

Responsibilities of The Curator as The Party Selling Bankruptcy Assets On Behalf Of The Bankruptcy Debtor Based On Bankruptcy Law

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Abstract. Bankruptcy has legal consequences or broad implications in the field of property law, whereby all of the debtor's assets will be managed by the trustee to pay off their debts. With bankruptcy, as stated in Article 69 of the UUK-PKPU, the trustee has several powers, such as the power to sell the bankrupt debtor's assets listed in the bankruptcy estate. The purpose of this research is to analyze the responsibilities of the trustee in the public sale of bankruptcy assets through the State Property and Auction Service Office and the role of the trustee in the direct public sale of collateral in the presence of the Land Deed Official based on the principle of fairness. This research uses normative legal research. The type and source of data used are derived from secondary data using primary, secondary, and tertiary legal materials. The data collection method in this research is literature review, and the data analysis method is qualitative. Based on the results of the research, the Curator is responsible for the sale of bankruptcy assets in the public through the KPKNL. this is a legal requirement as specified in Article 185(1) of the Bankruptcy Law, and further clarified in Ministry of Finance Regulation No. 122 of 2023 regarding Guidelines for Auction Procedures under Article 27(1). The curator has the authority to sell bankrupt assets through private transactions as regulated in Article 185(2) of the Bankruptcy Law, considering the efficiency of case resolution to prevent a decrease in the value of the bankrupt assets. To ensure legal certainty regarding the transfer of rights to bankruptcy assets, the sale of bankruptcy assets by the trustee to the buyer must be conducted in the presence of an authorized official, in this case a Public Notary who has the authority to issue an authentic deed.

Keywords: Bankruptcy; Bankruptcy Assets; Trustees.

1. Introduction

Business activities often involve debt, and this often requires the borrower to provide collateral. Collateral can be in the form of goods (objects), thus constituting material security, or a promise to guarantee the debt, thus constituting personal security. If the borrower or debtor fails to meet their debt obligations, one way to obtain repayment is by filing a bankruptcy petition with the commercial court if there are two or more creditors (lenders).¹ Bankruptcy has existed since Roman times. The word "bankrupt" (in English, "bankrupt") comes from an Italian law called *banca rupta*. Bankruptcy occurred in medieval Europe when bankers or merchants secretly fled with their creditors' assets. The history of bankruptcy in Indonesia was first regulated in the *Staatsblad* 1905 jo. *Staatsblad* 1906 concerning *Failure Verordening*, which was later replaced by Government Regulation in Lieu of Law No. 1 of 1998, subsequently ratified as Law No. 4 of 1998, and finally replaced by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UU K-PPU). This indicates that bankruptcy is essentially a general seizure of all of a debtor's assets, which will then be managed and settled to settle the debtor's debts (and distributed) among all creditors.²

Bankruptcy is a condition in which a debtor is unable to make payments on its creditors' debts. The purpose of bankruptcy is to secure the interests of creditors in respect of their receivables to an insolvent debtor. This state of being unable to pay is generally caused by difficulties in the financial sector or what is known as financial distress due to declining business speed. If we look at Article 1 number 1 of the Bankruptcy and Suspension of Debt Payment Obligations Law, it explains that "bankruptcy is a general seizure of all the assets of a bankrupt debtor, the management and/or settlement of which will then be carried out by a curator and the process will be carried out under the supervision of a supervising judge."

The definition of a curator is in Article 1 number (5) of Law Number 37 of 2004, which states that a curator is an orphanage or individual appointed by the court to manage and settle the assets of a bankrupt debtor under the supervision of a supervising judge. In Article 70 paragraph 2 of the Bankruptcy Law, a curator as referred to in this law is an individual or civil partnership domiciled in Indonesia and has the special expertise as required to manage and settle the bankrupt debtor's assets and has been registered with the Ministry of Justice and Human Rights.³

¹ Bahsan, M. (2010). *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Rajawali Pers.

² Yuhelson. (2019). *Hukum Kepailitan di Indonesia*. In *Hukum Kepailitan di Indonesia* (Vol. 1, p. 13–14).

³ Tim Redaksi Tatanusa. (2005). *Kepailitan & PKPU Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*. 8.

A curator is someone appointed by the court to manage and settle the assets of a bankrupt debtor. In carrying out his duties, he must comply with the rules. applicable laws. When carrying out his duties, the curator must be independent and not have a conflict of interest with either the debtor or the creditor, this is as regulated in the provisions of Article 15 paragraph 3 of Law Number 37 of 2004. control and manage his bankrupt assets. Meanwhile, for creditors, there will be uncertainty about the legal relationship between the bankrupt debtor and the creditors. The existence of Law no. 37 of 2004 concerning Bankruptcy and Suspension of UK-PKPU Debt Payment Obligations determines the party who will handle the problem between creditors and bankrupt debtors by appointing a curator who will later manage and settle the debtor's bankrupt assets and resolve the legal relationship between the bankrupt debtor and its creditors. Debt payment is one form of realization of the debtor's performance, if there is a performance which cannot be fulfilled or is in default, then one way to obtain repayment is to submit a bankruptcy petition to the commercial court. Bankrupt debtors are in general confiscation (by law).

2. Research Methods

The research used in this study is descriptive analytical. Descriptive analytical research is a study that describes, examines, explains, and analyzes a legal regulation. Descriptive analytical is a research method used to analyze and describe data by describing it through written or spoken words from informants or the results of observations of observed events.⁴ Regarding descriptive itself, this legal research aims to provide an overview of the characteristics of the problems that occur based on applicable laws and regulations regarding legal protection for curators in carrying out the settlement of bankrupt assets. Analytical means that the research object is supported by data related to the problems to be revealed, it is hoped that it will provide a careful, comprehensive, and systematic study of legal protection for curators in carrying out the settlement of bankrupt assets based on the value of justice.

3. Results and Discussion

3.1. The Curator's Responsibilities in the Public Sale of Bankrupt Assets Through the State Assets and Auction Services Office

The general task of the Curator is to manage and/or settle the bankrupt estate, therefore the curator must act in the best interests of the creditors, but he must also pay attention to the interests of the bankrupt debtor, these interests must not be ignored at all. In his obligation to carry out the task of managing and/or settling the bankrupt estate in accordance with Article 69 paragraph (1) of the Bankruptcy Law, the curator in carrying out his duties cannot freely carry out all

⁴ Soerjono Soekanto. (1986). Pengantar Penelitian Hukum, UI Press.

authorities alone. In fact, it is highly recommended that in all activities the curator is considered important, he must consult and must obtain the approval of the supervising judge, including for matters that are not regulated by law to request consultation and approval from the supervising judge.⁵

The duties of the Curator include the following:

a. Announce the bankruptcy declaration decision, the place and time of the first Creditors' meeting in the State Gazette of the Republic of Indonesia and two daily newspapers designated by the Supervisory Judge, within a maximum of five days of the date the bankruptcy declaration decision is received, as explained in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations in Article 15 paragraph (4), which states: "Within a maximum of five days after the date the bankruptcy declaration decision is received by the Curator and the Supervisory Judge, the Curator shall announce in the State Gazette of the Republic of Indonesia and at least two daily newspapers designated by the Supervisory Judge a summary of the bankruptcy declaration decision, containing the following:

- 1) The name, address, and occupation of the Debtor;
- 2) The name of the Supervisory Judge;
- 3) The names, addresses, and occupations of the members of the temporary Creditors' committee, if appointed; and
- 4) The place and time of the first Creditors' meeting."

b. Optimizing the safety of the bankrupt's assets by securing all letters, documents, money, jewelry, securities, and other valuables with a receipt, as explained in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Article 98, which reads, "From the date of his/her appointment, the Curator must make every effort to secure the bankrupt's assets and secure all letters, documents, money, jewelry, securities, and other valuables with a receipt."

c. Making a record of bankrupt assets no later than 2 (two) days after receiving the decision letter of appointment as Curator, stated in Article 100 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations "regulates the recording of bankrupt assets by the Curator. No later than 2 days after receiving the decision letter of appointment, the Curator is obliged to make a record of bankrupt assets", and after that must make a list of the nature and amount of receivables and along with the amount of their respective receivables,

⁵ Munir Fuady. (2014). *Hukum Pailit dalam Teori dan Praktek*. Pt. Citra Aditya Bakti.

Article 102 of the Bankruptcy Law. The recording of bankrupt assets as referred to in Article 100 and the list as referred to in Article 102 must be placed in the Court Registry to be seen by everyone free of charge.

The curator is charged with the responsibility of selling bankruptcy assets (boedel) through the State Assets and Auction Service Office for several reasons. Among them, the State Assets and Auction Service Office has the authority and adequate infrastructure to conduct auctions professionally and transparently. Sales through the State Assets and Auction Service Office ensure objectivity and fairness in the bankruptcy assets (boedel) sale process, minimizing the potential for fraud and/or abuse of authority by the curator. The State Assets and Auction Service Office (KPKNL) also has the authority to set price limits and asset valuations, helping to ensure the boedel is sold at a fair price.

Lawrence M. Friedman argues that the legal system in practice is a complex organism in which structure, substance, and culture interact. A legal system is a combination of "primary rules" and "secondary rules." The law can function effectively when the legal system, consisting of legal structure, legal substance, and legal culture, synergizes and interacts effectively.

The auction process conducted by the State Assets and Auction Services Office from the perspective of Good Governance theory can be explained as follows:⁶

1. The accountability theory ensures that the auction process is accountable to all stakeholders, namely the public and the government, including auction administration and auction money management;
2. The transparency theory ensures that all levels of society are aware of the plan and have an equal opportunity to participate, provided it is not prohibited by law. Therefore, every auction must be preceded by an auction announcement to prevent unfair business competition;
3. The participation theory ensures that anyone can participate in the auction, subject to the conditions specified by law.
4. The efficiency theory ensures that the auction process is carried out quickly and at a relatively low cost because the auction is held at a predetermined location and time. Buyers are confirmed immediately.

⁶ Suarti, E. (2021). Pelaksanaan Lelang Oleh Kantor Pelayanan Piutang dan Lelang. *Jurnal Ilmu Hukum*, 06(2).

3.2. The Role of the Curator in the Direct Sale of Bankrupt Assets Before the Land Deed Officially to Ensure Justice-Based Values

The process of selling the assets of a debtor declared bankrupt is carried out by the curator in two ways: public sale through an auction mechanism and private sale. Based on the provisions of Article 185 paragraphs (1) and (2) of Law Number 37 of 2004, it states as follows:

- 1) All assets must be sold publicly in accordance with the procedures specified in statutory regulations.
- 2) If the public sale as referred to in paragraph (1) is not achieved, a private sale may be conducted with the permission of the Supervisory Judge.

In the formal aspects of transferring bankrupt assets to immovable property such as land, aircraft, and ships with a volume of more than 20 m³, a transfer process is required through a Deed of Sale and Purchase. In this case, the Land Deed Official (PPAT) has the authority as the official authorized to prepare the Deed of Sale and Purchase in the process of transferring bankrupt assets.⁷ The sale of immovable property privately conducted through a Deed of Sale and Purchase by the Land Deed Official (PPAT) must be attended by both parties, namely the seller and the buyer. If one party is unable to attend, the absent party must submit a previously arranged power of attorney. However, Article 185 paragraph (2) of Law No. 37 of 2004 does not require the owner of the immovable property to be present in the private sale and purchase transaction, and there is no requirement to provide a power of attorney. According to Article 69 paragraphs (1) and (2), the curator does not require prior approval from the debtor to carry out the settlement of the estate.

Once the valid conditions of the agreement have been met, the parties, both the seller and the buyer, will appear together. to the Land Deed Official (PPAT) whose jurisdiction is located at the location of the immovable property being sold. With the signing of the Deed of Sale and Purchase for the immovable property included in the boedel by the parties before the Land Deed Official (PPAT), the transfer of the immovable property is legally valid.⁸

Thus, the third legal objective of the "three ideas of law," as expressed by Gustav Radburch, has been achieved. Therefore, the process of transferring bankruptcy assets during settlement has a legal basis. An authentic deed is valid evidence and holds high legal standing, as long as it meets the requirements specified in Article

⁷ M. Yasser Al Mursyid. (2021). Akta Peralihan Harta Pailit Berupa Benda Tetap yang Dijual Tanpa Lelang Oleh Kurator. *Jurnal*, 1 No 2, 230–240.

⁸ Article 37 paragraph (1). (1997). PP No. 24 of 1997 concerning Land Registration. 21(3).

1868 of the Civil Code, which defines an authentic deed, and Article 1870 of the Civil Code, which defines its evidentiary force.

The Land Deed Official (PPAT) also has a responsibility to provide legal protection to the parties who use his/her services. If the Land Deed Official commits an unlawful act while carrying out his/her duties and this results in losses for the parties involved, the Land Deed Official is obliged to be accountable for it. The responsibility of the Land Deed Official in the context of his profession is based on the principle of fault-based liability. Therefore, in the preparation of authentic deeds, the Land Deed Official must be responsible if problems arise due to errors he made. Errors or violations in the contents of the deed made are the responsibility of the Land Deed Official (PPAT) if they originate from his own actions. However, if the errors or violations are committed by the parties involved, then the Land Deed Official (PPAT) cannot be held responsible, because the duty of the Land Deed Official (PPAT) is only to record and include the information provided by the parties or appearing in the deed. , if the parties provide incorrect or false information, then the responsibility lies entirely with them, not the Land Deed Official (PPAT).

In the process of settling bankrupt assets, curators are required to consider the principles stipulated in the Bankruptcy and PKPU Law (UUK-PKPU), such as (Sinaga, 2012):

1. The principle of balance

This aims to regulate the relationship between the parties involved in the bankruptcy to prevent the abuse of rights and authority by dishonest or dishonest parties;

2. The principle of justice

This ensures that bankruptcy provisions satisfy a sense of justice for all interested parties. This principle also serves to prevent arbitrary actions by debtors who demand payment from the debtor without considering the rights of other creditors;

3. The principle of business continuity

This provides opportunities for debtor companies that still have prospects to continue operating, thus benefiting both debtors and creditors.

The curator's role in the sale of bankrupt assets before the Land Deed Official (PPAT) is not only administrative, but also ethical and legal. By upholding the principle of justice, the curator serves as the guardian of the integrity of the settlement process, ensuring that the rights of all parties, especially creditors and

debtors, are treated fairly and proportionally, in accordance with the principle of *pari passu prorata parte*, as specified in Article 1132 of the Civil Code (KUHP *perdata*), which states that all of the debtor's assets, by law, constitute joint collateral for the creditors, and the proceeds must be distributed proportionally among them, while adhering to the principle of *creditorium parity*.

To ensure that the bankruptcy estate sale process reflects the value of justice, the curator is required to:

1. Determine a fair and transparent selling price;
2. Involve creditors in the settlement process;
3. Maintain independence and accountability;
4. Avoid conflicts of interest.

Article 72 of the Bankruptcy Law and the Suspension of Debt Payment Obligations is an important instrument for maintaining a balance between settlement efficiency and protecting creditors' rights. Sales outside of auction must be conducted transparently, with the approval of the supervising judge, conducted before a Land Deed Official (PPAT) with an authentic deed, and based on the principles of justice and accountability.

Regarding the settlement of bankrupt assets carried out by the Curator in carrying out their duties and authorities, the Curator may conduct the sale or settlement of bankrupt assets privately or directly without going through the State Assets and Auction Services Office (KPKNL) or a private auction house. This is explained in Article 185 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (K-*PKPU*), which states: "If a public sale as referred to in paragraph (1) is not achieved, a private sale may be conducted with the permission of the Supervisory Judge." Bankruptcy law stipulates that such a sale must be conducted with the permission of the Supervisory Judge.

Private sales of bankrupt assets must still consider theories of justice. Gustav Radburch defined justice as paramount in his theory of the Three Ideas of Law. Generally, justice is defined as fair action or treatment. Justice, on the other hand, is impartial, impartial, and sided with what is right. According to philosophical studies, justice is defined as fulfilling two principles: first, not harming anyone, and second, treating each person according to their rights. Only if these two principles are met is it considered just. Justice must have proportional certainty, and when combined, the combined results constitute justice.

The process of selling bankruptcy assets privately must maintain a sense of justice, benefit, and legal certainty. If the sale of bankruptcy assets through an auction

mechanism is not successfully implemented, the assets will decline in value, and the proceeds from the sale will ultimately lead to the failure to meet the interests of bankruptcy creditors. Therefore, to maintain this sense of justice, the curator must conduct the sale of bankruptcy assets privately while maintaining transparency regarding the price and the assets being sold for the sake of justice.

Legal certainty regarding the sale of bankrupt assets must also be met to prevent fraud or problems with the assets. Therefore, the sale of bankrupt assets must be based on an authentic deed of transfer of rights between the seller, in this case the curator who has authority over the bankrupt assets, and the buyer. This way, the objectives of the law can be met.

4. Conclusion

The curator is burdened with the responsibility of selling bankrupt assets in public through the State Assets and Auction Service Office (KPKNL), this is a statutory order which has been explained as in the provisions of Article 185 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (K-PKPU) which explains that all objects must be sold in public in accordance with the procedures specified in statutory regulations, and is also specified in the Regulation of the Minister of Finance Number 122 of 2023 concerning Auction Implementation Guidelines Article 27 paragraph (1) which explains that the auction must be carried out by the KPKNL, Auction House, and Class II Auction Officials according to their authority. This ensures objectivity and fairness in the process of selling bankrupt assets (boedel) which minimizes the potential for fraud and/or abuse of authority by the curator. The curator has the authority to sell bankrupt assets through a private mechanism as regulated in the provisions of Article 185 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, that in the article explains that if a public sale is not achieved, a private sale can be carried out with the permission of the Supervisory Judge, considering the efficiency of the settlement of the case so that there is no decrease in the value of the bankrupt assets. In order to maintain legal certainty regarding the transfer of rights to bankrupt assets, the curator as the seller of bankrupt assets with the buyer must be carried out before an authorized official in this case the Land Deed Making Officer (PPAT) who has the authority to issue an authentic deed. By upholding the principle of justice, the curator functions as a guardian of the integrity of the settlement process, ensuring that the rights of all parties, especially creditors and debtors, are treated fairly and proportionally, as per the principle of *pari passu prorata parte*, which has been stipulated in the provisions of Article 1132 of the Civil Code (KUHPerdota).

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