

## Research Article

## **Regulation of the Curator's Responsibility in Securing Bankrupt Assets to Fulfill Justice**

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### **Abstract**

Bankruptcy of law is a law to arrange about bankruptcy with the intention to avoid being deception Creditors to get prerogative with sell goods from Debtor. Petition of bankruptcy submitted to The Commercial Court who be competent by their territory and after petition granted so that Debtor be avowed bankruptcy and taken over by Curator. However, during domination by Curator be found problem namely Curator cheating with obscure manner of bankruptcy estate, as a consequence prejudice for the parties with the result that affect of justice. Based on the above, the legal issues that will be discussed in this thesis are : 1) How is adjustment responsible of curator do safekeeping bankruptcy estate? 2) What weakness adjustment responsible of curator do safekeeping bankruptcy estate who involve injustice? 3) How should the adjustment responsible of curator do safekeeping bankruptcy estate to fulfill justice. The method used in this research is normative research. Based on the research, the conclusions are : 1) Adjustment responsible of curator do safekeeping bankruptcy estate not fulfill justice because there is no equality of rule so that rights and obligations not reached balance which raises disadvantage, 2) Weakness contained in adjustment who involve injustice namely, is not clearly regulated about adjustment responsible of curator, is not regulated about penalty provisions, and is not clearly regulated about oversight of curator by supervisory judge, and 3) Alternative deals for adjustment to fulfill justice namely, augment to Article 72 A points (1) until points (5) about adjustment of curator personally, augment to Article V about penalty provisions Article 299, and amendment to Article 98, Article 102. Article 116, and

Article 201 about oversight of curator by supervisory judge.

**Keywords:** Adjustment, Responsible, Curator, Safekeeping, Bankruptcy Estate, Justice.

## INTRODUCTION

Grammatically, bankruptcy refers to everything related to the term "bankrupt." According to Poerwadarminta, "bankrupt" means "insolvent"; and "insolvent" means suffering a significant loss until collapse (of a company, store, and so forth). From this explanation, it can be seen that the definition of bankruptcy is linked to the "inability to pay" by a Debtor on debts that have matured.

This inability must be accompanied by a concrete action to file, either voluntarily by the Debtor themselves or at the request of a third party (outside the Debtor), a petition for a bankruptcy declaration to the Commercial Court. Without a petition to the Commercial Court, interested third parties will never know about the Debtor's inability to pay.

In principle, the regulation of bankruptcy matters is an embodiment or realization of Articles 1131 and 1132 of the Indonesian Civil Code. Article 1131 states that all assets of the debtor, whether movable or immovable, whether existing or to be acquired in the future, become collateral for all personal obligations. Meanwhile, Article 1132 states that these assets become joint guarantees for all creditors; the proceeds from the sale of these assets are distributed proportionally, according to the size of each creditor's claim, except when there are valid reasons to prioritize certain creditors.

The principles contained in these two articles are as follows:

1. If the Debtor does not voluntarily pay their debts or fails to pay even after a court decision orders them to settle their debts, or because they are unable to pay all their debts, then all their assets are seized to be sold, and the proceeds from the sale are distributed among all creditors on a pro rata basis, meaning proportionally according to the size of each creditor's claim, except when there are valid reasons to prioritize certain creditors;
2. All creditors have equal rights;
3. There is no order of priority among creditors based on the time their claims arose.

Article 1131 of the Civil Code states that every action taken by a person in the field of wealth will always have consequences on their assets, whether increasing or decreasing the amount of their wealth. Article 1132 states that every party or creditor entitled to the fulfillment of obligations must receive fulfillment from the assets of the obligated party (Debtor) in a manner that is:

- *Pari passu*, meaning creditors receive payment together without any being prioritized; and
- *Pro rata* or proportional, calculated based on the size of each creditor's claim compared to the total claims against the Debtor's entire assets.

From the above explanation, it can be concluded that bankruptcy law is essentially needed to realize and embody Articles 1131 and 1132 of the Civil Code. Therefore, to execute and distribute the Debtor's assets for debt repayment to

creditors fairly and proportionally based on Articles 1131 and 1132 of the Civil Code, a specific legal framework is necessary, namely bankruptcy law, particularly Article 2 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which states that a Debtor who has two or more creditors and fails to fully pay at least one debt that has matured and can be collected, is declared bankrupt by court ruling, either upon their own petition or upon the petition of one or more creditors.

## METHOD

### Type of Research

This study employs a qualitative research approach, which is appropriate for exploring and understanding complex legal and regulatory issues related to the curator's responsibility in securing bankrupt assets. Qualitative research allows for an in-depth examination of legal texts, interpretations, and contextual factors influencing the implementation of bankruptcy laws, aiming to provide a comprehensive understanding of justice fulfillment in this context.

### Data Sources

The data sources for this study consist of:

- Primary Data: Original legal texts and documents, including Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, court rulings, and official regulations related to bankruptcy and curator responsibilities.
- Secondary Data: Academic books, journal articles, legal commentaries, research reports, and other relevant literature in both Indonesian and English that discuss bankruptcy law, curator duties, and justice in legal frameworks.

### Data Collection Techniques

Data collection is conducted through a library research (desk research) method, which involves systematically gathering and reviewing relevant legal documents, statutes, and scholarly literature. The data collection process includes:

- Identifying and selecting pertinent legal provisions and academic sources.
- Extracting relevant information concerning the curator's duties, responsibilities, and legal implications in securing bankrupt assets.
- Compiling case studies and interpretations from secondary sources to enrich the analysis.

### Data Analysis Method

The study uses content analysis as the primary qualitative data analysis method. Content analysis involves:

- Data Reduction: Selecting and simplifying the collected legal texts and literature to focus on key themes related to curator responsibility and justice.
- Data Coding: Categorizing legal provisions and thematic elements based on their relevance to the research questions, such as clarity of curator responsibilities, criminal provisions, and supervisory mechanisms.
- Data Interpretation: Analyzing the patterns and meanings within the legal texts to identify gaps, ambiguities, and implications for justice.

- **Comparative Analysis:** Comparing existing legal regulations with theoretical frameworks of justice and best practices in bankruptcy law to propose improvements.

This systematic approach enables the researcher to uncover underlying issues in the current legal framework and offer well-founded recommendations for enhancing the regulation of curator responsibilities to better fulfill justice.

## **RESULT AND DISCUSSION**

### **Regulation of the Curator's Responsibility in Securing Bankrupt Assets in General**

In this section, the author will explain the regulation of the Curator's responsibility in securing bankrupt assets. The legal provisions serving as references to address this issue are Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. This regulation will primarily be used to explain the Curator's responsibility in securing bankrupt assets.

The responsibility of the Curator in securing bankrupt assets is regulated in Article 72 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The essence of this article states that the Curator is responsible for any errors or negligence in carrying out the management and/or settlement duties (as stipulated in Article 69 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations) that cause losses to the bankrupt estate.

Article 78 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law states that if the Curator requires permission from the Supervisory Judge to perform an act toward a third party, but such permission is not obtained or the Curator disregards the provisions of Articles 83 and 84 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the act toward the third party is legally valid. However, as a consequence, according to Article 78 paragraph (2) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the Curator must personally bear responsibility toward the Bankrupt Debtor and Creditors.

Securing bankrupt assets is one of the Curator's activities categorized under the general management of bankrupt assets. This has been previously explained in Article 69 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which states that the Curator's general duty is to manage and/or settle bankrupt assets. This duty can be carried out from the date the bankruptcy declaration ruling is issued, even though the ruling is not yet final and binding (in kracht), meaning that appeals such as Cassation and/or Judicial Review may still be filed against the ruling.

It cannot be denied that managing and settling bankrupt assets is not as easy as many think, especially if the bankrupt estate has a large amount of assets. Many obstacles and challenges are faced by the Curator, not to mention the Curator's accountability if errors occur in the management or settlement of bankrupt assets. Therefore, thoroughness and deep mastery of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations are required.

In addition, a strong and professional mentality is necessary in carrying out the duties and authorities as a Curator, because it must be remembered that the assets being managed and settled are bankrupt assets which, according to Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, must be distributed according to the order and clarification of the Creditors.

## **Discussion**

In this section, the author will explain the weaknesses in the regulation of the Curator's responsibility in securing bankrupt assets that result in injustice. Considering its controversial history, it is understandable that Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations has certain weaknesses. The weakness lies in the fact that the current law is the result of a grafting process between old regulations and new ideas in special procedural law, which causes unclear provisions in its implementation and leads to various interpretations, even legal gaps in its resolution.

According to Aristotle's Theory of Justice, which the author uses, corrective justice means that to achieve justice, equality between rights and obligations must be pursued. If justice is not achieved, then equality is also not attained. The failure to achieve equality can affect the enforcement of legal norms, which serve as guidelines for human behavior, are concrete, and have legal consequences if violated or unmet. Law is defined as:

1. Rules governing human behavior in social life.
2. Regulations established by authorized official bodies.
3. Regulations that are coercive in nature.
4. Sanctions for violations of these rules are strict.

This issue is also felt in one of the Curator's duties, namely the management and settlement of bankrupt assets, especially in securing those assets. From the regulatory perspective, there are several points considered to fall short of justice, as stipulated in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. As long as these regulations remain unclear, significant problems will arise in exercising authority, such as the issues discussed in this study. Therefore, the weaknesses in the regulation of the Curator's responsibility in securing bankrupt assets that cause injustice will be elaborated based on Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

### **Lack of Clear Regulation on the Curator's Responsibility in Securing Bankrupt Assets**

As previously explained, the main duty of the Curator is to manage and settle bankrupt assets, meaning that the Curator has the obligation to carry out the management and/or settlement of bankrupt assets based on the provisions of Article 69 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which states that the Curator's duty is to manage and/or settle bankrupt assets.

### **Absence of Criminal Provisions Regulating the Curator's Responsibility in Securing Bankrupt Assets**

The inclusion of criminal provisions in a law is important to ensure effective enforcement, which in turn impacts public order in regulating certain behaviors. Conversely, if a law lacks specific criminal provisions regulating certain acts, it can lead to ineffectiveness in the law's application, resulting in public perception that the law fails to deliver justice.

This issue is particularly significant concerning the regulation of the Curator's responsibility in securing bankrupt assets as stipulated in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. One cause of injustice in this regulation is the absence of specific criminal provisions. In relation to the case discussed earlier in this study, a Curator proven guilty of embezzlement is sentenced to imprisonment based on the provisions in the Criminal Code. However, ideally, the criminal act committed by the Curator should refer to Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, as the offense specifically concerns the embezzlement of bankrupt assets in bankruptcy cases.

### **Incomplete Regulation on Supervision of the Curator by the Supervisory Judge**

The Curator is not entirely free in managing and settling bankrupt assets. The Curator is always under the supervision of the Supervisory Judge. The duty of the Supervisory Judge is to oversee the management and settlement of bankrupt assets carried out by the Curator. The Supervisory Judge assesses how the Curator's execution of the management and/or settlement of bankrupt assets can be accounted for to the Debtor and Creditors. This condition necessitates the role of supervision by the Supervisory Judge. Therefore, the Curator must submit reports to the Supervisory Judge regarding the condition of the bankrupt assets and the implementation of their duties every three (3) months, as regulated in Article 74 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

Considering the heavy responsibilities borne by a Curator in managing and settling bankrupt assets, the Curator is in constant communication with the Supervisory Judge for consultations or simply to receive input. This is done to achieve the successful outcome of a bankruptcy declaration; therefore, the Supervisory Judge and Curator must maintain a working relationship as partners. Establishing this cooperative relationship will facilitate the duties of both authorized parties.

### **Alternative Proposal Regarding the Lack of Clear Regulation on the Curator's Responsibility in Securing Bankrupt Assets**

The basis for the regulation concerning the responsibility of the Curator is Article 72 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. This article states that the Curator is responsible for any errors or negligence in carrying out the management and/or settlement duties that cause losses to the bankrupt estate. If understood as it is, the content of this article is indeed unclear and needs to be supplemented with input or alternatives to make it more effective. If left as is, there is concern that Curators may be reluctant to comply with this rule, which could lead to abuse of authority by the Curator.

The responsibility of the Curator is regulated in Article 72 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which states that the Curator is responsible for errors or negligence in carrying out management and/or settlement duties causing losses to the bankrupt estate. Upon analysis, the author finds that the wording of this article is still general, resulting in incomplete application regarding the Curator's responsibility. Therefore, the author attempts to offer an alternative to this article.

The alternative proposed by the author regarding this issue is the addition of a new article, namely Article 72A, consisting of paragraphs (1) to (5). The essence of this article is as follows:

1. The responsibility of the Curator referred to in Article 72 means that if the Curator, in carrying out their duties, does not comply with Article 78 paragraph (1), then such acts fall under the Curator's personal responsibility in accordance with Article 78 paragraph (2).
2. If the Curator's actions in performing their duties are deemed to contain elements of fault, whether intentional or unintentional, and cause losses to the bankrupt estate as described above, the Curator is personally liable to the parties involved, namely the Bankrupt Debtor and Creditors.
3. The parties involved have the right to take action against the Curator by filing claims either civilly or criminally if the Curator is proven to have committed errors resulting in a reduction of the bankrupt estate's value.
4. Regarding civil claims, the parties involved may file a civil lawsuit at the local District Court following the procedures of Civil Procedure Law.
5. Regarding criminal claims, the parties involved may report or file complaints about alleged criminal acts committed by the Curator in accordance with the procedures of Criminal Procedure Law.

Regarding civil claims, the procedure used is formal civil procedure or civil procedural law. In general, civil procedural law is a regulation implementing statutory provisions, where if one or more parties in a social relationship have their rights violated by another party, the violator can be subject to legal sanctions for the violations committed that have harmed the other party.

## CONCLUSION

From the description of the research results and discussion, the following conclusions can be drawn:

The regulation of the Curator's responsibility in securing bankrupt assets in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations does not fulfill justice because its application results in a lack of equality and imbalance between the rights and obligations of the parties involved, namely the Curator and the Creditors or Debtor, which leads to losses.

The weaknesses in the regulation of the Curator's responsibility in securing bankrupt assets that cause injustice include: unclear regulation regarding the Curator's responsibility, absence of criminal provisions, and incomplete regulation concerning

the supervision of the Curator by the Supervisory Judge. These shortcomings result in a lack of equality and balance between rights and obligations.

The alternative proposal to the regulation of the Curator's responsibility in securing bankrupt assets to fulfill justice is the addition of Article 72A paragraphs (1) to (5), which essentially explains the Curator's personal responsibility, the elements included in the Curator's personal responsibility, and dispute resolution through criminal or civil procedural law. Furthermore, an addition to Chapter VI concerning Criminal Provisions in Article 304 is proposed, which specifically addresses the imposition of penalties for embezzlement of bankrupt assets, as well as amendments to Articles 98, 102, 116, and 201 regarding comprehensive supervision of the Curator by the Supervisory Judge.

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