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Unveiling Curators' Accountability in Inaccessible Bankruptcy Estates: Legal Hurdles and Debtor Defiance

Wahyu Aji Susanto✉
Faculty of Law, Universitas Negeri Semarang, Indonesia
wahyuajisusanto2@students.unnes.ac.id
https://orcid.org/0009-0002-6176-4007

Valerio Sebastian
Faculty of Law, Universitat Autònoma de Barcelona, Spain
Sociedad Civil de Derecho y Políticas Públicas (SOCIPOL), Barcelona, Spain
https://orcid.org/0000-0002-4238-9582

Siti Aminatun Nasifah Ahmad Malik
Faculty of Law, Universiti Teknologi Malaysia, Kuala Lumpur, Malaysia
https://orcid.org/0000-0002-0923-0668

Abstract

This article analyzes the critical role of curators in managing bankruptcy estates, with a particular focus on the challenges they face when debtors obstruct access to assets, hindering the insolvency process. Under Indonesia's Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, curators are authorized to access and manage the bankruptcy estate without debtor consent. However, in practice, curators often encounter resistance, such as being denied entry to business premises or access to essential documents. This obstruction not only complicates the curator's duties to inventory, secure, and liquidate assets but also poses significant risks to creditors' interests. Through a doctrinal research approach, this study examines the legal responsibilities and potential remedies available to curators when faced with debtor non-cooperation. The research highlights that while curators have substantial legal duties, their accountability should be assessed in proportion to the efforts made to overcome debtor resistance, such as reporting to the supervisory judge, seeking forced execution, and taking anticipatory actions against asset concealment. Furthermore, curators have access to several legal remedies, including coordination with supervisory judges, law enforcement intervention, and filing a lawsuit for asset cancellation (*actio pauliana*) in cases of fraudulent asset transfers. The article contributes to the discourse on insolvency law by proposing legal reforms to enhance curator authority and protect creditors' rights. It argues for more robust enforcement mechanisms to ensure the efficiency and fairness of the bankruptcy process, offering valuable insights for legislators, legal practitioners, and scholars seeking to address the complexities of debtor non-cooperation.

Keywords: *Bankruptcy Law, Curator Accountability, Debtor Non-Cooperation, Legal Remedies, Asset Concealment, Legal Reform*

Introduction

Bankruptcy constitutes a legal condition in which a debtor—whether an individual or a legal entity—is unable to fulfil obligations to repay debts in accordance with prior agreements.[1] In such circumstances, creditors may seek judicial intervention, leading to a formal declaration of bankruptcy by the competent commercial court.[2] This declaration initiates a process of general confiscation over the debtor's assets, transforming private enforcement into a collective legal mechanism designed to ensure orderly debt settlement. As such, bankruptcy represents not merely a financial failure but a structured legal response aimed at preserving fairness among competing claims.[3]

Under Indonesia's Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, bankruptcy is explicitly defined as a general confiscation of all assets of a bankrupt debtor, the management and

[1] Suci, Ivida Dewi Amrih, R. Murjiyanto, and Mohd Zamre Mohd Zahir. "The Principle of Utility in Revoking a Bankruptcy Adjudications in Bakruptcy Law." *Journal of Private and Commercial Law* 8, no. 1 (2024): 1-28. *See also* González, Ricardo Hernández, and Rodolfo Ernesto Guarderas Izquierdo. "Bankruptcy of creditors for breach of obligations." *Revista Facultad de Jurisprudencia* 9 (2021): 93-117.

[2] Ellias, Jared A., and Robert J. Stark. "Bankruptcy hardball." *California Law Review* 108, no. 3 (2020): 745-787.

[3] Hermawan, Muhammad Bayu, et al. "The position of concurrent creditors in indonesian bankruptcy proceedings: Legal challenges and uncertainty." *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 3 (2024): 1456-1464; Wiguna, I. Nyoman, et al. "Legal Protection for Third Parties in Good Faith on Actio Pauliana Litigation in Bankruptcy Proceedings." *Yuridika* 39, no. 2 (2024): 181-210.

administration of which are entrusted to a curator under the supervision of a supervisory judge. This legal framework underscores the shift of control from the debtor to an independent fiduciary upon the issuance of a bankruptcy decision. The debtor consequently loses the right to manage and dispose of assets included in the bankruptcy estate, thereby centralizing authority in the hands of the curator to ensure impartial administration.[4]

The conceptual foundation of bankruptcy lies in its collective nature. Rather than allowing individual creditors to pursue separate enforcement actions, which may result in unequal outcomes, bankruptcy imposes a concursus creditorum principle.[5] This principle requires creditors to act collectively, ensuring that the debtor's limited assets are distributed proportionally and in accordance with legally established priorities. Without such a system, creditors with earlier or stronger enforcement capabilities might exhaust the debtor's estate, leaving others without recourse—an outcome widely regarded as inequitable.[6]

The rationale for this collective approach has been emphasized by legal scholars such as Kartini Muljadi[7] and Noviana[8], who argue that bankruptcy law is designed to prevent unilateral execution by creditors. Through

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4 *See* Ramadhania, Liza Mashita. "A Dualistic Concept of Personal Guarantee Responsibility and Its Relevancy with Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligation A Dualism Of Personal Guarantee Responsibility In Indonesia Bankruptcy Law." *Legal Brief* 12, no. 1 (2023): 22-35; Yitawati, Krista, Adi Sulistiyono, and Pujiyono Pujiyono. "Reconstructing the Debt Restructuring Mechanism in the Indonesian Law on Bankruptcy and Suspension of Debt Payment Obligations." *Financial Engineering* 1, no. 8 (2023): 81-95.

5 *See* van der Linde, Kathleen, and Juanitta Calitz. "Equality, Legal Certainty and Insolvency." *Legal Certainty and Fundamental Rights*. (Baden-Baden, Germany: Nomos Verlagsgesellschaft mbH & Co. KG, 2020).

6 Lira, M. Adnan. "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Creditorium Parity." *The Juris* 8, no. 1 (2024): 281-290. *See also* Marpi, Yapiter, Pujiyono Suwadi, and Hari Purwadi. "Actio Pauliana Legal Reconstruction of Creditors in Bankruptcy Disputes to Achieve Substantive Justice." *International Conference On Law, Economic & Good Governance (IC-LAW 2023)*. Atlantis Press, 2024.

7 Muljadi, Kartini. *Perikatan yang Lahir dari Perjanjian*. (Jakarta: Raja Grafindo Persada, 2008).

8 Noviana, Nina. "Perubahan Pokok dalam Peraturan Kepailitan Menurut Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang." *Jurnal Hukum & Pembangunan* 36, no. 2 (2006): 129-158. *See also* Kurniawan, Itok Dwi, et al. "Legal Frameworks and Advocacy in Bankruptcy Restructuring: A Comparative Analysis of Financial Service Authorities in Indonesia and the United States." *Indonesian Journal of Advocacy and Legal Services* 7, no. 1 (2025): 255-290; Leonardus, Rado Fridsel, Alexander Yovie Pratama Yudha, and Tata Wijayanta. "Practice of Applying Affidavits in Bankruptcy Law and Postponement of Debt Payment Obligations." *Unnes Law Journal* 9, no. 2 (2023): 467-488; Riyanto, R. Benny, et al. "Clashing Legal Realities: A Comparative Analysis of Insolvency Tests in Australia and Indonesia's Bankruptcy Law." *Jambura Law Review* 7, no. 1 (2025): 88-104.

general confiscation, the law effectively suspends individual enforcement rights and replaces them with a coordinated distribution mechanism. This ensures that all creditors participate in a single process of asset realization and distribution, reinforcing legal certainty and fairness.

Following the declaration of bankruptcy, the curator assumes a central role in administering the bankruptcy estate. Appointed by the court, the curator is immediately tasked with managing, safeguarding, and ultimately liquidating the debtor's assets under judicial supervision.[9] This includes identifying and inventorying assets, securing them against loss or dissipation, and preparing a distribution plan that reflects the hierarchy of creditor claims. The curator's function is thus both administrative and fiduciary, requiring a high degree of professionalism and legal compliance.

For creditors, bankruptcy provides a formal avenue to recover outstanding debts through the distribution of proceeds derived from the bankruptcy estate. The repayment process is governed by statutory priority rules, ensuring that secured and preferred creditors receive payment in accordance with their legal standing, as reflected in Articles 1131 and 1132 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*). At the same time, unsecured creditors participate proportionally in the remaining assets, reinforcing the principle of equitable treatment within the collective process.[10]

Despite its structured framework, the effectiveness of bankruptcy proceedings depends heavily on the accessibility and integrity of the bankruptcy estate. Debtors are legally obligated to cooperate by providing accurate and complete information regarding their assets. Article 71 paragraph (1) of the Bankruptcy and PKPU Law explicitly requires debtors

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[9] Tryandari, Maya. "Legal protection for bankruptcy curators in the resolution of bankruptcy cases." *Journal of Law and Legal Reform* 2, no. 3 (2021): 421-438; Al-Anshori, Huzaimah, Emi Puasa Handayani, and Gautam Kumar Jha. "Reformulation of Commercial Court Authority Regulations Relation to the Arbitration Clause." *Journal of Law and Legal Reform* 5, no. 1 (2024): 305-332.

[10] Articles 1131 and 1132 of the Indonesian Civil Code establish the fundamental principle of general security over a debtor's assets. Article 1131 provides that all of a debtor's present and future assets serve as collateral for their obligations, forming the basis of creditor claims. Article 1132 complements this by introducing the principle of *pari passu*, meaning creditors have equal rights to repayment unless statutory preferences apply. The main problem lies in practical enforcement: when assets are insufficient or concealed, creditors compete for recovery, potentially undermining fairness. This creates tension between legal equality and actual distribution, especially in cases involving debtor non-cooperation or asset dissipation. *See also* Niven, Peter. "The anti-deprivation rule and the pari passu rule in insolvency." *Insolvency Law Journal* 25.1877 (2017): 5-28; Buchheit, Lee C., and Jeremiah S. Pam. "The 'Pari Passu' clause in sovereign debt instruments." *Emory Law Journal* 53, no. Special Issue (2004): 869-922.

to disclose such information to the curator, enabling the latter to perform duties effectively. This obligation is essential to ensuring transparency and maximizing the value of the estate for the benefit of creditors.[11]

In practice, however, debtor cooperation cannot always be assumed. Instances of non-compliance—ranging from incomplete disclosure to deliberate obstruction—pose significant challenges to the administration of the bankruptcy estate. Debtors may deny access to business premises, conceal financial records, or transfer assets fraudulently prior to or during bankruptcy proceedings. Such actions undermine the curator's ability to identify and secure assets, thereby jeopardizing the equitable distribution process envisioned by the law.

This tension between legal authority and practical enforcement places the curator in a precarious position. While Article 74 paragraph (1) of the Bankruptcy and PKPU Law assigns the curator primary responsibility for managing and settling the bankruptcy estate, the successful execution of these duties often depends on factors beyond the curator's control. The curator must navigate legal, procedural, and sometimes physical barriers to asset access, raising important questions about the extent to which accountability should be imposed when outcomes are affected by debtor defiance.

From a doctrinal standpoint, this issue calls for a more nuanced understanding of curator accountability. Traditional evaluations tend to focus on the final outcomes of asset recovery and distribution. However, in cases involving inaccessible bankruptcy estates, such an approach risks overlooking the efforts undertaken by curators to overcome resistance. Measures such as reporting to the supervisory judge, seeking enforcement assistance, and initiating legal remedies—including actio pauliana actions—demonstrate proactive engagement that should factor into any assessment of responsibility.

Methodologically, this study adopts a doctrinal legal research approach grounded in the analysis of statutory provisions, legal principles, and scholarly interpretations relating to bankruptcy law in Indonesia. Primary legal materials include Law No. 37 of 2004 on Bankruptcy and

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[11] Article 71 paragraph (1) of Indonesia's Bankruptcy and PKPU Law obliges the bankrupt debtor to provide accurate, complete, and transparent information regarding their assets to the curator. This provision is essential for enabling effective management and administration of the bankruptcy estate, ensuring that all assets can be identified and distributed fairly to creditors. However, in practice, this obligation often faces significant challenges, as debtors may withhold information, conceal assets, or provide incomplete disclosures. Such non-cooperation hinders the curator's duties, delays the insolvency process, and risks reducing the value of the estate, ultimately undermining creditor protection and the effectiveness of bankruptcy proceedings.

Suspension of Debt Payment Obligations and relevant provisions of the Indonesian Civil Code, while secondary materials encompass academic literature and expert opinions. The study also incorporates a conceptual and comparative perspective to examine how curator accountability is understood in situations of debtor non-cooperation. Through qualitative analysis, the research aims to bridge the gap between normative legal frameworks and practical challenges, providing a structured evaluation of curator responsibilities and available legal remedies.

Against this background, this article examines the legal and practical dimensions of curator accountability in situations where bankruptcy estates are rendered inaccessible due to debtor non-cooperation. By analyzing statutory provisions, doctrinal principles, and practical challenges within the Indonesian insolvency framework, the study aims to identify gaps between normative expectations and empirical realities. It ultimately argues for a recalibration of accountability standards and the strengthening of enforcement mechanisms to ensure that bankruptcy proceedings remain effective, fair, and capable of protecting creditor interests in the face of persistent debtor defiance.

Forms of Curator's Responsibility in Handling Bankruptcy Assets When the Debtor Refuses to Provide Access to its Bankruptcy Assets

1. Legal Authority of Curator in the Management of Bankruptcy Estate

Within the Indonesian bankruptcy regime, the curator occupies a central institutional position as the legally mandated administrator of the bankruptcy estate. Pursuant to Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (hereinafter the Bankruptcy and PKPU Law), the curator is appointed by the Commercial Court to manage and administer the debtor's assets following a declaration of bankruptcy.[12]

[12] Apriyanto, Hendra, and Desni Raspita. "Application of the principles of justice to pkpu applications by debtors and bankruptcy applications by creditors." *JILPR Journal Indonesia Law and Policy Review* 6, no. 1 (2024): 192-197. *See also* Lie, Gunardi, and Sylvia Shasmita. "Application of Bankruptcy Principles and Principles in the Decision of a Special Judge (Ad Hoc) Commercial Court According to Law Number 37 Of 2004." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 23, no. 2 (2024): 5006-5020; Martina, Ni Wayan Umi, and I. Made Arjaya. "Commercial Court Legal System of Bankruptcy: Debtor Assets Less Than the Amount of Debts." *International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2018)*. Atlantis Press, 2018;

This appointment signifies a fundamental legal transition: the debtor is divested of control over his or her property, which is subsequently consolidated into the bankruptcy estate and placed under the curator's authority. In this sense, the curator functions as a fiduciary actor entrusted with safeguarding the collective interests of creditors within a structured insolvency process.[13]

The statutory basis of the curator's authority is primarily articulated in Article 69 paragraph (1) of the Bankruptcy and PKPU Law, which stipulates that the curator is responsible for the management and administration of the bankruptcy estate. This broad mandate encompasses a range of legal and practical functions, including the identification, preservation, valuation, and liquidation of assets. Furthermore, Article 15 paragraph (3) imposes strict requirements of independence and impartiality, mandating that the curator must be free from conflicts of interest and must not concurrently administer more than three bankruptcy cases. These requirements reflect the normative expectation that the curator operates as an objective and professional intermediary, detached from the competing interests of both debtor and creditors.[14]

The principle of independence is further elaborated in doctrinal scholarship. Sutan Remy Sjahdeini emphasizes that a conflict of interest arises where the curator has personal, financial, or relational ties that may compromise impartiality.[15] Such conflicts may include situations in which the curator is simultaneously a creditor, maintains familial relations with the debtor's management, holds significant share ownership in the debtor or creditor entities, or occupies a managerial position within those entities. From a legal-ethical perspective, these restrictions are essential to preserving the integrity of the insolvency process and ensuring that the curator's decisions are guided solely by legal considerations and the principle of pari passu distribution.[16]

Tryandari, Maya. "Legal protection for bankruptcy curators in the resolution of bankruptcy cases." *Journal of Law and Legal Reform* 2, no. 3 (2021): 421-438.

[13] Shubhan, M. Hadi. "Legal protection of solvent companies from bankruptcy abuse in Indonesian legal system." *Academic Journal of Interdisciplinary Studies* 9, no. 2 (2020): 142-148.

[14] Fauzi, M. "Insolvency within bankruptcy: The case in Indonesia." *SHS Web of Conferences*. Vol. 54. EDP Sciences, 2018; Wijayanta, Tata. "Deadline Settlement of Petition for Declaration of Bankruptcy Before the Commercial Court and the Legal Consequences According to Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations." *Yustisia* 7, no. 3 (2018): 519-533.

[15] Sjahdeini, Sutan Remy. *Hukum Kepailitan Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan*. (Jakarta: Pustaka Utama Grafiti, 2010).

[16] Sulistiyono, Adi, and Y. Taruono Muryanto. "Analysis of Equality on Creditor Standing Principle on The Process of Arrangement and Settlement of Bankruptcy Asset in

In addition to independence, the curator's authority is characterized by its immediate enforceability. Article 16 paragraph (1) of the Bankruptcy and PKPU Law affirms that the curator may commence duties upon the issuance of the bankruptcy declaration, notwithstanding the possibility of cassation. This is reinforced by Article 8 paragraph (7), which embodies the principle of *uitvoerbaar bij voorraad* (immediate enforceability), ensuring that the insolvency process is not delayed by procedural appeals. From a functional standpoint, this provision is critical to preventing the dissipation or concealment of assets during legal proceedings, thereby protecting the value of the bankruptcy estate for creditors.[17]

However, the curator's authority is not absolute. Its exercise is subject to procedural safeguards and institutional oversight, particularly by the supervisory judge. In practice, the curator must consider several legal and operational constraints, including the scope of authorized actions, the timing of asset disposition in light of economic considerations, and the necessity of obtaining approvals from relevant stakeholders such as the supervisory judge, creditors' committee, or the court. Certain actions—such as asset sales, settlements, or continuation of business operations—may require adherence to formal procedures, including creditor meetings or judicial authorization. These limitations reflect a system of checks and balances designed to prevent abuse of power and ensure accountability.

The legal framework also imposes substantive accountability on the curator for the performance of duties. Article 72 of the Bankruptcy and PKPU Law explicitly provides that the curator is liable for losses to the bankruptcy estate resulting from errors or negligence in the execution of management and administrative functions. This provision establishes a fault-based liability regime, under which the curator may be held personally responsible, including through recourse to personal assets. Such liability underscores the high standard of care expected of curators and aligns with broader principles of fiduciary responsibility in insolvency law.

Accountability is further reinforced through transparency mechanisms. Article 74 paragraph (1) requires the curator to submit periodic reports—at least every three months—to the supervisory judge, detailing the condition of the bankruptcy estate and the actions undertaken. Paragraph (2) extends this obligation by mandating that such reports be

Indonesia." *3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)*. Atlantis Press, 2019.

17 *See* Budiono, Doni, and Maria Clarisa Talia. "Limited Liability Company's Status After Insolvency: Dissolution or Rehabilitation?." *Pandecta Research Law Journal* 18, no. 2 (2023): 280-299. *See also* Anggriawan, Rizaldy. "Unravelling financial wrongdoing: A regulatory perspective on crimes in the Indonesian capital market." *Indonesian Journal of Criminal Law Studies* 8, no. 2 (2023): 151-172.

publicly accessible at the Commercial Court. This openness serves not only as a tool of judicial supervision but also as a mechanism for creditor oversight, thereby enhancing trust in the administration of bankruptcy proceedings.

From an institutional perspective, the curator may be drawn from the *Balai Harta Peninggalan* (BHP) or appointed as an individual professional, as stipulated in Article 1 point (5) and Article 15 paragraph (1) of the Bankruptcy and PKPU Law. Article 18 further requires that curators possess specific expertise, allowing for appointments from legal, accounting, or other relevant professional backgrounds.[18] This multidisciplinary approach reflects the complex nature of bankruptcy administration, which demands both legal acumen and financial competence. Scholars have argued that such professionalization is essential to ensuring that the bankruptcy process is conducted efficiently, transparently, and in accordance with principles of justice and legal certainty.

In carrying out their functions, curators are expected to act not merely as administrators but as guardians of the bankruptcy estate. This entails a proactive role in identifying and securing assets, preventing fraudulent transfers, and maximizing the value of the estate for distribution. As noted in insolvency theory, the curator's role is instrumental in translating the abstract principles of creditor equality into concrete outcomes.[19] The effectiveness of bankruptcy proceedings is therefore closely linked to the curator's capacity to exercise authority within the bounds of law and professional ethics.

Nevertheless, a persistent challenge arises in the practical enforcement of this authority. Although the legal framework grants curators extensive powers—including the right to access, investigate, and control the debtor's assets—the realization of these powers often depends on debtor cooperation and institutional support. In cases of debtor non-compliance, such as refusal to grant access to premises or withholding of information, the curator's ability to perform duties may be significantly impeded.[20] This reveals a critical gap between normative legal authority and empirical

[18] *See* Inayati, Raisa. "Tugas, Wewenang dan Tanggung Jawab Balai Harta Peninggalan dalam Pemberesan Harta Pailit." *Jurnal Media Hukum dan Peradilan* 4, no. 2 (2018): 166-182; Widiarini, F. Sekar, and Teddy Anggoro. "The Role of Balai Harta Peninggalan as Curator in The Management and Settlement of Bankrupt Assets." *Legal Brief* 11, no. 2 (2022): 964-978.

[19] *See* Ramzani Akerdi, Habib, and Mohammad Issaei Tafreshi. "The Deepening Insolvency Theory." *Comparative Law Researches* 21, no. 3 (2017): 75-108.

[20] *See* Rusdiannor, Achmad. "Rekonstruksi Regulasi Perlindungan Debitur Atas Hak Pemailitan Kreditur Separatis dalam Hukum Kepailitan Yang Berbasis Nilai Keadilan". *Dissertation*. (Semarang: Universitas Islam Sultan Agung, 2022).

enforcement, raising important questions regarding the adequacy of existing legal mechanisms and the recalibration of curator accountability in situations of obstructed bankruptcy estates.

2. *Curator's Accountability to Creditors*

In carrying out its duties, the curator must always implement the principles of transparency and accountability in the management of the bankruptcy estate. The principle of transparency requires the curator to provide clear and accessible information to creditors, debtors and other relevant parties about all actions taken during the bankruptcy process.[21] All reports and documentation related to the management of the bankruptcy estate must be accessible to creditors to ensure that there are no actions that harm any party.

Meanwhile, the principle of accountability requires the curator to be responsible for all actions taken in the management and administration of the bankruptcy estate. This accountability is also reflected in the curator's obligation to prepare periodic reports to the court and creditors regarding the progress of the bankruptcy process, as stipulated in Article 56 of the Bankruptcy and PKPU Law.[22] The principles of transparency and accountability are essential to maintain creditors' trust in the receivers. Creditors, as parties with claims against the debtor, must feel confident that the bankruptcy estate will be managed properly and in accordance with their rights. Likewise, debtors must ensure that this process takes place fairly and that no party is disadvantaged.

Although the principles of transparency and accountability are very important in the management of bankruptcy estates, in practice their application often meets various obstacles. One of the obstacles often encountered is the limited access to information available to creditors. Some creditors may find it difficult to obtain complete information about the bankruptcy process, especially if the receivers do not fulfil their obligation

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[21] Kartoningrat, Raden Besse, and Edi Krisharyanto. "Principles of Statutory Duty and Fiduciary Duty in The Responsibility of the Bankruptcy Curator." *Media Iuris* 6, no. 2 (2023): 205-230.

[22] *See* Waisapi, Jefri Yuliyanto. "The Role of Curators and Liquidators In Solving Problems Insolvent Limited Liability Company." *Eduvest-Journal of Universal Studies* 3, no. 2 (2023): 477-490. *see also* Pangestu, Puja Dwi. "Actio Pauliana as the Rights Protection Efforts for Creditors in the Bankruptcy Case." *Journal of Private and Commercial Law* 3, no. 1 (2019): 26-29.

to provide clear and timely reports due to the bankruptcy debtor's non-cooperation with the receivers by blocking access to the bankruptcy estate.[23]

The curator has very important rights and obligations in the management and administration of the bankruptcy estate, which is regulated in the Bankruptcy and PKPU Law where the curator must manage and distribute the bankruptcy estate fairly to creditors, as well as maintain transparency and accountability in every step of the management of the estate. Nonetheless, there are various obstacles to the application of these principles, both from the debtor and the existing legal system.[24]

The curator is responsible to all creditors for managing and administering the bankruptcy estate in a professional, transparent and responsible manner. Failure by the curator to gain access to the bankruptcy estate may result in allegations of negligence or default, even if the obstacle is caused by the debtor. Therefore, it is important for the curator to be able to demonstrate that all legal efforts have been made to overcome such obstacles.

The Bankruptcy and PKPU Law does provide protection for curators in carrying out their duties. However, the principles of prudence and accountability must still be maintained. Creditors can file objections or even

[23] *See* Hidayat, M. Taufik. "Penyelesaian Sengketa Akibat Kesalahan Kurator dari Berkurangnya Harta Debitur Pailit Yang Merugikan Pihak Kreditur dalam Kepailitan." *Al-Adl: Jurnal Hukum* 7, no. 14 (2015): 50-68; Rokhma, Fadila Ilaina, and Made Warka. "Kewenangan Kurator Dalam Pemberesan Boedel Pailit Debitur yang Masih dalam Sengketa." *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 3 (2023): 2784-2798.

[24] Furthermore, the curator holds a central and fiduciary role in Indonesian bankruptcy proceedings, with rights and obligations clearly stipulated under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. The curator is mandated to manage, secure, and distribute the bankruptcy estate in a fair and proportional manner, in line with the principles of *pari passu* and creditor equality as reflected in Articles 1131 and 1132 of the Civil Code. In addition, the curator is required to uphold transparency and accountability, including through periodic reporting to the supervisory judge (Article 74). As noted by Sutan Remy Sjahdeini, the curator's role is not merely administrative but also protective, ensuring that the interests of all creditors are safeguarded within a structured legal process. However, the implementation of these principles often encounters significant obstacles. From the debtor's side, non-cooperation—such as refusal to disclose assets, concealment, or fraudulent transfers—directly undermines the curator's ability to perform duties effectively (Article 71 paragraph (1)). From a systemic perspective, limitations in enforcement mechanisms, bureaucratic delays, and lack of coordinated support from law enforcement institutions further weaken the curator's position. Scholars such as Kartini Muljadi highlight that while the legal framework is normatively adequate, its practical application remains constrained by these structural and behavioral challenges. Consequently, a gap persists between legal norms and empirical realities, affecting the efficiency, transparency, and fairness of bankruptcy administration. *See* Sjahdeini, *Hukum Kepailitan Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan*; Muljadi, *Perikatan yang Lahir dari Perjanjian*.

sue the curator if proven negligent in protecting their interests, although the fault does not necessarily lie with the curator.[25] The curator can be held liable for the failure of the bankruptcy receivership process based on the theory of legal responsibility. This theory states that a legal subject, in this case the curator, is obliged to bear the legal consequences of an act or omission in carrying out its obligations. However, this theory also provides a broader and more proportional analytical framework, which not only looks at a person's formal position, but also the reality of the conditions faced, including real control over the object for which he is responsible.

In cases where the debtor does not provide access to the bankruptcy estate, for example by hiding documents, transferring assets, or even locking the building where the assets are stored, the curator cannot be directly categorized as negligent or in breach of his obligations. This is because such actions are beyond the direct control of the curator. Instead, the curator is in a vulnerable position, where he is obliged to prove that he has made all possible efforts in accordance with applicable legal provisions.

In order to fulfill the principles of accountability and transparency, as well as to protect himself from claims or lawsuits from related parties, the curator must record and document every step he has taken. Legal efforts that can be taken by the curator in this situation include the following:

1) Report the condition in writing to the supervisory judge, as a form of administrative accountability and so that the judge is aware of the obstacles that occur;
2) Submit a request for forced execution to the commercial court to obtain assistance in repossessing inaccessible assets;
3) Request the assistance of relevant third parties, such as notaries, police, or related agencies, in order to gain physical access or supporting documents;
4) Uncovering potential fraudulent acts of the debtor, such as illegal transfer of assets or concealment of documents, criminal reports;
5) Prepare a detailed and transparent periodic report to the supervisory judge, which includes the efforts that have been made, the obstacles faced, and the impact on the bankruptcy process;

If all these steps have been carried out professionally, documented, and in accordance with legal procedures, then theoretically and practically, the curator cannot be held legally responsible for the inability to take over the assets. In the theory of legal responsibility, the curator has fulfilled his

[25] *See* Simanjuntak, Ranto Parulian. "Curators are Vulnerable to be Criminalized and Criminated in Bankruptcy and PKPU Processes." *Global Legal Review* 3, no. 2 (2023): 141-161.

obligations as a legal subject who acts professionally and proportionally within the limits of his abilities.[26]

Conversely, if the curator does not take these steps or is proven to be negligent in carrying out his duties, such as not reporting obstacles, not applying for assistance, or ignoring his authority, then he can be held accountable in accordance with Article 78 of the Bankruptcy and PKPU Law. The sanctions that can be imposed vary, ranging from reprimands, suspension as a curator, to civil compensation or even criminal sanctions, depending on the level of guilt proven.

Therefore, within the framework of the theory of legal responsibility, the evaluation of the performance and behavior of the curator must be carried out objectively and proportionally, taking into account not only the final result of his duties, but also the process, efforts, and environmental conditions he faces. Thus, the legal responsibility of the curator is not absolute, but is a conditional responsibility and depends on the real ability and good faith of the curator in carrying out his duties.

In the case study of *Koperasi Simpan Pinjam Mitradana* in the city of Semarang, this kind of situation becomes very relevant. Many savings and loan cooperative bankruptcy cases are characterized by misappropriation of assets by the board or management before the bankruptcy verdict is handed down. In such situations, the role of the curator is not only as an asset manager, but also as a party who must be proactive in identifying and tracing assets that may be hidden, as well as proving that he has not been negligent in carrying out his duties.[27]

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[26] Sianturi, Martunas, Dewi Iryani, and Puguh Aji Hari Setiawan. "Tugas, Peran dan Tanggung Jawab Kurator dalam Kepailitan." *Co-Value Jurnal Ekonomi Koperasi dan Kewirausahaan* 14, no. 6 (2023): 751-60. *See also* Arfia, Arfia, Irabiah Irabiah, La Ode Awal Sakti, Basrawi Basrawi, Muh. As Ari AM. "Legal Review of Corporate Liability Based on Law Number 1 of 2023 concerning the Criminal Code". *Sangia Nibandera Law Research* 2, no. 1 (2025): 1-24. https://doi.org/10.5281/zenodo.19645887

[27] *See* Saraswati, Desty Ayu, and Inayah Inayah. "Tinjauan Yuridis Penundaan Kewajiban Pembayaran Utang Pada Koperasi Simpan Pinjam Mitradana Semarang (Studi Kasus Putusan Nomor 01/Pdt. Sus-PKPU/2017/PN. Niaga. Smg)". *Thesis*. (Surakarta: Universitas Muhammadiyah Surakarta, 2018). In addition, the controversy surrounding the Mitradana Semarang Savings and Loan Cooperative (KSP) (often referred to as Multidana in some news reports) stemmed from the cooperative's inability to meet its debt repayment obligations to its creditors. This issue then entered the Debt Payment Suspension (PKPU) mechanism at the Semarang Commercial Court. However, the cooperative's proposed composition plan was rejected by the majority of creditors—approximately 66.3%, representing a significant amount of debt—and the court ultimately declared the cooperative bankrupt in 2017. The controversy is further complicated by the fact that the case involves not only default but also alleged irregularities in the cooperative's business activities. The management is suspected of collecting funds from the public as if operating a banking institution without official permits, in violation of banking law. Furthermore, a criminal report has been filed against the former cooperative leader for these alleged violations. Legally, this situation

As such, the theory of legal responsibility is an important foundation in understanding the limits, conditions and mechanisms of receivership liability in the face of situations where debtors do not provide access to the bankruptcy estate. This theory provides a balanced normative framework, which protects the receivers from unfounded allegations of negligence, while maintaining the integrity of the insolvency process so that it continues to run in accordance with its legal objectives, namely the protection of creditors' rights and the fair and transparent settlement of debts.

Legal Measures Available to the Curator in Facing the Debtor's Refusal to Give Access to the Bankruptcy Estate

1. Legal Efforts of the Curator in Retrieving the Bankruptcy Estate

The bankruptcy estate can be equated with the debtor's assets which are divided into 3 (three) parts. First, there is the debtor's property that is fully owned and controlled by the debtor. Second, there are debtor's assets owned by the debtor and controlled by creditors due to a debt agreement that is required or required as collateral. Third, assets that were previously

demonstrates an overlap between the legal regimes of cooperatives, banking, and bankruptcy. From a bankruptcy law perspective, the main controversy lies in creditor protection and the effectiveness of the bankruptcy estate settlement process. The large number of creditors (cooperative members/customers) with significant claims creates difficulties in the verification and distribution of assets. Furthermore, indications of opaque fund management complicate the curator's task of identifying and securing the bankruptcy estate. This reflects a gap between legal norms governing debtors' obligations and the practical reality, particularly regarding asset transparency and the debtor's good faith. Thus, the KSP Mitradana Semarang case serves as a concrete example of structural problems in bankruptcy practice in Indonesia, namely: weak supervision of cooperatives, the potential misuse of legal entities for quasi-banking activities, and obstacles in the execution and collection of bankruptcy assets. This case also demonstrates the importance of strengthening the role of curators and coordinating with law enforcement officials to ensure that the bankruptcy process is effective and provides maximum protection for creditors. *See* Senjaya, I.C. "Ditolak Kreditur, Pengadilan Semarang Pailitkan Koperasi Multidana", *ANTARA Jateng,* May 15, 2017. Retrieved from https://jateng.antaranews.com/berita/167134/ditolak-kreditur-pengadilan-semarang-pailitkan-koperasi-multidana. *See also* Haryani, Anik Tri, et al. "Analysis of Judgement on Cancellation of Bankruptcy of Intidana Saving and Loan Cooperative (Review of the Authority to File for Bankruptcy and PKPU against Cooperatives)." *Jurnal Jurisprudence* 13, no. 1 (2023): 31-45; Nurindra, Nindya Raras Wisesa. "Tanggung Jawab Hukum bagi Koperasi Simpan Pinjam yang Dinyatakan Pailit terhadap Anggota Koperasi Simpan Pinjam". *Thesis*. (Semarang: Universitas Katolik Soegijapranata Semarang, 2019).

owned by the debtor but have been transferred by a legal action so that they are owned and controlled by a third party.[28]

In the face of a situation where a bankrupt debtor, in this case the Mitradana Savings and Loan Cooperative (KSP) in Semarang City, does not provide access to the bankruptcy estate, the curator has legal instruments that can be used to protect the interests of creditors. one of the efforts that can be taken is by filing an actio pauliana lawsuit to the Commercial Court at the Semarang District Court.[29]

Based on Article 41 paragraph (1) of the Bankruptcy and PKPU Law, the curator is authorized to file a petition for annulment of legal acts committed by the debtor that are detrimental to the interests of creditors and were carried out before the bankruptcy declaration was pronounced. In conducting an actio pauliana lawsuit, there are 3 (three) main requirements that must be met, including the following: the existence of legal actions carried out by the debtor that are detrimental to creditors; the legal action is not required to be carried out by the debtor; the legal action is carried out within a period of 1 (one) year before the bankruptcy verdict is imposed. If these three conditions can be proven, then the curator can file an actio pauliana lawsuit to cancel the transaction that harms the bankruptcy estate.

An actio pauliana suit is a legal mechanism that allows the receivership to invalidate legal actions of a bankrupt debtor that are detrimental to creditors. this action can only be brought if the debtor and the third parties involved knew or should have known that the actions would be detrimental to creditors. the purpose of *actio pauliana* is to protect the interests of creditors by ensuring that assets of the debtor that can be used to pay debts are not unlawfully transferred before the bankruptcy declaration is issued[30].

Actio pauliana is a legal mechanism that gives creditors the right to cancel the debtor''s legal actions that are not required and are detrimental to creditors. The provisions regarding actio pauliana are regulated in Article 1341 of the Indonesian Civil Code, and Article 41 paragraph (2) of the Bankruptcy and PKPU Law also stipulates that the cancellation as referred to in paragraph (1) can only be carried out if it can be proven that at the time the legal action was carried out, the debtor and the party with whom the

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[28] Mulyati, Etty, and Fajrina Aprilianti Dwiputri. "Prinsip Kehati-Hatian dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (2018): 134-148.

[29] *See also* Luwinanda, Aimee Malca, and Otih Handayani. "Legal Protection for Third Parties Against Actio Pauliana Lawsuits in Bankruptcy Cases in Indonesia." *Publication of the International Journal and Academic Research* 1, no. 2 (2024): 64-77.

[30] Setyabudi, Albertus Hansen, Sylvia Janisriwati, and Irta Windra Syahrial. "Perlindungan Hukum Terhadap Pihak Ketiga dalam Actio Pauliana." *Jurnal Magister Hukum ARGUMENTUM* 9, no. 1 (2023): 119-127.

legal action was carried out knew or should have known that the legal action would result in a loss to creditors.

In this case, the appointed curator has the authority to apply for actio pauliana to invalidate legal actions taken by the debtor prior to the declaration of bankruptcy, if it can be proven that the actions were detrimental to creditors and were taken in bad faith. This process aims to ensure that the debtor's assets that should be part of the bankruptcy estate are not unlawfully transferred to certain parties, so that the rights of creditors are fairly protected. The application of actio pauliana in the bankruptcy case of Koperasi Simpan Pinjam Mitradana demonstrates the importance of this legal mechanism in maintaining the integrity of the bankruptcy process and protecting the interests of creditors from debtors' actions that may harm them.

2. *Criminal Law Actions Against Debtors*

Law enforcement is not only civil in nature but can also go through criminal channels, especially if the debtor commits illegal acts. Here, criminal law functions as a means of ultimatum remedium, which is the last resort to maintain the authority of the law and protect the public interest (in this case, the creditors). criminal reporting against debtors is a form of repressive law enforcement.

In the context of criminal law, the actions of bankrupt debtors who are proven to have transferred part of their assets to other parties with the aim of avoiding obligations to creditors can be subject to criminal sanctions. Such actions can be categorized as criminal acts of embezzlement and/or fraud, which are regulated in the Criminal Code.[31]

In some cases, the debtor's actions that obstruct the duties of the curator can be categorized as a criminal offense. For example, hiding or unlawfully transferring assets may be subject to articles in the Criminal Code, such as Article 372 of the Criminal Code on ordinary embezzlement, Article 373 of the Criminal Code on minor embezzlement; Article 374 and Article 375 of the Criminal Code on embezzlement with aggravation and Article 376 of the Criminal Code on embezzlement in the family. In the bankruptcy case of Mitradana Savings and Loan Cooperative (KSP) in Semarang City, the most suitable article applied to the bankruptcy debtor for committing embezzlement against the bankruptcy estate is Article 372

[31] *See* Retnaningsih, Sonyendah, and Isis Ikhwansyah. "Legal Status of Individual Bankrup Deptors After Termination of Bankrupcy and Rehabilitation Under Indonesian Bankcruption Law." *Indonesia Law Review* 7, no. 1 (2017): 79-94.

of the Criminal Code *jo*. Article 55 paragraph (1) letter 1 of the Criminal Code.[32]

In the context of bankruptcy, if a debtor uses bankruptcy assets that have been publicly confiscated to make payments, this action can be considered an illegal act. This has the potential to ensnare the debtor in a criminal offense in accordance with the provisions contained in the Criminal Code (KUHP), specifically contained in Article 227 Jo. Article 396 up to Article 405 of the Criminal Code which regulates actions that harm creditors or parties who have rights to the debtor's property in a state of bankruptcy.[33]

The appointed curator has the authority to submit a request to the court through the supervisory judge, either at the time the bankruptcy declaration is read out or afterwards. The request can be in the form of detention of the debtor, which can be carried out in a state detention center or at the debtor's own residence, under the supervision of a prosecutor appointed by the supervisory judge. This detention aims to ensure that the debtor fulfills his obligations in the process of managing and administering the bankruptcy estate, as well as to prevent actions that could harm creditors.[34]

In the perspective of criminal law, the actions of debtors who use bankruptcy assets to make payments to one of the concurrent creditors can be categorized as criminal acts of embezzlement and fraud against the rights of creditors. this is regulated in Article 372 of the Criminal Code and Article 400 paragraph (1) of the Criminal Code.

Article 372 of the Criminal Code states that, any person who intentionally and unlawfully possesses property which wholly or partially belongs to another and which is in his possession by reason of no crime, shall be punished for embezzlement, with a maximum imprisonment of 4 (four) years or a maximum fine of sixty rupiahs.

Meanwhile, Article 400 paragraph (1) of the Criminal Code stipulates that any person who intentionally and unlawfully deceives another person with intent to benefit himself or another person, by using a false name, a false situation, deceit, or a series of lies, to induce a person to give a good or

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32 *See also* Robert, Robert, Rosa Agustina, and Bismar Nasution. "The Rationalization of Debt Discharge Policy for Individual Debtors in Indonesian Bankruptcy Regime." *Sriwijaya Law Review* 6, no. 1 (2022): 101-121.

33 Aprita, Serlika. "Sanksi Pidana Bagi Debitur akibat Perbuatan Melawan Hukum Berdasarkan Undang-undang No. 37 Tahun 2004." *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 3, no. 1 (2022): 35-47.

34 Tanudjaja, Tanudjaja, and Andri Vigianto. "Pertanggungjawaban Pidana Bagi Kurator salam Pelaksanaan Pemberesan Harta Pailit." *MORALITY: Jurnal Ilmu Hukum* 10, no. 1 (2024): 117-128.

to create a debt or to cancel a debt, shall be punished for fraud with a maximum imprisonment of 4 (four) years.

Based on the fact that the debtor has used the bankruptcy estate to pay a debt to one of the concurrent creditors, this action not only violates the provisions of civil law, but also fulfills the elements of the criminal acts of embezzlement and fraud as regulated in the Criminal Code.

In this case, the curator has the authority to report the debtor's actions to the police for further legal proceedings. In addition, the curator also has the right to apply to the court through the supervisory judge to detain the debtor, either in a state detention center or at his own residence, to ensure that the bankruptcy process runs in accordance with the principles of justice and legal certainty (*Pari Passu Pro Rata Parte*).

In the bankruptcy process, the debtor's role remains important, especially in important stages such as the accounts receivable matching meeting. The presence of the bankrupt debtor in the meeting is necessary to provide information regarding the causes of bankruptcy and the condition of the bankruptcy estate. This is regulated in Article 121 paragraph (1) of the Bankruptcy and PKPU Law, which states that the bankrupt debtor is obliged to attend the receivables matching meeting to provide information requested by the Supervisory Judge regarding the causes of bankruptcy and the condition of the bankruptcy estate.[35]

However, if the bankruptcy debtor is in detention and his presence is required for an action related to the bankruptcy estate, then according to Article 96 paragraph (1) of the Bankruptcy and PKPU Law, the bankruptcy debtor can be taken from the place of detention by order of the Supervisory Judge. The order is then implemented by the prosecutor's office, as stipulated in Article 96 paragraph (2) of the Bankruptcy and PKPU Law. Thus, even though the bankruptcy debtor is in detention, the legal mechanism still allows the debtor to participate in processes relating to the bankruptcy estate, provided that it is by order of the Supervisory Judge and executed by the Public Prosecution Service.[36]

From the perspective of criminal law, the use of bankruptcy estate assets by a debtor to preferentially satisfy the claim of one concurrent creditor may constitute a criminal act, particularly embezzlement and

[35] *See* Nating, Imran. *Peranan dan Tanggung Jawab Kurator dalam Pengurusan dan Pemberesan Harta Pailit*. (Jakarta: Raja Grafindo Persada, 2005); Ramadhani, Muhammad Fikri Fadhil, et al. "Kepastian Hukum atas Proses Pembuktian dalam Gugatan Actio Pauliana Perkara Kepailitan." *Jurnal Tana Mana* 4, no. 2 (2023): 249-260.

[36] Manik, Candoro Tua, et al. "The Role of The Curator in Managing Bankrupt Assets in Relation to Actio Pauliana Lawsuits." *Locus: Jurnal Konsep Ilmu Hukum* 4, no. 3 (2024): 107-115.

fraudulent conduct against the collective interests of creditors. Such conduct may be examined under Article 372 of the Indonesian Criminal Code concerning embezzlement, as well as Article 400 paragraph (1), insofar as it involves intentional acts that prejudice creditor rights within a structured insolvency process.

Substantively, the essence of the wrongful act lies in the misappropriation of assets that have been legally integrated into the bankruptcy estate. Once a bankruptcy declaration is issued, all debtor assets fall under the collective regime of distribution (*concursus creditorum*), meaning they must be allocated proportionally among creditors in accordance with statutory priority rules. Accordingly, any unilateral payment to a specific concurrent creditor using estate assets disrupts the principle of equality and may be characterized as an unlawful appropriation of property entrusted for collective settlement purposes.[37]

In this context, the debtor's conduct may also be qualified as fraudulent behavior against creditor rights, particularly when such preferential payment is carried out intentionally and without legal justification. The deliberate transfer of bankruptcy estate assets to benefit a particular creditor undermines the integrity of the insolvency system and violates the principle of pari passu distribution enshrined in Indonesian civil and bankruptcy law. Such actions not only distort the legal order of distribution but also potentially give rise to criminal liability due to the intentional deprivation of other creditors' rights.

Within the Indonesian insolvency framework, as regulated under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law), the curator's role extends beyond mere asset administration. It forms part of a broader law enforcement mechanism designed to ensure the effective implementation of court decisions, safeguard equitable creditor treatment, and uphold the principles of legal certainty and justice. In this regard, curators also function as supervisory actors who may identify and report unlawful acts, including potential criminal conduct affecting the bankruptcy estate, thereby reinforcing the intersection between insolvency law and criminal liability.

Law Enforcement theory provides an essential analytical framework for understanding the function of the curator as an integral actor within the bankruptcy enforcement system. This theory posits that law enforcement extends beyond the mere formal application of legal rules; it also encompasses the substantive realization of legal norms in practice to ensure

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[37] *See* Wiguna, et al. "Legal Protection for Third Parties in Good Faith on Actio Pauliana Litigation in Bankruptcy Proceedings."

justice, legal certainty, and the protection of stakeholders' rights. In this sense, effective law enforcement is measured not only by normative compliance but also by the extent to which legal objectives are achieved in real-world implementation.

Within the context of bankruptcy proceedings, the relevance of this theoretical framework becomes particularly evident in situations where debtors fail to provide access to the bankruptcy estate. Such non-cooperation—whether intentional or resulting from other circumstances—directly undermines the curator's ability to perform statutory duties. In these conditions, the curator functions not merely as an administrator of assets, but also as an active law enforcement agent responsible for ensuring the execution of court decisions and safeguarding the collective interests of creditors.

As the designated executor of the bankruptcy judgment, the curator bears both legal and professional responsibility to ensure that the administration and liquidation of the bankruptcy estate are conducted in accordance with prevailing legal norms. However, practical challenges frequently arise when debtors engage in obstructive conduct, such as concealing financial documents, restricting access to asset locations, or unlawfully transferring estate property. These actions create substantial impediments to the effective implementation of insolvency law and highlight the limitations of individual institutional authority in enforcement contexts.[38]

One of the core tenets of Law Enforcement Theory is the necessity of an effective institutional framework supported by adequate enforcement mechanisms to ensure compliance with legal norms and the imposition of sanctions for violations. Accordingly, curators cannot operate in isolation. Their effectiveness is contingent upon institutional cooperation with supervisory judges, law enforcement authorities (including the police), and other relevant agencies. Such coordination is essential to address debtor non-compliance, prevent asset dissipation, and ensure that the objectives of bankruptcy law—particularly creditor protection and equitable distribution—are fully realized.[39]

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[38] *See* Novitasari, Salwa Aulia, and Paramita Andiani. "Analysis of The Regulation of The Curator's Professional Code of Ethics in Carrying Out His Duties as the Person in Charge of a Bankrupt Company According to The Applicable Law in Indonesia." *Eastasouth Proceeding of Humanities and Social Sciences* 1, no. 1 (2023): 53-61; Simanjuntak, Ranto Parulian. "Curators are Vulnerable to be Criminalized and Criminated in Bankruptcy and PKPU Processes." *Global Legal Review* 3, no. 2 (2023): 141-161.

[39] Nurrohim, Muhammad, and Zetria Erma. "Rights of Bankrupt Debtors in the Management And Settlement Process in Accordance with Law Number 37 of 2004

In law enforcement theory, the active participation of receivers in overcoming obstacles created by debtors also reflects 2 (two) main approaches in law enforcement, namely:

1) Preventive Enforcement: through documentation, periodic reporting, and intensive communication with the supervisory judge, the office can prevent misperceptions, allegations of negligence, or even lawsuits from aggrieved parties;
2) Repressive Approach: through annulment lawsuits, criminal reporting, or requests for forced execution, the receivership provides a direct response to violations that have occurred and provides a deterrent effect to the offending party.

In addition, in order to enforce the law effectively and responsibly, the curator must always be guided by the principles of transparency and accountability. Every legal step taken must be documented in detail and filed in accordance with applicable legal procedures. This will serve as evidence that he has carried out his duties in a professional manner and complied with the provisions of the law, despite facing serious obstacles from the debtors.

Therefore, in law enforcement theory, the role of the curator in addressing situations where the debtor does not provide access to the bankruptcy estate must be viewed as an integral part of the national law enforcement system. The curator not only acts as an asset manager, but also as a partner in upholding the principles of justice, certainty, and legal protection for creditors.

Thus, the legal efforts made by the curator should not be seen partially or merely as a technical administrative action. It must be understood in a broader context, namely as a concrete effort in realizing fair law enforcement in the bankruptcy process. This is the essence of law enforcement theory, namely that the law does not only live in the statute book, but also in daily practice, especially in situations where the implementation of the law faces real challenges.[40]

This condition is particularly relevant in bankruptcy cases of savings and loan cooperatives such as KSP Mitradana in Semarang city, where bankruptcy debtors often resort to various means to attend to their obligations, including hiding or illegally transferring assets. In situations like this, the role of the curator as a law enforcement agent becomes very strategic, as he must be able to identify, trace, and reclaim assets that should

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Concerning Bankruptcy and PKPU." *PENA LAW: International Journal of Law* 1, no. 3 (2023): 51-62.

[40] *See* Tryandari, "Legal Protection for Bankruptcy Curators in the Resolution of Bankruptcy Cases."

be part of the bankruptcy estate. The legal efforts made by the curator in this case not only have an impact on the legal completion of the bankruptcy process, but also have broader implications for the restoration of public confidence in the bankruptcy legal system, as well as the regulation of the principle of equality before the law in legal relations between debtors and creditors.

Conclusion

This study concluded that the curator's legal authority in managing the bankruptcy estate under the Bankruptcy and PKPU Law is both extensive and imperative for ensuring the orderly and equitable distribution of assets. However, when confronted with debtor non-cooperation—particularly in the form of denying access to assets—the attribution of curator accountability must be applied proportionally. The key finding of this research is that liability should not be assessed solely on the basis of unsuccessful asset recovery, but rather on the extent to which the curator has exercised due diligence and undertaken reasonable legal measures. These include reporting to the supervisory judge, initiating forced execution, coordinating with law enforcement authorities, and pursuing actio pauliana claims in cases of fraudulent asset transfers. Thus, curator accountability is fundamentally conditioned by a fault-based standard, where responsibility arises only in cases of proven negligence or misconduct, rather than structural or external impediments.

In light of these findings, this study recommends strengthening the legal and institutional framework governing insolvency enforcement in Indonesia. Future reforms should focus on enhancing the coercive powers available to curators, streamlining procedures for obtaining enforcement assistance, and imposing stricter sanctions on debtors who obstruct the administration of the bankruptcy estate. Additionally, clearer doctrinal guidelines are needed to standardize the assessment of curator accountability in cases involving inaccessible assets. Such measures would not only provide greater legal certainty but also reinforce creditor protection and the overall effectiveness of the bankruptcy system in addressing complex patterns of debtor defiance.

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