

CURATORS ARE VULNERABLE TO BE CRIMINALIZED AND CRIMINATED IN BANKRUPTCY AND PKPU PROCESSES

Ranto Parulian Simanjuntak
RPP Law Office, Indonesia,
ranto_simanjuntak@rpplawoffice.com

Abstract

The Curator is one of the important organs in the debt settlement process between debtors and their creditors through bankruptcy law instruments. Based on Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PKPU), the Curator is given broad and broad duties and powers in managing and settling the assets of a bankrupt debtor. Because since being declared bankrupt by the court, the debtor has lost his right to manage his business and assets. The duties and authorities to administer the business and assets of the bankrupt debtor rest in the hands of the Curator, who works under the supervision of the Supervisory Judge. In carrying out its duties and authorities, the Curator must adhere to the provisions of the Law and the Professional Code of Ethics, namely being independent, having no conflict of interest and not handling more than 3 (three) Bankruptcy and PKPU cases. If in carrying out its duties and authorities it causes damage to the bankrupt assets, then the Curator must be legally responsible. That means, the Curator does not have the right of immunity or impunity in carrying out his duties and authorities to manage and settle bankruptcy assets in accordance with the provisions of the law. The Curator is not a public official. The Curator may be punished if his actions and decisions in administering and settling the bankrupt assets cause harm to the bankrupt assets. However, Law Number 37 of 2004 concerning Bankruptcy and PKPU does not include criteria for criminal acts and criminal sanctions for Curators. Because of this, Curators are vulnerable to being criminalized and punished.

Keywords: *Curator; Bankruptcy and PKPU; Criminal Liability*

1. INTRODUCTION

So far, the curator profession is not well known to the public. Even this one profession is less popular than other professions such as Public Accountants, Notaries, and Advocates/Lawyers. Understandably, the Curator profession has only become known since the monetary crisis that hit Indonesia in mid-1997. The monetary crisis had a very broad impact, both in the socio-political and economic fields.

In the political sector, the monetary crisis which later developed into a multidimensional crisis gave rise to a wave of student demonstrations demanding and urging the resignation of President Soeharto. The movement, which was driven by the students, caused the collapse of the New Order, which was marked by the resignation of President Soeharto on May 21, 1998. The resignation of President Soeharto marked the birth of the Reform Order (Orde Reformasi).

The impact of the reform movement is the change in the profile of the political system, government and law in Indonesia. The centralized government under the leadership of President Soeharto, who was in power for 32 years, collapsed and was replaced by a decentralized system of government which was marked by the birth of regional autonomy. Regions are given broad authority and responsibility to manage their regional households in accordance with local potential and wisdom.

The legal system has also undergone significant changes. Many legal products and legal institutions were born during the reform era. For example Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PKPU). At the same time, the Commercial Court was born, as a legal institution specifically examining, adjudicating and deciding cases related to bankruptcy and PKPU.

The most devastating impact of the financial crisis has occurred in the economic sector. Achievements in economic development during the New Order in power for more than three decades were in shambles. Even though Indonesia is considered the "tiger" of Asia in the economic field. The rupiah exchange rate fell to IDR 15,000/16,000 per US dollar. The fall in the rupiah exchange rate against the US dollar left serious and complex socio-economic problems for the business world.

Many companies are unable to expand their business due to financial difficulties. Even maintaining the continuity of its business activities is also not easy. This condition greatly affected the ability of the business world to fulfill its obligations to pay debts that were due to its creditors.

The inability of the company (the debtor) to fulfill its obligations to pay debts that are due to its creditors has left a series of complex and legal issues. On the one hand the debtor must face a bankruptcy lawsuit from his creditors and on the other hand the debtor must fulfill the obligation to pay employee wages. The follow-up legal issue is the policy of termination of employment (PHK) with all its consequences. Among them are paying employee severance pay in accordance with the provisions of the law and the possibility of being sued by employees.

Legally, bankruptcy does not erase the debtor's obligation to pay his debts which are due to his creditors. The bankrupt debtor is obliged to fulfill his obligations to his creditors, because both of them are bound by a business cooperation agreement with all their respective rights and obligations, as well as sanctions if one party breaks a promise (default). Because the agreement is a binding law for both parties who bind themselves in the agreement.

Settlement of accounts payable between bankrupt debtors and their creditors is indeed a legal issue for the parties. For this reason, it is necessary to regulate through legal instruments, so that there are no vigilante practices or threats/pressure, confinement and intimidation of bankrupt debtors and their families. The government as a regulator must find a solution that is fair, fast, transparent and effective by preparing a supportive legal instrument. If not resolved quickly, fairly and in a balanced way through supportive legal instruments, then these legal issues will be detrimental to the parties.

Prior to the 1997 monetary crisis, the settlement of debts between bankrupt debtors and their creditors referred to legal instruments left behind by the Dutch colonial government, namely *Failissement Verordening*, *Staatsblaad* 1905: 217 juncto *Staatsblaad* 1906: 348. However, these legal instruments are outdated and are no longer effective in resolving debts. Receivables between debtors and creditors are increasingly complex.

To fill this legal void, the government took the initiative to revise, change and delete several articles in *the Failissement Verordening* by issuing Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law, Additions and Improvements to Bankruptcy Regulations, (State Gazette of the Republic Indonesia Year 1998 Number 97, Supplement to State Gazette Number 3761 (Perpu

1/1998), 22 April 1998).¹

Perpu 1/1998 was later upgraded to become a law through the DPR RI plenary session, known as Law Number 4 of 1998 concerning the Stipulation of Government Regulations in lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law, (Gazette Republic of Indonesia of 1998 Number 135, Supplement to the State Gazette of the Republic of Indonesia Number 3778), abbreviated as Law no. 4 of 1998. After 5 (five) years of implementation, it turns out that the legal instrument is no longer effective. There are many terminologies that give rise to multiple interpretations among law enforcers, so that the Law is deemed not to have met the demands of justice for the Debtor and his Creditors.²

The government and DPR (Dewan Perwakilan Rakyat) then agreed to make improvements to Law no. 4 of 1998 by making important and meaningful changes. After a tough discussion, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations was born, (State Gazette of the Republic of Indonesia of 2004 Number 131, Supplement to the State Gazette of the Republic of Indonesia Number 4443), abbreviated as the Bankruptcy and PKPU Law.³

The Bankruptcy Law and PKPU are indeed designed as a solution to solving debt problems between debtors and their creditors in a fast, fair and balanced manner. In this Law, the Curator plays a very important and strategic role in managing and settling bankruptcy assets under the supervision of the Supervisory Judge (Article 1 point 1 of the Bankruptcy Law and PKPU) . He has broad authority to manage and settle bankrupt assets from the time the Commercial Court decides the bankruptcy of a company, even though there are cassation attempts from the debtor. This is because the debtor has lost his right to manage his property from the date the bankruptcy statement was pronounced, namely at 10:00 p.m. 00.00 local time (Article 24 paragraph (1) and (2) of the Bankruptcy Law and PKPU).

A Curator's broad authority in managing and settling bankrupt assets is also balanced with great responsibility. In carrying out their duties, a Curator must comply with legal signs as stipulated in Article 15 paragraph (3) of the Bankruptcy and PKPU Law which states that a Curator must be independent, not have a conflict of interest, and not be handling bankruptcy and PKPU cases of more than 3 (three) cases. In addition, a curator must also comply with the signs of the Professional Code of Ethics from the professional organization which he belongs.

Referring to its anatomy and substance, the Bankruptcy and PKPU Law basically only regulates matters relating to debt settlement procedures between Debtors and Creditors through the Bankruptcy and PKPU mechanisms. This is the realm of civil law and does not regulate matters relating to criminal law. The Bankruptcy Law and PKPU itself do not strictly regulate actions or actions that are directly punishable by crime.⁴

¹ Sriti Hesti Astiti, "Pertanggungjawaban Pidana Kurator Berdasarkan Prinsip Independensi Menurut Hukum Kepailitan," *Jurnal Hukum dan Peradilan* 5, no. 2 (2016): 277–98, <https://doi.org/10.25216/jhp.5.2.2016.277-298>.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*, 443.

However, the threat of criminal sanctions is also implied in the Bankruptcy and PKPU Law, namely if the Curator violates the provisions of Article 15 paragraph (3) of the Bankruptcy and PKPU Law (not independent). This is emphasized again in Article 72 of the Bankruptcy Law and PKPU which states that the Curator is responsible for mistakes or negligence in carrying out his duties and authorities which causes damage to the bankrupt assets. Indeed, the Bankruptcy and PKPU Laws do not elaborate further on the actions of the Curator who are not independent, which are categorized as criminal acts. This loophole provides space for criminal law to get involved in bankruptcy and PKPU processes. Bankruptcy and PKPU cases which were originally a civil domain, then entered the criminal realm.

Indra Nurcahya as quoted by Yalid mentioned several loopholes that could lead the Curator into a criminal case when carrying out his duties and authorities in managing and settling bankruptcy assets, including: (a) The Curator is not permitted by the bankrupt Debtor or is prevented from entering his office or residence and threatened by the Debtor or his attorney to be criminally reported for having entered the yard unlawfully (Article 167 of the Criminal Code); (b) The Curator is reported by the Debtor to the Police on the basis of entering a false statement because he refuses the Creditor's claim which the Debtor believes is the Creditor (Article 263 of the Criminal Code); (c) The Curator is reported by the Debtor to the Police for defamation of the bankruptcy announcement made by the Curator; and (d) The Curator is reported by the Debtor to the Police on the grounds of embezzlement because he has sold bankruptcy assets without his consent.⁵

Since the Bankruptcy and PKPU Laws were promulgated and implemented in 2004, quite a number of Curators have stumbled on criminal cases because of their profession. As an example, in this study, 4 (four) criminal cases were presented that befell the Curator in carrying out his duties and authority to manage and settle bankrupt assets based on a law order.

The first case relates to the bankruptcy of PT Asuransi Bumi Asih Jaya (PT Asuransi BAJ). Curators Raymond Bondgard Pardede, Lukman Sembada and Gindo Hutahaean conducted costly mistake treasure bankruptcy (Article 72 of the Bankruptcy Law and PKPU) in form embezzlement of creditors' funds . all three sentenced to imprisonment for 3 (three) years and a fine of Rp. 100 million each. All three were proven legally and convincingly guilty of jointly committing the crime using a forged or falsified document and together with The same do follow criminal washing Money as deed continues.⁶

The second case relates to the bankruptcy process of PT Alam Galaxy. Rochmad Herdito and Wahid Budiman as Management and Curator did not independent (Article 15 paragraph (3) of the Bankruptcy Law and PKPU with sided with creditors And harm debtor bankrupt. Both of them exaggerate mark bill from 2 (two) creditors which is not in accordance with the financial statements of PT Alam Galaxy. In criminal case Number 1827/Pid.B/2022/ PN.Sby at the Surabaya District Court, the two were charged with multiple articles, namely Article 263 paragraph (1) of the Criminal Code juncto Article 55 paragraph (1) 1st of the Criminal Code. The two were also charged with violating Article

⁵ Yalid, "Requirements and Prospects and the Idea of Immunity Against Good Faith Curators," *Respublica Law Journal* 16, no. 1 (2016): 46.

⁶ Fitang Budhi Adhitia, "Tangani Aset Rp 1 Triliun, 3 Kurator Ditangkap Bareskrim," *Detiknews*, May 19, 2017, <https://news.detik.com/berita/d-3506327/tangani-aset-rp->.

263 paragraph (2) of the Criminal Code in conjunction with Article 55 paragraph (1) 1st of the Criminal Code. During the trial, the Panel of Judges at the Surabaya District Court dropped 2 (two) year sentence in prison towards curators Rochmad Herdito and Wahid Budiman.⁷

The third case relates to the bankruptcy of PT Metro Batavia. This case began when Curators Turman M. Panggabean, Alba Sukmahadi, and Andra Reinhard Pasaribu filed a lawsuit against the Commercial Court regarding the land and building that became the Head Office of PT Metro Batavia on Jl. Ir. H. Juanda Number 15, Kebon Kelapa Village, Gambir District, Central Jakarta, Certificate of Building Use Rights Number 2257/Kebon Kelapa. After careful examination, the three curators are of the opinion that the land and buildings are classified as bankrupt estate. However, the land and buildings have been transferred by the Debtor to a third party. The Central Jakarta Commercial Panel of Judges and the Panel of Cassation Judges rejected the lawsuits of the three Curators. However, at the Judicial Review (PK) level, the PK Panel of Judges granted the third Curator's claim that the land and building Jl. Ir. H. Juanda Number 15, Kebon Kelapa Urban Village, Gambir District, Central Jakarta, the Building Use Right Certificate Number 2257/Kebon Kelapa is a bankrupt bankrupt. The debtor through his attorney put up a fight by reporting the three Curators to Bareskrim Polri with accusations that the three Curators made false statements in PK memory. The three Curators were finally named as suspects. However, the three of them put up a fight by filing a pretrial at the South Jakarta District Court and were later acquitted by law.⁸ Third Curator accused No independent (Article 15 paragraph (3) of the Bankruptcy Law and PKPU) and do mistake (Article 72 of the Bankruptcy Law and PKPU).

The fourth case relates to PT Surabaya Agung Industri Pulp & Paper's application for a postponement of debt payment obligations (PKPU). Curator Jandri Onasis Siadari, SH, LL.M who together with Drs. Joko Prabowo, SH., MH was appointed as PKPU Management and had to deal with criminal law because he was reported by PT Surabaya Agung Industri Pulp & Paper Debtor to the Directorate of General Criminal Investigation East Java Regional Police. Jandri Onasis Siadari is considered No independent (Article 15 paragraph (3) of the Bankruptcy Law and PKPU) and do a mistake (Article 72 of the Bankruptcy Law and PKPU). He was later arrested and named as a suspect on charges of forging letters which led to the bankruptcy of the Debtor. In the trial, Curator Jandri Onasis Siadari was not proven guilty and was acquitted.⁹

In Criminal cases involving the Curator, it appears that bankruptcy law is the realm of Civil _ Especially not spared from Criminal Law. This is not only confusing due to overlapping in the settlement of bankruptcy cases, but also causes the Bankruptcy Law and PKPU to be not autonomous and undignified, in which the Criminal Law appears to be superior to other legal systems.

⁷ Redaksi Media Merah Putih, "Dua Kurator Rochmad dan Wahid Dituntut 3 Tahun Penjara Terkait Pemalsuan," *Media Merah Putih*, March 17, 2023, <https://mediamerahputih.id/dua-kurator-rochmad-dan-wahid-dituntut-3-tahun-penjara-terkait-pemalsuan/>.

⁸ Yudho Winarto, "Batavia Air Pidanakan Tim Kurator Soal Aset," *Kontan.co.id*, November 20, 2015, <https://nasional.kontan.co.id/news/batavia-air-pidanakan-tim-kurator-soal-aset>.

⁹ *Decision of the Supreme Court of the Republic of Indonesia Number 231 K/Pid/2015*.

Indeed, in accordance with the provisions of the Bankruptcy Law and PKPU, the Curator/Management must be legally responsible if they make mistakes or negligence that cause losses to bankrupt assets. However, it does not explain in detail the criteria for criminal acts.

The ambiguity of the criteria for criminal acts related to bankruptcy and PKPU causes the existence and profession of the Curator/Management as one of the most important organs in managing and settling bankruptcy assets to seem undignified because they are vulnerable to being criminalized or punished. Even though the Curator/Management carries out their duties and authorities based on statutory orders and in accordance with the documents received, both from Creditors and Debtors. However, the Curator profession is not a public official and does not receive adequate legal protection.

2. RESEARCH METHODS

The type of research used in this research is normative legal research. This research is prescriptive in nature, namely a process to resolve the problems under study based on arguments that refer to the rule of law, legal principles and legal doctrines. ¹⁰ Types and sources of data include: primary legal materials, namely the Civil Code, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Debt Payment, and Circular Letter of the Supreme Court of the Republic of Indonesia Number 2 of 2016 concerning Increasing Efficiency and Transparency in Handling Bankruptcy Cases and Suspension of Obligations for Payment of Debt in Court. While secondary legal materials consist of books, journals and non-legal materials consist of the Big Indonesian Language Dictionary (KBBI). The approaches chosen in this research are: statutory approach (law approach), contextual approach (conceptual approach), and case approach (case approach). Data analysis techniques use deductive logic.

3. ANALYSIS AND DISCUSSION

3.1. Existence and Position of Curator in the Bankruptcy Law and PKPU

Article 1 point 5 of the Bankruptcy Law and PKPU defines a Curator as an Oral Property Office or an individual appointed by the Court to administer and dispose of the Bankrupt Debtor's assets under the supervision of the Supervisory Judge. Based on this definition, the Probate Court is not the only Curator, but it is also possible for other parties to become Curators in managing and settling bankruptcy assets, provided that these other parties must meet the criteria as stipulated in Article 70 paragraph (2) of the Bankruptcy Law and PKPKu, namely: (a) individuals who are domiciled in Indonesia, who have the special expertise needed in the context of managing and settling bankruptcy assets and (b) registered with the Ministry of Law and Human Rights.

In accordance with the mandate of Article 1 point 1 of the Bankruptcy Law and PKPU, the Curator is given a large and broad task, authority and responsibility in managing and settling the assets of a bankrupt debtor. In carrying out its large and broad duties, powers and responsibilities, the Curator is under the supervision of

¹⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia, 1986), 15.

the Supervisory Judge. Furthermore, in Article 16 paragraph (1) of the Bankruptcy Law and PKPU it is stated that the Curator has the authority to carry out the management and/or settlement of bankrupt assets from the date the bankruptcy decision is pronounced even though an appeal or review is filed against the decision.

The large Curator's authority in bankruptcy proceedings is reaffirmed in Article 69 paragraph (1) of the Bankruptcy Law and PKPU which states that the Curator's job is to manage and/or settle bankrupt assets. In carrying out its duties, the Curator is not required to obtain approval from the Debtor. In fact, the Curator is not required to submit prior notification regarding the process of managing/settlement of bankrupt assets to the bankrupt Debtor.

Furthermore, in Article 184 paragraph (1) of the Bankruptcy Law and PKPU it is stated that the Curator must start the settlement and sell all bankruptcy assets without the need to obtain the Debtor's approval or assistance. Thus, the existence of a Curator is one of the very strategic organs and is very decisive in the settlement of debts and receivables between Debtors and their Creditors through the bankruptcy process. He not only represents the court in administering and settling the bankrupt debtor's assets, but also represents the interests of bankrupt creditors and debtors. His expertise and expertise in managing and clearing out bankrupt assets will ensure that the process of managing and sorting out bankrupt assets runs smoothly, effectively, fairly and in balance.

The assignment of large duties, authorities and responsibilities to the Curator in managing and settling bankruptcy estate is solely based on legal considerations. Because referring to Article 24 paragraph (1) of the Bankruptcy Law and PKPU, the debtor by law loses his right to control and manage his assets which are included in bankruptcy assets, from the date the bankruptcy statement decision is pronounced. All legal actions, both management and transfer of bankrupt assets become the authority of the Curator under the supervision of the Supervisory Judge.¹¹

In carrying out these duties and authorities, the Curator not only manages and settles the existing bankruptcy assets and after they are collected they are then distributed to Creditors according to their respective portions, but also tries their best to save the assets allegedly belonging to the bankrupt Debtor.¹² The Bankruptcy Law and PKPU provide juridical instruments to save bankruptcy assets from fraudulent acts by the Debtor before he is declared bankrupt by the Commercial Court through an *actio pauliana lawsuit*. Because, the only party who has *a standi in iudicio persona* before the Court, including the authority to file an *actio pauliana lawsuit* to cancel the bankrupt debtor's actions that he committed before he was declared bankrupt is the Curator (Article 30 in conjunction with Article 41 of the Bankruptcy Law and PKPU). Thus, the position of the Curator is very strategic and important in

¹¹ M. Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan* (Jakarta: Kencana Prenada Media Group, 2008), 108.

¹² Serlika Aprita, "Wewenang dan Tanggung Jawab Hukum Kurator atas Kesalahan atau Kelalaiannya Mengakibatkan Kerugian Bagi Debtor dalam Proses Hukum Pengurusan dan Pembersihan Harta Pailit," *Solusi* 17, no. 2 (2019): 159, <https://doi.org/10.36546/solusi.v17i2.173>.

the process of finalizing the management and settlement of the bankrupt debtor's assets. In other words, the Curator is one of the most important organs in the bankruptcy and PKPU process.

In order to be able to carry out the duties and authorities which are very decisive in the process of finalizing the management and settlement of the assets of a bankrupt debtor, adequate qualifications of a Curator are required, both intellectual competence and personal integrity. Intellectual competence relates to special skills that must be possessed by a Curator as stipulated in Article 70 paragraph (2) letter a of the Bankruptcy Law and PKPU. What is meant by "special skills" are those who attend and pass Curator and Administrator education (explanation of Article 70 paragraph (2) letter a of the Bankruptcy Law and PKPU. This special expertise is very much needed in order to manage and settle bankrupt assets.

While personality integrity is related to the moral attitude of a Curator in carrying out his duties. Personal integrity is reduced to human values (humanistic values) such as: honesty, trustworthiness, consistency between words and deeds, daring to take risks, competent, professional and prioritizing teamwork. The curator must also be independent or impartial to any party and not have a conflict *of interest* with the parties (Debtor or Creditor) and the tasks he is carrying out.

Apart from intellectual competence and qualified personality integrity, there are administrative requirements that must be met by a Curator. In the Regulation of the Minister of Law and Human Rights Number 18 of 2013 concerning Requirements and Procedures for Registration of Curators and Administrators, it is stated that several conditions must be met in order to register as Curators, namely: ¹³

- a. Have faith in God Almighty;
- b. Indonesian citizens domiciled in Indonesia;
- c. Loyal to Pancasila and the Constitution of the Republic of Indonesia;
- d. Physically and mentally healthy;
- e. Advocate, Public Accountant or Bachelor of Economics majoring in accounting;
- f. Has attended the training for prospective Curators and Administrators and has passed the exam whose assessment is carried out by the Joint Committee;
- g. Never been convicted of a crime punishable by a criminal sentence of 5 (five) years or more based on a court decision that has permanent legal force;
- h. Never been declared bankrupt by the Commercial Court and paid the non-tax state revenue fee, the amount of which is in accordance with the laws and regulations.

The description of the qualifications that a Curator needs to have, whether intellectual competence, personal integrity, morality or other administrative requirements that must be met as described above shows that the Curator profession

¹³ Elita Ras Ginting, *Hukum Kepailitan: Pengurusan dan Pemberesan Harta Pailit* (Jakarta: Sinar Grafika, 2019), 58–59.

is an honorable profession. Therefore, its existence needs to be appreciated as one of the important organs in efforts to enforce bankruptcy and PKPU laws.

3.2. Criminal Sanctions for Curators

Even though the Curator represents the court in administering and settling the assets of a bankrupt debtor, he does not have the right of immunity (immunity). The Bankruptcy and PKPU Law regulates the legal responsibility of the Curator in carrying out his large duties and powers, namely Article 15 paragraph (3) and Article 72 in conjunction with Article 234 paragraph (4) of the Bankruptcy and PKPU Law. These articles imply a criminal threat for the Curator if he does not behave independently or has a conflict of interest with the debtor or creditor.

This independent and impartial attitude must be the main and important sign for the Curator in carrying out his duties and authorities. Indeed, the Bankruptcy and PKPU Laws do not explain in detail the meaning of independence and do not have a conflict of interest. In the elucidation of Article 15 paragraph (3) it is only stated that what is meant by "independent" and "not having a conflict of interest" is that the existence of the Curator in the bankruptcy process does not depend on the Debtor or the Curator. He has no interest whatsoever in relation to the Debtor or the Curator. Curators work under the law. The article reads the same as Article 234 paragraph (4), namely the Board of Directors who is appointed to manage the bankruptcy assets of the Debtor must be independent and not have a conflict of interest with the debtor or Creditor. In other words, in carrying out its duties and authorities, the Curator cannot be intervened by any party, both Debtors and Creditors.

The provisions of Article 15 paragraph (3) in conjunction with Article 234 paragraph (4) regarding being independent and not having a conflict of interest with any party, both the Debtor and the Creditor must be the ethical attitude of the Curator in carrying out his duties and authorities managing and settling the assets of a bankrupt Debtor. The attitude of being independent and not having a conflict of interest is also emphasized in the Code of Ethics of the Association of Indonesian Curators and Administrators (AKPI) which makes being independent and not having a conflict of interest an important requirement in the process of accepting members of the Indonesian Association of Curators and Administrators.

From the description above, it can be said that being independent and not having a conflict of interest is a moral virtue or integrity that must be possessed by a Curator in order to avoid disgraceful acts that can get him into legal trouble. But it must be remembered, integrity is not a factor that is given or happens overnight. Integrity is the result of self-discipline and hard work to improve oneself from time to time, so as to produce a good personality. This principle must always be realized by the Curator in carrying out his duties and authority to manage and settle the bankruptcy assets of the Debtor. Because it is not uncommon for a Curator to be faced with a difficult situation between the interests of Debtors and Creditors. Not to mention the temptation of economic gain for oneself, so that the Curator may betray the trust given by the court, Supervisory Judge, Debtors and Creditors by not being independent and this action will ultimately harm the bankruptcy estate.

Article 15 paragraph (3) in conjunction with Article 234 paragraph (4) of the Bankruptcy Law and PKPU does not specify in detail which actions are not categorized as independent. Likewise with the term having a conflict of interest, it is not explained in detail. Even though the two Articles imply a criminal threat for the Curator if he violates them. How can actions that enter the realm of morality be brought to the realm of crime?

The debate about the concept and position of moral integrity in relation to law has been going on for a long time. There is a school of law (Positivism) which says that moral integrity belongs to the realm of morality and not the realm of law. However, there is a school of law (natural law) which says that morality and law do not need to be contradicted. The two social rules That have a connection functional lead come back: moral And law interacts in its application. The moral principles adopted and lived by the community will support adherence to positive legal norms. People obey the law not because they are afraid of being punished, but are born from personal a awareness of good and bad behavior. Thus, moral rules help efforts to uphold positive legal norms in society. And vice versa, law enforcement also upholds moral principles.¹⁴

In relation to the provisions of Article 15 paragraph (3) in conjunction with Article 234 paragraph (4) of the Bankruptcy Law and PKPU with the threat of criminal sanctions, this is still being debated. The problem is the unclear criteria for non-independent acts which can result in a Curator being subject to criminal sanctions. Likewise, the criteria for having a conflict of interest are not stated in detail and clearly. The interpretation of Article 15 paragraph (3) in conjunction with Article 234 paragraph (4) of the Bankruptcy Law and PKPU is biased and threatens the existence of the Curator in bankruptcy proceedings.

If it is related to the theory of sentencing, the provisions of Article 15 paragraph (3) in conjunction with Article 234 paragraph (4) are contradictory. Because the criminal law explicitly states that in order to impose a sentence on a person, 3 (three) elements must be met, namely: (1) elements of a criminal act; (2) errors/negligence and criminal liability; and (3) elements of criminal sanctions. While the two Articles in the Bankruptcy and PKPU Laws mentioned above do not explicitly explain the elements of acts that are not independent and have a conflict of interest as elements of a criminal act.¹⁵

Therefore, the provision of being independent and not having a conflict of interest is not a separate element of a criminal act. An independent and impartial attitude refers more to the moral values of professional standards that must be upheld.¹⁶ These professional standards will be the navigation that guides the Curator in carrying out his duties and great authority in managing and clearing up bankrupt assets in order to avoid imposing criminal sanctions.

¹⁴ Salman Luthan, "Dialektika Hukum dan Moral dalam Perspektif Filsafat Hukum," *Jurnal Hukum Ius Quia Iustum* 19, no. 4 (October 2012): 506–23, <https://doi.org/10.20885/iustum.vol19.iss4.art2>.

¹⁵ Sriti Hesti Astiti, *Op. cit.*, 448.

¹⁶ *Ibid.*

Based on the description above, if the Curator is not independent and has a conflict of interest in carrying out his duties and authority to manage and settle bankruptcy assets, then these actions actually constitute violations of the Professional Code of Ethics. Handling of violations of the code of ethics should return to the policies and provisions of professional organizations, where the Curator is under the auspices of imposing sanctions, both administrative sanctions in the form of reprimands and suspensions as well as dismissal from organizational membership. The Curator's permit can even be revoked by the agency authorized to issue Curator appointment permits, namely the Minister of Law and Human Rights (Menkumham) as the agency authorized to issue Curator appointment permits.

If a Curator is proven guilty of violating the Professional Code of Ethics and is subject to sanctions in accordance with the provisions of the organization, especially until his license is revoked by the competent authority, then there is a strong indication that the Curator concerned has committed an act that is detrimental to the bankrupt assets or other parties such as Debtors and Creditors, which actions can be categorized as a criminal act. This is the scope of criminal law. Decisions from professional organizations related to the alleged actions of the Curator which are suspected of harming bankrupt assets will assist Polri investigators in carrying out their investigative and investigative duties.

Thus the involvement of criminal law in the bankruptcy process is only as a complement and guardian of the implementation of the Bankruptcy Law and PKPU. This means that the Bankruptcy Law and PKPU are recognized as an autonomous and dignified legal system. In other words, criminal law does not consider the bankruptcy and PKPU legal systems as subordinate to criminal law.

Even though Article 15 paragraph (3) of the Bankruptcy Law and PKPU are categorized as ethical attitudes or guidelines for the Curator Professional Code of Ethics as previously explained, violations of these provisions are punishable by criminal sanctions. The curator must be legally responsible. The legal responsibility of the Curator in carrying out his duties and authorities in managing and clearing out the bankrupt assets is emphasized in Article 72 of the Bankruptcy Law and PKPU, which states that the Curator is responsible for his mistakes and negligence which caused losses to the bankrupt assets.

The substance of the provisions of Article 72 of the Bankruptcy and PKPU Law is to limit the Curator's powers in carrying out his duties and authorities with the threat of legal sanctions, both criminal and civil sanctions. This is because it does not rule out the possibility that in carrying out its large and broad duties and authorities the Curator made a mistake or negligence which caused a loss to the bankrupt assets. For this mistake or negligence, the Curator must be held legally responsible.¹⁷

The legal ratio for imposing legal responsibility of the curator for his mistakes and negligence which resulted in losses to the bankrupt assets as stipulated in Article 72 of the Bankruptcy and PKPU Law is as follows:¹⁸

¹⁷ Serlika Aprita, *Op. cit.*, 164.

¹⁸ *Ibid.*, 163.

First, the Curator who is appointed by the Commercial Court has very large and extensive duties and authority in managing and settling the assets of a bankrupt debtor. That means the Curator has been given a legal obligation to represent the court in administering and settling bankruptcy assets in accordance with the provisions stipulated in the Bankruptcy Law and PKPU. This legal obligation must be accounted for, if due to mistakes or negligence it causes losses to bankrupt assets.

Second, there is legal uncertainty for creditors in obtaining their rights from the assets of a bankrupt debtor whose authority is in the hands of the curator. Therefore, the Curator must be professional and optimal in carrying out the duties and authority to manage and settle bankruptcy assets so that they can be distributed fairly and in a balanced manner according to their respective portions. If the Curator does not carry out their duties properly, let alone embezzle bankruptcy assets under their control, then the Curator concerned must be held legally responsible. Creditors who feel aggrieved can submit objections to the Supervisory Judge based on Article 77 paragraph (1) of the Bankruptcy Law and PKPU¹⁹ or report them to the authorities (Police).

Third, there are provisions in laws and regulations regarding the legal responsibilities of Curators, both as individuals and as Curators appointed by the Commercial Court. Legal responsibility as a person is regulated in Article 1365 of the Civil Code, which essentially states that the Curator can be sued for personal responsibility for compensation for losses resulting from mistakes or negligence and acts against the law. In fact, the Curator can be criminally prosecuted for actions that harm certain parties in the process of managing and clearing out bankruptcy assets.

Fourth, there is the possibility that the Curator will abuse the authority granted by the Bankruptcy Law and PKPU which will cause harm to the Debtor and his Creditors. For this act of abuse of authority, the party who feels aggrieved can submit a request for resistance to the Supervisory Judge or report it to Bareskrim Polri for legal processing in accordance with applicable regulations.

However, in Article 72 of the Bankruptcy and PKPU Law, it is also not stated in detail and explicitly about what is meant by "errors and omissions that cause losses to bankrupt assets that are subject to criminal sanctions." The lack of clarity on the criteria for acts that are categorized as criminal acts in the Bankruptcy Law and PKPU, the legal responsibility of a Curator must refer to the general provisions in the Criminal Code. However, it must be remembered that criminal law adheres to the principle of "no crime without fault" (*Nulla Poena Sine Culpa*). That is, in order to determine whether a person is criminally responsible, it must first be proven that the person concerned has committed a mistake or negligence or committed a prohibited act.²⁰

¹⁹Article 77 paragraph (1) of *Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations* reads, "Every Creditor, Committee of Creditors and Committee of Bankrupt Debtors may submit a letter of objection to the Supervisory Judge against the actions committed by the curator or request the Supervisory Judge to issue an order for the Curator to commit certain acts or not to do the planned deed." Furthermore, Article 77 paragraph (2) states, "The Supervisory Judge must submit an objection letter to the Curator no later than 3 (days) after the objection letter is received" and Article 77 paragraph (3) states, "The Curator must provide a response to the Supervisory Judge no later than 3 (three) days after the objection letter is received." three) days after receiving the objection letter."

²⁰Sriti Hesti Astiti, *Op. cit.*, 458.

Based on the theory of sentencing, the imposition of criminal sanctions against a person must meet the requirements of being wrong and against the law. The error in question contains elements of intent, negligence (*culpa*) and can be accounted for. The element of intention or negligence will be an indication of a motive (a motivating reason to act) and the purpose of the act.²¹

Referring to the provisions of the Criminal Code, the Criminal Articles involving the Curator include : follow criminal embezzlement (Article 372 of the Criminal Code), follow criminal fraud (Article 378 of the Criminal Code), follow criminal forgery (Article 263 of the Criminal Code and Article 264 of the Criminal Code), the crime of providing false information (Article 266 of the Criminal Code) and follow criminal bribery to apparatus enforcer law (Articles 418 and 420 of the Criminal Code).

The involvement of criminal law in bankruptcy and PKPU proceedings which is the realm of civil law is actually not something that must be rejected. Because in its development, criminal law is not only related to crime cases that occur in society, but also as *The guardian of the Constitution* or *The guardian of Security* so that people do not become victims of crime. Thus criminal law can penetrate into other areas of law such as civil law and state administrative law. This is because actions that are categorized as criminal acts can occur in other legal systems and the regulation is in the criminal law system.²²

However, according to a criminal law expert, Prof. Dr. Muladi, SH, as quoted by Sriti Hesti Astiti, stated that the involvement of criminal law in other legal systems, including the civil law system, is only complementary to support the enforcement of norms in other areas of law. Criminal law is seen to be able to provide benefits when other legal systems are deemed unable to resolve the problem.²³ In civil law, for example, the maximum sanction for perpetrators who harm other people (because of their mistakes or negligence) is in the form of compensation. This sanction is considered too light, so harsher sanctions are needed in the form of imprisonment and fines to give a deterrent effect to the perpetrators.

In relation to bankruptcy and PKPU cases, the involvement of criminal law to resolve alleged criminal acts committed by the Curator needs to be carried out carefully and professionally. This means that law enforcement officers (APH) must truly understand in depth the duties, powers and obligations of a Curator in managing and clearing out bankrupt assets in accordance with the provisions of the law (Bankruptcy Law and PKPU). APH must really ensure that reports of alleged criminal acts committed by the Curator meet the criteria as criminal acts.²⁴ This is important so that criminal law is not misused to criminalize Curators or criminal law does not feel superior to other legal systems.

Therefore, in the sentencing process the Curator who is suspected of having committed a bankruptcy crime must follow the procedures stipulated by the laws and

²¹ *Ibid.*

²² Sriti Hesti Astiti, *Op. cit.*, 460.

²³ *Ibid.*

²⁴ *Ibid.*, 462.

regulations. If a Curator is suspected of having committed an act that violates the law and harms other parties or causes damage to bankrupt assets, the parties who feel aggrieved can report it to the Indonesian National Police (Polri), both in the area (Directorate of General Criminal Investigation at Polda) and at headquarter (Bareskrim Polri).

Furthermore, the National Police who received reports of alleged criminal acts committed by the Curator in managing and clearing out bankrupt assets carried out an investigative and investigative process in accordance with the applicable laws and regulations. The investigation is the most important first step in uncovering an event that is suspected of being a crime. The investigation is the foundation of the subsequent legal process. Whether the actions or actions taken by the Curator in administering and settling the bankrupt assets are classified as criminal acts or not. Therefore, Polri investigators must have special expertise related to bankruptcy law and PKPU, so that they are not careless in following up on reports related to bankruptcy and PKPU cases.

Investigations can only be carried out by investigators, namely police officials who are authorized to conduct investigations.²⁵ Therefore, every investigator and investigator must really understand their duties and obligations and also understand the spirit of the formation of the Criminal Procedure Code such as the principles of the criminal procedure law, the obligations and powers possessed and the limits on the use of these powers. This is important in relation to respect for the nobility of human dignity and the existence of legal certainty, justice and its benefits for justice seekers.

Article 1 point 5 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) and Article 1 number 9 of Law Number 2 of 2002 concerning the Indonesian National Police states that investigation is a series of investigative actions to seek and find an incident that suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in this law. Thus, in essence, an investigation is not yet a *pro-justitia activity*, so there are no steps that lead to coercive measures in the form of limiting the rights of citizens such as arresting, detaining, searching, confiscating, checking mail, and summoning someone.

Investigation is the initial action of the police after receiving a report or complaint from someone about a legal incident to find and find whether a crime has occurred or not. Investigators examine the extent to which information is true in the form of reports or complaints in order to legally strengthen further action. If the initial evidence is insufficient, then the investigation process cannot proceed to investigation. Investigators can issue an order to stop the investigation (SP3).

²⁵Article 4 of Law Number 8 of 1981 on Criminal Procedure Code stipulates that every Polri official is an investigator. Apart from the National Police, the institutions that are also burdened with the duty of carrying out investigations and investigations into events suspected of being criminal acts are the prosecutor's office and the KPK.

Because of this, investigators are required to act prudently, because a lack of caution can have fatal consequences at the stages of investigation, arrest, detention and even have an impact on the next judicial process. If the facts and evidence are not sufficient, then it is very reasonable not to proceed with an investigation process into an investigation. It is better for investigators to focus on efforts to find and find complete facts, information and evidence so that they are sufficient to proceed with investigations.

While the investigation is a series of investigative actions in terms of and according to the method regulated in the law, seeking and collecting evidence, which with that evidence makes it clear about the crime that occurred in order to find the suspect or perpetrator of the crime (Article 1 point 13 Law No. 2 of 2002 concerning the Indonesian National Police). It is at this stage of the investigation that the objectives and scope of the examination activities fall into the *pro justitia* category to find suspects, evidence and develop cases.

At the investigation stage, investigators can carry out summons, arrests, detentions, searches, confiscations, and examination of letters. Determination of suspects is based on at least 2 (two) pieces of evidence and is carried out through the mechanism of a case court, unless caught red-handed. Suspects can also be subject to preventive measures so as not to flee outside the territory of the Indonesian state.

After completing the process and stages of the investigation, the investigator must immediately submit the case files to the public prosecutor as stipulated in Article 110 of the Criminal Procedure Code and Article 28 of Perkap Number 6 of 2019 concerning The Submission of Case Files. If the case file for examining a case has been declared complete (P-21), then it will be delegated to the Prosecutor's Office. If declared incomplete (P-19), the case dossier is returned to the Polri investigators to be completed. If the case files transferred are declared complete (P-21), the investigator will hand over the suspect and evidence to the public prosecutor.

The management of investigations and investigations is very vital for Polri as a law enforcer who is burdened with the duty and authority to uncover criminal events, including criminal acts in bankruptcy proceedings involving curators. With good management, investigators and investigators will carry out their duties based on applicable rules and technical guidelines, so that investigators will not act beyond their authority or commit acts that violate human dignity. Through good management, investigative and investigative activities can be carried out in a careful, professional and principled manner.

In relation to bankruptcy cases involving the Curator, investigators must examine the relationship between the curator's non-independence attitude and the element of error in criminal law. As for these elements, among others: there must be a will, desire, or willingness in a person to commit a crime, and the person who does something intentionally already knows and is aware beforehand of the consequences of his actions. That means that not all reports of alleged criminal acts committed by the Curator in carrying out their duties and authorities managing and clearing out bankruptcy assets are criminal offenses.

However, in practice the Polri investigation team tends not to make adequate plans in handling cases of suspected criminal acts in the bankruptcy process involving curators. In several cases, it appears that the Polri investigation team was not careful, unprofessional and did not adhere to principles in accordance with statutory provisions. In addition, the Polri investigation team also did not understand or deliberately did not understand the substance of the Bankruptcy and PKPU Laws, especially with regard to the duties and powers of the curator.

The actions of Polri investigators who were careless, not careful, unprofessional and disobedient led to abuse of authority in the form of "manipulating criminal acts" or attempts to criminalize the Curator. For example, an alleged perpetrator of a bankruptcy crime is arrested at the investigation stage which is not yet a *pro justitia activity*. Or determine the suspect without the support of 2 (two) pieces of evidence. In fact, based on Article 109 paragraph (2) of the Criminal Code (KUHP), investigators can stop the investigation if there is not enough evidence or the incident reported is not a crime.

The modus operandi of criminal acts or attempts to criminalize the Curator in carrying out their duties and authorities in accordance with the provisions of the Law places criminal law as if it is superior to civil law or civil law is considered to be subordinate to criminal law. Not only that. The involvement of criminal law in bankruptcy and PKPU cases also causes the debt settlement process between debtors and their creditors to be protracted. Even though the basic principle of the Bankruptcy Law and PKPU is a settlement process that is simple, fast, fair, balanced and effective. More than that, the fabrication of criminal acts or efforts to criminalize the Curator makes the Curator's profession undignified.

3.3. Legal Protection and Curator Immunity

The vulnerability of Curators to being criminalized in carrying out their duties and authorities is not without reason to manage and settle bankrupt assets. There are at least 3 (three) factors that influence the vulnerability of Curators to be criminalized, namely legal substance, legal structure *and* legal culture .

First, the legal substance *factor* . From the aspect of legal substance, the Bankruptcy and PKPU Laws do not explicitly describe the profession of Curator. Article 5 point 1 of the Bankruptcy Law and PKPU only states that a Curator is a Heritage Center or an individual appointed by the court to manage and settle the assets of a bankrupt debtor under the supervision of a Supervisory Judge. This formulation does not explain the position or position of the Curator in the bankruptcy and PKPU proceedings, whether as a public official or not? In fact, in carrying out his duties and authorities to manage and settle bankruptcy assets, the Curator works based on the orders of the Law (Bankruptcy Law and PKPU). The Curator should be a public official like an advocate or notary.

The unclear position of the Curator in the Bankruptcy and PKPU Laws means that the Curator does not have the right of immunity like other public officials in carrying out their duties and authorities in managing and dealing with bankruptcy assets in accordance with the provisions of the law. Therefore, the reason for the abolition of criminal penalties for public officials who carry out the orders of the law as regulated in Article 50 of the Criminal Code does not apply to curators.

Substantially, the Bankruptcy Law and PKPU do provide criminal threats for Curators who are not independent or because of their mistakes and negligence cause losses to the bankruptcy assets. However, it was not explained in detail the criteria for action and the penalty. Criminal acts/actions and threats for the Curator refer to the Criminal Code. The involvement of criminal law in bankruptcy and PKPU cases has the potential to cause different interpretations among law enforcement officials (police, prosecutors, judges) regarding the criteria for bankruptcy and PKPU crimes which can drag the curator into legal cases. This condition causes the Curator's position to be very vulnerable to being criminalized. Even though Sutan Reny Sjahdeni, as quoted by Sriti Hesti Astiti, said that the Bankruptcy Law and PKPU should also include criteria for criminal acts and at the same time criminal sanctions, both for Debtors and Creditors and Curators who act fraudulently or make mistakes/negligence which causes losses to the bankrupt assets. This is important as an embodiment of the principle of legality, thereby preventing the potential for arbitrary interpretation outside the provisions of the law.²⁶

Second, the factor of legal structure (*legal structure*). Structurally, the legal system in Indonesia has been equipped with a number of law enforcement agencies with their respective functions such as the Indonesian National Police (Polri), the Attorney General's Office, the Judiciary and lawyers/advocates. These four law enforcement agencies must work together and complement each other, so that the four are at the forefront of law enforcement efforts *for* the realization of 3 (three) legal principles, namely: legal certainty, justice and benefits.

However, it must be admitted that the quality of human resources (HR) for law enforcement officers (APH) is inadequate, in both intellectual competence and personal integrity. From the aspect of intellectual competence, it seems that not many law enforcement officials have special expertise related to bankruptcy and PKPU. Lack of knowledge from law enforcement officials causes the handling of bankruptcy and PKPU cases to be the same as general criminal cases. Likewise the integrity aspect of the personality of law enforcement officers. It is no longer a secret, many police officers, prosecutors and judges and even legal advisers are involved in bribery cases or become case brokers. It is common knowledge that many large corruption cases involve law enforcement officials and other public officials. In fact, based on a Kompas poll some time ago, showed that law enforcement institutions were ranked first in corruption cases.

Third, the factor of legal culture (*legal culture*). The legal culture in Indonesia is classified as unhealthy. Various legal products and legal instruments that have been formed have not guaranteed legal certainty, justice and the benefits of society. The practice of taking the law into their own hands, bribing or buying and selling justice is still a chronic problem in this country, and has even become a "new culture" in law enforcement in society. This condition is exacerbated by the presence of legal mafia or case brokers in judicial practice in the country. The court is not a place to seek

²⁶ Sriti Hesti Astiti, *Op. cit.*, 470–471.

justice, but a place to buy and sell justice. Thus, culture (bribery culture) can also be a potential factor that makes Curators vulnerable to being criminalized.

It is no longer a secret, the practice of bribery and the existence of the legal mafia not only damages the image of the law and law enforcement officials, but also undermines public trust *in* law as a means of seeking truth and justice. Society is already apathetic towards the law and law enforcement officials. The law is only sharp downwards and blunt upwards. The law only favors people with deep pockets. With the strength of their capital, including the Debtor, they "buy" law enforcement officials to criminalize the Curator in order to avoid the threat of bankruptcy.

Curators are increasingly vulnerable to being criminalized because until now there is no adequate legal protection for the Curator profession. There is no specific law that regulates and protects the Curator profession. Even though the existence of a Curator is increasingly needed in line with economic growth, foreign investment and cross-border business cooperation that requires guarantees of legal certainty, including the process of settlement of debts and creditors through the legal instruments of the Bankruptcy Law and PKPU.

From empirical experience, the unclear position of the Curator in Bankruptcy Law and the absence of adequate legal protection or the absence of the right of immunity means that the Curator is easily criminalized. In the case that happened to Turman M. Panggabean, Alba Sukmahadi and Andra Reinhard Pasaribu in the bankruptcy of PT Metro Batavia, for example, it appears that there was an attempt to criminalize the Curator who was carrying out statutory orders, namely carrying out an *actio pauliana* lawsuit related to land and buildings becoming the PT Metro Head Office Batavia on Jl. Ir. H. Juanda Number 15, Kebon Kelapa Village, Gambir District, Central Jakarta, Certificate of Building Use Rights Number 2257/Kebon Kelapa. When they lost at the judicial review (PK) level, the bankrupt debtor through his attorney reported the three curators to the Bareskrim Polri on charges of forging letters when submitting PK memories and named suspects. The three Curators were later released through pretrial proceedings at the South Jakarta District Court.

Likewise, the case that happened to Curator Jandri Onasis Siadari, SH, LLM, who handled the request for postponement of debt payment obligations (PKPU) for PT Surabaya Agung Pulp & Paper Industries. Curator Jandri Onasis Siadari, SH, LLM together with Drs. Joko Prabowo, SH., MH was arrested and named a suspect by the General Criminal Investigation Directorate East Java Regional Police accused of forging documents that caused the debtor to be bankrupt. In the trial, Curator Jandri Onasis Siadari was not proven guilty and was acquitted. It appears that the Police do not correctly understand the duties and powers of the Curator in accordance with the Bankruptcy Law and PKPU and it is very easy to determine a Curator as a suspect in a bankruptcy crime.

Admittedly, there are curators who deliberately commit crimes in the process of administering and clearing bankrupt assets, such as the case that happened to curators Raymond Bondgard Pardede, Lukman Sembada and Gindo Hutahaean. or forged and together The same do follow criminal washing Money as deed continued

in connection with the bankruptcy of PT Asuransi Bumi Asih Jaya (PT Asuransi BAJ). The three were sentenced to 3 (three) years in prison and fined Rp. 100 million each.

Likewise, Curators Rochmad Herdito and Wahid Budiman were charged with forging and inflating bills from creditors in the PKPU case of PT Alam Galaxy, Surabaya. The three were sentenced to 3 years in prison.

In accordance with the principle of *equality before the law*, no one is above the law, including the Curator profession. If the Curator is proven to have committed a crime in carrying out his duties and authority to manage and settle the bankrupt assets which causes losses to the bankrupt assets and other parties, then he must receive criminal sanctions, both imprisonment and fines. However, it is a shame if there is a fabrication of a crime or an attempt to criminalize the Curator profession by law enforcement officials, especially the Police and the Attorney General's Office because they do not fully understand the duties and powers of the Curator in managing and settling bankruptcy assets under the Bankruptcy Law and PKPU.²⁷ Even worse, engineering criminal acts or criminalization of the Curator profession is carried out because of bribes from bankrupt debtors who do not have good intentions or their attorneys.

Empirical experience of legal cases that befell the Curator in carrying out his duties and authority to manage and settle bankruptcy assets, the Curator's profession must be legally protected. This is important so that the Curator can carry out their duties safely and comfortably without being haunted by fears of being criminalized. Therefore, the role and function of the Supervisory Judge who is also appointed by the Court to oversee the implementation of the Curator's duties must be optimized.

The Supervisory Judge needs to be empowered to prevent errors and omissions that may be committed by the Curator early on causing bankruptcy assets to be damaged. The Supervisory Judge must be authorized to resolve differences of opinion regarding the amount of creditors' bills before being challenged in court. The Supervisory Judge needs to be asked for his opinion if there is a case and also legal responsibility. Thus there is no impression of discrimination between the Curator and the Supervisory Judge.

4. CONCLUSION

The Bankruptcy and PKPU Law places the Curator as one of the important organs in the bankruptcy and PKPU process. The Curator is appointed and represents the court (Commercial Court) with large and broad duties and authority to manage and settle bankrupt assets under the supervision of the Supervisory Judge.

However, the Bankruptcy and PKPU Laws do not regulate and describe clearly and unequivocally the position of the Curator in managing and settling bankrupt assets. This law only regulates how Curators carry out their profession, but does not describe who the Curators really are. Even though the main task is to manage and settle bankrupt assets in accordance with the provisions of the law.

²⁷ Yalid, *Op. cit.*, 46.

The unclear position or position of the Curator in the Bankruptcy Law and PKPU makes the Curator very vulnerable to being criminalized. Moreover, there is no specific law that regulates legal protection for Curators in carrying out their profession and there is no guarantee of immunity for Curators in carrying out their profession, because Curators are not public officials.

Therefore, in order to minimize the practice of criminalization or fabrication of criminal acts against Curators in carrying out their profession in accordance with statutory orders, it is necessary to formulate the position or position of Curator in a special law concerning Curators. The Curator must have the same position as a public official with the profession of an advocate and notary. Thus, the Curator receives adequate legal protection or has the right of immunity in carrying out his duties and authorities to manage and settle bankruptcy assets in accordance with the provisions of the law.

However, based on the principle of *equal before the law*, the Curator remains legally responsible, both criminally and civilly, for his mistakes or negligence which cause losses to other parties. These criminal sanctions should be regulated in the Bankruptcy and PKPU Laws so as not to cause multiple interpretations among law enforcers which are detrimental to justice seekers. This means that the legal responsibility of the Curator must be limited to material crimes such as forgery, embezzlement, bribery and other forms of engineering that are detrimental to bankruptcy assets. Because of this, Law Number 37 of 2004 concerning Bankruptcy and PKPU is very urgent to be revised.

Curator organizations also need to carry out regular coaching to their members, especially with regard to personality qualities with a religious and cultural touch so that Curators do not sacrifice their dignity and self-esteem by committing disgraceful and unlawful acts. These coaching activities can be carried out formally (education/training) and informally (regular meetings by inviting religious leaders or psychological motivators).

REFERENCES

- Adhitia, Fitang Budhi. "Tangani Aset Rp 1 Triliun, 3 Kurator Ditangkap Bareskrim." *Detiknews*, May 19, 2017. <https://news.detik.com/berita/d-3506327/tangani-aset-rp->
- Aprita, Serlika. "Wewenang Dan Tanggung Jawab Hukum Kurator Atas Kesalahan Atau Kelalaiannya Mengakibatkan Kerugian Bagi Debitor Dalam Proses Hukum Pengurusan Dan Pemberesan Harta Pailit." *Solusi* 17, no. 2 (2019): 154–174. <https://doi.org/10.36546/solusi.v17i2.173>.
- Astiti, Sriti Hesti. "Pertanggungjawaban Pidana Kurator Berdasarkan Prinsip Independensi Menurut Hukum Kepailitan." *Jurnal Hukum dan Peradilan* 5, no. 2 (2016): 277–298. <https://doi.org/10.25216/jhp.5.2.2016.277-298>.
- Ginting, Elita Ras. *Hukum Kepailitan: Teori Kepailitan*. Jakarta: Penerbit Sinar Grafika, 2018.
- Luthan, Salman. "Dialektika Hukum Dan Moral Dalam Perspektif Filsafat Hukum." *Jurnal Hukum Ius Quia Iustum* 19, no. 4 (October 2012): 506–523. <https://doi.org/10.20885/iustum.vol19.iss4.art2>.

- Redaksi Media Merah Putih. “Dua Kurator Rochmad Dan Wahid Dituntut 3 Tahun Penjara Terkait Pemalsuan.” *Media Merah Putih*, March 17, 2023. <https://mediamerahputih.id/dua-kurator-rochmad-dan-wahid-dituntut-3-tahun-penjara-terkait-pemalsuan/>.
- Shubhan, M. Hadi. *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan*. Jakarta: Kencana Prenada Media Group, 2008.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia, 1986.
- Winarto, Yudho. “Batavia Air Pidanakan Tim Kurator Soal Aset.” *Kontan.co.id*, November 20, 2015. <https://nasional.kontan.co.id/news/batavia-air-pidanakan-tim-kurator-soal-aset>.
- Yalid. “Requirements and Prospects and the Idea of Immunity Against Good Faith Curators.” *Respublica Law Journal* 16, no. 1 (2016).