



## INDEPENDENCE OF THE CURATOR IN THE MANAGEMENT AND DISPOSAL OF BANKRUPTCY PROPERTY

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### ABSTRACT

The curator has an important role in a bankruptcy to manage and settle the bankruptcy assets. Article 1 point 5 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations states that what is meant by Curator is the Inheritance Property Office or an individual appointed by the court to manage and settle the assets of a bankrupt debtor under the supervision of a supervising judge. In carrying out the task of settling and managing bankruptcy assets, the curator must be independent and not take sides with either party. What is the curator's responsibility for the risk of loss in the Management and Settlement of Bankruptcy Assets? What is the curator's authority over bankrupt debtors who are not cooperative in a bankruptcy process? This research is normative legal research, the research was carried out by reviewing secondary data in the form of library materials, which include primary materials, secondary and tertiary materials. The entire data obtained (secondary data and primary data) was then processed systematically and qualitatively to produce writing. analytical descriptive. In this case, the researcher conducted an analytical juridical study to see the role and responsibilities of the curator in the management and settlement of bankruptcy assets.

**Keywords:** *Curator, Bankruptcy, Bankruptcy Law and PKPU*

### A. INTRODUCTION

Law cannot be separated from the culture, history and time in which it exists. Every historical and social development must be balanced with legal developments, because every social change will affect legal developments. Through a cultural approach, legal development is seen as not just a shift in time from the colonial era to the era of independence, it requires legal changes and a shift in values to explain the value system adopted in the construction of national law. Bankruptcy is a situation where the debtor is unable to make payments on the debts of his creditors and the debts have matured. The situation of being unable to pay is generally caused by the difficult financial condition of the debtor's business which has experienced a setback. Bankruptcy is a court decision that results in the general confiscation of all assets of the bankrupt debtor, both those that already exist and those that will exist in the future. Basically, a debt is an obligation that must be fulfilled by the debtor, which if not fulfilled, the creditor has the right to obtain fulfillment from the debtor's assets. Bankruptcy management and settlement is carried out by the curator under the supervision of a supervising judge with the main aim of using the proceeds from the sale of the assets to pay all debts of the bankruptcy debtor proportionally and in accordance with the creditor structure. Bankruptcy is a further implementation of the creditorium parity principle and the pari passu prorata parte principle in the property law regime (Vermogensrechts). The principle of parita creditorium means that all of the debtor's assets, whether in the form of movable or immovable goods, as well as assets currently owned by the debtor, are bound to the settlement of the debtor's obligations. The curator has a major role in managing and settling bankruptcy assets for the benefit of creditors and debtors themselves. In article 1, point 5 of the KPKPU Law, the definition is given: "a curator is an Inheritance Property Office or an individual appointed by the Court to manage and settle the assets of a bankrupt debtor under the supervision of a Supervisory Judge in accordance with this Law." The management and/or settlement of the bankruptcy assets is handed over to the Curator appointed by the Court, supervised by the Supervisory Judge appointed by the Court Judge.

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To carry out his duties and authority, a Curator needs to sort out the authority he has based on law, namely:

- a) authority that can be exercised without the need for approval from other agencies or parties;
- b) authority that can be exercised after obtaining approval from another party, in this case the Supervisory Judge.

In carrying out its duties and authority, the Curator must at least have the following abilities:

- a. adequate mastery of civil law;
- b. mastery of bankruptcy law;
- c. management control (if the Debtor goes bankrupt, whether the company can still save its business activities or not); And
- d. basic mastery of finances.

This ability should ideally be possessed by a curator because in practice there are still some curators who are less than optimal in managing and resolving bankruptcy cases or often curators are not supported by adequate human resources to carry out due diligence and/or research on the financial statements of bankrupt debtors, resulting in bankruptcy cases. also becomes maximum. Curator's ability must be accompanied by integrity. Integrity is based on truth and justice and the obligation to comply with professional and ethical standards in accordance with their letter and spirit. Integrity is a fundamental characteristic for recognition of professionalism which underlies public trust as well as a benchmark for members (curators) in testing all decisions they take. Integrity requires curators to be honest and trustworthy and not sacrifice public trust for personal interests. Integrity requires curators to be objective and carry out their profession carefully and thoroughly. The appointed curator must be independent and must not have a conflict of interest with debtors or creditors. A creditor or debtor who files a bankruptcy petition can ask the court for the appointment of a curator. If there is no government, a commercial court judge can appoint a curator and/or a heritage agency who acts as curator. The curator's duties are not easy or can be carried out smoothly as stipulated in the law. Problems faced by curators often hinder the curator's proper performance process, such as dealing with debtors who do not voluntarily carry out court decisions, for example debtors do not provide access to data and information on their assets that have been declared bankrupt. Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations has clearly regulated the authority, duties and responsibilities of curators, but in reality carrying out duties as a curator is not as simple as described in the Law.

**B. FORMULATION OF THE PROBLEM**

From the description above, the author draws the problem formulation, including:

1. What are the Curator's Responsibilities in Managing and Disposing of Bankruptcy Assets?
2. Are the legal efforts taken by the curator in managing and settling bankrupt assets not independent or impartial?
3. What are the curator's powers over bankrupt debtors who are uncooperative in a bankruptcy process?

**C. RESEARCH METHODS**

The type of research method in this research is normative legal research (Legal Research). Then the nature of the research used is analytical descriptive, which means it reveals the laws and regulations related to the legal theories that are the object of research (Ibrahim, 2005). The data source in this research is secondary data. The technique for collecting legal materials in this research was carried out by means of library research in the form of legislation, literature in the field of legal science and identifying the required data. The data collection tools used in this research are document study (Documentary Search) and interview guidelines (Ridwan, 2006).



## D. RESULTS AND DISCUSSION

### 1. Curator's Responsibility for the Risk of Losses in the Management and Settlement of Bankruptcy Assets

As stipulated by Article 98 of the Bankruptcy Law and PKPU, immediately after receiving notification, the Curator, with all necessary and appropriate efforts, must save the bankrupt's assets. All letters, money, jewelry, securities and other securities must be immediately taken and stored by providing a receipt. After receiving notification of the appointment, the curator, with all necessary and reasonable efforts, must secure the Debtor's assets to avoid reducing the value of the bankruptcy assets. This security measure covers all of the Debtor's assets. After a bankruptcy declaration, the curator must immediately take the necessary preliminary actions following the bankruptcy declaration. After being appointed as curator, the curator concerned must contact the supervisory judge and prepare a draft bankruptcy announcement determined by the supervisory judge and propose a newspaper in which the announcement will be published. The curator must have principles that benefit creditors and debtors and in all actions taken must be careful, not to harm either party. Because even though appointed by the court, the curator is still proposed by the bankruptcy applicant (Ridwan, 2018:204). Even so, the curator proposed by the bankruptcy applicant must still provide justice both to preferred, separatist and concurrent creditors as well as to the continuity of the debtor's business.

Curators must be free to carry out their duties and remain obedient to applicable regulations, then not take sides with anyone and not be influenced by anyone (Aditya Pratama and Parulina Paidi Aritonang, 2014: 13). So the personal responsibility of a curator is very large given by the Bankruptcy Law-PKPU, for this reason the professionalism of a curator is really needed, because a lack of caution in processing bankruptcy assets will have juridical implications for the curator himself, besides that it also has an impact to the authority of the court (Tri Reni Novita and M. Faisal Husna, 2019:164). In carrying out the duties of managing and settling bankruptcy assets, a curator will not be successful without assistance from parties directly related to the bankruptcy process. Even though in the Bankruptcy Law-PKPU, the curator is given full power to carry out the management and settlement of bankruptcy assets from the moment the Debtor is declared bankrupt, without assistance and cooperation from parties directly related to bankruptcy, the curator's task will not be successful or will even fail. at all. All existing claims must be submitted to the Curator by presenting a calculation or other written statement, indicating the nature and amount of the receivables, accompanied by evidence or copies of such evidence, along with a statement letter regarding the existence or absence of a special privilege, pawn, mortgage, security rights, other mortgage rights, harvest bonds, including the right to retain objects (retention rights) as regulated in Article 114 of the Bankruptcy Law-PKPU.

The curator carries out debt and receivable matching to determine the rights and obligations of the bankruptcy estate. Debt and receivable matching activities begin when the curator is tasked with checking the formal and material truth of all creditor claims based on the debtor's evidence submitted by the creditor. If necessary, in matching these debts, the curator can play an active role in contacting concurrent creditors who are known to have significant claims against the debtor if the curator does not submit the bill. After that, the curator must sort out approved and disputed receivables. All receivables approved by the curator are included in the list of temporarily recognized receivables, while disputed receivables are included in a separate list containing the reasons for their denial. The list also includes notes on whether or not there are special rights attached to the receivables, including whether or not there is a guarantor with encumbrances, liens, mortgages, or collateral rights over other objects or retention rights that can be exercised. If the curator then only denies the existence of a right of precedence or the existence of a right of retention on a receivable, then the receivable must be included in the list of receivables that are temporarily recognized, along with the curator's note regarding the denial and the reasons

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therefor. A copy of these lists must be placed in the curator's office 7 days before the receivables matching day, so that it can be seen free of charge by anyone who wishes.

The placement of the list must be notified to all known creditors. The notification may be accompanied by a further summons to attend a receivables matching meeting and a statement regarding whether or not a reconciliation plan has been submitted by the bankruptcy debtor. Bankruptcy debtors are required to appear personally at the receivables matching meeting. Thus, the Debtor is expected to be able to provide all information required/requested by the supervisory judge regarding the reasons for the bankruptcy and the condition of the bankruptcy assets. Existing creditors, with the permission of the supervisory judge, are also permitted to ask the bankruptcy debtor for information regarding matters mentioned by them. The questions asked to the bankruptcy debtor and the answers given are written in the notification letter. In the receivables matching meeting, the supervisory judge is obliged to read out the list of receivables that have been temporarily acknowledged and the list of receivables that the curator has denied. Each creditor mentioned in the list is allowed to ask the curator to provide information about each receivable, the reasons for its placement in one of the lists, dispute the validity of the receivable or deny the existence of a right of precedence or the right to retain an item, or state that it confirms the curator's denial. The curator himself has the right to withdraw the temporary acknowledgment or denial that he has made or to request that the creditor confirm with an oath the truth of his receivable which has not been disputed by either the curator or one of the creditors. If the original creditor has died, the entitled holders (heirs) must explain under oath that they believe in good faith that the receivable still exists and has not been repaid.

Receivables that are not disputed at the meeting must be transferred to the list of acknowledged receivables and recorded in the meeting minutes. Regarding letters of appointment and letters of conveyance, the acknowledgment is recorded in those letters. Meanwhile, receivables for which the curator is requested to swear, are accepted with conditions, so that when a decision is made, the acceptance remains. A recognized receivable, which is recorded in the minutes of the meeting, has absolute force in bankruptcy. Cancellation of debts that have been acknowledged cannot be demanded by the curator, unless fraud has been proven, as stipulated in Article 126 paragraph (5) of the Bankruptcy Law and PKPU. Debts that have been disputed can be conditionally accepted by the supervising judge up to an amount determined by him. If the right to precedence is denied, then the supervising judge may recognize that right as conditional. The bankruptcy debtor has the right to contest the acceptance of a receivable, either in whole or in part, or against the existence of a right of precedence. If so, the objection and the reasons therefor are recorded in a notification letter, without referring the parties to court, and without preventing the recognition of the receivable in bankruptcy.

Receivables submitted to the curator after the specified time period has passed, but no later than 2 days before the receivables matching meeting is held, if no objection is raised by either the curator or one of the creditors present, they must be matched based on the request submitted for that purpose in meeting. Receivables are advanced after they are not matched. This provision does not apply if creditors who live far away are unable to report first. Bankruptcy debtors have the right to submit a peace plan for approval at a creditors' meeting which is then ratified by the court. A curator must always prioritize the possibility of achieving peace and in carrying out his duties the curator must pay attention to resolving bankruptcy and maintaining the business continuity of the bankrupt debtor. Therefore, a curator must maintain the debtor's business activities, if they are still running at the time of assignment, and limit the sale of bankruptcy assets before the debtor is unable to pay assets that do not materially affect the continuity of the debtor's business. The curator is obliged to provide written considerations to the creditors' meeting regarding the feasibility of the bankruptcy debtor's reconciliation plan, and in providing these considerations the curator is obliged to consider:

- a. The value of the bankrupt's assets is proportional to the amount agreed in the peace plan;
- b. There is a payment guarantee in the peace plan;





- c. There are allegations of fraud in the reconciliation plan, including if the plan unfairly benefits one or more creditors or debtors;
- d. If possible, the curator can complement these considerations with expert opinions who are qualified to do so.

The curator begins settling the bankruptcy estate after the bankruptcy estate becomes unable to pay and the debtor's business is stopped. If the bankruptcy estate is unable to pay, the curator acts based on the principle of increasing or at least maintaining the value of the bankruptcy estate. If the bankrupt's assets are in a state of inability to pay, this does not mean that business activities immediately stop, but business activities can continue if they can increase/maintain the value of the bankrupt's assets. The curator decides how to settle the bankruptcy estate by always paying attention to the best value at the time of settlement. With the approval of the supervisory judge, the curator carries out an assessment of the bankruptcy estate. The curator can carry out this assessment himself if he has the capacity to do so, or appoint a competent third party, such as an assessment company. The curator uses the results of the assessment as a reference in determining the value of the bankruptcy estate for settlement purposes.

The manifestation of the curator's responsibility for losses incurred as a result of the curator's mistakes and negligence for actions carried out by the curator without the responsibility of the supervising judge, as a result of negligence or because of the curator's unprofessionalism is the responsibility of the curator, therefore these losses cannot be borne by the curator. bankruptcy assets (Serlika Aprita, 2019 :168). However, if the curator's actions are carried out in accordance with the authority given to him by law and are carried out in good faith, but due to matters outside the curator's control it turns out to be detrimental to the bankruptcy estate, then the curator cannot be held personally responsible for the loss. can be charged to the bankruptcy estate. The broad authority granted by the law to curators creates a burden for curators to be careful and responsible in carrying out their duties, because parties who are harmed by the curator's actions in carrying out their duties can submit claims for the losses they have experienced to the curator. Jerry Hoff stated that losses arising as a result of the curator's actions could be the curator's personal responsibility, which means it would be the burden of the curator's personal assets to compensate for these losses. In other cases, losses that arise as a result of the actions or failure of the curator are charged to the bankruptcy estate to compensate for these losses (Aria Suyudi, et al, 2004: 89). The curator's responsibilities are divided into 2, namely:

1) Curator's responsibilities in the Curator's Capacity

The curator's responsibility in his capacity as curator is borne by the bankruptcy estate, and not by the curator personally who must pay for the loss. The party who is suing has claims on the bankruptcy estate, and the claims are debts from the bankruptcy estate, such as:

- a. The curator forgot to include one of the creditors in the distribution plan;
- b. The curator sells the debtor's assets which are not included in the bankruptcy assets;
- c. Curator sells third party assets;
- d. The curator tries to collect on the bankrupt debtor and confiscates the debtor's property, then finds out that the debtor's claim is false.

Losses arising as a result of the curator's actions mentioned above do not become a burden on the curator's personal assets but rather become a burden on the bankruptcy estate.

2) Curator's Personal Responsibilities

Losses that arise as a result of the curator's actions or inaction are the responsibility of the curator. In this case the curator is personally responsible. The curator must pay for the losses he causes himself. This responsibility can occur, for example, if the curator embezzles bankruptcy assets. If the loss that arises is the result of negligence or because the curator is not professional, it will be the curator's responsibility. Therefore, these losses are not charged to the bankruptcy estate. Differentiating responsibility for losses from bankruptcy assets to the curator will make the curator less creative in carrying out his duties, especially in efforts to increase the value of the bankruptcy assets. Types of Losses Experienced by Curators in the Management and Settlement of Bankruptcy

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Assets Losses of curators in the management and settlement of bankruptcy assets. In carrying out their duties, curators are not without losses, in fact the responsibility given to curators is a very heavy responsibility. According to Article 72 of the Bankruptcy Law, the curator is responsible for errors or omissions in carrying out management and settlement duties which cause losses to the bankruptcy estate. The curator can be sued and is obliged to pay compensation if due to his negligence, especially because his mistake (made intentionally) has caused the parties with an interest in the assets to go bankrupt, especially of course the concurrent creditors are harmed (Sinaga, 2012). The curator's efforts to defend themselves, even though up to now the curator does not have the right to immunity and there are no regulations in the Bankruptcy Law which strictly protect the curator in carrying out his duties, as long as the curator does not violate the provisions of the curator's professional code of ethics where the curator is independent. In carrying out his professional duties, not taking sides with anyone and not being influenced by anyone, where the curator, when carrying out his duties, manages and settles bankruptcy assets in accordance with applicable laws, there is no need to worry (Nurdin, 2019).

**2. Efforts Made by Curators Against Uncooperative Debtors**

The success or failure of the process of managing and settling bankruptcy assets is largely determined by the role of the bankruptcy debtor. If the Debtor is cooperative, the process will run successfully. But on the other hand, if the Debtor does not show good faith in cooperating, the process of managing and settling bankruptcy assets will take a long time and may even be unsuccessful. In practice in the field there may be Debtors who are not cooperative, for example in providing data information and dishonest use of funds where company funds are used for personal interests, or operational costs have been marked up. In dealing with uncooperative Debtors, the Curator can take legal action/legal sanctions as follows:

- a. Ongoing cases are suspended;
- b. The Debtor may not be the Plaintiff of the Defendant;
- c. Termination of employment can be carried out;
- d. The retention rights held by the Creditor remain valid;
- e. A period of suspension of execution of collateral rights applies;
- f. The confiscation ends and is lifted;
- g. A period of suspension of execution applies;
- h. Bankruptcy debtors can be held hostage;
- i. General provisions apply.

The curator proposes to the supervisory judge that legal action be taken against the bankruptcy debtor who is deemed uncooperative so that he can immediately comply with the bankruptcy process. This action can vary from the most serious, for example by asking the supervisory judge to issue a summons aimed at bringing the debtor into bankruptcy before a court or creditor's meeting, a letter of warning ordering the Debtor to comply with special actions in bankruptcy, or asking the supervisory judge to use the available instruments, namely to hold the Debtor hostage.

**a. Issue a Summons Letter**

A Debtor who is proposed to be declared bankrupt must be present at the hearing. For this reason, the court is obliged to summon the Debtor by registered letter no later than 7 days before the examination hearing is held (Article 8 of the Bankruptcy Law and PKPU). Apart from that, in accordance with the provisions of Article 121 of the Bankruptcy Law and PKPU, the bankrupt debtor must be present in person at the receivables matching meeting, so that he can provide information requested by the supervising judge regarding the causes of bankruptcy and the condition of the bankrupt's assets. In this receivables matching meeting, the presence of the Debtor is very necessary to match the receivables from the creditors. If we look at the provisions of Article 121 of the Bankruptcy Law and PKPU above, the Debtor is obliged to appear in person, this means that his presence is not through a summons from the supervising judge. Thus, if the Debtor does



not attend the receivables matching meeting, of course this will hinder the resolution of the bankruptcy itself, so in this case the supervisory judge can issue a summons for the Debtor to attend the next receivables matching meeting.

**b. Issue a letter of warning**

As explained above, in this bankruptcy process, good cooperation from the Debtor is very helpful in this bankruptcy process, especially in terms of decomposing bankruptcy assets. In practice, many Debtors hide or are not transparent in describing their assets from the Curator, namely by providing information to the Curator regarding their assets. Of course this hampers the curator's performance. In the absence of good faith on the part of the Debtor, the curator can ask the supervising judge to give a letter of warning to the Debtor so that it is hoped that he can cooperate in good faith with the curator.

**c. Taking Debtors Hostage**

In order to run the bankruptcy process smoothly, bankruptcy debtors are prohibited from leaving their residence without the permission of the supervising judge. If the Debtor leaves his residence, the Curator is obliged to notify the supervising judge in writing. The curator is obliged, if necessary, to submit a written request for confinement to the supervising judge.

**3. Authority of the Curator in the Management and Settlement of Bankruptcy Assets**

**1. The authority of the Curator in managing bankruptcy assets**

The curator's authority in managing bankruptcy assets begins with the appointment by a commercial court judge to carry out special tasks based on the decision to declare bankruptcy. Furthermore, he is authorized to act independently within the limits of his duties. Thus, the curator is fully responsible for managing the debtor's bankruptcy assets as determined by the judge and is also in accordance with his authority as curator under the Bankruptcy Law (Firmansyah, 2013).

**2. The authority of the Curator in settling bankruptcy assets**

In carrying out the settlement of bankruptcy assets, the curator has the following duties and authorities, the curator must immediately start settling the bankruptcy assets; initiate settlement and sell bankruptcy assets without the need to obtain the Debtor's approval or assistance; deciding what action to take on objects that cannot be dealt with quickly or at all; use the bankruptcy debtor's assistance services for the purposes of settling bankruptcy assets, by providing wages. The settlement can be carried out as part of one or more business entities (going concern) or for each bankrupt's assets (Al Mutfi, 2016).

**E. CONCLUSION**

Based on the discussion in this research, the following conclusions can be drawn:

1. That the curator also has the principle of independence and impartiality which is one of the main principles known in various provisions, the curator's responsibility is divided into 2, namely the curator's responsibility in his capacity as curator and the curator's personal responsibility so that the curator must be responsible if there is loss to assets bankrupt with limitations on liability based on the Bankruptcy Law and PKPU.
2. The Bankruptcy Law does not contain rules regarding protection for curators in terms of settling and administering bankruptcy assets, however, as long as the curator does not violate the provisions of the curator's professional code of ethics, the curator is independent in carrying out his professional duties and carrying out his duties in terms of managing and settling bankruptcy assets in accordance with the Bankruptcy Law and PKPU, there is nothing to worry about because the curator cannot be punished if he has carried out his duties according to the judge's decision.
3. Legal remedies that can be taken by the curator against debtors who are uncooperative include issuing a summons, issuing a warning letter and taking the debtor hostage.

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