Article 65 of the Bankruptcy and PKPU Law. The Supervisory Judge is responsible for handling the management and settlement of bankrupt assets carried out by the Curator so as not to abuse his authority. The position of the supervisory judge is very important because before deciding something related to the management and settlement of bankrupt assets, the Commercial Court is required to first listen to the opinion/advice of the supervisory judge. The legal problems regarding the authority of the Supervisory Judge in bankruptcy in Indonesia are limited responsibilities, limited authority in settling bankrupt assets, limited authority in determination, limited authority in disputes over bills, and limited authority in the first creditor meeting. These limitations on the authority of the Supervisory Judge have an impact on There is no certainty regarding the limits of the rights and authority of the supervisory judge and the curator in the task of managing and settling bankrupt assets.

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