

## **Reformulation of the Regulation of the Authority of Curators in Bankruptcy and the Postponement of Debt Payment Obligations Based on Justice**

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**Abstract.** *The authority of curators in bankruptcy and the Suspension of Debt Payment Obligations (PKPU) is regulated under Law Number 37 of 2004; however, in practice, it still creates legal uncertainty and an imbalance of protection between creditors and debtors. This study aims to analyze the weaknesses in the regulation of curatorial authority and to formulate a reform based on justice principles that can enhance transparency, accountability, and efficiency in debt resolution. This research employs a normative juridical approach by examining existing regulations, bankruptcy law doctrines, and relevant scholarly literature. The principles of procedural, distributive, and corrective justice serve as the basis for analyzing the effectiveness of curatorial authority and the conformity of practice in the field with legal provisions. The analysis also discusses regulatory weaknesses regarding the limits of curatorial authority, the supervision by oversight judges, and the management of modern assets. The study finds that current regulations grant broad authority to curators, yet they lack clear operational boundaries and effective substantive supervision. Justice-based reformulation is necessary by clarifying the parameters of authority, strengthening the role of oversight judges, standardizing national SOPs, and establishing proportional protection mechanisms for both creditors and debtors. The implementation of these reforms is expected to create a transparent, efficient, and fair bankruptcy and PKPU system.*

**Keywords:** *Bankruptcy; Curator; Justice*

## 1. Introduction

Indonesia constitutionally affirms itself as a state based on the rule of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The principle of a state based on the rule of law demands legal certainty, justice, and the protection of the rights of every citizen, including in the economic sphere. In the context of national development, the law functions not only as a controlling instrument but also as a means of social engineering to create order, certainty, and justice for all Indonesians. One important instrument in economic law is the regulation of bankruptcy, which serves as a mechanism for the fair resolution of debt disputes.

Bankruptcy is essentially a legal institution designed to resolve debt problems faced by debtors who are no longer able to pay their debts to creditors. With the existence of bankruptcy, the resolution of debt disputes is no longer left to the discretion of individual creditors but is instead placed within a fair and transparent legal mechanism through the courts. This is crucial to ensure that the interests of all parties, both creditors and debtors, remain protected in accordance with the principles of justice.

In the Indonesian legal system, regulations regarding bankruptcy are outlined in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (the Bankruptcy Law). This law was enacted with the aim of correcting the weaknesses of previous bankruptcy regulations while simultaneously providing greater legal certainty in debt settlement. The Bankruptcy Law provides a normative basis for judges, curators, and creditors in exercising their rights and obligations, and establishes a more structured mechanism for managing bankruptcy assets.

In bankruptcy practice, the curator occupies a central position. The curator is the party appointed to manage and settle the bankruptcy estate upon the issuance of a bankruptcy decision. The curator's primary functions include taking over control of the debtor's assets, inventorying the bankruptcy estate, securing assets, and selling the bankruptcy estate to distribute the proceeds to creditors in accordance with legal provisions. Therefore, the curator is the technical executor who determines whether the bankruptcy process is effective or creates new problems.

However, although the Bankruptcy Law has normatively regulated the duties and functions of curators, numerous issues still arise in practice. These include allegations of abuse of authority by curators, non-transparent practices in asset management, and conflicts of interest that harm both creditors and debtors. This creates distrust in the role of curators and can ultimately undermine the primary objective of bankruptcy law, which is to provide certainty, justice, and benefit to all parties.

Furthermore, the supervision of curators by supervisory judges is often considered suboptimal. Supervisory judges have the authority to oversee the bankruptcy process, including the curator's actions, but in practice, this oversight has been unable to prevent irregularities. This is exacerbated by the limited mechanism for imposing firm sanctions on curators who violate legal provisions. As a result, the rights of creditors and debtors are often not optimally protected.

This situation raises significant problems in bankruptcy law in Indonesia. On the one hand, the existence of a curator is a vital instrument for ensuring the orderly course of bankruptcy proceedings. However, on the other hand, if the curator fails to carry out his or her duties and functions in accordance with legal provisions, bankruptcy can actually become a vehicle for injustice and legal uncertainty. Therefore, an in-depth analysis of the duties and functions of the curator under the Bankruptcy Law is urgently needed to find solutions to the various issues that arise.

## 2. Research Methods

In accordance with the title and problems that will be discussed in this research, in order to provide useful results, this research was conducted using normative legal research (normative legal research method). The normative legal research method is legal research literature. This research is conducted by examining library materials or secondary data alone. This research is conducted to obtain materials in the form of: theories, concepts, legal principles, and legal regulations related to the topic.<sup>1</sup> The research specifications used are Descriptive Analytical, namely an effort to analyze and explain legal problems related to the object, said to be descriptive, meaning from this research is expected to be able to obtain a comprehensive and systematic overview of everything related to this research.

## 3. Results and Discussion

### 3.1. Regulation of the Curator's Authority in Bankruptcy and Suspension of Debt Payment Obligations

Regulations regarding the curator's authority in bankruptcy and the Suspension of Debt Payment Obligations (PKPU) are fundamental aspects of Indonesia's economic legal system. As the official bankruptcy body, the curator plays a crucial role in ensuring the effective, transparent, and fair management and settlement of the bankrupt's assets. Within the PKPU, the curator also acts as an administrator, overseeing the debtor's preparation of a reconciliation proposal.<sup>2</sup>

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<sup>1</sup>Soerjono Soekanto and Sri Mahmudji, *Normative Legal Research, A Brief Review*, (Jakarta: Raja Grafindo Persada, 2003), p. 13.

<sup>2</sup>M. Yahya Harahap, *Bankruptcy Law*, (Sinar Grafika, 2017).

The existence of a curator is not only regulated legally and normatively through Law Number 37 of 2004 concerning Bankruptcy and PKPU (Deferred Payment for Debt), but is also reinforced through various implementing regulations and professional guidelines. These regulations serve as the legal framework for carrying out the curator's duties, ensuring legal certainty for both creditors and debtors.<sup>3</sup>

In practice, the curator's authority is broad, encompassing inventory of the bankrupt's assets, asset security, continuing or terminating the debtor's business, executing legal actions, and distributing the proceeds of the settlement. Meanwhile, in a PKPU (Deferred Payment Order), the curator acts as an administrator, supervising and mediating between creditors and the debtor.<sup>4</sup>.

With the increasing complexity of modern financial transactions, comprehensive and harmonious regulation of curator authority is important to prevent abuse of authority, conflicts of interest, and ensure the creation of the principle of fairness for all parties.

## 1. The Concept and Position of a Curator in Bankruptcy

### a. Definition of Curator

A curator is a party appointed by the court to manage and settle the bankrupt's estate from the date the bankruptcy decision is pronounced. This definition is affirmed in Article 1, number 5 of the Bankruptcy Law, which states that a curator is "the Estates Office or an individual appointed by the court to manage and settle the bankrupt's estate."

A curator is not merely an administrative official, but a professional figure who holds a legal mandate and fiduciary duty to manage the debtor's assets for the benefit of all creditors.<sup>5</sup>

### b. Position of the Curator as a Bankruptcy Organ

Once a bankruptcy decision is issued, the debtor loses the right to manage and control their assets. Under Article 24 of Law 37/2004, these functions are fully transferred to the curator. Thus, the curator, along with the supervising judge, becomes the primary organ in the bankruptcy process.

The position of the curator can be seen from three aspects:

- 1) As the manager of the bankrupt estate, the Curator is fully responsible for the management and settlement.

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<sup>3</sup>Law Number 37 of 2004 concerning Bankruptcy and PKPU

<sup>4</sup>Hadi Shubhan, Bankruptcy Law, (Kencana, 2019).

<sup>5</sup>Sunarmi, Principles of Bankruptcy and Creditor Protection, (2019).

- 2) As a representative of the creditors, the Curator is obliged to act in the interests of the creditors in a proportional manner.
- 3) As an enforcer of the legal process, the Curator carries out legal action on behalf of the bankrupt estate, including suing third parties.

## 2. Regulation of the Curator's Authority in Bankruptcy

### a. Legal Basis for the Curator's Authority

The curator's authority comes from:

- 1) Law No. 37 of 2004 concerning Bankruptcy and PKPU
- 2) Regulation of the Minister of Law and Human Rights concerning Curators and Administrators
- 3) AKPI (Indonesian Association of Curators and Administrators) Code of Ethics
- 4) Jurisprudential decisions of the Commercial Court and the Supreme Court<sup>6</sup>

This legal basis emphasizes that the curator's authority cannot be exercised arbitrarily, but must refer to clear normative guidelines.

### b. Management Authority

The curator's primary authority is to manage the debtor's assets from the date the bankruptcy decision is pronounced. This management includes:

#### 1) Asset Inventory

The curator is required to identify all of the debtor's assets, including hidden assets, movable and immovable assets, deposits, receivables, and digital assets.

#### 2) Asset Sealing and Securing

Article 99 of the Bankruptcy Law permits the curator to seal assets to prevent the unlawful transfer of assets.

#### 3) Continuing the Debtor's Business

The curator may choose to continue the debtor's business activities if it is deemed more profitable for the bankrupt estate, with the approval of the supervisory judge.

The decision to continue or terminate the debtor's business is the professional discretion of the curator who must consider the economic value and interests of

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<sup>6</sup>AKPI, Code of Ethics for Curators and Administrators, 2020.

the creditors.

c. Liquidation Authority

Asset settlement aims to raise cash to pay debts to creditors. This authority includes:

1) Selling Bankrupt Assets

The curator can sell assets through an auction mechanism or private sale with the permission of the supervising judge.

2) Collecting Debtors' Receivables

The curator has the right to collect debtors' receivables from third parties, including issuing summonses and executions.

3) Compiling a Distribution List

The curator prepares a distribution list based on creditor preferences in accordance with Article 189 of Law 37/2004.

This settlement authority is strategic because it concerns the final value received by creditors.

d. Authority to File a Lawsuit

The curator has legal standing to sue on behalf of the bankrupt estate, including:

- 1) Actio Pauliana – cancellation of the debtor's actions which are detrimental to the creditor (Articles 41–49).
- 2) Civil Lawsuit – against the party holding the debtor's assets.
- 3) Lawsuit against debtor – if there are assets that are hidden or transferred illegally.

This authority ensures that assets that should have been included in the bankruptcy estate can be returned.

e. Administrative and Procedural Authority

Administrative powers include:

- 1) Opening a bankrupt estate account
- 2) Make periodic reports to the supervising judge
- 3) Announcing bankruptcy decisions to the public
- 4) Holding a creditors meeting<sup>16</sup>

### 3. The Curator's Authority in the PKPU

#### a. The position of the curator as a manager in the PKPU

In a PKPU (Customer Order for Debt Restructuring), the curator acts as an administrator, not a disbursement agent. He or she assists the debtor in developing a restructuring plan.<sup>17</sup>

The administrator does not take over control of assets as in bankruptcy, but functions to supervise the debtor so that he does not take actions that are detrimental to the creditor.

#### b. Authority of the Management in PKPU

##### 1) Monitoring Debtors

The administrator ensures that the debtor does not transfer assets that could harm the creditor.

##### 2) Assessing the Peace Plan

The administrator conducts a feasibility analysis of the restructuring plan proposed by the debtor.

##### 3) Holding a Creditors Meeting

The board coordinates the meeting to discuss and vote on the peace plan.

##### 4) Taking Precautions

If the debtor acts detrimentally, the administrator can ask the court to tighten the restrictions.

### 4. Principles and Limitations of the Curator's Authority

#### a. Principle of Independence

Curators must be free from conflicts of interest. This is emphasized in the AKPI Code of Ethics.<sup>7</sup>

#### b. Principle of Accountability

The curator is obliged to be accountable for all his actions through periodic reports to the supervisory judge and creditors.

#### c. Creditor Interest Principle

All curatorial actions must be directed at protecting and fulfilling the rights of

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<sup>7</sup>AKPI, Curator Code of Ethics, 2020. 20. Law 37/2004, Article 69

creditors, and must not take sides with the debtor.

d. Limitation of Authority

The curator may not take major actions without the approval of the supervising judge, for example:

- 1) Selling assets of significant value
- 2) Terminating important agreements
- 3) Closing or continuing a business

5. Problems and Challenges of Curator Authority Regulation

a. Diverse Normative Interpretations

Some provisions of the law are considered grey areas, such as the limits on the authority to sell assets, so that curators often face multiple interpretations.

b. Suboptimal Supervision

Even though there are supervisory judges, their implementation is often not optimal due to limited court resources.

c. The Complexity of Modern Assets

Digital assets, derivative contracts, and cross-border assets require specialized expertise from curators.<sup>8</sup>

d. Potential for Abuse of Authority

In some cases, curators are considered too aggressive or non-transparent, so strict oversight mechanisms are needed.

The curator's authority in bankruptcy and PKPU (Deferred Payment Order) is comprehensively regulated in Law 37 of 2004 and other supporting regulations. In bankruptcy, the curator has full authority to manage and settle the bankrupt's assets, including taking legal action such as suing and executing the debtor's assets. Meanwhile, in PKPU, the curator acts as an administrator with limited authority to supervise the debtor and facilitate a restructuring plan.

The curator's broad authority must be exercised with the principles of accountability, independence, professionalism, and the best interests of creditors. However, challenges remain that require regulatory reform, such as interpreting norms, professional oversight, and modern asset management.

Overall, the curator's authority is a key pillar in the success of the bankruptcy and

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<sup>8</sup> Indonesian Business Law Study Institute, 2021.

PKPU process, so good regulations and professional implementation are essential to achieve justice for all parties involved.

### **3.2. Weaknesses in the Regulation of the Curator's Authority in Bankruptcy and PKPU**

The regulations regarding the curator's authority in bankruptcy proceedings and the Suspension of Debt Payment Obligations (PKPU), as stipulated in Law Number 37 of 2004, play a strategic role in regulating the management and settlement of debtors' assets. However, in practice, several weaknesses exist that create legal uncertainty, ineffective processes, and potential injustice for both creditors and debtors.<sup>9</sup>

These weaknesses arise from several factors, such as unclear articles, multiple interpretations, lack of oversight of curators, complex economic developments, and the absence of uniform operational standards. Therefore, analyzing the weaknesses of curator regulations is crucial to evaluate their position within the Indonesian economic legal system.

#### **1. Substantive Weaknesses in the Regulation of Curator's Authority**

##### **a. Multi-interpretable norms**

One of the main weaknesses of the regulation is the existence of articles that are general and open to multiple interpretations, leaving room for differing interpretations. For example, Article 104 of Law 37/2004, which grants the curator discretion to continue or terminate a debtor's business, is considered insufficient to provide objective definitions regarding the factors determining whether a business is viable. As a result, the curator's decisions are often considered subjective and have the potential to harm creditors or even debtors.<sup>10</sup>

##### **b. There is no national standard operating procedure (SOP) for curators.**

Law 37/2004 grants curators broad authority, but lacks a uniform technical standard operating procedure (SOP). As a result, the implementation of these powers often differs from one curator to another. This disharmony makes it difficult for creditors and debtors to predict how the management or settlement process will proceed, creating legal uncertainty.

##### **c. Weaknesses in the Actio Pauliana Arrangement**

The regulations regarding actio pauliana in Articles 41–49 of Law 37/2004 are still

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<sup>9</sup>Hadi Shubhan, *Bankruptcy Law*, (Kencana, 2019).

<sup>10</sup>Law no. 37 of 2004, Article 104.

considered less effective because:

- 1) Does not provide a definite time limit for proving the existence of bad faith on the part of the debtor.
- 2) It requires complex proof to show that the debtor's actions are detrimental to the creditor.<sup>11</sup>

This weakness causes the curator's efforts to return the debtor's assets that were transferred fraudulently to be less than optimal.

d. Weak Protection for Debtors

While curators are expected to act independently, regulations do not provide strict mechanisms to prevent them from acting too aggressively. For example:

- 1) There is no clear limit on what actions a curator can take that can be considered to exceed their authority.
- 2) Supervisory judges' oversight is often administrative, not substantive.<sup>12</sup>

As a result, debtors often feel they are being treated unfairly by the curator in the settlement process.

2. Structural and Implementation Weaknesses

a. Lack of Supervision of Curators

One of the biggest weaknesses of the regulation is the weak oversight mechanism for the performance of curators. Supervisory judges are supposed to oversee curators, but in practice:

- 1) The supervisory judge's workload is very high.
- 2) Supervision is more administrative, not analytical.
- 3) There are no firm and direct sanctions against curators who violate.

This condition leaves the curator in a dominant position without adequate control.

b. Lack of Professional Standards and Certification

Although AKPI has compiled a code of ethics and conducted training, state regulations have not yet regulated in detail the standards of professionalism, periodic evaluations, and mandatory certification mechanisms for curators. The absence of an independent institution that strictly selects curators creates the

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<sup>11</sup>Yahya Harahap, *Bankruptcy Law*, (Sinar Grafika, 2017).

<sup>12</sup>. Sunarmi, *Bankruptcy Law and Creditor Protection*, 2019.

potential for the entry of incompetent curators.

c. Imbalance of Authority Between Curator and Supervisory Judge

Curators are given broad authority, but regulations do not provide detailed guidelines on when they must obtain the approval of the supervising judge. This leads curators to sometimes act too independently without adequate coordination. Several decisions also indicate that the supervising judge tends to approve almost all curator decisions without in-depth analysis.<sup>13</sup>

d. Modern Asset Complexity Not Accommodated

The curator regulations were created in 2004, when the development of digital assets, cryptocurrencies, derivatives, and other modern forms of assets had not yet developed to the level they have today. As a result:

- 1) Curators do not have a clear basis for managing digital assets.
- 2) There are no cross-jurisdictional asset safeguarding guidelines.
- 3) Arrangements for tracking debtor assets abroad are very minimal.

This often causes curators to have difficulty executing modern assets for the benefit of creditors.

3. Weaknesses in the Context of PKPU

a. The Ambiguity of the Curator's Role as a Manager

In a PKPU (Commercial Debt Restructuring Order), the curator acts as an administrator overseeing the debtor. However, the regulations do not clearly define the boundaries between "supervision" and "control." Consequently, there is confusion about whether the curator may control the debtor's operations or merely conduct monitoring.

This ambiguity often triggers disputes between debtors and administrators.

b. Reliance on the Debtor's Good Faith

The PKPU relies heavily on the debtor's good faith in developing a restructuring plan. However, there is no clear mechanism to take action against debtors who procrastinate or conceal assets. The administrator does not have the same authority as a bankruptcy curator to take action against detrimental debtor actions.

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<sup>13</sup>Supreme Court Decision No. 016 K/N/2007 concerning Disputes between Curators and Creditors

c. There are no specific regulations regarding conflicts of interest.

In a PKPU, the same party can act as both curator and administrator on different occasions. However, the regulations do not explicitly address potential conflicts of interest, such as:

- 1) when the curator has a relationship with a particular creditor, or
- 2) when the administrator has a business relationship with the debtor.

This has the potential to harm one of the parties and cause injustice.

#### 4. Impact of Regulatory Weaknesses

##### a. Legal Uncertainty

Regulatory weaknesses prevent creditors and debtors from accurately predicting the bankruptcy or PKPU process. This legal uncertainty undermines investor confidence and impacts economic stability.

##### b. Potential for Abuse of Authority

The curator's broad authority without effective supervision opens up opportunities for abuse of authority, such as:

- 1) sale of assets without transparency,
- 2) unreasonable determination of curator fees,
- 3) biased decision making towards certain groups of creditors.

##### c. Low Debt Settlement Effectiveness

Regulatory weaknesses make the bankruptcy and PKPU (Debt Recovery Order) processes inefficient. Debt settlement tends to take a long time, and recovery rates for creditors are low.

#### **4. Conclusion**

The regulation of curator authority in Law Number 37 of 2004 provides a fairly comprehensive legal basis for the curator's role in managing and settling bankrupt assets and as administrator in the PKPU (Deferred Payment Order). However, existing provisions indicate that the curator's authority remains broad and lacks clear operational boundaries. As a result, the implementation of this authority often leads to differing interpretations and legal uncertainty for both creditors and debtors. Furthermore, the role of the supervisory judge, who should oversee the curator's actions, is not yet optimal. Therefore, the strategic function of the curator requires more detailed regulations to ensure transparency and accountability in every action taken.

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