

The Duties and Responsibilities of Curators and Supervisory Judges in the Establishment of Bankruptcy Property

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Abstract

Duties and responsibilities of curators and supervisory judges in the enactment of bankruptcy property under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Payment. This research aims to find out the Duties and Responsibilities of Curators and Supervisory Judges in the enforcement of bankruptcy property when debtors sell bankruptcy property that harms creditors. This research uses Normative research methods, namely: Library research is research that uses secondary data, namely data sourced from library materials, studying various scientific writings, laws and regulations, documents and other sources related to the material discussed. The result of this research is that curators have a duty to manage and settle bankruptcy property under the supervision of supervisory judges appointed by Commercial Court Judges. Curators also have a personal responsibility if in carrying out their duties he performs *kelalalian* so as to cause losses to bankruptcy property. While the Supervisory Judge has a duty to supervise the curator in carrying out his duties in cleaning up the bankruptcy property. If the debtor commits a legal action on the bankruptcy *harta* that harms the creditor, then the curator based on the mandate of Article 16 of the Bankruptcy Law and PKPU can file an *Actio Pauliana* lawsuit to the Commercial Court which aims to cancel the legal actions committed by the previous debtor so that the bankruptcy property can be maximized to be distributed to the creditors.

Keywords

Bankruptcy; Curator; Supervisory Judge

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Introduction

Insolvency is a process in which a debtor who has financial difficulties so that he cannot pay his debt is declared bankrupt by the Commercial Court. Since the date the bankruptcy statement is pronounced, the bankruptcy debtor for the sake of the law no longer has the authority to control and manage his wealth, and the Commercial court judge will appoint a curator to clean up the property of the bankruptcy debtor and a supervisory judge to supervise the curator in cleaning up the bankruptcy property. Based on Article 1 Number 1 of Law No. 37 of 2004 on Bankruptcy and Suspension of Payment. (Here in after referred to as the Bankruptcy Law and PKPU), bankruptcy as a general confiscation of bankrupt debtors assets which administration and handling was through curator under the supervision of supervisory judges (Yulianto, 2017).

In Indonesia it has been regulated in article 1 number 5 of the Bankruptcy Law and PKPU that those who have the right to manage and distribute the property of bankruptcy debtors are individuals or heritage halls commonly called curators. In the bankruptcy process it is not uncommon to find the actions done by debtors to hide their wealth and even transfer their wealth to other parties which of course are done by creditors who are not in good faith. However, with the curator is an effort given by the Bankruptcy Law and PKPU to protect the interests of creditors from fraudulent acts committed by debtors.

If the debtor has two or more creditors and the debtor cannot pay the debt, so the creditor sues the debtor to the commercial court and is terminated in bankruptcy by the court, then all the debtor's property will be the source of repayment of the debtor's debts to the creditor, as stated in Article 1131 of the Civil Code "All material debtors, both moving and immoving, Both existing and new ones in the future become dependents for all individual engagements". Furthermore, Article 1132 of the Civil Code "The materiality becomes a joint guarantee for all those who owe it, the income of the sale of objects divided - divided according to balance, that is, according to the small amount of receivables respectively, unless among the debtors there are legitimate reasons to take precedence". The essence of the two provisions above is to provide assurance to creditors that the material belonging to existing and existing debtors becomes a mutual guarantee for all creditors divided according to the principle of balance or "Pari Pasu Prorata Parte".

If the debtor's wealth is sufficient to pay off his debt, there will be no problem, but conversely in the event that the debtor has many creditors and the debtor's wealth is not enough to pay off all creditors, then the creditors will compete at all costs, both in accordance with legal procedures and those that are not in accordance with legal procedures, to get the repayment of the bill first (Dedy Tri Hartono, 2016). So that creditors who come later will not get a share because the debtor's property has been exhausted. This will certainly trigger a dispute between one creditor and another that is certainly unfair to creditors who have lent their funds to debtors. This is the purpose of the Bankruptcy Law and PKPU so that there are no circumstances described above.

Curators have a major role in the management and distribution of bankruptcy property, bankruptcy debtors for the benefit of creditors and bankruptcy debtors themselves. Starting from the date the verdict of the bankruptcy statement is determined, the curator is authorized to carry out the management duties and/or the enforcement of the bankruptcy property, although against the verdict is filed cassation or review. In carrying out his duties and authority, a curator needs to sort out the authority he has under the law, namely: authority that can be exercised after obtaining approval from other parties, in this case a supervisory judge. If further reviewed, to carry out the duties and authority of curators based on the Bankruptcy Law and PKPU, a curator must at least have the ability, among others:

- a. Adequate control of civil law;
- b. Mastery of bankruptcy law;
- c. Management mastery (if the bankruptcy debtor is a company that can still be saved business activities);
- d. Basic mastery of finance (Rahayu Hartini, 2003).

In carrying out his duties curator, often the curator encounters obstacles so that the task he carries out cannot run smoothly as specified in the Bankruptcy Law and PKPU. Such obstacles such as debtors who ignore court rulings and are uncooperative in providing access or information needed by curators related to their assets that should be seized by curators even until the curator is reported to the police.

Based on the background of the above problems, the author formulates a problem that is how the duties and responsibilities of curators and supervisory judges in the release of bankruptcy property if the debtor sells bankruptcy property that harms creditors?

Research Methods

This type of research is normative law research using normative case studies in the form of legal behavioral products. The subject of his study is a law that is conceptualized as a norm or rule that defends me in society and becomes a reference for everyone's behavior. So normative legal research focuses on positive legal inventory, legal principles and doctrines, legal discoveries in cases in concreto, systematic law, synchronization standards, comparative law and legal history (Abdul Kadir, 2004).

Discussion

Before discussing the non-life that can be done by curators if the debtor sells bankruptcy property that harms creditors, it needs to be explained in advance about the duties and responsibilities of curators and supervisory judges in the application of bankruptcy property. According to Sutan Remy Sjahdeini, after the bankruptcy verdict was handed down by the Commercial Court, it was determined by the curator and supervisory judge by the Commercial Court. Curator is the authority that will further manage the debtor's wealth after with the bankruptcy verdict the debtor no longer has the authority to manage the wealth and for the debtor's wealth has been in the general order. The court also assigns supervisory judges who are tasked with overseeing the authority and

implementation of curatorial duties so that curators always carry out their authority and duties within the limits specified in the Bankruptcy Law and PKPU (Sutan Remy Sjahdeini, 2010).

1. Curator Duties and Responsibilities

In bankruptcy, the most fundamental task for curators is to manage and manage bankruptcy property, curators in carrying out their duties have the ultimate goal of taking decisions that can maximize the value of pilit property so that it can be given to creditors. Curators should not have conflicts of interest in them, curators must be independent (Alusianto Hamonangan, 2021). Independent in bankruptcy is related to the inner attitude of the curator, which upholds honesty, independence, neutral or impartial attitude in the interests of either the debtor and creditor. In addition, in the implementation of its duties must uphold the values of integrity and objectivity in order to achieve the goal of equitable distribution of bankruptcy property for both creditors and debtors. This is important, because in terms of the management and release of bankruptcy property, curators are often faced with difficult situations between the interests of debtors and creditors, even many temptations for economic interests for the curators concerned to the end actually harm the bankruptcy property (Sriti Hesti Astiti, 2016). Curators are obliged to ensure all his actions are for the benefit of the bankruptcy property (Moch. Zulkarnain Al Mufti, 2016).

The task of the Curator as stated in Article 98 of the Bankruptcy Law and PKPU, menyatakan that "Since the beginning of his appointment, the Curator must carry out all efforts to secure the bankruptcy property and keep all letters, documents, money, jewelry, securities, and other securities by providing receipts". Furthermore, Article 99 of the Bankruptcy Law and PKPU describes the duties of curators who can request the sealing of bankruptcy property to the Court, based on the reason for securing the bankruptcy property, through the Supervisory Judge. The sealing was carried out by the bailiff at the property where it was attended by 2 (two) witnesses, one of whom was a representative of the local government.

The authority of curators is a right, in the sense of the power granted by law to carry out its duties. Authority is always related to the duties (obligations) imposed on a person. The granting of authority must be in accordance with the charged duties. In general, curators have the authority to carry out the duties of management and/or the enforcement of bankruptcy property from the date the bankruptcy verdict is pronounced even if the verdict is filed cassation or review. The authority of the curator in relation to his main duties, among others as follows: (Freisy Maria Kukus, 2015)

- a. It is not required to obtain approval from or give advance notice to the Debtor or one of the debtor's organs, even in circumstances outside of insolvency, such consent or notice is required.
- b. Can make loans from third parties, only in order to increase the value of bankruptcy property. If in making a loan, curators need to burden bankruptcy with a guarantee

institution (lien, mortgage, fiduciary, dependent rights or collateral rights on other material), then the curator must get the approval of the supervisory judge first. Bankruptcy property that can be charged with a guarantee institution is a bankruptcy property that has not been used as a debt guarantee.

- c. Can transfer bankruptcy property to the extent necessary to cover bankruptcy costs or if its detention will result in losses on bankruptcy property, even against bankruptcy rulings filed cassation or review, after obtaining the approval of the supervisory judge (Article 107 of the Bankruptcy Law).
- d. Authorized to make peace to end an ongoing case or prevent the onset of a case, after seeking advice from the provisional creditor committee, if any and with the permission of the supervisory judge (Article 109 of the Bankruptcy Law).
- e. Can hold a meeting with the creditor committee, to ask for advice.
- f. File a lawsuit or forward an ongoing case, or refute a lawsuit filed or that is ongoing. To exercise this authority, curators are obliged to seek the opinion of the creditor committee, unless:
 - 1) Against disputes about matching receivables;
 - 2) About continuing or not continuing the company in bankruptcy, in matters referred to in articles 36, 38, 39, 59 paragraph (3), 106, 107, 184 paragraph (3) and article 186;
 - 3) About the establishment and sale of bankruptcy property;
 - 4) About the time or the amount of division that must be done.

The obligation to ask for the opinion of the creditor committee is no longer required if the curator has called the creditor committee to hold a meeting to give an opinion, but within 7 days after the call the creditor committee does not give an opinion.

- g. Can request the sealing of bankruptcy property to the court through a judge, on the basis of reasons to secure the bankruptcy property.
- h. Curators can continue the business of debtors who are declared bankrupt even against the verdict of the bankruptcy statement filed cassation or review, after obtaining the approval of the committee of temporary creditors. If there is no creditor committee, the curator needs the permission of a supervisory judge (Article 104 of the Bankruptcy Law).
- i. Authorized to open letters and telegrams addressed to bankruptcy debtors (Article 105 paragraph (1) of the Bankruptcy Law).
- j. Authorities by circumstances provide an amount of money set by the supervisory judge for the living expenses of the bankruptcy debtor and his family (Article 106 of the Bankruptcy Law).
- k. For the purposes of the establishment of bankruptcy property, curators can use the services of Bankruptcy Debtors with the provision of wages determined by the supervisory judge (Article 186 of the Bankruptcy Law).
- l. Authorized to hold the separatist creditors accountable who exercise their rights to the proceeds of the sale of objects that become collateral and submit the remaining

- proceeds of the sale after deducting the amount of debt, interest, and costs to the curator (Article 60 paragraph (1) of the Bankruptcy Law).
- m. Curators can hold meetings with the creditor committee for advice (Article 82 of the Bankruptcy Law).
 - n. Curators with the permission of supervisory judges can continue the sale of objects belonging to debtors, both moving and ieless objects in the framework of execution has been so far away until the day the sale of the object has been established (Article 33 of the Bankruptcy Law).
 - o. Curators with the approval of the supervisory judge may transfer the bankruptcy property to the extent necessary to cover insolvency costs or if his detention will result in losses on bankruptcy property, even against the bankruptcy ruling filed cassation or review (Article 107 paragraph (1) of the Bankruptcy Law).

In Article 104 of the Bankruptcy Law and PKPU also requires curators to be able to continue the business of bankruptcy debtors, but must be with the approval of the creditor committee, if the creditor committee does not exist, then permission to continue the business of the bankruptcy debtor can be requested by the curator to the supervisory judge. In addition, the other task of curators is to record all bankruptcy property in full and placed in the clerkship of the court for everyone to be seen for free. This recording begins no later than 2 (two) days after receiving the decree of his appointment as Curator, as mentioned in Article 100 and Article 103 of the Bankruptcy Law and PKPU.

While the responsibility of curators when viewed in Article 72 of the Bankruptcy Law and PKPU, namely the Curator is responsible for his errors or omissions in carrying out management and /or enforcement tasks that cause losses to bankruptcy property. The meaning of responsibility in Article 72 of the bankruptcy law and pkpu is the curator is personally responsible (personal property) if the curator makes a mistake in making a mistake in carrying out the distribution of bankruptcy property so as to cause the value of bankruptcy property to decrease or even cause worthless bankruptcy property causing losses for crediurs.

After the end of insolvency, the curator must give a calculation of responsibility about the management he has done to the supervisory judge.

2. Duties and Responsibilities of Supervisory Judges

In the bankruptcy statement ruling, in addition to curators, the Commercial Court Judge must also appoint a supervisory judge. Since the verdict is handed down by the Judge, the general process of insolvency after the bankruptcy verdict applies. In the bankruptcy process, the process of the establishment of bankruptcy property by curators under the supervision of the Supervisory Judge (Lilik Mulyadi, 2010). The supervising judge is authorized to hear witness testimony or order an investigation by experts to gain clarity on all matters regarding insolvency. The court shall hear the opinion of the supervisory judge, before taking a decision on the management or application of bankruptcy property. The supervisory judge is tasked with overseeing the management and execution of bankruptcy property.

Broadly speaking, the authority and responsibility of the supervisory judge is as follows: (Citra Dewi Saputra, 2020)

- a. Establishing a daily newspaper and submitted to the curator to announce the bankruptcy verdict that must be carried out by the curator within a period of at least five days from the date of the bankruptcy verdict is determined (Article 15 paragraph (4) of the Bankruptcy Law and PKPU);
- b. Establishing the period of implementation of the mutual agreement that has not been or has only been partially fulfilled if between creditors and curators is not reached agreement on the matter (Article 36 paragraph (1) and (2) bankruptcy law and PKPU);
- c. Supervise the management and enforcement of bankruptcy property (Article 65 of the Bankruptcy Law and PKPU);
- d. Giving advice to commercial courts before the commercial court decides something related to the management and enforcement of bankruptcy property (Article 66 of the Bankruptcy Law and PKPU);
- e. Hearing the testimony of witnesses or ordering experts to conduct investigations in order to obtain information about all things related to insolvency (Article 67 paragraph (1) of the Bankruptcy Law and PKPU);
- f. Delegate the examination of the witness to the court whose legal area includes the residence of the witness, if the witness has a legal position outside the legal position of the commercial court that stipulates the verdict of the bankruptcy statement (Article 67 paragraph (4) of the Bankruptcy Law and PKPU).
- g. Giving approval to the curator to obtain a third-party loan if in making the loan, it turns out that the curator needs to burden the bankruptcy property with a lien, fiduciary guarantee, dependent rights, mortgage, or collateral rights on other material (Article 69 paragraph (3) of the Bankruptcy Law and PKPU);
- h. Giving permission to the curator to face the court, except regarding debt matching disputes or in matters as meant by Article 36, Article 38, Article 39, and Article 59 paragraph (3) (Article 69 paragraph (5) of the Bankruptcy Law and PKPU).
- i. Receive a report from the curator that must be made every 3 months regarding the state of the bankruptcy property and the implementation of its duties (Article 74 paragraph (1) of the Bankruptcy Law and PKPU).
- j. Provide an extension of time for curators to submit reports to supervisory judges as stipulated in Article 74 paragraph (1) (Article 74 paragraph (3) of the Bankruptcy Law and PKPU).
- k. Receiving a letter of objection to the supervisory judge for the deeds committed by the curator or issuing a warrant for the curator to do certain acts or not to do the deeds that have been planned, submitted by each creditor, creditor committee, and bankruptcy debtor (Article 77 paragraph (1) of the Bankruptcy Law and PKPU).
- l. Submit a letter of objection to the curator referred to in Article 77 paragraph (1), no later than 3 (three) days after the letter of objection is received (Article 77 paragraph (2) of the Bankruptcy Law and PKPU).

- m. Must offer to creditors to form a permanent creditor committee, after debt matching is completed (Article 80 paragraph (1) of the Bankruptcy Law and PKPU).
- n. Chairing the meeting of creditors (Article 85 paragraph (1) of the Bankruptcy Law and PKPU);
- o. Determine the day, date, time and place of the first creditor meeting, which shall be held within a period of no later than 30 (thirty) days after the date of the bankruptcy verdict is pronounced (Article 86ayat (1) of the Bankruptcy Law and PKPU);
- p. Convey to the curator the plan to hold the first creditor meeting within a period of 3 (three) days after the verdict of the bankruptcy statement is received (Article 86 paragraph (2));
- q. Holding a meeting if deemed necessary or at the request of the creditor committee or at least 5 (five) creditors representing 1/5 (one-fifth) part of the amount of receivables recognized or received on condition (Article 90 paragraph (2) of the Bankruptcy Law and PKPU) and then determine the day, date, time, and place of the meeting (Article 90 paragraph (3) of the Bankruptcy Law and PKPU);
- r. Giving approval to the curator to be able to transfer the bankruptcy property to the extent necessary to cover the costs of insolvency or if his detention will result in losses on the bankruptcy property, even against the bankruptcy verdict filed cassation or review (Article 107 paragraph (1) of the Bankruptcy Law and PKPU).
- s. Within a period (14-fourteen) days from the time the bankruptcy statement verdict has permanent legal force, the supervisory judge sets: a) the final deadline for filing the bill; b) the final limit of tax verification to determine the amount of tax obligations in accordance with the laws and regulations in the field of taxation; c) the day, date, time and place of the creditors' meeting to hold matching receivables (Article 113 paragraph (1) of the Bankruptcy Law and PKPU);
- t. Receiving questions from creditors in debt matching meetings about the necessary information from bankruptcy debtors (Article 121 paragraph (2) of the Bankruptcy Law and PKPU);
- u. In the debt matching meeting, read the list of temporary receivables and the list of receivables denied by the curator (Article 124 paragraph (1) of the Bankruptcy Law and PKPU);
- v. Reconciling the parties to the dispute in relation to receivables against which rebuttals or examine disputes between the parties (Article 127 paragraph (1) of the Bankruptcy Law and PKPU);
- w. Ordering the parties to the dispute over receivables against which the receivables are rebuttal to resolve the dispute through the court on a predetermined day without the need for a subpoena (Article 127 paragraph (1) of the Bankruptcy Law and PKPU);
- x. Together with the substitute clerk signed the news of the receivable matching meeting (Article 126 paragraph (4) of the Bankruptcy Law and PKPU); Likewise in the news of the peace meeting (Article 154 paragraph (2) of the Bankruptcy Law and PKPU);
- y. Giving permission to curators if curators sell bankruptcy under the hands (Article 185 paragraph (2) of the Bankruptcy Law and PKPU) and give permission to curators

to do something on objects that are not immediately or absolutely cannot be resolved (Article 185 paragraph (3) of the Bankruptcy Law and PKPU).

In addition, the task of supervisory judges can also be seen in the creditors' meeting, which is to act as chairman. The supervisory judge determines the day, date, time, and place of the first Creditor's meeting, which shall be held within a period of no later than 30 (thirty) days after the date of the bankruptcy verdict is pronounced.

In the case of matching receivables, no later than 14 (fourteen) days after the verdict of the bankruptcy statement is pronounced, the supervisory judge shall establish:

- 1) Deadline for filing bills;
- 2) The deadline for tax verification to determine the amount of tax obligations in accordance with the laws and regulations in the field of taxation;
- 3) The day, date, time, and meeting place of creditors to hold matching receivables.

In the bankruptcy law and PKPU stipulates that the Supervisory Judge has the responsibility of supervising the curator in carrying out the management and execution of bankruptcy property so as not to abuse his authority as a curator. The responsibility of the Supervisory Judge is only limited to the duties and authorities stipulated in the bankruptcy law and PKPU and to the provisions he made while mistakes or omissions made by curators that can harm bankruptcy property remain the responsibility of the curator (Cholidah Utama Holijah, 2017).

3. Debtors Sell Bankruptcy Assets That Harm Creditors

As a result of insolvency is the debtor for the sake of the law loses his right to control and take care of his wealth included in the bankruptcy property, from the date the bankruptcy statement verdict is pronounced. Thus, at the time the bankruptcy verdict is pronounced and during insolvency, the debtor loses his right to control and take care of all his property included in the bankruptcy. In other words, the debtor no longer has the authority to do legal deeds (sell) his property because it has become the authority of the curator. However, it is not uncommon to find "rogue" debtors who continue to do legal acts against their property, in this case selling to third parties without the knowledge of curators and supervisory judges whose purpose is to obtain their own profits and impact the reduction of bankruptcy assets to the detriment of creditors.

If this has been done by the debtor then actio pauliana can be done. Actio Pauliana is the cancellation of all legal acts committed by the debtor against his property through the Court based on the application of creditors (curators if in bankruptcy) known by the debtor the deed is detrimental to the creditor. Meanwhile, according to Sutan Remy Sjahdeini, Actio Pauliana is the right granted by law to a Creditor applying to the court for the cancellation of any acts that are not required to be done by the Debtor against his property known by the Debtor the deed is detrimental to the Creditor.

Actio Pauliana action can be done by curators in order to return bankruptcy assets so that there is no reduction in the assets of bankrupt debtors who have an impact on debt payments by the debtor can run optimally. The actions of curators to carry out Actio Pauliana are in line with Article 16 paragraph (1) of the Bankruptcy Law and PKPU which states that curators are authorized to carry out their duties and/or enforcement of bankruptcy property even if the verdict is filed cassation or review. Thus, based on the Article it can be seen that the authority of curators to carry out Actio Pauliana action begins since the bankruptcy verdict is pronounced by the Commercial Court. Actio Pauliana's lawsuit filed by curators appointed by the court to manage and clear the bankruptcy debtor's estate under the supervision of a supervisory judge. Actio Pauliana is divided into 3 (three), namely:

- a. Actio Pauliana in general (Article 1341 civil code);
- b. Actio Pauliana on inheritance (Article 1061 civil code);
- c. Actio Pauliana in bankruptcy, divided into two, among others:
 - 1) Actio Pauliana against legal acts committed before the bankruptcy ruling (Article 41 of the Bankruptcy Law and PKPU);
 - 2) Actio Pauliana against legal acts committed within a period of 1 year before the bankruptcy verdict, (Article 42 of the Bankruptcy Law and PKPU).

So, if the debtor commits a legal act by selling bankruptcy property that harms the creditor, then the creditor and curator can take actio Pauliana, which aims to cancel the legal action committed by the debtor so that the bankruptcy property can be returned so as not to harm the creditor. Please note that based on Article 41 jo. 42 of the Bankruptcy Law and PKPU, Actio Pauliana's lawsuit can only be done if the debtor's legal actions such as selling bankruptcy property are carried out within a period of 1 (one) year before the bankruptcy verdict or during the bankruptcy process. So that all legal acts committed by debtors exceeding 1 (one) year before the bankruptcy verdict still have legal force as long as it meets the elements in Article 1320 of the Civil Code, in other words the act cannot be sued by Actio Pauliana in the Commercial Court.

Conclusion

Curators have the duty to carry out the management and application of bankruptcy property to be given to creditors under the supervision of supervisory judges appointed by Commercial Court Judges. On the other hand, curators have a personal responsibility if in carrying out their duties he commits negligence resulting in losses to bankruptcy property. While the Supervisory Judge has a duty to supervise the curator in carrying out his duties so as not to abuse his authority as a curator in cleaning up bankruptcy property.

If the debtor commits legal action on bankruptcy property that harms creditors, then curators based on the mandate of Article 16 of the Bankruptcy Law and PKPU can file an Actio Pauliana lawsuit to the Commercial Court that aims to cancel the legal actions

committed by the previous debtor so that bankruptcy property can be maximized to be distributed to creditors.

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