

REVIEW ARTICLE

LEGAL PROTECTION FOR BANKRUPTCY CURATORS IN THE RESOLUTION OF BANKRUPTCY CASES

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ABSTRACT

Bankruptcy is a general confiscation of the assets of a bankrupt debtor who is no longer able to pay his debts and is deemed unfit to run his business, then the management and settlement of his assets are carried out by the bankruptcy curator under the supervision of the court supervisory judge. The research method used is using sociological juridical method by analyzing various legal regulations and examines behaviors and direct relationships based on an understanding of the law in terms of social phenomena. The focus of this research is limited to the responsibility of the curator in resolving bankruptcy cases and the protection of the bankruptcy curator in resolving bankruptcy cases. The rights and obligations regulated in Law No. 37 of 2004 are very good and detailed, but the facts in the field of curators are very lacking in supervision. regarding the supervision carried out by the supervisory judge but the supervisory judge does not supervise the performance of the curator in the field but only supervises based on work reports and complaints by one of the parties concerned in bankruptcy cases. more supervision and consists of 3 elements related to bankruptcy, namely the courts, associations and curator education. Legal protection for bankruptcy curators is very much needed because protection

is very much needed in a profession, especially the curator profession which leads to the court's extension in resolving bankruptcy. This profession is required to have an attitude of independence but how can independence be realized if the Curator feels troubled by one of the parties in carrying out his duties and obligations. Law No. 37 of 2004 does not regulate the supervision and protection of curators. So far, the curator has taken refuge in himself and has also been assisted by the association.

Keywords: *Curator; Bankruptcy; Legal Protection*

INTRODUCTION

The growth of the business world in Indonesia, which is increasingly competitive, makes entrepreneurs want to develop their businesses so they don't lose out in business competition with other companies. Many companies want to expand or expand their business through borrowing capital from banks or other creditors in order to develop their company. Competition in the business world as mentioned earlier which has very tight competition which causes the company to be unable to return the loan money to several creditors, so that the company experiences a period of bankruptcy and then the company is actually declared bankrupt according to the applicable commercial law in Indonesia.

The monetary crisis that hit Asia including Indonesia since mid-1997 has caused great difficulties for the national economy and trade. The ability of the business world to develop its business is severely disrupted, even to maintain the continuity of the business world is also not easy, this greatly affects the ability to meet its debt payment obligations.

Debt is an obligation that is stated in the amount of money both in Indonesian currency and foreign currency, either directly or that will arise in the future or contingent, which arises because of an agreement or law and which must be fulfilled if it is not fulfilled gives creditors rights. Bankruptcy is a condition where the debtor has difficulty in paying his debts to the creditor, and the debtor is declared bankrupt by the court because he has financial difficulties to pay the debt ([Suci & Poesoko, 2011](#)).

Law Number 37 of 2004 concerning bankruptcy and suspension of debt payment obligations in Article 1 paragraph (1) bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by a curator under the supervision of a supervisory judge. The bankrupt loses the right to control and manage his assets that are included in the bankruptcy estate, from the date the bankruptcy decision is pronounced, then the management and settlement of the bankruptcy estate becomes the duty and authority of the Curator ([Article 1 paragraph 1 of Law Number 37 of 2004](#)).

According to Poerwadarminta, "bankrupt" means "bankrupt" which means suffering a big loss until it falls (companies, shops, and so on) (Poerwadarminta, 1999). According to John M. Echlos and Hasan Shadily, bankrupt means bankrupt, and bankruptcy means bankruptcy, bankruptcy. According to Prof. Mr. Dr. sudargo gautama Bankruptcy is a complete confiscation of all property of the Bankrupt. As a consequence of course, the Bankruptcy is prohibited from continuing his business and taking legal actions, except with the approval of the supervisor or executor. It can be concluded that Bankruptcy or Bankruptcy is the inability to pay from a debtor for his debts that are past due. A company that is unable to pay its debts is finally reported by creditors or reports itself that it is no longer able to run the company and pay its debts to the commercial court. The court will appoint a curator to check whether the company is in a state of inability to pay its debts. This curator checks and sees all lists of financial books, settlements and responsibilities in distributing rights to debtor assets to creditors (Jono, 2008).

In relation to the issuance of a bankruptcy decision, the "curator" acts as the guardian of the bankrupt and its main task is to administer or extort the assets of a bankrupt debtor and the loss of authority of the bankrupt debtor to control and manage his bankruptcy assets. As for creditors, there will be uncertainty about the existing legal relationship between the bankrupt creditor and the bankrupt debtor. For this purpose, the Bankruptcy Law has determined the party who will take care of the issue of the bankrupt debtor and the bankrupt creditor through the curator. In the decision to declare bankruptcy, a curator and a supervisory judge appointed from the court judge must be appointed and in the event that a debtor, creditor or other authorized party submits an application for a declaration of bankruptcy, if the curator does not submit a proposal to the court, then the inheritance hall is appointed as a curator or private curator, the appointed curator must be independent, have no conflict with debtors or creditors, and are not currently handling bankruptcy cases and delays in paying debt obligations for more than 3 cases involving ongoing. According to Article 1 point 5 of the Bankruptcy Law, a curator is a treasure trove or an individual who is appointed by the court to manage and settle the assets of the bankrupt debtor under the supervision of a supervisory judge in accordance with the applicable law. and not currently handling bankruptcy cases and delays in paying debt obligations for more than 3 ongoing cases. According to Article 1 point 5 of the Bankruptcy Law, a curator is a treasure trove or an individual who is appointed by the court to manage and settle the assets of the bankrupt debtor under the supervision of a supervisory judge in accordance with the applicable law. and not currently handling bankruptcy cases and delays in paying debt obligations for more than 3 ongoing cases. According to Article 1 point 5 of the Bankruptcy Law, a curator is a treasure trove or an individual who is appointed by the court to manage and settle the assets of the bankrupt debtor under the supervision of a supervisory judge in accordance with the applicable law.

Bankruptcy curator according to Law Number 37 of 2004 is a person who is a professional in the legal field who is then appointed by the commercial court to manage and settle assets or bankrupt boedel. Based on Article 70 paragraph (1) of the Bankruptcy Law, it is stated that the curator is the inheritance hall or other curator. The requirements to become a curator as stipulated in Article 70 paragraph 1 letter B are;

1. Individuals domiciled in Indonesia who have special skills needed in order to manage and settle bankrupt assets;
2. Registered with the ministry whose scope of duties and responsibilities are in the field and laws and regulations.

Based on article 15 paragraph (2) of the bankruptcy law, it provides an opportunity for bankrupt debtors or bankrupt creditors to submit a proposal for the appointment of a private curator, so that currently the practice of bankruptcy cases being submitted to the commercial court, the debtor or creditor has the right to also submit the name of the candidate curator to the commercial court. Based on the names of the candidates, the commercial court will then determine the curator. Here there is often a dispute in terms of determining the candidate for curator proposed by the creditor or debtor to be selected. Management and settlement are: recording, finding, maintaining value, securing, and tidying up property by selling it through auction. So, the curator has the task of ensuring that the confiscated goods can be identified, maintained, and even developed in value for sale and distribution of the proceeds to creditors and other duties of the curator. For this reason, the curator must be able to read the company's financial statements in order to obtain information regarding the assets under his authority. In their duties, the curator can use the services of an auditor. Even the curator can invite an appraiser or tax consultant if necessary. There is a problem what if in a bankruptcy case the curator violates the code of ethics within the authority and responsibility of a curator.

The obligations of the curator are already regulated in Law Number 37 of 2004 concerning bankruptcy or PKPU. Starting from the appointment of authority given by the commercial court and other duties of a curator. In fact, the curator's obligations are all integrated with the bankruptcy regulations and the PKPU does not have the concentration and independence of its own legal regulations regarding the rights and responsibilities of the curator, the protection of the curator, and even the punishment for the curator. responsible for himself if he is negligent in his duties and authorities" which is stated in Article 72 of the Bankruptcy Law.

The curator profession is indeed very rewarding, but I see many curators being sued by bankrupt debtors or bankrupt creditors with various problems, this profession is also widely accused of being a mafia conspiracy practice, how can this happen, is there really a lot of curators who work or not? in accordance with what it should be even though I feel that the curator profession is a profession that helps and mediates in the company's debt and debt problems which indirectly almost have similarities in the profession of advocate and notary. According to an article I

read on a site (Hukumonline.com) : " Chairman of the Indonesian Association of Curators and Administrators (AKPI) James Purba said that curators who violated the code of ethics could not be categorized as bankruptcy mafia , because they were not carried out in an organized manner . James also said that the curator had a low probability of a bankruptcy mafia movement, because the curator must be able to work after the court's decision. James believes that the curator must be independent, there should be no conflict of interest either with the creditor or with the debtor. The curator is intermediary and indeed must be independent in carrying out his duties and responsibilities. Many curators complained about the obstacles in carrying out their duties, and there were even curators who were reported by debtors to the police for embezzlement because they had sold bankruptcy assets without their consent. Another lawmaker who seeks profit from the report, it can be said that law enforcers think that the curator is a person who has a lot of wealth and wealth.

Based on the background Based on the background the author conveys two things that are the main problems of this research, namely how is the responsibility of a bankruptcy curator in a bankruptcy case and how is the legal protection of a bankruptcy curator in his profession as a curator in a bankruptcy case.

To obtain these data, several methods are needed as guidelines, because this research method is an important element in research. This research is a qualitative research. According to Bogdan and Taylor, what is meant by "qualitative research is a research procedure that uses descriptive data in the form of written or spoken words from people and observed behavior ([Moeleong, 2009](#)). This type of qualitative research was chosen because this research is typical of applied legal research by identifying the law and its effectiveness holistically.

The research method used is the socio-juridical method (socio-legal approach). According to Soerjono Soekanto, the juridical approach is: "Includes research on legal principles, legal systematics, level of legal synchronization, legal history, and legal comparisons" ([Soekanto, 1986](#)), by analyzing various legal regulations and examining behaviors and direct relationships based on an understanding of the law in terms of social phenomena. The focus of this research is limited to the responsibility of the Curator in resolving bankruptcy cases and the protection of the bankruptcy curator in resolving bankruptcy cases.

BANKRUPTCY AND THE LEGAL PROTECTION

The curator is an institution established by law to settle the bankruptcy estate. In every bankruptcy decision by the court, it includes the appointment of a curator who is appointed to manage and transfer the bankruptcy estate under the supervision of the supervisory judge ([Novitasari, 2016](#)). After the debtor is declared bankrupt by the court, the debtor by law does not have the authority to manage and/or transfer his assets that have become bankrupt assets. The curator does not have a conflict of interest in it, the curator must be independent. The

curator may not side with either the creditors or the bankrupt debtor itself. In practice, the determination of the name of the curator is appointed by the creditor who submits an application for bankruptcy against the debtor. However, even though it is proposed by the creditor, the Curator must remain independent because he will be responsible for what he does.

The law does not comprehensively explain the meaning of independent and conflict of interest. In the explanation of Article 15 Paragraph 3 of the Bankruptcy Law, it is only said that what is meant by "Independent and has no conflict of interest" is that the continuity of the existence of the curator does not depend on the debtor or creditor, and the curator does not have the same economic interest as the economic interest of the debtor or creditor. The Indonesian Association of Curators and Administrators (AKPI) in the provisions of its professional code of ethics places the principle of independence and conflict of interest as the first principle of the principle of professional ethics. Furthermore, AKPI describes the principle of independence that in every appointment received, members of the Indonesian curator association and management must be independent and free from anyone's influence.

In the 1998 and 2004 amendments to the bankruptcy laws, there was a progressive change in the regulation regarding curators, namely the possibility of curators other than *Balai Harta Peninggalan*. In Article 1 Number 5 of the 2004 UUK it is stated that the curator is an inheritance center or an individual who is 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. Article 70 Paragraph (1) of the UUK states that the Curator as referred to in Article 69 is the Heritage Hall or other Curator. What is meant by other Curators are those who meet the requirements as curators, namely, an individual who has the special skills needed in order to manage and/or settle the bankruptcy estate and has been registered with the Ministry of Justice as a curator. Thus, the bankruptcy curator since the changes in the law caused by the 1998 monetary crisis resulted in the *Balai Harta Peninggalan* not being overwhelmed in handling bankruptcy cases.

A. Duties, Authorities, Rights and Supervision of the Curator in a Bankruptcy Case

There are two stages of work carried out by the curator, namely the management and settlement of these stages carried out by all curators, both BHP and private curators. These stages consist of various work breakdowns:

1. Management

Since there is a decision or determination that a company is declared bankrupt by a judge or court, the Curator's work begins because by law the company is no longer able to run and the head of the company is no longer able to

run the company and there are no rights along with the details of the management stage;

- a) Newspaper Announcement, where the curator is obliged to announce that the company has been declared bankrupt, at least two newspapers and within a period of no later than 5 days;
- b) Creditors Meeting where this is the deadline for collecting claims by creditors to debtors;
- c) Verification meeting or debt matching/invoicing all data from creditors will be matched with data from debtors by the Bankruptcy Curator;
- d) The offer of peace addressed to the creditors committee whether to stay clean and have a unanimous commitment to this company going bankrupt;
- e) If indeed there is no agreement between the debtor and the creditor, then enter the determination or isolation stage.

2. Settlement

This stage will be carried out if there is no conciliation between the debtor and the creditor committee, then this stage will be carried out. The curator will carry out detailed work regarding the debtor's assets, namely;

- a) The first thing the Curator will do in the Settlement stage is confiscation of assets where the head of the company or company director has no right to the operations of the company or there is no right, all of which will be confiscated by the State;
- b) All debtor assets will be assessed individually and as a whole and then calculated in detail how much the selling price of the assets will be;
- c) Auction of assets conducted by the curator through newspapers and in collaboration with the KPKNL State Auction Center or private auction hall;
- d) If the assets can be sold and the amount of the assets collected, the next step is to determine the distribution of assets to the creditor committee and announce it in newspapers or newspapers;
- e) The next stage of receiving payments or Curator Fees at this stage is usually carried out simultaneously with the stage of distributing assets to creditors because the curator here is a concurrent creditor. '
- f) Newspaper announcements intended to inform that the extortion of assets has reached the termination process and that the distribution of assets has been completed;
- g) Work report to the supervisory judge;
- h) If BHP is the Curator of BHP, it must also provide a report to the Director General.

The task of the Curator is not only to collect the bankruptcy estate and then distribute it to creditors, but the curator is also expected to be able to increase the selling value of the bankruptcy estate as much as possible (Sutedi, 2009). Based on UUKPKPU which are the duties, authorities and responsibilities of the most primary curator, among others are as follows:

- a) The curator has the authority to act on his own to the extent of his duties (Article 73 Paragraph 3);
- b) The main task of the Curator is to manage and settle the bankruptcy estate (Article 69 Paragraph 1);
- c) It is permissible to borrow from a third party with the terms and objectives to increase the value of the bankruptcy estate (Article 69 Paragraph 2);
- d) With the approval of the supervisory judge, the curator has the authority to encumber the bankruptcy estate with Mortgage, Pledge and other Collateral Rights (Article 69 Paragraph 3);
- e) The authority referred to in Article 36 is a reciprocal agreement unless there is an agreement that gives the debtor the right to carry out his own actions;
- f) The authority to sell collateral from separatist creditors after 2 (two) months of insolvency (Article 59 Paragraph 1) or the curator to sell movable goods in a state of stay (Article 56 Paragraph 3);
- g) The curator has the authority to continue the business of the debtor who is declared bankrupt (with the approval of the supervisory judge or creditor committee) even though an appeal or judicial review is filed against the decision on the bankruptcy statement (Article 104);
- h) The curator has the obligation to make a description or record of the bankruptcy estate (Article 100);
- i) Authority to transfer bankrupt assets prior to verification (with the approval of the supervisory judge) (Article 107 Paragraph 1);
- j) The curator is obligated to make and verify the list of receivables (Article 116 in conjunction with Article 117);
- k) The curator is obligated to make payments according to the creditors' receivables in the settlement process (Article 201);
- l) Can make demands based on legal institutions *action paulina* (Article 41 in conjunction with Article 47 Paragraph 1);
- m) The curator may release the object that becomes the collateral by paying the creditor concerned the smallest amount of the market price of the collateralized goods with the amount of money that is guaranteed by the collateral goods (Article 59 Paragraph 3);
- n) The curator is entitled to service fees/fees in performing his duties after the bankruptcy ends and the provisions regarding the amount of compensation obtained are through a determination based on the guidelines of the Minister of Law and Human Rights Regulation Number 2 of 2017 concerning Amendments to the Regulation of the Minister of Law and Human Rightsa Number 11 of 2016 concerning Guidelines for Service Fees for Curators and Management. (Article 75 in conjunction with Article 76);
- o) In the event of negligence and errors in carrying out the duties of management and settlement of the bankruptcy estate, the curator is responsible for this (Article 72);

- p) The curator must uphold the attitude of independence and be free from the intervention of creditors and debtors (Article 15 Paragraph 3);
- q) The curator may conduct an auction of the burden of the bankruptcy estate based on the power of the supervisory judge according to the auction day that has been determined (Article 33);
- r) Dismissal of workers who work for debtors can be done by the curator or the will of the worker (Article 39);
- s) The authority of the curator to break the lease ties of the bankrupt debtor (the debtor as the party that rents) (Article 38);
- t) If in the management of the bankruptcy estate there is an inheritance that falls to the bankrupt debtor, the curator can receive the inheritance if its existence benefits the bankruptcy estate (Article 40 Paragraph 1) then on the contrary the curator has the right to refuse the inheritance based on the permission of the supervisory judge (Article 40 Paragraph 2);
- u) The curator's obligation to sell assets in terms of settlement tasks; and
- v) The curator must submit a report every 3 (three) months to the supervisory judge regarding the condition of the bankruptcy estate and the implementation of duties as a form of accountability (Article 74 Paragraph 1).

The tasks listed above are the tasks regulated in Law No. 37 of 2004, all of which have been well regulated and detailed regarding the tasks of the Bankruptcy Curator. Broadly speaking, the duties and authorities of the curator as emphasized by Kukus (2015), are:

- 1) Carry out the management and settlement of bankrupt assets even though the decision is filed for cassation or review
- 2) Carry out tasks without prior notification to the debtor
- 3) Make a loan to increase the value of the bankrupt property
- 4) File a claim for bankruptcy assets
- 5) Carry out security or sealing of bankrupt assets
- 6) Transferring bankruptcy assets
- 7) Make a record of bankruptcy assets
- 8) Make a list of bankrupt assets
- 9) Refuse inheritance, unless it benefits the bankruptcy estate
- 10) Make a final bankruptcy report

In Article 73 paragraph (1) of the Bankruptcy Law, it is stipulated that if more than one curator is appointed, then in order to take legal and binding action, the curators need the approval of more than of the number of creditors, except for the curator who is appointed for special tasks based on the decision of the statement. Bankruptcy is authorized to act on its own to the extent of its duties (Article 73 paragraph (3) of the Bankruptcy Law.

In his book Dr. M Hadi Subhan, SH, MH, CN is of the opinion that the Curator is authorized to terminate the employment relationship, if the bankrupt is a limited liability company, without ignoring the labor regulations and that with the shortest notice of 45 (forty-five) days in advance. The curator can also accept

or reject an inheritance that fell during bankruptcy if he receives an inheritance, then the inheritance will benefit the bankruptcy estate, while if it is rejected, there must be permission from the supervisory judge. The curator may submit a request to the court to make detention (forced body) against the debtor if the debtor is deemed to be less cooperative in the settlement of bankrupt assets.

The above powers mentioned in the Bankruptcy Law as well as the experts who of course refer to the Bankruptcy Law are very detailed and good. Everything about the duties and authorities regulated in the bankruptcy law leads to the Curator's responsibility to uphold justice and independence. Bankruptcy Curator is an extension of the court where he must be fair and work to assist the court, the independence of which is repeatedly stated in the Bankruptcy Act. The Bankruptcy Law does not formulate supervision in which supervision is held by the supervisory judge and may be assisted by the Director General

In the decision to declare bankruptcy, a Curator and a Supervisory Judge must be appointed from the Court Judge. The appointment of the Bankruptcy Curator by the Judge is usually through an offer submitted by the supervisory judge to the Debtor or Creditor who will choose whom to appoint or use his services to expedite the bankruptcy case. There is also one applicant who has brought his own Curator which will then be assessed by the Judge whether this Curator will be independent and have good performance.

Whereas the difference in wages obtained from a bankruptcy case is also a problem in bankruptcy cases, Law No. 37 does not regulate the wages of Bankruptcy Curators, for example, the wage for inheritance in bankruptcy cases is 8%. This is regulated in a government regulation, Law No. 10 of 2015 While the wages of individual curators are 10% plus sales wages, this difference really shows the lack of the Bankruptcy Law regulating the profession of curator even though it is very good at regulating the duties and authorities of the bankruptcy curator ([Novitasari & Wijayanta, 2016](#)).

The regulation of Law No. 37 of 2004 Article 76 which regulates the wages of Bankruptcy Curators does not regulate in detail, only refers to the government's decision to regulate the wages of the Curator profession. The amount of the service fee that must be paid to the curator as referred to in Article 75 is determined based on the guidelines established by a Ministerial Decree whose scope of duties and responsibilities is in the field of law and legislation." ([Article 76 of Law No. 37 of 2004](#)).

The lack of clarity on the amount of wages that is not regulated in Law No. 37 of 2004 and the differences in the arguments that can be obtained based on the research that the author does are very vulnerable to the Curator Profession. The amount of this wage is very controversial and can also be a gap in a bankruptcy case. This difference can be a boomerang for the curator in getting his rights from a job he does in bankruptcy cases. It is possible that one of the parties authorized to pay the wages of the curator does not receive the amount of the

curator's wages based on the bankrupt account. This requires reaffirmation of the amount of wages received by the Curator in a Bankruptcy case,

The curator is indeed lacking in supervision, only supervision is based on the work report of the supervisory judge and also if there is a report of dissatisfaction from one of the parties in the Bankruptcy case. The bankruptcy law does not regulate this supervision, it is necessary to carry out supervision from the three institutions to supervise the Curator in handling bankruptcy cases, for example the Curator's Association or BHP according to where the Curator is under, from the government such as the court and also the Director General of Taxes, and also from education or coaching of the Curator Profession.

Next, we will discuss the rights of the Bankruptcy Curator in handling a bankruptcy case which is one of the elements of protection based on their rights. In accordance with Article 75 of the Bankruptcy Act states that the amount of curator service fee is determined after the bankruptcy ends. The number of wages that are not clear and different is a polemic in a bankruptcy case

and the curator in carrying out certain actions must also pay attention to the proper way from a legal, social and customary point of view in the community. For example, the sale of certain assets through the courts, auctions or privately (Fuady, 2005).

The procedure for appointing a Bankruptcy Curator is the existence of a bankruptcy application submitted by a bankruptcy applicant that meets the simple elements of more than 2 creditors, not paying off at least one debt that has matured and can be collected (Article 2 paragraph 1 of Law No. 37 of 2004), the petition for bankruptcy also mentions the candidate for the Curator being requested (attach a statement that there is no conflict of interest on both sides, namely the creditor and debtor, willing to handle the case, not handling more than 3 bankruptcy cases and PKPU simultaneously), after going through the trial process , then if the application is granted then legally the company or individual is bankrupt along with the legal consequences. Furthermore, the new curator can carry out his duties and responsibilities in accordance with the legislation that governs it.

Regarding the procedure for appointing a Curator in a Bankruptcy Case, there is a bankruptcy decision from a Judge in a bankruptcy case, then the Judge gives advice to both parties regarding the services of a State Curator or Individual Curator which will be used if both parties have not submitted a Curator to be used, if there is one. If the proposed Curator is submitted by one of the parties, the Judge will review and consider how the proposed Curator has the right to handle this bankruptcy case and also ensure the independence of the Curator.

The curator is responsible for his negligence that harms Hartapailit, according to Article 72 of Law No. 37 of 2004, but all must be proven legally, and even if he is suspected of being a criminal, must reach the stage of *inkrach van gewijde*. Implementation of Law No. 37 of 2004 concerning bankruptcy and PKPU as long as the Curator carries out his duties and responsibilities in accordance

with the laws and regulations and complies with and is in line with the code of ethics of the Curator Profession. and the work carried out by the curator must also be in harmony with the supervisory judge appointed by the Commercial Court to supervise the tasks that have been carried out by the curator.

Supervision should be carried out by three fields, namely the courts, associations or BHP as State Curator, and education or the professional field, so that indeed from various parties who are indirectly related to the curator profession, these three fields also provide protection if they really The curator stumbles upon a case or lawsuit in handling the case and the three fields can judge fairly whether the bankruptcy curator really deserves to be protected or not. The work of a curator whose notes are very sensitive to debtor's assets and creditor's rights really needs more supervision (Muryati, Septiandani, & Yulistyowati, 2017).

B. Responsibilities of the Bankruptcy Curator in a Bankruptcy Case

In the big Indonesian dictionary, responsibility is defined as:

- 1) The state of being obliged to bear everything (if anything happens, it can be sued, blamed, sued);
- 2) The function of receiving the burden, as a result of the attitude of one's own or other party's actions in the Black's law dictionary, is explained by the term liability (responsibility).

In relation to responsibility, there are several principles of responsibility that can be stated as follows:

1. *liability based on fault* (principle of responsibility for mistakes) This principle has been in effect for quite a long time, both in criminal law and civil law. Responsibilities like this are then expanded to vicarious liability, namely the responsibility of employers, company leaders to their employees or parents to their children, as regulated in Article 1367 of the Civil Code.
2. *Presumption of liability principle* (principle of presumption of responsibility) a person or defendant is considered responsible until he can prove that he is not guilty. Thus, the burden of proof is on him. This principle is also called reverse proof (*omkerin van bewijslast*).
3. *Presumption of non-liability principle* (The principle of presumption is not always responsible) This principal outlines that the defendant is not always responsible. This principle is the opposite of the presumption of responsibility.
4. *Strict liability* (The principle of absolute responsibility) This principle is the opposite of the first principle, namely liability based on fault. With this principle, the defendant must be responsible for the losses suffered by the consumer without having to prove whether or not there was a mistake on him.
5. *Limitation of liability* (Limited liability principle) This principle benefits business actors because it includes an exoneration clause in the standard agreement they make.

Every act of the curator that is detrimental to the bankrupt property or in the sense of harming the interests of the curator, whether intentionally or unintentionally by the curator, the curator must be able to account for his actions. This is expressly stated in Article 72 of the Bankruptcy Law, among others:

"The curator is responsible for his/her mistakes/omissions in carrying out management and/or settlement tasks that cause losses to the bankruptcy estate.."

As a form of accountability, every 3 months, the curator must submit a report to the supervisory judge regarding the state of the bankruptcy estate in the implementation of his duties (Article 74 paragraph (2) of the bankruptcy law). This report is open to the public and can be viewed by everyone free of charge ([article 74 paragraph \(2\) of the Bankruptcy Law](#)).

The curator appointed either the BHP Curator or the Individual Curator must be independent and not currently handling bankruptcy cases or debt repayment obligations of more than 3 cases. Article 72 of the Bankruptcy Law expressly states that the Curator is responsible for his errors or omissions in carrying out management and/or settlement tasks that cause losses to the bankruptcy estate ([Shubhan, 2008, p. 108](#)).

In carrying out their duties, the Curator makes a working paper for the sake of accountability for his duties. The Curator's professional standard explains that working papers are a collection of any and all documentation held by the curator or administrator along with a compilation of all data or information related to assignments in a bankruptcy. Working papers are confidential, except for documents in them which are declared by law as public documents. Working papers serve to assist the curator to work in a structured and efficient manner, as well as to facilitate the curator's accountability or responsibility for the implementation of his assignments ([Shubhan, 2008, p. 111](#)).

Furthermore, the professional standards of curators and administrators explain that a curator's working paper should at least contain data/information along with notes on:

1. Administrative documentation on which the assignment is based;
2. The work plan prepared by the curator at the beginning of the assignment;
3. Correspondence with parties involved in the bankruptcy process
4. Documentation (including supporting documentation) relating to bankruptcy assets or bankruptcy assets obligations, including but not limited to notes or descriptions of bankruptcy assets or their descriptions
5. Note things that are considered important by the curator in carrying out their duties
6. Meetings held in connection with assignments, including but not limited to creditor meetings and curator consultations with supervisory judges.

7. Conclusions, analyses, memorandums and representations made by the curator during his assignment
8. Curator reports as referred to in the bankruptcy law. ([Shubhan, 2008, p. 111](#)).

LEGAL PROTECTION FOR CURATORS IN HANDLING A BANKRUPTCY CASE

Legal protection is to provide protection for human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is various legal remedies that must be provided by law enforcement officials. Law to provide a sense of security, both physically and mentally from interference and various threats from any party ([Rahardjo, 2003](#)).

Legal protection for a Bankruptcy Curator is often reviewed in legal articles because the Bankruptcy Curator profession works as an extension of the court and must be independent in dealing with a problem. The question that arises is how a curator can be independent if one of the parties in a bankruptcy case sues or sues the curator or at least makes it difficult for the curator to work. Indeed, the word legal protection is often associated with the right to immunity, which is immunity. It is too dangerous to interpret legal protection as being related to the right to immunity, because no law enforcer is immune to the law ([Raissa, Yuniar, & Nurhayati, 2020](#)).

The emergence of the problem of legal protection for a Bankruptcy Curator is because many Curators have been sued and even criminalized, especially individual Curators. In the course of the bankruptcy management and settlement process, the curator is very vulnerable to being sued or even criminalized (criminal). This is due to the lack of information or not too much socialization about Bankruptcy and PKPU, and there is not a single article written in Law No. 37 of 2004 concerning Bankruptcy and PKPU regarding Immunity Rights. This is different from other professional professions that have immunity, in comparison with the Advocate Profession, where there is an article that clearly regulates Immunity and there is an MOU between the DPN Peradi and the Police regarding the procedure for summoning an advocate by the police (we attach it). So the participation of professional organizations, the Ministry of Law and Human Rights (government) and the DPR to immediately revise Law no. 37 of 2004 concerning bankruptcy and PKPU and includes articles concerning Immunity, and that professional organizations in this case are AKPI (Indonesian Association of Curators and Administrators), IKAPI (Indonesian Association of Curators and Administrators) and HKPI (Association of Indonesian Curators and Administrators) to make an MOU with The Indonesian National Police ([Kartoningrat & Andayani, 2018](#)).

That the Curator Profession is very vulnerable to being sued and criminalized, for example, the case of Mr. Jandri Onasis Siadari SH.LLM which based on the decision that Mr. Jandri's brother was sued for committing, ordering to do or co-operating with Drs. Joko Prabowo, SH, MH made a forged letter or falsified a letter that could give rise to a right, engagement or release of debt, or which gave rise to a right, an engagement or which was intended as evidence of something with the intention of using or ordering another person to use the letter with the intention of to curse or order others to use the letter as if its contents were true and not falsified. With this lawsuit, Mr. Jandri was further processed and entered into court and was not proven guilty or did not deviate from his duties. This can be a point of view that the bankruptcy curator profession is very vulnerable to lawsuits and criminalization. Individual curators who are under the auspices of the association will be accompanied by the association because the association cannot move much because there is no agreement with the police like advocates.

Unlike the state curator or BHP, the state curator does not seem to have many problems regarding performance in handling bankruptcy cases. BHP does not have any significant problems regarding lawsuits or demands because we act as the government and have a clear body and are under the auspices of the government, it's just that we need more physical protection or strong legal protection if we are difficult in our performance as curators by one of the parties in the bankruptcy case.

The right of the Curator is to get wages from the bankruptcy case he is working on. Article 75 of the bankruptcy law states that the amount of the curator fee is determined after the bankruptcy ends. The number of wages that are not clear and different is a polemic in a bankruptcy case. The right of the curator is also included in one of the curator's legal protections because if we look at the Bankruptcy Law, it does not regulate much about curator wages. That the difference in wages obtained from a bankruptcy case is also a problem in bankruptcy cases, Law No. 37 does not regulate the wages of Bankruptcy Curators, for example, the wage for inheritance in bankruptcy cases is 8%. This is regulated in government regulation Law No. 10 of 2015.

The right of the Curator is to receive his wages in accordance with the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 11 of 2016 (to be attached) which regulates the fees for the services of the Curator and Management. The Bankruptcy Law only regulates when the Curator gets his wages, regarding the amount of the Ministerial Regulation that will be used.

CONCLUSION

That the Curator's responsibilities which include his duties, powers and rights have been sufficiently regulated in Law No. 37 of 2004, all of which have been

very well regulated and the Curator there is required to be independent. it's just that the lack of regulations that supervise curators in performing in the field makes this law a lot of gaps for irresponsible persons. Supervision that has been carried out so far is very lacking because the Curator is only supervised based on the work report he has made and also the objection report from one party if he finds the performance of the Curator that is not related to his duties and authorities.

The law also does not regulate the rights of the curator with wages because the law only explains when the curator gets his rights, not the number of wages the curator gets from his performance in handling a bankruptcy case. The difference in the number of wages received by BHP and the Individual Curator with the same responsibility makes one of the parties to a bankruptcy case feel disapproved and will add to the complicated problem in a Bankruptcy case.

That the legal protection for this curator, which is also an outline of what the author wants to raise is that protection has not yet been regulated in Law No. 37 of 2004. There is no single regulation that regulates legal protection for this profession where this profession acts as an extension of the court and its objectives are fair in managing the bankruptcy estate and also do not burden one of the parties where independence is needed, how independence can be realized if the Curator feels that it is difficult, or his performance is being sued by one of the parties. This must be interpreted at the same time that legal protection is very much needed for curators but not only curators, but debtors and creditors also need legal protection.

The necessary supervision from the curator profession is supervision from the government or courts, supervision from shelters such as BHP and AKPI, as well as supervision from the education sector and professional development of the Curator. this must apply equally to BHP and individual curators, there are no distinctions, and these three supervisory elements can also act as the same shelter so that there is no distinction between state curators or BHP and individual curators under the aegis, for example AKPI.

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“Capitalism without Bankruptcy is like Catholicism without Hell.”

Ziad K. Abdelnour

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